

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

3 -----X

4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
5 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

6 Plaintiff,

7 -against-

8 THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
9 WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
10 and JOSHUA POWELL,

11 Defendants.

12 -----X

13 Index No. 451625/20 60 Centre Street
14 CONFERENCE New York, N.Y.
15 and JURY SELECTION January 8, 2024

16 B E F O R E:

17 HONORABLE JOEL M. COHEN,
18 Justice

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1 (Appearances continued:)

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LORI SACCO
Official Court Reporters

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Proceedings

1 (Whereupon, the selected jurors were seated in the
2 jury box.)

3 THE COURT: All right, everybody can be seated.
4 Welcome to all of you.

5 The first order of business is to administer the
6 oath to the jurors.

7 So, Ms. Hill, if you wouldn't mind ...

8 THE CLERK: Is the jury satisfactory to the
9 parties?

10 MS. CONNELL: Yes, your Honor; they're satisfactory
11 to the plaintiff.

12 MS. ROGERS: Satisfactory to the NRA.

13 MR. CORRELL: Satisfactory to Wayne LaPierre.

14 MR. FARBER: Satisfactory to Mr. Phillips.

15 MR. FLEMING: And satisfactory to John Frazer.

16 THE COURT: Thank you.

17 THE CLERK: Jurors, would you raise your right
18 hands.

19 (Jurors complied.)

20 THE CLERK: You and each of you do solemnly swear
21 or affirm that you will well and truly try the issues joined
22 by the parties in the case on trial, and a true and just
23 verdict render therein, according to the law as given to you
24 by the Court and the evidence presented? If so, say "I do."

25 NUMEROUS JURORS: I do.

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Preliminary Charge

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1 THE CLERK: Thank you.

2 You may be seated.

3 (Jurors seated.)

4 THE COURT: Okay. Good morning, or -- I can't
5 believe I said "good morning."

6 Good afternoon.

7 As you know, because we've met before, I'm Joel
8 Cohen; I'm going to be the presiding trial judge in this
9 case.

10 I want to begin by thanking you once again for
11 being here. I hope you will agree, this can be a very good
12 experience if you get into it, take it seriously and do a
13 good job, which I know you will. If at any time while the
14 trial is going on you have any trouble hearing or seeing,
15 including on the screens that are on both sides of the jury
16 box (indicating), which are not -- nothing on them right now
17 -- just let me know and we'll rearrange things to fix that.

18 Before the trial begins, I'm going to give you an
19 overview of how things will go and how some -- and some
20 important instructions on a few things you should and
21 shouldn't do as we go forward.

22 In a nutshell, the three basic rules are these:

23 First, be fair and keep an open mind throughout the
24 trial.

25 Second, listen very carefully to the evidence you

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1 hear and see in this room, the arguments of counsel, my
2 instructions, and your fellow jurors, once you start
3 deliberating.

4 And third, see Rules 1 and 2. In other words,
5 don't listen to or be influenced by anything else.

6 So now I'm going to go through the basics about how
7 the trial and the case will unfurl. First of all, the
8 parties:

9 The party who brings a lawsuit is called the
10 plaintiff. In this action, as I've told you during the
11 selection process, the plaintiff is the New York Attorney
12 General, Letitia James, on behalf of the People of the State
13 of New York. You may hear plaintiff referred to as the
14 "plaintiff" or the "attorney general" or something along
15 those lines.

16 The party against whom a lawsuit is brought is
17 called the defendant. In this action, as you know, there
18 are -- well, in this action, there are four defendants: the
19 National Rifle Association of America, or the NRA; and three
20 individuals who currently or previously served in executive
21 positions at the NRA. Those are: Wayne LaPierre, John
22 Frazer, and Wilson "Woody" Phillips.

23 During jury selection, I indicated to you that
24 there would be a fifth defendant, Joshua Powell, but
25 Mr. Powell is no longer a defendant in this case.

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1 As to the three remaining individual defendants,
2 Wayne LaPierre is the NRA's executive vice president and has
3 held that position since 1991. On January 5th, 2024, he
4 announced his resignation from that role, effective January
5 31, 2004.

6 John Frazer is the NRA's general counsel and
7 secretary of the NRA Board, and has held these positions
8 since 2015.

9 Wilson Phillips was the NRA's chief financial
10 officer and treasurer of the NRA Board of Directors for
11 approximately 25 years, until 2018.

12 You may hear them referred to together as "the
13 defendants."

14 A little bit about opening arguments and the
15 evidence:

16 After I'm done with these instructions, the
17 attorneys for each party are permitted to make opening
18 statements in which they will outline for you what they
19 expect to prove. The purpose of opening statements is to
20 tell you about each party's contentions, so you will have a
21 better understanding of the evidence as it is introduced.
22 What is said in opening statements, though, is not evidence.
23 The evidence upon which you will base your decisions will
24 come from the testimony of witnesses here in court or in
25 sworn testimony given before trial or in the form of

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1 photographs, documents or other exhibits admitted into
2 evidence.

3 In this case, the plaintiffs -- the attorney
4 general's office -- will make an opening statement first,
5 followed by the defendants.

6 After the opening statements, the plaintiff will
7 introduce evidence in support of its claim. Normally, a
8 party must produce all of its witnesses and complete its
9 entire case before the opposing party introducing --
10 introduces any evidence, although exceptions are sometimes
11 made for the convenience of witnesses.

12 After the plaintiff has completed the introduction
13 of all of its evidence, each defendant may, but is not
14 required to, present witnesses and exhibits. If they do so,
15 then the plaintiff may, but is also not required to, offer
16 additional evidence for the purpose of rebuttal.

17 A witness is examined by the party who calls that
18 witness to testify and then may be questioned by the
19 opposing parties in cross-examination, and then it can go
20 back and forth a bit: redirect, recross, and the like.

21 At times during the trial, an attorney may object
22 to a question or to the introduction of an exhibit or make
23 motions concerning legal questions that apply to this case.
24 Arguments in connection with objections or motions sometimes
25 are made outside the presence of the jury; if we're talking

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Preliminary Charge

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1 about whether you should see something, it obviously doesn't
2 make sense for you to see it while we're talking about it.

3 The ...

4 Any ruling I make will be based solely on the law,
5 and therefore, you must not conclude, from any ruling or
6 anything I say during the trial, that I favor any party to
7 this lawsuit.

8 After all the evidence is in, then the attorneys
9 will speak to you in closing statements, or summations. In
10 summing up, the lawyers will point out what they contend the
11 evidence has shown, what inferences or conclusions they
12 contend you should draw from the evidence, and what
13 conclusions they contend you should reach as your verdict.
14 As with the openings, what attorneys say in summation or in
15 the making of objections or motions during the trial is only
16 argument; it's not evidence. Under our system, the
17 defendants will do their closings first, followed by the
18 plaintiff.

19 A little bit about my job and your job:

20 After summations, I will come back and instruct you
21 again, in a much longer form, on the rules of law that apply
22 to this case. You will then retire for deliberations.

23 Your function, as jurors, is to decide what has or
24 has not been proved and to apply the rules of law that I
25 give you to the facts as you find them to be. The decisions

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1 you reach will be your verdict. Your decisions will be
2 based, and must be based, on the testimony you hear and the
3 exhibits received in evidence during the trial.

4 You are the sole and exclusive judges of the facts,
5 and nothing I say or do should be taken by you as any
6 indication of my opinion as to the facts. Neither I nor
7 anyone else can take over your responsibility to determine
8 the facts. My role is to preside impartially and not to
9 express any opinion concerning the facts. Any opinion of
10 mine on the facts would, in any event, be totally irrelevant
11 because the facts are for you to decide.

12 On the other hand and with equal emphasis, I
13 instruct you that in accordance with the oath you took as
14 jurors, you must accept the rules of law that I give you,
15 whether or not you agree with them. You are not to ask
16 anyone else about the law and you must not consider or
17 accept any advice about the law from anyone other than me.

18 As the sole judges of the facts, you must decide
19 which of the witnesses you believe, what portion of their
20 testimony you accept, and what weight you give to it. At
21 times during the trial, I may sustain objections to
22 questions and you may hear no answer or, where an answer has
23 been given, I may instruct that it be stricken or removed
24 from the record and that you disregard it. You may not draw
25 any inference or conclusion from an unanswered question, nor

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1 may you consider testimony that has been stricken or removed
 2 from the record in reaching your decisions. The law
 3 requires that your decisions be made solely on the evidence
 4 before you, so any items I exclude from your consideration
 5 have to be excluded because they are not legally admissible.

6 A note about impartiality, and we'll get into a few
 7 issues in this line:

8 A lawsuit is a civilized method of determining
 9 disputes. We'll see whether you still agree with that when
 10 we're done. It is basic to the administration of any system
 11 of justice that the decisions on both the law and the facts
 12 be made fairly and honestly. You, as the jurors and I, as
 13 the Court, have a heavy responsibility: to act impartially
 14 and ensure a just result is reached in deciding the disputes
 15 between the plaintiff and the defendants in this case.

16 As a fair and impartial juror, you must guard
 17 against the application of any stereotypes or attitudes
 18 about people or groups that might lead you to render a
 19 decision based on those stereotypes or attitudes. Keep in
 20 mind that bias is not always obvious or conscious. In
 21 assessing the testimony and other evidence in this case, you
 22 must not be swayed by those stereotypes or attitudes.

23 The law does not require you to accept all the
 24 evidence I will admit. In deciding what evidence you will
 25 accept, you must make your own evaluation of the testimony

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1 given by each of the witnesses and decide how much weight,
2 if any, you choose to give that testimony.

3 The testimony of a witness may not conform to the
4 facts as they occurred for a bunch of reasons: because he or
5 she is intentionally lying, because the witness did not
6 accurately see or hear what he or she is testifying about,
7 because the witness' recollection is faulty, or because the
8 witness has not expressed himself or herself clearly.

9 There is no magical formula by which you evaluate
10 testimony. You bring with you to this courtroom all the
11 experience and background of your lives. In your everyday
12 affairs, you decide for yourselves the reliability or
13 unreliability of things people tell you. The same tests you
14 use in your everyday dealings are the tests you should apply
15 in your deliberations.

16 In deciding how much weight, if any, you will give
17 to a witness' testimony, you may consider the interest or
18 lack of interest of that witness in the outcome of this
19 case; the bias or prejudice of the witness, if there is any;
20 the age, appearance and manner in which the witness gives
21 testimony on the stand; the opportunity and ability the
22 witness had to observe the facts about which he or she
23 testifies; and the probability or improbability of the
24 witness' testimony when considered in light of all the other
25 evidence in the case.

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1 If it appears there is a conflict in the evidence,
2 you should decide whether and to what extent the apparent
3 conflict can be reconciled by fitting the different versions
4 together. If you can't do so, you will have to decide which
5 of the conflicting versions you will accept, if any.

6 Now, I'm going to talk, now, about the conduct --
7 your conduct -- during your time as a juror:

8 To help make sure a just result is reached when you
9 decide this case, consistent with the oath you took as a
10 juror, there are several rules that must govern your conduct
11 during your time in serving as a juror. First, we'll talk
12 about discussions among the jurors and keeping an open mind:

13 In fairness to the parties to this lawsuit, it is
14 very important for you to keep an open mind throughout the
15 trial. You must reach your decisions and verdict on the
16 evidence only as it is admitted during this trial and then
17 only after you have heard the summations of the attorneys
18 and my instructions to you on the law. Then you will
19 exchange your views and opinions with the other members of
20 the jury to reach your decision and verdict.

21 While it is human nature for you to form tentative
22 opinions about the witnesses' testimony and other evidence
23 as the trial progresses, and there is a strong temptation to
24 want to discuss those opinions during the course of the
25 trial, the law does not permit it. The reason for this is

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1 that if you engage in premature discussions without the
2 benefit of all the evidence, the summations by the lawyers
3 and my instructions on the law, your discussions will not be
4 fully informed, which would be unfair to the parties. For
5 this reason, among others, do not do any independent
6 research on any topic you might hear about in this case,
7 whether by consulting others, reading any material or
8 conducting Internet searches of any kind.

9 Some of the topics you are not to discuss or
10 research are: the law or any of the issues in this case.
11 You also must not discuss or do research about the parties,
12 the lawyers, the witnesses or me, even. After you have
13 rendered your verdict and have been discharged, you'll be
14 free to do any research you choose or to share your
15 experiences.

16 Remember these rules while you are serving as a
17 juror, whether in the courtroom or elsewhere, including
18 whenever you use a computer or other personal electronic
19 device. It is vital that you carefully follow these
20 directions.

21 The law requires that you consider only the
22 testimony and other evidence admitted at this trial. Not
23 only does our law mandate it, but the parties depend on you
24 to fairly and impartially consider only the admitted
25 evidence. To do otherwise, by allowing outside information

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1 which may be incomplete, inaccurate or otherwise unreliable
2 to affect your judgment would be unfair and prejudicial to
3 the parties and could require a retrial of this case.

4 All cell phones, smartphones, laptops, tablets or
5 any other personal electronic devices must be turned off
6 while you're in the courtroom and while you are
7 deliberating.

8 Several of you, during the selection process,
9 mentioned that you had seen alerts come up on your phone or
10 the like that related to this case, so it's going to
11 require, in this case in particular, special vigilance to
12 avoid hearing things that will distract you from the
13 evidence in this case. To the extent that you are able to
14 turn off automatic alerts from news sources that might pop
15 up without your doing anything, I would urge you to try to
16 figure out how to do that. Okay?

17 Second, discussions with or by others:

18 Do not talk, either among yourselves or with anyone
19 else, about anything related to this case. You may tell
20 people you're a juror and give them information about when
21 you will be required to be in court, but you must not talk
22 with anyone about any other matters related to the case.

23 You must not provide any information about this
24 case to anyone, by any means whatsoever. This means, you
25 must not discuss or give or get information about any matter

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1 related to this case by telephone, text message, e-mail or
2 any Internet services or social media, including blogs, chat
3 rooms, Google, Facebook, Twitter, Linked-In, Instagram,
4 TikTok or the many others that I have no idea about,
5 including those which -- I have no idea about most of those,
6 but I suspect most of you know more about it than I do.

7 You must not permit any person who is not a juror
8 to talk to you about this case in your presence and if
9 anyone does so despite your telling that person not to,
10 report that to me as soon as you are able; however, you must
11 not discuss with your fellow jurors either that fact or any
12 other fact you feel necessary to bring to my attention.

13 Although it is a normal human tendency to talk to
14 people with whom you come in contact during the time you're
15 on this jury, do not talk, whether in court or out of the
16 courtroom, with any of the parties or their attorneys or any
17 witnesses. By this I mean, not only don't talk about the
18 case, but don't talk to them at all, even to pass the time
19 of day. In no other way can all parties be assured of the
20 absolute impartiality they're entitled to expect from you as
21 jurors.

22 Just as a heads-up, because lawyers ask me to make
23 this point to people, if a lawyer, party or witness does not
24 acknowledge you passing in the hall, that person's not being
25 rude, but is merely following my instructions not to speak

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1 with you.

2 The parties and the attorneys involved in this case
3 or people working with them on this case may properly look
4 at a juror's public website, public social media posts or
5 blogs or your social media profiles that are publicly
6 accessible. This may have occurred during jury selection
7 and also may occur during the course of this trial, during
8 deliberation and after the trial has ended.

9 While the parties and attorneys may look at your
10 public media, they may not communicate with you through
11 public media or any other way during the trial and
12 deliberations. In fact, nobody may communicate with you
13 about the case, for any reason, in any manner, during the
14 course of this trial or during the time you are
15 deliberating.

16 If you believe anyone has attempted to communicate
17 with you in any manner about the case, let me know as soon
18 as possible; the court officers are always available to get
19 messages to me. You should not communicate about the case
20 with anyone other than me or the court officer.

21 (Continued on next page.)

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JURY INSTRUCTIONS

1 During the trial circumstances may arise when a
 2 juror has a need to bring a matter to my attention such as I
 3 just described. Should any one of you find yourself in that
 4 situation, please notify the court officer either orally or
 5 through a note that you need to speak to me and I will then
 6 instruct you further. Do not tell any other juror or anyone
 7 else the matter you seek to bring to my attention.

8 A note about alternate jurors and how we accomplish
 9 that in this case. Under the law only six jurors will
 10 ultimately deliberate on this case. We have selected six
 11 additional jurors because some time during the trial,
 12 especially a long one, a juror may be unable to continue
 13 service due to some emergency. All of you, to be clear, are
 14 required to pay the same careful attention during the trial
 15 so that each of you will be fully familiar with the case.
 16 The fact that there are additional jurors does not mean that
 17 any juror is free to excuse himself or herself from the
 18 case. As a duly sworn jury it is your obligation to be
 19 available and attentive throughout the trial. In part to
 20 assist in that we have not selected designated alternate
 21 jurors. Instead we will randomly choose and determine which
 22 of you are alternate jurors after the parties closing
 23 arguments and prior to deliberations.

24 You may be interested about note taking. If you
 25 want to, you may take notes, and we will provide a notebook

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JURY INSTRUCTIONS

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1 for you. Whether you take notes or not, you should be aware
2 that the court reporter reports everything stated in the
3 courtroom, and any portion of the transcript at your request
4 will be read back to you during your deliberations. If you
5 do take notes during the trial, you should not allow your
6 note taking to be a distraction from the proceedings. If
7 any of you do take notes during the trial, those notes are
8 only for your personal use and can only be used as aid to
9 your memory. Any difference between any juror's
10 recollection and any juror's notes should always be settled
11 by asking to have the court reporter's transcript on that
12 point read back to you. The court transcript should govern
13 your deliberations and determinations rather than a juror's
14 notes. A juror's notes are not a substitute for the
15 official record or governing principles of law that I will
16 give to you during and at the end of the trial. Your notes
17 are confidential and will be directed and secured by the
18 court officers at the end of each session and destroyed at
19 the end of trial.

20 Okay. That description of trial procedures, the
21 rules governing your conduct and legal principles I've
22 described for you I hope will make it easier for you to
23 understand the trial as it proceeds and to reach a just
24 result at its conclusion.

25 A couple of logistical notes before we move on to

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JURY INSTRUCTIONS

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1 the opening arguments. As I mentioned to you during the
2 selection process, the trial is scheduled to take place over
3 six weeks, from today through February 16th. The trial is
4 generally scheduled from Monday to Thursday with Fridays off
5 so that I can deal with other cases. But there are some
6 exceptions, which I can tell you about now and remind you
7 about later. First, we will have trial this Friday morning
8 from 9:30 to about 12:30. This is to make up for the fact
9 that we did not start today at 9:30, as we had originally
10 planned. Second, the Court is closed on Monday,
11 January 15th, for Martin Luther King Junior Day. So we will
12 have -- so that will be our off day and we'll have trial
13 that Friday, the 19th. Sorry. Third, there is no trial on
14 Thursday, January 25th, and instead we'll have trial on the
15 26th. This room is being used for another purpose that day.
16 Fourth and finally, the court is closed on February 12th for
17 Lincoln's birthday, and the trial will instead be held on
18 the 16th instead that week. That's a lot to remember. I'll
19 remind you as the weeks go on which days. Basically if it's
20 a holiday, that's our off day. There may be sometimes where
21 I need to tend to issues in other cases, but I'm going to
22 try to keep that to a bare minimum.

23 Are the parties ready to proceed?

24 MS. CONNELL: If we can have one second to set up
25 the tech, your Honor.

LAS

OPENING - CONNELL

20

1 THE COURT: In the meantime, the court officers
2 want to do something with the way the audience is
3 configured.

4 Can I ask, I do this with some, does anyone need to
5 take a restroom break before we start, because the opening
6 will be between an hour and hour an a half. I figured that
7 would happen. If anybody needs to, the court officer will
8 take you and we'll take a short break.

9 THE COURT OFFICER: Jury exiting. All rise.

10 THE COURT: If I can urge that we make the break
11 relatively short, so we can get back and get open, I would
12 appreciate it.

13 (Whereupon the jury panel departed the courtroom.)

14 (Whereupon a recess was taken.)

15 THE COURT OFFICER: All rise. Jury entering.

16 (Whereupon the jury panel entered the courtroom.)

17 THE COURT: Welcome back. Have a seat. Counsel,
18 you may proceed.

19 MS. CONNELL: Thank you, your Honor. Good
20 afternoon. This case is about corruption -- Your Honor,
21 excuse me one second. That feedback is a real problem.
22 Perfect. Thank you, your Honor, for your tech help.

23 THE COURT: It's great as long as you don't intend
24 to have any witnesses during the trial.

25 MS. CONNELL: We might have to talk about that.

LAS

OPENING - CONNELL

21

1 Ladies and gentlemen, this case is about corruption in a
2 charity. It's about breaches of trust and it's about power.
3 People take money out of their pockets, hard earned money
4 and they donate it to charities and causes that they believe
5 in. It doesn't matter what the charity is or what the cause
6 is. It's they take their money out of their pocket and give
7 it to advance that charity or cause. They should be able to
8 trust that the hard earned money they donate is going to go
9 to advance the mission of that charity. They should be able
10 to trust that their hard earned money that they donated will
11 not be used for luxury travel and five star hotels for
12 charity board members, executives, their family and friends.
13 They should be able to trust that their hard earned money
14 won't be used for trips to the Bahamas that have nothing to
15 do with the charity's mission or for no show or low show
16 contracts. For board members and people who connected with
17 the charity's leadership. They should be able to trust that
18 the money won't be used for the wedding of an executive's
19 son or to pay millions of dollars illegally to companies who
20 are run by friends of NRA executives, yet that is exactly
21 what occurred here.

22 Defendants National Rifle Association of America or
23 NRA, Wayne LaPierre, Defendant John Frazer and Defendant
24 Wilson Phillips, who is called Woody at times, Woody
25 Phillips, have breached the trust placed in them and

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OPENING - CONNELL

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1 violated rules and laws that they were required to follow.
2 The evidence will show that the NRA itself and the three
3 individual defendants acted illegally over and over again
4 for years. That they were part of a entrenched leadership
5 within the NRA. And why did they actively and how did they
6 get away with this? Primarily to maintain the power of the
7 NRA's internal leadership. To ensure that insiders,
8 including the defendants, maintain their title and status.
9 That they kept their jobs. And that they and their family
10 and friends received lavish perks or million dollar deals
11 from the NRA.

12 Judge Cohen will explain the law to you at the end
13 of the case. But NRA is suppose to function in compliance
14 with the laws that make charities. The defendants are
15 suppose to have -- individual defendants are suppose to have
16 undivided loyalty to the NRA and its mission. They are
17 suppose to be -- to properly oversee the charitable assets
18 of the NRA. They are suppose to make sure that the monies
19 donated or given by members as membership fees go to the
20 mission of the charity for the purposes intended and not for
21 the personal benefit of NRA insiders and their friends and
22 family.

23 You will hear that the NRA allowed Wayne LaPierre
24 and his group of NRA insiders, including board members,
25 employees and officers to operate at the NRA as Wayne's

LAS

OPENING - CONNELL

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1 world for decades. You will hear from NRA employees and
2 board members that the NRA operated -- did not operate
3 according to the law or even according to its own rules.
4 We'll talk about those rules and why they are important.

5 You will hear that the NRA operated, and you'll
6 hear this from an NRA employee, on a Wayne says basis.
7 You're going to hear a member of the NRA board say or refer
8 to Wayne as the king of the NRA. And the evidence will show
9 that with the assent of the NRA, with the organization's
10 approval, with the help of the other defendants, the king of
11 the NRA corrupted and breached the NRA from within and used
12 donors' monies in ways that they shouldn't be used.

13 My name is Monica Connell. I'm an assistant
14 attorney general in the Charities Bureau of the Office of
15 the Attorney General. I along with my colleagues, including
16 Jonathan Conley, Steve Shiffman, Stephen Thompson and
17 William Wang will be presenting most of the evidence in this
18 case to you. And we are going to show you that the
19 defendants breached New York law and ask at the end to
20 return a verdict of liable, that they are liable for that.

21 In this case the People of the State of New York
22 are represented by the Attorney General of the State of New
23 York, Letitia James. And just to let you know, you'll hear
24 evidence that the Attorney General oversees charities that
25 are chartered and raise funds and do business in New York.

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1 The People are going to show you specifically that the
2 defendants violated certain specific New York laws,
3 including that the defendants violated the estates powers
4 and trust law and that they failed to properly administered
5 the NRA and its charitable assets. The People will also
6 show that the individual defendants, Defendant LaPierre,
7 Frazer and Phillips, breached their fiduciary duties to the
8 NRA in violation of New York's Not-For-Profit Corporation
9 Law. That defendants NRA, LaPierre and Phillips were
10 personally involved in something called an illegal related-
11 party transaction. The Judge will explain to you what a
12 related-party transaction is. You'll be hearing a lot about
13 them. It's essentially when the NRA engages in a
14 transaction with people within the NRA who have power, such
15 that the action should be reviewed by the NRA board or its
16 audit committee, because those types of transactions can be
17 subject to abuse.

18 The defendants also aided others in engaging in
19 related-party transactions. Plaintiff will also prove that
20 the defendants, the NRA, violated New York's whistleblower
21 law. We'll talk about the importance of the whistleblower
22 law. And that the Defendant NRA, Defendant John Frazer made
23 false -- materially false statements to the State of New
24 York in regulatory filings.

25 Today I'm going to walk you through some of the

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1 evidence that we think we will show you. But I would like
2 to take a second to stop and talk to you about some concepts
3 and terms that will help -- that you will hear over and over
4 again in the evidence and help you understand the evidence
5 as it comes in. Specifically in regard to charities and
6 nonprofits.

7 The law allows formation of tax exempt charities
8 like the NRA to ensure that people can collect their money
9 together and use it for a good purpose. It's important to
10 society that they be able to do so. You will hear charities
11 like the NRA are not for profit. They don't have
12 shareholders or owners who are looking at the bottom line to
13 make sure that they get their every penny worth of value out
14 of money spent. So they can be subject, particularly
15 subject to abuse. To waste of funds, loss, something called
16 diversion of funds, away from the charitable mission.

17 You'll hear evidence about safeguards. And there
18 are five main safeguards that are used to prevent or try to
19 prevent the waste, loss or misuse of charitable funds.
20 These safeguards can't always be effective. They can't
21 always stop all problems, but they are put into place if you
22 think of them like guardrails on the side of the road or a
23 seatbelt. Hopefully they prevent a problem or minimize the
24 damage.

25 The first safeguard that you'll hear about

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1 fiduciary duties. This is the trust and legal obligations
2 placed in those who run charities. And it means, again the
3 Judge will explain the law to you, but generally it means
4 that the officers of a charity must exercise, they must
5 exercise the highest level of loyalty to the charity. They
6 have to have undivided loyalty to the charity when they are
7 acting within their position at the charity. They have to
8 make sure the charity's interest comes before their own
9 interest, otherwise they have divided loyalty and that can
10 create a problem.

11 You're going to hear that each of the individual
12 defendants here were fiduciaries of the NRA and owed the
13 duty of loyalty, the duty of care and the duty of obedience
14 to the charity. As to that I want to say that the -- most
15 charities, and the NRA here has some internal rules, we'll
16 be talking about those, as a fiduciary defendants were
17 required to follow and comply with those rules.

18 Fiduciaries can be liable for breaches of their
19 duties, and plaintiffs will show here that the defendants
20 breached their fiduciary duties. For example, the evidence
21 here, the evidence will show defendants engaged in, enabled
22 and permitted transactions that were against the NRA's best
23 interests, especially transactions tainted by conflicts of
24 interest.

25 What is a conflict of interest? I think many of us

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1 have some understanding of that. But a conflict of interest
2 is basically when a person, a person's personal interest may
3 conflict with that of the organization such that they might
4 have divided loyalties and might not exercise judgment in
5 the best interest of the corporation.

6 So, one example of a conflict of interest
7 transaction that you're going to hear a lot about involves
8 the NRA's agreements with three of its largest vendors, the
9 vendors are Membership Marketing Partners, Allegiance
10 Creative and Comport Social. We are going to collectively
11 refer to them as MMP. All three of these vendors are
12 controlled by the same family. All three of these vendors
13 have the same employees. You will hear evidence that all
14 three of these vendors operated out of the exact same office
15 which happens to be located in a building of the NRA
16 headquarters.

17 So, the NRA spends, you'll hear that the NRA has
18 paid these entities over the last decade over \$135 million.
19 You're going to hear that -- Excuse me -- you're going to
20 hear that Defendant Wayne LaPierre signed multiple contracts
21 with these vendors. You're going to hear Defendant Wilson
22 Phillips also signed multiple contracts with these entities.
23 You're going to hear evidence that they also agreed to the
24 payment of millions of dollars to the MMP entities that were
25 not included in these written contracts, as they are suppose

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1 to be under NRA rules. Tens of millions of dollars. That's
2 what the evidence will show. Those payments, in violation
3 of NRA policies, and those payments that were not properly
4 approved by the NRA board and not properly approved by other
5 executives are illegal and are a problem alone. But the
6 problem here is much worse.

7 Because Defendant Wayne LaPierre, while he was
8 negotiating with the MMP entities, while he was approving
9 contracts and signing contracts, while he was approving
10 payments outside of those contracts was friends with the
11 owners of MMP and accepted valuable gifts from them the
12 whole time. You will hear that the owners of MMP, David and
13 Laura McKenzie, who we'll refer to as the McKenzies,
14 arranged for and paid for travel for Mr. LaPierre and his
15 wife Susan. You'll hear that they traveled all over the
16 world for free on McKenzie's dime. They went to Greece,
17 Dubai, the Mediterranean. You'll hear that they also got
18 free use of the McKenzie's super yachts known as The
19 Illusion and The Grand Illusion. They used them yearly,
20 sometimes multiple times a year. Mrs. LaPierre will take
21 girls trips on them. The Grand Illusion was used as part of
22 a family wedding celebration. A daughter, a family wedding
23 celebration. Excuse me. This is a conflict of interest.
24 People will submit the evidence will show this, that the
25 LaPierre -- that Mr. LaPierre accepted these gifts while

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1 engaging in business with the McKenzies. But it gets worse.
2 Because the evidence will show that Mr. LaPierre hid his
3 relationship with the McKenzies from some people within the
4 NRA and lied about it.

5 You'll hear that every year certain board members
6 and executives within the NRA were required to disclose --
7 One second, your Honor. Mine is having a little problem --
8 were required to disclose information to ensure, try to
9 prevent conflicts of interest or related-party transactions.
10 That they are asked every year whether they or a relative
11 has received a gift from someone who is a vendor or wants to
12 be a vendor to the NRA. They want to sell or get NRA money.
13 And year and year, when asked this question, Mr. LaPierre
14 checked no.

15 Now you will hear evidence that Mr. Frazer, whose
16 the general counsel of the NRA, we'll talk about that, and
17 secretary to the board, put out these financial
18 questionnaires every year and he collected them. We'll hear
19 what he did with them. But coming back to this. Mr.
20 LaPierre checked that box no year after year after year.

21 Finally on April 7th, 2021 Mr. LaPierre at least
22 partially disclosed some gifts he had received from the
23 McKenzies. He made this disclosure on the morning of a day
24 he was about to testify in court under oath and before a
25 judge in Texas. That happened to be in bankruptcy

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1 proceedings that he had commenced in which he had placed the
2 NRA into bankruptcy. You'll hear about that. So, on the
3 day he's going to testify in the bankruptcy proceedings, he
4 finally at least partially discloses gifts he receives from
5 MMP. The evidence will show that nothing happened to him as
6 a result. That he turned in this form. Mr. Frazer got this
7 form. To the extent Mr. Frazer may claim he didn't know
8 about the relationship with MMP before, the evidence will
9 show that he received this form.

10 Mr. Frazer testified more than a year later that he
11 had not asked Mr. LaPierre about the conflict. He had not
12 investigated it. He did not ask why Mr. LaPierre didn't
13 disclose this conflict earlier. In short, Mr. LaPierre
14 suffered no adverse effect from having lied to the NRA year
15 after year, from having spent millions of dollars of NRA
16 funds and diverted it to friends and from having received
17 valuable gifts, free luxury travel and other benefits from a
18 vendor of the NRA.

19 You will see that the other defendants went along
20 with this conduct. The NRA didn't do anything about it.
21 You'll hear that the board, when they learned about this,
22 didn't do anything about it. That this -- that Mr.
23 LaPierre, you know again, got away scot free with it. And
24 that Mr. Phillips assisted Mr. LaPierre in this. How did he
25 assist him? Well, Mr. Phillips, as you'll hear, oversees

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1 the financial services division of the NRA among other
2 things or used to oversee it before he retired in 2018. He
3 helped push through the payments. He helped sign some of
4 the contracts. And he helped make sure that he helped pay
5 out even when there was not a contract justifying a payment.
6 And Mr. Frazer certainly assisted by failing to take any
7 action once the conflict of interest was revealed. These
8 are just some examples of the types of fiduciary duties that
9 People of the State of New York are going to prove to you.

10 To step back safeguards that are intended to
11 prevent the waste of charitable assets. One of them is
12 something called internal controls. Now, internal controls
13 is a fancy term that just essentially means rules and
14 procedures that are designed to prevent the waste or misuse
15 of money. So, for example, if you wanted your child to have
16 an allowance, you might say here's your \$20, your \$10, your
17 \$5. You're not going to give them your credit card and tell
18 me how it all comes out. Right. You're going to have
19 rules. So, typical examples of internal controls are rules
20 that require somebody, when they spend NRA funds, to provide
21 business justification for that expenditure. To
22 substantiate that business justification. So, if you spend
23 \$800 at a dinner, then you should provide proof to the NRA
24 of that charity of what that expenditure was for, for
25 example.

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1 Other rules are procurement or purchasing rules
2 that certain contracts must be in writing and approved in
3 certain ways. There are also rules against conflicts of
4 interests in related-party transactions. These are just
5 some common rules. The NRA does have some internal
6 controls. They are mostly embodied in the bylaws, its
7 policy manual and its employee handbook. You'll be hearing
8 about some of those.

9 But the evidence in this case will show that the
10 defendants, meaning Defendants NRA, LaPierre, Phillips and
11 Frazer, with help from some board members and others,
12 routinely engaged in and violated the NRA's internal
13 controls. They ignored when -- when it suited them and
14 suffered little to no consequences.

15 For example, and this is just one example, the NRA
16 has a travel transportation policy. And as you'll see, the
17 transportation policy indicates and sensibly that travel
18 should be made in the most economical way possible for the
19 NRA. Only coach tickets are allowed. First class is
20 permitted in certain instances with advance approval.
21 That's their policy. And again employees and board members
22 are required to follow the NRA's policies. And yet you will
23 see evidence that in violation of the NRA's transportation
24 policy Mr. LaPierre, when he was using NRA funds, flew
25 almost entirely by private jet for years, at least since

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1 2012, if not before that, in direct violation of that
2 policy. And how is this a waste of NRA funds? How is this
3 bad? One example is the NRA paid over \$600,000, the
4 evidence will show, in private jet travel to the Bahamas.
5 And that was not the only expenditure that is questionable.

6 The NRA, you'll also hear evidence, that the NRA
7 paid over a million dollars for flights on which Mr.
8 LaPierre was not even a passenger. The NRA may say that
9 there is a security reason that Mr. LaPierre flew private,
10 but you will hear no evidence of a board resolution at any
11 time even prior to 2022 that permitted such flights. And
12 you'll see evidence, we'll show you evidence that he worked
13 quite hard to hide the NRA's payments for his private
14 flights.

15 So, some other examples, excuse me, of the NRA's
16 payments for private flights that would give you an example
17 of how members' hard earned, donated funds used include
18 flights for family and friends. So, for example, in
19 July 2017 LaPierre authorized a private flight for the
20 daughter of his wife, his niece to fly from Dallas to
21 Orlando. The cost of that flight was more than \$26,000. In
22 November 2018 LaPierre and his wife took a private round
23 trip flight from Washington to Dallas and stopped in
24 Nebraska, where that niece lives to pick her up. That added
25 a leg each way. The total cost of that trip and those

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1 flights was \$59,000, in excess of \$59,000. In March 2019
2 LaPierre and his wife took a private flight from DC to
3 Orlando. Again, it had the flight swing by Nebraska to pick
4 up the niece and her family. Those flights cost in excess
5 of \$79,000. Those are three examples, three trips and there
6 are lots more.

7 (Continue on the next page.)
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1 MS. CONNELL: All told, the NRA spent over \$11
2 million for private flights and luxury travel for LaPierre,
3 his family and friends, again, all in violation of the NRA's
4 internal controls. Had the NRA's internal controls been
5 enforced, perhaps they could have prevented some of these
6 expenditures.

7 Another safeguard, or the third safeguard, are
8 whistleblowers, and I mentioned whistleblowers before. What
9 is a whistleblower? I think we may have heard that term
10 before, but to be clear, a whistleblower is a board member,
11 an employee, an officer, even a volunteer, within a charity
12 who speaks out about potentially illegal -- illegal conduct
13 or conduct in violation of that charity's rules or unethical
14 conduct.

15 And you will hear that charities like the NRA,
16 under New York law, must properly administer -- they must
17 have a -- a compliant whistleblower policy, which the NRA
18 did not for years; they must properly administer and
19 investigate good-faith whistleblower complaints; and it is
20 illegal for them to retaliate against whistleblowers, or to
21 intimidate or harass whistleblowers, as a result of their
22 actions in raising concerns within the charity.

23 Now, why are whistleblowers important?
24 Whistleblowers are so important because if a charity is
25 acting in good faith, having a board member or an employee

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1 or even a volunteer come forward and say, "I think there's
2 illegal conduct going on; I'm concerned about these
3 expenditures; I'm concerned about, why is this board member
4 getting money?", that's an important way that a charity
5 that's acting in good faith can do something to stop that
6 conduct, to nip it in the bud. So they're an important
7 source of information for the charity itself.

8 Whistleblowers also provide a way, or may also
9 provide a way, for regulators to learn about abuse -- abuses
10 and waste and loss of charitable funds inside a charity.

11 Plaintiff will show evidence that defendants,
12 particularly Defendants NRA and John Frazer, failed to
13 investigate whistleblower complaints.

14 The N -- the attorney general here asserts a
15 whistleblower claim against the NRA. The attorney general,
16 however, will show you evidence that Mr. Frazer violated and
17 breached his fiduciary duties by violating his obligations
18 in regard to whistleblowers.

19 In this case, you will hear from whistleblowers.
20 For example, you will hear from Esther Schneider, who's a
21 former NRA Board member; from Lieutenant Colonel North, who
22 is a former NRA president and -- I'm sorry; I should say,
23 former board member; he's not a current board member -- and
24 from Judge Phillip Journey, for example. There are other
25 whistleblowers, as well.

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1 And you will hear that when each of them raised
2 concerns about the waste of charitable assets within the
3 NRA, about the violation of NRA internal controls -- in one
4 case, about payments to board members -- when they raised
5 concerns about the filing of the bankruptcy by -- the
6 decision to file bankruptcy -- by Wayne LaPierre, which
7 ultimately cost the NRA at least \$12 million, the evidence
8 will show, and you'll hear from the current NRA treasurer,
9 it harmed the NRA in other ways. When they complained and
10 raised concerns about this, their complaints were not
11 investigated; Mr. Frazer deemed that they were not in good
12 faith.

13 And instead, the NRA and the defendants retaliated
14 against them. They were subject --

15 MR. FARBER: Objection.

16 There are different defendants, your Honor; time
17 period.

18 THE COURT: Continue.

19 MS. CONNELL: Thank you, your Honor.

20 Instead, you'll hear that they suffered
21 retaliation, such that they -- their complaints were not
22 heard, or ignored, and they were made examples of in --
23 within the NRA.

24 The fourth safeguard that's important for you to
25 understand and that you're going to hear a lot about are

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1 regulatory and tax filings. Charities like the NRA,
2 especially the size of the NRA, have to make annual filings
3 with the New York State Office of the Attorney General's
4 Charities Bureau. These include the CHAR500 form. That's a
5 New York State form. That form also requires that the --
6 that the charity's IRS Form 990 be attached. And it's
7 important to hear -- to learn about these terms, because
8 you're going to hear them a lot. Both forms include a lot
9 of information, and we're going to look at the -- the NRA's
10 990s quite a bit to see how NRA funds were spent, as they
11 reported them, and about safeguards and internal controls
12 the NRA claimed to have in place.

13 As part of New York law, an entity the size of the
14 NRA must also attach an independent financial statement
15 audit in which an auditor says that the NRA's
16 representations, certain representations as to its finances,
17 are true. You're going to hear about what that means and
18 the limitations on a financial statement audit in this case.

19 And you're going to hear, and the People will show
20 you, that the NRA and Mr. Frazer made materially false
21 statements on the NRA's annual filings. They made false
22 statements, for example, the plaintiff believes the evidence
23 will show, about the NRA's payment for golf clubs and social
24 clubs for board members and executives, and the statement
25 that the NRA had a policy with regard to such payments it

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1 applied with the same, which we submit the evidence will
2 show is untrue. Hundreds of thousands of dollars of NRA
3 money went out the door in such expenditures.

4 The People believe the evidence will also show that
5 the NRA filings falsely represented personal benefits paid
6 to and received by NRA board members and employees.

7 The fifth safeguard that is relevant for the
8 purposes of the case and that you will hear evidence about
9 is regulatory oversight. That means, the work of regulators
10 like the attorney general to monitor charities and their
11 fiduciaries, and to investigate and bring actions where
12 appropriate.

13 Despite these safeguards, you will hear that the
14 defendants engaged in illegal conduct. You will hear that
15 they breached fiduciary -- the individual defendants
16 breached fiduciary duties. You will hear that the NRA
17 ignored breaches of fiduciary duties, when they occurred,
18 frequently; you will hear that the NRA routinely ignored the
19 defendants' breaches of internal controls; and you will hear
20 about the violations of whistleblower laws.

21 I'm going to walk you through a little bit more of
22 what we think the evidence will show. I'm going to try and
23 keep it -- you can't trust when a lawyer says they're going
24 to keep something short, but I'm going to try and keep it
25 short -- a little shorter -- today, but I'd also like to

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1 talk a little bit about the parties right now.

2 The NRA is a charitable organization that was
3 founded in New York and chartered in New York over 150 years
4 ago and is subject to the regulation of the Charities
5 Bureau. The NRA's mission statement is included in its
6 bylaws; it's restated in its filings. As a nonprofit, the
7 NRA's money -- it doesn't matter what the NRA's missions
8 are; its monies are supposed to be spent to advance this
9 mission. They are not supposed to be spent for personal
10 benefit of other individuals.

11 Pursuant to the bylaws, the NRA has a 76-member
12 board of directors. They're elected by a subset of NRA
13 members and they, from -- they elect six officers, three
14 board officers. That means, three members of the board are
15 elected and become the president of the NRA, the first vice
16 president, and the second vice president of the NRA. They
17 also elect the executive vice president.

18 The executive vice president is essentially the CEO
19 of the NRA; it's the highest hourly officer. For 30 years,
20 that has been Wayne LaPierre. You have heard, and you heard
21 the judge make reference to the fact, that Mr. LaPierre
22 resigned last week, effective January 31st, 2024. We'll
23 talk about that a little bit more.

24 But, going back to the organization of the NRA, the
25 board also elects the treasurer -- in this case, the

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1 treasurer was Mr. Phillips, for 25 years, who also served as
2 the CFO -- and the secretary to the board. That's currently
3 Mr. Frazer, who is also the general counsel of the NRA.

4 So let's talk about John Frazer. He has been the
5 general counsel since 2015. As I said, he was subsequently
6 elected the secretary to the board the same year; he remains
7 in that position today. As general counsel, he reports
8 directly to Mr. LaPierre and as secretary, he keeps the
9 records of the NRA and he reports to the board and
10 communicates to the board.

11 Wilson "Woody" Phillips, Defendant Phillips, was
12 the NRA's chief financial officer between 1993 and 2018,
13 when he retired. He was also elected treasurer by the NRA
14 board. As chief financial officer of the NRA, Mr. Phillips
15 reported directly to Wayne LaPierre and Mr. Phillips was
16 responsible for overseeing, among other things, the
17 Financial Services Division.

18 Finally, Defendant Wayne LaPierre: He's -- as I
19 said, he is the EVP of the NRA, the highest-salaried
20 officer, and he's been elected by the board of the NRA every
21 year since -- since he first ran, over 30 years ago.

22 The evidence will show that Wayne LaPierre has
23 maintained his control for 30 years, largely unchallenged,
24 and the evidence will also show how he did that: how
25 Mr. LaPierre, with the help of Defendant Frazer and

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1 Defendant Phillips, and some loyal board members and other
2 loyal employees and -- loyal employees of the NRA -- a small
3 group of them -- has maintained his control and has been
4 able to engage in the illegal conduct we believe the
5 evidence will prove. You can think, in some manner, that
6 the leadership of the NRA has maintained this control for 30
7 years. We believe that leadership is entrenched and has
8 maintained the control for 30 years to benefit loyal
9 insiders and family and friends of them.

10 The first is self-serving management. The one
11 important tool that you will hear that Mr. LaPierre and his
12 close insiders used was to make management decisions not per
13 se in the best interests of the NRA but to secure his
14 leadership position. He has hired people who owe him their
15 jobs and will do -- and will be loyal to him, sometimes
16 above loyalty to the NRA as a result. You will hear that he
17 systematically filled top positions with people who might
18 not have gotten the job -- you'll make the decision -- if
19 not for Mr. LaPierre's -- Mr. LaPierre's decision to hire
20 them, and who owe him their title and their salary.

21 So, who was in this loyal inner circle? Well,
22 you're going to hear, again, about Mr. Frazer. Defendant
23 John Frazer was hired by LaPierre as general counsel without
24 an executive search. Mr. LaPierre didn't interview any
25 other candidates; he didn't -- he said -- you'll hear

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1 Mr. LaPierre admit, he had no idea whether Mr. Frazer was
2 familiar with nonprofit law when he hired him as general
3 counsel.

4 Now, the general counsel is the highest legal
5 officer within the NRA. It's a very important, powerful
6 office, overseeing all of the legal work of the NRA, and it
7 is an office that needs to be able to fulfill a duty in the
8 very large and complex organization. You'll hear that the
9 NRA has had, at different times, hundred -- different
10 numbers of hundreds of employees; it's a nonprofit that
11 raises funds throughout the United States; it has to comply
12 with the regulatory framework; and it has a large -- you
13 know -- large revenue, and its highest was 360 million. It
14 dips below 200 million at times. But Mr. Frazer was hired
15 to oversee this organization without anyone checking to see
16 that he had an expertise in nonprofit law.

17 You will also hear Mr. LaPierre admit that he
18 didn't bother to check with the board before he hired
19 Mr. Frazer. Whether Mr. Frazer -- Defendant Frazer -- was
20 qualified and whether he was hired in the best interests of
21 the NRA is something you'll decide.

22 The People believe that the evidence will show that
23 Mr. Frazer did exactly what Defendant LaPierre wanted. For
24 example, you will hear evidence that when Joshua Powell, who
25 used to be a defendant in this case and is no longer a

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1 defendant in this case -- he settled with the -- with the
2 plaintiff -- told Mr. --

3 MR. FARBER: Objection.

4 THE COURT: Continue.

5 MS. CONNELL: -- he told Mr. LaPierre that "we
6 need" -- that the NRA needed -- a much stronger general
7 counsel, you will hear that Mr. LaPierre replied, "Well, we
8 can control John, so we have to keep him where he is."

9 You will hear evidence that Mr. LaPierre and others
10 within the NRA placed such little faith in Mr. Frazer and
11 his abilities, although they kept him in his position, that
12 he wasn't consulted before some of the largest legal
13 decisions that the NRA made, including whether to sue one of
14 its largest former vendors and whether to declare
15 bankruptcy.

16 You're going to hear Mr. Frazer admit that he had
17 only two years in private practice before he took the --
18 took on the job as general counsel, although he had worked
19 at the NRA in other positions for some time. He had no
20 expertise or specialty in nonprofit law, in New York law or
21 in other relevant areas. And you're going to hear that
22 Mr. Frazer was just appointed by the board after he was --
23 he was -- he was hired as general counsel by Mr. LaPierre.

24 So, the evidence will show that Mr. LaPierre put
25 what we think you will determine is an inexperienced general

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1 counsel who owed his position and status to Mr. LaPierre in
2 a very powerful position at the NRA.

3 You also will hear evidence and see evidence about
4 Mr. Phillips' hiring. Mr. Phillips was hired by Defendant
5 LaPierre in 1993 with little to no vetting; he had no prior
6 experience as a CFO or treasurer. The evidence will show
7 that he was given a high salary and high-level position, and
8 later, he was rewarded with a post-employment contract.

9 You will hear evidence from NRA witnesses that
10 Mr. Phillips violated the NRA's internal control. The
11 evidence will show that the NRA's own witnesses say this:
12 that he -- that he didn't comply with internal controls,
13 that he wasn't following the NRA's rules.

14 So why put him in that position? He was put -- the
15 People suggest that the evidence will show that Mr. Phillips
16 was put in that position because he would go along with what
17 Mr. LaPierre wanted.

18 Another example ...

19 Another example of Mr. LaPierre's hiring decisions
20 that were self-serving rather than in the NRA's best
21 interests is Joshua Powell. You'll hear evidence that
22 Mr. LaPierre made the decision to hire Josh Powell on his
23 own; that Mr. Powell lacked relevant experience; he was
24 hired with no vetting; he was placed in one of the highest
25 positions within the NRA. He would be second -- second in

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1 line to leadership of the NRA if something had happened to
2 Mr. LaPierre. And you will hear that he was paid a salary
3 that went from 250,000 to 800,000 in just two years. Powell
4 had no real nonprofit experience, no real corporate
5 experience that would prepare him for this job, and in the
6 few years he worked at the NRA -- it was about three and a
7 half years -- he reported directly to LaPierre.

8 Powell, who was previously a defendant in this
9 case, as I mentioned, was accused by the NRA in 2019, after
10 the NRA brought in a new chief financial officer, of having
11 taken some funds and used them for personal purposes. The
12 NRA accused him of, the evidence will show, taking \$54,000
13 of what's called "excess benefit," or NRA money for personal
14 purposes. After that he was fired. But up to that point
15 and after that, the evidence will show that a lot of -- a
16 lot of blame for conduct within the NRA was placed on
17 Mr. Powell. But he was there for two -- for three and a
18 half years. And the evidence will show, he was treated
19 differently in terms of how personal expenses and personal
20 benefits he received were handled.

21 Up until the time that the new CFO identified
22 personal expenditures he used, Mr. Powell was rewarded,
23 promoted and kept in his position because, the evidence will
24 show, he was loyal to Mr. LaPierre and his circle of board
25 members and executives who helped him maintain control.

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1 Another example -- and this is the final example
2 and then I'll move on -- was Millie Hallow. Ms. Hallow was
3 hired by Mr. LaPierre and worked for him for almost 30
4 years. Ms. Hallow had a history of misusing charitable
5 funds. She was made the Managing Director of Executive
6 Operations by Mr. LaPierre. The evidence will show that
7 Ms. Hallow worked as Mr. LaPierre's right arm.

8 You'll hear that Mr. LaPierre, other than making
9 notations on yellow legal pads (simulating) in his own
10 handwriting, almost never communicates in writing. He
11 doesn't put things in writing. He may sometimes have other
12 people put things in writing for him, but he doesn't e-mail
13 and he doesn't text and, during the relevant time period of
14 this lawsuit, didn't have a work computer. Instead, he
15 would convey directions and commands orally, not leaving a
16 paper trail.

17 Ms. Hallow was key in conveying Mr. LaPierre's
18 wishes to board members and employees and others, and the
19 evidence will show that she did her job over and over again
20 and well.

21 You will hear that Ms. Hallow helped convey what
22 will be referred to in documents you'll see as "crib sheets"
23 of board members, or prospective board members, who were
24 loyal to LaPierre, to ensure that they were nominated by the
25 nominating committee and elected year after year so that the

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1 board would be controlled by people who supported LaPierre.

2 Unfortunately, while she was doing this, the
3 evidence will also show that Ms. Hallow misused NRA funds
4 over and over and over again. And this can't be a surprise
5 to the NRA or NRA leadership, because in the early 2000s,
6 the NRA investigated her misuse of a credit card. It found
7 that in a given year, Ms. Hallow spent over \$500,000 on an
8 NRA credit card. The evidence will show, even the NRA found
9 that at least in a two-year period, over \$170,000 was spent
10 by Ms. Hallow on unquestionably personal benefits; things
11 like betting, travel for her family, clothing, car
12 repairs -- of NRA funds were spent by Ms. Hallow and for --
13 you know, wrongfully. And Ms. Hallow retained her
14 employment; she retained her salary, her position. She
15 wasn't punished in any way. Ms. Hallow remained employed
16 for decades after that, but unfortunately, her misuse of NRA
17 funds continued. Due to her loyalty, she stayed employed at
18 the NRA until 2022, two years after this lawsuit was
19 commenced.

20 Mr. LaPierre and his friends couldn't maintain
21 control of the NRA without board members being onboard, and
22 you'll hear that he had key, core, loyal board members.
23 These are some of them. You're going to hear from some of
24 them in this case, most likely. The composition of the
25 NRA's board, you'll see evidence of, is largely determined

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1 by who gets nominated by the nominating committee. Those
2 people are almost always elected. And the evidence will
3 show that Ms. Hallow, acting at Mr. LaPierre's behest and
4 with the help of other board members, worked to use --
5 sometimes to use -- NRA funds to get a board member
6 elected -- illegally, we say -- and at other times, secretly
7 helped rally the troops to make sure anyone perceived as
8 disloyal to LaPierre was kept off the board.

9 You'll hear that people who were once deemed loyal
10 to LaPierre, if they had the audacity to question -- excuse
11 me -- if they raised questions about Mr. LaPierre's
12 leadership, suddenly were not renominated by the nominating
13 committee and were no longer on the board.

14 So Mr. LaPierre fostered a group of especially
15 loyal senior NRA board members, and some of them -- and many
16 of them are still -- they all are still on the board. Some,
17 to note for you, that are particularly important are:
18 Charles Cotton, who's the current NRA president -- board
19 president; Marion Hammer, who I'm going to be talking quite
20 a bit about; Carolyn Meadows, who's a former NRA president
21 and member of key committees; and David Coy, who's not on
22 this list but should be. David Coy and Mr. Cotton headed up
23 the NRA's Audit Committee. You'll hear, that's a key board
24 committee that's supposed to prevent ethical lapses and help
25 oversee any financial issues within the NRA.

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1 The second way Mr. LaPierre and his core of loyal
2 insiders helped maintain control is through spending. They
3 used NRA funds, not just for his benefit but to reward
4 people who were loyal to him. It makes sense -- right? --
5 that he would want to help out those who helped him.

6 Under the NRA bylaws, people who serve on the board
7 of the NRA are not supposed to receive compensation, salary
8 or other benefit, but you're going to hear evidence that
9 many members of the NRA Board did just that. In fact, many
10 of NR -- of Mr. LaPierre's core loyal insiders, board
11 members, for years, sometimes decades, received money from
12 the NRA, and not in small amounts. Several board members
13 received hundreds of thousands of dollars, almost never
14 approved by the board in advance.

15 And you'll hear that under the law and under the
16 NRA's internal controls, those payments were supposed to be
17 reviewed by the board and approved in advance. Why? Why?
18 It's to make sure, you'll hear evidence, that the -- that
19 the NRA was getting value for these payments; that the NRA
20 was getting services or goods that were worth the money it
21 was paying out.

22 And you'll hear that these monies were paid to
23 board members, almost always, without approval or
24 appropriate ratification by the board. For example, Sandy
25 Froman received at least \$216,000 from the NRA. David Cain

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1 has been paid over 153,000. The People say, these are
2 illegal related-party transactions.

3 One notable board member, for example, is Marion
4 Hammer. She's a former NRA president and a very, very --
5 you'll hear -- very strong supporter of Mr. LaPierre.
6 Ms. Hammer has received money from the NRA through what the
7 evidence will show is an unnecessarily complex structure --
8 financial structure. She received money under a ten-year
9 contract from the NRA that was paid to her.

10 She also received money through a separate division
11 within the NRA that has a separate financial department; the
12 NRA ILA, I-L-A. It stands for Institute for Legislative
13 Action. It's often referred to as "NAR ILA." She received
14 money from NRA ILA.

15 She also received monies paid by the NRA to her,
16 not her entity called Unified Sportsmen of Florida.

17 All together, Ms. -- excuse me. I'm sorry --
18 Ms. Hammer has received over -- well over -- \$3 million from
19 the NRA.

20 In short, you'll hear evidence that people loyal to
21 the entrenched leadership of the NRA were rewarded with
22 money and that LaPierre approved this -- it often came out
23 of his own EVP budget, or PR budget -- and that Mr. Phillips
24 helped make sure they got paid; and that Mr. Frazer --
25 Defendant Frazer -- knew about these payments and usually

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1 did little to nothing to stop them. On occasion, he would
 2 present them to the Audit Committee for approval or
 3 ratification. The People will show evidence that such
 4 ratifications generally were rubber stamping (simulating) --
 5 belated rubber stamping -- of the arrangements, but these --
 6 these -- these -- these types of arrangements went on for
 7 years.

8 And you'll hear Charles Cotton, the former
 9 president of the NRA, say that Defendant Frazer should have
 10 brought some of these related-party transactions to the
 11 Audit Committee sooner.

12 (Continued on next page.)

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1 The third method by which the entrenched leadership
2 which that maintained control is to instill a culture of
3 secrecy. And you're going to see evidence, I mentioned some
4 of it already, that Mr. LaPierre didn't put things in
5 writing. That he approved payments verbally. You're going
6 to hear evidence that Mr. Phillips or Mr. LaPierre asked
7 some vendors to keep their invoices vague so they didn't
8 show what they were paying for. Is that in the NRA's best
9 interest or does it serve the interest of Mr. LaPierre, Mr.
10 Phillips and Mr. Frazer.

11 You're going to hear that Mr. LaPierre and
12 Mr. Phillips set up other complex transactions besides the
13 one to Ms. Hammer to hide the amounts of money that were
14 being paid to certain people. We discussed the structure of
15 payments to MMP, one example. But another example is Mr.
16 LaPierre's personal travel agent, Gayle Stanford. Now, the
17 NRA has a travel agency that deals with employees who have
18 to make their reservations through the agency. Mr. LaPierre
19 did not use that agency. Mr. LaPierre used Ms. Stanford.
20 And he would call Ms. Stanford when he needed to make travel
21 arrangements. The testimony will establish he booked his
22 personal and private jet flights solely through her, and
23 that he did -- he maintained the secrecy of the costs of
24 those flights in a number of ways. First, he would, as I
25 said, he would personally call and not e-mail her, leave a

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1 paper travel at his request. You'll hear evidence that Ms.
2 Stanford was asked to alter her invoices. To hide who was
3 on the flights. How many people were on the flights. Where
4 the flights went. And you're going to hear evidence that
5 she's asked to split her invoices among different entities,
6 and that she was paid from different entities so that it was
7 very, very hard to track what was being done. So, for
8 example, an invoice might originally be sent by Ms. Stanford
9 that would indicate a stop in the Bahamas. This is one
10 example you'll hear about. This is Plaintiff's Exhibit
11 4745. But by the time it was altered as requested, the
12 Bahamas are left off of that flight invoice.

13 You're going to hear evidence that Mr. LaPierre and
14 Mr. Phillips asked Ms. Stanford to make the invoices to say
15 air transportation. For example, flight details removed.
16 And I know this is a little hard to follow and not
17 interesting, but it's important. Maybe you're not
18 interested, I don't want to say that. I find it
19 interesting. The NRA arranged an unnecessarily complex
20 structure for Ms. Stanford's payments. So, Ms. Stanford,
21 you'll hear evidence, was asked to break her company into
22 two. To form a second company. She was the only employee
23 that operated out of her home.

24 Now she has two names that can be billed for doing
25 the same services, booking luxury travel for Mr. LaPierre

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1 and some of his core group of insiders. She was also
2 directed to send invoices and receive payment from three
3 different sources. Again she was paid from the NRA. Again
4 she was paid from the separate financial division of the NRA
5 ILA. And she also, in an extraordinary thing, was paid
6 through NRA vendor Ackerman McQueen. You'll hear witnesses
7 from Ackerman McQueen. If someone wanted to try to put
8 together how much Mr. LaPierre spent on luxury travel and
9 private jets, they would have to be able to track payments
10 from three sources to two different companies. That's what
11 the evidence will show.

12 The NRA has paid a wide range for this needlessly
13 complex transaction structure. You're going to hear about
14 why that might be and how complex this was and what monies
15 were spent exactly from plaintiff's expert, Eric Hines. But
16 in the end the NRA paid, the evidence will show, NRA paid in
17 excess of \$11 million for private flights, limousine or
18 black car services and travel agent fees for Ms. Stanford,
19 for Mr. LaPierre's personal costs from January 2015 through
20 2019 alone or, excuse me, through February 2020 alone. The
21 evidence will show that these were in clear violation of the
22 NRA's internal control. In violation of the NRA's policies.
23 Also Gayle Stamford, for her assistance and help, was paid
24 \$500,000 a year by the NRA for services as a travel agent.
25 And she followed the instructions she was given. And she

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1 was loyal to Mr. LaPierre and his friend. And she was
2 reward.

3 You will hear evidence that NRA employees who were
4 part of the entrenched leadership were able to spend money
5 to benefit themselves. They were able to engage in luxury
6 dining, travel, first class travel, sports tickets, that
7 kind of thing without business substantiation. The rules
8 require, as I said, that the NRA, the NRA's internal rules
9 require that business substantiation be provided for any NRA
10 funds that are expended. You'll see time and time again
11 that was not the case. You may hear evidence that years
12 later, after this investigation was commenced, the NRA tried
13 to go back and look at those expenses, but you'll see
14 evidence that millions of dollars went out the door that
15 way.

16 You heard me mention Ackerman McQueen. This is a
17 good example of how NRA executive expenses were paid without
18 review, an invasion of the NRA's internal controls. You'll
19 hear that the -- that certain executives within the NRA,
20 including Mr. LaPierre, including Mr. Phillips, including
21 Tyler Schropp and other people you'll hear testimony from,
22 billed their expenses to Ackerman McQueen. That's a vendor
23 of the NRA. And that Ackerman McQueen billed those back to
24 the NRA on invoices that simply said out-of-pocket expenses.
25 That way it made it difficult or impossible to review what

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1 this money was being spent on. Whether there was a
2 legitimate personal purpose.

3 You will hear, for example, that Ackerman McQueen
4 purchased, spent hundreds of thousands of dollars of
5 clothing on Mr. LaPierre, including from stores like Zegna.
6 I think I said that right. You will hear there was a lack
7 of substantiation for the business purposes of that. Over
8 time you will hear the NRA paid over \$4.3 million from 2015
9 to 2019 alone on these out-of-pocket expenses for Ackerman
10 McQueen. So, the evidence will show that this is important.
11 You may think what's the big deal. But this will show
12 millions of dollars of NRA funds, of NRA executives'
13 expenses were paid circumventing NRA's internal controls.
14 NRA knew about it for years and did nothing, nothing to stop
15 him. Mr. Phillips knew it was going on. Mr. LaPierre knew
16 this was going on. This went on over and over. No one was
17 punished for those. When these violations of internal
18 controls were brought to light, Mr. Frazer did nothing. Mr.
19 LaPierre did nothing. This is just another way that Mr.
20 LaPierre and all insiders used spending to reward themselves
21 and maintain control of the NRA.

22 The final method that you'll see that helped cover
23 illegal conduct and maintain control is suppression. You'll
24 hear evidence that Wayne LaPierre and his friends
25 effectively suppressed the voice of anyone who challenges

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1 his leadership or who asked questions that come too close to
2 his control, especially whistleblowers.

3 The NRA does have a whistleblower policy. I
4 mentioned earlier that they didn't have a compliant one.
5 We'll show that for many years. But it does have a
6 whistleblower policy. It requires that people be allowed to
7 come forward when they suspect violations of the NRA's
8 policies or rules or illegal conduct. It also requires that
9 they not be retaliated against, intimidated or harassed.

10 One example of a whistleblower who was violated, we
11 talked about some of them before, I would like to discuss
12 this one in more detail, is Lieutenant Colonel Oliver North.
13 In 2018 Lieutenant Colonel North was a broadcaster on Fox
14 News. He had his own show. The evidence will show that Mr.
15 LaPierre wanted him to become president of the NRA. So, Mr.
16 LaPierre approached him and asked him to do that. And the
17 evidence will show that Mr. -- that Lieutenant Colonel North
18 couldn't take that job or wouldn't take that job if he
19 couldn't get paid and couldn't get health benefits due to
20 family circumstance at the time. That was no problem. The
21 evidence is going to show that Mr. LaPierre, with the help
22 of others within the NRA and vendor Ackerman McQueen
23 arranged a contract for Lieutenant Colonel North in which he
24 would be paid a salary of approximately \$2 million and get
25 health insurance. And North was subsequently elected

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1 president of the NRA.

2 With Mr. Frazer's help in 2018 the -- this
3 contract, which was already in place, was put before the
4 audit committee and ratified. In 2018 the audit committee
5 said this arrangement is fine. There is not a problem with
6 it. It's approved. Lieutenant Colonel North began work at
7 the NRA headquarters. You're going to hear evidence that he
8 showed up at headquarters. Sometimes he brought his dog.
9 He had lunch in the cafeteria sometimes. He asked people
10 how are things going. What's going on here. When he
11 started to raise concerns about some things he was seeing or
12 hearing, you'll hear he got pushback from Mr. LaPierre. He
13 was told that's my job. Your position is ceremonial. Stay
14 in your lane.

15 You're going to hear when he continued to raise
16 concerns, when he put his concerns in writing with other
17 board members, when time and time again he asked about NRA
18 spending, when he asked for investigations, other than one
19 small investigation that they did of one aspect of, which
20 was substantiated, that Lieutenant Colonel North was deemed
21 to be unloyal. That he was accused of staging a coup
22 attempt. And that he was essentially not renominated as
23 board president in 2019.

24 That year, in 2019, a year, less than a year after
25 the audit committee had reviewed his contract with Ackerman

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1 McQueen and reviewed the arrangement under which he would
2 get paid by Ackerman McQueen and approved it, Mr. Frazer
3 presented it to the audit committee. And this time -- this
4 time it was determined to be a conflict of interest. What
5 had changed between 2018 and '19? You'll be the judge of
6 that.

7 You'll hear evidence again that other board members
8 who complained or raised concerns about possible illegal
9 conduct within the NRA were accused of having misinformed
10 views. Were accused -- publically called names. Were
11 belittled or intimidated or harassed. That they were
12 stripped of committee assignments.

13 Now, every year the NRA gives out committee
14 assignments the evidence will show. And you may hear some
15 witnesses testify well they just didn't get any committee
16 assignments after they made their whistleblower complaints.
17 But you'll also hear evidence that at least one NRA board
18 member admitted no, they were stripped of their committee
19 assignments, and it was because they complained. They were
20 made examples of. You'll hear from some whistleblowers like
21 Esther Schneider and Judge Journey.

22 Moreover, even more recently you'll hear about
23 Lieutenant Colonel Willes Lee, who was first vice president
24 of the NRA. He was -- he is a current NRA board member.
25 You'll hear that when Lieutenant Colonel Lee began to

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1 question the leadership of the NRA, he began making public
2 posts, raising concerns about NRA leadership. He said we
3 need to clean up the NRA. He made other statements about
4 problems with the NRA. He was what he called canceled.
5 Until this past April he was an officer of the NRA. And
6 you'll hear that Lieutenant Colonel North, excuse me,
7 Lieutenant Colonel Lee has since been brought back into the
8 full. That he will say that he, you know, he doesn't
9 remember everything he was concerned about. He may not
10 remember exactly what the nature of some of his complaints
11 were. But you're going to hear about the public posts and
12 you'll hear about the things he said about NRA leadership.
13 You'll hear about him testify as a hostile witness. You'll
14 hear that he was essentially no longer an NRA officer after
15 he raised concerns about the NRA leadership.

16 Another person who is not a whistleblower or
17 important witness you'll hear about and from is Craig Spray.
18 One second. As you heard, Mr. Phillips retired in 2018. In
19 2018 the NRA decided to engage in an actual executive search
20 to look for an actual -- to do an actual formal hiring
21 process for CFO and treasurer. And they found Mr. Spray who
22 had a lot of relevant experience and brought him in. And
23 the evidence is going to show that Mr. Spray started to
24 change things. He started to enforce the internal controls.
25 He started to try and get things in line. But what you're

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1 going to hear is that when those changes started to touch
2 upper management in a way that they didn't like, when he
3 said, for example, there are no Wayne set approvals at the
4 NRA anymore, Mr. Spray was shortly thereafter driven out.
5 He refused to form or excuse me he refused to sign or
6 wouldn't sign one of the NRA tax filings. He asked NRA
7 officers and board members to confirm that those filings
8 were accurate. They wouldn't do it. Shortly after you'll
9 hear evidence that he was left out of meetings. That he
10 wasn't getting information. He was not included in the
11 decision in January of 2021 to file for bankruptcy. He was
12 the CFO and treasurer of the NRA, and he was not told that
13 the NRA was going to file for bankruptcy. He learned about
14 it on the day the petition was filed. Two weeks later
15 Mr. Spray received a phone call, the evidence will show,
16 from Mr. LaPierre with someone from human resources on the
17 line, and he was told that the NRA had decided to go in a
18 different way. A different direction. Almost instantly his
19 access no NRA computers, accounts and information was cut
20 off and Mr. Spray was gone.

21 In short, Mr. Spray is an example of what happens
22 to people who tried -- who tried to change things in the NRA
23 the way that touched top management, top leadership, that
24 entrenched leadership in the NRA.

25 I would like to try to wrap things up. I see I'm

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1 taking longer than I already wanted to. The evidence will
2 show that for years the NRA, as well as Defendants LaPierre,
3 Frazer and Phillips, failed to properly administer the NRA
4 and its charitable assets. The individual defendants,
5 meaning the three people sued, breached their fiduciary
6 duties to the NRA. They did this in a number of ways,
7 through expenditures, diversion and waste on NRA funds for
8 purposes that did not advance the NRA's interest or mission.
9 Engagement, allowance and enabling of related-party
10 transaction and conflict interest transactions. For
11 purposes like free safaris, luxury travel, fine dining,
12 housing expenses being paid for, furniture.

13 You'll hear that the NRA at some point began to try
14 and look at and make some reform efforts internally, and
15 that in 2018 the NRA audit committee looked at some
16 transactions that were going on with the NRA. We believe
17 the evidence will show the audit committee again just rubber
18 stamped those transactions but retroactively ratified them.
19 The fact that those transactions didn't benefit the NRA, we
20 believe the evidence will show, because a lot of them were
21 stopped at that point. If they were benefiting the NRA, why
22 would you stop them. But in short, the evidence will show
23 that the NRA did not act in compliance with the laws
24 applicable to charities in New York and that the individual
25 defendants used the NRA to benefit themselves, to maintain

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1 their jobs and status, their titles. And in regard to
2 Mr. Phillips and Mr. LaPierre in particular, to benefit
3 themselves or to help enable sweetheart deals for favorite
4 vendors. To help get benefits for family members and
5 friends. To get lucrative post employment contracts and
6 that kind of thing.

7 In conclusion I would like to just say Mr.
8 LaPierre, we talked about Mr. LaPierre's retirement. Mr.
9 LaPierre, you'll hear evidence that Mr. LaPierre's conduct
10 violated the law and violated the NRA's internal control for
11 years. That it was not in good faith that he engaged in
12 conflict of interest contractions. That he didn't have the
13 NRA's best interest in mind. That he benefited himself. He
14 operated the NRA that way. He did it with the support of
15 Mr. Phillips, Mr. Frazer and others. He did it with the
16 support of loyal board members. He did it because the NRA
17 allowed it. They allowed this to go on for years. There is
18 no question that the evidence will show that he was never --
19 the NRA didn't take any steps to stop his conduct of which
20 is well aware.

21 You're going to hear evidence that Mr. LaPierre
22 spent over a hundred million and many, many other millions
23 on sweetheart dealers with other vendors like Ackerman
24 McQueen in violation of the NRA's internal controls. And
25 that these -- these transactions that he approved and

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1 payments he approved caused millions and millions of dollars
2 of NRA funds to be paid off for non NRA purposes and are
3 illegal.

4 Now Mr. LaPierre has stepped down, resigned as the
5 NRA's executive vice president. At the end of the case
6 we're going to ask you that you hold him liable for his past
7 illegal conduct. We are also going to ask that you
8 determine that there is cause for Mr. LaPierre's removal.
9 You will hear the Judge say, one of the things you're going
10 to be asked to determine, is whether there is cause for
11 removal of Mr. LaPierre and Mr. Frazer from their positions.
12 And we believe that Mr. LaPierre's voluntary resignation
13 does not mean that that determination shouldn't be made. We
14 ask that you return a verdict against him. That you find
15 him liable. And that you find cause to remove him.

16 Similarly in regard to Mr. Frazer, we're going to
17 prove that Mr. Frazer permitted payments to board members.
18 He engaged those related-party transactions to go on for
19 years. He helped paper over payment transactions. He took
20 no steps when he found out about breaches of fiduciary
21 duties, like the engagement in related-party transactions
22 and conflict of interest transactions within the NRA. He
23 failed to properly administer whistleblower complaints and
24 help retaliate against whistleblowers. We're going to
25 prove, the evidence will prove that Mr. LaPierre --

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1 Mr. Frazer was required to put the NRA's interest above his
2 own and he didn't. Instead he was only loyal to entrench
3 the leadership of the NRA.

4 (Continue on the next page.)
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1 MS. CONNELL: At the end of the case, we will ask
2 that you determine that Mr. Frazer is liable.

3 And also, with regard to Mr. LaPierre and
4 Mr. Frazer and Mr. Phillips, you'll be asked to determine
5 whether they should be called to account for and/or what
6 amount of restitution, if anything, they should make to the
7 NRA and any penalties that Mr. Phillips and Mr. LaPierre
8 should have to pay.

9 We ask that you return a verdict of liable for
10 Mr. Frazer and you determine that there's cause for his
11 removal.

12 In regard to Mr. Phillips, we believe the evidence
13 will overwhelmingly show that he violated New York State
14 law; he engaged in pervasive and routine evasion of the
15 NRA's internal controls; he failed to adhere to his
16 fiduciary duties; that he helped approve payments on verbal
17 authority, in violation of the NRA's procurement policy; he
18 helped arrange hidden payments for -- for example -- for the
19 travel, for the jet travel, in violation of the NRA's
20 transportation and travel policies; that, in short, he
21 engaged in many, many incidents of illegal conduct, violated
22 his fiduciary duties, and failed to properly administer the
23 charitable assets of the NRA. We ask that you find him
24 liable and award restitution against him.

25 You've heard me mention that the NRA, at times,

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1 engaged in reform efforts. We believe the evidence will
2 show that these were redaction -- reaction -- reactive,
3 partial measures that didn't address the root problems of
4 the illegal conduct within the NRA. It didn't address why
5 this illegal conduct occurred, how it occurred for so long,
6 who was responsible for that illegal conduct. It didn't get
7 down to the root cause of that illegal conduct.

8 And you will see that, for years, the NRA has
9 operated in violation of New York State law and in violation
10 of its obligations as a charity who accepts donations and
11 membership fees, and we will ask that you hold the NRA
12 liable, as well.

13 Ladies and gentlemen, you've been through a long
14 process of being selected for the jury and for sitting
15 through this opening, and I want to thank you for your time
16 and your kind attention.

17 Thank you.

18 THE COURT: Thank you, counsel.

19 Okay. Members of the jury, we're going to end our
20 day. We're going to reconvene tomorrow at 9:30 in this
21 room. We're going to -- just to give you a heads-up, we're
22 going to have the morning in this room and then we're going
23 to, in the afternoon, continue in what will look like, in
24 comparison, a log cabin, my regular courtroom, which is
25 directly below this and much less fancy, but this room is

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1 being used for something. So you don't have to worry about
2 it; we'll take care of all the moving things around. It
3 will be a little less roomy.

4 I would just remind you, which I will probably do
5 almost every day, not to discuss the case amongst
6 yourselves, not to discuss it with others, not to do
7 research, not to look around for anything. Everything you
8 need to do and to hear in this case, you should hear in this
9 room.

10 So, again, thank you very much and I look forward
11 to seeing you tomorrow at 9:30, when we will hear from the
12 defendants.

13 COURT OFFICER: All rise. Jury exiting.

14 SECOND COURT OFFICER: All rise. Jury exiting.

15 (The jury left the courtroom.)

16 THE COURT: Okay. Thank you, everyone. We are
17 adjourned for the night. We'll see you tomorrow at 9:30.

18 MR. SHIFFMAN: Thank you, your Honor.

19 (Whereupon, the matter was adjourned to Tuesday,
20 January 9, 2024 at 9:30 a.m.)

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

3 -----X

4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
5 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

6 Plaintiff,

7 -against-

8 THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
9 WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
10 and JOSHUA POWELL,

11 Defendants.

12 -----X

13 Index No. 451625/20 60 Centre Street
14 TRIAL New York, N.Y.
15 January 9, 2024

16 B E F O R E:

17 HONORABLE JOEL M. COHEN,
18 Justice; and a jury

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ALAN F. BOWIN, CSR, RMR, CRR

1 (Appearances continued:)

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3

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LORI SACCO
Official Court Reporters

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1 THE COURT: Good morning. Have a seat.

2 Good morning, folks. Just -- I have finished my
3 annotation of the Tedrick transcript, so Mr. Blaustein will
4 convey that to you, I think, by e-mail. It's not very
5 wordy; it's just the words in the column.

6 The only thing I'll say is, I did sustain some of
7 the objections to the counterdesignations. What I want to
8 make clear is, that doesn't mean that they're inadmissible,
9 necessarily, in the state's case-in-chief. The point is, is
10 for counter-designations, to have it all play at the same
11 time during the state's case, it has to be admissible as a
12 counter-designation. So, I didn't want it to be construed
13 as the defendants can't use that testimony. It just means
14 they'd have to introduce it in their case, because it didn't
15 work -- in my view, some of the excerpts didn't relate to
16 the same topics that the AG was advancing it for.

17 I don't know whether there'll be separate
18 objections to it being admitted in the state -- in the
19 defendants' case, but that's not what I was reviewing it
20 for.

21 MR. FLEMING: Your Honor, may I ...?

22 I had raised this with the Attorney General's
23 office; we don't really have an answer. One of the, sort
24 of, issues in the case is: They're going to call out
25 witnesses, who it would be helpful and, I think, convenient

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1 for us to, maybe, stray a little bit off of what the scope
2 of the direct is, just so the witness can show up one time,
3 rather than have to call them back for a limited amount of
4 questioning, say, on my case.

5 THE COURT: If there's agreement on that with
6 respect to individuals, to, you know, reduce the hassle to
7 nonparties, that's not unusual to do and that's fine. But,
8 you know, at the same time, I -- I'm not going to force one
9 side to have a case cluttered by the other party's case.
10 But I'll -- I think we should all be accommodating to, at
11 least, nonparty witnesses. So I'll just take those one at a
12 time.

13 MR. CORRELL: Your Honor, I'd like to raise one
14 matter, quickly. I know you want to get to the jury, but I
15 had objections to the opening statement yesterday that I
16 reserved because I did not want to interrupt the opening.
17 I'm entitled to put those objections on the record, to
18 preserve them.

19 I would -- I've asked the attorney general to give
20 us a copy of the deck that they put on without showing us
21 first, so that I can key the objections to the deck itself,
22 and they have not done so and I would ask that you order
23 them to do so.

24 THE COURT: Is that the objection or do you have
25 another objection?

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1 MR. CORRELL: Well, there are many objections to,
2 among other things, putting documents before the jury that
3 were not in evidence and may not come into evidence; and,
4 also, some statements were made that might have no basis in
5 the evidence. So what I wanted is to go through the deck,
6 review it and give you written objections, but not in a way
7 that's going to prevent --

8 THE COURT: I don't -- those kind of objections
9 should be -- I mean, we talked about you taking a look at
10 those before, you know, while I was doing the instructions.
11 Having an objection after it's already happened is not
12 terribly effective.

13 MR. CORRELL: Well, there is authority to the
14 effect that that is the way to do it, so as to avoid
15 interrupting your opposing counsel and --

16 THE COURT: So all you would be seeking is some
17 sort of a corrective instruction?

18 MR. CORRELL: Well, not necessarily a corrective
19 instruction, because sometimes corrective instructions just
20 draw attention to the thing that was objectionable. And
21 what I would do is, after reviewing it and submitting it to
22 you, I would ask for appropriate relief; and I think it may
23 include -- and I hate to say this word, but a mistrial, to
24 the extent that the -- that the objections resulted in
25 prejudice and a bell that cannot be unrung.

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1 THE COURT: Well, I will order this: The slides
2 should be shared. And, frankly, I'm a bit surprised that
3 the parties did not have a protocol for sharing
4 demonstratives in advance of them being shown to the jury.
5 That's, in my experience, a fairly common practice and if it
6 had been raised to me, I would have directed it. I just
7 assumed that you all could take care of that, because before
8 anything is shown to the jury, you know, demonstratives,
9 even during examination, I want to have flagged for me any
10 objections before anything is shown to this jury. So I'm
11 surprised that the parties didn't share these things, and I
12 will direct them to do that going forward.

13 So, yes, they should, you know, promptly give you a
14 copy of the slides; I'd like them to. And the same goes for
15 anything you all are going to use in your openings or with
16 any witnesses. I don't want anything shown to the jury
17 unless any objections have been vetted before me.

18 MR. CORRELL: Thank you, your Honor.

19 And to your other point: As a solo practitioner, I
20 was unable to be here, listening to your instructions to the
21 jury and be somewhere else, reviewing exhibits that had not
22 been presented before that, so there just wasn't time to do
23 it.

24 THE COURT: All right. Well, I have -- people have
25 raised this issue before, about potential objections, and I

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1 suggested that a process to do this would be, in the period
2 between now and when the openings began, that that vetting
3 could take place. So I just -- my assumption was that the
4 parties were going to work out a way to do that, but
5 apparently it didn't happen.

6 All right. I think, with that, we'll get the jury.

7 MS. ROGERS: Your Honor, a couple of small things.

8 THE COURT: Almost got there.

9 (Laughter.)

10 MS. ROGERS: Before we get the jury, a couple of
11 small notes, one substantive and one logistical:

12 So, with respect to Mr. Powell, I just wanted to be
13 clear on what the parameters are around that, for openings.
14 So Ms. Connell, in her opening, mentioned the settlement;
15 and without transgressing the Rule 408/4547 principle, if
16 Mr. Powell were, for example, a cooperating witness in a
17 criminal case, we would be allowed to impeach him by saying
18 that his testimony is a condition that he bargained with the
19 Government, and I would like to say that. But I don't want
20 to encounter objections or, you know, offend any preference
21 of your Honor, so I wanted to raise that before openings.

22 MS. CONNELL: Your Honor, apologies if there are
23 misunderstandings. I tried to clear up some concerns I had
24 about opening yesterday, before the openings. I mentioned
25 that there was a settlement with Mr. Powell. I, of course,

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1 have no objection if defendants want to mention that, as
2 well; that there's a settlement. I think discussing whether
3 he's a cooperating witness under a rule or something like
4 that or going further is a little bit --

5 THE COURT: Well, is it your position that the
6 terms of the settlement, which have been publicly filed, are
7 not something that they can talk about?

8 MS. CONNELL: No, your Honor, that's not our
9 position.

10 THE COURT: So they can.

11 MS. CONNELL: They can.

12 THE COURT: I would think so, too.

13 MS. ROGERS: Thank you, your Honor.

14 And the other small item, and I apologize for
15 bothering the court with this: I think the microphone
16 battery (indicating) is dead. So, before I start opening
17 and then no one can hear me ...

18 (Pause.)

19 THE COURT: I hereby order that it be not dead.

20 (Laughter.)

21 MS. ROGERS: I apologize.

22 THE COURT: One logistical note for the audience:

23 This afternoon, as you know, or as I've said
24 before, we're going to have the session in Room 208, which
25 is a very small room. We, I believe, are going to have a

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1 different overflow room for folks who can't fit into 208,
2 and I hope to find out from our IT folks -- well, I will
3 find out from them -- ah. I have found out from the IT
4 folks. The overflow room is going to be 232. So, if you
5 can't fit in 208, which I will tell you in advance, you --
6 most people probably won't be able to, because just with the
7 lawyers and the jurors, there's not that many seats left.
8 So 232 will be the overflow room.

9 While we're at it: I think 412 is going to be the
10 overflow room on Thursday, although -- yeah, the same
11 issues, because Thursday's also going to be in 208.

12 I think that's all for my logistical things.

13 Are they working on your mic?

14 MS. ROGERS: I think there's a battery coming.

15 (Pause.)

16 THE COURT: You want to test it?

17 MS. ROGERS: Yes.

18 Hello.

19 Sounds good.

20 THE COURT: Yeah.

21 All right, let's get the jury, please.

22 Are you using slides, as well?

23 MS. ROGERS: Yes.

24 THE COURT: Have those been shared?

25 MS. ROGERS: No.

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1 THE COURT: All right. They should be, now,
2 anyway. Let's see how it goes. Again, I do appreciate not
3 having objections during, but vetting in advance would be a
4 much better practice.

5 MS. CONNELL: Your Honor, we've been trying to
6 agree to a protocol --

7 THE COURT: I'm sorry?

8 MS. CONNELL: We've been trying to agree to a
9 protocol. It's -- whatever. We'll work it out.

10 THE COURT: If you'd asked me, I would have given
11 you the protocol, which is what every other lawyer has ever
12 done in every other case I've ever had. So ...

13 MS. CONNELL: I agree, your Honor.

14 MS. EISENBERG: Your Honor, since they now have
15 ours, could we please have theirs?

16 THE COURT: I already ordered them to give them to
17 you.

18 MS. EISENBERG: Okay.

19 MS. CONNELL: We'll do it as soon as we can.

20 THE COURT: Yeah. Do it electronically, and I'm
21 sure there are people listening who can make that happen.

22 COURT OFFICER: Is the court ready for the jury?

23 (The Court nodded.)

24 COURT OFFICER: Jury entering.

25 (The jury entered the courtroom.)

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Opening - Rogers

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1 THE COURT: Good morning, everyone. Please have a
2 seat.

3 You all passed the first test, which is coming
4 back.

5 (Laughter.)

6 THE COURT: Thank you for that.

7 Okay. We're going to proceed with opening
8 arguments, and who is going first is the Defendant NRA.
9 Counsel, you may approach and proceed.

10 Oh, wait. Let him pass them (indicating) their
11 books.

12 (Court officer distributed notebooks to jurors.)

13 MS. ROGERS: Good morning, ladies and gentlemen.

14 My name is Sarah Rogers and I'm one of the lawyers
15 who has the privilege of representing Defendant The National
16 Rifle Association of America in this case. I'm joined, and
17 will be joined, at trial by my colleague Svetlana Eisenberg
18 (indicating), as well as Bill Brewer and Noah Peters, who
19 may or may not be -- Bill Brewer (indicating), who is with
20 us today, and my colleague Noah Peters, who will be with us
21 later today.

22 THE COURT: Can everybody hear?

23 MS. ROGERS: Is it a little lower?

24 I'll try and be a little louder and if anyone can't
25 hear me, please let me know, because I'm going to talk long

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Opening - Rogers

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1 enough and you don't want me to repeat myself.

2 In addition to my colleagues, I am joined by Kim
3 Rhode.

4 I would ask Ms. Rhode to please stand for a moment.

5 (Ms. Rhode stood.)

6 MS. ROGERS: So, in addition to meeting me and my
7 colleagues over the next six weeks, you will be meeting the
8 NRA. Ms. Rhode is a six-time Olympic medalist in
9 competitive shooting, and she is one of dozens of unpaid
10 volunteers who give their time and their expertise and their
11 dedication to the NRA, to its governance and to its
12 policies. Ms. Rhode is one of 76 directors elected annually
13 by the NRA's members, and you'll meet others at this trial.

14 Thank you, Ms. Rhode.

15 (Ms. Rhode was seated.)

16 MS. ROGERS: The NRA is the largest and probably
17 the most successful constitutional rights advocacy group
18 ever to exist. Some people love the NRA and some people
19 hate the NRA, but those people actually have common ground;
20 they love the NRA and they hate the NRA for the same reason,
21 which is: the NRA is successful at its mission.

22 We've all heard of scam charities, outfits that
23 pretend to research cancer or help animals but do none of
24 that, and instead, siphon money into someone's pockets for
25 the sake of corruption and private inurement.

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Opening - Rogers

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1 Now, we have some disagreements with the
2 Government, that everyone in this courtroom should be able
3 to agree that the NRA is not a scam charity. It's good when
4 the Government goes after that kind of fraud. But whether
5 you agree or disagree with the NRA's mission, there should
6 be no dispute that the NRA delivers on that mission. That
7 is why everyone in this courtroom (indicating) knows the
8 NRA's name.

9 And now we get to the distinction that the
10 Government wants to blur and hopes you will forget, but
11 don't forget it, because this distinction drives the entire
12 case:

13 The attorney general has sued four separate
14 defendants, and I represent the NRA (indicating), not any of
15 its past employees or even its current employees. The NRA
16 is not Josh Powell, grayed out there (indicating) in the
17 corner.

18 Some of you, during jury selection, heard
19 Mr. Powell's name and the Court instructed you, and the
20 Government admitted yesterday, that after Mr. Powell was a
21 defendant in this lawsuit until Friday night, the Friday
22 night before a Monday trial, when the Government let him off
23 the hook in a settlement. You will learn that his
24 testimony, as part of their (indicating) case, is a
25 condition of that bargain, and you will evaluate how

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1 credible a witness Mr. Powell may or may not be.

2 Now, just so that you know, the NRA fired Josh
3 Powell for expense fraud.

4 The NRA is not Woody Phillips, in the lower
5 right-hand corner there (indicating). Mr. Phillips has been
6 gone from the NRA for years. He had a trailing
7 post-employment consulting agreement, which the NRA cut off
8 five years ago.

9 The NRA is not its general counsel, John Frazer, in
10 the green circle there (indicating). He's the only
11 individual defendant who is both a current and a future
12 officer at the NRA. The NRA trusts Mr. Frazer; we rely on
13 him; we think he does a good job, but the NRA and Mr. Frazer
14 are distinct defendants for a reason.

15 Now, the Government cannot prove, and doesn't even
16 try to allege, that Mr. Frazer took a penny for himself,
17 that he was corrupt, that he stole, that he has a yacht or a
18 plane somewhere. Instead, the allegations against the NRA's
19 lawyer (indicating) boil down to an accusation that he
20 signed some forms which contained inaccuracies. And you
21 will have to consider whether those inaccuracies, first of
22 all, were there or whether the forms were true; second, if
23 there were inaccuracies, whether they were big or small;
24 third, whether Mr. Frazer knew or should have known about
25 them; and fourth and most importantly to my client,

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1 whether -- if Mr. Frazer did make an oversight signing a
2 form -- whether his employer, my client, the NRA, is at
3 fault.

4 Now, the NRA also is not Wayne LaPierre, its
5 longtime CEO who resigned recently, or announced his
6 resignation. The truth you will learn about Mr. LaPierre
7 during this trial is that he has been a valuable and
8 visionary leader of this association and the gun rights
9 cause in America, but he was not always a meticulous
10 corporate executive.

11 You will learn that Mr. LaPierre received gifts,
12 which didn't cost the NRA money but did confer benefits on
13 him; that he should have reported those gifts and did it
14 several years later, after he should have reported them; you
15 will learn that Mr. LaPierre benefited from expenses, which
16 he repaid to the NRA with interest; and you will learn from
17 the NRA board of directors, people like Ms. Rhode, why they
18 chose to allow Wayne to repay those funds with interest
19 instead of firing him or suing him in the manner of someone
20 like Mr. Powell. You will learn from the NRA Board why the
21 NRA continues to honor the legacy of this (indicating) man,
22 but the NRA is not this man.

23 So, if I were sitting where you were sitting, if I
24 were a juror in this case, I would think: "Wait a minute.
25 I'm going to be asked to decide if the NRA did anything

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1 wrong and if the NRA is separate, is distinct from its
2 executives" -- and it is; it's sued separately, separate
3 lawyers, separate defendants -- "then what human person do I
4 look at when I'm trying to figure out if the NRA did
5 something wrong?" Well, I'm showing you and telling you
6 now, because the NRA has millions of members and its 76
7 volunteer directors like Ms. Rhode and their specialized
8 committees that exercise the corporate authority of the NRA
9 in New York.

10 All right. This is the first time in my career
11 that I've opened a trial with a PowerPoint slide on what my
12 client and the other client agree on. Usually, when people
13 are fighting in court, it's because they disagree. But the
14 attorney general and the NRA actually agree on a few
15 important things:

16 We agree that there were some past violations of
17 NRA policies, some failures to adhere to the rules that
18 Ms. Rhode and the other directors set; we agree, and this
19 was highlighted in Ms. Connell's presentation yesterday,
20 that these violations were repeatedly concealed from, and
21 unapproved by, the NRA Board; and we both agree, and the
22 evidence will show, that numerous wrongdoers, like their
23 witness Josh Powell, were fired or gone from the NRA.
24 These are three important facts and they're not disputed.

25 In real life, if you're a bit petty and lawyerly

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Opening - Rogers

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1 like me, you might wish that there was somebody in the room
2 writing down every word that everyone said and you could go
3 back and nitpick and analyze it later. Well, court is a
4 unique social and professional environment because we have
5 exactly that feature: we have our court reporter here
6 (indicating). And so, I took the liberty of extracting from
7 the transcript some statements that the Government made
8 yesterday to you in its opening statement.

9 We learned that the payments the New York Attorney
10 General is suing over were, in many instances, "not
11 approved" by the NRA board. We heard that the relationships
12 with vendors were, quote, hidden and lied about. We heard
13 the allegation that Mr. LaPierre didn't bother to check with
14 the board before incurring expenses, and that those expenses
15 were almost always without approval or ratification by the
16 board (indicating). We learned that some of the
17 transactions they are challenging are "complex" and hid the
18 amount of money that were paying paid to certain people.
19 And we even learned that some executives asked some vendors
20 to keep their invoices vague so they didn't show what the
21 NRA was paying for.

22 All right. So, now we know facts that we agree and
23 that they have stated verbatim on this record. Let's talk
24 about why those facts matter and what issues you should keep
25 your eye on as the evidence comes in and the trial unfolds:

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1 One core issue in this litigation: We know some
2 past violations happened, but did the NRA Board -- did
3 people like Ms. Rhode -- condone them, permit them,
4 willfully close their eyes or were they, in fact, the
5 victims of this misconduct?

6 You're going to look at the board's business
7 judgment. Why did the NRA do what it did? Think about that
8 question as the evidence rolls in.

9 And the third issue -- this is an allegation in
10 this case -- persistent violations. Regardless of whether
11 some rules were broken in the past, has the NRA allowed
12 those violations to persist or has it cleaned up its act?

13 All right. What you did not hear much about from
14 Ms. Connell yesterday is the NRA today; you'll be hearing
15 about that from our witnesses. You will be hearing that the
16 NRA's instituted strict compliance protocols; that the
17 board, which always made good rules of the road, has newer
18 and tighter mechanisms to ensure its executives follow those
19 rules. You will learn that best practices and
20 state-of-the-art controls have been implemented in-house,
21 and you will learn about steps being taken to ensure that
22 expenditures by people who serve the NRA, those go to
23 support the mission that people like Ms. Rhode chart for the
24 NRA.

25 All right. Remember, arguments, like what you're

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1 hearing from me now and what you heard from the Government
 2 yesterday, aren't evidence. Testimony and documents are
 3 evidence, and here is a preview of what that real evidence
 4 is going to show:

5 So, the real evidence will not show that my client,
 6 the NRA, "assented" -- that was a word used yesterday -- or
 7 ignored, or blinded itself to the offenses being committed
 8 against it. You will see the opposite. The facts will show
 9 that this volunteer board of directors -- Olympic athletes,
 10 police officers, accountants, lawyers and others who serve
 11 on this board -- that they relied, responsibly, on some top
 12 outside professionals, like auditors and accounting firms,
 13 to tell them what was going on and what they should be doing
 14 and that when problems surfaced, those problems were
 15 corrected.

16 (Continued on next page.)

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1 It is complete fiction that the NRA spends
2 charitable dollars on private jets and yachts as the
3 government insinuated. Those two expenditures were
4 prominent in the presentation yesterday. The truth is that
5 the flights, the evidence will show, were either business
6 related or for ones like Ms. Connell highlighted, when
7 family members were on the plane and it wasn't business
8 related or paid to the NRA with interest. The yacht trips
9 you heard about cost the NRA, its members and its donors
10 zero. Nothing.

11 All right. So what does the NRA board do when it
12 discovers imperfections, deviations and betrayals by those
13 who are trusted. Well, these aren't the only two forms of
14 remediation you'll hear about at trial, but they are two key
15 ones and they correspond to some of the evidence that was
16 previewed for you yesterday. So, if money actually leaves
17 the NRA's hands, if a vendor puts down a credit card to pick
18 up an expense for an executive, the NRA you'll hear over and
19 over again, demanded repayment or received repayment of that
20 money with interest if it was in the past. Often those
21 vendors were fired. Some of them were sued. And in other
22 instances, like these yacht trips, where the NRA didn't
23 spend a dollar of its own money, but there could still be an
24 improper conflict of interest, what the NRA did was it put
25 up walls and guardrails to ensure those conflicts of

LAS

1 interest wouldn't affect how the assets are spent. So, for
2 example, if Mr. Smith let's you use his yacht in the summer,
3 and Mr. Smith has a contract with your company, the yacht
4 might be free, but there would be a suspicion that you're
5 giving Mr. Smith favorable contract terms because he's such
6 a good, generous magnanimous friend. To prevent that from
7 happening is they make a rule. They call it a wall. If
8 you're the one on the yacht, you can't be the one who
9 decides what Mr. Smith is paid.

10 Now yesterday you heard from the government and the
11 evidence will show that these yacht trips were hidden from
12 the board or not disclosed to the board until 2021. And in
13 2021, when the board found out about them, Mr. LaPierre was
14 walled off from determining the contractual terms of that
15 relationship.

16 All right. So here's some key factual issues to
17 pay attention to. Did violations happen, we talked about
18 that one, which the board approved or permitted. Did the
19 board vote to approve it or did the board hear about it and
20 willfully close its eyes. The evidence will show not only
21 that that isn't true, but it is the opposite of the truth.

22 Second key issue, business judgment. What they
23 considered. Were they willfully blind to red flags. No.
24 The evidence will show the opposite. That a reasonable
25 person sitting in Ms. Rhode's shoes or her colleague's shoes

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1 with the same information and the same assurances from the
2 same accountants and the same professionals would have done
3 something in the range of the same thing you will be able to
4 find.

5 All right. As you hear the evidence, pay attention
6 to whether the NRA board acted reasonably. Whether it
7 showed good nature and was trying to do what was best for
8 the association. Pay attention to whom they relied on and
9 trusted. Executives and vendors defied and betrayed the
10 board for personal benefit. They hurt the NRA to benefit
11 themselves. Ask yourself, in response to that, what the
12 board knew and what did the board do.

13 So let's talk about this board. Seventy-six
14 volunteers. They serve three year terms. They are elected
15 by millions of grassroots members across the country. There
16 are officers of the board who are also elected, and then
17 there are salaried officers like Mr. LaPierre, like
18 Mr. Frazer and formally Mr. Powell, who are more like
19 employees than directors. So, the directors are big picture
20 stewards who meet a few times a year, more if they are on
21 certain committees. And they choose the policies and chart
22 the course of the NRA. And then they hire full-time
23 employees to execute, to actually fill out the spreadsheets
24 and run the organization data.

25 All right. You heard a word from Ms. Connell

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1 yesterday several times and that word was entrenched. See,
2 the government has to prove a case not just against some
3 individuals, most of whom no longer work at the NRA, but
4 against the NRA itself, against the NRA board. So the
5 government suggests that the board is entrenched, but it's a
6 group of decades long serving insiders who benefited from
7 deals and given benefits to each other and they control
8 everything and they can't be dislodged. That is not only
9 not true, that is the opposite of the truth.

10 Ms. Connell showed you a slide yesterday with 24
11 pictures on it of 24 people who serve on the board. She had
12 them in little circular dots. I'll show you some dots soon
13 too. And highlighted that some of them served for 27 years.
14 First of all, 27 years of service to the NRA is not a mark
15 of corruption. Even if it were, even if all of those 24
16 board members were corrupt in some way, even if they all
17 voted the same way on every issue, they would have no
18 control of the NRA, because there are 76 directors not 24.

19 Now you might be wondering why I am showing you a
20 slide of the composition of the board in 1997. It's because
21 some of the first evidence you're going to hear at trial
22 from the Attorney General is going to be dredged up from the
23 1990s. That is when Mr. LaPierre first came into power. So
24 their allegation is that Mr. LaPierre controls the board or
25 they are all his cronies.

LAS

1 This is what the board looked like when Mr.
2 LaPierre began his tenure. I'm going to ask my colleague to
3 press the button now. So those initial board members are
4 the green dots. That's the 1990s. And you'll see what
5 happens when there are constant elections in which millions
6 of nationwide gun owners and NRA members vote. The new
7 class is represented by the yellow dots, that's 2007.
8 Purple dots coming in, fresh directors, 2017. And just
9 remember blue is new. This is a new board. So the idea
10 that we're dealing with an entrenched circle of insiders who
11 always run everything the same way and always will is not
12 only not true, it is the opposite of the truth.

13 All right. Remember I told you look for persistent
14 violations. That's what they allege and that is not what
15 you will find. The reason you're going to be hearing about
16 the 1990s is that these allegations are old and cold.

17 Okay. So, what is the NRA actually doing with its
18 money if it's not spending it on luxury yachts. Well, the
19 NRA's mission has been largely the same since 1871, when it
20 was formed in the State of New York by former officers of
21 the Northern Union Army after the Civil War. They noticed
22 that the confederate shouldered shoot better than the
23 northerns and wanted to fix the problem. That's why it
24 makes its home in New York. The NRA promotes public safety
25 and education. It trains people in shooting and hunting

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1 safety and protects and defends the Second Amendment.

2 All right. Now, we heard yesterday some vocabulary
3 words about charities and assets and 501(c)(3)s and
4 501(c)(4)s. So there are some technicalities I don't want
5 to linger on too long but they are important.

6 So, the NRA like a lot of big not-for-profit
7 organizations have several affiliates. Some of them are
8 charities under federal tax law and some of them aren't. My
9 client, The National Rifle Association of America, the
10 nonprofit corporation, incorporated in New York, is a
11 501(c)(4), but it has affiliated entities that are charities
12 for federal tax purposes. The Wittington Center is a
13 conservation and shooting sports center. The NRA Freedom
14 Action Foundation does get out to vote and public education
15 about the Second Amendment. The NRA foundation also funds a
16 variety of shooting education. And the NRA Civil Rights
17 Defense Fund helps people who can't afford to go to court to
18 defend their rights in this area do so. You'll hear about
19 that in a minute.

20 Now the government can't show and won't even bother
21 to allege that charitable dollars, those that are tax
22 deductible, that go to those federal 501(c)(3) charities
23 aren't misspent at all. The NRA has very careful controls
24 in place the evidence will show to ensure if you claim a tax
25 deduction when you donate to the NRA, if you donate to one

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1 of these charities, that money is not getting spent on any
2 of what you heard about yesterday. It is getting spent in
3 support of that charitable mission.

4 Let's talk about the charitable mission. Gun
5 education and safety programs are one of the NRA's
6 initiatives. There is a program called End Illegal that's
7 been around since the 1980s to teach kids if you find a gun,
8 you should stop, don't touch, runaway and tell a grownup.

9 The NRA Civil Rights Defense Fund provides
10 litigation funding for people who can't afford their own
11 lawyers but have important constitutional cases. The one
12 that's on the screen right now is a favorite of mine,
13 because I personally worked on it. Ka Mauri Harrison was a
14 fourth grade boy in Louisiana who was kicked out of public
15 school for having a BB gun sitting against the wall of his
16 bedroom during a Zoom class. So, the NRA teamed up with the
17 ACLU, which we do occasionally, to fight for this boy, and
18 we obtained a very favorable outcome. That's the kind of
19 thing that the NRA's charitable dollars go to.

20 All right. NRA is also a leader in firearms
21 education and safety. We have 125,000 certified
22 instructors. The NRA trains police officers on how to use
23 guns safely and responsibly to avoid tragedies. The NRA has
24 a variety of women's programs, women's self defense, women's
25 shooting sports. Competitive shooting programs like the

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1 ones that Ms. Rhode is so decorated in is also an initiative
2 of the NRA. Hunting conservation is important to NRA. Lots
3 of NRA hunters want the animals they harvest to be eaten and
4 not wasted. So, NRA Hunters for the Hungry is a program
5 where a hunter shoots a deer, for example. He can give that
6 meat to poor people instead of letting it go to waste.

7 The NRA has dozens of clubs and associations across
8 the country. It's not just in New York. These are all NRA
9 affiliates. The NRA is one of the oldest and largest
10 nonprofits in this country with millions of members, more
11 than other recognizable organizations you may have seen.
12 And the NRA, the corporation, my client has 358 employees in
13 11 divisions. These people aren't riding on yachts. They
14 are doing the hard, ordinary work of running this
15 organization.

16 All right. So I told you the board creates good
17 rules and good frameworks to ensure that the NRA's assets
18 are treated appropriately. Let's talk about what those are.
19 The NRA has a set of bylaws that's hundreds of years old and
20 constantly amended and updated. Yesterday you saw the
21 government put some documents on the screen that were copies
22 of NRA policies. If you pay attention, you'll notice they
23 can't really find much wrong with the NRA's policies. The
24 board sets good rules. It's just that some individuals
25 deviated from those rules. That's what the facts in this

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1 case will show.

2 All right. The evidence will show that the NRA's
3 board approved policies, fulfilled its obligations. The
4 board paid attention to what it was suppose to be doing,
5 people acting on its behalf were suppose to be doing and set
6 the right rules of the road.

7 All right. You heard yesterday about the audit
8 committee, which is a very important committee under New
9 York law and at the NRA. The audit committee attends to
10 internal controls. The audit committee is a place where
11 whistleblowers can go to speak out and have. The audit
12 committee liaises with the outside auditors who are
13 independent accountants hired by the NRA to come in and look
14 at its books and make sure that column A matches column B.
15 Make sure there is not obvious financial fraud or diversion.
16 The audit committee works with them. And the audit
17 committee reviews the NRA's audited financial statements.

18 The NRA has an employee handbook that every employ
19 has to sign. The NRA fired Josh Powell. The fact that he
20 signed the employee handbook and didn't abide by it was part
21 of that vignette you'll hear.

22 All right. The NRA's compliance score card is
23 strong. The evidence in this case will show you that the
24 NRA terminated insiders, whether they are vendors or
25 employees who took advantage. The NRA didn't fire every

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1 single person every time. Sometimes somebody had retired a
2 few years ago and then the imperfections were discovered. A
3 review was done. You can't fire the guy when he's already
4 gone. But the NRA fired a lot of people and a lot of
5 vendors.

6 The NRA instituted compliance seminars for the
7 employees, including the senior ones were required to
8 attend. And an anonymous hotline so that whistleblowers can
9 report issues without revealing their identity. The NRA
10 hired a compliance manager who eventually will be a
11 compliance officer who reported directly to the board. The
12 NRA increased its documentation of its scrutiny of
13 related-party transactions, which we'll talk about more.
14 The NRA bought knew financial reporting software to make
15 sure that all of its financial were handled efficiently and
16 clearly and accurately and easily. And the NRA analyzed
17 potential transactions, like the ones that the government
18 was complaining about and many instances was repaid with
19 interest.

20 Okay. So let's take a closer look at the claims in
21 this case. As I told you, there are four individual
22 defendants. Only one of them, Mr. Frazer, works at the NRA
23 and will work at the NRA by the time this case is over. Mr.
24 LaPierre has resigned. Mr. Powell and Mr. Phillips are long
25 gone. Good riddens.

LAS

1 All right. Now this is an unusual lawsuit. If
2 you've been on a jury before, the plaintiff will often ask
3 you to award damages paid by the defendant. He hit me with
4 his car. I have \$10,000 in medical bills. He should give
5 me \$10,000. That's not this case. Any damages you award in
6 this case will be paid to the NRA, to my client. That's one
7 of the factor that makes this case unusual is the government
8 acknowledges that my client is the victim of the misconduct
9 it complains about.

10 All right. Let's talk about what they seek to
11 prove. So, they talked yesterday about breach of fiduciary
12 duty. They don't allege that on the part of the board of
13 directors. On the part of the NRA. The government seeks to
14 prove improper administration and diminution of property
15 held for charitable purposes. That is a mouthful.
16 Essentially that the NRA does not steward its assets,
17 especially the charitable assets properly.

18 So, some facts you will hear that are relevant to
19 that allegation. Some important facts start to crystalize
20 in 2018. In the summer of 2018 several employees came
21 forward under the NRA's whistleblower policy. Some under
22 the policy and some not, but several employees in the
23 accounting department came forward to the audit committee,
24 which exists in part for this purpose, and raised concerns
25 about financial irregularities, including regarding big

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1 vendors, like Ackerman, McQueen, the advertising agency you
2 heard about yesterday.

3 So, in response the NRA acted quickly. That audit
4 committee meeting where the whistleblowers appeared was in
5 July, the very end of July. By September the NRA sent
6 hundreds of letters to its vendors. Now the vendors that
7 were identified by these whistleblowers, that were of
8 central concern, they got audited. One of them got sued.
9 One of them got fired. That was a major conflict. But even
10 vendors that raised less concern, vendors where we didn't
11 know for sure anything was wrong received these strict
12 letters saying from now on you need to improve your
13 documentation of invoices you submit. And if you don't want
14 to do that, you're not going to be an NRA vendor anymore.
15 Vendors either complied with this protocol or were fired.

16 If you ever worked at a big company with lots of
17 vendors, vendors that give you photocopy paper, vendors that
18 service your cafeteria, vendors that do your advertising,
19 your media, you know it is disruptive to fire dozens or
20 hundreds of them. The NRA did that because whistleblowers
21 told it that vendor relationships and payments to vendors
22 were a vector through which money might be misused.

23 All right. The plaintiff also alleges improper
24 related-party transactions. And as the government
25 explained, a related-party transaction is a subset, a

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1 technical subset of a type of transaction between someone
2 who has power of the nonprofit or affiliate. When you're
3 getting money from the nonprofit that you work for or your
4 family member is essentially.

5 So, what they don't tell you but what you'll be
6 instructed at the close of this case and should remember as
7 you hear evidence is not every transaction with a related
8 party is one that's regulated by the statute or one that the
9 government will have anything to say about or can state a
10 claim over. So, it's true though that some of these did
11 happen and the board did not know about them and that's an
12 impetus of their allegations. The board, Ms. Rhode, her
13 colleagues didn't know, didn't approve. But there are only
14 a few of these that actually fit the criteria of the
15 Attorney General's claim.

16 So, the transaction with an insider with a related
17 party is completely okay under the law if it's quote unquote
18 "de minimus". Now lawyers use a lot of French and Latin for
19 reasons that were probably clearer to us hundreds of years
20 ago. De minimus means small enough not to matter. So, if
21 the NRA sends a \$5 Christmas trinket to everyone including
22 an insider, that is not something the government can or
23 should sue over. A transaction occurring in the ordinary
24 course of business is not a related-party transaction. It
25 can't be something you would do every day. It has to be a

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1 special one off transaction and a transaction that benefits
2 a big glass of beneficiaries. Hunters, for example, or gun
3 owners does not become a related-party transaction just
4 because some of your related parties are gun owners and get
5 that benefit. For example, if the NRA subsidizes and
6 promotes shooting safety classes and someone who is an
7 insider runs a shooting safety class and receives that
8 benefit, that is not a party-related transaction you'll be
9 instructed under New York law.

10 All right. I told you we had a board of 76
11 volunteers who give their time for free and get nothing.
12 And the government responds that board members, some of them
13 used to have contracts with the NRA and one of them still
14 does. That's true. Seventy-six board members, one -- one
15 has a contract with the NRA. You will hear evidence that
16 that person is an extremely impactful, I think this is
17 undisputed, effective gun rights activities who is advancing
18 the NRA's mission. Remember, the government admitted to you
19 yesterday it doesn't matter if you agree or disagree with
20 the NRA's mission. It's obligation as a charity nonprofit
21 is to spend its money in furtherance of that mission. You
22 will learn that hiring an effective gun party's activist to
23 promote gun rates serves that mission.

24 Okay. The NRA also is accused of retaliating
25 against whistleblowers. This is not only not true, it's the

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1 opposite of the truth and it's offensive, because the truth
2 is that the NRA protected and promoted whistleblowers and
3 its ranks. Now the whistleblowers you heard about
4 yesterday, Oliver North, who you might have heard of from
5 the 1980s, along with a couple of other NRA directors who
6 didn't get on the committees they wanted, were some of the
7 most powerful people in that corporate organizational chart.
8 They were on the board. They were not salaried employees
9 who feared being fired by their bosses. They were NRA board
10 members who were upset that they didn't get enough votes to
11 get re-elected or they weren't picked for the assignments
12 they wanted.

13 All right. This is the NRA whistleblower policy
14 and it's important, because it protects you if you are on
15 the board but it also protects you if you are an employee.
16 You heard about Craig Spray. The government admits that
17 Craig Spray was a good CFO. Craig Spray left the NRA in
18 2021, after having a massive heart attack and being unable
19 to work from the office during COVID. You will learn that
20 Mr. LaPierre made the decision to end Mr. Sprays'
21 employment, but he does not consider himself to have been
22 retaliated against. He is proud of his work for the NRA.
23 He thought there was no fraud in the organization. That he
24 credits the NRA's board and Mr. LaPierre for protecting him
25 and supporting him as he implemented change.

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1 You will learn about what has sometimes been called
2 a 360 degree review process. The NRA commenced prominently
3 featuring its audit committee in 2017, 2018 and years
4 thereafter. So, you heard these whistleblowers came
5 forward, the accounting staff to the audit committee in the
6 summer of 2018. You heard vendor abuses were reported and
7 suspected. There were also concerns over employee expenses
8 that lead the NRA to turn over a lot of rocks and piss off a
9 lot of people and fire some of them and some of this even
10 ended in litigation. But what you will learn is throughout
11 this process whistleblowers who came forward were rewarded.

12 Okay. Here's one of those whistleblowers. Sandra
13 Froman used to be a mid level accountant in the NRA's
14 financial services division. She blew the whistle in the
15 summer of 2018 on vendors and others who had more power than
16 she did. And the NRA protected her and it supported her and
17 today she's sitting in the same chair her former boss,
18 Wilson Phillips once occupied. She's the highest ranking
19 financial officer at the NRA. You will learn that she is
20 not the only employee who came forward with concerns and was
21 protected and rewarded for it.

22 All right. Finally the NRA is accused of false
23 regulatory findings. I put false in quotes here because our
24 contention will be and the evidence will show that some of
25 these alleged false filings weren't even false. These are

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1 tax returns that are hundreds of pages long, and in some
2 instances if there is a transaction, for example, a board
3 member, it has to be reported in two different places and
4 there are instances in which the transaction, the dollar
5 amount were listed but a corresponding box was not checked
6 on a separate page of the form.

7 Now, in order to prevail on their claim they don't
8 just have to show that these filings were false, but that
9 the inaccuracies were material. That means that within a
10 total mix of information you would consider, if you were a
11 donor or a regulator looking at that form, seeing that box
12 checked or not would have to influence how you would behave.
13 Our contention will be if you don't see the box checked but
14 you do see a disclosure two pages later that a board member
15 received \$2,000, that you wouldn't behave in a way that is
16 state on not thinking anyone got \$2,000. It doesn't make
17 sense. These are inconsistencies not lies.

18 All right. As I told you earlier, I'm one of
19 several fine lawyers representing the NRA. And you could
20 have heard from any one of them today. I asked to
21 personally address you because like some of you, I grew up
22 in the New York City area. And I never owned a gun. And I
23 never thought I needed one. And before working on this case
24 I didn't really agree with the NRA on the Second Amendment.
25 Then one night walking home I was attacked by --

LAS

1 MS. CONNELL: Objection, your Honor.

2 MS. ROGERS: This is just a concluding remark.

3 THE COURT: Okay.

4 MS. ROGERS: Yeah. I was attacked by two men in
5 the dark. And it didn't matter that I had taken a kick
6 boxing class at the gym. It didn't help. Not everyone
7 whose been the victim of a crime or who has concerns for
8 personal safety chooses to own a gun for self defense. In
9 fact statistically depending upon your specific situation it
10 might not even make you safer. Training is important.
11 These are all things that should form your choice. But
12 that's the point. It's your choice. In America the power,
13 the responsibility, the choice to own a firearm does not
14 just belong to the king or the militia or the cops. In
15 America it's yours. That's what my client's mission means
16 to me and to some of the directors you will meet.

17 Now there can be no question that some individuals,
18 some executives, an advertising agency, a travel agent
19 betrayed that mission. Betrayed people like Ms. Rhode. The
20 only question or at least one question is why the NRA, the
21 victim of that betrayal is a defendant in this case. You'll
22 be answering some really important questions at the end of
23 this trial in this, one of the most important and exciting
24 rooms in the city, in the society, because court is an
25 exquisite, special bubble we've created. Where life is fair

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1 or at least it's suppose to be. Having the facts on your
2 side is more important than having power. And where what is
3 fair and what is true is more important than who and whom.

4 My client and I are so grateful that you're
5 participating in this process with us. We're so grateful
6 for the six weeks of your time that you're about to give.
7 Listen to the evidence. Hold them to the burden of proof
8 that is theirs alone. And I hope that you will agree at the
9 end of the trial that regardless of the verdict you render
10 as to each of the individuals, there is simply no support
11 here for a verdict against the NRA. Thank you.

12 (Continue on the next page.)

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Proceedings

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1 THE COURT: Thank you.

2 MR. CORRELL: Your Honor, may we have a short break
3 before I begin? I'm not sure how long I'm going to be
4 going.

5 THE COURT: I'm sorry?

6 MR. CORRELL: I'd ask for a short break before I
7 begin my opening.

8 THE COURT: Is that for preparation or do you need
9 to -- people need to use the facilities, or what is this
10 for?

11 MR. CORRELL: I'm not sure how long I'm going to be
12 continuing and I just don't want the jury to be
13 uncomfortable during a long opening.

14 THE COURT: Okay.

15 So we'll take our morning break. Hopefully, we'll
16 try to keep it short, but you guys can step out.

17 COURT OFFICER: All rise. Jury exiting.

18 (The jury left the courtroom.)

19 THE COURT: Okay. Procedurally, generally, to keep
20 things moving, I generally take one mid-morning break. So
21 doing it now means we'll probably -- for this day, may have
22 to do two. So we'll develop a rhythm as we go, but it's
23 normally going to be around eleven o'clock that we take a
24 mid-morning break. But I understand your point: that if
25 you're going to go past that point, you don't want to do

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1 that. But once we're into the normal course of the trial,
2 that's the way I'll probably regulate it.

3 All right? Thank you.

4 (Recess.)

5 COURT OFFICER: All rise. Jury entering.

6 (The jury entered the courtroom.)

7 THE COURT: Okay. Be seated.

8 Okay. Now we'll hear from counsel for
9 Mr. LaPierre.

10 MR. CORRELL: Good morning. My name is Kent
11 Correll and I represent Wayne LaPierre.

12 You've heard a lot about Mr. LaPierre. You're
13 going to meet Mr. LaPierre later in this trial. He's going
14 to take the stand, he's going to be asked questions, and
15 he's going to answer those to the best of his ability.
16 You're going to learn what he knew and when he knew it, what
17 he did and why he did it, who he relied upon and why he
18 relied upon them, and how he viewed his duty to the NRA.

19 The question -- main question -- with respect to
20 Mr. LaPierre is: Did he do his duty to this organization?
21 And I submit to you that, after you've heard all the
22 evidence and all the witnesses, you will conclude that he
23 did; that he served it well and honorably and honestly for
24 44 years, until his health made it impossible for him to
25 continue. And you'll be hearing about that at trial, too:

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Opening - Correll

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1 how he held on for as long as he could before he was
2 ultimately told by his doctors that he had to stop.

3 He was born in New York; I guess, which makes him a
4 New Yorker. He was born in Schenectady. And at the age of
5 five he moved to Roanoke, Virginia, which is where he grew
6 up. But he came back to New York for college, Siena
7 College; Loudonville; upstate, near Albany. In college he
8 worked at GE, which is where his father worked. His father
9 was proud to have his son working there and he was proud
10 that his father was working there. He saw nothing wrong
11 with working for a company that his father worked for. He
12 thought it was great; the company thought it was great. He
13 unloaded banana boats from Albany; dusty, hard work. So he
14 learned the work ethic early on, and he learned to work with
15 people from all walks of life.

16 In college, he didn't study business
17 administration, business or accounting. He wasn't
18 interested in making money. He was fascinating with
19 politics, political science. He thought he was going to
20 become a professor; he wanted to become a professor of
21 political science. He was a scholar; he was bookish; he was
22 shy; he was a devout Catholic, and he -- which is why he
23 went to Siena College, which was a college founded by the
24 Franciscans. He went to Boston College, a Catholic school
25 in Boston, for a master's in government and politics; and

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1 after he finished, he applied for acceptance into a Ph.D.
2 program and was accepted and he did the coursework.

3 But something happened along the way: He was
4 working in Washington as a consultant, building on the
5 experience he had gained as an intern working in Albany for
6 two African-American state senators who were members of the
7 Democratic Party; and in working in that office, which was a
8 small office shared by these two state senators, he came to
9 meet some of the leaders of the civil rights movement:
10 Julian Bond, Vernon Jordan, Roy Innis. And he became
11 friends with Roy Innis, who had founded the Congress of
12 Racial Equality, which was one of the leading civil rights
13 organizations in the '60s and still exists today, and they
14 became friends, and fast-forward: Roy Innis ended up being
15 on the board of directors of the NRA through this
16 relationship.

17 And meeting Roy Innis and working with Roy Innis in
18 the civil right area made him realize more strongly
19 something he already knew, which was that politics is about
20 relationships and it's about people; it's about caring about
21 people and trying to help them. And that's what he wanted
22 to do. He wanted to study it; he wanted to understand it.

23 And then, when he got to Washington on a
24 consulting -- with a consulting job, he heard that this
25 group called the NRA was looking for someone to work with

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Opening - Correll

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1 Democrats. He was on the Hill and he walked over; they
2 liked him; he liked them. Next thing he knew, he was -- I
3 believe it was -- state and local liaison for the NRA,
4 working in the northeast; New York and other states, which
5 was a tough area to work, because while you have hunters
6 upstate, you don't have a lot of hunters who live in or
7 around New York City. And so, that was his route or, you
8 know, his territory.

9 He did so well in that job that he was asked to
10 step up to the federal level, which he did, and he really
11 enjoyed it.

12 Then, in 1991, the executive vice president
13 position came open and that was the top position;
14 essentially, the CEO of the organization, or it's equivalent
15 to the executive director of a not-for-profit, and they
16 asked if he would take the job. He did not want it; he
17 didn't want the job. He was happy doing what he was doing;
18 he enjoyed being out there, meeting people in the field,
19 talking to legislators. That's what he had done. That's
20 what he had grown up doing as a college student.

21 But there was no one else to take the job, so he
22 tried to get other people to take it. He tried to get a
23 Congressman from Michigan to take it, who wouldn't. He
24 tried to get a -- I think he was a Secretary of the Navy to
25 take it. No one would take it. He stepped into the job,

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1 and that was in 1991, and he became the head of the NRA.

2 Over time, he was asked to do -- well, his duty as
3 executive vice president of the NRA is described in the
4 bylaws as the duty being to direct all the affairs of the
5 association in accordance with the programs and policies
6 established by the board of directors. So that was the
7 technical/legal description of his duties.

8 But he saw his duties as getting out, meeting with
9 people, listening to people, understanding what their views
10 were on guns and gun policy and gun legislation and
11 enforcement of existing laws; and also hearing what they
12 thought about candidates, people who would be in a position
13 to influence gun policy, as to what they thought about legal
14 issues, what the law should be on guns, because you have a
15 Second Amendment and it says that the right of the people to
16 keep and bear arms shall not be infringed. The question is:
17 What does that mean? How is it applied? How do we reach a
18 consensus as a nation on what our policy should be? Should
19 it be federal? Should it be state by state? Should it be
20 local? These were the political-science issues that he was
21 dealing with, the policy issues that he was dealing with.

22 But then his role began to expand because people
23 said, "Well, you've got to go on TV and talk." And this is
24 something he had never done before, so he had to be trained
25 by people who knew how to do that. They wanted him to go on

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1 TV and debate; they wanted him to make speeches. And so he,
2 over time, grew into a different person, someone who could
3 stand on a stage, in front of an audience who loved him or
4 in front of an audience who hated him or in front of an
5 audience that was mixed, and speak for the millions of
6 Americans who entrusted him to speak for them.

7 Tough job, really tough job; involves a lot of
8 travel, because in order to stay in touch with your
9 constituency, you've got to be like a politician. You've
10 got to travel a lot. You've got to travel to small places.

11 I was joking with Wayne -- and people call him
12 "Wayne"; they don't call him "Mr. LaPierre." No one calls
13 him "Mr. LaPierre." I was talking to Wayne and I said: --

14 It's like the Hank Snow song; you know, "I've Been
15 Everywhere." It was covered by Johnny Cash; "I've Been
16 Everywhere."

17 -- "if you took a map of the United States and you
18 went through and put a pin in every little town and city
19 that you've been in, what would it look like?" And he just
20 looked down and kind of smiled. There would be a pin in
21 pretty much everyplace in the United States.

22 He traveled a lot because he viewed his duty as
23 being with people, from the highest to the lowest, if there
24 is any such thing as low; but from the humblest to the
25 grandest, from -- from Grand Rapids to the Oval Office. And

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1 he knew every President; he was in the Oval Office a lot.

2 He was friends with Sarah Brady, something people
3 don't know. He worked with her to try to get to a place,
4 after her husband was shot, to -- on gun policy in this
5 country.

6 This is who Wayne LaPierre is. It's not a story
7 you heard -- you hear -- told very often, because there are
8 people who write about him; they have an agenda and they
9 want to paint him as someone other than the person he is.
10 And so does -- so does Letitia James. So does Ms. Connell
11 (indicating). They want to paint him as a person he --
12 that's not him, because they want to put these facts in
13 front of you and then ask you to imagine from these facts
14 that he is not an honest person, that he wasn't acting
15 honestly, with sincere intention to do what he thought was
16 in the best interests of the NRA.

17 This case is going to unfold over the course of six
18 weeks. We're going to spend a lot of time together, and I
19 don't want to bore you today or -- because there are other
20 people (indicating) who have to speak.

21 But I just wanted to touch on a couple things,
22 because it's easy to throw up a picture of a yacht and say,
23 "Oh, my gosh, this guy accepted an invitation to stay on a
24 yacht and therefore, you should hate him or you should be
25 suspicious of him, because anyone who goes on a yacht is a

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1 bad person." Well, I don't know where that comes from,
2 because if someone invited me to go on a yacht, I would
3 probably go. I have been invited.

4 Mark Messier invited me to come on his boat and I
5 was --

6 MS. CONNELL: Objection, your Honor.

7 MR. CORRELL: It's a personal story.

8 And the fact is that when Mr. LaPierre was invited
9 to go on someone's yacht or to -- even to use a man's yacht
10 when he wasn't using it, he didn't think of this as a gift
11 and something he needed to disclose; he thought of it as a
12 nice invitation and he went.

13 Now, Ms. Connell has done a good job of conflating
14 three very different things. She puts up the picture of
15 yachts and says, "He used these yachts." We've all heard of
16 Davos and we've all heard of the Aspen Institute and places
17 like this, where people come together to talk about things.
18 Well, there was something called the Celebrity Retreat in
19 the Bahamas every year for a while, where David McKenzie and
20 his wife, Laura McKenzie, who were personalities in
21 Hollywood, would invite people to come together and network,
22 basically schmooze, and they invited Wayne to come.

23 And one of the things Wayne wanted to do was to try
24 to make relationships with people so that he could talk to
25 them about this issue and enlist their support for the NRA,

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1 because he knew -- he was smart -- he understood that people
2 respect celebrities, rightly in some cases, wrongly in other
3 cases, and he wanted to make sure that he developed
4 relationships with people who were in a position to
5 influence public opinion in a positive way about the NRA and
6 the issues, so that we could have a -- he could have a
7 lively and fair debate. He went to these celebrity retreats
8 for that purpose.

9 He sometimes traveled with David McKenzie on his
10 boat -- and, yes, it was a nice boat -- with the purpose of
11 advancing the interests of the NRA by being introduced to
12 people who were in a position to speak for the NRA or to
13 come on the board of the NRA, and he had some amazing
14 successes: people like Roger Moore, who were planning to
15 speak on behalf of the U.N. against gun rights, and he
16 persuaded him that that wasn't the right thing to do.

17 This is a -- those of you who don't know who Roger
18 Moore is, he played James Bond in the movies and the --
19 preventing a situation where James Bond would be speaking
20 out against law-abiding ownership of firearms was obviously
21 a thing that was in the interest of the NRA to do, and he
22 did it.

23 Montel Williams was a naval officer with the U.S.
24 Naval Academy. Wayne developed a relationship with him,
25 through the McKenzies, through this process of spending time

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1 with the McKenzies on their boat, with fancy people, and
2 just talking to them about who the NRA really is and what
3 they're really doing and trying to accomplish.

4 Vitally necessary to the NRA is to prevent the
5 Hollywood community from just being absolutely, 100 percent
6 against the NRA.

7 So this was part of his sense of duty: to be out on
8 the road, meeting with people from rubber-chicken dinners in
9 Nebraska or Iowa, to fancy dinners in LA or D.C. He was
10 doing it all.

11 Flights: The one thing Ms. Connell didn't tell you
12 about is security. Mr. LaPierre gets a lot of threats;
13 death threats. It's almost constant. He was told: "You
14 must fly private" at one point. "You cannot fly commercial.
15 We can't protect you, and it would be -- we couldn't protect
16 the people around you. You must fly private. Whether it's
17 for business or whether it's personal, you must fly
18 private."

19 And before that, depending on the threat levels
20 (simulating), there were times when he had to fly private
21 because he just couldn't get there commercially: The
22 President called, said, "You've got to be -- I want you in
23 my office tomorrow morning at 10:00 a.m." He's in Nevada.
24 He can't get a flight. He's got to charter a flight.

25 He had authority, as the head of this organization,

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1 to decide how he flew and to decide how other people flew.
2 The main policy, the written policy, was, fly as cheap as
3 you can. But, we understand, there are circumstances where
4 if you have a medical problem or you need to travel first
5 class or you need to -- you need to travel charter, you do.

6 At one point, they had a guy named Charlton Heston,
7 who many of you probably don't know, but he was a -- he was,
8 like, the Leo DiCaprio of Hollywood back in -- a long time
9 ago. But he was a hunter and -- and a shooter and he wanted
10 to speak up for gun rights because he was afraid that they
11 were being attacked and infringed, that they were going to
12 lose them, and he stepped up and became the president of the
13 NRA, and he traveled and when he had -- when he traveled, he
14 traveled private because, I guess, if you're Charlton
15 Heston, that's the way you like to travel. But, also, once
16 he stood up and started speaking up, he started getting
17 death threats, as well. So there were considerations there,
18 as well.

19 So this is all part of the story that hasn't been
20 told. When you -- when Mr. LaPierre comes before you, he'll
21 tell the story, and he'll tell it from personal experience.
22 He was there. He -- he -- he knows exactly what the
23 circumstances were and he knows exactly why he did what he
24 did and what his thinking was.

25 And was his thinking always exactly right? No. Is

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1 perfection the standard for administration of -- or
2 management -- of a not-for-profit? No. I think the Judge
3 will tell you, it's not perfection; it's something different
4 than that.

5 And I'll tell you what it is, because it's in the
6 statute that says, an officer of a not-for-profit
7 corporation shall discharge the duties of his position in
8 good faith and with the care an ordinarily prudent person in
9 a like position would exercise under similar circumstances.
10 So it puts the duty in the hands of the officer, the trust
11 to act in good faith, honestly and with good intention to
12 advance the interest of their employer, of the organization.
13 And he has, and the members have rewarded him every year by
14 reelecting him for -- I think it's 44 years -- well, he was
15 there for 44 years; he's been EVP for 31 or 32.

16 So the members were looking at what he was doing;
17 they were looking at what they were getting. They know
18 Wayne because he shakes every hand at every dinner. He
19 doesn't even eat. He waits until he goes back to the hotel,
20 because he can't sit and eat at these dinners; he has to
21 shake everyone's hand. That's his job. That's where he
22 delivers the most value.

23 Spending time with people of means who are in a
24 position to help the NRA in the way that some billionaires
25 help other organizations that they like, it's prospecting;

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1 it's -- it's trying to find people not only who will speak
2 for the NRA, but who will help the NRA advance their
3 mission.

4 He saw his duty as broader than sitting in an
5 office in a -- at headquarters, reviewing contracts and
6 invoices. He had people that he knew and trusted and he
7 believed to be reliable and competent who were doing that,
8 and the information he was getting from them was, "All's
9 well." The night watchman was ringing the bell and saying,
10 "All is well." The outside auditors would come in and they
11 looked at everything and Wayne would ask Woody Phillips, you
12 know, "How did it go?" and he'd say: "Great. No problems.
13 All is well."

14 Wayne is not an accountant; he didn't study
15 accountant -- accountancy or accounting. He studied
16 political science. And that was his main function, to be
17 the face and voice of the organization. He's not a lawyer.
18 He didn't study the law. He's more interested in reading
19 proposed legislation, I think, and seeing whether he thinks
20 it's good or bad for America than in, you know, figuring
21 out -- than reading contracts. He is a policy person. He
22 reads the Constitution. He reads legislation. That's what
23 he does. That's his focus. That's what he's good at and
24 that's where he tried to put his efforts.

25 You heard about "Zegna," and Ms. Connell, you know,

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1 talked about Zegna. Zegna is a fan -- it's a store that
2 sells expensive clothing. Wayne will tell you a story.
3 He'll tell you that the head of the advertising agency that
4 organized all these public appearances and magazine covers
5 and shoots and TV shows and speeches and debates had a
6 concept of how he should present himself, how he should
7 appear, and that Angus McQueen, the head of the organization
8 Ackerman McQueen, said: "Go to Zegna. They'll lay out some
9 suits for you. Pick the ones that you like. But you have
10 to wear the suits and the ties that I tell you you have to
11 wear when you appear." So he did, and he wore those suits
12 and he appeared and he did this job.

13 Twenty years later, the attorney general
14 (indicating) is complaining about these suits -- he kept the
15 suits because they were tailored for him; he kept the
16 suits -- and that he didn't pay for the suits, and that the
17 allegation was that the -- that he -- the NRA had paid for
18 the suits.

19 But there was testimony in this litigation, from
20 someone who worked for Ackerman McQueen, that that wasn't
21 true; that Ackerman McQueen paid for the suits. The person
22 who was doing the production at the advertising agency paid
23 for the suits. It was later determined that, no, there were
24 some documents that showed that the NRA did pay for some,
25 that some invoices were sent. What did Wayne do? He said:

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1 "How much is it? I'll write a check to cover that. And, by
2 the way, we should probably calculate interest so that the
3 NRA is not out of pocket a penny," for suits that his ad
4 people told him he had to wear for these appearances and
5 that he wore and kept without any understanding that, under
6 any tax rules, it would be treated as compensation to him
7 and that he would have to reimburse the organization for it.

8 So, sorry to bore you with this, but the fact is
9 that there's a lot here that hasn't been said, that will be
10 said and that as we go through the next six weeks of trial,
11 it's going to unfold like the peel of an onion, and at the
12 end of the day, you will get to the truth of the matter.

13 And the thing I would ask you to do, which is the
14 thing that the Judge (indicating) has already asked you to
15 do, is to reserve judgment until you've heard all the facts.
16 I'm not asking you to form an opinion as to my client right
17 now; I'm asking you to wait till you meet him. And -- but
18 then to set aside any preconceptions you might have had
19 about him based on what you've read, things that are written
20 by people who don't know him, who've never met him and who
21 may have an agenda to say something bad about him.

22 It's easy to accuse someone of something; it's hard
23 for someone who's accused of something to defend themselves,
24 because in defending yourself, you have to repeat the
25 accusation and in repeating the accusation, it gives that

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1 accusation some sort of elevated status. But the fact is,
2 as we now know too well, a lot of people in this country are
3 throwing a lot of accusations at each other that are just
4 not true, and it's coming from both sides; it's mud-throwing
5 from every quarter. And that's happening -- it happened a
6 little bit on Ms. Connell's opening.

7 And I just urge you to ignore the mud and look to
8 the facts, and at the end of this process, think about the
9 relationships that Wayne LaPierre has built with various
10 people in various positions all over this country, that has
11 empowered this organization to the point where there are
12 people that thought they needed to attack it in order to
13 take it down (simulating).

14 So, thank you for your time. Sorry. I feel like I
15 went a little longer than I thought I would -- I was going
16 to go -- but thank you for your attention and I look forward
17 to addressing you again after you've seen all the evidence
18 and you've heard all the witnesses.

19 THE COURT: Thank you, counsel.

20 Next is counsel for Mr. Phillips.

21 MR. FARBER: Yes.

22 Do I need the lapel (indicating), your Honor?

23 THE COURT: Relinquish the lapel, please.

24 (Laughter.)

25 (Pause.)

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1 MR. FARBER: May I proceed?

2 THE COURT: Yes, please.

3 MR. FARBER: Good morning, ladies and gentlemen.

4 My name, again, is Seth Farber and together with my
5 colleagues who are seated at counsel table (indicating),
6 Mark Werbner and Lisa Coutu, it's our privilege to represent
7 Defendant Wilson Phillips.

8 Wilson Phillips, who goes by "Woody" Phillips, is
9 75 years old. He's seated right there (indicating), in the
10 blue suit, blue tie, in the corner over there (indicating).
11 He devoted more than 25 years of his life to working for the
12 NRA. Everything he did in that job he did for the good of
13 that organization and for that mission that both Ms. Connell
14 and Ms. Rogers (indicating) talked to you about earlier. He
15 never used his position to line his own pocket; he never hid
16 anything from his boss, Mr. LaPierre; and he never concealed
17 anything from the NRA's board of directors, either.

18 Now, that's not to say that Mr. Phillips always did
19 his job perfectly; none of us are perfect. But the evidence
20 is going to show you that he never intentionally did
21 anything to harm the NRA.

22 In her opening, Ms. Connell talked to you about the
23 NRA's policies and procedures and she even showed you,
24 quickly, a slide of that book and said, "There will be
25 evidence that Mr. Phillips did not comply with them." Well,

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1 ladies and gentlemen, this (indicating) is a copy of the
2 NRA's policies and procedures, the policy manual from 2015,
3 when he was still its treasurer and CFO. As I said, you --
4 you may remember, you saw a picture of it the other day;
5 it's 220 pages long.

6 And, yes, there will be evidence during this trial
7 that over the course of his 25-plus years in that role, some
8 of the transactions that Mr. Phillips approved were not done
9 in a way that complied with the letter of each of these
10 (indicating) hundred-or-so policies. But the evidence will
11 also show that in each of those instances, he was trying to
12 do what was best for the NRA, and although he may not have
13 dotted every I or crossed every T, he never intentionally
14 evaded any policies or any controls.

15 What you're going to see instead is that
16 Mr. Phillips always acted in good faith; that he built a
17 well-qualified team of accounting, financial, administrative
18 personnel reporting to him; and that he relied on those team
19 members, as well as the NRA's well-qualified outside
20 auditors, as he needed to do in order to do his job.

21 And during the 25 years that Mr. Phillips was at
22 the NRA, the organization thrived; it grew enormously, and
23 it grew enormously by whatever metric you want to use:
24 membership, revenue, assets, programming, the types of
25 programming that Ms. Rogers described for you, the training

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1 programs, the education programs; and, whether one agrees
2 with its position or not, it grew in political influence.

3 I'll speak a little more about all of that in a few
4 minutes, but first I'd like to take a minute to tell you a
5 little bit about Mr. Phillips himself, because he's one of
6 the individuals who's a defendant here, in front of you.

7 Woody Phillips was born in 1948 in Raleigh, North
8 Carolina; went to college nearby, at Wake Forest University,
9 studied accounting and graduated with an accounting degree
10 in 1970. And after he graduated, he passed an exam to
11 become a Certified Public Accountant, what's called a "CPA"
12 -- and you've heard reference to the CPA's again in
13 Ms. Rogers' opening -- and he started working for one of the
14 major, prominent accounting firms, which in those days was
15 known as Pricewaterhouse. And Mr. Phillips worked for
16 Pricewaterhouse for several years before leaving to go work
17 in the corporate sector, and he continued working in that
18 sector until about 1991, when he saw an ad in the newspaper
19 for a job, and that job turned out to be the position of CFO
20 and treasurer at the NRA. Mr. Phillips interviewed for that
21 position, got the job, and he started working at the NRA as
22 its treasurer in approximately 1992 and shortly thereafter,
23 he got the formal title of CFO, too.

24 Now, before that, Mr. Phillips had no background
25 with the NRA; he had no background with it before he started

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1 working there, did not know Mr. LaPierre before he started
2 working there. He had not even been a member of the NRA.
3 But he threw himself into that job from the start.

4 As I said a moment ago, the NRA was very different
5 in 1991 and 1992 than it was when he retired in 2018. It
6 was much smaller; it was much less active. But in the years
7 that Mr. Phillips worked there, membership more than
8 doubled; its revenues increased almost fivefold; its assets
9 almost tripled; its net assets, which were only about \$3
10 million when he started, grew to be more than \$140 million;
11 and planned giving, which means gifts that donors plan to
12 donate to the NRA at their death, through either their wills
13 or their trusts, went from zero to \$300 million.

14 Mr. Phillips was instrumental in that role. The
15 NRA's planned-giving and affinity programs developed under
16 him. He recruited and built a team of professionals that
17 was key to that growth. He put CPA's and other
18 well-qualified financial professionals in positions of
19 responsibility under him. Those 56 people who Ms. Rogers
20 mentioned were in the Financial Services Division under
21 Sonya Rowling, that was a division that Mr. Phillips built
22 himself, basically, from scratch with those CPA's, with
23 those professionals. He needed that team, he delegated to
24 that team and he relied on that team, because he had a wide
25 range of responsibilities that grew as the NRA grew over

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1 time.

2 Being treasurer and CFO did not mean that
3 Mr. Phillips' job was simply, himself, personally, to keep
4 the books and monitor expenses. He had much broader
5 responsibilities than that, including budgeting, financial
6 growth, reporting to, and coordinating with, the NRA's
7 board, its Audit Committee and its Financial Services
8 Committee.

9 Now, Ms. Connell did not mention much of any of
10 this evidence to you, but these facts are important; and so
11 you can understand why they're important, I'd like to take a
12 few minutes talking about the three specific causes of
13 action against Mr. Phillips in this case.

14 And part of the reason for talking about the
15 specific causes of action against Mr. Phillips is that it's
16 important for you to remember that although Ms. Connell
17 spoke a lot about what the "the defendants" -- all the
18 defendants -- did, you have to, as Ms. Rogers pointed out,
19 consider the evidence and the charges as to each of them
20 individually. That's particularly important as to
21 Mr. Phillips because, as I mentioned earlier, he retired in
22 2018, more than five years ago. When many of the events
23 that Ms. Connell talked about, including the NRA's
24 bankruptcy, the alleged retaliation against
25 whistleblowers -- when many of those things occurred, he was

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1 no longer even at the NRA.

2 So what are the claims against Mr. Phillips?

3 First, he's charged with breaching his fiduciary duty to the
4 NRA under New York's Not-For-Profit Corporation Law.

5 Second, he's charged with failing to properly
6 administer the NRA's charitable assets.

7 And third and finally, he's charged with entering
8 into what the attorney general contends is an illegal
9 related-party transaction with the NRA. And what is the
10 transaction? He's charged with doing that by entering into
11 a contract, an arm's-length, with the NRA to perform
12 consulting services for it after he retired.

13 (Continued on next page.)

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1 You're going to see the evidence the evidence isn't
2 going to support any of these charges. First, as I
3 mentioned, Mr. Phillips never breached his fiduciary duty to
4 the NRA. To the contrary he always acted in good faith to
5 promote what he quite reasonably thought was in the best
6 interest of the NRA.

7 Second, Mr. Phillips not only properly administered
8 the NRA's charitable assets when he was treasurer and CFO,
9 that's the test, he oversaw their enormous growth enabling
10 the NRA to become a far larger, far more successful
11 organization than it was when he started.

12 Now, yes, it's true that certain NRA members such
13 as Ackerman, McQueen, you heard a little bit about before,
14 provided invoices to the NRA for expenses that they incurred
15 without detail or without background, but there was nothing
16 unusual or nefarious about that. During the 25 years that
17 Mr. Phillips worked at the NRA, Ackerman was a proven,
18 trusted and vital partner to the NRA. He worked -- They
19 worked hand in hand with the organization on strategy,
20 public relations, marketing and messaging. Mr. LaPierre
21 talked about one aspect of that in terms of the public
22 relations efforts that Ackerman, McQueen directed for Mr.
23 LaPierre. They were a partner. It worked hand in glove
24 with the NRA on the public relations messages and often
25 incurred expenses for NRA employees in doing so. Ackerman

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1 retained the backup for these expenses. And you will hear
2 that the NRA had the ability to and did periodically audit
3 those expenses to confirm their validity. You'll also hear
4 that there was good reason for the NRA in some circumstances
5 to have its vendors keep the backup for those expenses and
6 to limit the detail in their invoices. That was done not
7 because of a desire for secrecy. Not to keep information
8 from the NRA's board or auditors. But out of a desire for
9 confidentiality and to minimize the chance of leaks to the
10 outside world. And why was that necessary? Why was that
11 important? Well, as you've heard, the NRA's political
12 positions are controversial and to say the least they are
13 strongly opposed. And you also heard from most recently
14 from Mr. Correll that unfortunately some of that opposition
15 has resulted in real and serious security risks for Mr.
16 LaPierre. And as a large organization that was the subject
17 of intense media scrutiny, leaks of Mr. LaPierre's travel
18 plans or other sensitive information were a real and
19 legitimate concern.

20 Now finally let me talk about the last charge
21 against Mr. Phillips. The contention is he was contracted
22 to work as a consultant for the NRA after he retired was
23 improper related-party transaction. Ladies and gentlemen,
24 you will see that contract wasn't some retirement benefit
25 that Mr. Phillips bestowed upon himself. He didn't cause

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1 the NRA to enter into this agreement. He negotiated that
2 contract with the NRA at arm's length. And the NRA wanted
3 to be able to call upon Mr. Phillips' 25 years of knowledge
4 and experience with the NRA after he retired. And two of
5 the most senior members, two of the most senior members of
6 the NRA's board of directors, two of the most senior
7 officials of the NRA, its then president Pete Brownell and
8 one of its vice presidents, Caroline Meadows, signed that
9 contract on the NRA's behalf. At the NRA the president and
10 the vice presidents, they are part of the board. They are
11 elected by the board to serve in those roles. So, that
12 contract was not only executed by the NRA, it was fully
13 known. In fact, approved by the two senior most members of
14 the NRA's board of directors.

15 Now, you will hear that Mr. Phillips' successor,
16 Craig Spray, decided not to take advantage of Mr. Phillips'
17 availability of that contract, and he elected not to call
18 upon Mr. Phillips after he retired. That was Mr. Spray's
19 decision. That doesn't affect the validity of the contract
20 that Mr. Phillips had negotiated with the NRA before he left
21 one bit. Again, Mr. Brownell, the then president,
22 Ms. Meadows, the then vice president, they decided it was
23 in the NRA's best interest to sign Mr. Phillips to that
24 contract. And you'll see that Mr. Phillips noted his
25 obligations under it by being available to the NRA whenever

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1 it needed.

2 Now, you don't have to and you shouldn't take my
3 word for any of this. Shortly, it's been a long wait,
4 you'll start to see and hear the evidence in this case. And
5 I'm asking you the same thing that Mr. Correll asked, was
6 that you keep an open mind until you do. But when that
7 evidence comes in, you'll see the relevant documents,
8 including this 200 plus page policy manual that I showed you
9 earlier. You'll see Mr. Phillips' post-retirement
10 consulting agreement with President Brownell's signature and
11 Vice President Meadows' signatures on them. And most
12 importantly, you'll hear from the witnesses from that
13 witness stand. Those are the people who will provide
14 evidence.

15 Mr. Phillips will be one of those witnesses
16 (gesturing). He will testify truthfully. He'll give you
17 his best recollection about everything that he's asked. But
18 there are a few things about Mr. Phillips I should mention
19 and you should bear in mind as you listen to his testimony.

20 First, as I said earlier, Mr. Phillips is now
21 75 years old. He retired from the NRA in 2018, more than
22 five years ago. A few years before he retired in 2013
23 Mr. Phillips was in a very serious bicycle accident and was
24 hospitalized for a number of weeks. He went back to work,
25 at the NRA, after he got out of the hospital. And although

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1 he did not notice any mental decline at the time, in recent
2 months he's begun to experience memory problems. And you
3 may see as a result of that when he testifies, that he loses
4 a train of thought, can't follow a question or cannot recall
5 something. His doctors --

6 MS. CONNELL: Objection, your Honor.

7 THE COURT: Overruled.

8 MR. FARBER: His doctors have diagnosed his
9 condition as hydrocephalus or water on the brain. It may
10 relate back to the bike accident. It may simply be a
11 product of aging. Regardless of the cause, you'll likely
12 see the effect on Mr. Phillips when he testifies.

13 Please give Mr. Phillips the same consideration and
14 respect that you give to all witnesses in this case. I
15 think if you do that, when we get to the end of this trial,
16 you'll see that the evidence shows that none of these
17 charges against him have any merit. Thank you.

18 THE COURT: Counsel, Mr. Fleming, you'll have to
19 switch your mike, counsel, for Mr. Frazer.

20 MR. FLEMING: Good morning. Can you all hear me
21 okay? My name is William Fleming, and I represent John
22 Frazer. And I would like to thank each of you for your
23 time, for your attention to this really critically important
24 matter for John and his family.

25 We recognize the request, the extraordinary request

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1 we made of you to be here for this period of time, and I can
2 tell you we deeply appreciate it. But I'll enter a
3 prediction for you. I will bet that what you first think of
4 or first thought of as a very inconvenient imposition on
5 you, you will come to think of as an important event in your
6 life. So, thank you.

7 John, can you stand up. (Gesturing). This is John
8 Frazer. John is the general counsel and secretary of the
9 NRA, and as you heard from Ms. Rogers, today a current
10 employee and officer. And like you, John is here today for
11 the remainder of this trial, away from his normal routines.
12 He is away from home. He's fighting claims against him made
13 by a very determined group of adversaries on the other side,
14 who are requesting that you remove him from his job and
15 livelihood and that you take away every penny that he's ever
16 made at the NRA since 2015 at a minimum.

17 I'm going to speak to you about three things.
18 John's background. I'm going to tell you about him
19 personally. And then I'm going to tell you about the
20 charges and why they are so unfair in this case.

21 Now, first I'm going to tell you that this case can
22 be summed up in two words, and as Mr. Farber already talked
23 about it, I think the other defendants also talked about it,
24 this is a case about good faith. In particular, it's the
25 good faith of John Frazer, whose done nothing but show up

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1 for his job and do his duty and served the organization he
2 has served, which you'll hear about, for nearly 30 years.
3 He's done it selflessly and absolutely to the best of his
4 ability you may find. In the end, you may agree this is all
5 you can ask from anybody.

6 Now, a court in this case, very common, but in a
7 civil case, John will be called as the plaintiff's witness
8 and he will give testimony with them examining him. I won't
9 get a chance to call John until very late in the case,
10 probably in February, and I would just ask you please to
11 withhold judgment and wait. Give us a chance to have that
12 opportunity.

13 There will also be periods where you don't hear
14 from me. I will probably go last always. And I can't cover
15 everything in this opening statement, and there is a lot to
16 cover. So, please wait for me and us.

17 There may be times I don't ask questions. I'm sure
18 you'll be happy about that. But at the end I will make a
19 full presentation. So, please withhold judgment.

20 So, John's background, like some of you I assume,
21 John is a native New Yorker. He grew up in this very
22 neighborhood. In fact, as a child he caught the bus on the
23 south corner of this very courthouse to go to school
24 (pointing). He went to college in Maine, and 30 years ago
25 as a young man he took a job at The National Rifle

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1 Association in Virginia, where he now lives with his wife
2 and two children, two young children. He has spent his
3 formative life there. He was married while there. The NRA
4 sent him to law school while he was there. And he had his
5 children while there. And it's been a career and a life for
6 him. He drives to work each day to the headquarters. There
7 you may find he deals with the day's problems and he goes
8 home like all of us.

9 Now after starting there in 1993 he received a
10 series of promotions over 20 years. He excelled at the NRA.
11 Before he was a lawyer you will hear he worked on laws. He
12 analyzed legislation. He wrote legislation. He wasn't a
13 lawyer but he did legal work. In fact, he did so well that
14 his boss said, you know, we think you have skills. You do
15 it better than anyone who is a lawyer here anyway. We want
16 to send you to law school. So, they did. And while he went
17 to law school at night, he worked at the NRA during the day.
18 For some of you who have had to work two jobs you know how
19 grueling that can be. That's his loyalty to the
20 organization.

21 After he graduated from law school, he spent the
22 last five years or five years after that working as a lawyer
23 at the NRA. And then in 2013, after 20 years there, he
24 decided to leave the NRA and he went into the private
25 practice of law.

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1 Now, what you will hear is that 18 months after he
2 left, a year and a half, the president of the entire
3 organization, a man by the name of Jim Porter called John
4 out of the blue and said we want you to consider standing
5 for election as secretary of the NRA, and of course he was
6 honored by this.

7 Now, you will hear, contrary to what the plaintiff
8 said in her opening, the -- that call took place before he
9 was asked to be general counsel. Now the plaintiff had said
10 that Wayne LaPierre hired John as his general counsel and
11 then the board just elected him as secretary. Well, in
12 fact, it was the other way around. Mr. Porter asked him to
13 stand for election for secretary. The election wasn't
14 happening until April of 2015. Then after Mr. Porter asked
15 him this, Mr. LaPierre called John and said we would like
16 you to serve as general counsel as well. Now that's an
17 employee position, and so what John was able to do was
18 start. So, he started as the general counsel in January.
19 And then when the April election happened, he was elected
20 secretary. As a bonus to the organization you will find and
21 hear that John was filling two previously separately
22 staffed, separately paid positions for one salary. So even
23 at the beginning he was giving back to the organization.

24 So, let's talk about corporate secretary. Now, the
25 plaintiff said correctly the secretary has duties that are

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1 specified. They are written in the NRA bylaws. There are
2 only four. Principally, as you heard yesterday, the
3 secretary is responsible for distributing messages from the
4 board of directors. Now, you will see documents and you'll
5 hear testimony about how the secretary does this when
6 requested. And you may find that the NRA's board of
7 directors is a demanding group to navigate. That's what the
8 secretary has to do. First, there are a lot of them. It's
9 a 76 member board, which you may find and you'll hear, is a
10 lot larger than your normal corporate board. They meet
11 three times a year. So, it's a lot of work. It's a lot of
12 personalities. They are populated with highly passionate
13 people, deeply dedicated deeply to the NRA's mission about
14 what you heard Ms. Rogers speak. You may find this is why
15 the 150-year-old organization is 150 years old, because it
16 has people that care a lot to steward it to the next
17 generation.

18 So, the secretary interfaces with this large group
19 of passionate people. They are often demanding. And he
20 does it smoothly. And you'll meet John. I trust you're
21 going to get very quickly a sense of that calm that he
22 brings to a turbulent organization. He does it smoothly so
23 that the business of the organization can run effectively in
24 its overall best interest, because at the end of the day
25 that's what this is all about, serving the NRA, the best

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1 interests of the NRA. And you may find that that's exactly
2 what John has done really, I don't want to overdramatize it,
3 his entire career.

4 So we will show you even elsewhere he distributes
5 messages exactly as requested. You will see the process,
6 okay, because, and I'll get to it later, there are going to
7 be some messages that the plaintiff is going to say
8 constitutes some sort of retaliatory action. And you'll see
9 that John just hears a message from our president.

10 Now, a short little detour. You're going to hear
11 the word secretaries in different contexts as well, okay.
12 It's a little point but it's important. John is the
13 secretary of the NRA. There are subcommittees of the board
14 duly authorized to do different things. Quite a lot of
15 them. And those committees have secretaries as well. Those
16 secretaries are not, with a few exceptions, John, okay. And
17 you'll hear about these names, but I didn't want you to get
18 confused.

19 Now, let's talk about general counsel. Now as the
20 plaintiff told you, the general counsel is the NRA's head
21 internal lawyer. So, let's start by talking about what John
22 Frazer is not. He is not nor should you believe that he is
23 a man with all the answers. Being a lawyer does not make
24 you the know all and end all of an organization. He's not
25 gifted with supreme knowledge. And if you sit in this

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1 courtroom for the next six weeks you will realize we are all
2 living proof of that.

3 Now, the plaintiff may try to push that idea
4 because there has been this sort of subtext in the case that
5 he's the lawyer. He should know. Anything bad that
6 happened, it's got to be his fault. Resist that. It's
7 unfair and it's incorrect. Further, he is the general
8 counsel. You'll be able to hear testimony even from their
9 own expert who will say that of course the general counsel
10 doesn't know it all. That's why they hire outside lawyers.
11 That's why they consult with outsiders. They are trying to
12 get to the answers, and they don't have them all. This is
13 totally normal as you may already know.

14 So, much in the same way, think of it like a
15 general doctor will refer you out to a specialist, refer us
16 out. Like if I need knee surgery or I need someone to
17 administer some exotic drug, my general doctor will not be
18 the one who does that. He'll say go see Dr. Jones, he's a
19 specialist at that. The general counsel is sort of the same
20 way. Think of him as a traffic cop trying to identify
21 issues of importance to the organization and ways to get
22 answers. So, the organization is not perfect. Neither is
23 flesh. What organization is. Perfection can only be
24 strived for. It can never be achieved. It changes. The
25 moment you think you have, it changes. That's why you work

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1 every day towards that goal. That's why good faith is the
2 centerpiece of this case. John Frazer exhibited it you may
3 find. It's not about perfection. It can't be.

4 So, you will hear a lot of evidence presented by
5 the plaintiff, okay. There are going to be insinuations,
6 and I have to trust you, and I do trust you, to look at it,
7 analyze it, think about it, use your reason, use your
8 experience. Does it make sense. Get to know John. Is this
9 the way he would act. This sounds out of character. Do
10 that. That's what you're here for. That's what you've come
11 here with the gifts you've come here with and we trust you
12 to use them.

13 You may find at the end that John Frazer displayed
14 his good faith to create a culture of doing things the right
15 way at the organization he's worked for 30 years to improve
16 and whose mission he served at that time.

17 Now you heard Ms. Rogers in her opening say,
18 talking about John. The NRA, we trust him. We relied on
19 him. He does a good job. And there is a reason for this.
20 You may find John Frazer is a deeply ethical person.

21 So, let's talk about his good faith. Before I do
22 that though, let me address one comment made by Ms. Connell
23 in her opening about Mr. Frazer's hiring as general counsel.
24 She emphasized that there was no expensive executive search
25 done. Do you remember that? They said he had only been in

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1 private practice for 18 months. What she didn't say is that
2 he had been working there for 20 years. They knew him. She
3 said he had no expertise in not-for-profit law. Each of
4 these things is a partial truth. He worked in private
5 practice for 18 months. He did not have expertise in
6 not-for-profit law, but he had a 20 year career that they
7 knew about and counted on and they knew his legal skills
8 already.

9 So, on July 1st, 2014, before John restarted at the
10 organization, he restarted in January of 2015, so July 1st,
11 2014 New York has a new law called Not-For-Profit
12 Revitalization Act. And you may hear about it. What they
13 did was they changed the law that governed not for profits.
14 So when John arrived in January of 2015, he started culling
15 through documents, getting his seat legs under him.
16 Remember he's walking into 150 year old organization. It's
17 not like you come in and say there is a new sheriff in town.
18 We do things my way. That's not how it works. But he
19 looked at it. What you'll find and we'll show you evidence,
20 in 2015 his first year he said there is a problem with the
21 not for profit law. We're not in compliance. We got to fix
22 it. So, he notified directors of possible needed changes.
23 We'll show you this. He undertook to write a new conflict
24 of interest and related-party transaction policy. We'll
25 show you this. He used outside help, like I talked about,

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1 in this process. We'll show you that. He met with
2 directors to inform and prepare them for the needed changes.
3 Got them on board. We'll show you that. And ultimately in
4 January of 2016, at a board meeting, he had to wait for a
5 board meeting to get it voted on, the board adopted John's
6 new conflict of interest and related-parties transaction
7 policy created by his efforts, by his initiative, the person
8 that they say is not showing good faith. Not acting in the
9 best interests of the organization.

10 The Attorney General has conceded this new policy
11 which John crafted was comprehensive. It hued closely the
12 requirements of the law in related-party transactions and it
13 defined conflicts of interest more broadly than the law
14 required. Yet they claim bad faith.

15 You will hear how Mr. Frazer pushed for the
16 adoption of this policy. How he prepared and delivered a
17 presentation days before the board vote to encourage them to
18 do it. In short, he lead the organization with this change.
19 In his first year he brought it towards compliance, which
20 the plaintiff knows, they know this, yet they complained
21 about a lack of expertise in not for profit law. Was it
22 beginners luck? The proof is in the pudding. That's not
23 all. Immediately after the board adopted the new policy you
24 will hear that Mr. Frazer and the duly authorized audit
25 committee which were to deal with these related-party

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1 transactions -- Mind you no one has done this before. This
2 is a maiden voyage. He meets with the audit committee in
3 March of 2016. The policy was passed in January.

4 (Continue on the next page.)
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Opening - Fleming

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1 MR. FLEMING: They go through related-party
2 transactions, which obviously are old; they had happened.
3 So he's bringing it up and saying, "We got to deal with
4 these." They look at it; they think about it; they defer
5 until September. In September of 2016 -- you'll see all the
6 documents -- these transactions are approved by the board,
7 by the Audit Committee. By December of 2017, a year later,
8 they're approving related-party transactions in advance. We
9 will show you this.

10 Now, you will also hear, in 2015, evidence that
11 Mr. Frazer began the process of improving the NRA's methods
12 for identifying conflicts of interest and related-party
13 transactions. Now, the way it's done under the law is by
14 self-disclosure; totally okay. That's how it's expected to
15 be done. So what they do is, they send out a questionnaire
16 to all related parties -- directors, officers, key
17 employees -- and they say, "Hey, disclose your related-party
18 transactions." They come back and, based on that form
19 (simulating), they submit it to the Audit Committee; it gets
20 voted on.

21 Now, the reason this is important is because in
22 2015, the man they say has not displayed good faith in the
23 best interests of the organization decided to rewrite the
24 financial disclosure questionnaire, to increase it, to ask
25 more questions, to get more information about more conflicts

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1 of interest and more related-party transactions.

2 Now, they also talked about a statement by the
3 NRA's Mr. Cotton. I don't know if you remember the name.
4 He is now the president of the NRA, but he's also on the
5 Audit Committee. And there was previous testimony, at some
6 point in time, where Mr. Cotton said that John had failed to
7 bring related-party transactions to the Audit Committee.

8 But they (indicating) left out the full testimony,
9 because what Mr. Cotton said is that John failed to do that
10 "because related parties had not self-disclosed the
11 transactions." That's a big omission. John's not hiding
12 anything. The self-disclosure was not fulsome.

13 So what did -- what did he (indicating) do? He
14 fixed that, too. And that's point number 2. John worked to
15 develop, with the NRA's Financial Services Division, the
16 accountants at the NRA, who know about all payments
17 (simulating) made by the NRA -- okay? They have the books.
18 We can see all dollars that go out of the NRA. We can see
19 if someone paid a director or an officer or a key person.
20 So John recognized that that was a real opportunity and
21 developed this cross-checking system between the secretary's
22 office (indicating) and the Financial Services Division
23 (indicating). So now, if a director or officer fails to
24 disclose, not intentionally but, you know, doesn't
25 understand something, the Financial Services Division can

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1 catch it and the Audit Committee can then vote on this.

2 And the third point in improvement is in 2018,
3 because some people -- this is complicated stuff -- some
4 directors, some officers, some key employees, they don't
5 really, maybe, know what a related-party transaction is or
6 what qualifies, and so John develops and begins giving, now
7 several times a year, training seminars to his very people.
8 It started out in 2018 to people who dealt with financial
9 issues only; it's been expanded. Now it's given to
10 directors. Now it's given to all employees. And people are
11 now educated better about what qualifies. So this also
12 improves disclosure.

13 You know, John asked me to say this because, you
14 know, Mr. LaPierre doesn't get enough credit, but while John
15 was instituting all these improvements, John has said, and
16 he'll say it on the stand, you know, Mr. LaPierre never
17 pushed back; never said, "Don't do that." As far as John
18 knew, he was all for these improvements.

19 Now, look, there's nothing perfect in this world,
20 so I'm not going to stand here and tell you that that's
21 (indicating), you know, St. John Frazer; okay? I will tell
22 you that his intentions are impeccable. I will tell you
23 that his good faith is unchallengeable. But, you know, this
24 was a new process; like I said, a maiden voyage, so the
25 documentation of this stuff had to go through an evolution.

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1 Started off -- we'll show you the documents -- started off
2 with minutes of these Audit Committee meetings that
3 discussed these transactions and it turned in, over the
4 years, to a much more elaborate report, an Audit Committee
5 report. There was full disclosure -- full -- I shouldn't
6 say "disclosure"; full explication of everything they'd
7 done.

8 Now, but isn't that to be expected? You introduce
9 an entirely new procedure, I maintain, and you may find it
10 deserves a ramp-up period, because nothing is turnkey.

11 So here we are. You know, we're here because, in
12 2019, acting on a campaign promise made to her voters, the
13 attorney --

14 MS. CONNELL: Objection.

15 (No audible ruling.)

16 MR. FLEMING: -- general began an investigation
17 into the NRA. The investigation lasted about 15 months.
18 The attorney general's lawyers obtained documents from the
19 NRA; they conducted interviews of NRA personnel and others;
20 and at the end of that 15-month investigation, they filed
21 these (indicating) claims, the ones that we're here today
22 on.

23 But know this: Though he was an employee and one
24 of its three officers, they never tried to interview John
25 Frazer; they just charged him. He could have explained to

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1 them everything I just told you about the efforts he and the
2 organization had made to improve its processes, to comply
3 with New York law; he could have explained or at least
4 clarified any questions they might have had about this work.
5 But they chose to sue him first: "Ready" --

6 MS. CONNELL: Objection, your Honor.

7 (No audible ruling.)

8 MR. FLEMING: -- "fire, aim."

9 Then the attorney general gave a press release, in
10 a public statement for all the world to hear, that John
11 Frazer had used the NRA as a personal piggy bank.

12 Had they chosen to speak with him first, they would
13 know, as they now admit, that Mr. Frazer has received
14 nothing, nothing from the NRA except what was decided by the
15 board of directors (indicating) without his input. Every
16 year, you will hear, the board voted to approve the
17 compensation and benefits they and they alone thought
18 appropriate, which, by the way, was one salary for two
19 positions.

20 You will hear evidence that John Frazer has given
21 nothing to the organization but his good-faith devotion and
22 received nothing from the organization except his
23 board-approved pay and standard benefits. Nothing else.

24 You will further hear from Mr. Frazer's expert
25 witness that his compensation for one of the two jobs is

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1 mid-level, reasonable and, of course, if he was paid for two
2 positions, it would be much more.

3 Despite all this, the attorney general decided to
4 allege that John Frazer has failed to discharge his
5 duties -- you heard Mr. Correll talk about it -- in good
6 faith and with the care an ordinarily prudent person would
7 exercise under similar circumstances or, one might say,
8 "careless."

9 But you can ask yourself: Is it careless to craft
10 and push the board to adopt a policy which is more demanding
11 on the law than is required?

12 Is it careless to continue to make financial
13 disclosure questionnaires more detailed, more encompassing
14 to get more information?

15 Is it careless to reach out to another department
16 and figure out this cross-checking system, to further seal
17 up gaps that might exist?

18 Is it careless to institute compliance training and
19 expand it and give more and more training seminars?

20 Is his conduct consistent with bad faith? It's the
21 central question. Make no mistake about it, that's what
22 this case is about.

23 You may find these are more signs of someone
24 obsessing over how to make an organization better; they
25 (indicating) don't think so.

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1 Now, you will be presented, presumably, with
2 mistakes because, God knows, they're (indicating) looking
3 for them and you will have to judge them; you (indicating)
4 will have to judge them. Please -- I said it before -- use
5 your innate fairness, your experience, your common sense
6 when evaluating them. Understand that John Frazer is not
7 perfect, but none of us are. Ask and search and probe; use
8 your reason: In making his judgments, did he fail to
9 discharge his duties in good faith, did he lack care of an
10 ordinary person in his position, or were they consistent
11 with his past service for nearly 30 years in the interests
12 of the organization he served? Is this even a close
13 question? You may find it is not.

14 You're going to hear -- I'm going to switch
15 topics -- about whistleblowers:

16 The revitalization law I talked to you about also
17 made changes about whistleblowers; it requires an
18 organization to have a whistleblower policy. You will hear
19 that the NRA was one of the first nonprofits to have a
20 whistleblower policy, well before the law was passed.

21 You will see evidence that John Frazer considered
22 the question: "Do we need to update our whistleblower
23 policy?" You will hear that the law permits an old policy
24 to work if it's substantially consistent with the new law.
25 You'll see that John looked at it; he made a judgment that

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1 it was fine. I maintain, like I've said already, that he
2 made that judgment in good faith.

3 Now, let me talk about the old -- "old" -- policy.
4 It worked. So, in 2018, a group of whistleblowers started
5 to talk about it. From the Financial Services Division,
6 employees came forward with a list of "top concerns," and
7 you will see evidence that John met with them to try to
8 understand their concerns, to try to figure things out. He
9 then arranged for them to appear in front of the Audit
10 Committee, they presented their concerns and the
11 organization -- it's been talked about; I won't belabor
12 it -- took those concerns and ran with them, and they
13 investigated and they terminated people and they terminated
14 vendor relationships. And at the end, the whistleblowers
15 said that those concerns that they expressed had been all
16 resolved to their satisfaction, and now, of course, they've
17 been promoted.

18 And the attorney general says that John Frazer --
19 I'm really not even sure what they're saying -- retaliated
20 against whistleblowers or, you know, participated in
21 retaliation or something like that.

22 Now, there are other examples of whistleblowers
23 where he treated the situation sensitively and resolved it.
24 Those aren't even at issue; I'm not even sure they're going
25 to come up. We can bring them up later, if need be. But

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1 you're going to be hearing about alleged whistleblowers.
2 These are the situations they were looking for, some way to
3 muddy the water, so I'm going to talk to you about a couple
4 of 'em.

5 Lieutenant Colonel Oliver North. You all may know
6 him. I remember him because I'm too old to tell you about
7 right now. But standing ramrod straight, giving his
8 testimony before Congress in his uniform (simulating), you
9 know, whatever you want to think about Lieutenant Colonel
10 North, as an image, he is the perfect image for the NRA,
11 seems to me. That's just one man's opinion. Other people
12 have a different view. And in May of 2018, he signed a
13 contract -- we talked -- some other people talked about
14 it -- with Ackerman McQueen; it was going to pay him, like,
15 \$2 million a year, and he was going to become the NRA
16 president.

17 And the long story short -- it's a very complicated
18 story and you'll hear it all, but I don't want to belabor it
19 too much, because the point of this is, he signed a contract
20 and no one knew where his loyalties lay. We didn't know:
21 "Is he an employee of Ackerman McQueen or is this an
22 independent contractor contract, in which case he could be
23 president of the NRA because he wouldn't have divided
24 loyalties? So the question is: Which master was he going
25 to serve; was it the NRA or was it Ackerman McQueen? And

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1 more to the point, more to John Frazer's point, is, it
2 raised an issue with respect to the conflict-of-interest
3 policy.

4 So, for months -- you'll hear it -- John was trying
5 to get North's contract to figure out this question: "Is he
6 an employee or is he not? Where do this loyalties lay?"
7 For months, he's being rebuffed by North, he's being
8 resisted by Ackerman McQueen, and they keep pushing and they
9 keep pushing, or John (indicating) keeps pushing.

10 So here's the overriding point: The NRA and John
11 Frazer were pursuing the question, even about its handpicked
12 leader, to confirm that there was no breach in its conflicts
13 policy. They were choosing compliance with law over their
14 own handpicked leader, and yet we're here in this courtroom.

15 So, if you pay close attention, you'll also hear
16 this fact: On the very day that John, finally, was going to
17 see North's contract -- the very day, February 26th, 2019 --
18 Oliver North files, or sends out a note, which the plaintiff
19 says is a whistleblower complaint. It's a little suspicious
20 for my taste. So, that day John finds out, lo and behold,
21 he's an employee of Ackerman; he owes his loyalties to
22 Ackerman, not to the NRA. The related-party transaction
23 that had been approved by the board has to be undone because
24 there's a conflict of interest; it's a violation of the
25 policy.

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1 In any event, even though North has this very
2 convenient timely "whistleblower" complaint, you'll find and
3 you'll hear that John took it and analyzed it. He hired
4 outside counsel. It had to do with whether the organization
5 had followed its policy in hiring its outside lawyers, and
6 indeed, there had been a mistake and John figured this out,
7 spoke with outside counsel and resolved it within a matter
8 of a couple of weeks.

9 Nevertheless, Lieutenant Colonel North continued to
10 push issues, even though they'd been resolved and
11 unfortunately, it escalated into a quarrel, which ended up
12 with Lieutenant Colonel North deciding not to run for
13 re-election for president.

14 So there are other whistleblowers --
15 "whistleblowers" -- that are raised as well, and you'll hear
16 from them. But -- you know, you'll hear Esther Schneider,
17 who's an individual you may find who has a long history of
18 being difficult, is called a whistleblower even though her
19 complaint addressed issues that were stale, and here's why
20 they were stale: The issues had been raised in press
21 reports, like, a month before and you may find that John had
22 already read these press reports and had started
23 investigations into each of the things listed on these -- in
24 these press reports, and we'll show you that evidence. And
25 she also re-raised issues that Colonel North had raised,

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1 that had already been resolved.

2 So these were stale. Nevertheless, you'll see
3 evidence that he took all of Ms. Schneider's calls, again
4 showing his calm amidst fire.

5 And, as context, you will hear that all this took
6 place in the months immediately following -- on the very
7 weekend that Colonel North decided not to run for
8 re-election as president, a very contentious weekend that
9 you'll hear about, that Ms. Schneider had approached Carolyn
10 Meadows, who was one of the three board officers, and
11 confronted her in a profanity-laced invective, I think -- I
12 don't know -- because Ms. Meadows was a fan of Wayne
13 LaPierre.

14 So when Ms. Meadows, the board president, decided
15 not to give Ms. Schneider the committee assignments that she
16 wanted -- these are director problems -- the plaintiff
17 (indicating) is saying, "Well, that's all whistleblower
18 retaliation." And John Frazer, the secretary, who sent out
19 the memo from Ms. Meadows saying, "Here are the committee
20 assignments," is not to be blamed for that content. And
21 even their (indicating) own expert witness has testified,
22 and will testify, to that fact: Being a messenger, we don't
23 kill the messenger. Okay? The messenger is not responsible
24 for the content of the message.

25 There are a couple of other names: Rocky Marshall,
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1 Phillip Journey. You'll hear, I think -- I'm still not even
2 clear on it. You'll hear that the complaint is that John
3 did not provide access to documents when they were directors
4 and that directors have the right to see documents.

5 Well, here's the truth of the matter: The truth of
6 the matter is, they did have access to documents; they had
7 to view them in headquarters. They objected to that. It
8 was applied evenhandedly. Because of confidentiality and
9 leaking problems, the board had decided that that's how it
10 was going to be. John took his direction from the board,
11 his bosses, and he executed it. You'll hear from those
12 people, too.

13 You are also possibly --

14 I just want you to hear it from me first, because
15 I, you know, don't know what they're going to do. You're
16 going to hear that in response to a standard instruction
17 given by lawyers that documents need to be preserved for
18 eventual disclosure in a lawsuit to the other side -- that's
19 how it works -- it caused Ms. Meadows, whose testimony you
20 will hear by video, to eliminate medical records from a
21 private family medical matter involving her dying husband,
22 which had some notes about NRA business on them and she got
23 rid of those documents. Now, Ms. Meadows, when asked, says,
24 "No, I didn't do that because John Frazer instructed me."
25 But there's been insinuations that that's the case. You're

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1 going to have to be the judge of that.

2 So ...

3 (Music heard in courtroom.)

4 THE COURT: That's just a planned musical
5 interlude.

6 (Laughter.)

7 MR. FLEMING: I will wrap up for you guys, but this
8 leads me to the final --

9 THE COURT: It's like the music at the Academy
10 Awards.

11 (Laughter.)

12 MR. FLEMING: This leads me to the most unfair
13 claim of all:

14 John Frazer is accused of false statements. You
15 heard it. There's a document called a "CHAR500." You will
16 see it. John signs it with another officer. There are only
17 three officers at the organization; two of them have to sign
18 it. One of them is either the president or other authorized
19 officer. That's what it says. The second signer is the
20 treasurer. So the treasurer always signs and John draws the
21 short straw (simulating) and has to sign because the
22 president's not around. The signature says -- I'm going to
23 read it: "We reviewed this report" -- "we," meaning the
24 treasurer and John -- "We reviewed this report, including
25 all attachments, and to the best of our knowledge and

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1 belief, they are true, correct and complete, in accordance
2 with the laws of the State of New York applicable to this
3 report."

4 A few points:

5 That's the CHAR500; that's what's signed. There's
6 no allegation that anything in the CHAR500 is false.
7 Nothing. The allegation is that the attachments contained
8 falsities, so I want to talk about the attachments. There's
9 two attachments: audited financial statements, Form 990 tax
10 return.

11 Let's talk about audited financial statements
12 first. You all may know this; I'm pretending that you
13 don't: Financial statements are created by the
14 organization. The organization has internal CPA's, a bunch
15 of them, and they go through all the records, they know all
16 the transactions of the organization and they put it all
17 together. I can't tell you what a financial statement is,
18 but, you know, assets, liabilities, everything. These
19 financial statements are completed and then they are
20 audited. The audit process is when outside, third-party
21 professional auditors come in and they do a financial
22 circuit -- financial statement audit.

23 So what does that mean? In the case of the NRA,
24 here's what it means: In the fall -- September, roughly --
25 the financial statements are completed, or nearly completed,

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1 but suffice to say, auditors start to get involved, and they
2 look at the financial statements and they test the financial
3 statements and they come on-site and they go through the
4 books and they interview people at the NRA and they get
5 comfort that these financial statements are fairly
6 presented; they fairly present the financial condition of
7 the NRA within a range of materiality. And once they have
8 comfort about that, they issue an opinion -- an audit
9 opinion -- that says exactly that: "We certify that the
10 financial statements fairly present the financial condition
11 of the company."

12 Those are audited financial statements. That
13 opinion comes out, roughly, March; September to March
14 (simulating). I don't know how many months that is; it's a
15 lot of months. People on-site, outsiders. Remember those
16 months.

17 Tax return: The tax return starts with the audited
18 financial statements. So, in April, the internal CPA's at
19 the NRA take the audited financial statements that have
20 been -- gotten the seal of approval from the outside auditor
21 and they start to populate the tax return with the numbers
22 from the audited financial statements and they start to
23 develop the 990, the tax return. And then they use, again,
24 outside professionals; this time, tax accountants who come
25 in with their specialized knowledge and they help these

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1 internal CPA's complete the tax return. And it goes back
2 and forth, and everyone has a different role.

3 This takes from, roughly, April to November; okay?
4 In November, the tax return is signed. For many of the
5 years in question, it is signed by the treasurer of the NRA
6 and it is signed by the paid tax preparer, the outside,
7 third-party professional that comes in and helps them do the
8 tax return; signed by both.

9 (Continued on next page.)

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1 In later years you will hear that the NRA had a
2 software program that helped them prepare the tax return.
3 They still use the outside people just as intensively as
4 they did before, but because the outside professional did
5 not prepare the document, they didn't sign it. That started
6 in 2019. But for 2015 through 2018 the paid preparer was
7 the second signature on the tax return.

8 Now, think about it. This is the process audited
9 financial statements, September to March. Tax return, April
10 to November. By the time November comes around, the
11 auditors are back in the building doing it. There are
12 outside financial professionals at the organization
13 12 months a year every year, year after year after year
14 after year. This has been going on for way before John was
15 hired as general counsel in 2015. And the tax return
16 reflects the accumulated knowledge of all of these
17 professionals for years, including general counsels that
18 preceded John. Including outside lawyers that preceded
19 John. And, of course, including all the tax professionals
20 that are used.

21 So, whose named for false statements in connection
22 with the Form 990? Any of those people? Any of them? John
23 Frazer. John Frazer is the person they say issued a false
24 statement because he signed a chart 500 that said this is
25 true, correct and complete to the best of my knowledge and

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1 belief, having reviewed it. They won't be able to dispute
2 that he reviewed all of these documents, but yet he's the
3 one in court today answering for this. It's unfair and it's
4 not right. If he's going to answer for it, I contend that
5 they need to prove that John Frazer did not believe for it
6 to be a false statement.

7 MS. CONNELL: Objection, your Honor. As to what we
8 have to prove to maintain a claim as to whose named, the NRA
9 is named in that claim.

10 MR. FLEMING: I said it's my contention.

11 THE COURT: Go ahead.

12 MR. FLEMING: I contend that what they would have
13 to prove, the only statement that John Frazer has made is
14 that I believe these to be true and correct. They would
15 have to prove that he did not have that belief.

16 There is going to be a lot of evidence by the way,
17 and I'm not going to get into it, because I'm going to wrap
18 up. These statements aren't even false. We'll show you
19 that as well. You will be the judges of that. We will show
20 you that as well. I don't want to concede there is any
21 fault, because I don't believe there is.

22 So I'm going to end there with a few last comments.
23 I said this is a case about good faith. It's not about
24 perfection. It can't be. It just can't be. We're all
25 human. No one is perfect. And you may find the law does

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1 not require perfection. More than a mistake is needed.

2 Second, John Frazer has spent almost 30 years at the NRA in

3 an unremitting effort to improve it and make it better.

4 He's modest. He's dedicated. Decent. No one would say

5 otherwise. You won't hear anybody say otherwise. He's been

6 recognized for his efforts with a series of promotions,

7 culminating with the honor of having the president of The

8 National Rifle Association asking him to be one of his three

9 officers. He's required to stand for election as secretary

10 every year. Every year. He's been re-elected each after

11 the scandalous charges every year. You heard Ms. Rogers say

12 they trust him. He does a good job. They filed this case

13 without even bothering to talk to him first.

14 So, at the conclusion of this proceeding I will ask

15 you on behalf of John Frazer to return a verdict in his

16 favor against the plaintiff in the unwarranted claims

17 against him. Can't thank you enough for your attention.

18 THE COURT: Thank you, counsel. Okay. I think we

19 probably don't have enough time to get started with

20 witnesses at this time. This is -- We normally take our

21 lunch break at 12:30 to 12:45. Pretty much at 12:30. We'll

22 reconvene at 2:15. So I'll let you go now. Again, typical

23 instructions, keep saying it until it gets really boring.

24 Don't talk about the case. Don't look up anything. Just

25 relax and get ready for the afternoon. Thank you very much.

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1 See you then.

2 THE COURT OFFICER: All rise. Jury exiting.

3 THE COURT: We're going to be -- The court officer
4 will show you, we'll be in 208 in the afternoon. It's very
5 close to where your room is. They will guide you where to
6 go.

7 (Whereupon the jury panel departed the courtroom.)

8 THE COURT: Okay. We're adjourned until 2:15.

9 MR. FARBER: Just quickly can I put one thing on
10 the record. I had raised off the record the fact that an
11 objection by one defendant became an objection by all
12 defendants. I just wanted to confirm that's the Court's
13 procedure.

14 THE COURT: Yes, it is.

15 MR. FARBER: Thank you.

16 MS. CONNELL: We have a few minutes without the
17 jury present to ask for a curative instruction that this
18 case is not about whether people are going to have a choice
19 to buy a gun or something. I thought there was some
20 confusion. That no matter what you think, you should have
21 that choice in America. It's your choice in America.

22 This jury is not going to be determining whether
23 people get to buy a gun or not. I don't want there to be
24 any confusion about that. Also in regard to part of that
25 opening, which may influence the case and the evidence that

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1 comes in, your Honor has already ruled and rejected the idea
2 that this case is about what -- that the plaintiff has to
3 prove what is currently happening in the NRA. As you know,
4 we haven't had insight into that and that's not fair.
5 That's what was told to that jury. That's fine. Moving
6 forward we don't want any more confusion about that, in
7 particular some of the evidence that was pointed to as
8 evidence that was only recently identified or mentioned to
9 plaintiff. That's not fair. It's prejudicial.

10 Finally, I think counsel tried to walk a fine line,
11 and I guess it was okay, but there is the sword and shield
12 issue regarding partial repayments or some monies repaid by
13 Mr. LaPierre. That's something we would like to flag for
14 the Court, kind of put a flag on it as the evidence comes
15 in.

16 THE COURT: All right. I don't currently see a
17 need for a curative instruction. First of all, these jurors
18 have all been told multiple times that this case is not
19 about gun rights. It came up in sort of a side way. I
20 don't think that there is any real concern about them being
21 off course. I'll listen to proposals I suppose, but I
22 didn't see anything. To the extent that there is, I heard a
23 reference to current medical condition to a witness, if you
24 need some discovery on that or something to -- it seemed
25 like you were surprised to hear it. I would certainly

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1 entertain a request that you be given information necessary
2 to cross examine that.

3 MS. CONNELL: Your Honor, that is one of the
4 points. To hear Mr. LaPierre's counsel stand up and say
5 that and make reference to medical diagnoses that he was
6 pulled and had to be pulled from his -- his work because of
7 his -- his medical diagnoses. If this has been going on for
8 a while, to learn about this the Friday before trial and
9 hear that's why he resigned, and the details about that in
10 opening is manifestly prejudicial. Yes, we ask for those
11 records, but we also think it doesn't undo the prejudice and
12 that shouldn't be put in front of the jury further. In
13 regard to Mr. Phillips or referencing --

14 THE COURT: Just to stop with that. I mean, I'm
15 not going to make a ruling now that as to what can or cannot
16 be in front of the jury about -- I was just talking about
17 both witnesses with references to health issues. If you
18 want to make a request for, you know, additional
19 information, I'll consider it. But I'm not prohibiting them
20 from talking about their current medical situation at this
21 point.

22 MS. CONNELL: Your Honor, thank you. We'll make
23 that request, but we also ask that hearsay evidence
24 regarding the same be limited. Reports of what doctors have
25 said or told them that aren't proper evidence before the

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1 court.

2 THE COURT: Well, I don't think that would be --
3 Well, I'm not going to rule on something I haven't seen yet.
4 But understood. I appreciate everybody's efforts and I'll
5 see you at 2:15.

6 MS. CONNELL: Thank you, your Honor.

7 THE COURT: Just a reminder to the audience, the
8 second half for today will be in courtroom 208. The
9 overflow room, I think, is 232.

10 THE COURT OFFICER: That's correct, your Honor.

11 THE COURT: That's a courtroom that will have a
12 screen. 208 is very small as compared to this grand
13 ballroom here. So not everybody can fit. So we're going to
14 have a video of the proceedings in 232.

15 (Whereupon a luncheon recess was taken.)

16 (Continue on the next page.)

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1 A f t e r n o o n S e s s i o n:

2 THE COURT: Have a seat.

3 You all suddenly look much larger.

4 (Laughter.)

5 THE COURT: Okay. Are we ready for the jurors or
6 do we need to do anything first?

7 MS. CONNELL: We're ready for the jurors, your
8 Honor.

9 THE COURT: That's what I was hoping to hear.
10 All right, let's go get the jurors.

11 (Pause.)

12 COURT OFFICER: All rise. Jury entering.

13 (The jury entered the courtroom.)

14 THE COURT: Okay, have a seat.

15 So this is what a regular courtroom looks like.

16 If -- like I said, if the screens or anything needs to be
17 moved around for you all to be able to see, just let me
18 know.

19 All right. So now we're moving into the
20 introduction of evidence.

21 Is the plaintiff ready to call its first witness?

22 MR. WANG: We are, your Honor.

23 THE COURT: And who do you call?

24 MR. WANG: Your Honor, the plaintiff calls Roscoe
25 Marshall.

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1 THE COURT: Okay. Mr. Marshall, can you ...

2 COURT OFFICER: On the way.

3 THE COURT: On the way.

4 MR. WANG: May I give you a binder (indicating)?

5 THE COURT: For me or the witness?

6 MR. WANG: For you, and one for the witness.

7 THE COURT: Oh, okay.

8 (Binder handed to Court.)

9 THE COURT: Thank you.

10 MR. CORRELL: Your Honor, how about for opposing
11 counsel?

12 THE COURT: You have to put the microphone on.

13 COURT OFFICER: Is the Court ready for the witness?

14 THE COURT: Yes.

15 For --

16 MR. WANG: We provided them electronically prior to
17 today.

18 COURT OFFICER: Are you ready for them?

19 THE COURT: Yes, sir.

20 Witness entering.

21 (The prospective witness entered the courtroom and
22 assumed the witness stand.)

23 THE COURT: Good afternoon.

24 THE CLERK: Do you want to hang your coat up over
25 there (indicating)?

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1 THE WITNESS: It's fine here (indicating), unless
2 you want it over there (indicating).

3 THE CLERK: No.

4 THE WITNESS: Okay.

5 THE CLERK: Raise your right hand.

6 (Mr. Marshall complied.)

7 THE CLERK: Do you solemnly swear or affirm that
8 the testimony you give shall be the truth, the whole truth
9 and nothing but the truth? If so, say, "I do."

10 THE WITNESS: I do.

11 THE CLERK: State your name.

12 THE WITNESS: Roscoe Marshall.

13 THE CLERK: And spell it.

14 THE WITNESS: Last name is Marshall,
15 M-a-r-s-h-a-l-l.

16 THE CLERK: Address, if you have one.

17 THE WITNESS: My business address is Post Office
18 Box 277, Center Point, Texas 78010.

19 THE CLERK: Okay, I need your address.

20 THE WITNESS: The physical address is 259 Crossing
21 Street, Center Point, Texas 78010.

22 THE CLERK: Thank you.

23 You may be seated.

24 (Witness seated.)

25 THE COURT: Good afternoon.

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Marshall - by Plaintiff - Direct/Wang

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1 THE WITNESS: Good afternoon.

2 THE COURT: Counsel, you may inquire.

3 DIRECT EXAMINATION

4 BY MR. WANG:

5 Q Good afternoon.

6 A Good afternoon.

7 Q What is your name, sir?

8 A My name is Roscoe Marshall. My nickname is "Rocky."

9 Everyone calls me Rocky.

10 Q And, Mr. Marshall, where are you from?

11 A I'm from Boerne, Texas.

12 Q And are you a member of the NRA?

13 A I am a member of the NRA, yes.

14 Q Are you familiar with the mission of the NRA?

15 A Yes, I am.

16 Q What is the mission of the NRA?

17 A The NRA's mission is to protect our Second Amendment
18 rights, but also in -- is all the other things related to that.

19 So we promote gun safety; we promote training; we promote

20 competition, and -- and all gun-related sports activities, the

21 NRA's involved with those kinds of things.

22 Q Do you support the mission of the NRA?

23 A Absolutely, I do.

24 Q When did you join the NRA?

25 A That was in 2006.

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Marshall - by Plaintiff - Direct/Wang

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1 Q And why did you join the NRA?

2 A I joined the NRA because it's one of the things that I
3 strongly believe in. It's a -- it's a constitutional amendment,
4 the Second Amendment, obviously, and -- and, um, I -- I support
5 what they do and I believe in -- in supporting the -- the Second
6 Amendment.

7 Q What is your membership level at the NRA?

8 A I'm a Benefactor Life Member.

9 Q Are there different membership levels at the NRA?

10 A Yes, there are.

11 Q And what are those different membership levels?

12 A Okay. They're -- in the NRA, there -- so we have a --
13 a regular membership, which is a -- a member that would just pay
14 annual dues -- usually it's about \$25 a year -- and then there's
15 several levels of Life Membership; I think there's four, four
16 total levels. And the Benefactor level that I'm at is the
17 highest-level member that you can be in the NRA.

18 Q Mr. Marshall, have you ever been a member of the NRA
19 Board of Directors?

20 A I -- I have.

21 Q And when did you serve on the NRA Board?

22 A I -- I was appointed to the NRA Board of Directors in
23 January of 2021 and my term ended in -- I think it was October
24 of that year; of 2021.

25 Q Mr. Marshall, why are you here today?

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Marshall - by Plaintiff - Direct/Wang

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1 A I'm here today to just share my story about my
2 involvement with the NRA, and also my time on the NRA Board of
3 Directors.

4 Q Just a few questions about your background,
5 Mr. Marshall. Are you employed?

6 A I -- I'm employed, yes.

7 Q How are you employed, sir?

8 A I own a manufacturing company in Texas. I'm the CEO of
9 that company.

10 Q What is the name of that company, sir?

11 A It's Frontier Truck Gear.

12 Q And what does Frontier Truck Gear do?

13 A We -- we manufacture truck accessories, things like
14 grille guards, headache racks, bumpers, those kinds of things;
15 things for trucks -- trucks and SUV's. We make those types of
16 accessories.

17 Q And were you employed prior to the founding of Frontier
18 Truck Gear?

19 A Yes, I was.

20 Q How were you employed prior to founding the company?

21 A I was a senior executive for Baker Hughes, which is a
22 very large oil-and-gas service company based in Houston, Texas.

23 Q What was your job at Baker Hughes?

24 A Well, so Baker Hughes recruited me out of Texas A & M
25 University, where I was a business student. A & M's one of the

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1 better business schools in the country, and they recruited me
2 there as part of their management training program. I worked my
3 way up through Baker Hughes. I eventually became a division
4 president for two different divisions for Baker Hughes.

5 Q What were some of your responsibilities as a division
6 president at Baker Hughes?

7 A So, as a division president -- so I'm president of
8 two -- two companies. These are multinational companies, so I'm
9 overseeing operations around the world, which include all the
10 functional pieces of a business, which includes the marketing,
11 the accounting, the -- the HR departments and all --
12 manufacturing, all the related groups of a company. That's what
13 I was responsible for; two different divisions.

14 Q And did you regularly review financial documents as
15 part of your responsibility?

16 A Yes.

17 So, I mean, Baker Hughes, at that time, was a Fortune
18 150 company and that's part of the core training, is that you're
19 going to be looking at a lot of financial statements all the
20 time.

21 Q As the CEO of Frontier Truck Gear, what are some of
22 your responsibilities?

23 A So it's the same kind of position -- I -- I founded the
24 company in 2021 and -- and so we're a fairly large small
25 business; we sell products throughout the country. And so we

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1 have the same type of discipline. We have a marketing
2 department, manufacturing, accounting, finance, HR, those kinds
3 of functions.

4 Q And as part of your responsibilities as the CEO of
5 Frontier Truck Gear, did you review financial documents?

6 A I -- I do, routinely.

7 Q Other than the NRA, have you ever served on boards of
8 directors of other nonprofits?

9 A I -- I have.

10 Q What other nonprofit boards have you served on?

11 A I was the chairman of the board for the local Workforce
12 Commission, which is the -- the program that handles all of the
13 workforce-related activities of -- of monies that come from the
14 federal government. I was -- that was based in San Antonio.
15 It's a 12-county program, very large. I also was on a church
16 board in a local community; I was on -- I started on a church
17 board. And I was heavily involved in baseball with my -- when
18 my boys were small, so I -- I became on the board of directors
19 for a nonprofit that ran the baseball program where we live, in
20 Boerne, Texas.

21 Q As part of your role on these boards, did you ever come
22 to review the nonprofits' financial documents?

23 A I -- I did.

24 Q Mr. Marshall, you mentioned you had served on the NRA
25 Board. Why did you join the NRA Board?

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1 A I joined the NRA Board because I was recruited. So
2 there -- I know a few board -- NRA Board -- members and one of
3 the board members actually recruited me, and had recruited me
4 for several years, to join and eventually, I agreed to -- to be
5 considered as a -- a candidate.

6 Q Who recruited you to join the NRA Board?

7 A That was Susan Howard.

8 Q Approximately when, to the best of your recollection,
9 did she recruit you to join the board?

10 A That was in 2019.

11 Q Why did you decide to run for the NRA Board?

12 A Okay. So in 2019, at that point in time, the New York
13 AG's office had actually issued some petitions -- or not --
14 subpoenas, and also starting doing some investigative work
15 regarding the NRA. Susan was very much concerned about that and
16 she knew my background; we'd been friends for 20 years, and she
17 said, "Would you be willing to serve" --

18 MS. EISENBERG: Your Honor, hearsay.

19 THE COURT: Overruled.

20 This is for -- not for -- the truth of the matter
21 asserted, just for the fact that it was said.

22 You can answer.

23 Q Please finish your answer.

24 A So, with my background, she felt like I could be of
25 assistance as we went through these problems. And I was willing

ALAN F. BOWIN, CSR, RMR, CRR

1 to help because part of my background really is -- the core part
2 of my experience has really been a problem solver and that's --
3 I felt like those skills could be used in this case.

4 Q Let me back up for a second and ask you some questions
5 about the board process: How does some -- are you familiar with
6 how someone would run for the board at the NRA?

7 A I -- I am.

8 Q And how do they do that?

9 A So the process is, any member of the NRA can nominate
10 any other member of the NRA to be on the board, so my name
11 was -- was proposed to the nominating committee. The nominating
12 committee reviews all the candidates that have been submitted
13 and from that group of candidates, they select members that they
14 deem highly qualified to serve on the NRA Board, and they
15 present that information not only to the board of directors but
16 also to all the members of the NRA.

17 Q And who votes to elect members of the board of
18 directors at the NRA?

19 A Okay. So all Life Members can vote, and the way the
20 vote happens: a ballot comes in the -- the magazine to your
21 home, and so you fill out the ballot and you send it in.
22 Regular members that have been regular members for five years
23 consecutively can also vote, so there's a requirement for
24 regular members; but all Life Members can, in fact, vote.

25 (Continued on next page.)

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1 Q You had mentioned the nominating committee. Did you go
2 through a process?

3 A There is a process.

4 Q What's that process?

5 A The process is so once you're being considered by the
6 nominating committee, they send you a set of documents that you
7 complete in terms of your resume, your background. There is a
8 series of questions that they ask. You complete all this
9 documentation. And then you send it back to John Frazer, who is
10 the general counsel and secretary of the NRA. And that's given
11 to the nominating committee.

12 Q And did you undergo a review from the nominating
13 committee before running for the board?

14 A My understanding, they reviewed the documents that I
15 sent.

16 Q What did the nominating committee find regarding your
17 candidacy?

18 A They considered me highly qualified to be considered as
19 a recommendation to the board and to the members at large.

20 Q Did you win a seat on the board through -- when you ran
21 for the board?

22 A I did not.

23 Q How did that election process work?

24 A Okay. So, I forgotten the total number of candidates
25 that were eligible to run, but I finished in position 32 on the

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1 ballot. I had 60 something thousand votes. That was just
2 outside of the seats that were open. There were 31 seats open
3 and I was in position 32. Therefore, I was not selected in that
4 ballot process.

5 Q Were you eventually appointed to the board?

6 A I was.

7 Q When did that occur?

8 A That happened in January of 2019.

9 Q How did your appointment arise?

10 A A current board member, a person name Duane Liptak had
11 resigned from the board in early January. And the process is
12 they maintain a list of all the eligible candidates that were
13 not selected during the ballot process. And those candidates
14 become eligible to replace anyone that resigns or retires or for
15 some reason leaves the board. They go to that list. And so my
16 name was the first name on the list. And they contacted me to
17 see if I would complete Duane Liptak's seat.

18 Q Were you contacted? What did you say?

19 A I said yes, I would.

20 Q Do you have an understanding of why Mr. Liptak
21 resigned?

22 A My understanding is --

23 MS. EISENBERG: Calls for hearsay.

24 THE COURT: Sustained. Sustained. Hearsay is when
25 a witness is being asked to testify as to what somebody told

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1 him. And since that person, whoever that is, is not here,
2 there are some exceptions to it. But that's why the
3 objection is sustained.

4 Q Mr. Marshall, what was the climate like at the NRA when
5 you were appointed to the board in January of 2021?

6 A Okay. So I was not actually attending any board
7 meeting at that point in time. So what I began to do was to
8 actually contact various NRA personnel to try to understand more
9 about what was happening. And I would say it was a little bit
10 of turmoil in that early January period.

11 Q When you joined the board, what were some of the first
12 actions you took?

13 A The very first action was I contacted John Frazer's
14 office to get multiple years worth of board meeting minutes,
15 committee meeting minutes, the financial statements, which is
16 the IRS form the NRA's form is the 990, which is a little
17 different than individual forms. So, I got actually boxes and
18 boxes of data from John's office so I could start reviewing all
19 the minutes to try to get up to speed as to where they were at
20 that point in time, especially with some of the investigation
21 that was going on with the New York AG's office.

22 Q Other than the 990s and the financial documents did you
23 review any other documents before you joined the board?

24 A I kind of read everything I could. I spent probably
25 almost a month going through meeting minutes, all those kinds of

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1 things just to try to understand where they were. Also read a
2 lot of press releases. Press releases were starting to occur.
3 I was trying to get some background information. So, I looked
4 through all those documents as well.

5 Q Did you review any documents related to this case?

6 A Yes. So, I think the complaint was filed at that point
7 in time. So, the New York AG's office had filed a complaint,
8 and that became public information. And I read the complaint
9 against the NRA.

10 Q After you reviewed the financial documents and the
11 complaint in this case did any of those documents cause you any
12 level of concern?

13 A Yes, very much so.

14 Q What were your concerns?

15 A Well, so I'll kind of go back a little bit. Before I
16 was on the board, the impression I got was that the NRA was
17 communicating that they were under a political attack by the New
18 York AG's office. That was the impression I had. One of the
19 reasons I wanted to be on the board was to help organize
20 whatever the issues were so we could defend the NRA against the
21 AG's office. After reading the complaint that the New York AG
22 publically released, I became concerned, because the charges
23 were so detailed and very specific. That really raised my level
24 of concern.

25 Q Did you communicate those concerns to anyone?

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1 A I did.

2 Q Who did you communicate those concerns to?

3 A I made phone calls to Charles Cotton, whose the first
4 vice president and also chairman of the audit committee. I
5 talked to John Frazer. I also talked to Witt Davis, whose the
6 general counsel for the NRA board.

7 Q To the best of your recollection when did you
8 communicate these concerns?

9 A This is kind of late January timeframe of 2021.

10 Q Let's take those individuals one at a time. Who is
11 Charles Cotton?

12 A So Charles Cotton is currently the president of the
13 NRA. At that point in time Charles was the first vice president
14 and he was also chairman of the audit committee.

15 Q Do you know what an audit committee is?

16 A Yes.

17 Q What is an audit committee?

18 A So, an audit committee reviews those things of an
19 organization, things like contracts, agreements, various
20 policies and procedures that may occur. Also they supposedly
21 are responsible for any whistleblower complaints they might
22 have. They would review those documents and approve them. In
23 fact, like contracts, that they are in fact valid and they have
24 been approved.

25 Q Have you had any experience working or communicating

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1 with audit committees from other nonprofits or other companies
2 you've been involved with?

3 A Of course. Yes.

4 Q When you communicated these concerns to Mr. Cotton,
5 what was his role again?

6 A So Mr. -- Charles Cotton was first vice president of
7 the board, but he was also chairman of the audit committee.

8 Q When you communicated your concerns to Mr. Cotton, how
9 did he respond?

10 A Not well.

11 Q Can you describe for the Court what kind of reaction
12 Mr. Cotton had?

13 A Okay. So at this point in time I'm just trying to get
14 my arms around what the problems are. 'Cause it becomes pretty
15 obvious at this time that there are some serious problems here.
16 I called Charles Cotton in order to try to get him to help me
17 understand all the problems and also to provide information so
18 that I could be effective as my role as a board of director
19 member. I talked to Charles for almost an hour I guess, and
20 during the course of that conversation I couldn't get an answer
21 on anything I asked. I really was getting the runaround. When
22 I asked for documents, like things from the audit committee that
23 I couldn't find in the board meeting minutes, he wouldn't
24 provide that information. He said you would need to contact
25 John Fraser's office. Maybe they can get that for you. The

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1 runaround really bothered me, because I felt like, you know
2 what, you need to tell me the straight scoop here so I could be
3 effective and I wasn't getting that.

4 Q Did you feel like he responded to your concerns?

5 A No, not at all.

6 Q You also mentioned an individual named Witt Davis?

7 A Yes.

8 Q Who is Witt Davis?

9 A At that point in time Witt is the general counsel for
10 the board. So, his role is to be the legal representative for
11 the board of directors.

12 Q With respect to Mr. Davis did you communicate your
13 concerns to him?

14 A I did.

15 Q When you were communicating those concerns to
16 Mr. Davis, were you seeking his legal advice?

17 A I was not. No.

18 Q What was the purpose of your communication to
19 Mr. Davis?

20 A I contacted Witt Davis to get more data because I'm
21 still trying to piece together this puzzle, which was actually
22 becoming larger than I realized, and I wanted more data. That's
23 why I contacted Witt.

24 Q Did Mr. Davis provide you the information or data that
25 you were looking for?

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1 A Well, verbally Witt shared a lot of things with me that
2 I was not aware of. That was helpful. But then I wanted
3 physical documents, and I asked for a whole list of things. I
4 wanted copies of Wayne LaPierre's W-2 statements, the
5 whistleblower reports. I wanted copy of the internal audit
6 reports and forensic accounting reports. I wanted to get a list
7 of those things. And I wanted a list of all of the problems
8 that had been identified through NRA's own work and the
9 corrective actions that go with those problems. Those were the
10 things I was asking for.

11 Q And were any of those things provided to you?

12 A No, they were not.

13 Q The third individual you mentioned was John Frazer.
14 Who is John Frazer?

15 A John Frazer is the general counsel and secretary of the
16 NRA.

17 Q And why did you communicate your concerns to
18 Mr. Frazer?

19 A So, John is the central secretary's role in terms of
20 information and those kind of things. That was the reason I
21 reached out to John is to -- because he's in that pivotal
22 communication spot.

23 Q And did you receive the information that you were
24 seeking from Mr. Frazer?

25 A John sent me tons of information. However, the

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1 information that I just described, I also was seeking that from
2 John, and I could not get copies of that.

3 Q Other than reviewing documents and asking for more
4 information, did you take any other actions when you joined the
5 board?

6 A I did.

7 Q And what else did you do?

8 A So, one of the things I started to do was to reach out
9 to various board members. Now this is early February of 2021.
10 And at that point in time a current director named Judge Phillip
11 Journey had filed an independent examiner motion in the
12 bankruptcy trial that had been filed by the NRA. So, the
13 bankruptcy had been filed prior to me being on the board. And
14 the judge had joined or created this independent examiner motion
15 with the court, and I did contact him regarding that motion.

16 Q Let's break that down a little bit. What is a motion
17 for an examiner? I heard you say that.

18 A Okay. So NRA is now in bankruptcy court. Judge
19 Journey filed this motion because what he was seeking is for the
20 Court to appoint an independent examiner to come into the NRA
21 and go through the records and go through the books and really
22 get to the bottom of all of these charges that were being
23 leveled against the NRA by the AG's office. It was a
24 factfinding role. And as a board member we were wanting to get
25 to the bottom of the truth of all of these allegations, and the

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1 role was, for the independent examiner, was to help get that
2 data.

3 Q And let's back up for one second. What involvement, if
4 any, did you have with the NRA's bankruptcy?

5 A Okay. So my -- at that point in time I had no
6 involvement because this is after the fact. So the NRA had
7 filed bankruptcy. I come on to the board, and I had talked to
8 Judge Journey about the independent examiner motion. And after
9 a few weeks I called him back and asked him if I could join that
10 motion as part of that process.

11 Q And did you in fact join the motion for an examiner?

12 A I did. I joined the motion.

13 Q Was that motion successful?

14 A It was not.

15 Q What happened? What was the end result of that motion?

16 A The Court dismissed the motion.

17 Q And what was the end result of the NRA's bankruptcy to
18 the best of your understanding?

19 A Judge Hale was the judge at the time, and he dismissed
20 the case as -- as lacking proper filing.

21 Q Were there costs associated with you joining Judge
22 Journey's motion for an examiner?

23 A Yes. We had legal representation. There is always
24 costs with legal representation.

25 Q Did you contribute to those costs?

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1 A I did.

2 Q How much did you contribute?

3 A I think I kicked in \$25,000.

4 Q Did you engage in any communications with the board
5 outside of the motion for an examiner?

6 A Yes, I did.

7 Q And how did you engage in those communications?

8 A I'm laughing because I write a lot. So I wrote a ton
9 of e-mails to the board as a director I think from early
10 February is when I started writing and continued to write
11 multiple e-mails to the entire board until I left in October of
12 that year.

13 Q Why were you writing e-mails to the board at that time?

14 A Well, this was a strange situation for me having served
15 on boards and been an executive for a Fortune 150 company. I've
16 seen a lot of things over about 40 years in the industry. And
17 it was odd to me that I was not getting any updates. I wasn't
18 receiving any information. I'm a director. So the director is
19 the oversight of any organization of the board. And there was
20 nothing coming from the NRA. I thought that was peculiar. So,
21 what I began to do was to write e-mails to the board on things I
22 felt like they should be aware that was not being communicated.
23 So, I was trying to fill a void of information that was not
24 available.

25 Q Mr. Marshall, there is a white binder in front of you.

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1 I'll ask you to open that up and turn to tab two if you will.

2 A Okay.

3 MS. EISENBERG: What's the exhibit number, counsel?

4 MR. WANG: PX 3572.

5 A (Examining).

6 Q Mr. Marshall, I'm showing you a document that has been
7 premarked Plaintiff's Exhibit 3572. Do you recognize this
8 document?

9 A (Examining). I do.

10 Q What is it?

11 A This is -- this is an e-mail that I wrote. It's
12 actually showing that I wrote it to myself. I did a blind copy
13 to all the board. I did that to make sure their e-mail wasn't
14 being sent out anywhere. But this is the first e-mail that I
15 ever sent to the board of directors. And what I was trying to
16 do was to communicate what -- not only who I was, 'cause I had
17 not met anybody yet at this point. So, I was trying to
18 communicate that. But also start to bring them up to speed on
19 what was happening with the bankruptcy, which I was quite sure
20 they had no idea.

21 Q Directing your attention to the top of the document, do
22 you recognize that e-mail address in the very first line of the
23 document?

24 A Yes, that's my address.

25 Q And does this document accurately represent an e-mail

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1 that you sent to the NRA board on March 15th, 2021?

2 A Yes. Yes, this is the e-mail that I wrote.

3 MR. WANG: Your Honor, I move for the admission of
4 PX 3572.

5 THE COURT: Any objection?

6 MS. EISENBERG: Yes. We object to portions of it
7 coming in for its truth, also as an improper legal opinion.

8 MR. WERBNER: Your Honor, I object that it's
9 hearsay on its face. It says it's related from what people
10 have told them.

11 MR. WANG: Your Honor, may I respond?

12 THE COURT: Yes.

13 MR. WANG: Your Honor, this is Mr. Marshall's own
14 impressions. He indicates in the document himself what his
15 impressions are based on, including a review of numerous
16 amounts of documents. He's testifying. He's on the stand.
17 He's testifying. We're not offering the specific paragraphs
18 for the truth of the matter asserted but for the fact that
19 he's reaching out to the board. He's trying to express
20 concerns to the board and he's communicating to them. He's
21 introducing himself to the board. He hasn't had a board
22 meeting yet, as he testified to, and he's trying to explain
23 who he is and what his opinions are and how he can make a
24 contribution.

25 THE COURT: Objection is overruled. It's admitted.

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1 Q Mr. Marshall, just directing your attention to the
2 first two paragraphs at the very top of this document. What is
3 the purpose of this communication?

4 A Well, so this was -- this was an odd situation. I'm
5 writing to people that I have never met. And I hope that I
6 could meet them at the first board meeting. Keep in mind that
7 this is when COVID was going on. So, the board meeting got
8 canceled. So, we weren't going to meet. And I was really
9 concerned at that point because all of this bankruptcy stuff is
10 happening. So, what I was trying to do is a couple of things.
11 One is I was trying to introduce myself but also I was trying to
12 share with the board I have a lot of experience here in terms of
13 industry and other things. So, I was trying to get through that
14 as quick as I could and start talking about the concerns that I
15 have.

16 Q What kind of response did you receive to this e-mail
17 message?

18 A Well, it wasn't received well.

19 Q And what do you mean by not received well?

20 A Well, so some of what I was trying to accomplish here
21 was I expected directors to respond to me either with
22 information that I did not have or if they had a different
23 opinion about some of the things that I was talking about, I
24 thought I could start a dialogue and at least start this process
25 of figuring out where can we go with the bankruptcy. Instead I

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1 received some hate mail from a couple of the board members.

2 Q Who did you receive hate mail from?

3 MS. EISENBERG: Objection.

4 THE COURT: To that question?

5 MS. EISENBERG: Yes.

6 THE COURT: Overruled.

7 A I received an e-mail, a joint e-mail from Marion
8 Hammer, David Keene and Kayne Robinson.

9 Q Who is Marion Hammer?

10 A Marion Hammer is a longtime serving board of director
11 member, former president of the NRA. David Keene is also a long
12 time NRA member, former president of the NRA. And Kayne
13 Robinson is also a long-term, actually he was on staff at one
14 point but also on the board for a long time.

15 Q And what was the sum and substance of the negative
16 responses you received from these individuals?

17 A Well, basically they said I didn't know what I was
18 talking about. So, I mean, it was a lengthy mail that was sent
19 out to the entire board. And they were challenging some of the
20 comments I said by inferring that I didn't have any background
21 to talk about these things.

22 Q Did you receive any positive responses to your e-mail?

23 A I did.

24 Q And what was the nature of the positive responses?

25 A So, I got e-mails and phone calls. So, at this point

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1 so I only know a couple of board members and some boards members
2 would actually call me. We would have talks about it. Then I
3 got some positive e-mails. The positive e-mails I noticed were
4 just from that board member to me instead of it being to all the
5 board, which I thought was peculiar, because I'd already started
6 this dialogue with everyone and they wouldn't respond to me
7 individually about they supported the things that I was saying
8 here.

9 Q Were the negative responses sent to you individually or
10 distributed widely?

11 A They were sent to the entire board.

12 Q You had mentioned you wanted to attend a physical board
13 meeting. Did you ever attend any physical board meetings while
14 you served on the board?

15 A I did. In 2021 I think I attended every board meeting
16 that actually physically happened. I think there were four or
17 five total board members that year.

18 Q To the best of your recollection what was the first
19 board meeting you attended in person?

20 A That was in March of 2021.

21 Q And what was the purpose of this board meeting?

22 A So the only real purpose, I mean I think there was like
23 general business that was scheduled to occur. The primary
24 purpose was to ratify the bankruptcy filing that occurred in
25 January.

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1 Q What does it mean to ratify a bankruptcy filing?

2 A Okay. What the goal was was to present to the board of
3 directors the bankruptcy filing and then have the board vote to
4 approve the bankruptcy filing.

5 Q This was for a bankruptcy filing that had already been
6 made?

7 A It had already occurred, yes.

8 Q Did you receive any documents prior to this board
9 meeting?

10 A I did not.

11 Q How does the lead up to this board meeting compare to
12 the lead up of board meetings you would have attended at other
13 nonprofits?

14 A This was pretty odd. I haven't done this in a long
15 time. In the boards that I've managed and chaired we -- we send
16 tons of information to the directors. We don't want them coming
17 to a meeting and not know what we're talking about. We
18 literally would send hundreds of pages of documents. The NRA
19 would send an agenda that typically was a one page agenda,
20 mostly an outline of what time the meeting started, what time is
21 lunch, what time is the meeting over. Generally there was not
22 any information provided regarding what would be discussed.
23 There might be a notation about committee meetings and things
24 like that. Really nothing provided other than just an outline.

25 Q Would you say that is similar or different than your

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1 prior experience?

2 A This is -- this is not like any board I've ever been
3 on.

4 Q And did this lead up to the board meeting make it
5 difficult for you as a board member?

6 A Well, yes, 'cause you're coming to a board meeting not
7 prepared. It's the worst case scenario, because as a director
8 you're voting on things that you should research and spend time
9 reading and understanding and that was not happening. So, I was
10 coming to the meeting with no idea. We were guessing what the
11 point of the meeting was and did not find that out until we were
12 actually in the meeting.

13 Q Was there a vote taken at this meeting?

14 A There was a vote taken.

15 Q And did you vote at the meeting?

16 A I did.

17 Q What was the subject matter of the vote?

18 A The subject matter was to again ratify or approve the
19 bankruptcy filing that occurred in January.

20 Q How did you vote?

21 A I voted no.

22 Q And did the vote pass?

23 A The vote passed.

24 Q Do you recall if anyone else voted no?

25 A Yes. Well, actually no, I was the only no vote on that

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1 particular vote.

2 Q Did you ever try to change that vote?

3 A I did.

4 Q Why?

5 A So during the course of this -- So keep in mind this is
6 a large board meeting. There are 76 directors. I think at that
7 meeting there might have been 40 or so there. I voted no.
8 There were several abstains. I think there were three or four
9 abstains, which means there is no voting. In the course of that
10 process a board member got up, came to speak with me and
11 requested that I change my vote to abstain instead of no.

12 Q Did the NRA allow you to change that vote?

13 A No, they did not.

14 Q Other than the vote to ratify the bankruptcy, did
15 anything else take place at this board meeting?

16 A Well, yes. There was a discussion of the independent
17 examiner motion that had been filed by Judge Journey.

18 Q And what was the tenor of that discussion?

19 A It was pretty hostile.

20 Q And how would you describe that hostility?

21 A I think the best example, if you've ever seen the movie
22 Animal House, it was kind of like that food fight scene in the
23 lunchroom, it was along those lines. I mean, there was a lot of
24 shouting and yelling and that kind of thing.

25 Q Was the shouting directed at anyone in -- any

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1 particular individual?

2 A Yes. It was directed at Judge Phil Journey.

3 Q And what did you observe happen with respect to Judge
4 Journey?

5 A It's actually shocking. I've not seen a board act that
6 way. People would stand up and actually, you know, shout at
7 Judge Journey because of the independent examiner motion that he
8 had filed. So it was pretty contentious, very hostile.

9 Q Was Judge Journey allowed to speak?

10 A He asked for a point of order because of Robert's Rules
11 of Order, to have a personal point of order so he could speak.
12 They allowed that. He got up to a microphone. He began to
13 speak. And they immediately cut him off. The lawyer, Witt
14 Davis, got -- went up to the dais. Charles Cotton I think was
15 leading the meeting. They stopped him and they said you're not
16 allowed to speak.

17 Q Did you attend any other board meetings while you were
18 a board member?

19 A Yes.

20 Q What was -- Do you recall when the next board meeting
21 you would have attended occurred?

22 A I think it was the May 1st meeting of that year.

23 (Continue on the next page.)
24
25

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1 Q What was the purpose of that meeting?

2 A So the purpose of that meeting really was to approve
3 the reorganization plan that they were going to present to the
4 court because of the bankruptcy filing.

5 Q Were there -- were there any other issues --

6 Let me back up for a second: Did that -- did that --
7 was there a vote taken on that topic?

8 A There -- there was a vote taken.

9 Q And what was the result of that vote?

10 A It -- it passed.

11 Q Were there any other issues brought to light at this
12 board meeting?

13 A Oh. Um, not really. I think that was the primary
14 pur -- I mean, again, there's -- there was always certain things
15 that were discussed, things -- certain committee reports were --
16 were discussed. There were opening comments, generally. But
17 that was the purpose, was to ratify this bankruptcy plan.

18 Q Mr. Marshall, are you familiar with a Special
19 Litigation Committee?

20 A I am.

21 Q And what do folks at the NRA generally refer to that
22 as?

23 A The "SLC."

24 Q And was there any business discussed by the SLC -- or
25 business regarding the SLC discussed at this board meeting?

ALAN F. BOWIN, CSR, RMR, CRR

Marshall - by Plaintiff - Direct/Wang

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1 A Yes.

2 Q And what business was that?

3 A Okay. So the SLC --

4 Just let me back up just a little bit: The SLC was --
5 was created to handle not only the bankruptcy but other legal
6 matters. So, normally, on something like a bankruptcy, that --
7 that would -- the board of directors would be involved with
8 that. But before our -- or before my time, they created the
9 Special Litigation Committee to manage that process and to make
10 decisions and do the work of -- regarding those legal matters at
11 that point in time.

12 At this board meeting -- and, obviously, this was
13 contentious because on the SLC, there's really -- were two
14 people. You had this -- the first vice president and the second
15 vice president, and the president of the board. Carolyn Meadows
16 was the president of the board, but was also having some family
17 issues and she was gone a lot, so I wasn't sure that she
18 actually was participating. But Charles Cotton and Willes Lee,
19 who were the officers, were participating, and that was the
20 entire size of the board. So I -- it looked to me like there
21 were two people making a lot of decisions here.

22 Q Did you think that was a good idea?

23 A I did not think that was a good idea.

24 Q Did you make any suggestions for a potential change?

25 A I did.

ALAN F. BOWIN, CSR, RMR, CRR

Marshall - by Plaintiff - Direct/Wang

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1 So, at this board meeting, I -- I had -- I created a
2 motion that we needed to expand the Special Litigation Committee
3 and add five additional board members so that the board could be
4 more fully represented, because you're making huge critical
5 decisions that affect the entire NRA by a couple of people. So
6 that -- that was the motion I made.

7 Q Was that motion successful?

8 A It was not successful.

9 Q How was this motion voted down?

10 A They had -- they took a vote and I think I received
11 two -- two or three -- votes on my motion, and the rest, um,
12 were against the motion.

13 Q Did anyone speak out against the motion?

14 A Oh, sure. Yeah, a lot -- a lot of people did.

15 Q Can you describe the resistance to this motion?

16 A It was pretty hostile. So, it wasn't as bad as the
17 "food fight" I described earlier; it's kind of less of a food
18 fight, but -- but it was pretty hostile. There were some --
19 some unprofessional comments made, like, "This is the stupidest
20 motion I've ever heard" and things like that. So --

21 Q And who was involved in making those kind of
22 statements?

23 A I don't know if I can remember everyone that was there,
24 but it was -- it was some of the more central people on the
25 board that had been there a long time.

ALAN F. BOWIN, CSR, RMR, CRR

Marshall - by Plaintiff - Direct/Wang

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1 Q And when you refer to people who were central and who
2 had been there for a long time, can you give us an example of
3 who that -- who those individuals are?

4 A Okay. Yeah.

5 So -- I hope I can say this correctly: Okay. We had a
6 nickname for this group; we called it "The Cabal." And I
7 didn't -- that's not a name I came up with; another board member
8 told me that. And I said, "What's The Cabal?" and they said,
9 "It's kind of a core group that actually made most of the
10 decisions regarding the board and they were the ones mostly
11 informed." Typically, those people were former officers of the
12 board; they were former presidents of the board, been on the
13 board for 20-plus years. So it was a very small group; I would
14 say, maybe a dozen to 15 people.

15 Q Do you recall who some of those individuals were?

16 A Yes. Marion Hammer, Sandra Froman, Kayne Robinson,
17 David Keene; and there's others, too. If you give me the list,
18 I'm -- I can tell you who they are.

19 Q Mr. Marshall, I'm going to shift over to the summer of
20 2021 and direct your attention to a document that is in your
21 binder. It's actually not tabbed but it's a sleeve -- it's in
22 the sleeve. It is marked PX 3569.

23 A Yes.

24 Q Does this document look familiar to you?

25 A It does.

ALAN F. BOWIN, CSR, RMR, CRR

Marshall - by Plaintiff - Direct/Wang

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1 Q What is it?

2 A Okay. This is a -- this is an e-mail that I wrote to
3 John Frazer regarding the directors and officers insurance
4 policy.

5 Q And just directing your attention to the very top of
6 the e-mail, do you recognize that first line? Whose e-mail is
7 that?

8 A That's my -- that's my e-mail address.

9 Q And whose e-mail address is in the "To:" section?

10 A That's John Frazer's e-mail address.

11 Q Do you recall sending this series of e-mails back and
12 forth with Mr. Frazer in the early-August time frame?

13 A Oh, sure.

14 Q And did you regularly use e-mail to communicate
15 business with NRA staff or NRA board members?

16 A I -- I did. In this case, I actually called John
17 first. And to get the -- to give you the back story: The
18 directors and officers insurance policy had been dropped by
19 Lloyds of London, who was the carrier, so there was no D&O
20 insurance.

21 Q Mr. Marshall, just before we dive into that: Does --

22 A Okay.

23 Q Do these e-mail represent a fair and accurate
24 representation of e-mails you engaged with, with Mr. Frazer?

25 A It -- it does, absolutely does.

ALAN F. BOWIN, CSR, RMR, CRR

Marshall - by Plaintiff - Direct/Wang

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1 MR. WANG: Your Honor, I move to admit PX 3569 into
2 evidence.

3 THE COURT: Any objection?

4 MS. EISENBERG: No objection.

5 THE COURT: It's admitted.

6 (Image displayed.)

7 BY MR. WANG:

8 Q So, Mr. Marshall --

9 So the way these e-mails work, the bottom e-mail on
10 page 4 of 4 of PX 3569 would be the first e-mail and the first
11 e-mail is dated Monday, August 9th, 2021.

12 Do you see that e-mail that I'm directing your
13 attention to?

14 A I -- I see it.

15 Q And do you recall receiving this e-mail?

16 A Yes.

17 Q What was your reaction to receiving this e-mail?

18 A Okay. Are you talking about the --

19 Okay, which one -- which one are you talking about?

20 Q The first e-mail in the chain, which occurs on Monday,
21 August 9th, 2021 (indicating), from Mr. Frazer.

22 A Okay. That's not here (indicating).

23 THE COURT: The back of the page.

24 THE WITNESS: Ah. Okay.

25 Q I'm sorry. They're double-sided.

ALAN F. BOWIN, CSR, RMR, CRR

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1 A Oh, yes. Okay.

2 Yes, I -- I recognize this (indicating).

3 Q What was your reaction to receiving this message?

4 A I was excited. I thought, "Okay, great," because as
5 a -- this is important because if you -- as an -- as a director,
6 you want to have insurance to protect you, and knowing that they
7 had gotten a D&O policy was important to me and I was excited
8 about that.

9 Q Taking a step back, Mr. Marshall: Do you know what D&O
10 insurance is?

11 A Yes.

12 Q What does it stand for?

13 A It's directors and officers insurance.

14 Q And can you explain the concept of directors and
15 officers insurance?

16 A It's -- it's basically liability insurance; so, in the
17 event that you're sued in the course of being a director, you
18 have coverage that protects you in that lawsuit.

19 Q And in this series of communications with Mr. Frazer,
20 what were you asking for?

21 A I wanted to see a copy of it.

22 Q Did you receive a copy of it?

23 A I did not.

24 Q How many times did you ask for a D&O policy?

25 A Actually, I think it was around a dozen times I asked

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Marshall - by Plaintiff - Direct/Wang

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1 for it. We -- three phone calls and e-mails, and also -- yeah,
2 mostly e-mails. Yeah.

3 Q Were you given a reason as to why this document
4 couldn't be provided to you?

5 A It was confidential.

6 Q Did that explanation make sense to you?

7 A No, it did not.

8 Q Why not?

9 A The directors and officers insurance policy is
10 purchased to protect people like me and the other directors, so
11 this is the policy that I have ownership in. And I explained to
12 John that I need a copy of this because I -- first of all, I
13 want to know that I'm actually covered. So this is like having
14 a car insurance policy and you want to know that it's going to
15 work. And, um -- and I also wanted to show it to my personal
16 attorney and my insurance company to make sure that this is a
17 good policy and that I don't have to take out additional
18 insurance to make sure I'm protected.

19 Q Were you given any alternatives to viewing the
20 document?

21 A Yes, I was.

22 Q And what alternative was that?

23 A I could fly to Virginia and I could visually read the
24 document in their offices.

25 Q Okay. What state do you live in, again?

ALAN F. BOWIN, CSR, RMR, CRR

Marshall - by Plaintiff - Direct/Wang

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1 A I live in Texas.

2 Q And was this alternative feasible for you?

3 A Not -- it really wasn't. I mean, they wanted me to fly
4 to Virginia. This was during COVID, also, and so, you know, I
5 wasn't -- I'm 64. I know I look younger but I'm 64. And I
6 wasn't anxious about crawling on an airplane. And I do have
7 underlying health issues with asthma. I said, you know, "I
8 don't need this risk," but I -- I was frustrated that I just
9 couldn't get a physical copy to -- to review at my leisure.

10 Q Did you feel that Mr. Frazer responded to your
11 concerns?

12 A No, not at all.

13 Q I'm going to direct your attention to tab 1 of the
14 binder that is in front of you, Mr. Marshall, and that's a
15 document that bears a premarked exhibit number of PX 2156, under
16 tab 1 of your binder.

17 A I see it.

18 Q So, for this document, there is an e-mail that begins
19 on page 2 of 2156 and there are a couple of e-mails on page 1.
20 Does this document look familiar to you, sir?

21 A Yes, it does.

22 Q What is it?

23 A Okay. So on -- on page 1 is an e-mail from Wit Davis
24 to Alexander Reid, who's an attorney; and then the other -- the
25 other part of the document is things that I wrote to the Ethics

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1 Committee.

2 Q I'm going to directing your attention to the e-mail
3 starting on page 2. Is that your e-mail at the very top of the
4 document?

5 A Yeah, that -- that's my e-mail.

6 Q And who are the recipients in the "2" section of this
7 e-mail?

8 A In this is everyone that resides on the Ethics
9 Committee; it's the chairman, plus everyone else.

10 Q And you recognize their e-mail addresses?

11 A Yes, I do.

12 Q And you recognize this as an e-mail that you sent to
13 members of the Ethics Committee?

14 A That's correct.

15 Q And these (indicating) e-mails represent a fair and
16 accurate representation of e-mails that you sent to the NRA
17 Ethics Committee in September of 2021?

18 A That -- that is correct.

19 MR. WANG: Your Honor, I move for the admission of
20 2156 into evidence.

21 THE COURT: Any objection?

22 MS. EISENBERG: There is a section that's hearsay,
23 your Honor, but I just wanted to note that.

24 THE COURT: Which section?

25 MS. EISENBERG: Page 2 of 3, second-to-last

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1 paragraph, second-to-last sentence.

2 (Pause.)

3 MS. EISENBERG: It starts with the word "Mister,"
4 period.

5 THE COURT: Is that person Mr. -- someone who is
6 outside counsel to the NRA?

7 MS. EISENBERG: Correct.

8 THE COURT: So I think he's an agent of a party.
9 So, overruled.

10 MR. WANG: I think we were in the middle of -- I
11 was asking for admission of 2156.

12 THE COURT: Right you are.

13 Objection is overruled.

14 The document is admitted.

15 (Image displayed.)

16 BY MR. WANG:

17 Q Mr. Marshall, just directing your attention to your
18 e-mail, the very top of the e-mail where, in the "Re:" -- R-e --
19 section, it says: "Ethics complaint for Mr. John Frazer" --

20 A Yes.

21 Q -- can you describe why you brought an ethics complaint
22 against Mr. Frazer?

23 A Okay. So this was so frustrating because, as a
24 director, I have an absolute right to every record of the
25 corporation -- that's the whole job -- and that cannot be

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1 withheld from me. And so -- especially on something like this,
2 where this is a policy for me. So my frustration had reached
3 the point where I said, "This is totally ridiculous; I need to
4 do something." I filed the Ethics Committee [sic] because I
5 really wanted to document this for the other board members, that
6 this is ridiculous; we're not getting just things that we need
7 to do our job.

8 So that's why I did that.

9 Q Was this (indicating) ethics complaint responded to?

10 A Yes. Actually, it was responded to.

11 Q And how was it responded to?

12 A I -- I received a pretty harsh e-mail from Marion
13 Hammer, who complained that I had copied Alex Reid, who's a
14 lawyer that I had contacted to help me get this policy, and she
15 did not know who Alex Reid was.

16 Q Did you ever get this policy from the NRA?

17 A I did not.

18 Q Did the NRA ever act on this (indicating) ethics
19 complaint you filed against Mr. Frazer?

20 A I have no knowledge of that.

21 Q Mr. Marshall, are you familiar with the NRA's finances,
22 in general?

23 A I am.

24 Q Have you reviewed the NRA's 990s?

25 A I have.

ALAN F. BOWIN, CSR, RMR, CRR

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1 Q Have you reviewed NRA financial statements?

2 A I have.

3 Q What general information have you gleaned from your
4 review of recent NRA financial statements?

5 A Okay. So --

6 MS. EISENBERG: Objection.

7 A -- I kind of created ... I'm sorry.

8 MS. EISENBERG: I'm not sure this witness is an
9 expert on the topic about which he was asked.

10 MR. WANG: May I respond, your Honor?

11 We're not offering Mr. Marshall as an expert
12 witness. He's a member of the -- he, at this period of
13 time, was a member of the board of directors. As part of
14 his responsibilities as a member of the board of directors,
15 he is responsible for understanding the financial
16 wherewithal of the organization. He's testified that he
17 studied numerous 990s, financial reports, audits, and he's
18 also testified that he has familiarity with these documents.

19 I think it is appropriate testimony.

20 THE COURT: Overruled.

21 You can answer.

22 Q Mr. Marshall, what information have you gleaned from
23 your review of these NRA financial statements?

24 A Okay. So I spent a lot of time going through the --
25 the 990, which is their tax form -- their tax statement -- and

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1 the peak of the NRA's revenues was in 2016, when they had \$366
2 million in revenue. Last year, it ended at 211 million. The
3 member dues, the amount of monies that come in from the members,
4 had peaked to about \$163 million; last year it was \$83 million.

5 So I've gone through the numbers at length. Last year,
6 they lost money, for example.

7 And I would say that these financials are in -- in
8 pretty bad shape for any company or any organization.

9 Q What does diminished revenue mean for NRA programs?

10 A Yeah, the big -- the big hurt in all of this, as the
11 revenues have declined, is, the programs that -- that the NRA
12 supports are really valuable. The NRA is known for its lobbying
13 efforts. That's really the small part of what it does. The big
14 part of what it does: It does things like train single moms in
15 Chicago on how to properly handle a firearm. You know, it's --
16 it does gun safety for police officers and military. It
17 supports competition in shooting and those kinds of things. And
18 so it does a whole bunch of things. If there's no monies coming
19 in for those programs, those programs cannot happen.

20 Q Have you found that the spending on those programs has
21 declined?

22 A It absolutely has, yes.

23 Q Have you donated to the NRA in the past?

24 A I have not donated recently, in several years now.

25 Q Why have you stopped donating?

ALAN F. BOWIN, CSR, RMR, CRR

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1 A Because I felt like the money was not being used to
2 support the mission.

3 Q Mr. Marshall, what's your current involvement with the
4 NRA?

5 A Currently, I'm actually seeking to be included on the
6 board again, and my name will appear on the -- on the upcoming
7 ballot in March of this year.

8 Q And how did you seek re-election?

9 A I sought re-election through the nominating committee.
10 My name was once again -- my nom -- my name has been submitted
11 every year since I was on the board; it was once again submitted
12 and I was rejected by the nominating committee.

13 And then the second way you can get on the ballot is
14 through petition, so I was able to garner enough signatures on a
15 petition that allowed me to get on the ballot, so my name will
16 appear on the ballot.

17 Q To the best of your knowledge, did your qualifications
18 change between 2019 and 2023?

19 A I got a little older, but my qualifications are the
20 same.

21 Q And you said you are on the ballot by petition. What
22 does that mean?

23 A So that means that I had -- I had to go out and contact
24 members that were eligible to vote and -- and have them
25 physically sign a petition that they wanted me to be included on

ALAN F. BOWIN, CSR, RMR, CRR

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1 the ballot and then submit that documentation to the NRA. And I
2 did and my name was -- was included.

3 Q Why did you choose to run for the board again?

4 A You know, my hope, really, from the beginning until
5 now, was to help it and to put it on a -- on a -- the right
6 path, and they've been on the wrong path for a very long time,
7 in my opinion. And so, that's my entire goal. They still need
8 a lot of help and I think I have a certain skill set, as a -- as
9 a board of director member, that I can help provide some
10 leadership and some direction on -- on where they should go in
11 the future.

12 Q Well, based on your experience on the board,
13 Mr. Marshall, do you have a view as to whether Mr. LaPierre was
14 effective as the NRA's EVP?

15 A You want to define that for me?

16 Q Do you think he did a good job?

17 A You know, um, I'm torn about this, because I do believe
18 that Wayne worked hard as the -- as the EVP director, but -- but
19 then a lot of other things happened along with that that was not
20 appropriate. So, yes, he -- Wayne worked hard. Unfortunately,
21 he made some poor management decisions here.

22 Q Do you have a view as to whether Mr. LaPierre should be
23 allowed to be reappointed or reelected to the position of NRA
24 EVP?

25 A Yeah. Mr. LaPierre should not be reappointed as a --

ALAN F. BOWIN, CSR, RMR, CRR

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1 in any role for the National Rifle Association.

2 Q Now, based on your experience on the board, do you have
3 a view as to whether Mr. Frazer was an effective general counsel
4 and secretary for the NRA?

5 A My opinion is, Mr. John Frazer was not effective as
6 general counsel and secretary and should not be reappointed in
7 that role.

8 Q As a candidate for the board and a current NRA
9 Benefactor Member, what would you like to see happen with the
10 NRA?

11 A You know, I don't know how to say this: You know, my
12 mom always said, you know, "The proof's in the pudding."
13 There's a lot of pudding here. There's a lot of pudding. And
14 so there -- over the next six weeks, you're going to hear a lot
15 of things that need to be dealt with, and I -- I'm sure the
16 Judge will consider those things.

17 You know, I would hope that -- that the Court would
18 appoint a monitor to oversee the NRA, so we can get it back on
19 track, on the mission that it was set out to do.

20 And I --

21 MR. WANG: Thank you for your testimony,

22 Mr. Marshall.

23 THE WITNESS: Okay.

24 MR. CORRELL: Your Honor, may we approach?

25 (The following occurred at sidebar:)

ALAN F. BOWIN, CSR, RMR, CRR

Proceedings

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1 THE COURT: What's the issue?

2 MR. CORRELL: Mr. Wang has just obliterated the
3 line between your phase of the trial for reappointment and
4 monitor.

5 THE COURT: He hasn't obliterated anything. He's
6 mentioned the type of relief that the jury is not going to
7 be asked to provide, so I think it doesn't have any
8 substantive effect on the Court or this trial.

9 So what is it that you request?

10 MR. CORRELL: Well, my objection is that he has
11 introduced a question to the jury of whether or not
12 Mr. LaPierre should be reelected or reappointed. There is
13 no valid --

14 THE COURT: This is about as a board member, and
15 the board does vote on that. He can -- you know, as a board
16 member, he can give that view.

17 There was no objection raised to the question,
18 first of all, but -- so --

19 MR. CORRELL: Mr. LaPierre is not seeking
20 re-election or reappointment, and he was never appointed,
21 so --

22 THE COURT: Well, I mean, you can ask that
23 question, if you want --

24 MR. CORRELL: Thank you.

25 THE COURT: -- on cross.

ALAN F. BOWIN, CSR, RMR, CRR

Proceedings

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1 MR. WANG: That doesn't mean that it wouldn't
2 happen in the future.

3 THE COURT: Yeah. I mean, I --

4 So what else -- what do you --

5 Does anybody want any relief?

6 MS. EISENBERG: Yes. The last Q and A, we would
7 like that struck from the record, because we can't defend
8 against that request for relief, and they should never have
9 elicited it.

10 THE COURT: Well, he didn't elicit it. The witness
11 just said it.

12 MR. WANG: Agreed.

13 THE COURT: And just so we're clear, I will
14 reference it to say that that's not an issue for the jury to
15 be concerned with.

16 MS. EISENBERG: That's fine.

17 MS. CONNELL: Thank you.

18 MR. WANG: Thank you, your Honor.

19 (Counsel returned to counsel table.)

20 THE COURT: So, members of the jury, just a quick
21 clarification:

22 In the last question and answer, there was a
23 reference to a monitor. I just want to make it clear:
24 There is no issue for you about appointing a monitor.
25 That's not anything that you're going to have to either

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1 address or deal with. So that's just not part of the case
2 in front of you.

3 So I'm going to just strike that part of the answer
4 from the record.

5 All right, cross-examination?

6 CROSS-EXAMINATION

7 BY MS. EISENBERG:

8 Q Good afternoon, Mr. Marshall.

9 A Hi.

10 Q My name is Svetlana Eisenberg. I represent the NRA.

11 A All right.

12 Q You are a member of the NRA, right?

13 A Yes, I am.

14 Q Currently, you are not a board member; right?

15 A Currently, I'm not.

16 Q And you served as a board member in the past, right?

17 A Yes, I have.

18 Q That was in 2021?

19 A Correct.

20 Q Between in or around January of 2021 and in or around
21 October 2021, right?

22 A Yes, that's correct.

23 Q That was the only time you served as a board member of
24 the NRA, right?

25 A That is correct.

ALAN F. BOWIN, CSR, RMR, CRR

Marshall - by Plaintiff - Cross/Eisenberg

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1 Q You've never been an employee of the NRA?

2 A No.

3 Q Never been an officer of the NRA, right?

4 A No.

5 Q What are the bylaws --

6 What do the bylaws of the NRA say about the election of
7 the executive vice president?

8 A The election of the executive vice president? So
9 there's -- there's a process, and so the EVP is elected by the
10 board of directors.

11 Q And you ran for that position in 2021?

12 A I didn't run; I was nominated.

13 Q And there was a vote, right?

14 A There was a vote.

15 Q And all the board members cast their votes, right?

16 A All that were present cast their vote.

17 Q And you received two votes, right?

18 A I think I got two.

19 Q And Mr. LaPierre won that race, right?

20 A He did, definitely, win, yes.

21 Q You were rep --

22 You, as a board member, could introduce resolutions;
23 right?

24 A Yes, and I did while I was on the board.

25 Q And in fact, you did that; right?

ALAN F. BOWIN, CSR, RMR, CRR

Marshall - by Plaintiff - Cross/Eisenberg

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1 A Yeah.

2 Q Now, let's talk about what the NRA does. You believe
3 that the NRA performs a valuable service to the community and
4 the society; correct?

5 A Yes.

6 Q And fights for the Second Amendment?

7 A Yes.

8 Q It provides marksmanship training?

9 A Yes.

10 Q It's involved with law enforcement?

11 A Yes.

12 Q The military?

13 A Yes.

14 Q Also, outreach to the young people; right?

15 A Yes.

16 Q And you believe that the NRA does all of those things
17 today, right?

18 A It -- it attempts to do those things, yes.

19 Q And you believe, in 2021, that the NRA did all of those
20 things then; right?

21 A Yes.

22 Q After you were appointed to the board in January of
23 2021, you requested Forms 990 from Mr. Frazer; right?

24 A Yes.

25 Q And those forms were provided to you, right?

ALAN F. BOWIN, CSR, RMR, CRR

Marshall - by Plaintiff - Cross/Eisenberg

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1 A They were.

2 Q You reviewed them?

3 A I have.

4 Q Each one of them?

5 A Yes.

6 Q Every page of them.

7 A Yes.

8 Q You also requested the NRA's financial statements from
9 Mr. Frazer, right?

10 A Yes.

11 Q And the financial statements that you requested were
12 provided to you, right?

13 A I -- I received -- yes. At that point in time, I think
14 I received them all, yes.

15 Q And you reviewed them, right?

16 A I did.

17 Q Each one?

18 A Yes.

19 Q Every page?

20 A Yes.

21 Q And Mr. Davis, the outside counsel -- board counsel --
22 also provided you with a lot of infor -- with a lot of
23 information, verbally; right?

24 A Verbally, yes.

25 Q Are you familiar with other board members of the NRA?

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Marshall - by Plaintiff - Cross/Eisenberg

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1 A Again, can you rephrase that? What -- I'm sorry; what?

2 Q There are 76 board members at the NRA, right?

3 A Correct.

4 Q And are you -- do you know any of them?

5 A I -- I knew of a couple of them, but once I was on the
6 board, I knew -- obviously -- I knew, you know, many of them,
7 yes.

8 Q And sitting here right now, do you -- how many board
9 members of the NRA, currently sitting on the board, do you think
10 you can name?

11 A Do you want me to try that?

12 Q Just give us a ballpark example.

13 A I could probably name a dozen, sure.

14 Q A dozen of the 76, about?

15 A Yeah. Either -- the ones that are currently there?
16 Yeah.

17 Q And would you agree with me that the NRA Board includes
18 individuals who are highly accomplished?

19 A Yes.

20 Q Highly credentialed?

21 A Some, yes.

22 Q Senator Larry Craig?

23 A I'm sorry; what?

24 Q Senator Larry Craig?

25 A Right. Yeah, he was on the board.

ALAN F. BOWIN, CSR, RMR, CRR

Marshall - by Plaintiff - Cross/Eisenberg

225

1 Q Lieutenant Governor Mark Robinson --

2 A Right.

3 Q -- from North Carolina?

4 A He's still on the board, I think.

5 Q Kim Rhode?

6 A Yep.

7 Q An Olympic medalist?

8 A Right.

9 Q Let's take a look at the document that Mr. Wang showed
10 you.

11 MS. EISENBERG: Mr. Lee [sic], would you please
12 display Exhibit PX 3569, which is in evidence?

13 A Is that in this (indicating) binder?

14 Q Yes.

15 THE COURT: It's the one in the sleeve.

16 THE WITNESS: Oh, in the sleeve?

17 (Image displayed.)

18 Q I'd like to focus on an e-mail message in the thread
19 that begins at the top of page 2.

20 (Image modified.)

21 Q And Mr. Wang did not show you this portion of the
22 thread during his direct examination, did he?

23 A I'm sorry; say that again? I -- I can't hear you well.

24 Q I'm so sorry.

25 Is this (indicating) better?

ALAN F. BOWIN, CSR, RMR, CRR

Marshall - by Plaintiff - Cross/Eisenberg

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1 A Yeah, that's a little better.

2 Q Okay. Do you have page 2 of the exhibit in front of
3 you?

4 A Yeah, Exhibit 3569, right.

5 Q Correct.

6 A Okay, got it.

7 Q And at the top of page 2, do you see an e-mail message
8 from Mr. Frazer to yourself, sent on August 13th, 2021, at 3:23
9 p.m.?

10 A I see it.

11 Q When Mr. Wang asked you questions, he asked you about
12 certain e-mail messages in this (indicating) e-mail thread;
13 right?

14 A Yes.

15 Q He did not ask you any questions about this
16 (indicating) specific e-mail message, did he?

17 A I don't -- no, I don't think so.

18 MR. WANG: Objection.

19 Q And --

20 THE COURT: Overruled.

21 Q And Mr. Frazer wrote you this e-mail on August 13,
22 2021; right?

23 A Yes.

24 Q And he apologized to you for his delayed response?

25 A Yes.

ALAN F. BOWIN, CSR, RMR, CRR

Marshall - by Plaintiff - Cross/Eisenberg

227

1 Q And he indicated that the forms had not yet been issued
2 by the underwriters, right?

3 A Yeah. I saw that. It didn't make sense to me, but I
4 did see that.

5 Q And in the second-to-last paragraph that starts with
6 the words "To facilitate" --

7 MS. EISENBERG: If we can blow that up ...

8 (Image modified.)

9 Q -- he also offered that he would bring any other
10 available information to Houston, along with the policy, of
11 course, if that's available by then; right?

12 A That's what -- yes, that's what it says, yes.

13 Q And you were in Houston; weren't you?

14 A Yes.

15 Q You didn't ask him for a copy when you were in Houston,
16 did you?

17 A No.

18 Q Who is Oliver North?

19 A Oliver North is a well-known military guy. He was
20 former president of the NRA.

21 Q Would you agree that the NRA has a robust
22 conflict-of-interest policy?

23 MR. WANG: Objection, your Honor.

24 The line of questioning is outside the scope of the
25 direct examination.

ALAN F. BOWIN, CSR, RMR, CRR

1 THE COURT: I'm going to overrule that.

2 Q Would you like the question repeated?

3 THE COURT: I think the scope was fairly broad in
4 terms of his discussion of the -- of the entity, so I'll let
5 you ask that.

6 MS. EISENBERG: Thank you, your Honor.

7 A One more time?

8 Q Of course.

9 Would you agree that the NRA has a conflict-of-interest
10 policy?

11 A Can I see it?

12 (Continued on next page.)

13

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ALAN F. BOWIN, CSR, RMR, CRR

Cross-Marshall-Eisenberg

229

1 Q I'm asking you sitting here right now are you aware
2 that the NRA has a conflict of interest policy?

3 A I'm sure they must have one. Off the top of my head I
4 can't remember. If I read it, I don't remember what it says.

5 Q So sitting here right now you don't know whether or not
6 the NRA has a conflict of interest policy?

7 A If you let me see it I can tell you.

8 Q Who is Esther Schneider?

9 A Esther Schneider is a former NRA board member.

10 Q Do you know her personally?

11 A I've met her through the NRA, yes. So, I know her
12 personally now, yes.

13 Q When did you first meet her?

14 A At the bankruptcy trial.

15 Q If a board member enters into a transaction with a
16 major vendor of the NRA, do you believe that that is something
17 that the audit committee must preclear before the board member
18 receives any payments from the vendor?

19 A I would love to see -- You're talking about something
20 that sounds specifically. Can I see that or do you have that
21 example that I can see? That I can read?

22 Q I'm just asking you for your opinion.

23 A Okay. Say it again.

24 Q If a board member enters into a transaction with a
25 major vendor of the NRA, do you believe that this transaction

LAS

Cross-Marshall-Eisenberg

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1 must be preapproved by the audit committee before it goes
2 forward?

3 MR. WANG: Objection, your Honor. This is an
4 unclear hypothetical.

5 THE COURT: Well, look, obviously he's not an
6 expert. So there were -- Not an expert witness I should
7 say. Not saying that -- I let the other side ask questions
8 because they were decisions that the board would make. Are
9 you -- I don't think he's here to give a legal opinion about
10 something, but if you want to ask based on his time as a
11 board member whether he understood that this is something
12 within his remit to understand.

13 MS. EISENBERG: Certainly.

14 THE COURT: He's a fact witness not an expert
15 witness.

16 Q Mr. Marshall, you earlier testified that the board's
17 role is to provide oversight, right?

18 A That's correct.

19 Q And as part of that oversight, you expect board members
20 to be familiar with the NRA's conflict of interest policy,
21 right?

22 A Yes.

23 Q And you expected yourself to be familiar with that
24 policy, right?

25 A Right.

LAS

Cross-Marshall-Correll

231

1 Q Yet sitting here right now you don't even remember if
2 the NRA has one?

3 A I suspect they do. I can't recall it. I would love to
4 see it if you have it.

5 MS. EISENBERG: No further questions.

6 THE COURT: Okay. Any further questions? Mr.
7 Correll.

8 CROSS EXAMINATION

9 BY MR. CORRELL:

10 Q Good afternoon, Mr. Marshall. I'm Kent Cornell. I
11 represent Wayne LaPierre.

12 A Yeah. I think we met before.

13 Q Do you still want Wayne LaPierre's job?

14 A I never wanted his job.

15 Q I thought I heard you testify you ran for that
16 position?

17 A I was nominated for that position. I agreed to be
18 nominated.

19 Q Okay. So, you stood for election for that position?

20 A I did reluctantly, yes.

21 Q But you didn't want the job?

22 A I did not.

23 Q Why did you stand for election for that position?

24 A At that point in time we were -- NRA was in some
25 serious trouble. They wanted to nominate me to have someone to

LAS

Cross-Marshall-Correll

232

1 run against Wayne in hopes that we could get a new EBP.

2 Q And who is the they?

3 A Some of the board members.

4 Q Who exactly?

5 A Judge Phil Journey. Mark Skeleton. Buzz Owens.

6 Q Who else?

7 A I think that's all.

8 Q Okay. So three people wanted you to run?

9 A Yeah.

10 Q Okay. Are you planning to run for the EBP position
11 this year?

12 A No, I am not.

13 Q Thank you.

14 A Yep.

15 THE COURT: Anything further? You don't always
16 have to go last by the way.

17 CROSS EXAMINATION

18 BY MR. WERBNER:

19 Q Good afternoon, Mr. Marshall. My name is Mark Werbner.
20 I'm from Dallas, Texas and I represent Woody Phillips.

21 A Okay.

22 Q I want to ask you if you have any personal knowledge,
23 not what somebody has told you, but any personal knowledge of
24 what Willie Phillips has been doing the last five years?

25 A No.

LAS

Cross-Marshall-Fleming

233

1 Q Do you have any personal knowledge, not what someone
2 has told you about, what Willie Phillips has done in the last
3 ten years?

4 A No, I do not.

5 MR. CORRELL: I'll pass the witness.

6 THE COURT: Thank you.

7 CROSS EXAMINATION

8 BY MR. FLEMING:

9 Q Good afternoon, Mr. Marshall. I'm William Fleming, and
10 I represent John Frazer. Just a couple of questions for you.
11 If I could direct --

12 MR. FLEMING: If someone could draw or bring up PX
13 3569, which is in evidence. And I could direct to the
14 second page.

15 Q Ms. Eisenberg just asked you questions about the e-mail
16 from Mr. Frazer dated August 13th, is that right? Do you recall
17 that?

18 A Yes.

19 Q Okay. And that was Mr. Frazer's response to your
20 e-mail below on August 12th, correct?

21 A That's correct.

22 Q And so he responded within roughly 24 hours to you,
23 right?

24 A Yes.

25 Q Now, in that Ms. Eisenberg pointed out to you that

LAS

Cross-Marshall-Fleming

234

1 Mr. Frazer conveyed the forms had not been issued, right?

2 A I'm sorry. Say that again.

3 Q The forms had not been issued, the insurance forms.

4 A He said that, which I thought was odd.

5 Q Did you ever find out that those insurance forms were
6 not delivered to the NRA until September 28th?

7 A I had no information on that.

8 Q By September 28th you had already filed an ethics
9 complaint against Mr. Frazer by then?

10 A I think that's correct, yes.

11 Q Now in this document still, and in the second or really
12 third paragraph, the one beginning "In addition", do you see
13 that?

14 A (Examining). Yes.

15 Q In the second line it says, "the leadership decided
16 that sensitive information such as you request will not be
17 forwarded by e-mail." Do you see that?

18 A I see that.

19 Q Did you understand who Mr. Frazer was referring to?

20 A I -- I -- I think I assumed that he was referring to
21 either Wayne LaPierre, Charles Cotton, maybe Willes Lee, I
22 assumed.

23 Q Is it your view that Mr. Frazer should have flouted the
24 directions of leadership?

25 A Yes. That is my -- my opinion, yes.

LAS

Cross-Marshall-Fleming

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1 Q Okay. And you see in the last paragraph he assures you
2 that this decision is being applied equally to all similar
3 requests?

4 A I see that.

5 Q Okay. Now if we could go to page 1 of 4 of this
6 exhibit.

7 MS. KRAL: One or four?

8 MR. FLEMING: One of four of that same exhibit.

9 Q At the bottom category, "review in Houston", do you see
10 that?

11 A I see that.

12 Q I will read what it says. "This is unacceptable to me
13 in that I am requesting this document immediately so that I can
14 review with my personal attorney and my risk and coverage
15 inherent in the D&O policy." Do you see that?

16 A I see it.

17 Q So, you're responding to Mr. Frazer saying he doesn't
18 have the insurance policy, right?

19 A That was not my understanding at that point in time.

20 Q Well, you don't dispute that that's what he wrote, do
21 you?

22 A But prior to this e-mail he wrote and said he had the
23 policy.

24 Q You don't dispute that's what he wrote?

25 A That's what he wrote, yeah.

LAS

Cross-Marshall-Fleming

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1 Q And you're responding to what he wrote, correct?

2 A I'm responding to the denial of having access to it,
3 yes.

4 Q Okay. And do you have any information that he had the
5 policy?

6 A No, other than his e-mail, when he said that we have
7 one.

8 Q That they have secured coverage, correct?

9 A Correct.

10 Q But he's written to you that the forms have not yet
11 been issued, correct?

12 A That's what he wrote, yes.

13 Q Are you saying that was an untruth?

14 A No. I'm not saying that.

15 MR. FLEMING: Okay. Now, if I could cull up the
16 August 31st e-mail for identification.

17 THE COURT: Is there an exhibit number?

18 MR. FLEMING: It would be JFX 103.

19 THE COURT: I'm sorry. I didn't hear that.

20 MR. FLEMING: JFX 103.

21 THE COURT: JFX 103?

22 MR. FLEMING: Yes.

23 Q Mr. Marshall, let me just ask you a couple final
24 questions.

25 A Sure.

LAS

Cross-Marshall-Fleming

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1 Q The D&O insurance coverage was not the only issue you
2 were discussing with Mr. Frazer at the time, isn't that right?

3 A Are you talking about specific this line of discussion
4 or something else?

5 Q I'm talking about the time period we're addressing,
6 which is in August of 2021.

7 A Okay.

8 Q I'm asking if you recall discussing any other issues
9 with Mr. Frazer other than the directors and officers insurance
10 policy.

11 A I don't recall if I did. I mean, you have something
12 that you're referring to?

13 Q Sure. Do you recall discussing Lieutenant Colonel Alan
14 West?

15 A I do. Yes. Now I remember that, yes.

16 Q What was that issue?

17 A That issue was Lieutenant Alan West had resigned from
18 the board, and no notice had been given to the board that he had
19 resigned.

20 Q And do you recall talking to Mr. Frazer about the 76th
21 director election?

22 A I do.

23 Q And do you recall him telling you that every candidate
24 had been voted on so there was no one left to fill a 76 director
25 spot?

LAS

Cross-Marshall-Fleming

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1 A Do you have that document? I think it was in the
2 e-mail, was it not? Not this one, but I think another one. Do
3 you have that? It wasn't this one.

4 Q No, it was not.

5 A I do remember discussing that in an e-mail form. I
6 don't think we talked about it over the phone.

7 Q My question to you is, do you recall him explaining and
8 giving you an answer?

9 A I do. I would love to read it to refresh my memory.

10 Q I have nothing further. Thank you.

11 A Thanks.

12 THE COURT: Okay. Anything on redirect?

13 MR. WANG: Very brief redirect. If we can bring up
14 3569, page 2 again, Jessie.

15 REDIRECT EXAMINATION

16 BY MR. WANG:

17 Q Mr. Marshall, on cross examination you were asked a
18 number of questions about the e-mail at the top of this page and
19 you said you found the e-mail unusual. Why did you find it
20 unusual?

21 A Yeah. So, it struck me odd that John was not providing
22 something that I thought he clearly had described in his e-mail
23 that we had secured a policy. Typically when you say that you
24 have the policy. That's why you say that. That means you've
25 looked at it. And I thought this was just strange the way that

LAS

Redirect-Marshall-Wang

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1 he responded to me in this case.

2 Q Why didn't you ask for the D&O policy at the meeting in
3 Houston?

4 A You know, 'cause I really wanted a copy. What he was
5 referring to is that I could come and read one. I'm not an
6 insurance guy. I'm not a lawyer, thank God. So, I wanted a
7 copy so I could actually give it to my insurance company and my
8 attorney to review, and they were not going to provide it. And
9 I did, in March of that 2021, I did also ask for the current D&O
10 policy, and I couldn't get a copy of that either. This was kind
11 of a continuation of that same thing, and my frustration was
12 pretty high at this point.

13 Q Were you concerned about risk?

14 A Absolutely I was concerned about risk.

15 Q Why were you concerned about risk?

16 A Because the NRA was in bankruptcy. There was a lot of
17 accusations of wrongdoing. The board of directors is
18 responsible to provide the oversight for the NRA. And I was a
19 board of director member.

20 Q Would you have accepted this document by hard copy
21 mail?

22 A Absolutely. Sure.

23 Q Would you have accepted this document by an encrypted
24 e-mail message?

25 A Absolutely. Sure.

LAS

Redirect-Marshall-Wang

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1 Q Other than the D&O policy, were you denied access to
2 other critical information?

3 A Yes.

4 MS. EISENBERG: Outside the scope, your Honor.

5 THE COURT: That's true. They didn't ask about
6 that on theirs.

7 MR. WANG: No further questions.

8 THE COURT: Anything else?

9 (No response.)

10 THE COURT: All right. Thank you, sir.

11 THE WITNESS: Yep.

12 (Witness excused.)

13 THE COURT: Would you like to call your next
14 witness.

15 MR. WANG: Your Honor, the People call Esther
16 Schneider.

17 THE COURT: Counsel, do you want to gather back up
18 your binder so we don't confuse the witnesses.

19 MR. WANG: Yes.

20 THE COURT: Thank you.

21 MR. WANG: Thank you, sir.

22 THE COURT: Jurors okay? Counsel, just a
23 procedural point. Since we're not -- we're not marking and
24 separately putting copies of the exhibits, they have all
25 been premarked. So I'm relying on counsel to keep a

LAS

PROCEEDINGS

1 collection of all admitted exhibits. In some organized way
2 you're going to do it. The court officers and the court
3 reporter often times do that. I'm taking it that you all
4 are taking that on.

5 MS. CONNELL: Your Honor, we will.

6 MR. WANG: We are certainly doing it.

7 THE COURT: Okay. Let's bring the witness in.
8 Good afternoon.

9 THE COURT CLERK: Raise your right hand.
10 E S T H E R S C H N E I D E R, after having been duly sworn by
11 the court clerk, was examined and testified as follows:

12 THE COURT CLERK: State your name.

13 THE WITNESS: Esther Schneider.

14 THE COURT CLERK: Spell your last name.

15 THE WITNESS: S-C-H-N-E-I-D-E-R.

16 THE COURT CLERK: Your business address, if you
17 have one. If not, then we need your home address.

18 THE WITNESS: I will give you my home address.
19 2575 Usener Road, Fredericksburg, Texas 78624.

20 THE COURT CLERK: Thank you. You may be seated.

21 THE COURT: Good afternoon.

22 MR. WANG: May I proceed, your Honor?

23 THE COURT: Let the witness get comfortable. Yes
24 you may inquire.

25 MR. WANG: Thank you, your Honor.

LAS

Direct-Schneider-Wang

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1 DIRECT EXAMINATION

2 BY MR. WANG:

3 Q Good afternoon.

4 A Good afternoon.

5 Q What is your name, ma'am?

6 A Esther Schneider.

7 Q And, Ms. Schneider, where do you reside?

8 A Texas.

9 Q And where are you originally from?

10 A Las Vegas.

11 Q Are you a member of the NRA?

12 A I am.

13 Q When did you join the NRA?

14 A Approximately 1997.

15 Q What is your membership level at the NRA?

16 A The highest one, a benefactor.

17 Q Do you support the NRA's mission?

18 A I do.

19 Q What's the NRA's mission?

20 A Basically to promote the Second Amendment and preserve
21 rights.

22 Q Can you describe, are you involved with the NRA?

23 A Not any longer.

24 Q Were you previously involved with the NRA?

25 A Yes.

LAS

Direct-Schneider-Wang

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1 Q Can you describe your prior involvement with the NRA?

2 A I went to a lot of Friends dinners. I helped recruit
3 members. Helped recruit money. Raised money for the Women's
4 Leadership Forum and several other ancillary programs that were
5 involved with the NRA.

6 Q You mentioned Friends dinners. What's a Friends
7 dinner?

8 A That is part of the foundation. The money goes to the
9 foundation and raises money that 50 percent of it goes back to
10 the states in the form of grants so to build gun ranges, to help
11 train law enforcement, a multitude of programs for adults and
12 children.

13 Q Have you been involved in NRA committees?

14 A I have.

15 Q And what committees are those?

16 A I was involved with the membership committee and the
17 outreach committee.

18 Q Have you ever been a firearms trainer?

19 A I have.

20 Q And how long have you been a firearms trainer?

21 A I taught women to shoot for decades.

22 Q Ms. Schneider, why are you here today?

23 A I'm here to tell the truth about my experience at what
24 happened as a board member.

25 Q Ms. Schneider, what is your occupation?

LAS

Direct-Schneider-Wang

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1 A I'm a firearms dealer and instructor.

2 Q Do you have any business experience?

3 A I do.

4 Q Can you briefly describe for the Court your business
5 experience?

6 A So, basically started out after graduating from college
7 in the advertising and media world, worked in the gaming
8 industry and also in politics.

9 Q Have you ever served on the board of a nonprofit other
10 than the NRA?

11 A Yes.

12 Q And can you briefly describe your nonprofit experience?

13 A There has been more than two dozen organizations, Boy
14 Scouts of America, American Cancer Society. Gosh, there is a
15 lot of them.

16 Q Have you ever served on the NRA board?

17 A Yes.

18 Q When did you serve on the NRA board?

19 A I was elected in 2016 and served -- was elected twice
20 and then resigned in 2019.

21 Q How did you come to serve on the NRA board?

22 A I received a phone call.

23 Q Who did you receive a phone call from?

24 A Susan LaPierre.

25 Q And did that phone call have anything to do with you

LAS

Direct-Schneider-Wang

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1 running for the board?

2 A It did. She asked me if I would be interested in
3 submitting an application to run.

4 Q Who is Susan LaPierre?

5 A The wife of Wayne LaPierre.

6 Q And what was your response to Ms. LaPierre?

7 A I said to her, you know, I'm honored but I'm not
8 qualified. I didn't believe I was qualified to serve.

9 Q And did you end up running for the NRA board?

10 A I did.

11 Q Why did you end up running for the board?

12 A The more we talked about why I was qualified and all of
13 my experience and what I could actually do to help promote the
14 agenda of the NRA, I thought it was a great idea to do then.

15 Q And did you in fact run?

16 A I did.

17 Q How does that process work for running for the board of
18 the NRA?

19 A So, you submit your application. Well actually there
20 is two ways to run. One is by signature petition, where you
21 have to gather enough signatures to earn a spot on the ballot or
22 you can submit an application and be nominated by someone within
23 the organization and it would go in front of the nominating
24 board, the nominating committee.

25 Q And by which method did you end up running for the

LAS

Direct-Schneider-Wang

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1 board?

2 A I was told I was going to be nominated by Joel
3 Friedman, and that he would make sure that it was passed by the
4 nominating committee.

5 Q And you said you were told you had been nominated by
6 Joel Friedman. Who told you that?

7 A Susan LaPierre.

8 Q Did Mr. Friedman in fact nominate you?

9 A As far as I know. I never spoke to him.

10 Q With respect to the nominating committee, how did that
11 process work?

12 A I can only, since I never was part of the nominating
13 committee, I could only guess as the way the process works.
14 That the committee meets, reviews the applicants and makes a
15 decision on who is nominated.

16 Q Did they report you as a qualified candidate?

17 A Yes.

18 Q When you joined the board -- When did you join the
19 board?

20 A I believe that would have been in 2016.

21 Q Did you attend any NRA board meetings?

22 A Yes.

23 Q How do NRA board meetings work?

24 A You -- Depending on when your committees are is when
25 you are allowed to fly in. And the committee meetings happen

LAS

Direct-Schneider-Wang

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1 before the board meetings, so you can attend your committee
2 meetings and then the board meeting was on Saturdays and Sunday
3 if need be.

4 Q And what day of the week would committee meetings
5 typically be?

6 A They started on Wednesday.

7 Q How many board meetings were there typically in a year?

8 A Three.

9 Q Where are the board meetings generally held?

10 A They were typically always held in Virginia, and once
11 in a while there would be an offsite board meeting.

12 Q Directing your attention to the board meeting from
13 September of 2018. Did you attend this board meeting?

14 A Yes.

15 Q Can you describe the events of the September 2018 board
16 meeting?

17 A That's when the publicity started to come out I believe
18 with Josh Powell and inappropriate conduct.

19 Q And did you learn about these issues at the 2018 board
20 meeting?

21 A We did not.

22 Q How did you learn about issues?

23 A In newspaper reportings.

24 Q And did you attend the next board meeting in January of
25 2019?

LAS

Direct-Schneider-Wang

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1 A Yes.

2 Q Can you describe the events of the January 2019 board
3 meeting?

4 A We were hoping to hear, there were subsequently more
5 news reports that came out, and we had hoped that we would hear
6 more about those issues. We've been told that, you know, don't
7 worry about it. We will explain it. That you'll understand
8 there is nothing there.

9 Q Did you raise any concerns at the January 2019 board
10 meeting?

11 A I had conversations with, you know, quite a few people
12 about, you know, my concerns, what had been reported in the
13 media and asked a lot of questions. You know, is this true.
14 You know, is this really happening. Did this occur.

15 Q Who did you ask questions of?

16 A I did ask John Frazer and a couple other board members
17 who I thought would probably know, but they all basically
18 dismissed me.

19 Q Other than John Frazer, do you recall any other board
20 members who you say dismissed you?

21 A Sandy Froman I had spoken to, and I believe I had
22 spoken to Jim Porter. And I spoke to Sandy Perlman later in --
23 in conversations afterwards, but there were other board members,
24 Sean Maloney, Tim Knight, Buzz Mills. You know there were -- A
25 lot of us had questions that we couldn't seem to get answers

LAS

Direct-Schneider-Wang

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1 for.

2 Q Are you familiar with internal auditors, Ms. Schneider?

3 A I am.

4 Q And how are you familiar with internal auditors?

5 A In my previous employment I was assigned to, by the
6 governor, to clean up an internal million dollar ticket theft
7 from the Hoosier Lottery. And the internal auditor played a
8 huge role in that, because despite being required by the state
9 under the rules of the lottery, they were suppose to have done
10 an audit every year of policies and procedures and none were
11 done.

12 Q Did the NRA have an internal auditor?

13 A No.

14 Q How did you discover that?

15 A I asked John Frazer when things started to come out in
16 the media who was our internal auditor.

17 Q And what was his response?

18 A We don't have one.

19 Q Did this raise a level of concern for you?

20 A Yeah. I said why don't we have one. And he told me
21 Wayne LaPierre didn't want one.

22 Q After you discovered there was no internal auditor, did
23 you take any other actions?

24 A It raised a great deal of alarm for me because of the
25 amount of money that was raised by the NRA every year and the

LAS

Direct-Schneider-Wang

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1 fact that we had so many different reporting entities. It's
2 critical to every business, especially when you need
3 transparency, that job of the internal auditor is to make sure
4 the policies and procedures are in place and that you're in
5 compliance.

6 Q I'm going to hand you a binder with some documents.

7 MR. WANG: This is for the witness. This is for
8 the Judge.

9 THE WITNESS: Thank you.

10 THE COURT: Thank you.

11 Q Ms. Schneider, I'm going to ask you to open up your
12 binder and turn to tab four. This is a document marked PX 3230
13 and it is tab four in your binder.

14 (Whereupon the witness complied with the above
15 request of counsel.)

16 A Okay.

17 Q This is an e-mail and it's followed by four additional
18 pages of text. Do you recognize this document?

19 A (Examining). Yes.

20 Q Is that your e-mail on the first page of the document
21 at the very top of the first line?

22 A Yes.

23 Q And are those e-mail addresses of fellow NRA board
24 members at this time?

25 A Yes.

LAS

Direct-Schneider-Wang

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1 Q In April of 2019?

2 A Yes.

3 Q Do you recognize this document?

4 A Yes.

5 Q Is this document a fair and accurate representation of
6 an e-mail message you would have sent fellow NRA directors in
7 April?

8 A Yes.

9 Q And did you regularly conduct NRA business or
10 discussion of NRA business via e-mail?

11 A Yes.

12 MR. WANG: Your Honor, I move for the admission of
13 PX 3230.

14 THE COURT: Any objection?

15 MS. EISENBERG: Your Honor, objection to the extent
16 if the NYAG were to offer it for its truth, it is an out-of-
17 court statement that's inadmissible for that purpose. But
18 if the only purpose for offering is to just show that these
19 statements were made, we have no objection.

20 MR. WANG: We are offering it to show that
21 Ms. Schneider raised concerns with respect to activities
22 that were going on.

23 THE COURT: So it's the fact that she raised
24 concerns not the -- it's not proof of the underlying truth
25 of the concerns.

LAS

1 MR. WANG: Correct.

2 THE COURT: All right. It's admitted for that
3 purpose.

4 (Continue on the next page.)
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LAS

Schneider - by Plaintiff - Direct/Wang

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1 MR. FARBER: Judge, can we get a limiting
2 instruction and explain that to the jury?

3 THE COURT: Okay.

4 As I mentioned, hearsay is a concept that witnesses
5 are on the stand to talk about their personal knowledge and
6 so, generally, we don't let a witness say, "Well, Jim told
7 me this and now I'm telling you this." The only time you
8 can do that, or one of the times, is if it's not to prove
9 that what Jim said is true but just to prove that, for
10 example, it was said.

11 So, if I were to testify, "Somebody told me, across
12 the street, that they were the President," if I were
13 testifying, if it was a commitment hearing as to whether
14 somebody was saying things that were obviously untrue, I
15 would be a firsthand witness to that being said. So I could
16 say, "Yeah, he told me; he said these things." But it
17 wouldn't be truth that he's the President, if you follow my
18 reasoning.

19 So here -- at the moment, anyway -- this is being
20 offered to just show, these are concerns the witness
21 conveyed. It kind of depends on what the underlying thing
22 says, but if in the things she wrote she's talking about
23 things that are not firsthand knowledge, then this document
24 doesn't prove those things but it's being offered to show,
25 these are concerns that were raised.

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1 So if you -- hopefully, you understand that
2 distinction. I'm probably going to explain it a number of
3 more times as we go because it's a little bit of a strange
4 concept.

5 But with that instruction, you can proceed.

6 And to the extent, by the way, there are
7 firsthand-knowledge items conveyed in here (indicating), you
8 can also consider it for that.

9 BY MR. WANG:

10 Q Ms. Schneider, I'm going to direct your attention to
11 320, page 2, the very top of the document, and the first full
12 paragraph that begins: "There are two imperative issues that
13 must be addressed."

14 (Image displayed.)

15 Q And just backing up for one second: Did you draft this
16 document?

17 A I did.

18 Q And why did you draft this document?

19 A These were things that I had observed that had been
20 cited in the newspapers and they raised questions, because we
21 have a fiduciary responsibility to the membership and part of
22 our position as a director is to be given information and to be
23 aware of things, and these highlight things that have happened,
24 that were reported in the media, that we were made -- not made
25 aware of in any board meeting.

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1 Q And directing your attention to the second sentence of
2 that first paragraph, when you say, "the intentional stifling of
3 critical information to the NRA Board of Directors," what do you
4 mean?

5 A That there were instances where this should have been
6 brought to the board for discussion or for approval and they
7 weren't.

8 Q And did you experience that happening on a firsthand
9 basis?

10 A Explain.

11 Q Yeah. Did you experience stifling of critical
12 information --

13 A Yes.

14 Q -- as a director?

15 A Yes.

16 Q Did you give any examples of instances where you felt
17 critical information was stifled from you?

18 A So, on several occasions I had asked John Frazer, via
19 e-mail or via -- usually via e-mail -- about, you know, if the
20 reporting and the stories in the newspaper were true, and either
21 it was -- from my memory -- it was either told to me that it
22 would be addressed later or that they would -- he would forward
23 it on to the appropriate committee.

24 Q Directing your attention to 3230, page 4, in the middle
25 of the first full paragraph, there is a reference to salaries

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1 being paid to Mr. Kyle Weaver and Mark Marcellin for an entire
2 year after their NRA employment ended. Why was this an issue?

3 A If they are no longer employed by the NRA, why did we
4 continue to pay them?

5 Q And how did you discover this issue?

6 A These were reported in the 990s.

7 Q And is the 990 a public document?

8 A It is.

9 Q Did you review the 990?

10 A I did.

11 Q Did you review the 9 -- how did you review the 990?

12 A After knowing that there would be a record of these
13 expenditures, or should be, on the 990s, on the reporting for
14 the NRA, you go to the source where they are published, and that
15 would be in a particular state, and look them up on their
16 website.

17 Q Did you discuss this document with any fellow board
18 members?

19 A Yes.

20 Q Who did you discuss it with?

21 A Melanie Pepper, Buz Mills, Allen West, Sean Maloney,
22 Tim McKnight. There are quite a few others.

23 Q What was the purpose of gathering all this information
24 in this memo?

25 A Well, again, going back to having fiduciary

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1 responsibility and seeing this information, these excessive
2 expenditures and things that just didn't make sense and wanting
3 to have answers, because, again, you know, it is our
4 responsibility as members -- if you're going to vote and you're
5 going to represent your organization and you're going to
6 represent the members who elected you and they ask you
7 questions, you need to know.

8 Q Were these (indicating) concerns addressed by the NRA?

9 A No.

10 Q And did you attempt to have these concerns raised
11 before NRA leadership?

12 A Yes.

13 Q And what was the response?

14 A Basically, in most cases, there wasn't a response.

15 Q In what period of time is this occurring during your
16 board service?

17 A So this is before -- I'd submitted my -- to run for
18 re-election and the -- I believe the ballots have already been
19 mailed to the members and the actual tallies would be given in
20 late April or May as to whether or not you would be reelected,
21 and I questioned on whether or not I -- I wanted to be on the
22 board.

23 Q And did you decide to run for the board again?

24 A I did.

25 Q And why was that?

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1 A I had a conversation with Joe DeBergalis --

2 (Whereupon, the reporter sought a spelling from the
3 witness of the above name.)

4 Q Ms. Schneider, I'm going to direct your attention to
5 the fifth tab of the binder that is in front of you. It is a
6 document that has the Bate -- that has that --

7 THE COURT: And just so it's clear, there was no
8 answer, actually, in the transcript to that question. After
9 she said the name "Joe DeBergalis," there's nothing in the
10 transcript.

11 MR. WANG: Okay.

12 THE COURT: So you may want to get that.

13 Q Can you finish your answer, Ms. Schneider? I'm sorry.

14 A Yes. I believe the question was: What was my
15 discussion with Joe DeBergalis?

16 Q Yes.

17 A I had discussed my concerns about all of these issues
18 that were -- that I didn't have answers to, and given the fact
19 that that I did not have answers, I did not want to serve on the
20 board. I did not want to create more exposure for myself,
21 potentially -- even, you know, sitting in this courtroom -- that
22 I would be in trouble for information that I didn't know about.
23 And Joe assured me that the problems -- that things were being
24 cleaned up, not to worry about it: "Don't worry."

25 Q Who's Joe DeBergalis?

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1 A At the time, he was the chief operating officer.

2 Q I'm going to direct your attention to the fifth tab of
3 your -- the binder that is in front of you. It's a document
4 that has been premarked PX 3231.

5 Are you there?

6 A Yes.

7 Q At the very top of this page, do you see an e-mail
8 address?

9 A I do.

10 Q Is that your e-mail address?

11 A Yes.

12 Q And are you sending this e-mail to an e-mail address
13 you understand to be Mr. Wit Davis's e-mail?

14 A Yes.

15 Q And is this a fair and accurate representation of an
16 e-mail that you would have sent to Mr. Davis on May 20th of
17 2019, with a four-page attachment?

18 A Yes.

19 Q And do you re -- did you draft the four-page attachment
20 that follows the first-page e-mail?

21 A I did.

22 MR. WANG: Your Honor, I move for the admission of
23 PX 3231.

24 MS. EISENBERG: Your Honor, the NRA objects to the
25 extent the Government were to offer it for the truth of the

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1 matter asserted, including as to any statements that on
2 their face appear to have been based on personal knowledge
3 of the testifying witness.

4 Of course, if the Government is offering it only to
5 show that the questions were asked or concerns were raised,
6 we have no objection.

7 THE COURT: Right.

8 So the same thing as the last one: So, to the
9 extent that it says, "Here's my concern from a newspaper
10 article that says A, B and C," you can take that part for
11 her raising the concern, but it's not proof of A, B and C.
12 That has to come from some direct source.

13 So it's the same thing.

14 So you can take it for the fact that these were
15 concerns that were expressed and if there are
16 firsthand-knowledge pieces of it, that's fine, as well, but
17 just to that limited extent.

18 MR. WANG: Your Honor, the only addition we would
19 have to that is, to the extent the observations are based on
20 statements from defendants, our position is, those are party
21 admissions that are not hearsay, and she will have firsthand
22 knowledge of some of the statements within this document and
23 we intend to elicit that testimony.

24 THE COURT: Okay.

25 So the second part of your first law school class

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1 is that the Hearsay Rule has a number of objections [sic].
2 So if I were to say, you know, "Mr. Smith told me X" and I'm
3 now conveying that, if Mr. Smith is a stranger to the case,
4 that's hearsay. In a lawsuit, if I'm saying that the party
5 told me something and I'm conveying to you what they said,
6 that is admissible because the party can answer for
7 themselves later on. So that's sort of a complicated mix of
8 things here, because this document has a lot of different
9 things.

10 So, to the extent -- I don't know that it has
11 anything in here, but if it has, "Person X," who is a party,
12 one of the defendants, "told me this," then the only
13 credibility question is the witness saying, "Yes, they in
14 fact told me that." And so you can take her testimony,
15 because the only witness question is: Did the person say
16 it?

17 So we'll learn hearsay together over the course of
18 six weeks, but --

19 So this document -- to the extent she's repeating
20 conversations she's had with others who are not parties or
21 things she's read from other sources, you can consider it
22 only in the sense that she's conveying these concerns.

23 And you can consider her testimony of it coming
24 from one of the defendants as her testimony that she heard
25 it. That's -- you can -- they can cross-examine about

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1 whether she heard it correctly.

2 So, with those crystal-clear clarifications, you
3 can consider this exhibit as admitted.

4 MR. WANG: Thank you, your Honor.

5 BY MR. WANG:

6 Q Ms. Schneider, I'm going to direct your attention just
7 to the cover e-mail on 3231, page 1. You sent an e-mail to
8 Mr. Davis with this document attached to it (indicating)?

9 A Yes.

10 Q Who was your intended audience?

11 A It would be to the Audit, Finance and other committees
12 that could -- would/should be responsible for providing an
13 answer.

14 Q Why were you sending this message to Mr. Davis?

15 A He had informed us that if we had additional questions
16 that had not been covered in the board meeting in Indianapolis,
17 that we could draft any questions and forward those to him and
18 he would make sure that we got answers.

19 Q When you sent these issues to Mr. Davis, did he in fact
20 ensure that you got answers?

21 A He said he would ask.

22 Q And what was the end result of that? Did -- did he --
23 did he in fact ask?

24 A I have no idea whether he in fact did ask, but I can
25 tell you, I got no answers.

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1 Q And just directing your attention to the second page of
2 the document, the fourth full paragraph that begins, "Why have
3 accounting ..." --

4 A Um-hmm.

5 Q -- did you raise this issue with the NRA's Audit,
6 Finance and other applicable committees?

7 A I did not, personally, because I was not able to attend
8 a lot of those meetings because they conflicted with my
9 committee meetings.

10 Q Well, how did you know that accounting issues were
11 presented by whistleblowers in 2018?

12 A Again, there were media reports that talked about
13 issues being raised, questions about the 990s that did not make
14 sense, and that's pretty much how I knew.

15 Q Were those presented to the full board?

16 A They were not.

17 Q And the next paragraph, just below that, that begins,
18 "When is WLP going to repay the NRA ...," do you see that
19 paragraph?

20 A I do.

21 Q Who is "WLP"?

22 A Wayne LaPierre.

23 Q And as a board member, were you told about money spent
24 on travel and clothing charged on the A/M credit card?

25 A No. We learned about that in media reporting.

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1 Q Who is "A/M" that you're referring to in this document?

2 A Ackerman McQueen, the ad agency.

3 Q Did you ever receive an answer to this question?

4 A No.

5 Q Was this concern ever resolved for you, as a member of
6 the board of directors?

7 A No.

8 Q Just directing your attention to the ninth paragraph of
9 this same page, page 2 of PX 3231, the paragraph begins: "How
10 much compensation is board member Marion Hammer receiving,
11 directly and indirectly ..." Was this question ever answered?

12 A No. The only way we found it was through looking at
13 the 990s.

14 Q Was this issue ever brought to the full board's
15 attention?

16 A I don't know if it was ever brought to the full board's
17 attention; but, again, I had it submitted to the Audit, Finance
18 Committees and any other one, and they were never answered.

19 Q I'm going to direct your attention to 3231, the top
20 par -- the first paragraph of page 4. Here you begin the
21 paragraph with: "There needs to be an end to the secret and
22 predetermined selection of those who will serve as committee
23 chairmen and co-chairmen."

24 Do you see this paragraph?

25 A I do.

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1 Q What led you to include this as an issue you were
2 raising with Audit and Finance Committees of the NRA?

3 A There were people who I believed were not qualified to
4 serve on those committees, and the way this transpired was:
5 Before nominations were made from the floor during the board
6 meeting, you would be given a -- a piece of paper and either
7 told how to vote or to nominate -- and/or to nominate -- an
8 individual from the floor; that it was your job to go up to the
9 microphone and nominate that specific person.

10 Q Who would give you a piece of paper with that
11 information on it?

12 A I believe, the first time I received one was from
13 Millie Hallow, and then subsequent ones were from Pete Brownell.

14 Q Who's Millie Hallow?

15 A She is Wayne's executive assistant.

16 Q And you also mentioned Pete Brownell. Who's Pete
17 Brownell?

18 A He was the first vice president of the board of
19 directors.

20 Q Just directing your attention to the third sentence
21 (indicating) of the paragraph, "The Nominating Committee,
22 especially, should have an equal rotation of eligible board
23 members and there shall never be an inferred, implied or direct
24 dictation for support of a candidate or slate of candidates from
25 any NRA officer or NRA employee."

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1 From your experience on the board, is that how the
2 nominating committee performed its duties?

3 A That was my experience, yes.

4 Q Just clarifying your answer, Ms. Schneider: This
5 statement (indicating), this is -- is this statement how you
6 believed the nominating committee was performing --

7 A Oh.

8 Q -- or is this statement how you believed the nominating
9 committee should perform?

10 A That is how the nominating committee should perform.

11 Q And from your firsthand experience, how did the
12 nominating committee actually perform?

13 A There were specific people that were chosen. It was
14 not a rotation of board members. It was what I would be -- what
15 I would perceive as personal favorites of Wayne.

16 Q I'm going to direct your attention to the second tab of
17 your binder and it -- this -- the second tab of your document is
18 a one-page document that has been premarked PX 1594.

19 Are you on the second tab?

20 A I am.

21 Q Does this document look familiar to you?

22 A Yes.

23 Q What is it?

24 A It is a text exchange with Millie Hallow, telling me
25 how to -- to -- to take the list, and I asked her, why, or when,

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1 was I supposed to nominate this person?

2 Q At the very top of the document, do you see a phone
3 number next to your name?

4 A Yes.

5 Q Is that a phone number you recognize to be one of your
6 own?

7 A Yes.

8 Q And at the top of the page, there is also a phone
9 number next to the name "Millie Hallow." Is that a phone number
10 you recognize to be Ms. Hallow's phone number?

11 A Yes.

12 Q There's also an e-mail address there, next -- that's --
13 which has the name "Mildred Hallow" next to it. Is that an
14 e-mail you understand to be Ms. Hallow's e-mail?

15 A Yes.

16 Q Is this a fair and accurate copy of text messages that
17 you exchanged with Ms. Hallow on May 23rd, 2016?

18 A Yes.

19 Q And did you regularly conduct NRA business with NRA
20 staff via text message?

21 A Yes.

22 Q And do you recall sending and receiving these text
23 messages in May of 2016?

24 A Yes.

25 MR. WANG: Your Honor, I move to admit PX 1594.

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1 MS. EISENBERG: No objection.

2 THE COURT: Counsel, before you put it up there
3 (indicating), are you going to have it with the numbers on
4 it?

5 MR. WANG: I am happy to have it with the numbers
6 and then redact the information in the record.

7 MS. STERN: He can hide them.

8 MR. WANG: He can hide them. Great.

9 MS. CONNELL: Your Honor, we'll redact them now and
10 we'll redact the admitted exhibit. We used the numbers for
11 authentication. It's in a number of locations, so it's not
12 going to be -- not going to be short.

13 THE COURT: But once you put it up on the screen,
14 there are a lot of people who are going to see it. So I
15 think it would be, probably, consistent with privacy
16 concerns, better to take the moment to -- two minutes.

17 MR. WANG: Jesse, can you remove those terms?

18 THE TECHNICIAN: Just give me a minute.

19 BY MR. WANG:

20 Q While we're waiting for the document to come on-screen:
21 What did you understand was the message that Ms. Hallow was
22 intending to convey by this text message?

23 A That, "Get yourself up and there make that nomination
24 as I told you to do it."

25 Q And did you follow that instruction?

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1 A I was brand-new; I did.

2 Q Why did you follow it?

3 A I thought that this was the way it was supposed to
4 work.

5 Q What do you understand -- do --

6 We've talked about Millie Hallow. Do you know who that
7 is?

8 A I do.

9 Q What did you understand to be Ms. Hallow's role?

10 A She basically implemented the wishes of Wayne.

11 THE COURT: One -- if you're, sort of, stalling for
12 time for this to -- you can probably just ask her to --
13 this -- this is four sentences long; you can probably just
14 ask her to read it into the record -- the back-and-forth --
15 and that will probably cover it.

16 MR. WANG: Sure.

17 Q Ms. Schneider --

18 THE COURT: So I'm admitting the document into
19 evidence, so then you can ask that question.

20 MR. WANG: Thank you, your Honor.

21 Q Ms. Schneider, what was the first question that you
22 asked Ms. Hallow?

23 A At 11:13, I asked her: "When am I to use the list?"

24 Q And what was the second question?

25 A You know, and I got no response for four minutes and I

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1 texted again and asked: "Now?", with a question.

2 Q What was Ms. Hallow's response?

3 A Shortly thereafter, she said: "Yes, you have been
4 assigned someone to nominate."

5 THE COURT: "Have you" -- I'm sorry.

6 Do you want to read that one more time?

7 Q Can you read that message one more time? What was her
8 response?

9 A Her response was: "Yes, you have been assigned someone
10 to nominate."

11 Q You're just missing a word (indicating).

12 A "Yes, you" --

13 THE COURT: It starts with "Have."

14 THE WITNESS: Oh. Okay. Sorry.

15 "Yes. Have you been assigned someone to nominate?"

16 Okay.

17 Q And what's the next message that Ms. Hallow sends to
18 you?

19 A "The sheet is how you should vote."

20 Q And what is your response to that?

21 A "Should have known you had it all under control."

22 Q And which emoji are those three emojis that follow?

23 A I little smiley, happy face, kind of.

24 Q What did you mean when you said, "Should have known you
25 had it all under control"?

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1 A Millie scurried around and made sure everyone was in
2 their place, everything was proceeding the way it was supposed
3 to. I mean, she was the taskmaster and enforcer.

4 MR. WANG: Jesse, we don't need that anymore. If
5 you do have it, feel free to put it up, but I think we're
6 done with that.

7 THE COURT: It is still worth doing --

8 MR. WANG: Yeah.

9 THE COURT: -- because the document -- the
10 exhibit -- is going to be shown to the jury in redacted
11 form.

12 So, if you want to see this document later on in
13 your deliberations ...

14 (Image displayed.)

15 THE COURT: Or you can just look at it now, on the
16 screen.

17 MR. WANG: Thank you, Jesse.

18 BY MR. WANG:

19 Q Did this process ever discontinue?

20 A Yes.

21 Q Do you have an understanding of why it discontinued?

22 A Yes.

23 Q And why did it discontinue?

24 A Pete was -- stepped down and resigned, and I -- no one
25 followed up with me after that.

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1 Q At what -- do you recall around what year that was?

2 A I'm not positive.

3 Q Ms. Hallow [sic], have you ever been on an NRA
4 committee?

5 MS. EISENBERG: "Hallow"?

6 Q Ms. Schneider. I'm sorry.

7 A Yes.

8 Q Do you know how committee assignments are determined at
9 the NRA?

10 A You put -- you are given the option of selecting your
11 own and it is the president's approval to make -- fulfill your
12 recommend -- or your wishes, or not.

13 THE COURT: Counsel, just a heads-up: You have
14 about a ten-minute warning before the day's end.

15 MR. WANG: Thank you, your Honor. I think I'll be
16 able to wrap up before then.

17 Q Did you -- have you previously been on committees?

18 A Yes.

19 Q How did you receive those committee assignments?

20 A I received a letter from the president, telling me --
21 informing me -- that I had been selected for the following
22 committees.

23 Q In 2019, did you ask for committee assignments?

24 A I did.

25 Q Did you receive any?

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1 A No.

2 Q How did you discover that you had been denied committee
3 assignments?

4 A I received a letter from President Carolyn Meadows
5 informing me that the following committees had been assigned to
6 me; however, there were no committees assigned and/or listed.

7 Q Who was Carolyn Meadows?

8 A She was the new, incoming president of the NRA.

9 Q I'm going to direct your attention to tab 6 of your
10 binder, which is document PX 5028.

11 Do you see this document?

12 A Yes.

13 Q Is that a -- on the very first line of the document, is
14 that an e-mail you recognize --

15 A Yes.

16 Q -- to be your e-mail?

17 A Yes.

18 Q And it appears you're e-mailing yourself something,
19 because your e-mail is also in the "To:" line. Is that -- do
20 you see that?

21 A Yes.

22 Q And turning to the second page of the document, is this
23 a letter -- did you receive this (indicating)?

24 A Yes.

25 Q And is that (indicating) your handwriting on the bottom

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1 of the document?

2 A Yes.

3 Q Is this a fair and accurate representation of a letter
4 that was sent to you by Ms. Meadows and then you signed it and
5 returned it to the NRA with a handwritten message?

6 A Yes.

7 MR. WANG: Your Honor, I'm asking for the admission
8 of PX 5028.

9 THE COURT: Do you want to identify the second page
10 as a photograph that she took?

11 Q Ms. Schneider, is the second page a photograph of a
12 document?

13 A Yes.

14 Q And did you e-mail it to yourself?

15 A I did.

16 Q And what was the purpose of that e-mail?

17 A So I would have a record of the letter.

18 MR. WANG: Move to admit 5028.

19 THE COURT: Do you want to ask who took the
20 photograph?

21 Q Who took this photograph, Ms. Schneider?

22 A I did.

23 THE COURT: Okay.

24 Any objection?

25 MS. EISENBERG: No objection, your Honor.

ALAN F. BOWIN, CSR, RMR, CRR

1 THE COURT: It's admitted.

2 (Image displayed.)

3 MR. WANG: Thank you, your Honor.

4 BY MR. WANG:

5 Q Ms. Schneider, do you have an understanding of why you
6 did not receive committee assignments?

7 A Yes.

8 Q What is that understanding?

9 A I spoke out and I was retaliated against for asking
10 questions that they didn't want question -- asked.

11 Q I'm going to direct your attention now to tab 3 of your
12 binder, a document that has been marked PX 2095. It is a two-
13 page document.

14 Do you see this document?

15 A I do.

16 (Continued on next page.)

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ALAN F. BOWIN, CSR, RMR, CRR

Direct-Schneider-Wang

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1 Q At the very top of the document this document indicates
2 there is an e-mail from you and it is being sent to Mr. Frazer.
3 Do you see that?

4 A Yes.

5 Q At the very bottom of the document there is a message
6 from Ms. Hammer, NRA past president. Do you see that?

7 A (Examining). I do.

8 Q Do you recall receiving this message from Ms. Hammer?

9 A I do.

10 Q Do you recall sending an e-mail forwarding Ms. Hammer's
11 message to Mr. Frazer on July 14th of 2019?

12 A Yes.

13 Q Is this -- is this document a fair and accurate
14 representation of an e-mail you exchanged with Mr. Frazer
15 forwarding a document from Ms. Hammer on July 14th, 2019?

16 A Yes.

17 MR. WANG: I move to admit PX 2095.

18 MS. EISENBERG: No objection.

19 THE COURT: It's admitted.

20 Q Do you recall receiving this message from Ms. Hammer?

21 A I do.

22 Q What was your interpretation of the message Ms. Hammer
23 was conveying to you?

24 A How dare you question authority. How dare you ask
25 questions at all. And you're questioning why you didn't get

LAS

Direct-Schneider-Wang

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1 committee assignments.

2 Q I'm going to direct your attention to the third full
3 paragraph of page 2 of PX 2095, that begins "Some board members
4 were".

5 A Uh-huh.

6 Q This paragraph begins, "Some board members were in fact
7 stripped of committee assignments." Was it your interpretation
8 from Ms. Hammer's message that you were one of the board members
9 stripped of your committee assignments?

10 A Yes.

11 Q After you didn't receive committee assignments and your
12 questions to Mr. Davis remained unanswered, what did you do
13 next?

14 A Based on the date, we hired our own internal -- our own
15 counsel to represent us, three of us.

16 Q And without revealing any advice that that attorney may
17 have provided to you, what did you believe your options were?

18 A We basically had three options. We could stay on the
19 board and potentially be removed from the board. We could stay
20 on the board and potentially draw a personal lawsuit. And the
21 last one was we could do a noisy withdrawal and resign from the
22 board.

23 Q I'm going to direct your attention now to the first tab
24 of your binder, a document that's been marked PX 590. There is
25 a two page e-mail and then a two page attachment to this.

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1 A Okay.

2 Q Does this document look familiar to you?

3 A (Examining). Yes.

4 Q At the very top of this document the e-mail is from
5 Timothy Knight. Do you know who Timmy Knight is?

6 A Yes.

7 Q Who is he?

8 A He was my fellow board member that we hired counsel
9 together and ultimately resigned together.

10 Q Is that your e-mail address in the c.c. --

11 A Yes.

12 Q -- column? And were you sending this e-mail to
13 Mr. Frazer?

14 A I believe that Tim sent it to Mr. Frazer.

15 Q And the title of the attachment is "NRA Board
16 Resignation"?

17 A Yes.

18 Q Do you recall, did you take part in drafting this
19 resignation letter?

20 A Yes.

21 Q And is this e-mail a fair and accurate representation
22 of an e-mail you were carbon copied on between Mr. Knight and
23 Mr. Frazer?

24 A Yes.

25 MR. WANG: I move to admit PX 590.

LAS

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1 THE COURT: Any objection?

2 MS. EISENBERG: It's hearsay. It doesn't represent
3 the views of the two other individuals. But no objection to
4 the extent it's offered for the purpose of showing what was
5 stated in the resignation letter.

6 THE COURT: It's admitted.

7 Q Ms. Schneider, what is the attachment to PX 590?

8 A This is our actual resignation letter addressed to
9 Carolyn Meadows, John Frazer and the board of directors of the
10 NRA.

11 Q Were you trying to send a message through the
12 resignation letter?

13 A Yes.

14 Q What was that message?

15 A That we asked questions. We tried to fulfill our
16 obligation and our fiduciary responsibility. And in return we
17 were retaliated against. And if we continued or persisted we
18 would personally draw a lawsuit which would be costing us tens
19 of thousands of dollars to defend and that instead we choose to
20 resign.

21 Q Ms. Schneider, did you previously donate to the NRA?

22 A I did.

23 Q Do you still donate to the NRA today?

24 A No.

25 Q Why not?

LAS

Direct-Schneider-Wang

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1 A I don't want my money wasted on frivolous lawsuits,
2 like just wasted.

3 Q Based on your experience on the board, Ms. Schneider,
4 do you have a view as to whether Mr. LaPierre has been an
5 effective NRA EBP?

6 A I do.

7 Q And what is that view?

8 A I do not believe he has been.

9 Q Why not?

10 A Instead of fighting for the mission of the NRA, which
11 is to preserve our Second Amendment rights, he has raised money
12 and used those for his personal benefit.

13 Q Based on your experience on the board, do you have a
14 view as to whether Mr. Frazer has been an effective NRA general
15 counsel and secretary?

16 A Yes. Yes.

17 Q What is that view?

18 A I believe he's a very nice man, but I believe he has
19 been -- he has not fulfilled his duties as general counsel or
20 secretary.

21 Q Thank you for your testimony, Ms. Schneider. I have no
22 further questions.

23 A Thank you.

24 THE COURT: Okay. We would now turn to cross
25 examination. We're pretty much at the end of our day. Do

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1 you want to pick it up fresh in the morning?

2 MS. EISENBERG: Certainly, your Honor.

3 THE COURT: Okay. So, we're going to break for the
4 day and continue with cross examination in the morning. I
5 just would let you know that effectively you're still on the
6 stand and in the middle of your testimony. So you should
7 not discuss your testimony with anyone, including the
8 lawyers in this case. And so basically just keep it
9 together until tomorrow morning. We meet at 9:30.

10 THE WITNESS: Thank you, your Honor.

11 THE COURT: Thank you. And the jury, I'll release
12 you tonight with the same instructions. Don't talk about
13 the case. Don't research the case. And I will see you
14 tomorrow at 9:30. Thank you very much. We'll let the jury
15 leave first.

16 THE COURT OFFICER: All rise. Jury exiting.

17 (Whereupon the jury panel departed the courtroom.)

18 THE COURT: Thank you. Ms. Schneider, you can step
19 down.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 THE COURT OFFICER: Member of the audience, please
23 remain seated for a moment.

24 THE COURT: Okay. I think we're off the record for
25 the day.

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1 MS. CONNELL: So, thank you for doing the
2 designations for Mr. Tedrick since he cannot appear. Since
3 he's going to be appearing through his audio taped
4 deposition, there are a number of documents that we asked
5 him about in his deposition and weren't admitted. I wanted
6 to make sure that we had told the defendants which ones we
7 wanted to admit. I just want to confirm the process to make
8 sure it goes smoothly.

9 THE COURT: Well, maybe I didn't -- One thing I was
10 not able to fully do was I didn't get the exhibits along
11 with the transcript at least I didn't in what I've received.
12 Maybe I have it. But I was just looking on Sunday at the
13 transcript by itself. I didn't see the exhibits. If they
14 are there, I mean I know I have them somewhere. I just
15 didn't have them at home where I was. So, we'll have to,
16 right before the tape is played, we'll have a short session
17 where I'm sure I can make judgments on these relatively
18 quickly. So, I'll have to just do it that way. Is that
19 going to be done tomorrow?

20 MS. CONNELL: I think it might be.

21 THE COURT: All right. I think we just need to
22 carve out 15 minutes or something for you to give me the
23 documents, and I'll see if there are any objections.
24 Obviously if there are no objections, that would make that
25 go faster. So, you should confer and only limit what we

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1 have to talk about to those documents as to which there are
2 objections.

3 MS. CONNELL: Yes, your Honor. We'll recirculate
4 the exhibits to you and to all parties again tonight. I
5 know. I'm sorry. And I jut again, your Honor --

6 THE COURT: Look I'm not going to look at them all.
7 I want to look at ones that are disputes about. So I can do
8 it pretty quickly. Try to -- See if you can work them out.
9 You know, I think you've probably seen the lay of the land
10 as to how I'm going to rule on most of these, most of the
11 internal documents or business records just in the ordinary
12 course, just regular finance employees. If it's just
13 e-mails back and forth I don't see what the issue should be.
14 But we'll do it quickly. So we'll give the jury a break at
15 the time before you're going to do the audio. While they
16 are taking a break, we will stay at work. And their usual
17 time for a break is about as long as I think we'll need to
18 deal with the document issues.

19 MS. CONNELL: Thank you, your Honor. One final
20 thing. I truly apologize and thank you for going through
21 these voluminous deposition designations on an expedited
22 basis, since these witnesses are not appearing. We
23 appreciate that. I just wanted to ask you about
24 Ms. Meadows, which I could barely spit out. I'm sorry.

25 THE COURT: Look, it's probably six hours of work

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1 for me to do it. I don't have that between now and tomorrow
2 morning. I've asked my law clerk to start getting a head
3 start on all of that. We'll do the best we can. If you
4 have to take them in a different order, you'll have to do it
5 in a different order. There is not a witness involved here.
6 We're trying to cover as many things as we can.

7 MS. CONNELL: Absolutely, your Honor.

8 THE COURT: It's on our list, let's put it that
9 way. All right. See you tomorrow.

10 MS. CONNELL: Thank you.

11 THE COURT: Off the record.

12 (Whereupon the trial was adjourned to January 10,
13 2024 at 9:30 a.m.)

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

-----X
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against- Index No. 451625/20

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

Defendants.

-----X

CONTINUED JURY TRIAL

60 Centre Street
New York, New York
January 10, 2024

B E F O R E: HONORABLE JOEL M. COHEN,
Supreme Court Justice

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LORI SACCO
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1 THE COURT: Okay. Why don't we get started. So,
2 good morning everyone. I do want to start by saying I know
3 everybody is working extremely hard, and I don't mean the
4 following to be a complaint really, but I think we're going
5 to have to work on our cycle time in terms of when things
6 are submitted to me for review the next morning. I did
7 receive a friendly e-mail at midnight with a package of
8 documents and the proposed demonstrative. And while I
9 occasionally miss my time in private practice, that was part
10 of my job, I don't miss it anymore. Anyway, I was able to
11 get through all of it. I can't promise you that I'm always
12 going to be able to do that in terms of what I have to do in
13 the morning and other things. So, I think what I would
14 suggest is you may have to think about exchanging things
15 sooner so that any objections can be bubbled up to me sooner
16 so I can actually use my law clerk to actually do some of
17 the work which I can't do between midnight and 8:00 in the
18 morning. Again, the folks working on this, first of all,
19 horrifying to me how hard people are working, but I know
20 that's life on trial. I hope we can find a way to make it a
21 little more reasonable.

22 So, as I understand it there are two agenda items
23 that the State wants me to take up, which I'm ready to do.
24 Then we'll see if anybody else has anything. We'll have to
25 get to the jury as soon as we can. Keep things moving.

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1 So the first thing is the Tenenbaum demonstrative
2 slides. So, do you have these where they can be put up on
3 the screen?

4 MR. THOMPSON: Yes, your Honor.

5 THE COURT: I'll just cut to it. I think I
6 understand what the issues are. I've gone back and re-read
7 my in limine motion and decision. I think the objection to
8 the slide nine is well taken in part. The ruling basically
9 was the witness shouldn't be giving legal conclusions about,
10 I'm talking about whether the defendants did or did not
11 breach fiduciary duties. But instead I followed some case
12 law from the Southern District where the -- giving the
13 jurors a sense of best practices in the business is
14 something that could be helpful because it's not a business
15 everybody knows about. So, my suggestion or at least one
16 way to deal with it, I think the only issue I have is slide
17 nine is the title, which right now reads "How Nonprofit
18 Officers and Directors Comply With Fiduciary Duties", which
19 to me, you know, suggests a bit more of a legal conclusion
20 than I had in mind with my ruling. If you want to change it
21 to something like best or common practices, that's I think
22 fine. Again, the actual slide itself, I don't know what
23 you're going to ask exactly. The point of the slide is that
24 in this guy's experience, dealing with however many
25 nonprofits, these are the kinds of things he sees nonprofit

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1 officers and directors do. I literally see it being edited
2 in front of me. But the -- that's the way I think it has to
3 be pitched as opposed to, I don't want this guy who is a
4 lawyer I think getting up saying well, I know what fiduciary
5 duties are. Here's what you have to do to meet them.
6 That's the line that I drew. So, the change there to me is,
7 I mean, I didn't that you had to actually say best work
8 common practices, whatever you want. Does that address the
9 concern the defendants had.

10 MR. WERBNER: Yes, your Honor. It says "best
11 practices".

12 THE COURT: Okay. Now it's changing. Industry
13 standards was something that I was also a little
14 uncomfortable with, because this is not like a medical
15 malpractice case where you're judging against some standard.
16 Best common practices. We got them to no objection. And
17 you got me to no objection. I would kind of quit while
18 you're ahead.

19 The other objection to slide ten I didn't fully
20 understand not -- well, because I didn't give the defendants
21 yet a chance to explain what their objection was. I didn't
22 understand it.

23 MR. CORRELL: Your Honor, my concern was that we
24 were swaying into federal tax law both law and federal tax
25 area. I know you made a ruling about not getting into IRS

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1 regs. My concern is that it appears to be veering into an
2 area that you had ruled was sort of out of bound, IRS regs,
3 revocation of tax exempt status. There is no claim for that
4 in this -- in this complaint.

5 THE COURT: Well, it's slightly different than the
6 one issue that we did talk about a lot, which was the
7 portion of the excess benefits relating to travel. But
8 agreed. So, just from the plaintiffs, I don't really recall
9 what this is and what you're intending to do. Is he going
10 to get into tax compliance?

11 MR. THOMPSON: Excess benefits is something that --
12 that has been part of our complaint and it's been disclosed
13 by the --

14 THE COURT: Excess benefits under New York law or
15 excess benefits under tax law?

16 MR. THOMPSON: Well, they are excess benefits under
17 tax law, but that is also relevant to the breaches of
18 fiduciary duty under New York law, specifically the duty of
19 obedience, which requires that you comply with the law and
20 the internal policies of the organization and Mr. Tenenbaum
21 is going to talk about the risks that nonprofits face when
22 they -- like the risk of losing their tax exempt status, and
23 that's something that directors of organizations need to be
24 concerned about and to make sure that they are diligently
25 complying with.

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1 THE COURT: Well but are you expecting this witness
2 to come in and explain the IRS angle to all of that, that
3 here's what the Internal Revenue Code requires, and here's
4 how you breach that and all of that? Is that what this guy
5 is going to do?

6 MR. THOMPSON: He's not going to say how they
7 breached it or anything of that nature. We do want him to
8 explain what an excess benefit is because it's a term of art
9 that's not clear to the jury.

10 THE COURT: Under what?

11 MR. THOMPSON: The IRS, the tax code.

12 THE COURT: Well, so, are you envisioning that the
13 jury is going to make a determination as to whether any of
14 the things that are alleged here constitute excess benefits
15 under the tax code?

16 MR. THOMPSON: No.

17 THE COURT: What does this add?

18 MR. THOMPSON: What it adds is an excess benefit is
19 also going to be private inurement for purposes of New York
20 law and waste. So we need them to understand that an excess
21 benefit under the tax code is not just under the tax code,
22 it is also a problem for New York law.

23 THE COURT: Is this -- is this trying to connect up
24 what the 990s are?

25 MR. THOMPSON: Yes, your Honor.

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1 THE COURT: Okay. So, I'm okay with him explaining
2 what the 990s are and how they fit into what not-for-profit
3 companies do. Those are documents that are going to come in
4 and it's part of understanding the, you know, the
5 nomenclature of this area. So, I think if it's what it's
6 limited to is providing background to the jury as to what
7 these 990s are and if that's what this is, but I guess I'm
8 more concerned whether you're going to have -- this slide is
9 an introduction to him explaining the tax law --

10 MR. THOMPSON: Okay. Understood, your Honor.

11 THE COURT: -- which I don't want.

12 MR. THOMPSON: Understood.

13 THE COURT: At least I don't think you need it,
14 'cause that's not the statute that we're talking about. You
15 know, I'm not familiar with any particular -- Look,
16 obviously losing tax exempt status is the kind of thing that
17 a nonprofit board has to think about. I understand that
18 point. But is that the link here?

19 MR. THOMPSON: Yes, your Honor. As we heard in the
20 opening yesterday, the NRA is distancing itself from the
21 individual defendants and is focusing on the board and what
22 the board does or does not do. We need Mr. Tenenbaum to
23 explain what boards typically do or do not do, and one of
24 those things is make sure they are not putting themselves at
25 risk of losing that tax exempt status.

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1 THE COURT: I think -- By the way, this question
2 has been lingering in my mind. As a 501(c)(4), part of the
3 NRA, I heard some arguments during the openings that made me
4 wonder is that also tax exempt? Their tax exempt as a
5 social welfare organization.

6 MR. THOMPSON: They do not have to pay taxes on
7 their profits but donations are not tax exempt.

8 THE COURT: So, it's partially tax exempt. It's
9 tax exempt from their perspective but not from the donors'
10 perspective.

11 MR. THOMPSON: Correct, your Honor.

12 THE COURT: So it's still a tax exemption. It's
13 not as if it's -- Okay.

14 MR. CORRELL: Your Honor, if I made add a point to
15 that. The question of revocation of tax exempt status is
16 really something totally different. The IRS decides on
17 that, and the intermediate sanctions were developed so that
18 the IRS would have the tools it needed to deal with
19 situations that were short of justifying the nuclear option,
20 which was pulling someone's tax exempt status. So, the
21 revocation of tax exempt status is not in the complaint and
22 it's inappropriate to put that before the jury in this case.

23 THE COURT: Yeah. I think it's going to be a
24 little confusing honestly. If you're going to raise this
25 topic of revocation of tax exempt status, but that's not

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1 going to be in front of the jury as a separate item. In
2 other words, you know, we got the fiduciary duty to think
3 about, the New York statute four provisions to think about.
4 I'm a little concerned that, you know, raising this sort of
5 tax issue is going to be sort of confusing and not actually
6 tied together with anything. Again other than explaining
7 what the 990s are and why they are filled out.

8 MR. THOMPSON: Your Honor, proper administration of
9 the NRA is the primary issue with respect to the NRA.
10 Proper administration means don't do things that put your
11 tax exempt status at risk.

12 THE COURT: I understand that, but we're not
13 actually putting that issue in front, we're not, because at
14 least I have not understood the complaints to be arguing
15 this and haven't thought that's the way this case was going
16 to be presented to the jury. Since you're not actually
17 going to say that an element of the claim is conduct A, B
18 and C puts at issue their tax exempt status, which to do
19 that you will then have to bring in tax law issues, which
20 we're not going to get into. If you're going to raise this
21 issue but not tie it up with, you know, tax law analysis,
22 which I don't think we're doing, I don't know where this
23 gets you.

24 MR. THOMPSON: The other angle, your Honor, with
25 respect to excess benefit is an excess benefit is a private

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1 benefit for purposes of both the tax code as well as New
2 York law. And so explaining that, what an excess benefit
3 means, is that they got more money than they deserved is an
4 important term that the jury needs to understand.

5 THE COURT: Independent of the tax law
6 implications.

7 MR. THOMPSON: Correct.

8 THE COURT: Right. That part is I think part of
9 his general discussion here, but he's not here as a tax
10 expert. He's not here to give an opinion as to whether what
11 happened here would or could result in a revocation of tax
12 exempt status. So, I would tread very carefully here. I
13 mean, I think he can talk generally among the things they
14 think about is maintaining their tax exempt status, but he
15 didn't I don't think disclose an opinion, did he, that, you
16 know, they would lose their tax exempt status or did he?

17 MR. THOMPSON: Oh, I think he did, your Honor, yes.
18 That was in his initial report.

19 THE COURT: All right. I don't think I, in my
20 denying part granting part, I really was limiting him to
21 best practices, explaining the background of not for profits
22 and I was excluding his legal conclusions part of it. So --
23 Yeah. Especially this penalty with the excess penalty taxes
24 and excess benefits, that gets into the regulation that we
25 have talked about at some length that I don't want to sort

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1 of get. I would like to get -- I would like this not to be
2 part of this. I just -- We're not going -- If we're not
3 going to go the whole way, and we're not, because I already
4 ruled this out, this I think will add more confusion than
5 anything else.

6 MR. THOMPSON: Your Honor --

7 THE COURT: I'll sustain their objection to slide
8 ten.

9 MR. CORRELL: Thank you, your Honor.

10 THE COURT: All right. That takes care of Tedrick,
11 yes? Ten. Sorry. That takes care of the slide deck, yes.
12 I'm seeing nodding.

13 MR. CORRELL: Yes, your Honor.

14 THE COURT: Thank you. All right. I've looked at
15 the exhibits here, and obviously I only have sort of stick
16 figures for the objections, but I think I understand what
17 they all are. So, I want to go through them one at a time.
18 And I'll tell you what my thoughts are and if people want to
19 argue. I do want to get to the jury. So I have spent time
20 looking at them.

21 With respect to PX 519, I'm going to sustain that
22 objection. This is one whereas I understand it, you know,
23 the body of it is a management letter prepared by Aronson.
24 My point is that this witness is not a vehicle to just
25 introduce that, and I think it's -- it may be a bit

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1 unrealistic to say well, you know, this is just to show that
2 a review occurred because, you know, if you put this report
3 in front of the jury and they then have it, it's -- I think
4 there is a significant risk they will review it for the
5 truth of the matter asserted. Now my question is, is do you
6 have Aronson coming in who can sort of testify as to what
7 this is and how it was prepared in the ordinary course and
8 all of that stuff?

9 MR. THOMPSON: Aronson is on the defendants'
10 witness list.

11 THE COURT: Right. If you can get this in that
12 way. This witness seems to be a particularly I mean
13 unfortunately in part because he's not here to answer any
14 questions about it, but just based on my reading of the
15 transcript, he can't really lay a foundation for what it is.
16 Obviously he can't testify whether this is a business record
17 prepared by Aronson in the ordinary course or whatever. So
18 I think -- Anyway, so I'm going to sustain that. You can
19 keep the testimony from Tedrick that a review was done, but
20 I don't think we can dump this document into evidence yet.
21 Now it may well be admissible with somebody who can testify
22 as to, you know, who prepared it and how it was done and
23 explain the foundation for it.

24 Next is PX 01915, which is a big spreadsheet with
25 flight invoices. What I have here is that it's an objection

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1 to hearsay and response that to seek conditional admission
2 subject to laying a foundation with Ms. Rowling later on.
3 My lean is to sustain the objection at this point only
4 because it will just be shown to the jury. I mean, I
5 suspect if you're telling me this is what will happen, that
6 the person who is going to testify will explain what the
7 spreadsheet is, it probably will be admissible, assuming
8 it's prepared by the NRA and somebody can tell me what it
9 is. But right now with just a two dimensional audio
10 transcript, I've got no basis to admit it. So, it may well
11 be admissible, but I sustain that I'm not going to admit it
12 just with this transcript yet.

13 The next one PX 1396, I'm going to overrule that.
14 These are all internal NRA communications. All party
15 statements, including even the within the -- this -- this
16 maybe applies more to a later one, even the internal
17 conversations about what people talked about, others in the
18 NRA, each level of the hearsay is still not inadmissible
19 because it's still all within the defendant group.

20 (Continue on the next page.)
21
22
23
24
25

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1 THE COURT: And the invoice itself, which is the
2 first e-mail, is not -- I see it being offered for the
3 truth. It's just offered for the fact that it's an invoice.

4 So I would overrule that objection.

5 This one seems to me more, you know, obviously
6 admissible. And I believe Mr. Tedrick is also on the chain
7 of -- in the e-mail. So it's not just some document
8 dropping out of the sky.

9 PX 831, which is an e-mail chain between NRA --
10 among NRA employees regarding an invoice from a vendor, it's
11 similar. The e-mail from the vendor is not being offered
12 for the truth of anything in it. It's just sort of a chatty
13 transmission letter and it's just in there to show that the
14 invoice came in, and the rest of it is an internal
15 communication about the invoice. So I don't -- I don't see
16 an objection to that. The -- you know, the rest of the
17 document is just internal NRA communications and business
18 records.

19 The next one is PX 1491, which is another e-mail
20 chain among NRA employees. It is, strictly speaking, as the
21 objection suggests -- it has hearsay within hearsay, but all
22 of the levels of hearsay are covered by the same, whether
23 you call it exception or exemption, in that they're all
24 about communications among NRA employees.

25 So, I mean, it's not the most probative thing in

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1 the world, when you start talking about what somebody told
2 you that somebody else said to somebody else. I don't think
3 I -- I don't think it's inadmissible on that ground, in
4 these circumstances.

5 And the final one is PX-1907, which is a long
6 American Express transaction spreadsheet, and this is one
7 that the witness does talk about and engage with, and it's
8 his American Express -- I don't know -- bill or invoice or
9 something. So my lean is to overrule it.

10 I think it -- it sounds like the objection is that
11 it's sort of overbroad, that it includes a bunch of entries
12 that are not covered in the testimony. But, you know, I
13 lean to agree that, you know, if it a business record,
14 clearly, the American Express -- the use of the American
15 Express Card is a relevant issue in the case. And there's
16 no particular reason to get rid of the rest of it, even
17 though the testimony only covers part of it. And since he
18 does, in my view, set the foundation for it, I think it's
19 admissible.

20 So I have, very quickly, glided over a bunch of
21 different objections here, which I think I understand. If
22 you think I have missed something, on the defense side, let
23 me know.

24 Nope? Everybody's -- I mean, I wouldn't say
25 "happy," but they under -- I understood the objections.

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1 So those are my rulings on those; call it the
2 "Speed Round."

3 So you can go ahead and start cutting up the
4 transcript and getting it ready.

5 So one other thing: You know, I think I told you,
6 weeks and months ago, that I was going to continually warn
7 you about timing, or not "warn" but just make sure
8 everybody's got their eye on the ball here. My view toward
9 ending the trial, and telling the jury that the trial will
10 be over, February 16th suggests to me that we should be
11 aiming for closing arguments on the 15th, so that on the
12 16th there's nothing more to do other than my instructions
13 and the jury's deliberations. Now, obviously, they may
14 deliberate more than a day; that's up to them. But I think
15 I did not -- I do not mean that -- and I want to make it
16 clear -- that, you know, the last word of the last closing
17 argument happens by the end of the day on the 16th and
18 everything is fine.

19 I will note again, which I've noted also:
20 Everything that's gone on in this case has simplified it,
21 meaning we now have one defendant who's settled. So, you
22 know, at each level, you know, whatever our estimates were,
23 logically, certainly, it shouldn't be expanding. So I don't
24 think -- again, since everybody's had notice of this for a
25 long time, that's my expectation.

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1 Now, obviously, February 15th is more than a month
2 away, so there's still plenty time for everybody to plan and
3 be ready. So I don't expect to see surprised faces as we
4 get toward that last part of the process. I really meant
5 it.

6 So I also am -- rather than using my handy chess
7 clock, I'd like to depend on the parties to keep track of
8 the relative use of time. It hasn't been complicated so
9 far. The first day was, basically -- that first afternoon
10 was all the plaintiff's opening statement; the first morning
11 after that was all the defendants' opening statements. So
12 that was pretty easy. And then the rest of yesterday was --
13 you know, keeping track of the amount of time on direct and
14 cross should be pretty straightforward.

15 So I'd like the parties to keep a running total of
16 that. If I have to do it with my clock, I will, but I have
17 a lot of other things to think about. So, if you can have
18 somebody on your team following that, I'd appreciate it. I
19 don't need an everyday tally, but I probably will want to do
20 it at the end of the week.

21 All right. Anything else?

22 So the order of witnesses today is to finish
23 Ms. Schneider and then what's after that?

24 MS. CONNELL: It's Ms. Schneider, Mr. Tenenbaum,
25 Mr. Erstling and then, if possible, Mr. Tedrick.

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1 And before Mr. Tedrick, before we play his
2 testimony, we would ask your Honor just to instruct the jury
3 that Mr. Tedrick cannot appear for health reasons and will
4 testify by audiotape, just to prepare them. That's -- it's
5 unpleasant to listen to a lot of testimony by audio.

6 THE COURT: Now, just so I know, are you going to
7 have the transcript on the screen that they can follow along
8 while they listen?

9 MS. CONNELL: I -- yes, we are, your Honor.

10 And then, as the exhibits come up, those -- the
11 ones that you've admitted -- those will also be brought up
12 at the appropriate times.

13 THE COURT: Okay. I think that's helpful, to have
14 those visual cues whenever you're just hearing an audiotape,
15 which I've not actually seen before.

16 All right, anything else before we get going?

17 MS. EISENBERG: Yes, your Honor.

18 Janet Nyce, an NRA Board member, is here as a
19 corporate representative. I'd just like to introduce her to
20 the Court.

21 THE COURT: Good morning.

22 MS. EISENBERG: And if your Honor wouldn't mind
23 introducing her to the jury, we would appreciate it.

24 THE COURT: Excuse me?

25 MS. EISENBERG: If the Court would be so inclined

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1 and could introduce Ms. Nyce to the jury, we would
2 appreciate it.

3 THE COURT: I won't. I'll let you do it.

4 MS. EISENBERG: Thank you.

5 MR. FARBER: Your Honor, there were a couple of
6 occasions, I believe, yesterday when there was testimony
7 that would have been hearsay; it was admitted because they
8 were party admissions; and it may have come up in some of
9 the exhibits and I'm sure it will come up in the future.
10 But I believe, under the rule, those party admissions are
11 only admissible as against the NRA, not as against other
12 parties for whom those are not agents.

13 So I'd ask that when there are instances when
14 something is going to be admitted as a party admission, that
15 your Honor give that, in essence, limiting instruction: that
16 that is being admitted as against the NRA but not as against
17 the individuals.

18 THE COURT: Yeah, I'm just pausing because I'm
19 thinking about in the context where the defendants are all
20 senior executives of the entity and the communications, for
21 example, are -- include, for example -- communications where
22 witnesses are talking about their conversations with
23 Mr. Phillips, for example.

24 MR. FARBER: I recognize it depends on the
25 circumstances, your Honor. But, for example, you know,

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1 Mr. Phillips retired in 2018. If there are things in 2019,
2 etcetera -- it will depend on the circumstances. But I just
3 think, generically, just because something is a party
4 admission and admissible against the NRA doesn't necessarily
5 mean it's admissible against my client, Mr. Correll's client
6 or Mr. Fleming's client.

7 MR. CORRELL: And I join in that objection, your
8 Honor.

9 MR. FLEMING: You've read my mind, your Honor.

10 THE COURT: All right. Well, I'll think about
11 that. That may be something we have to do as a -- sort
12 of -- a broader instruction rather than doing it each and
13 every time, I think. But I'm just trying to work out the
14 complications of that as it -- as it goes through. But why
15 don't we let that percolate.

16 But it's admissible and there may be -- you know,
17 certainly, with respect to the time issue, there are people,
18 especially somebody who was not there at the time, you've
19 already been pretty effective at making that point on
20 cross-examinations. But I need to mull that, because I
21 haven't really seen briefing yet on the question of
22 admissibility when all of the defendants are either the
23 entity itself or, you know, the highest-level executives for
24 some period of time and whether those kinds of corporate
25 admissions are admissible against senior officers in their

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1 own right or whether, you know, the jury would have to parse
2 that.

3 I wouldn't mind you showing me some case law that
4 would bear some -- shed some light on that.

5 MR. FARBER: We'll do that, your Honor.

6 Thank you.

7 THE COURT: Okay.

8 All right. I think we're ready for the jury.

9 Yes?

10 MS. EISENBERG: Yes, your Honor.

11 THE COURT: Ms. Schneider is here?

12 MS. EISENBERG: Is my mic working? Can you hear
13 me?

14 THE COURT: Yes.

15 MS. EISENBERG: Thank you.

16 THE COURT: And Ms. Schneider is available, I
17 guess, once the jury's here?

18 MR. WANG: Yes.

19 MS. CONNELL: Yes, your Honor.

20 THE COURT: Okay.

21 Off the record.

22 (Discussion off the record.)

23 COURT OFFICER: All rise. Jury entering.

24 (The jury entered the courtroom.)

25 THE COURT: Good morning, everyone. Have a seat.

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1 Glad nobody was washed away or blown away by the
2 storm last night.

3 COURT OFFICER: Is the Court ready for the witness?

4 THE COURT: We are ready for the witness, yes.

5 (Pause.)

6 COURT OFFICER: Witness entering.

7 (Ms. Schneider entered the courtroom and resumed
8 the witness stand.)

9 THE COURT: Good morning.

10 THE WITNESS: Good morning.

11 E S T H E R S C H N E I D E R, called as a witness by the
12 plaintiff, having been previously duly sworn/affirmed, was
13 examined and testified further as follows:

14 THE COURT: Okay. Good morning, Ms. Schneider.

15 I just wanted to remind you that you're still under
16 oath from yesterday.

17 Do you understand that?

18 THE WITNESS: I do.

19 THE COURT: Okay.

20 Can you turn the mic on?

21 COURT OFFICER: It's on.

22 THE COURT: Is it on?

23 COURT OFFICER: It's on, yeah.

24 THE COURT: Okay.

25 Cross-examination?

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1 MS. EISENBERG: Thank you, your Honor.

2 Good morning.

3 THE COURT: Ms. Eisenberg.

4 MS. EISENBERG: Your Honor, before we proceed with
5 the examination, may I introduce someone in the audience to
6 the jury?

7 THE COURT: You may.

8 MS. EISENBERG: Thank you very much.

9 Ladies and gentlemen of the jury, good morning.
10 I'd like to introduce you to Janet Nyce (indicating).

11 Ms. Nyce, if you would be so kind as to please
12 stand up ...?

13 (Ms. Nyce stood.)

14 MS. EISENBERG: Janet Nyce is an NRA Board member,
15 just like Kim Rhode. She is a firearms instructor; she is
16 an NRA-certified firearms instructor, and she focuses on
17 firearms instruction for women and youth.

18 Thank you very much.

19 (Ms. Nyce was seated.)

20 THE COURT: Okay. You may inquire.

21 CROSS-EXAMINATION

22 BY MS. EISENBERG:

23 Q Ms. Schneider, the NRA fights to protect the Second
24 Amendment; correct?

25 A Yes.

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1 Q In fact, according to your testimony a few years ago,
2 the NRA was, at least then, the only organization that fought to
3 protect the Second Amendment; right?

4 A Yes.

5 Q And in your opinion, if we -- at least as you held it
6 in 2021 -- if we don't have the NRA in place, we lose our
7 constitutional rights; correct?

8 A To a degree, yes.

9 Q The NRA has millions of members, right?

10 A As far as I know, they still do, yes.

11 Q And the NRA's membership crosses all races; correct?

12 A Yes.

13 Q All ethnicities?

14 A Yes.

15 Q All education levels.

16 A Yes.

17 Q And all income levels as well, right?

18 A Yes.

19 Q Would you agree that the NRA, in addition to fighting
20 for the Second Amendment, also does several other things?

21 A Such as ...?

22 Q Well, you previously testified, did you not, that the
23 NRA has the nation's premier firearms training and safety
24 program?

25 A Yes.

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1 Q In fact, didn't you previously testify that across this
2 entire country, as of at least 2021, there was no other
3 organization that was so paramount as the NRA in firearms
4 training and safety?

5 A Yes.

6 Q And as of 2021, you were a firearms instructor; right?

7 A Yes.

8 Q Sitting here right now, you are a fire -- you are still
9 a firearms instructor?

10 A Yes.

11 Q Just like Ms. Nyce (indicating); correct?

12 A Yes.

13 Q And it's important to you, as a firearms instructor, to
14 have insurance; fair?

15 A Yes.

16 Q And in 2021, you had such insurance?

17 A Yes.

18 Q And that insurance existed thanks to the NRA's premier
19 firearms training and safety program; fair?

20 A It was through Lockton -- Lockton Insurance.

21 Q And you're familiar with the NRA's bylaws?

22 A Yes.

23 Q You read them when you were on the board?

24 A Yes.

25 Q And you're familiar with the provision regarding

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1 committees, right?

2 A Yes.

3 Q And it states that it's the president who decides who
4 to appoint to a committee, right?

5 A Yes.

6 Q And the bylaws also state that the appointment is only
7 for one year; correct?

8 A Yes.

9 Q You attended NRA Board meetings, right?

10 A Yes.

11 Q In fact, you told us you were at a board meeting in
12 January of 2019?

13 A Yes.

14 Q And also in April of 2019, right?

15 A Yes.

16 Q In January 2019, did you have any concerns about the
17 matters that you discussed with Mr. Wang yesterday?

18 A Yes.

19 Q And you spoke to the entire board about your concerns,
20 right?

21 A Not to the entire board.

22 Q In April of 2019, did you continue to have those
23 concerns?

24 A Yes.

25 THE COURT: Sorry, counsel. Can --

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1 Are you guys able to hear pretty well?

2 (Jurors nodded.)

3 THE COURT: For some reason, it's --

4 Can you just move your mic over a little closer to
5 you?

6 MS. EISENBERG: Of course, your Honor.

7 THE COURT: Sorry.

8 MS. EISENBERG: Is this better?

9 THE COURT: A little bit. It's not really coming
10 through here (indicating), but ...

11 MS. EISENBERG: Is this better?

12 THE COURT: Not that much better, really. But it
13 may just be me. I can hear the other mics a little louder.
14 So it's all right. But if the jury can hear you, that's
15 more important.

16 MS. EISENBERG: Thank you, your Honor.

17 BY MS. EISENBERG:

18 Q In two thousand -- in April of 2019, you attended an
19 NRA Board meeting; right?

20 A Yes.

21 Q And as of that time, you had concerns of the nature
22 that you discussed with Mr. Wang yesterday; right?

23 A Yes.

24 Q And you raised those concerns to the entire board,
25 right?

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1 A No.

2 MS. EISENBERG: Let's display for the jury and the
3 witness PX 1594, which is a text exchange between
4 Ms. Schneider and Ms. Hallow.

5 THE COURT: That was admitted yesterday; yes?

6 MS. EISENBERG: Yes, your Honor. It's in evidence.

7 THE COURT: Okay.

8 (Image displayed.)

9 Q Ms. Schneider, do you have PX 1594 in front of you?

10 A Yes.

11 MR. FARBER: Judge, this is not the version, your
12 Honor.

13 MR. WANG: It's 1954 that's on the screen. The
14 admitted version is 1594.

15 THE COURT: Okay. Can we switch that to 1594?

16 (Image removed.)

17 (Pause.)

18 (Image displayed.)

19 THE COURT: There we go.

20 (Continued on next page.)

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Cross-Schneider-Eisenberg

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1 MR. FARBER: There is information on here.

2 THE COURT: This isn't the version that was
3 actually admitted. Just take that one down. I think maybe
4 the plaintiffs have the version where we took the -- some of
5 the personal information out, the cell phone numbers. Hang
6 on one second. Thank you, counsel.

7 Q You testified that this text exchange with Ms. Hallow
8 is about nominating individuals to the nominating committee,
9 right?

10 A Yes.

11 Q And you testified that Ms. Hollow gave you a name or
12 multiple names and asked you to nominate those individuals?

13 A Yes.

14 Q And you responded to her, right?

15 A Yes.

16 Q At 11:21 a.m. you wrote, "Should have known you had it
17 all under control." Three smiley faces, right?

18 A Mm-hmm.

19 Q Did you follow Ms. Hollow's alleged instructions?

20 A Yes.

21 Q And in doing so, were you nominating someone who you
22 didn't think was a good candidate for the nominating committee?

23 A I was asked to nominate on numerous occasions, and I
24 don't recall who the specific person was in this particular
25 instance.

LAS

Cross-Schneider-Eisenberg

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1 Q But surely you wouldn't have nominated someone to the
2 nominating committee if you didn't think they had the best
3 interests of the NRA at heart, right?

4 A Repeat the question.

5 Q Surely you would not have nominated someone to the
6 nominating committee if you thought that they didn't have the
7 NRA's best interest at heart?

8 A I don't recall who the individual was at the time. And
9 I did what I was asked to do in the beginning because I didn't
10 know any better.

11 Q So, it's possible that you nominated someone who you
12 thought was a bad candidate for the nominating committee?

13 A I can't answer that question without specifics. Who
14 was the name?

15 Q You attended a dinner with Carolyn Meadows in April of
16 2019, right?

17 A I guess. Yes. I had a dinner -- Which dinner are you
18 referring to? I had several dinners with Ms. Meadows.

19 Q It was a dinner which multiple donors were present.

20 A Are you speaking of the Heston Society?

21 Q Yes.

22 A Yes. I did not have dinner with her. She was in
23 attendance.

24 Q You and she were both in attendance, right?

25 A Correct.

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Cross-Schneider-Eisenberg

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1 Q And there were multiple donors?

2 A Yes. And she is not a donor to that particular
3 society.

4 Q And there were multiple donors, yes?

5 A As far as I know. There were a lot of people there who
6 were not donors.

7 Q And you referred to her using expletive, right?

8 A No.

9 Q You didn't ask her if she was F'n stupid?

10 A That's not referring to her. It was referring to a
11 situation of her standing. That wasn't directed at her. It was
12 an adjective.

13 Q And that was before she didn't appoint you to
14 committees, correct?

15 A Yes.

16 Q You testified yesterday that Susan LaPierre gave you a
17 call and according to you suggested that you should run for the
18 board. Do you recall that testimony?

19 A Yes.

20 Q And you also told us that you told her that you were
21 not qualified, remember that?

22 A I do.

23 Q And when you told her that you weren't qualified, did
24 you explain what qualifications specifically you were missing?

25 A I did. I said to her I was not an attorney and I

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1 wasn't a legislator.

2 Q Did you tell her about any problems in your past or any
3 reputational problems that you thought she should be aware of in
4 assessing your candidacy?

5 A No.

6 MR. WANG: Objection, your Honor. Relevance.

7 THE COURT: Not yet. I mean, there is no objection
8 yet. I don't know what's coming. But it's cross
9 examination.

10 Q Before that conversation, you had worked at the Indiana
11 State Lottery Commission, right?

12 A Yes.

13 Q You were its executive director?

14 A Yes.

15 Q And there was a reported settlement of 2 million -- of
16 over \$2 million in a case where seven individuals accused you of
17 racial discrimination, correct?

18 MR. WANG: Objection, your Honor. Relevance. And
19 also this is an attack on the witness' character.

20 THE COURT: Sustained unless the --

21 MR. CORRELL: Your Honor, may I be heard, please?

22 THE COURT: Does it go to credibility?

23 MS. EISENBERG: Yes, your Honor.

24 MR. CORRELL: Your Honor, it goes to credibility.

25 It also goes to concealment of issues in her past. And it

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Cross-Schneider-Eisenberg

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1 also goes to another issue that I think Ms. Eisenberg is
2 going to raise.

3 MR. WANG: Can we have a side bar, your Honor?

4 THE COURT: Hang on. Yes, but hang on one second.

5 MR. CORRELL: Your Honor, the witness' testimony
6 yesterday covered her qualifications, her background.

7 THE COURT: Hang on one second. I'm just checking
8 something. Okay. We can have a side bar.

9 (Whereupon the following proceedings were held at a
10 side bar conference.)

11 THE COURT: All right. What's the issue?

12 MR. WANG: This testimony is not related to her
13 experience on the board. It's not probative of her
14 testimony, her experience as a board member of the board of
15 directors. It's prejudicial to her. It's about settlement
16 in a legal case where she was involved as an employee. One
17 of her prior employers. It's an attempt to attack her
18 character. And her testimony on direct just related to the
19 importance of an internal auditor. And she raised -- she
20 said it's important to have an internal auditor at the NRA.
21 So, it's our position that this line of questioning is --

22 THE COURT: Not all -- You know, for impeachment
23 purposes I think the -- you know, there is no criminal
24 conduct or malicious conduct or anything going to
25 credibility as to what I've heard so far.

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Cross-Schneider-Eisenberg

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1 MR. CORRELL: It's not the issue, your Honor. The
2 issue is she testified that she was retaliated against. She
3 was not appointed to committees because of something she had
4 done. The fact is the evidence will show that she attacked
5 the president of the organization.

6 THE COURT: Well, that you can get into.

7 MR. CORRELL: But she also, we have evidence that
8 she also has a hot temper and she tends to go off on people.

9 THE COURT: What we're talking about now is whether
10 to bring in a specific event from her that is not
11 credibility related as far as I can tell and, you know, if
12 you're going to tell me that the NRA found out about it and
13 that's why they removed her from committees, that would be
14 relevant. So, that's not what this is.

15 MR. CORRELL: Your Honor, character is an important
16 consideration.

17 THE COURT: The law does not permit broad based,
18 dredge up anything and finding anything about anyone and
19 bring it in on cross examination. There are limits to it.
20 And, you know, the most important is those going to
21 credibility. So embezzlement or something like that would
22 be a different kind of issue.

23 MR. CORRELL: Your Honor, if I may bring up one
24 more point, your Honor.

25 THE COURT: Yes.

LAS

Cross-Schneider-Eisenberg

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1 MR. CORRELL: She tore up pieces of paper and threw
2 it in the face of the general counsel while she was
3 executive director of the lottery, appointment from the
4 governor and she was discharged after that.

5 THE COURT: I understand the -- If what this line
6 is getting at is that prior event and there is no connection
7 to credibility, I'm not permitting it.

8 MR. FLEMING: May I be heard? Your Honor, the NRA
9 did know about it. It went into the reputation, which may
10 have influenced the president's decision not to assign her
11 to committees. And there is also sort of a quickness
12 demonstrated by this witness to fire employees. She's
13 gotten on the stand yesterday and very cavalierly said John
14 Frazer and Wayne LaPierre should have been dismissed. I
15 think it goes exactly to her testimony.

16 MR. CORRELL: Your Honor she --

17 THE COURT: I do not agree.

18 (Whereupon the following proceedings were held in
19 open court.)

20 THE COURT: Okay. The objection is sustained and
21 the jury will disregard the question. So, proceed.

22 Q Ms. Schneider --

23 MR. CORRELL: Your Honor, before we proceed can we
24 make a record of this, an offer of proof at the conclusion
25 of the examination to just preserve the record?

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Cross-Schneider-Correll

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1 THE COURT: You have your record preserved. Yes,
2 we can talk about how to do that. Let's get moving.

3 MR. CORRELL: Thank you.

4 Q Ms. Schneider, you resigned from your position as the
5 executive director of the lottery commission in less than two
6 years, right?

7 A It was about at two years.

8 MS. EISENBERG: I'll pass the witness.

9 CROSS EXAMINATION

10 BY MR. CORRELL:

11 Q Good morning. I'm Kent Correll. I represent --

12 THE COURT: You have to get the microphone.

13 MR. CORRELL: Hello.

14 Q Good morning. You testified yesterday that you spoke
15 with Susan LaPierre about the possibility of running for
16 director of the NRA, correct?

17 A Yes.

18 Q How did you come to know Susan LaPierre?

19 A Through the Women's Leadership Forum.

20 Q What is the Women's Leadership Forum?

21 A It is a group that is designed to include more women in
22 participating in shooting activities and supporting the Second
23 Amendment and just ancillary supporting organization for the
24 NRA.

25 Q Were you involved in that organization --

LAS

Cross-Schneider-Correll

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1 A Yes.

2 Q -- that Women's Leadership Forum? What was your
3 involvement?

4 A I was a donor.

5 Q You were asked to arrange to be a chair of a luncheon
6 in Indianapolis at one point, correct?

7 A Yes.

8 Q And you undertook that obligation, correct?

9 A Yes.

10 Q Or that responsibility, correct?

11 A Yes.

12 Q And you were praised for your assistance in putting on
13 that luncheon, correct?

14 A Yes.

15 Q Do you think that the Women's Leadership Forum is a
16 valuable organization to the NRA?

17 A Yes.

18 Q And what value did that organization bring to the NRA?

19 A I believe it encouraged more women to join.

20 Q Was it effective in raising money for the NRA?

21 A Yes and no.

22 Q And when you say "yes and no", what do you mean by
23 that?

24 A They made a lot of money, but they spent a lot of
25 money.

LAS

Cross-Schneider-Correll

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1 Q Did you make money on the luncheon that you organized
2 as a cochair?

3 A I was told we raised a certain amount but never saw the
4 expenditures.

5 Q You testified about -- Let me ask you this. Do you
6 know whether Susan LaPierre had any discussion with her husband
7 about her conversations with you?

8 A I would assume that she did based on what she said.

9 Q And so you're assuming. You don't know?

10 A I don't know.

11 Q What did she say?

12 A She said I want you to run for the board because I need
13 someone to protect my husband.

14 Q Did you have any reason to believe that -- Did you ever
15 talk to Mr. LaPierre about this?

16 A No.

17 Q Have you ever spoken to Mr. LaPierre?

18 A Very infrequently. When he does, he doesn't even look
19 at me.

20 Q Okay. But you never spoke to him about this, the
21 matter of you running for the board, correct?

22 A It may have been something in passing. There was never
23 an in-depth conversation with Mr. LaPierre.

24 Q And you said when you saw him he never even looked at
25 you, is that it?

LAS

1 A He would never look me in the eye.

2 (Continue on the next page.)

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LAS

Schneider - by Plaintiff - Cross/Correll

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1 Q And how did that make you feel?

2 A You know, dismissed.

3 Q Okay. And did you develop a negative attitude toward
4 him because of that interaction?

5 A No, because some people are shy.

6 Q You talked about Josh Powell yesterday. Do you recall
7 testifying about Josh Powell?

8 A Vaguely.

9 Q Okay. And you alluded to some accusations that had
10 been made against Josh Powell; correct?

11 A Yes, that appeared in the newspaper.

12 Q Right.

13 Do you believe everything you read in the newspaper?

14 A Well, when the sources are from within the NRA
15 themselves, I would tend to believe they are true.

16 Q And who were the sources within the NRA?

17 A I don't -- you'd have to pull up the specific article,
18 but they -- I believe it was the attorney Bill Brewer.

19 Q Do you believe everything that the attorney general has
20 written in the complaint in this case?

21 A I haven't read the entire complaint.

22 Q Okay. So you have no personal knowledge as to whether
23 Mr. LaPierre spent money inappropriately or not; is that
24 correct?

25 A My knowledge comes from what is written in the

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Schneider - by Plaintiff - Cross/Correll

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1 newspaper and reported by people who represent -- who were paid
2 to represent -- the NRA. Why would I believe otherwise?

3 Q Are you saying that someone in the NRA reported that
4 Mr. LaPierre had spent money improperly?

5 A I'd have to go back and look at the newspaper, see what
6 the newspaper article wrote. That's my only source of
7 knowledge.

8 Q What newspaper are you referring to?

9 A The Wall Street Journal.

10 Q And what time period are you referring to?

11 A 2018, 2019.

12 Q So you read a newspaper article and concluded that
13 Mr. LaPierre had done something because someone in a newspaper
14 article -- because the reporter -- said that Mr. LaPierre had
15 done something; is that fair?

16 A No. I said, I believed the source who made those
17 claims, who were paid by the NRA to represent the NRA, made
18 those claims.

19 Q Who are you referring to?

20 A Bill Brewer.

21 Q Are you saying that Bill Brewer made the claim that
22 Wayne LaPierre used money from the NRA improperly?

23 A I am saying that he said things, which he was quoted in
24 the newspaper, that led anyone to believe that they were true.

25 Q Can you recall exactly what you say he said?

ALAN F. BOWIN, CSR, RMR, CRR

Schneider - by Plaintiff - Cross/Correll

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1 A No, I cannot. It's been almost five years.

2 Q You said you wanted an internal auditor; correct? You
3 testified yesterday?

4 A Yes.

5 Q Were you aware that the NRA had an outside auditor?

6 A Yes.

7 Q Had you spoken to the outside auditor?

8 A No.

9 Q Had you spoken to the Audit Committee about the outside
10 auditor?

11 A No, but I asked John Frazer for copies -- the certified
12 copies -- of the audit and all I was given was the condensed
13 annual report --

14 MR. CORRELL: Your Honor, move to strike as not
15 responsive.

16 A -- which was against the bylaws.

17 MR. CORRELL: Your Honor, move to strike as
18 nonresponsive.

19 MR. WANG: Your Honor, the witness was attempting
20 to finish her answer.

21 THE COURT: All of those things are true.

22 (Laughter.)

23 THE COURT: When he asks a yes-or-no question on
24 cross-examination, although it's sometimes awkward, if you
25 can answer it "yes" or "no" or say, "I can't answer it that

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1 way," that's the best way to keep things moving along. If
2 you want to elaborate, then, on redirect, you can have a
3 chance to do that.

4 BY MR. CORRELL:

5 Q You talked yesterday about a conversation you had with
6 Joe DeBergalis. Do you recall that testimony?

7 A Yes.

8 Q Joe DeBergalis. You described him as the COO; is that
9 correct?

10 A Yes.

11 Q He's not the COO, is he?

12 A He was promoted to that capacity after Josh Powell
13 left. What is the correct title?

14 Q Well, the -- he's actually the -- he's the executive
15 director of general operations; correct?

16 A Okay.

17 Q Does that refresh your memory on that?

18 A That's fine.

19 Q You talked yesterday about -- well, you testified --
20 that you were told by Mr. DeBergalis that things were being
21 cleaned up. Do you remember that testimony?

22 A I do.

23 Q And did you circle back with anyone to determine
24 whether things had, in fact, been cleaned up?

25 A That conversation took place during the time period

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1 when a lot of bad publicity was coming out or the newspaper
2 articles were coming out. I never did receive any answers to my
3 questions that were submitted after that conversation.

4 Q And what was that time period?

5 A Sometime between January and May.

6 Q Of what year?

7 A Of 2019.

8 Q So that was five years ago.

9 A Correct.

10 Q Have you inquired to determine whether any of the
11 issues that you had expressed concern about had been addressed
12 and resolved?

13 A No.

14 Q Do you know whether Mr. LaPierre has made payments to
15 the NRA to address issues raised concerning travel expenses?

16 A I did see that.

17 Q Where did you see that?

18 A It was in one of these supporting documents, I believe,
19 that were submitted to the Court.

20 Q Okay. And if it were true that Mr. LaPierre had
21 written checks to the NRA to cover travel expenses about which
22 questions had been raised, would that satisfy you?

23 A No.

24 Q Why would that not satisfy you?

25 A Because it was only for a specific time period.

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1 Q And how do you know that?

2 A The dates on this report were from 2011 to 2018.

3 Q And what report are you describing?

4 A It -- Mr. Marshall gave me a copy of a document that I
5 believed was derived from the 990s.

6 Q So you talked to Mr. Marshall before you took the stand
7 today?

8 A No. I did -- I did, before we came to this trial.

9 Q Well, that's before you took the stand today --

10 A Yes.

11 Q -- correct?

12 A Correct.

13 Q And he gave you information to help you prepare to
14 testify in support of the AG's position; correct?

15 A No.

16 MR. WANG: Objection, your Honor.

17 Mischaracterization; assumes facts not in evidence;
18 no foundation.

19 THE COURT: You can ask --

20 MR. CORRELL: I'll restate the question slightly.

21 Q Did he give you information to assist you in preparing
22 for your testimony today?

23 A It had no relevance on my testimony.

24 Q Well, you've just -- well --

25 So, did he give you anything else; any other documents?

ALAN F. BOWIN, CSR, RMR, CRR

Schneider - by Plaintiff - Cross/Correll

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1 A No.

2 Q Did you have any discussions with him? Any
3 conversations?

4 A No.

5 Q How much time did you spend with him?

6 A We had dinner, but there were also six people there and
7 he was seated across the table from me.

8 Q Who were the other six people?

9 A Personal friends of mine that live here in New York.

10 Q Were they members of the NRA?

11 A No.

12 Q You testified yesterday that the nominating committee
13 was populated by -- and I hope I get this right -- "what I would
14 perceive as personal favorites of Wayne"? Do you remember
15 giving that testimony, or substantially that testimony?

16 A Yes.

17 Q You used the word -- the words -- that "what I would
18 perceive." What was the basis of your perception?

19 A The people that were on the nominating committee were
20 also the same people on the executive committee, and there were
21 many individuals who had been in the NRA for a long time that
22 had never served on either one of those committees.

23 Q And you -- based on that observation, you concluded
24 that these were -- these people were -- favorites of Wayne?

25 A Based on longtime observations of being at different

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1 events, yes.

2 Q In fairness, these were people that Wayne had worked
3 with for a long time to advance the mission of the NRA; correct?

4 A Not all of them.

5 Q Can you tell me who wasn't one of those people?

6 A Mitzy McCorvey was on the nominating committee and she
7 was brand-new. She wasn't even a board member; she was the
8 outside person. She's been since elected to the board.

9 Q If you had been allowed to serve on one of these
10 committees, how could you -- what would you have done
11 differently than just continuing to support the NRA as a -- as a
12 general member?

13 A To ask other people with better business backgrounds to
14 join our board.

15 Q You understand that in an association like the NRA,
16 it's important to have people on committees who work well
17 together?

18 A Yes.

19 Q And do you view yourself as a person who works well
20 with other people?

21 A I do.

22 Q Do you recognize the name "Shisler"?

23 A Yes.

24 Q And who is Ms. Shisler?

25 A She was my former general counsel at the lottery.

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Schneider - by Plaintiff - Cross/Correll

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1 Q Okay. Did you have a good working relationship with
2 Ms. Shisler?

3 MR. WANG: Objection, your Honor.

4 Counsel is venturing into territory that you --
5 your Honor has already sustained.

6 MR. CORRELL: Your Honor, I'm trying to lay a
7 foundation to show relevance, and I think we're getting
8 there.

9 THE COURT: I heard you out on that. It's the
10 same.

11 MR. CORRELL: All right.

12 No further questions.

13 MR. FARBER: May I proceed, your Honor?

14 THE COURT: Yes, thank you.

15 CROSS-EXAMINATION

16 BY MR. FARBER:

17 Q Good morning, Ms. Schneider.

18 A Good morning.

19 Q My name is Seth Farber and I'm one of the attorneys
20 representing Wilson Phillips.

21 MR. FARBER: Could we get Plaintiff's Exhibit
22 3230 -- it's been admitted into evidence -- up on the
23 screen, please?

24 (Image displayed.)

25 Q So, Ms. Schneider, this was one of the exhibits that

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Schneider - by Plaintiff - Cross/Farber

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1 you testified about yesterday. You remember that?

2 A Yes.

3 Q And this was an e-mail message that you sent to a
4 number of people, and what was the date on which you sent that?

5 Can you see that?

6 A It says: "April 22nd, 2092."

7 COURT REPORTER: Sorry?

8 A "2019."

9 Sorry.

10 MR. FARBER: And could we go to page 3 of this
11 document?

12 (Image scrolled.)

13 MR. FARBER: And if we could scroll down, please,
14 to the last paragraph ...?

15 (Image scrolled.)

16 MR. FARBER: Thank you.

17 Q And, Ms. Schneider, you see, you refer in the last
18 paragraph -- the carryover -- the first line, the second line,
19 to "NRA treasurer Craig Spray." Was Mr. Spray the treasurer and
20 CFO of the NRA at the time you sent this e-mail?

21 A Yes.

22 Q I'm sorry --

23 A Yes.

24 Q -- I didn't hear you.

25 A Um-hmm.

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1 Q And the other documents that Mr. Wang went through with
2 you yesterday, those were all from 2019, as well; isn't that
3 correct?

4 A Yes.

5 Q When Mr. Spray was the CFO and treasurer; is that
6 correct?

7 A Yes.

8 Q Okay. That was after my client, Mr. Phillips, had
9 retired; is that correct?

10 A Yes.

11 MR. FARBER: No further questions, your Honor.

12 THE COURT: Anything further?

13 MR. FARBER: We need to trade (indicating).

14 I apologize.

15 (Microphone handed to Mr. Fleming.)

16 CROSS-EXAMINATION

17 BY MR. FLEMING:

18 Q Good morning, Ms. Schneider.

19 A Good morning.

20 Q How are you?

21 A I'm fine, thank you.

22 Q I'm William Fleming; I represent Mr. Frazer. So I have
23 a few questions for you; it won't take too much time.

24 I believe your testimony yesterday included testimony
25 that you only learned about Marion Hammer's compensation from

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1 reviewing Form 990s; is that right?

2 A I believe so.

3 Q So it was disclosed in the Form 990; correct?

4 A Correct.

5 Q Okay. And you were a director?

6 A Yes.

7 Q Did you have access to reports that were furnished to
8 directors on the board?

9 A Some, not all.

10 Q Did you, in the usual course of events, get Audit
11 Committee reports?

12 A Yes.

13 Q Okay.

14 MR. FLEMING: Can we call up JFX 52, which is not
15 in evidence; for identification?

16 Q And I would have you look at that when it comes up.

17 THE COURT: Is that going to come up on her screen?

18 It can't go up on the screen --

19 MR. FLEMING: No, it can't go up on the screen
20 (indicating).

21 THE COURT: I thought that it would work on your
22 screen. Is that not ...?

23 (Pause.)

24 THE COURT: Oh. I thought they usually set it up
25 that the witness' screen can see it. But if that's not been

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1 set up, we'll have to get that set up that way.

2 Do you have a hard copy?

3 MR. FLEMING: I don't. It's big and thick. I
4 don't.

5 Let me just ask questions around it. The document
6 will come in at some point.

7 BY MR. FLEMING:

8 Q You're familiar with what an Audit Committee report is?

9 A Yes.

10 Q Can you explain to the jury what it is?

11 A It is the minutes of the meetings that are -- been
12 transcribed and put into the board packet.

13 Q And you were a director in 2018; correct?

14 A Correct.

15 Q And do you recall there being a September 2018 Audit
16 Committee meeting?

17 A Yes.

18 Q And I think you testified that you couldn't attend
19 because you had a conflict; is that right?

20 A I believe that's the case, yes.

21 Q Do you recall seeing the Audit Committee report from
22 September 2018?

23 A I may have; I don't recall its contents.

24 Q Do you recall, at all, seeing that Marion Hammer's
25 compensation was included in that report?

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1 A That sounds familiar.

2 Q Okay. And as a director, you also get reports from the
3 office of the secretary; correct?

4 A Yes.

5 Q And the office of the secretary is John Frazer's
6 office, right?

7 A Yes.

8 Q And the secretary's reports come out every year;
9 correct?

10 A Yes.

11 Q And they disclose to directors all payments made to
12 officers and directors -- is that right? -- that are over
13 \$2,000.

14 A Yes.

15 Q All right. And you recall seeing Marion Hammer's
16 compensation on those, as well?

17 A I don't recall off the top of my head, no.

18 Q But you've seen the secretary's report.

19 A Yes.

20 Q Now, you also testified yesterday about the nominating
21 committee?

22 A Yes.

23 Q You recall it?

24 A Yes.

25 Q Okay. And you kept an eye on that committee,

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1 apparently; is that right?

2 A I'm sorry?

3 Q Kept an eye on that committee?

4 A Tried to.

5 Q And you formed a conclusion that its members were
6 chosen --

7 A Correct.

8 Q -- selected carefully; correct?

9 A Correct.

10 Q And I believe you said that those members were chosen
11 to be favorites of Wayne; is that correct?

12 A Yes.

13 Q And you were a director in 2017; is that right?

14 A Yes.

15 Q Do you consider Marion Hammer to be a favorite of
16 Wayne?

17 A I do.

18 Q She would qualify, right?

19 A Yes.

20 Q Okay. And so, are you aware, having kept an eye on the
21 nominating committee, that Ms. Hammer bid for a seat on that
22 committee in 2017?

23 A I don't know that.

24 Q Are you aware that she lost that bid?

25 A I am not.

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1 I do know that Ms. -- Ms. Hammer did not attend any
2 board meeting except one my entire time on the board.

3 MR. FLEMING: Move to strike, your Honor.

4 THE COURT: That wouldn't be responsive to the
5 question, so it's stricken.

6 Q Now, I believe you submitted, or evidence was submitted
7 of, a memo you wrote to Mr. Wit Davis in May of 2019.

8 A Yes.

9 Q Do you recall that?

10 (Witness nodded.)

11 MR. FLEMING: Okay. Can we call up PX 3231, which
12 is in evidence?

13 (Image displayed.)

14 Q And can you confirm for the jury that this (indicating)
15 is the memo we're talking about?

16 A Yes.

17 Q Okay. Now, on the first page, it says: "These are
18 questions for the Audit and Finance Committees"; is that right?

19 A Yes.

20 Q Now, those committees are filled with directors of the
21 NRA; right?

22 A Yes.

23 Q Okay. Other directors.

24 You're a director; they were directors.

25 A Yes.

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1 Q And Wit Davis was a lawyer for the board of directors,
2 right?

3 A So we were told.

4 Q But that's what he was; correct?

5 A In my conversations with him, he led me to believe that
6 he didn't really represent us to the extent that he was
7 exclusively for us.

8 Q Well, putting aside what he represented, his title --

9 A His title was such.

10 Q -- was the lawyer for the board; right?

11 A Correct.

12 Q Okay. And that's why you reached out to him, because
13 you were a director and the Audit and Finance Committees were
14 filled with directors. You went to the lawyer for directors;
15 correct?

16 A We were told, if we had additional questions, that we
17 should refer those questions to Mr. Davis.

18 Q Okay. But you didn't dispute the logic of that, right?

19 A No.

20 Q Now, a few days later, after sending this (indicating)
21 memo, you reached out to Mr. Frazer. Do you recall that?

22 A You'd have to refresh my memory.

23 Q Okay.

24 MR. FLEMING: Can we call up PX --

25 Well, we're going to have the same problem.

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1 (To counsel) It's one of your exhibits. It's not
2 admitted yet. Is there a way to get it up for the witness
3 to see?

4 MS. CONNELL: It's not admitted?

5 MR. FLEMING: No.

6 MR. WANG: Something from yesterday?

7 (Discussion among counsel outside the hearing of
8 the reporter.)

9 THE COURT: I have a call into IT.

10 That's the way we had the wiring set up yesterday.

11 (To jury) Normally, the way it works is that the
12 witness and lawyers can see. We're not trying to keep
13 anything from you, but until I admit it, it's not supposed
14 to go up on the screen for you.

15 So do you want to take that one down?

16 MR. FLEMING: All right. I'll get -- I'll try to
17 ask questions around the document.

18 THE COURT: Can we just take that one down?

19 MR. PETERS: May we move it into evidence?

20 MS. CONNELL: That one (indicating) is admitted
21 into evidence.

22 THE COURT: Oh, that was in evidence.

23 The one that was up there was admitted into
24 evidence?

25 MS. CONNELL: Yes.

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1 THE COURT: Okay.

2 BY MR. FLEMING:

3 Q I want to ask questions around the document. If you
4 don't recall it, just tell me.

5 A Okay.

6 Q Okay?

7 Mr. Davis. You sent him that memo on May 20th, 2019.
8 Do you recall that?

9 A Yes.

10 Q All right. On May 29th, you reached out to Mr. Frazer.
11 Do you recall that? Roughly?

12 A Roughly.

13 (Continued on next page.)

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1 THE COURT: Actually, counsel had a good point. If
2 this is a PX exhibit, meaning it's one of the exhibits that
3 the plaintiff wants to introduce and the defendants want to
4 have it be admitted, seems to me it's probably not objected
5 to. That's what PX means, right?

6 MS. CONNELL: Generally means, your Honor, yes.
7 Can we just look at the number?

8 MR. FLEMING: 2087.

9 MS. CONNELL: Thanks. That's fine.

10 THE COURT: Thanks for the idea, but so you can --
11 What number was it?

12 MR. FLEMING: 2087.

13 THE COURT: PX 2087 is admitted on consent.

14 Q Take your time, Ms. Schneider, and just tell me if you
15 recall this?

16 A (Examining). Okay.

17 THE COURT: I think she's finished.

18 Q All set?

19 A The next page just came up.

20 Q Yep.

21 A (Examining). Yes.

22 Q Okay. So, do you recall sending this e-mail?

23 A Yes.

24 Q Okay. And Mr. Frazer got back to you the next day,
25 right?

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1 A Yes.

2 Q Okay. And he even went further and he forwarded your
3 questions to the president and the two vice presidents, the
4 three board officers, right?

5 A That's what he said, yes.

6 Q Well, do you dispute that?

7 A I don't have a way to confirm it or dispute it.

8 Q Okay. Do you know Mr. Frazer to mislead?

9 A No.

10 Q Okay. Now, you reach out to him and say "Might you
11 call me tomorrow." Do you see that?

12 A Mm-hmm.

13 Q And he called you, right?

14 A I -- I had many conversations with Mr. Frazer.

15 Q Okay. And he was generally responsive, right?

16 A Again, I have no context.

17 Q Well, he was available to you, right?

18 A Yes.

19 Q Okay. And you spoke this time, didn't you, for a long
20 time?

21 A In this particular conversation?

22 Q Yes.

23 A I don't know. You can't -- you can't say. As I just
24 explained, I had many conversations with Mr. Frazer over a
25 period of time.

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1 Q Okay.

2 A And he was always agreeable to take my call.

3 Q Do you recall on this occasion speaking to Mr. Frazer
4 right after you asked him to call you for approximately
5 40 minutes where he explained to you all the investigations he
6 was doing into the very issues that you had raised?

7 A I don't -- I don't know. I don't recall that at all.

8 Q Do you recall ever having a conversation like that with
9 him?

10 A No. You'll have to give me more context. You can't
11 tell me it was a 40 minute conversation and I have nothing to
12 verify that with.

13 Q My question to you is this. You spoke to him, right?

14 A If you have the 40 minute documentation, why not show
15 it to me?

16 Q You have to answer my question. You spoke to him that
17 day, right?

18 A Again, I cannot verify or deny.

19 MR. WANG: Objection, your Honor, to the extent
20 there is a hearsay element to the conversation that
21 Mr. Fleming is attempting to elicit and there is a potential
22 sword and shield on a privilege issue.

23 THE COURT: All of that is premature because we
24 don't even know what the question is going to be. And he's
25 just asking I think for your present recollection whether

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1 you recall the conversation. I don't -- I don't -- I think
2 that's all you're asking, right, her present recollection?

3 MR. FLEMING: I'll go further, your Honor. So,
4 Ms. Schneider answered that she remembered --

5 THE COURT: You don't have to talk to me anymore.
6 You can ask her.

7 MR. FLEMING: Okay.

8 Q You remember that he called you. You already said
9 that, right?

10 A No. Again, I answered your question and said I had
11 many conversations with Mr. Frazer over that time period.

12 Q So, you don't recall?

13 A I cannot. Until you give me more context, if you know
14 it was 40 minutes how -- show me it was 40 minutes. I don't
15 know.

16 Q So, Ms. Schneider, is it your testimony that you don't
17 recall having a conversation after you wrote "Might you call me
18 tomorrow", is that your testimony?

19 A If -- if John -- if I asked John to call me, he
20 probably did.

21 Q Okay. And my next question is, do you recall either
22 then or ever talking on the phone or in person with Mr. Frazer
23 about the investigations he was conducting into the issues that
24 were raised in the articles that you had talked about with
25 Mr. Davis?

LAS

Cross-Schneider-Fleming

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1 MR. WANG: Just preserving, your Honor,
2 sword-and-shield objection to this line of questioning.

3 THE COURT: Well, they haven't thrown the shield up
4 yet. So, they can ask. And if they open the door by asking
5 questions, then we'll see what happens.

6 A I would have to go back and look and see what the dates
7 are on my documents. As I said earlier, it's been more than
8 five years and you're asking me for very specific details.

9 Q Do you document all of your phone calls?

10 A Not all of them, no.

11 Q Okay. A lot of them?

12 A I did back then, but I don't recall doing -- I mean,
13 again I had a lot of conversations with Mr. Frazer over this
14 time period.

15 Q Do you generally document -- did you generally document
16 your phone calls from Mr. Frazer?

17 A No.

18 Q Now, every year directors elect the paid officers of
19 the NRA, correct?

20 A Yes.

21 Q All right. And you testified yesterday that your view
22 was John Frazer had not fulfilled his duties, is that right?

23 A Yes.

24 Q Now, in your three years on the board, did you ever
25 vote against him?

LAS

Cross-Schneider-Fleming

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1 A No, I don't believe so. I don't -- Again, a lot of
2 those were voice votes and there were many times I didn't vote.

3 Q Now, in fact, you told Mr. Frazer in person to his face
4 that the NRA was blessed to have him, didn't you?

5 A You have to give me context, because John Frazer is a
6 very lovely man. I never had any dispute with John. I do have
7 issues with some of the decisions that he made without board
8 approval.

9 Q Did you ever say to him, to your recollection, The NRA
10 is blessed to have you?

11 A In a three year time period I may have.

12 Q Now, last question. You talked about articles coming
13 from reliable sources, right, and that's why you trusted what
14 was in news articles, right?

15 A I don't know if I trusted them, but it gave greater
16 pause for thought to really understand what was happening.

17 Q Now you've had articles written about you, haven't you?

18 A Yes.

19 Q And those articles were based on sources that were
20 inside the organization you worked for, isn't that right?

21 MR. WANG: Objection, your Honor. We're going into
22 the same line of questioning that your Honor has already
23 sustained an objection to.

24 THE COURT: You're talking about the NRA or a
25 different entity?

LAS

Cross-Schneider-Fleming

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1 MR. FLEMING: Different entity.

2 MR. WANG: Same that we objected to previously,
3 your Honor.

4 MR. FLEMING: Your Honor, I'm just establishing
5 that there are articles written by sources and trying to
6 find out simply whether the witness agrees with those
7 sources or not. That's all.

8 MR. WANG: Same objection that we presented.

9 THE COURT: Sustained. I think the jury has heard
10 this from me before. Newspaper articles are hearsay. They
11 are not evidence of anything. So, for our purposes that's
12 really all that's relevant about this.

13 MR. FLEMING: Thank you.

14 THE WITNESS: Thank you.

15 THE COURT: Any redirect?

16 MR. WANG: Just brief redirect, your Honor. May I
17 proceed, your Honor?

18 THE COURT: You may.

19 REDIRECT EXAMINATION

20 BY MR. WANG:

21 Q Good morning, Ms. Schneider.

22 A Good morning.

23 Q On your cross examination you spoke a little bit about
24 press reports dealing with NRA. Did you review press reports in
25 the 2018 and 2019 time period?

LAS

Redirect-Schneider-Wang

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1 A Yes.

2 Q Did those raise concerns about the NRA to you?

3 A Absolutely.

4 Q When you were concerned about the NRA, what did you do?

5 A Asked more questions.

6 Q And who did you ask those questions of?

7 A I sent questions to John Frazer. I asked questions of
8 Jim Porter. I asked multiple people questions who I thought,
9 Scott Bach, who could give me the answers based on the
10 committees they served on.

11 Q Did you want to understand what was happening?

12 A I did.

13 Q And did you feel like those questions were responded
14 to?

15 A No.

16 Q Did you get information that you were requesting?

17 A No.

18 Q Did you ask for information from the NRA?

19 A I did.

20 Q And did you feel like you got a sufficient -- a
21 satisfactory response?

22 A No.

23 Q What did you hope would happen in response to
24 the concerns you raised with NRA leaders?

25 A I hoped that they would change course and provide those

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1 answers, make provisions, put provisions in place, policies and
2 procedures to prevent it from happening again.

3 Q Did you serve on committees while you were a board
4 member?

5 A Yes.

6 Q Were there ever any complaints raised about your
7 committee service while you were a board member?

8 A No.

9 Q You testified about understanding that Mr. LaPierre
10 made some repayments to the NRA recently, right?

11 A Yes.

12 Q And do you know what went into those -- Do you know how
13 much he repaid?

14 A I have no idea. I have a general idea, but I didn't
15 put a calculator to it.

16 Q Do you know if they were repayments that included for
17 private flights?

18 A I believe some of that was, yes.

19 Q Do you know which flights were included?

20 A No.

21 Q Do you know if repayments included repayments from a
22 limousine service?

23 MR. CORRELL: Objection. She said she read
24 newspaper articles about them. She didn't say she didn't
25 have personal knowledge about this stuff.

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1 MR. WANG: She said she read a court --

2 MR. CORRELL: She read court filings.

3 THE COURT: Well, the question is not
4 objectionable. You're just asking what she knew. What she
5 learned.

6 Q Do you know if limousines were included?

7 A I don't recall.

8 Q Do you know if five star hotels were included in those
9 repayments?

10 A No. It was a very quick look.

11 Q You were also asked about who the treasurer was in
12 2019. Do you recall who the treasurer was?

13 A Craig Spray.

14 Q And you were raising some concerns in the 2018/2019
15 time period. What time period did the conduct you were raising
16 concerns about cover?

17 A Basically I believe '17, '18.

18 Q Earlier than just 2019?

19 A Yes.

20 Q You testified about raising concerns with John Frazer?

21 A Yes.

22 Q Did he resolve those concerns?

23 A A lot -- No. I mean, he was very gracious in taking
24 the call and listening to what I had to say but could not
25 provide answers.

LAS

Redirect-Schneider-Wang

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1 Q Did you raise concerns with Mr. Davis?

2 A Yes.

3 Q Did you feel like Mr. Davis helped resolve your
4 concerns?

5 A Not at all.

6 MR. WANG: No further questions, your Honor.

7 THE COURT: Anything further?

8 (No response.)

9 THE COURT: All right. Thank you very much.

10 THE WITNESS: Thank you.

11 THE COURT: You're free to go.

12 (Witness excused.)

13 THE COURT: Typical standard would be to have our
14 morning break at 11:00 so that we can then refresh and be
15 ready to go for the rest of the morning. So why don't we
16 take a short break. Everybody can use the facilities and
17 come back for the next witness.

18 THE COURT OFFICER: All rise. Jury exiting.

19 (Whereupon the jury panel departed the courtroom.)

20 THE COURT: Okay. Off the record.

21 (Whereupon a discussion off the record was held.)

22 THE COURT: Back on the record. I think your
23 question was not on the record if you want to ask that
24 again.

25 MR. CORRELL: Your Honor, would this be a good time

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1 to handle the proffer?

2 THE COURT: Is this about the impeachment evidence
3 that you were seeking to have introduced?

4 MR. CORRELL: Yes, your Honor.

5 THE COURT: If you want to make a record as to what
6 it would be. I think I heard most of what you were talking
7 about, but go ahead.

8 MR. CORRELL: Your Honor, had we been allowed to
9 proceed, we would have questioned about information
10 reflected in certified documents we have from the United
11 States District Court for the Southern District of Indiana,
12 Indianapolis Division. They are public records of which you
13 can take judicial notice. They include statements regarding
14 allegations made against Ms. Schneider by a quadriplegic who
15 served as general counsel for the lottery, who alleged that
16 she was abused verbally in front of other co-workers and
17 that at one point Ms. Schneider tore up a document and threw
18 it in her face. On another occasion threw a document on the
19 ground, knowing she would not be able to pick it up, and
20 told her to pick it up. The documents also show that there
21 was a suit for discrimination brought by, I believe, eight
22 or nine African American employees that Ms. Schneider was
23 the executive director of the organization at the time all
24 of this occurred. And a substantial amounts of money were
25 paid out by the state of Indiana to address the issues. I

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1 would like to offer these into evidence, your Honor. Well,
2 offer them as proffer for identification.

3 MR. WANG: Your Honor, the evidence is highly
4 prejudicial, not probative.

5 THE COURT: Can you talk into the mike.

6 MR. WANG: Your Honor, the evidence is highly
7 prejudicial and not probative to any issues in this
8 litigation. It's just designed to make Ms. Schneider look
9 like an unlikable witness. It doesn't have -- It's
10 collateral evidence. It doesn't have anything to do with
11 her service on the NRA board of directors. Her raising of
12 concerns. Her testimony about the need at the NRA to have
13 an internal auditor. It's our position that proffered
14 evidence is irrelevant.

15 THE COURT: Yeah. I think it's being offered for
16 impeachment. So, you know, there are situations where prior
17 conduct can be used, but the question is whether this is one
18 of those situations. And again this is just allegations,
19 right.

20 Look, I -- I understand the issue. Putting aside
21 the fact that these are only allegations, there is a limit
22 to the kind of prior conduct one can bring up in cross
23 examination. And the general principle is that the nature
24 of the conduct or the circumstances in which it occurred
25 bare logically and reasonably on the witness' credibility.

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1 And what you have all presented is, I think, you know,
2 Mr. Wang fairly states, it more goes to just, you know,
3 general character and I think it certainly is -- whether
4 it's intended or otherwise would be more inflammatory than
5 anything else. It's not conduct going to credibility in my
6 view logically or reasonably. So, I'm sticking with my
7 ruling.

8 MR. CORRELL: Your Honor, if I may add one thing.
9 The issue is whether Carolyn Meadows exercised her business
10 judgment as president of the NRA appropriately in deciding
11 not to let this person on the committee. She had knowledge
12 of the incident that occurred with her. She witnessed
13 personally. And there was press coverage of this prior
14 conduct by Ms. Schneider that we -- that may have been part
15 of the consideration as well.

16 THE COURT: Well, is there any evidence that those
17 making the decision not to appoint her to committees were
18 aware of those prior events?

19 MR. CORRELL: We are going to explore that with
20 other witnesses, I believe. I know one witness will testify
21 that they became aware of this two years after the fact.
22 And that it's also relevant she did not disclose this. When
23 she was seeking to run for the board, she concealed this
24 from the board. And that that conflicted with her getting
25 on the board and may have been affected by her own

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1 concealment.

2 THE COURT: Look, I just disagree. If it had been
3 part of the factual background for her being kept off
4 committees, then that's a different issue. That becomes
5 part of the decisionmaking process. That was not. The fact
6 that it was found out two years after the fact, it's just,
7 in my view, being offered to, you know, tarnish her in
8 certain ways. But it had nothing to do with the decision to
9 -- with respect to her -- her committee membership. So it's
10 not factually relevant. It can only be relevant, if at all,
11 to impeach her credibility. And it is not suffice to do
12 that. I heard the arguments, and I'm sticking with my
13 ruling.

14 All right. Let's take a short break. Five
15 minutes. Let's try to return in five minutes if we can.

16 (Whereupon a recess was taken.)

17 MR. CORRELL: Your Honor, I would like to know how
18 you would like us to offer the documents marked for
19 identification just to make them part of the court record.

20 THE COURT: Part of the court record.

21 MR. CORRELL: We're not moving to admit them.
22 We're asking to have them marked for identification.

23 THE COURT: You can mark them for identification as
24 -- What do you want to mark them as?

25 MR. CORRELL: We'll give them a special number.

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1 MS. CONNELL: Your Honor, may be have these?

2 THE COURT: You'll have to also give copies to the
3 Attorney General's Office. We can mark them as Defendants'
4 Exhibit 1 for identification or I don't know what you want
5 to call it.

6 MR. CORRELL: That's fine. We'll make them
7 together as a set.

8 THE COURT: Yeah. Maybe it's better to pick a
9 number that is not being used for anything else. You can
10 work out the numbering.

11 MR. CORRELL: We'll work it out with the State,
12 your Honor.

13 THE COURT: Okay. All right. Let's get the jury,
14 please.

15 THE COURT OFFICER: All rise. Jury entering.

16 (Whereupon the jury panel entered the courtroom.)

17 THE COURT: Okay. Welcome back. Have a seat. Is
18 plaintiff ready too call its next witness?

19 MR. THOMPSON: Yes, your Honor. The People call
20 Jeffrey Tenenbaum.

21 THE COURT: Okay. Please get the witness, Mr.
22 Tenenbaum.

23 THE COURT CLERK: Raise your right hand.

24 J E F F R E Y T E N E N B A U M, after having been duly sworn
25 by the court clerk, was examined and testified as follows:

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1 THE COURT CLERK: State your name.

2 THE WITNESS: Jeffrey Tenenbaum.

3 THE COURT CLERK: Can you spell your last name.

4 THE WITNESS: T-E-N-E-N-B-A-U-M.

5 THE COURT CLERK: Business address, if you have
6 one.

7 THE WITNESS: 1101 K Street Northwest, Suite 700,
8 Washington, D.C., 20005.

9 THE COURT CLERK: Thank you. You may be seated.

10 THE COURT: Good morning, sir.

11 THE WITNESS: Good morning.

12 THE COURT: Counsel, you may inquire.

13 MR. THOMPSON: Thank you, your Honor. Good
14 morning, members of the jury. My name is Stephen Thompson,
15 one of the attorneys for the plaintiff.

16 DIRECT EXAMINATION

17 BY MR. THOMPSON:

18 Q Mr. Tenenbaum, can you just take a look at the first
19 document in your binder and let me know if you recognize it.

20 A (Examining).

21 Q The one you just pulled out, Mr. Tenenbaum. Yeah.

22 A Yes. These are my demonstrables or slides for today's
23 testimony.

24 Q Great. So we have those up on the screen for the jury
25 as well.

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1 THE COURT: Just so it's clear folks, when people
2 call something a -- I think you said demonstrable -- a
3 demonstrative, it's not evidence. It's a presentation that
4 kind of organizes things. It's helpful to organize things.
5 It should be -- It's not evidence itself. It's just sort of
6 a guide. So, just a heads up on that.

7 Q Mr. Tenenbaum, do you have any professional degrees?

8 A I do.

9 Q What are they?

10 A I have a Bachelor of Arts from the University of
11 Pennsylvania, and I have a Juris Doctor, a law degree, from The
12 Columbus School of Law of Catholic University.

13 Q And could you please provide the jury with a brief
14 review of your professional background since graduating from law
15 school?

16 A Sure. So, I got my start really in this career when I
17 was going to law school at night. I worked during the day at a
18 place called The American Society of Association Executives.
19 It's basically a professional association for people that run
20 membership associations. Was doing public policy issue analysis
21 and then managing the legal section there. Learned a lot about
22 the law governing membership associations. Kind of fell in love
23 with it. Decided that's what I wanted to do. And for the last
24 28 years I've been in private practice in D.C. exclusively
25 representing nonprofit organizations including membership

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1 organizations as outside counsel.

2 THE COURT: I thought that was the association that
3 most epitomized Washington, The Association of the
4 Association Executives.

5 THE WITNESS: It is.

6 THE COURT: Is there an association of the people
7 who are in the association of the association?

8 THE WITNESS: It's a great organization.

9 Q Mr. Tenenbaum, are you currently employed?

10 A I am. I am currently a managing partner of a five
11 lawyer boutique firm in Washington D.C., Tenenbaum Law Group.
12 I've done my whole career exclusively representing nonprofit
13 organizations as outside counsel.

14 Q Do you have any experience consulting with nonprofits
15 on governance-related issues?

16 A Yes, extensive experience. I sometimes view myself not
17 only as a lawyer but as a governance consultant. I said that
18 many times to many clients and others. I do a lot of board
19 trainings for not profit boards on governance-related issues and
20 I consult regularly, probably almost every day with different
21 clients on a wide variety of nonprofit governance matters.

22 Q All right. And, Mr. Tenenbaum, do you know
23 approximately how large the NRA is in terms of its annual
24 revenue?

25 A I believe the last IRS Form 990 that I looked at, I

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1 think it was 2022, it was maybe \$227 million in annual revenue.

2 Q And do you have any clients currently who are the same
3 size or larger than the NRA?

4 A Yes.

5 Q In terms of annual revenue?

6 A Yes.

7 Q Approximately how many?

8 A Out of our 700 or so clients, probably about ten or 12.

9 Q And do you work with membership organizations ever?

10 A Yes. I mean, as I said earlier, I've spent the first
11 ten years of my career probably roughly doing nothing but
12 working with membership associations. Over the rest of my
13 career, it's still a significant part of our practice. Probably
14 60 percent of our firm's practice is representing membership
15 associations. And then the rest is all other types of
16 nonprofits from charities, foundations, conservation groups, et
17 cetera.

18 Q Currently can you estimate approximately what
19 percentage of your client base is composed of membership
20 organizations?

21 A Yeah. I mean by number of clients, like I said,
22 probably around 60 percent.

23 Q And, Mr. Tenenbaum, in your career have you ever
24 observed governance failures in nonprofits?

25 A Oh, yes. Many, many times.

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1 Q Have you ever observed governance failures at the
2 executive level of a nonprofit?

3 A Absolutely.

4 Q What about at the board level of a nonprofit?

5 A Yes. Both.

6 Q So, to take a step back, Mr. Tenenbaum. Can you please
7 explain to the jury your unique role as a witness in this case.
8 Why are you here today?

9 A I believe I'm here and was asked to be here to kind of
10 provide a benchmark and context for what are kind of standard
11 typical practices in the nonprofit community, especially with
12 governance matters.

13 Q Were you engaged by one of the parties in this
14 litigation?

15 A Yes, by the Attorney General's Office.

16 Q And were you asked to provide any specific opinions?

17 A I was. I was asked to provide primarily three
18 opinions. You want to know what those are?

19 Q Yes, please.

20 THE COURT: Not yet.

21 Q Would you please say what your opinions are?

22 THE COURT: No, not yet.

23 MR. THOMPSON: Okay.

24 THE COURT: You have to move -- Before he can state
25 his opinions to the jury, you have to seek to have him be

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1 qualified as an expert.

2 MR. THOMPSON: Yes. At this point, your Honor, I
3 would move for Mr. Tenenbaum to be qualified as an expert.

4 THE COURT: Any objection?

5 MS. ROGERS: Yes. Your Honor, we object, to the
6 extent that Mr. Tenenbaum is being qualified as an expert
7 obviously -- Can you hear me, your Honor?

8 THE COURT: Sort of.

9 MS. ROGERS: I'll try this microphone. To the
10 extent that Mr. Tenenbaum is being qualified as an expert,
11 we object to the extent that his testimony is offered on the
12 subjects previously contested which were a subject of motion
13 practice before your Honor.

14 THE COURT: Right. So, this is the first expert
15 witness that you have seen. There will be others. If the
16 appropriate qualifications are shown, then a witness is
17 allowed to provide either background or opinion testimony.
18 They're different from fact witnesses who tell you whether
19 the light was green or red. This is more for situations
20 where some specialized expertise can be helpful to the
21 factfinder, that is you all. And so my conclusion is is
22 that he is admitted as an expert limited to the topics that
23 as Ms. Rogers pointed out have been agreed in advance. And
24 so with those provisos.

25 MR. CORRELL: Your Honor, if I may. I join that

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1 objection, but I would also ask the Court to instruct
2 counsel to elicit exactly what he is an expert on. Just
3 trying to set the parameters, your Honor.

4 THE COURT: Okay. I thought that he had. But what
5 is the area of expertise, Mr. Thompson, that you're offering
6 the witness.

7 MR. THOMPSON: We're offering Mr. Tenenbaum as an
8 expert on nonprofit governance and particularly at the
9 executive and at the board level.

10 MR. CORRELL: No objection, your Honor.

11 THE COURT: Okay. He's admitted. Now you can ask
12 about his opinions.

13 Q Mr. Tenenbaum, what opinions were you asked to provide?

14 A I was asked to provide opinions on three topics. One
15 is kind of typical customary nonprofit practice when it comes to
16 conflicts of interest and related-party transactions. I was
17 also asked to provide opinions on common and typical nonprofit
18 practice when it comes to whistleblower policies and
19 whistleblower protection. I was asked to provide an opinion on
20 customary and typical nonprofit practice when it comes to the
21 safeguarding of nonprofit assets and avoiding waste and abuse.

22 Q So, Mr. Tenenbaum, at a high level what is a nonprofit
23 organization?

24 A So, a nonprofit organization, let me explain. So the
25 term nonprofit typically comes from the fact that an

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1 organization is incorporated as a nonprofit corporation in a
2 particular state, one of the 50 states or D.C., in this
3 particular case it's New York. That's what makes it a nonprofit
4 corporation. And that's what makes it subject to the law of the
5 state of incorporation. Wherever you are incorporated,
6 regardless of where you are located, you're always going to be
7 governed by that state statute, which has a lot of rules,
8 restrictions, prohibitions, et cetera.

9 Separate and apart from that, a lot of people presume
10 that nonprofit also means tax exempt organization. But that
11 actually comes from a separate process where you go to the
12 Internal Revenue Service, IRS, and ask them to recognize your
13 federal tax exempt status, meaning you're extent from federal
14 and state corporate income tax. And together that's what most
15 people think of as a nonprofit organization. That is what is
16 the case in this particular case.

17 Q And, Mr. Tenenbaum, can you provide a brief overview of
18 what role, if any, nonprofits play in the United States economy?

19 A A really important role. I spent my entire career
20 devoted to nonprofit organizations. As you can see in this
21 slide, nonprofits are the third largest employer in the country.
22 A lot of people don't know that. Part of it is there are all
23 different types of nonprofits. Some you don't even think of as
24 nonprofit organizations. They really fulfill a critical
25 function. You know, all different types of nonprofits do

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1 different things. But the ones that we typically think of as
2 nonprofits from the charities, philanthropic organizations,
3 social welfare organizations, they really do a very important
4 job of kind of helping to relieve the burdens of government.
5 Filling a social safety net. Providing assistance to people.
6 As you can see from the slide, more than half of Americans
7 typically make donations to nonprofit organizations. It's a
8 critical part of the American economy and they play a critical
9 role.

10 Q And generally speaking what, if anything, makes a
11 nonprofit different from a for profit entity?

12 A Well, the most important distinction is that a
13 nonprofit has no owners. So what that means -- The term is
14 actually misnomers. It really has nothing to do with profit,
15 although the New York general not-for-profit corporation law
16 does say that a New York nonprofit is only suppose to make
17 incidental profit. Generally speaking there is no real
18 restriction how much profit a nonprofit can make. It's just
19 that those profits get reinvested in the organization, where a
20 for profit company, you know, the owners typically kind of take
21 out the profits at the end of the year or however they are
22 distributed.

23 Q And what role, if any, do state's Attorney Generals
24 play in the regulation of nonprofits?

25 A They play a critical role, 'cause the Attorney Generals

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1 are in most states the principal enforcer of the state nonprofit
2 corporation law. So, I talked about kind of the IRS being an
3 enforcer of the federal tax exemption laws, like 501(c)(3),
4 (c)(4) organizations. But at the state level, in terms of the
5 state nonprofit corporate laws, like the one in New York, these
6 are enforced by the State Attorney General. So because all of
7 the profits have to be reinvested back in the mission and
8 purpose of the organization, from a state corporate law
9 perspective it falls to the State Attorney General to help
10 ensure that those profits are in fact being reinvested back in
11 the organization and not being diverted to private individuals
12 or corporations or other parties.

13 Q And Mr. Tenenbaum, are you familiar with the IRS Form
14 990?

15 A Very.

16 Q What is it?

17 A So, some people call it the nonprofit tax return. It's
18 technically referred to as an information return because unless
19 they earn something called unrelated business income tax, tax
20 exempt organizations don't pay corporate income tax. So, the
21 form, it's an information return, because it provides a whole
22 bunch of information to the IRS and also to state regulators,
23 because in states like New York a copy has to be provided to the
24 state regulator as well for certain types of nonprofits.

25 The form allows the IRS and state regulators to be able

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1 to kind of determine compliance with the tax laws. It has a
2 whole bunch of information, unlike the individual tax returns
3 that we all file that are mainly just numbers, this of course
4 has numbers, but it has a whole bunch of other information
5 relating to governance and relating to diversion of assets and
6 related to related-party transactions and whether the
7 organization board has adopted certain policies. A whole bunch
8 of other things to enable the IRS and state regulators to
9 determine compliance with the tax and the state corporate laws.

10 And then as you can see in this slide it serves an
11 equally important function in that it's subject to what's called
12 public disclosure. So unlike corporate income tax returns and
13 individual tax returns, which are not subject to public
14 disclosure, this form is. With the exception of one schedule on
15 the form Schedule B. The rest of it is subject to public
16 disclosure. Anyone who wants to request a copy of a Form 990
17 can go to the organization and request a copy for any reason.
18 It has to be provided by law. There is also websites like
19 GuideStar and Pro Public and others and even the IRS website
20 itself where you can see copies of the Form 990. So, it allows,
21 it serves a really important function of allowing like donor,
22 potential donors and grantors and whatnot to determine, you
23 know, is this an organization we want to give money to. Is it
24 using its funds wisely. Is it violating the tax laws. Is it
25 spending too much on fundraising expenses and not enough on

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1 other programatic expenses and carrying out the mission and
2 purpose of the organization. It provides a really important
3 function on that regard.

4 THE COURT: You may have to talk a little bit more
5 slowly for the court reporter to keep track.

6 THE WITNESS: Sorry. I tend to talk fast.

7 THE COURT: We all do.

8 (Continue on the next page.)
9
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1 Q Mr. Tenenbaum, you used the phrase "diversion of
2 assets." Can you tell the jury what that means, please?

3 A Well, I think -- at its most basic, I think of it as,
4 in terms of a not-for-profit organization, having the
5 organization's assets, its money, its resources being utilized
6 in a manner that's, kind of, not in furtherance of the mission
7 and purpose of the organization. Whether that means just being
8 wasted, whether it means going to the benefit of insiders that
9 run the organization, whether it means paying too much to
10 outside vendors, these sorts of things are what I would
11 typically think of as a diversion of -- of assets.

12 Q And are there any questions on the Form 990 aimed at
13 whether or not there had been a diversion of assets?

14 A Yes. In the -- in the governance section of the Form
15 990, that asks a whole bunch of governance-related questions.
16 And this is relatively new. I've been doing it for 30 years;
17 it's relatively new to me. It's only since 2008 that the IRS
18 overhauled the Form 990 and put all these new questions on
19 there, including, in the governance section, they added one
20 about: Has the organization been subject to a significant or
21 material diversion of assets in the last year? So the 990 is
22 filed on an annual basis, so they're asking, like, what happened
23 over the course of the last fiscal year? And if you answer
24 "yes," then, on what's called Schedule O, which is basically a
25 blank piece of paper, you're supposed to put a description of

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1 exactly what happened.

2 Q And, Mr. Tenenbaum, are related-party transactions
3 required to be disclosed on the Form 990?

4 A Yes.

5 It is schedule L, I believe, that is the schedule where
6 you disclose what are called "related-party transactions"; and
7 there's a very specific definition on there of what that means.
8 But that's where related-party transactions are supposed to be
9 disclosed, yes.

10 Q And you also mentioned that there is a section on
11 governance-related questions in the 990; is that correct?

12 A Correct.

13 Q And what other -- so we --

14 We talked about diversion of assets, but what other
15 governance-related questions are on the 990?

16 A I don't remember all of them, but some of the
17 highlights that I do remember -- you know, for instance, it asks
18 whether the organization's board has adopted certain policies
19 that the IRS believes are really important for, kind of, the
20 healthy governance and management of tax-exempt organizations.
21 So it asks whether the organization has -- its board -- has
22 adopted a conflict-of-interest policy, a whistleblower-
23 protection policy, a record-retention policy, an executive-
24 compensation policy, things like that; and then it asks some
25 related questions about, essentially, whether those policies are

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1 being complied with and whatnot.

2 Q And what role, if any --

3 In your experience, Mr. Tenenbaum, what role, if any,
4 do those questions about governance have on the public
5 perception of a charity?

6 A A huge impact. I mean, because think about it: If
7 you're a potential grantor, whether it's, like, a big private
8 foundation or a government agency or just a big donor or
9 donor-advised fund and you think about giving money to a
10 nonprofit, if you see that the organization hasn't adopted the
11 policies that the IRS says should be adopted or it's not
12 enforcing them properly or engages in related-party transactions
13 or has substantial diversion of assets, you know, if you think
14 about it, you're probably not going to want to give money to
15 that organization.

16 So it's -- you know, it -- it's critically important --
17 and, you know, the form -- whoever signs it signs with the
18 penalty of perjury. It's -- it's critically important that the
19 form be completed accurately and completely.

20 Q Mr. Tenenbaum, have you ever had occasion to provide
21 any trainings to board members?

22 A I do it, probably, twice a month, on average, I'd say.
23 I've been doing it for years and years.

24 Q And do those trainings involve any governance-related
25 training?

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1 A It's primarily -- I actually call it "governance and
2 legal training" or "orientation," and these are all to
3 not-for-profit boards. I get asked to do it all the time. And
4 it's basically to help not-for-profit board members understand,
5 you know: "What does it mean to be a board member of a
6 not-for-profit, tax-exempt organization? What responsibilities
7 do I have?" You know: "What's the role of the board versus the
8 role of staff versus the role of officers and committees?" You
9 know: "How do I fulfill my responsibilities as a board member?
10 How I do keep myself out of personal liability risk?"

11 And so, those are the typical kinds of things that --
12 that I talk about when I do these trainings.

13 Q And typically speaking, what are the best practices
14 that you train board members on in order to fulfill their
15 responsibilities?

16 A So you're kind of looking at them right here
17 (indicating) on the screen, and these are kind of the three core
18 responsibilities that not-for-profit officers and directors --

19 And I should say, these duties apply to board members,
20 but also to officers who are sometimes board members, sometimes
21 not, and to all senior staff of the organization. So it applies
22 to all of them.

23 You're looking at the three duties: the care, loyalty,
24 and obedience.

25 Are you asking me to walk through each one of these

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1 (indicating)?

2 Q No. That's all right, Mr. Tenenbaum.

3 A Okay.

4 Q But just to take one example: So the slide says that
5 it's a best or common practice for, you know, board members to
6 ask questions. Can you just elaborate on that, please?

7 A Yeah.

8 So that's the -- you know -- the responsibility related
9 to care, which I always, when I'm doing these board trainings,
10 explain as, you know, it's a duty to be a prudent steward and
11 overseer of the organization; to exercise due diligence; to ask
12 questions; to raise red flags where warranted; to bring in
13 outside experts where there's things of concern that you want to
14 look into more; and to exercise sound, prudent judgment, because
15 ultimately, the board is the ultimate, what we call, "fiduciary"
16 of the organization; it's ultimately responsible for everything
17 that the organization does. And so, the board has a duty to,
18 kind of, not turn a blind eye, not to be asleep at the switch,
19 and to ask questions and dig deeper where appropriate.

20 Q And in your experience, Mr. Tenenbaum --

21 MR. THOMPSON: Well, strike that, and I'll step
22 back for a moment:

23 Q So, at the highest level, in your experience, who is
24 responsible for governing a not-for-profit organization?

25 A The board of directors.

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1 Q And --

2 A And the -- well, it's very clear, yes.

3 Q And then, are you familiar with what officers are in
4 the context of a nonprofit?

5 A Yes.

6 So the way I always describe this when I'm doing
7 not-for-profit board trainings is, you know, you have the board
8 at the top; they're the ultimate, you know, responsibility for
9 the organization. And even when there are voting members -- a
10 lot of people think, "Oh, there's voting members; that's the
11 bigger group; they must be ultimately responsible." They're
12 actually not. Their role and responsibilities are fairly
13 limited in most organizations, like the ability to, you know,
14 approve a major transaction, to -- in a lot of organizations, to
15 elect board members. But beyond that, the board has the
16 ultimate responsibility.

17 But then you have officers that have, kind of, a higher
18 level of responsibility, beyond a typical board member. You
19 know, they're typically charged with extra responsibilities,
20 certain leadership responsibilities. As I said before, you
21 have, sometimes, board officers as well as staff officers.

22 And then you also have the role of committees, where,
23 particularly for organizations with large boards of directors,
24 like in this particular case, the role of committees is
25 critical, because it's -- it's impossible for the board to fully

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1 carry out its responsibilities at that, you know, big board
2 level, particularly when you say they have 76 board members.
3 And so you have to use committees very wisely to be able to help
4 carry out the responsibilities of the board.

5 Q I think you mentioned, Mr. Tenenbaum, that there are
6 both staff officers and then also board officers; is that right?

7 A Yes.

8 Q And can you distinguish those for the members of the
9 jury?

10 A And sometimes they could be both. Like, in this
11 particular case, some of the officers who are staff also serve
12 what's called "ex officio" on the board, meaning whoever is in
13 that officer/staff position also serves as a board member.

14 But in addition, you can have officers who are just
15 staff who don't serve on the board.

16 And then, finally, you can have officers who are just
17 volunteers. Like, in this particular organization, the
18 president is a volunteer leader of the organization, not a staff
19 person, but is also an officer.

20 And they all have different responsibilities. Some of
21 it comes from the -- like -- the New York statute, and a lot of
22 it comes just from the organization's own governing documents;
23 mainly, something called the "bylaws," which is, like, the
24 principal governance framework for a not-for-profit that
25 allocates who has what responsibilities in governing or in

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1 managing the organization.

2 THE COURT: If we can stick to the best practices,
3 from your observation; and the legal obligations would be
4 something I'll cover with the jury in instructions ...

5 THE WITNESS: Okay.

6 BY MR. THOMPSON:

7 Q Mr. Tenenbaum, do you know what the size of the NRA
8 Board of Directors is?

9 A Last I saw, I believe it had 76 members.

10 Q In your experience, is there an -- is there a best
11 practice for what the size of a not-for-profit board should be?

12 A Absolutely.

13 Q And what is that size?

14 A It's not 76.

15 You know, the -- the -- the, um -- the IRS recommends
16 not-for-profit, tax-exempt boards be in the size of somewhere,
17 like, between 12 and 20 people. That's generally the -- you
18 know, it depends on how large the organization is, of course.
19 But, basically, in my experience, any board that's too large
20 like that -- you know, anything more than 30 people, say -- it's
21 just impossible for it to fulfill its responsibilities. It's --
22 it's too many people that talk in a meeting. It's just -- it
23 becomes impossible.

24 And I've worked with, you know, a number of clients
25 over the years that have really large boards, some of them even

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1 larger than this one, where we've worked to shrink it down to
2 less than 20, because it's just impossible for the board to
3 fulfill its duties when it's that large.

4 What ends up happening is that the responsibilities end
5 up getting fulfilled by a much smaller group of people; by
6 senior staff, by an executive committee, things like that; and
7 the full board is not able to really carry out its -- its
8 responsibilities.

9 THE COURT: Just another clarification:

10 This witness has not been qualified to give
11 opinions as to whether there are any failings in this
12 particular case, and is giving opinions about
13 not-for-profits as a whole and the best and common practices
14 with respect to the industry.

15 Q And, Mr. Tenenbaum, you mentioned a few minutes ago
16 that there are often committees of the board; is that right?

17 A Yes.

18 Q And are you familiar with what an audit committee is?

19 A Yes.

20 Q Generally speaking, what is an audit committee?

21 A So, an audit committee, you tend to find in larger
22 organizations, not -- sometimes smaller organizations but you
23 don't see it that often.

24 Audit committees can serve different functions. Some
25 of it comes from what's mandated by the state statute, but other

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1 of it comes just from what are typical common practices.

2 And I'd say, first and foremost, the responsibility is
3 to, kind of, oversee and deal with the external auditor for the
4 organization. That's the CPA firm, the audit firm that's kind
5 of auditing what's called the "external financial statements" of
6 the organization; testing and making sure that they're accurate.
7 And the audit committee is the principal interface with the
8 auditors and is designed to be, kind of, an independent group,
9 meaning -- "independent" meaning -- none of the audit committee
10 members are supposed to be compensated by the organization.
11 That's where the independence comes from. And the idea is that
12 those independent audit committee members are dealing with the
13 auditors and can -- can hear things and decide what they need to
14 do about them.

15 But beyond that, in most larger organizations, the
16 audit committee serves multiple other functions; largely, kind
17 of, overseeing compliance within the organization; dealing with
18 ethical issues; being the vetter of, and the arbiter of,
19 conflicts of interest and related-party transactions; things
20 like that. And that's a very typical, common role for -- for an
21 audit committee of a large not-for-profit.

22 Q So, Mr. Tenenbaum, you mentioned these, sort of,
23 external audits that can happen for a not-for-profit. Are you
24 familiar with those external audits?

25 A I'm -- I'm not an auditor myself, but certainly, I -- I

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1 work with auditors all of the time at not-for-profits and I'm
2 very familiar with the process, yes.

3 Q And in your experience, Mr. Tenenbaum, is there a
4 difference between an external audit and an internal audit?

5 A Yeah, a big difference.

6 Q What is that difference, in your experience?

7 A So, like I said, the external audit is basically
8 testing the numbers that are on the external financial
9 statements -- you know, income, expenses, assets, liabilities,
10 all of that stuff, different categories -- to test whether
11 they're accurate, whether it's an accurate reflection of the
12 finances of the organization; and they do that testing in lots
13 of ways. It deals with a few other things, but it's pretty
14 narrow in scope.

15 Whereas an internal audit -- and I kind of misstated --
16 it shouldn't say "internal controls" on it. It's an internal
17 audit. It's very different. It's much broader in scope. It's
18 designed to look at all sorts of aspects of compliance, and
19 certainly including what are called "internal controls" -- think
20 of it like checks and balances -- to be sure that, you know,
21 funds are being spent appropriately and not being abused or
22 misused or, you know, going into people's pockets where they
23 shouldn't or that vendors aren't being paid too much. Things
24 like that.

25 And it's often, you know, a process that large

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1 organizations always have, certainly should have. Every year,
2 there should be dedicated staff that work on that. And
3 oftentimes, those same firms that do an external audit, like,
4 you'll hire a separate firm to come in, sometimes, and assist
5 you with an internal audit.

6 Q And in your experience, Mr. Tenenbaum --

7 Well, stepping back: At the end -- what happens at the
8 end of an external audit?

9 A The auditor -- the audit firm -- issues their opinion;
10 it's either qualified or unqualified. You want to have an
11 unqualified opinion, meaning there's no findings of anything
12 problematic or, you know, any troublesome issues of concern.
13 And then they -- they issue their opinion, and it goes with the
14 financial statements, and the audit committee will typically
15 hear that report and then accept the audit report.

16 Q And colloquially, is an unqualified audit opinion
17 sometimes called a "clean audit"?

18 A Yes.

19 Q And in your experience, Mr. Tenenbaum, what, if
20 anything, does a clean audit opinion say about the internal
21 controls of a not-for-profit?

22 A From -- again -- sorry. No pun intended, but
23 qualifying my answer, it's not -- it doesn't -- it -- it doesn't
24 mean much at all, their internal controls. The external audit
25 deals a tiny bit with internal controls but not much, and it

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1 really doesn't say anything because it's not really testing the
2 internal controls. It's not what an external audit is designed
3 to do. And so, you know, as I said here on the slide
4 (indicating), a clean financial audit does not mean that the
5 organization is, kind of, healthy or compliant, especially from
6 the internal-controls perspective.

7 Q And in your experience, Mr. Tenenbaum, have you ever
8 encountered a client that had a clean audit opinion in a given
9 year and, nevertheless, had governance failures of other kinds?

10 A Oh, yes.

11 Q And, Mr. Tenenbaum, I'd like to turn to talk about some
12 sort of general policies and procedures in not-for-profits.

13 Are you familiar with conflict-of-interest policies in
14 not-for-profits?

15 A Very much so.

16 Q And generally speaking, what purpose does the
17 conflict-of-interest policy serve in the governance of a
18 not-for-profit?

19 A So it serves a really important function.

20 Some people say that the conflict-of-interest policy is
21 the most important policy that a not-for-profit organization
22 should have and it's basically designed to, again, ensure that
23 those profits that get reinvested back in the organization in
24 furtherance of its mission and purposes -- at least the primary
25 purpose, at least -- are being used appropriately and are not

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1 being used to benefit, you know, people that have some inside
2 connection, like staff or officers or directors or committee
3 members or other leaders in the organization.

4 It's designed to help ensure that that responsibility,
5 the "loyalty" one that we talked about before that was on that
6 other slide -- we didn't really talk about that, but that said,
7 you know, we have to be loyal to the mission and purpose of the
8 organization, and make decisions that are in the best interests
9 of the organization and not in the best interests of yourself or
10 your family or your company or your relatives or some other
11 organization that you're a part of. It's designed to, kind of,
12 weed all of that out.

13 And then, in a situation where there is a conflict --

14 And not all conflicts are bad. Some conflicts can
15 actually be helpful. Like, if a board member, you know, for
16 instance, you know, had -- provides some service and they're
17 really good at it and they -- and they -- and they're willing to
18 provide it to the organization at a really good price, like half
19 of their going rate, that's not necessarily bad.

20 But the critical thing -- this is what a conflicts
21 policy is designed to do -- is to be sure that you go through
22 the right process in evaluating that; namely, disclosure,
23 because we can't do something about a conflict if we don't know
24 about it; two, what's called "recusal," meaning you remove
25 yourself from decision-making and let others, who have no

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1 conflict of interest, decide what to do about it; and then the
2 third is that you have those disinterested decision-makers,
3 people that don't have a conflict of interest, like, for
4 instance, an audit committee, deciding what is in the best
5 interests of the organization: "Should we go ahead with this?
6 Should we look at other alternatives? Is this the best price?
7 Is this going to, you know, pose any -- any risk to the
8 organization from a legal or other perspective?" All of those
9 sorts of things. You know, and -- and again, ultimately,
10 deciding what is in the best interests of the organization.

11 So, as I explain in board trainings all the time, it's
12 about the process; that's what matters so much.

13 And the conflict-of-interest policy, a good one, will
14 spell out that process that has to be followed. And it's
15 typically accompanied with an annual disclosure form, or what
16 this (indicating) slide called a "questionnaire," where you're
17 answering a bunch of questions about whether you have a
18 conflict; if so, what is it? So you have to disclose all of
19 that, so then you have those independent decision-makers who can
20 decide what's in the best interests of the organization.

21 Q And with respect to those questionnaires,
22 Mr. Tenenbaum, in your experience, when it comes to providing
23 the questionnaires and getting responses from the
24 executive-level staff and the board of directors, who typically
25 reviews those conflict-of-interest forms?

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1 A So, again, a larger not-for-profit, where you have an
2 audit committee, it's typically going be to the audit committee
3 that does that. But, most importantly, whoever it is, you have
4 to make sure that it's a group of, kind of, disinterested
5 decision-makers, people that are not compensated by the
6 organization; certainly, people that don't have a conflict
7 themselves. Like I said, typically, it's going to be an audit
8 committee in a large organization, a large not-for-profit.

9 Q In terms of the, you know, hierarchy of the board and
10 the executive-level members of the staff, do executive-level
11 members of the staff typically review conflicts of interest at
12 the board level?

13 A No. That should never happen, because, you know,
14 basically, staff ultimately report to the board. So the CEO or
15 executive president, whatever the title is, kind of, reports up
16 to the board; the rest of the staff reports to that person. And
17 so it's always a best practice, a common practice, almost a
18 norm, that you should never, you know, have someone beneath you
19 reviewing your conflict-of-interest disclosure. It should
20 always be, kind of, someone above in that kind of governance or
21 management hierarchy.

22 Q And in your experience, Mr. Tenenbaum, is there a
23 difference between having a written conflict-of-interest policy
24 and enforcing it?

25 A Yes, a big difference.

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1 Q And what is that difference?

2 A I mean, having a great conflict-of-interest policy and
3 disclosure form is great, but if you're not enforcing it, people
4 aren't complying with it, if conflicts aren't being disclosed,
5 if you don't have proper management of the conflict, meaning a
6 group of disinterested decision-makers deciding what to do about
7 the conflict, to have the person that has the conflict removed
8 from the decision-making -- you know, for instance, like, if you
9 disclose a conflict of interest with a particular vendor -- if
10 you disclose that conflict and then you have a group of
11 disinterested decision-makers decide what's best, typically,
12 what will also happen is, that person who has a conflict cannot
13 be involved in any way with managing that vendor; can't be, you
14 know, charged with expanding the scope of services or the amount
15 of money that's going to be paid to the vendor or extending the
16 term of the relationship or the contract with the vendor. You
17 want to make sure that that person that has the conflict -- and
18 this is where, like, an audit committee can come in, is making
19 sure that you have that right process in place.

20 So, if it's decided that it makes sense to go ahead
21 with this vendor despite the conflict, that you have insulation,
22 complete recusal, so the person that has the conflict cannot in
23 any way affect the nature and scope and dollar amount of that
24 relationship.

25 Q And in your experience, Mr. Tenenbaum, is the procedure

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1 for reviewing a conflict of interest different when the conflict
2 of interest is not disclosed before the relevant transaction
3 happens?

4 A Oh, yeah.

5 I mean, you can't -- like I said earlier, you can't do
6 something about a conflict if you don't know about it, if it's
7 not disclosed, and that's step one. Like I always tell boards
8 in the training, it's critically important -- it's not the only
9 step; it doesn't start -- it doesn't stop with disclosure but it
10 has to start with disclosure, because if we don't know about the
11 conflict, then we can't do all of those other things that I've
12 explained just now that are so important to make sure it gets
13 managed properly.

14 Q And, Mr. Tenenbaum, you've been practicing as a
15 governance consultant for approximately 28 years; is that right?

16 A Well, as a nonprofit lawyer doing a lot of
17 governance-related work for not-for-profits, 28 years, yes.

18 Q In your experience, have you ever encountered a
19 nonprofit organization that has ratified a conflict of interest
20 after the fact?

21 A Once in a while. Rarely. It's not common. It's
22 certainly disfavored. But once in a while, I -- I've seen it
23 happen, yes.

24 Q Have you ever encountered a client that has ratified
25 more than two dozen conflicts of interest after the fact?

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1 A No, never.

2 Q What about one dozen?

3 A Never.

4 Q More than five?

5 A No.

6 And the -- and the times that I've seen it are usually
7 where it's something that's kind of hypertechnical: the person
8 that, you know, was supposed to disclose a conflict really
9 didn't understand that it was a conflict because it wasn't
10 crystal-clear and later, once it was understood and disclosed,
11 then there's an after-the-fact ratification. That --

12 By the way, you know, it's typical to follow up -- you
13 know, it's not just blindly saying, "Oh, the conflict is fine;
14 let's go ahead and ratify it." You know, it's looking --
15 look -- kind of, doing a deeper dive; you know: "Was this
16 transaction in the best interests of the organization? Did it
17 put the organization at any undue risk? Were there other
18 alternatives, better alternatives, less expensive alternatives?"
19 Documenting -- you know, contemporaneously, meaning at the same
20 time -- documenting why that ratification occurred, and putting
21 in place procedures to make sure that this doesn't happen again;
22 like, for instance, if you need to clarify what is a conflict in
23 your policy so that people understand. Like, going through all
24 of those steps is critically important for a conflict, kind of,
25 after-the-fact ratification.

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1 Q And have you ever encountered, Mr. Tenenbaum, a
2 not-for-profit organization that, after the fact, has ratified a
3 conflict of interest where there is no written agreement?

4 A No written agreement for what?

5 Q No written agreement with respect to the --

6 MR. THOMPSON: Withdrawn.

7 Q I'll just move on.

8 A Okay.

9 Q So, Mr. Tenenbaum, are you familiar with contract
10 policies?

11 A Yes.

12 Q And are you familiar well procurement policies?

13 A Yes.

14 Q Can you please, briefly, describe for the members of
15 the jury what role contract policies play in the governance of a
16 nonprofit?

17 A So I -- I broke them out here (indicating), on this
18 slide, into two different categories. Sometimes, though,
19 they're actually combined in a -- in a single policy.

20 But, you know, in short, the -- the contract -- some
21 people call a contract policy a "contract-signing policy"; like,
22 who has the ability to sign contracts over certain dollar
23 amounts? What sort of approval procedures do you have to go
24 through? Like, for some of our clients, you know, the health
25 form; it has -- you know, it has to be approved by this person

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1 in this department, Legal has to sign off it, the CFO has to
2 sign off on it, things like that.

3 You know, it provides other requirements for how long a
4 contract can be; like, it can't be more than three years; you
5 know, over a certain dollar amount has to be reviewed, you know,
6 to make sure it's still in the best interests of the
7 organization. That -- that sort of thing.

8 Q And what about with respect to procurement policies?
9 Can you, briefly, describe for the jury -- members of the
10 jury -- what role they play in not-for-profit governance?

11 A Yeah.

12 So, "procurement" is a term that basically means, like,
13 when you're going out to purchase products or services; goods or
14 services; and again, it's designed to be sure that the
15 not-for-profit organization is doing this in a responsible way,
16 because again, those -- those profits that the organization has
17 have to get reinvested back, in furtherance of the mission and
18 purpose of the organization, and we want to make sure that
19 they're being safeguarded.

20 So, a procurement policy will say, for instance, you
21 know, the idea of, you know, any acquisition of a good or
22 service over a certain dollar amount has to have a written
23 contract, has to be approved by XYZ people; for over a certain
24 dollar amount, you have to go through some sort of a competitive
25 bidding process, what you see on the slide called a "request for

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1 proposal" or an "RFP," a very common, standard practice in
2 nonprofit organizations. So that, you know, larger, you know,
3 vendor contracts and other things like that where you're
4 spending a lot of money, you want to make sure that you're
5 putting out a proposal to a whole bunch of interested parties --
6 qualified parties -- so that you're evaluating, you know:
7 "Which one is -- which one's best? Which one's going to, you
8 know, give us the best value, do the best work at the best price
9 and that will safeguard our assets?"; making sure that process
10 recurs, say, every three years, again, for larger-dollar
11 acquisitions; and, of course, making sure that everybody has a
12 written contract, that it's signed by the appropriate people,
13 that there's a proper justification -- some people call it
14 "business-case justification" -- basically, you know: "What's
15 the business case for why we're going with this vendor?" You
16 know: "How is it in the best interests of the organization?
17 What about other alternatives," meaning less expensive
18 alternatives; "why didn't we go with that?"

19 And then, finally, once in a while, I mean, the
20 procurement policy will have something called, like, a
21 "sole-source justification" -- again, rarely used, very much
22 disfavored -- to not do an RFP. But, once in a while, it will
23 be, like, a provider that's so uniquely qualified to provide a
24 service, for instance, that no one else is -- I should say,
25 product or service. And we're not talking about basic things

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1 like, you know, fund-raising or public relations or legal
2 services or lobbying services. You know, we're talking about
3 something that's really, really unique.

4 And in a situation like that, if that provider is
5 really the only one who can do that, or maybe they've developed
6 a really, really unique expertise and it's just clear there's no
7 one else that can do it, then you'll have to justify why you're
8 doing not an RFP and why you're going with that sole-source
9 provider.

10 But, again, very rare and it has to follow, typically,
11 very detailed procedures to justify that.

12 Q And, Mr. Tenenbaum, in your experience, how common is
13 it for a not-for-profit to require that contracts be in writing?

14 A Oh. I mean, virtually all the time. I mean, maybe if,
15 you know, you're going down and, you know, purchasing, you know,
16 lunch for the staff, you know, you don't need to have a
17 contract, necessarily, with a caterer. But for virtually
18 everything else, you know, certainly over a certain dollar
19 amount, it's virtually unheard of to not have a written
20 contract.

21 Q In your experience, is there a dollar-amount threshold
22 that most not-for-profits use for when a contract is required?

23 A I'd probably say -- I'd probably -- again, it depends
24 on the size of the organization, but I'd probably say \$5,000,
25 based on my recollection.

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1 Q And, Mr. Tenenbaum, you mentioned requests for
2 proposals, or RFPs. So, is it fair to say that those are a type
3 of competitive bidding process?

4 A It is a type of competitive bidding, but it's kind of a
5 more formalized type of competitive bidding. And, like, for
6 instance, I deal with them all the time in my role as, you know,
7 an attorney and a managing partner of a law firm where we will
8 receive an RFP from, let's say, a not-for-profit that wants to
9 potentially retain us to provide legal services and will send it
10 to five other law firms, as well, you know, and have very
11 detailed questions and information that they need. I do these
12 all the time. And the idea is for the not-for-profit to be able
13 to see, you know, who's the most qualified, who has the most
14 competitive pricing and who -- and it's always going to involve
15 checking references and things like that. So it's kind of a
16 more formalized, competitive bidding process. And then it then
17 allows the not-for-profit to receive those proposals, evaluate
18 them all; usually leading to, like, a round of interviews with
19 leading candidates. This always should happen with big-dollar
20 contracts and acquisitions; you know, to evaluate and check any
21 references and all of that; you know, which provider is the best
22 -- in the best interests of the organization at this particular
23 time. And then, typically, that will get reviewed, renewed, you
24 know, say, every three or five years. So ...

25 (Continued on next page.)

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1 Q And in your experience, Mr. Tenenbaum, have you ever
2 encountered a procurement policy that exempted legal counsel
3 services from the RFP process?

4 A Never.

5 Q What about for lobbying services?

6 A No.

7 Q What about for public relations services?

8 A Never.

9 Q For membership services?

10 A If you mean like membership marketing, like developing,
11 recruiting, developing new members, no.

12 Q What about for fundraising services?

13 A No.

14 Q And what about for marketing services?

15 A No.

16 Q And you mentioned that typically there is a time limit
17 on when something has to go up for RFP again, is that right?

18 A Yeah. A typical, well written procurement policy, you
19 know, will say for, you know, contracts, vendors over a certain
20 dollar amount, that it has to be rebid every say usually three,
21 four or five years. Probably three and five years the most.

22 Q And, Mr. Tenenbaum, have you ever encountered a
23 procurement policy that permitted verbal agreements for services
24 over \$5,000 in worth?

25 A No.

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1 Q So then turning, Mr. Tenenbaum, are you familiar with
2 whistleblower policies and the role that they play in nonprofit
3 governance?

4 A Very. All these policies you're asking about we either
5 write them, review them, analyze them and apply them on an
6 almost daily basis.

7 Q So what role generally speaking do whistleblower
8 policies in nonprofits?

9 A Well, first off they are critically important. It's
10 one of the reasons why the IRS asks on that governance section
11 of the 990 whether you have, the board has adopted a
12 whistleblower policy. Also many of the state nonprofit laws
13 have very specific requirements, including New York, when it
14 comes to whistleblower policies.

15 The number one reason in my experience is to provide a
16 safe environment for people to come forward with blowing the
17 whistle on their concerns. And blowing the whistle by the way
18 can mean a lot of different things, financial impropriety, mean
19 overpaying vendors, employment-related issues, discrimination,
20 things like that. It can mean a whole host of different things.
21 The idea is that you want to encourage employees and board
22 members and officers and committee members, you know, to be able
23 to come forward in a safe space with their concerns. And then
24 to make sure that, as I said here on the top of the slide, the
25 number one most important provision in any whistleblower policy

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1 is to prohibit retaliation against the people that are blowing
2 the whistle.

3 And then the other kind of key element of the policy
4 are to spell out okay, when someone -- you know, how do you blow
5 the whistle. Who do you report it to. You want to have
6 multiple avenues of reporting. In a large organization you
7 typically have some sort of hotline, whether it's a telephonic
8 hotline or online reporting or both, where you can report things
9 anonymously as well.

10 Then you want to have a procedure for what happens once
11 the whistle is blown. You know, what happens next. You know,
12 who is in charge of this. What's the process. I get involved
13 in these a lot in my role as outside counsel in that I get
14 brought in a lot of time to lead an internal investigation
15 following whistleblower complaints. You know, coming in and
16 reporting directly to the board after we complete our
17 investigation and issue our factual findings and our
18 recommendations. That's typically part of the process that's
19 spelled out in a whistleblower policy.

20 Then, finally, as I put here on the slide, what
21 remedies can result from that. What are the different things
22 that can happen. They are critically important policies for a
23 nonprofit to have.

24 Q Mr. Tenenbaum, is it typical for nonprofit
25 whistleblower policies to require the whistleblower to be making

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1 their complaint in good faith?

2 A Yeah, it is typically kind of an element of a policy
3 that you are -- you should make whistleblower complaints only if
4 you believe it to be in good faith. That doesn't necessarily
5 mean that it's always accurate. Sometimes people think there is
6 some impropriety going on, something improper and it turns out
7 to not be the case. If someone truly believes that to be the
8 case, that's kind of the requirement, that's what the good faith
9 requirement means.

10 Q And in your experience, Mr. Tenenbaum, when during the
11 process, a whistleblower raises a concern, when during the
12 process does a determination about whether the whistleblower was
13 acting in good faith occur?

14 A So that's like, for instance, when we do our
15 investigations as outside counsel, that's partly what we're
16 trying to determine. You know, what's the merit. So it's
17 basically after the complaint is made and after the
18 investigation occurs. You can't determine if it's in good faith
19 until you kind of dig deep and you interview all the relevant
20 parties and you figure out, you know, maybe this person was
21 right. Maybe they were wrong. Maybe they had an ax to grind.
22 In fact, a lot of the whistleblowers, some of the most famous
23 whistleblowers in this country come from people that did have an
24 ax to grind, but it was still a very much good faith and
25 accurate blowing of the whistle that ended up, you know,

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1 disclosing huge amounts of impropriety, things like that.

2 But just because someone might have a disgruntled
3 former employee or someone who was, you know, shoved out of some
4 opportunity or something, they might have an ax to grind but it
5 doesn't mean that the complaint wasn't in good faith. And it's
6 -- it's incumbent on the organization, whether it's the board or
7 the audit committee, to go through that investigative process
8 first to determine whether it was in good faith.

9 Q So, turning to our last policy, Mr. Tenenbaum, are you
10 familiar with policies governing how executive level expenses
11 are reimbursed?

12 A Yes, very much.

13 Q And can you describe generally speaking what those
14 policies require?

15 A Yes. So, without getting too much in the weeds here,
16 again purpose of expense reimbursement policies first and
17 foremost are to make sure that the organizations funds are being
18 used wisely, prudently, in the best interest of the organization
19 in furtherance of its mission. Minimizing waste. Making sure
20 that we're not overpaying for things. Making sure that expenses
21 that are being reimbursed are appropriate.

22 So, you know, one of the core elements of any expense
23 reimbursement policy is that the expense has to be kind of an
24 IRS term is ordinary and necessary, kind of a reasonable expense
25 that has some mission-related purpose for the organization.

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1 That if the organization is either going to reimburse you or
2 sometimes pay directly, you know, if you have a corporate card
3 for instance it's not technically a reimbursement. It's just
4 being charged to the organization. But you have to make sure
5 that every expense has a -- you know, it's related to the
6 mission. It's reasonable. It's appropriate. It's no greater
7 than necessary in order to accomplish that key purpose. For
8 instance, things that are just personal in nature, that benefit
9 someone personally but don't predominantly have a business
10 reason, something related to the nonprofit mission and purpose,
11 that's not appropriate for expense reimbursement.

12 So an expense reimbursement --

13 MR. CORRELL: Your Honor, I think he's crossing a
14 line into legal opinions, what's appropriate and what's not
15 appropriate.

16 THE COURT: Again, the purpose of the testimony is
17 to talk about practices in this area. So, you know, I know
18 this wasn't -- the testimony is not about any particular
19 entity, but you heard the concerns. We're trying to, you
20 not giving legal advice to the jury here. You're giving
21 your experience based on seeing how it works in the real
22 world. If you can broaden it to that, I would appreciate
23 it.

24 MR. CORRELL: Also if the witness could break up
25 his responses. It's hard to object to an answer that goes

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1 as long as an answer like this one. If you could direct it
2 to just be broken up a little bit, your Honor. I hate to
3 interrupt with an objection.

4 THE COURT: I'm not going to give that guidance.
5 You can object when you need to.

6 MR. CORRELL: Thank you, your Honor.

7 Q I can move on to another question, Mr. Tenenbaum. So,
8 in your experience, Mr. Tenenbaum, who reviews the expenses of
9 the chief executive officer of the nonprofit?

10 A So, as I said earlier when I was talking about typical
11 practices, with reviewing disclosed conflicts of interest, it's
12 got to be someone whose above that person. So, in many
13 nonprofit organizations, for instance, the treasurer is like an
14 elected officer, volunteer, not an employee. That person would
15 be above the CEO or executive vice president. I would say
16 that's the most common person that I've seen in nonprofit
17 organizations to review and approve the expenses of the chief
18 staff officer, like the executive vice president. And sometimes
19 it will be the chair of the board or what's sometimes called a
20 president. It's got to be someone more senior to that person,
21 certainly not someone more junior.

22 MR. CORRELL: Your Honor, I object to the "it's got
23 to be" language, that's again suggesting there is a standard
24 to which all people have to adhere as opposed to a custom
25 that he's observed.

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1 THE COURT: Overruled.

2 Q Mr. Tenenbaum, have you ever encountered in your
3 experience a nonprofit where the employees expenses are paid for
4 by a vendor of the nonprofit and then passed through back to the
5 nonprofit?

6 A Never.

7 Q And -- Withdrawn. All right. So just two last
8 questions, Mr. Tenenbaum. How frequently in your experience
9 have you seen a nonprofit authorize charter private jets for
10 executives?

11 A Rarely. The only time that I've seen it are with some
12 of our what we call INGO, international nongovernmental
13 organizational clients. These are typically large tax exempt
14 relief and development organizations that, you know, you're
15 familiar with many of them like Care and so many others that go
16 around the world typically to developing countries to provide
17 different relief and development services. They are often
18 funded in the U.S. by USAID, a federal agency. Sometimes they
19 have to go to very remote parts of the world to deliver
20 services, to deliver goods or things like that. So, sometimes
21 I've seen charter flights in those situations, because they are
22 just simply no commercial flights available. That's the only
23 time that I've, in my experience, have seen that.

24 Q And then towards the beginning of your testimony, Mr.
25 Tenenbaum, we were discussing the types of questions that board

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1 members can ask. So the question is, what role do the executive
2 level staff play in responding to questions from board members
3 typically speaking?

4 A Well, in my experience the executive staff are
5 extremely responsive to board members, because the board is
6 their boss. And so in most nonprofit organizations that I work
7 with almost always, you know, the board asks a question and, you
8 know, the executives, you know, they scramble to provide
9 anything and everything they can to provide answers, backup
10 documentation, other things like that. It's just the custom in
11 an organization and, you know, typically it's the -- anyone who
12 has a reporting line to the board is going to, in my experience,
13 always kind of act in that manner.

14 Q In your experience, Mr. Tenenbaum, have you ever
15 encountered a nonprofit where the executives decline to provide
16 information to a board member because of confidentiality
17 concerns?

18 A I've seen it happen a few times, and they got fired
19 pretty quickly.

20 MR. THOMPSON: No further questions, your Honor.

21 THE COURT: Okay. Do you want to start the cross
22 now?

23 MS. ROGERS: Yeah. I probably have about
24 20 minutes. I don't know if the Court's preference is to
25 break for lunch.

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1 THE COURT: We have until about a quarter of. So,
2 I mean --

3 MS. ROGERS: Yeah.

4 THE COURT: -- I would like to give you the time to
5 get started on it. If we run a little long, we'll take a
6 break and continue after. I usually like to break around 20
7 of. That's in lawyer time. Twenty of becomes 15 of. I'm
8 baking that into my guidance.

9 MS. ROGERS: I will do my very best to observe
10 civilian time, especially before lunch.

11 CROSS EXAMINATION

12 BY MS. ROGERS:

13 Q Good morning, Mr. Tenenbaum. We haven't met before.
14 My name is Sarah Rogers. I'm a lawyer for the NRA.

15 A Good morning or afternoon.

16 Q Mr. Tenenbaum, good midday to you. All right. So you
17 testified that the board is the ultimate governing body of a
18 nonprofit, right?

19 A Yes.

20 Q And board members of nonprofits can come from all
21 backgrounds, right?

22 A Correct.

23 Q Isn't it true that anybody over the age of 18 is
24 legally qualified to serve on a nonprofit board?

25 A I believe that's the law in every state, the nonprofit

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1 corporation law that I reviewed.

2 Q Right. We understand that you're not here to testify
3 as a lawyer offering legal conclusions. So, I do want to ask
4 you about another source of authority. You testified that
5 states Attorney General play a critical role in nonprofit
6 governance, right?

7 A In enforcing state nonprofit corporation laws, yes.

8 Q Are you aware of whether state attorneys general, like
9 the New York State Attorney General typically issued public
10 guidance about what nonprofits -- about nonprofit best practices
11 for organizations incorporated in their states?

12 A Yes. In fact, New York does it probably more than most
13 other states.

14 Q And in formulating your testimony did you review the
15 contents of the guidance on plaintiff's websites?

16 A I mean, certainly I reviewed all of the relevant New
17 York State laws. I don't remember if I reviewed any AG
18 guidance. I certainly have in the past, the best practices for
19 cross marketing, things like that are pretty widely accepted and
20 used in the nonprofit world.

21 Q But you didn't review any of the white papers issued by
22 this plaintiff telling my client how to govern itself, right?

23 A I don't believe so. No.

24 Q Okay.

25 A I reviewed a lot of stuff, Ms. Rogers.

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Cross-Tenenbaum-Rogers

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1 Q Okay. I believe you. I'm sure. We're all very good
2 at reviewing big piles of paper.

3 THE COURT: One at a time, please.

4 MS. ROGERS: Sorry.

5 Q So, the board is the ultimate governing authority, but
6 the board doesn't manage the day-to-day affairs of the
7 association, correct?

8 A Correct.

9 Q That usually falls to officers, right?

10 A It's a combination. It falls to officers. Also falls
11 to committees and also falls to staff.

12 Q And the board can grant authority for day-to-day
13 management to officers or staff, right?

14 A Absolutely, as long as they exercise proper oversight.

15 Q And salaried officers have more formal responsibility
16 than ordinary salaried employees, right?

17 A Correct.

18 Q And they also have more formal responsibility than non-
19 salaried volunteer board members when it comes to day-to-day
20 affairs?

21 A I would agree with that, yes.

22 Q We talked about how the audit committee is an important
23 nonprofit governance device, right?

24 A Yes.

25 Q And it should be composed of independent directors,

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1 which you testified means directors who aren't compensated by
2 the nonprofit, right?

3 A Correct.

4 Q And you testified later that conflicts should be
5 reviewed by which you said disinterested decisionmakers. I just
6 want to clarify for the jury because you used a couple of
7 different terms. And audit committee, independent directors,
8 that's an adequate body of disinterested decisionmakers for that
9 kind of review, right?

10 A So long as in any particular review of a transaction
11 for instance it's conceivable that one of the audit committee
12 members themselves have a conflict of interest.

13 Q Right. I assuming none of them are conflicting and
14 they are all independent, meaning not compensated, that's an
15 appropriate body to review conflicts, right?

16 A Yes, but if I can just clarify. By independent, it
17 largely means not compensated, but it also means that they don't
18 have any conflicts of interests themselves with respect to the
19 matter.

20 Q All right. Let me offer you a definition of an
21 independent director. And you tell me if you think it comports
22 with your view of nonprofit best practices, okay.

23 A Sure.

24 Q All right. How about an independent director is a
25 member of the board who is not paid by the organization and

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1 neither they nor their family members have any financial
2 relationship with the organization.

3 A I would say that's a good start, but I don't think it's
4 fully complete. Sometimes you can have a conflict of interest
5 that doesn't involve receiving compensation from the
6 organization.

7 Q What if the State Attorney General tells you that
8 that's the standard for independence in their jurisdiction,
9 would that influence the judgment of a reasonable director in
10 your view?

11 MR. THOMPSON: Objection. Calling for a legal
12 conclusion.

13 THE COURT: That had been their objection earlier.

14 MS. ROGERS: I can clarify. I'm not asking him
15 whether the State Attorney General's guidance is legally
16 binding, only whether it's part of a reasonable prevailing
17 practice for a board to consider what the Attorney General
18 says and acts on it.

19 THE COURT: Okay.

20 A Well, like, for instance, I'm going to answer in a
21 slightly different way. Like the IRS has like a model, a
22 conflict of interest policy that they put out, which most of us
23 in kind of the nonprofit bar, nonprofit lawyers believe is
24 insufficient because it focuses just on financial transactions,
25 like compensation of board members and doesn't count other

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1 things like say a board member, an audit committee member serves
2 on the board of a competing organization or something like that.
3 Like these situational conflicts. So, just because there is
4 some standard in the IRS or New York doesn't necessarily mean in
5 my opinion that it's complete enough. So, I'm not sure what
6 you're asking me.

7 Q Well, I'll ask this a different way. We looked at
8 slide nine before, which talked about best practices for
9 business judgment by a director of a nonprofit.

10 MS. ROGERS: Would you mind putting that back up.
11 Slide nine of plaintiff's dec.

12 THE COURT: There it is.

13 MS. ROGERS: Great. Perfect. It was up. It's
14 gone now.

15 THE COURT: Try it again. There you go.

16 Q Here we go. We talk here about due care, sound,
17 prudent judgment, right. You testified before that even if the
18 IRS or the Attorney General says something is okay, that might
19 not make it adequate in your opinion. Is that your testimony?

20 A I don't think that's what I was saying.

21 Q All right. Would the court reporter read back --

22 A If you want to give me more detail.

23 Q Sure. Well, I just want to clarify for the jury. When
24 you say it's the best practice to exercise sound, prudent
25 business judgment, that's prudent by the standard of an

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1 ordinary, reasonable person in the same shoes as that director,
2 right?

3 A I use that same exact term when I do board trainings.
4 The reasonable person standard, that you're suppose to evaluate
5 what is -- you know you're -- you're duty to exercise that care
6 has to be informed by what a reasonable person with your level
7 of experience and expertise would do under that circumstance.

8 Q Right. If you were standing in their shoes, right?

9 A Correct. Like I used the example if someone has like a
10 financial background, you know, an accountant or something like
11 that, they are going to be expected to have a higher level of
12 knowledge and expertise when it comes to financial matters than
13 someone who has no financial background, yes.

14 Q So, let's talk about the standards for director
15 independence. Would it be fair to say that being friends with
16 the CEO does not disqualify you as a independent director?

17 A I would agree with that.

18 Q Right. And, in fact, it's fair to say that no
19 jurisdiction, not in New York, not D.C., not Delaware, not the
20 IRS, nobody says that being friends destroys director
21 independence?

22 A I agree with that.

23 MR. THOMPSON: Objection, your Honor. This is
24 getting into the law as opposed to industry standards.

25 MS. ROGERS: I won't go further into the law.

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1 Q Serving for a long time on the board, according to
2 industry standards for director independence, that doesn't
3 destroy director independence either, right?

4 A Agreed.

5 Q Okay. Aside from independence, what other kinds of
6 qualifications are there to serve on an audit committee?

7 A Are you asking me like what does, for instance, New
8 York require? I don't think you're asking me that.

9 Q I'm not asking you about the law. I'm just asking
10 according to sound, prudent, prevailing nonprofit practice, what
11 kinds of qualifications should I look for when appointing my
12 audit committee? What kinds of relevant expertise?

13 A Well, it certainly doesn't hurt to have some people
14 with a financial background because of the interface with the
15 outside auditor I described earlier. I think it also, in my
16 opinion, takes people who are willing to ask questions and raise
17 red flags and dig deeper and care about compliance and things
18 like that. That's part of the function of the audit committee.

19 Q So people who are CPAs might be good, right?

20 A Sure.

21 Q People who have been lawyers?

22 A Sure.

23 Q People who worked in law enforcement and investigated
24 financial crime?

25 A Yeah. I don't know of any list of requirements like

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1 this I've ever seen. Certainly those would seem to be well
2 qualified people to serve on an audit committee.

3 Q We talked before about whistleblower. And you noted
4 that to be a whistleblower you've got to come forward in good
5 faith, right?

6 A Correct.

7 Q And that means the whistleblower must believe that what
8 she is saying is true, right?

9 A Believe to the best of their knowledge that what
10 they're saying, accusing, blowing the whistle on is true, yes.

11 Q A whistleblower isn't just someone who complains about
12 any old thing. It's someone who reports specific types of
13 concerns, right?

14 A Correct.

15 Q It has to be a suspected illegal act or a violation of
16 policy, right?

17 A Those are two areas. Not necessarily limited to that.
18 For instance, there could be some financial impropriety that
19 someone is aware of or believes to be true that's not prohibited
20 by some policy because the policy is insufficient or something
21 like that. I wouldn't limit it to just violations of policy or
22 law. Those are certainly two big areas.

23 Q Could I read you a proposed definition of what a
24 whistleblower reports and you tell me whether you think that's
25 an adequate definition?

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1 A Sure.

2 Q A whistleblower is someone who reports any action or
3 suspected action taken by or within the corporation that is
4 illegal, fraudulent or in violation of any adopted policy of the
5 corporation. Is that fair?

6 A I -- I mean, I review and write whistleblower policies.
7 I would say, if I was reviewing that and my colleagues were, we
8 would say that is insufficient, because I think there are other
9 categories that are not covered by those three things.

10 Q In preparing to testify as an expert on best practices
11 for New York nonprofits, did you check whether the text I just
12 read is the exact text of New York law?

13 A Again, I can't comment. I'm not suppose to comment on
14 the law.

15 MR. THOMPSON: Objection, your Honor. We're
16 getting into the definitions of New York law.

17 THE COURT: I don't think the question asked that.
18 Go ahead.

19 Q Okay. And to act in good faith, a whistleblower not
20 only needs to believe that what she's saying is true, she's got
21 to reasonably believe that the facts she's reporting amount to
22 one of those reportable violations, right?

23 A Again, I believe that those three things are too narrow
24 and there should be other broader things. Yes, whatever that
25 list is, any good whistleblower policy will define what that

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1 list is. The person should believe in good faith that one or
2 more of those things occurred or failed to occur.

3 Q In your experience applying that objective
4 reasonableness standard, again I'm not asking about the law just
5 common sense and common practice, in your experience might
6 someone with a grudge or an ax to grind believe things which
7 deviate from an objectively reasonable standard?

8 A I can't get in the mind of someone that has an ax to
9 grind. Like I said earlier, I will say some of the most notable
10 whistleblowers that we have seen in this country in the last few
11 decades have almost all been people with an ax to grind.

12 Q But in your broad and ample experience looking at these
13 types of situations and how people in them behave, you've never
14 seen someone behave unreasonably because of a grudge?

15 A Of course I have.

16 Q You've seen people perceive things unreasonably because
17 of a grudge, right?

18 A Absolutely.

19 Q All right. Well let's talk about what we mean --

20 A Just to put a finer point on that. I recently did an
21 internal investigation --

22 THE COURT: You answered the question.

23 THE WITNESS: All right. That's fine.

24 Q All right. Let's talk about what we mean when we talk
25 about whistleblower retaliation. So, it would be fair to say

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Cross-Tenenbaum-Rogers

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1 that whistleblower retaliation includes adverse employment
2 consequences, right?

3 A If the whistleblower is an employee, yes.

4 Q Firing somebody, an obvious example of whistleblower
5 retaliation?

6 A That's one thing. Not promoting them, demoting them,
7 not giving them a raise or bonus, putting them in a different,
8 new position that's unfavorable, any of those things.

9 Q If I call my colleague Ms. Eisenberg fucking stupid in
10 front of donors to our nonprofit, and she as a consequence stops
11 sitting with me at lunch, would you call that whistleblower
12 retaliation?

13 A I mean, public shaming or shaming before a board of
14 directors, for instance, I certainly think could be considered
15 to be retaliation.

16 Q In this hypothetical, I'm the one that publically
17 shamed and insulted profanely my colleague, and she responded by
18 reducing her association with me socially. So my question is,
19 is that the kind of action you would consider whistleblower
20 retaliation?

21 A No, I would not.

22 Q Okay. All right. What if she doesn't pick me for her
23 committee, is that whistleblower retaliation as a consequence of
24 that action?

25 A Assuming that Ms. Eisenberg has the ability to appoint,

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1 you know, for instance board members to committees and people
2 want to serve on committees, it's favorable, high profile,
3 prestigious and all of a sudden she decides to take away your
4 committee appointment, I would consider that retaliation when it
5 comes to board members.

6 Q If she did it because I called her fuckin stupid in
7 front of our donors, you would call it whistleblower
8 retaliation?

9 A Well, calling someone fuckin stupid isn't blowing the
10 whistle.

11 Q Indeed. Thank you. All right. In New York a
12 whistleblower doesn't get immunity if he participated in a
13 violation of policy or law, right?

14 A Again, I'm not suppose to comment on the laws.

15 Q Let's talk about best practices. Is it best practice
16 to have a whistleblower policy where no matter what I did wrong,
17 no matter how much I stole, if I come forward and blow the
18 whistle on someone else, I'm immunized from my own misconduct?

19 A Well, in my experience I've been through many
20 situations where the whistleblower might have some culpability
21 as well and that needs to be dealt with without question, but it
22 doesn't mean what they are blowing the whistle on isn't real,
23 isn't a problem and shouldn't be investigated, no.

24 Q But let's say hypothetically I have a whistleblower who
25 is party to an illegal contract. He should -- It's fair for him

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1 to expect that contract might be cancelled, right?

2 A So, if he blows the whistle on that contractual
3 relationship, is one of the consequences that he might envision
4 that the contract could be canceled, yes, but it doesn't mean he
5 shouldn't be blowing a whistle on the contract being improper in
6 the first place.

7 Q But if he blows the whistle on something else, can he
8 do that as a gambit to immunize his seven figure illegal
9 contract from termination by his employer?

10 A I don't view it that way. I think if you're a person
11 that is blowing the whistle on an improper contractual
12 relationship, and he truly believes in good faith that it's
13 improper, that needs to be investigated. I don't know
14 necessarily that I would agree that immunizes him in any way.

15 Q Right, it shouldn't, should it?

16 A No, like I said if, you know, he blows the whistle, has
17 to be that proper investigation, looking into it, and then later
18 if you determine that he did something improper, then you take
19 action against him. Absolutely.

20 Q You should take action against him, right?

21 A If it's determined that he did something improper, yes.

22 THE COURT: Counsel, we're going to need to take
23 our lunch break.

24 MS. ROGERS: Okay. I'm sorry. I underestimated my
25 time, which is something I do.

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1 THE COURT: I don't blame you. All right. We're
2 going to reconvene at 2:15. As usual same instructions
3 about keeping your focus on lunch and not on investigation
4 or discussion. All right. See you all at 2:15.

5 THE COURT OFFICER: All rise. Jury exiting.

6 THE COURT: Mr. Tenenbaum, before we leave, during
7 the break you're still effectively on the stand. You
8 shouldn't discuss your testimony with anyone, including
9 counsel for either party.

10 THE WITNESS: Got it.

11 (Whereupon the jury panel departed the courtroom.)

12 THE COURT: I asked them to check the mikes again.

13 MS. ROGERS: Thank you.

14 (Whereupon a luncheon recess was taken.)

15 (Continue on the next page.)
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25

LAS

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1 A f t e r n o o n S e s s i o n:

2 THE COURT: Good afternoon, counsel.

3 One just small to-do item that I had my list but
4 just haven't done yet:

5 I have the Powell set of papers that have a "so
6 ordered" line. I don't know that it's something that
7 requires judicial approval, but there is a "so ordered"
8 line. I saw a letter that said some things of concern about
9 it, from the defense side, but not, seemingly, a request for
10 me not to sign it, but I'm not really sure. So I'll have --
11 you know, if we have time at the end of the day today or
12 before we start tomorrow, I'll just hear whatever anybody
13 has to say. But otherwise, I'd like to get on with that,
14 one way or the other.

15 MR. PETERS: Yeah. We would appreciate an
16 opportunity to talk about it, briefly, with your Honor.

17 THE COURT: Sure.

18 MS. ROGERS: And tomorrow morning is probably
19 better than this evening. There is a procedure for us to
20 object, and I think we intend to.

21 THE COURT: There is a procedure for you to object?

22 MS. ROGERS: We believe so, and that's what we'll
23 discuss. We're happy to put in a letter tonight or just
24 raise it in the morning.

25 THE COURT: Right.

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1 Is it bound by time or is it something that you
2 just --

3 I mean, I've been waiting to see if there were any
4 things that came up that indicate I shouldn't sign them. I
5 just haven't seen anything other than a letter that wasn't
6 entirely clear to me what I was supposed to do with it.

7 MS. ROGERS: We'll apprise the Court with -- we'll
8 have more detail and concrete authority.

9 THE COURT: And just -- my understanding is, you
10 know, this action is not a derivative action, and I don't
11 believe there's something in the settlement that would
12 constitute a release of claims that the NRA might have. So
13 it wasn't -- I have had other situations where the attempt
14 to release derivative claims gives rise to an objection from
15 the company, but I didn't see that here.

16 But I just wanted to make sure you had a chance to
17 tell me if there's some reason why you think I shouldn't go
18 forward with finalizing that.

19 All right, let's get the jury.

20 (Pause.)

21 (Discussion between the Court and court officer
22 outside the hearing of the reporter.)

23 THE COURT: The jury wants me to remind them of the
24 days we're on and off; just the schedule.

25 Assuming -- I'm going to ask you all to check me

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1 after I give them that.

2 (Laughter.)

3 (Pause.)

4 COURT OFFICER: Is the Court ready for the jurors?

5 (The Court nodded.)

6 COURT OFFICER: All rise. Jury entering.

7 (The jury entered the courtroom.)

8 THE COURT: Welcome back. Have a seat.

9 I wanted to go over, briefly, our trial days, where
10 we're on and we're off. I went through that, probably, very
11 quickly during the opening instructions and you may want to
12 know. So --

13 I'll wait until you all get your Post-it notes.

14 Is Post-it notes the official record?

15 (Laughter.)

16 (Pause.)

17 THE COURT: So, as I mentioned, generally, we sit
18 four days a week. This week, because we started the first
19 day late, I'm going to have -- we're going to be, tomorrow,
20 back in my courtroom, downstairs; and then Friday, just for
21 the morning, so 9:30 to 12:40, roughly.

22 Then next week, Monday is a court holiday, so
23 that's our off day. So we will have trial all the rest of
24 the four days.

25 The following week -- the rumors of Friday being

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1 our off day are exaggerated, because they need this room on
2 Thursday, so we're going to be off on the 25th; Thursday,
3 the 25th. So no trial on the 25th. We will be on, in this
4 room, on the 26th, Friday.

5 Then the next week, the week of January 29th, we
6 are sitting Monday through Friday -- through Thursday -- off
7 on Friday, February 2nd.

8 The following week, the same: We'll be off on
9 Friday, February 9th.

10 The following week, Monday, the 12th, is a court
11 holiday and we will be sitting the other four days, Tuesday
12 through Friday.

13 So that's our schedule.

14 All right, let's get the witness.

15 (Pause.)

16 COURT OFFICER: Witness entering.

17 (The witness entered the courtroom and resumed the
18 witness stand.)

19 THE COURT: Welcome back, sir.

20 THE WITNESS: Thank you.

21 (Witness seated.)

22 THE COURT: Just a reminder that you're still under
23 oath.

24 THE WITNESS: Yes.

25 THE COURT: Okay.

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1 Counsel, you may continue your cross.

2 MS. ROGERS: Thank you, your Honor.

3 I think I'm continuing with a working microphone.

4 (To jury) Can the jury hear me okay? Great.

5 CROSS-EXAMINATION CONTINUED

6 BY MS. ROGERS:

7 Q All right, Mr. Tenenbaum, welcome back from lunch.

8 A Thank you.

9 Q This morning, I thought I heard you testify that good
10 not-for-profit governance is not possible if the board is too
11 large. Is that your testimony?

12 A I didn't make that broad of a statement.

13 Q I think you used the word "impossible," right?

14 A No. What I -- what I said was that it's extremely
15 difficult for a board that large to exercise its fiduciary
16 responsibilities properly.

17 Q Are you aware of prominent not-for-profit advocacy
18 organizations that have large boards of directors?

19 A I'm honestly not, but I wouldn't be surprised. But it
20 wouldn't change my opinion.

21 Q How many people are --

22 Do you know how many people are on the board of the
23 ACLU?

24 A I don't.

25 Q If I told you it was 80, would that surprise you?

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1 A Like I said, it would not surprise me to know that
2 there are other large-board, large not-for-profit organizations,
3 whether they're advocacy groups or not. But it doesn't change
4 my opinion about the appropriateness of, and the effectiveness
5 of, that -- a board that size.

6 Q Are you aware of any governance problems at the ACLU?

7 A I, frankly, don't -- they're not a client of mine and I
8 have never worked with them.

9 Q What about the NAACP; do you know how many people are
10 on the NAACP board?

11 A I do not.

12 Q If I told you it was 69, would that surprise you?

13 A Again, it would not surprise me, but it doesn't change
14 my opinion.

15 Q And it's not impossible that the ACLU and NAACP are
16 governed well, right?

17 A Again, I was talking about the board's ability to
18 exercise its fiduciary duties; not about overall governance,
19 generally, in an organization.

20 Q Well, is it possible that the members of the ACLU board
21 exercise their fiduciary duties properly?

22 A I don't know anything about them.

23 Q Is it impossible that the members of the NAACP board
24 exercise their fiduciary duties properly?

25 A I don't know anything about them.

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Tenenbaum - by Plaintiff - Cross/Rogers

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1 I'm just saying, in my experience, in every case that
2 I've seen of large boards like that, they have extreme
3 difficulty properly exercising their fiduciary responsibilities.

4 Q You talked earlier about how a government agency or a
5 donor-advised fund is reviewing the Form 990; they would care
6 about related-party transaction disclosures. That was the sum
7 and substance of your testimony, right?

8 A Along with other things that I was referring to on the
9 Form 990, as well, yes.

10 Q And you would agree that a government agency or a
11 donor-advised fund are important audiences for Form 990?

12 A I was referring to grantors, donors, generally; and
13 whether they're, like, you know, a federal or state agency
14 that's granting funds, a donor-advised fund, a private
15 foundation, a corporate foundation, an individual donor, all of
16 them tend to care about things like that, yes.

17 Q Right. And would one of those readers who cares about
18 things like related-party transactions just be looking at the
19 checkbook or bother to read the schedule of related-party
20 transactions (simulating)?

21 A Well, put it this way: If I was advising a potential
22 donor or if I was a potential donor, I would not just be looking
23 at the first page of -- I think it's Schedule L of the 990. I
24 would look at where you have to provide more details about it.

25 Q Before lunch, you talked about an internal audit

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1 function and I believe your words were that larger organizations
2 "often don't always have it." Do you recall that testimony?

3 A I thought what I said was that, typically, large
4 organizations do have an internal audit function.

5 Q And that's because a clean audit from an outside
6 auditor might not tell you much about your internal controls,
7 right?

8 A It tells you some. I believe they changed, like, the
9 audit rules for external auditors a number of years ago to, in
10 part, deal with internal controls, but it's from far from --
11 from everything I've heard and learned from auditors and CFO's
12 and others over the years, it's very insufficient in terms of
13 being an overall judge of the effectiveness of the internal
14 controls of the organization.

15 Q Because the scope of the typical outside audit is just
16 not extensively concerned with internal controls, right?

17 A Right. Like I said, it's mainly testing the accuracy
18 of the numbers that show up on financial statements.

19 Q Right. Have you ever heard the term "special
20 procedures" in connection with an outside audit?

21 A I have.

22 Q Can you tell the jury your understanding of what that
23 is?

24 A I honest -- like I said, I'm not an auditor. I've
25 heard the term before but I don't know exactly what it means.

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1 Q If I represent to you that a client can ask its
2 auditor, or the auditor can decide, to conduct special
3 procedures which change the scope of the audit to look at things
4 like internal controls, would that be consistent with your
5 expertise?

6 A My general recollection is that special procedures do
7 involve the auditor going somewhere beyond what they would
8 typically do, but beyond that -- that's about the extent of my
9 knowledge.

10 Q Okay. You testified, with Mr. Thompson, earlier that
11 it's not enough to have a conflict policy, you've got to enforce
12 it; right?

13 A Well, it's not just those two. You have to have an
14 appropriate conflict policy; you have to educate people on it
15 and train people on it; and then, yes, you have to enforce it.

16 Q And you also testified that if a related-party
17 transaction or a conflict does happen and it's ratified after
18 the fact, best practice says you've got to put in place some
19 procedure to stop that from happening again. Is that your
20 opinion?

21 A I think I rattled off a number of things that should
22 happen with an after-the-fact ratification; I'm happy to go
23 through those again. One of those was that -- that the -- the
24 ratifier needs to be sure that there are appropriate
25 protections, procedures, whatever else, put in place to make

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1 sure that it doesn't happen in the future, yes.

2 Q All right. So, for example, if an organization were to
3 clarify the deadlines for submission of conflict forms, that's
4 one thing they might do to prevent late-submitted forms from
5 happening again; right?

6 A You mean, if that's one of the problems, then that's
7 one of the things that should be addressed. To me, that would
8 be a very small thing. I think, you know, the much bigger thing
9 that I tend to see is these conflicts not being disclosed,
10 period, when they should be disclosed or a conflict being
11 disclosed but then the person not being recused from the
12 decision-making about what to do about the conflict. Things
13 like that.

14 Q All right. What about walling off a conflicted
15 employee from relevant contract negotiations? Is that an
16 appropriate procedure to prevent issues from recurring?

17 A That's one of them. I think I mentioned that earlier,
18 and that could be a very important one in certain circumstances,
19 yes.

20 Q What about replacing -- firing and replacing -- a
21 conflicted executive with a new one?

22 A That certainly -- if -- if it's warranted; for
23 instance, if an executive is repeatedly entering into
24 conflict-of-interest transactions and not disclosing them, would
25 termination potentially be an appropriate remedy? Sure.

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Tenenbaum - by Plaintiff - Cross/Rogers

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1 Q And what about terminating a vendor that was the source
2 of that conflict? That's a procedure that could prevent that
3 conflict from recurring, right?

4 A Well, yes. I mean, in a certain circumstance,
5 terminating a vendor who is perpetuating the conflict could be
6 part of this solution, but you still have to be sure you're
7 dealing with the underlying issue of making sure you have
8 disclosure, recusal, and independent decision-making.

9 Q What about instituting compliance training? That's a
10 procedure that might prevent something like this from arising
11 again?

12 A Again, part of the solution, yes.

13 And trainings on this stuff -- like I said, I do them a
14 lot -- it's really, really important, because in my experience,
15 a lot of times, board members and even officers and staff don't
16 quite understand the concept of how broad a conflict is and they
17 think about it in a very narrow sense.

18 Like, for instance, some might think a conflict only
19 involves me getting compensated by an organization as, say, a
20 board member; but they might not think of, well, me also getting
21 a lot of gifts from a vendor that we do a lot of business with
22 could be a conflict, as well.

23 So it's important, for instance, to help educate people
24 who are subject to the policy -- officers, directors,
25 employees -- that receiving significant gifts from a big vendor

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Tenenbaum - by Plaintiff - Cross/Rogers

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1 to the organization can constitute a conflict of interest; a big
2 one.

3 Q So, in your experience, that kind of education is
4 important.

5 A Very.

6 Q It's essential, right?

7 A Yes.

8 Q And that's because, sometimes, people can fail to
9 disclose conflicts without trying to violate policy because they
10 aren't aware that the specific relationship or situation amounts
11 to a conflict under that policy; right?

12 A I've seen plenty of situations where people don't
13 disclose conflict because it's -- it's usually where it's not
14 something that's readily apparent; it's not, like, a -- someone
15 that everyone -- everything -- everyone instinctively knows,
16 yes, this is a conflict. It can be something more nuanced. And
17 those are the situations where I've seen that, yes, sometimes a
18 failure to disclose conflicts can be inadvertent and not
19 intentional, sure.

20 Q You testified before lunch that you, in your
21 experience, have seen RFP or contract-out-for-bid policies with
22 certain exceptions to them; right?

23 A Very rare exceptions, and I talked about one notable
24 exception; kind of, the sole-source justification. I've never
25 seen huge categories of exempted activities. And when

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1 Mr. Thompson went through a list of a whole bunch of activities
2 that would -- that I've not seen exemptions for, when you think
3 about it, there's not much left. There's maybe, like, IT
4 services and facilities management and payroll and employment
5 services. And beyond that, it's pretty much most of what most
6 nonprofit organizations do.

7 And so that's why I said that I have not seen those
8 sorts of broad -- huge, I would say -- kind of loopholes in a
9 procurement policy.

10 Q All right. So, before lunch, we talked about how
11 you're testifying about practices, not about law, and I'm not
12 asking you here about law but I'm asking you -- I'm going to ask
13 you -- if you heard of the Heller Supreme Court decision.

14 A No.

15 Q Have you heard of the McDonald Supreme Court decision?

16 A No.

17 Q Have you heard of the Bruin Supreme Court decision?

18 A No.

19 Q If I represent to you that those are all recent Supreme
20 Court decisions that were highly controversial and impactful in
21 the arena of the Second Amendment, would that refresh your
22 recollection?

23 MR. THOMPSON: Objection, your Honor; outside the
24 scope.

25 MS. ROGERS: That's going to be my last question

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1 about this.

2 THE COURT: I don't know what the question really
3 is yet, so -- or --

4 Q Well, I'll ask you this, Mr. Tenenbaum: You
5 testified -- and I think you just used the words "huge
6 loophole" -- that you have never seen a procurement policy that
7 exempted legal services from RFP. Do you recall that testimony?

8 A Yes.

9 Q Have you ever counseled an organization, like the NRA,
10 whose not-for-profit mission entails bringing and winning very
11 important and controversial Supreme Court cases?

12 A Obviously, I do not provide legal counsel to the NRA,
13 and I have not. I have provided legal counsel to other
14 organizations who -- whose litigation served the -- you know,
15 the -- the litigation it brings on behalf of its mission is a
16 critically important part of what it does, yes.

17 Q Supreme Court litigation?

18 A I'm sorry?

19 Q Supreme Court litigation?

20 A All sorts of litigation.

21 Look, I'm not a litigator myself, so I'm not going to
22 purport to be an expert in this stuff, but I have provided legal
23 counsel to nonprofit organizations that have large litigation
24 departments that bring litigation on behalf of their mission or
25 their purpose.

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Tenenbaum - by Plaintiff - Cross/Rogers

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1 Q Have you ever seen Supreme Court litigation subject to
2 an RFP?

3 THE COURT: U.S. Supreme Court litigation.

4 MS. ROGERS: U.S., yes; United States Supreme
5 Court.

6 (Laughter.)

7 A Honestly, that's outside of my wheelhouse.

8 Q Okay. All right. I'm going to rattle off a list for
9 you of not-for-profit governance practices and I'd like you to
10 tell me if these practices are consistent with your
11 understanding of good not-for-profit governance. Okay?

12 A I -- I will. I'm happy to do that, as long as -- you
13 know, sometimes this stuff is more complicated than a "yes" or
14 "no." It's --

15 Q All right.

16 A You can't -- you can't analyze it in a vacuum.

17 Q Okay. Well, what about policy that expense reports
18 which are submitted too late are ineligible for repayment?
19 That's a good policy, right?

20 A I've seen policies like that, but I've also seen
21 exceptions to those policies.

22 Q All right.

23 MS. ROGERS: Well, let's put plaintiff's slide 15
24 back up.

25 (Image displayed.)

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Tenenbaum - by Plaintiff - Cross/Rogers

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1 Q All right. So this (indicating) is one of your
2 demonstrables [sic], right?

3 A Yes.

4 Q And this invoice on the right (indicating), that's an
5 example of a bad invoice; right? That's why it's got a red "X"?

6 A Well, yeah. And I purposely put "two years later."

7 Yes, an expense reimbursement that was submitted two
8 years later, I can't imagine a policy allowing that to go
9 forward for reimbursement.

10 Q Right.

11 And so, in fact, it's good governance to not allow that
12 and to rule that expenses submitted too late are ineligible for
13 reimbursement; right?

14 A Well, if you look at the slide on the left side, you
15 have one week later being okay -- like, basically, one week
16 late, versus two week -- two years late not being acceptable.

17 Q Right.

18 So, in other words, we shouldn't be paying expenses
19 that are submitted two years later; right?

20 A Yes, I agree.

21 Q Even if it's a senior, trusted executive and even if
22 it's hundreds of thousands of dollars in expenses, best
23 governance is to say, "No, too late; we're not paying."

24 A Agreed.

25 Q Agreed.

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1 Hiring a compliance officer who reports to the board,
2 that's good governance, right?

3 A A chief compliance officer that has a direct reporting
4 line to the board or the audit committee, yes, absolutely, a
5 favored practice.

6 Q And where contracts are issued under an RFP exception,
7 is it good governance to report to the board or a committee a
8 list of those contracts?

9 A So you're saying, if there are -- if a contract is --
10 I don't want to use a legal term "let," but if you
11 enter into a contract that's being issued pursuant to an
12 exemption to the procurement policy, would it be a good practice
13 to inform the board and the audit committee about that contract
14 and provide a copy? Absolutely.

15 Q Absolutely.

16 A And generally, with an explanation that accompanies as
17 to why it's exempted.

18 Q And having a whistleblower hotline, that's good
19 governance; right?

20 A Yes.

21 Q All right.

22 And, let's say, a related-party contract has been
23 approved but new material information comes to light about that
24 relationship. Would it be good governance for the audit
25 committee to revisit that transaction?

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1 A Yes, absolutely.

2 Q Absolutely.

3 And if an employee has been accused of corruption, is
4 it consistent with best practices to have an outside law firm
5 investigate that accusation?

6 A Yes.

7 Q Would it also be consistent with best practices to hire
8 a forensic accounting firm to investigate that accusation?

9 A If the allegations regard potential financial
10 improprieties, absolutely, yes.

11 Q What about allowing the president of a not-for-profit
12 to have a \$980,000, under-the-table contract with a major
13 vendor? Is that a good practice?

14 A So, again, you have to put it in context: Is it being
15 done pursuant to, and compliant with, a procurement policy and
16 the conflict-of-interest and related-party-transaction policy,
17 or not?

18 Q So, if the president of a nonprofit has a \$980,000
19 contract with a vendor which he does not disclose, we're not
20 sure if that's good governance because it might be done pursuant
21 to the procurement policy? Is that your testimony?

22 A Well, again, I'm just asking for the full facts.

23 And by "the president," first off, do you mean the
24 volunteer president or do you mean the chief staff executive,
25 like --

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1 Q Well, let's hypothesize an organization where the
2 bylaws prohibit the president from being paid, but he has an
3 undisclosed \$980,000-a-year contract with a major vendor.

4 Is it good governance to allow that?

5 A No. That would be problematic, for sure.

6 Q And if the audit committee discovered that, it should
7 take action with respect to that contract; right?

8 A Yes.

9 Q And if you found out that the president hadn't even
10 performed those services he was being paid \$980,000 to perform,
11 that would make the concern even more acute; right?

12 A Well, is the president supposed to be performing
13 services on behalf of the nonprofit that he or she is the
14 president of?

15 Q Well, I don't want to make the hypothetical too
16 detailed. I think we've got the parameters of what you think is
17 permissible with the secret million-dollar contract.

18 MS. ROGERS: So I have nothing further, for now.

19 THE COURT: Okay.

20 Any further cross?

21 MR. CORRELL: Yes.

22 THE COURT: Transfer the mic.

23 (Microphone handed to Mr. Correll.)

24 MR. CORRELL: Thank you, your Honor.

25 Kent Correll, for Wayne LaPierre.

ALAN F. BOWIN, CSR, RMR, CRR

Tenenbaum - by Plaintiff - Cross/Correll

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1 (To jury) Good afternoon.

2 CROSS-EXAMINATION

3 BY MR. CORRELL:

4 Q Good afternoon, Mr. Tenenbaum.

5 A Good afternoon.

6 Q You said you went to Columbus School of Law?

7 A It's the law school at Catholic University of America,
8 yes.

9 Q And where is that located?

10 A In Washington, D.C.

11 Q And you testified you're not a New York lawyer;
12 correct?

13 A I am not a New York lawyer, no. I'm not a member of
14 the New York Bar, if that's what you mean.

15 Q You said you worked for the Association of the --

16 A American Society of Association Executives.

17 Q And for how many years?

18 A About three years; a little less than three years.

19 Q You testified you're not a litigator.

20 A I'm not a litigator.

21 Q You've never been to the U.S. Supreme Court.

22 A For social functions, but not for -- I've never
23 litigated there. I've been a member of a case -- part of a case
24 -- there.

25 Q Have you ever helped anybody work up a case for the

ALAN F. BOWIN, CSR, RMR, CRR

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1 Supreme Court?

2 A No.

3 Q You have organized seminars; correct?

4 A Yes, many.

5 Q And can you just tell us, briefly, how that works;
6 organizing the seminar?

7 A I mean, I do all of -- I do a lot of public speaking on
8 nonprofit legal issues. Some I do for other organizations, like
9 the American Society of Association Executives and the American
10 Bar Association and others; some I've done on my own; some I
11 moderate and organize. I -- I just -- it's a whole variety
12 of -- I probably give -- I don't know -- 50 presentations a
13 year.

14 Q And do you get paid to do those seminars?

15 A Almost never.

16 Q Okay. You're a paid witness today; correct?

17 A Yes.

18 Q What is your hourly rate?

19 A For this case, I don't remember if we had a -- a
20 special hourly rate, but my typical hourly -- hourly rate -- for
21 the last four years, has been 595 an hour; effectively hourly
22 rate.

23 Q And how many hours have you billed on this case?

24 A Oh, I don't know the number of hours.

25 Q Do you know the amount of money?

ALAN F. BOWIN, CSR, RMR, CRR

Tenenbaum - by Plaintiff - Cross/Correll

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1 A I haven't checked at all recently. I would venture to
2 guess, probably somewhere in the 175,000 to \$200,000 range.

3 Q And who do you bill for your time?

4 A The New York State Office of the Attorney General.

5 Q And can you tell the members of the jury how you came
6 to be engaged by the --

7 Well, let me ask this question: Have you been engaged
8 by the Office of the Attorney General on this case?

9 A Yes.

10 Q And how did you come to be engaged?

11 A I was approached by a now-former member or employee of
12 the office who I had known through nonprofit conferences and a
13 speaking engagement that -- she was on a panel that I had
14 organized and, just generally, through the nonprofit world. She
15 reached out, told me -- actually, I don't think she told me
16 that -- the name of the -- the case or the party, but she told
17 me, generally, what this was about and if this was something
18 that I might feel comfortable being an expert witness about, and
19 if so, then she wanted me to meet with other members of the
20 team, which I did.

21 Q And was her name Yael Fuchs?

22 A Yes.

23 Q And you had met Yael Fuchs at a seminar; correct?

24 A I believe I met her first at a seminar, yes; I don't
25 remember exactly which one.

ALAN F. BOWIN, CSR, RMR, CRR

1 Q And after the seminar, you asked her to go out for a
2 drink with you; correct?

3 A I think that was the first time I met her in person
4 and, yeah, we did meet for a drink afterward, before she took a
5 train back to New York.

6 Q And did anyone else accompany the two of you?

7 A I don't believe so, but I -- it's been a while now.

8 Q And you went across the street to a restaurant near
9 your office; correct?

10 A Correct.

11 Q And you were with her for about 30 minutes? Is that
12 about right?

13 A Maybe 30, 45 minutes. That sounds about right.

14 Q And you talked about the possibility of working
15 together again; correct?

16 A Well, we didn't talk about anything such as potentially
17 being an expert witness or anything like that. I think we
18 talked about potentially doing other speaking engagements
19 together but had never contemplated any sort of a -- a client
20 or -- you know -- paid-engagement-type relationship.

21 Q Okay. And then she was the point of outreach from the
22 Attorney General's office on this case; correct?

23 A Initially, yes.

24 (Continued on next page.)

25

ALAN F. BOWIN, CSR, RMR, CRR

Cross-Tenenbaum-Correll

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1 Q You talked earlier about membership organizations. How
2 are they different from other nonprofit organizations?

3 A So, they are different. When you incorporated a
4 nonprofit corporation, you have to indicate in most states on
5 the article of incorporation -- So, in most states perhaps all
6 states, I don't know offhand for sure, but when you incorporate
7 you have to indicate whether or not they are going to be voting
8 members of the organization. And if they are voting members,
9 then each of the state nonprofit corporation statutes in D.C.
10 has a whole set of provisions that relate to the voting members.
11 Certain rights that voting members have compared to the board.
12 Without voting members, kind of all the basically premier
13 governance rights belong to the board or when you have voting
14 members, like for instance, only voting members can approve a
15 merger, a consolidation or a dissolution or an amendment of the
16 article of incorporation or substantial transfer of assets. And
17 then it's common practice when you have voting members in a
18 membership association for the members to be able to elect the
19 board. Sometimes to elect the officers. And to amend the
20 bylaws. It's not required by law, but it's a common practice.

21 Q Do you know how many members the NRA has?

22 A I believe they have about 4 million members.

23 Q Have you ever represented or advised an organization
24 with that many members?

25 A No.

LAS

Cross-Tenenbaum-Correll

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1 Q What's the largest membership organization you've ever
2 advised and represented in terms of membership?

3 A So, I represented organizations, as I said earlier,
4 with budget sizes larger, as larger or larger than -- than this
5 one. I don't -- I honestly don't know offhand. Maybe 500,000
6 members, something along those lines.

7 Q And can you describe the kind of membership
8 organization that was?

9 A These are -- Most of my clients that I represented over
10 the years that are membership organizations are what are called
11 trade and professional associations. So, they are associations
12 that represent a particular industry or profession. They
13 advocate for that industry or profession.

14 Q That would be like a 501(c)(6) organization, correct?

15 A Many of them are, although there are a lot of 501(c)(3)
16 associations and obviously there are some 501(c)(4).

17 Q Is there any magic to the difference between (c)(3),
18 (c)(4) or (c)(6) in terms of membership organizations?

19 A So, there is a lot of difference between (c)(3) and
20 (c)(4) or a (c)(3) and a (c)(6). But (c)(6) and (c)(4)s are
21 very, very similar. The basic rules are the same for the most
22 part with the exception that (c)(4)s, because they are social
23 welfare organizations, there is something called a private
24 benefit doctrine that applies to them that does not apply to
25 (c)(6)s.

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Cross-Tenenbaum-Correll

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1 Q Are you familiar with -- You had drawn a distinction
2 between membership organizations and charities earlier. Do you
3 recall that?

4 A Well, I drew a distinction between membership
5 organizations and nonmembership organizations.

6 Q Okay. Are you familiar with the term charities?

7 A Yes.

8 Q And what does that term mean to you?

9 MR. THOMPSON: Objection.

10 A So, it means different things in different context.

11 MR. THOMPSON: Calling for a legal conclusion, your
12 Honor.

13 THE COURT: I think in this context, overruled.

14 Q I certainly don't mean to ask you for a legal opinion.
15 If you could describe in your practice of advising people what
16 is the custom and practice in the nonprofit world in terms of
17 use of the word charities?

18 A So it depends in what context. From an IRS
19 perspective, the IRS uses the term a lot on its website and
20 elsewhere, it doesn't really have any special legal meaning from
21 an IRS prospective. But for purposes of New York nonprofit law
22 it has a lot of meaning, because both (c)(3)s and (c)(4)s, so
23 the welfare organizations are considered charities under New
24 York State law.

25 MR. CORRELL: Your Honor, move to strike. He just

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Cross-Tenenbaum-Correll

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1 crossed the line into giving advice on New York law that
2 he's not allowed to give.

3 THE WITNESS: I don't know how else to answer the
4 question.

5 THE COURT: Yeah. I mean, it's a little unfair
6 because it was responsive to the question. The question was
7 not looking at the legal niceties of any particular state's
8 law, but do you have a view based on your general
9 experience.

10 A Yeah. I would say if you're asking me from that
11 perspective, I would say generally a charity is an organization
12 that has to put the public benefit by far above any private
13 interest. Whereas that doesn't necessarily apply in a 501(c)(6)
14 association where you can promote the interest of the
15 profession, the industry and it doesn't have to benefit the
16 general public.

17 MR. CORRELL: Your Honor, could I get a ruling on
18 the prior objection? Because I do think it was an
19 appropriate objection to strike the --

20 THE COURT: We'll strike -- Again this witness
21 isn't here to give you advice on New York law. For better
22 or worse I'm your source for that. So, the answer about New
23 York law you should disregard.

24 Q So, you're not an expert on compensation and benefits,
25 correct?

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Cross-Tenenbaum-Correll

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1 A Well, yes and no. I advise a lot of nonprofit
2 compensation committees on executive compensation, structures,
3 legalities, all those other sorts of things. I am not like a
4 compensation consultant that comes in and does a compensation
5 study to determine what's reasonable, fair market value, et
6 cetera.

7 Q But when I asked earlier what you were an expert on,
8 you didn't include compensation and benefits, correct?

9 A Well, I consider myself an expert on nonprofit law and
10 governance generally, which includes a lot of different things.
11 One of the things that I've always advised on is executive
12 compensation. And I negotiate, you know, nonprofit CEO
13 employment contracts. I advise compensation committees. I
14 advise on compensation plans. I advise on expense reimbursement
15 policies. These are all things I lump into that.

16 Q But you're not offering an opinion on compensation and
17 benefits today, correct?

18 A I'm offering an opinion on what I was asked about.

19 Q You did not in your expert disclosure say that you were
20 going to offer an opinion on compensation benefits, correct?

21 A Are you talking about in my expert report?

22 Q Correct.

23 A Well, in my expert report I did weigh in on certain
24 executive compensation benefits and, you know, the need that
25 they have to follow certain rules and an accountable planning

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1 and things like that. So, I'm not sure what you mean by that.

2 MR. CORRELL: Well, your Honor, I'm just trying to
3 draw a line between the expertise that was declared at the
4 beginning of the examination and what's happening today.

5 Q You're not offering any opinion today to this jury on
6 compensation of benefits, correct?

7 MR. THOMPSON: We offered Mr. Tenenbaum for what we
8 offered him for. This seems to be outside the scope.

9 THE COURT: Well, I mean, I'm not sure it's a black
10 and white thing. I think the witness has said compensation
11 and benefits is part of the broad category of nonprofit
12 governance. I'm not sure -- And he's also said he's not a
13 compensation expert in terms of setting compensation. I'm
14 not sure how much -- I'm not sure how to help you here.

15 MR. CORRELL: Well, I think I can move away from
16 this just because when you asked -- when he was asked to be
17 qualified as an expert, I was very careful to ask what are
18 you an expert on, and he did not say that. So, I'm going to
19 drop this line of questioning and move on.

20 THE COURT: Okay.

21 MR. CORRELL: But I reserve the right to circle
22 back and challenge his qualifications as a compensation and
23 experts expert in an attempt that he opines on that subject.

24 MR. THOMPSON: Your Honor, can we approach?

25 THE COURT: No, I don't think we need to. I think

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1 he's been clear about what his expertise is, and
2 compensation is a part of a broad category, but he's not a
3 compensation specific -- We know what compensation experts
4 look like. He's not saying that's what he is.

5 Q You're not an auditor, are you?

6 A No.

7 Q You're clear about that, you're not an auditor?

8 A I made that very clear in some of my prior answers.

9 Q Okay. You've seen a lot of auditors, but you're not an
10 auditor?

11 A Correct.

12 Q You're not an accountant, correct?

13 A No.

14 Q You've seen a lot of people do accounting work for
15 nonprofits, but you're not an accountant?

16 A Correct.

17 Q And have you ever run a nonprofit?

18 A No.

19 Q You've never been a chief executive of a nonprofit?

20 A No.

21 Q So, you're a quarterback whose never been on the field
22 in terms of nonprofit executive function, is that fair to say?

23 MR. THOMPSON: Argumentative, your Honor.

24 THE COURT: Overruled. You can answer.

25 A I mean, I would say I'm more like the coach that's

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1 never been a quarterback, but it doesn't mean that the coach
2 doesn't know everything about what's going on on the football
3 field. I've never run a nonprofit. I've never been employed by
4 a nonprofit except when I worked at that place at ASE, when I
5 went to law school. But I've worked with probably well over
6 2,000 nonprofits and about every aspect of their operations and
7 governance. So, I feel like I'm very much an expert on how
8 nonprofits typically work, should work, best practices, bad
9 practices, but no, I've never run a nonprofit.

10 Q Is the NRA a typical nonprofit?

11 A No. Definitely not typical.

12 Q Have you ever raised a million dollars a day to support
13 a cause?

14 A No.

15 Q A million dollars a day?

16 A No.

17 Q Have you ever engaged in constitutionally protected
18 activity that puts you at personal risk?

19 MR. THOMPSON: Outside the scope, your Honor.

20 MR. CORRELL: He's a nonprofit expert.

21 THE COURT: Overruled.

22 A No, I have not.

23 Q Have you ever advised a nonprofit organization where
24 there was an executive who was at substantial personal risk due
25 to death threats?

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1 A No.

2 Q You testified earlier that -- Well, I'll move in order.
3 You said in 2008 the federal form IRS 990 form was changed,
4 correct?

5 A Correct.

6 Q They added some questions, correct?

7 A Yeah. They completely overhauled the form and added a
8 lot of questions.

9 Q You focused on the questions regarding significant
10 material diversion of assets, correct?

11 A I was asked a question about that by Mr. Thompson.
12 Yes. I wouldn't say I focused on it.

13 Q They also put new questions in there, isn't that true
14 in Schedule J?

15 A They put a whole bunch of new schedules and a whole
16 bunch of new questions. I was not trying to suggest that that
17 was the only significant change to the form.

18 Q And Schedule J they asked a new question which was in
19 the past year did you provide, did the corporation provide any
20 of the following things to any person, correct?

21 A I know exactly what you mean, yeah. It's right up at
22 the top.

23 Q Right. And the top left box is first class or charter
24 travel?

25 A Correct.

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1 Q And then if you check any of the boxes there are other
2 things, companion travel, correct?

3 A I don't remember every one of the things like social
4 club dues. If you have like a chauffeur or private chef or
5 things like that.

6 Q Okay. And this indicated to you that the IRS knew that
7 some nonprofits were providing these things to certain people,
8 correct?

9 A Well, I don't know the IRS motivation behind putting
10 those.

11 Q Fair enough. They asked the question. They wanted to
12 know the information.

13 A But it could be because they don't think it's
14 appropriate and they want it to be disclosed so either they know
15 there is red flags or the potential donor public knows there is
16 red flags.

17 Q You don't know what they were thinking when they put
18 those questions in there?

19 A I don't.

20 Q Fair enough. Below that there is a line that says, If
21 you check any of these blocks, then answer the following
22 questions. And one of them was if you check the box for first
23 class -- well, it said I think for all of them do you have a
24 written policy, correct?

25 A Correct.

LAS

Cross-Tenenbaum-Correll

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1 Q Right. And so is -- Then it has another line where it
2 says, If you want to provide more information, you can go to
3 part three. Do you remember that?

4 A I believe so. Yeah. I don't have the form. It sounds
5 about right.

6 Q You go to part three and then you provide whatever
7 information you think the IRS might want to know, but they don't
8 really tell you what they want to know, correct?

9 A Correct.

10 Q Okay. So people have to kind of interpret the form and
11 decide what they want to put in there and that's something that
12 who typically would do in a nonprofit?

13 A Who typically prepare a Schedule J, is that what you're
14 asking?

15 Q Yeah. Well, the explanation for part three of Schedule
16 J who would do that typically?

17 A Well, I mean, it's really a question about who
18 typically prepares the 990 more generally, that's part of it.
19 In my experience it's a team effort. It's not just the person
20 whose signing it. That's impossible. As I said earlier, the
21 990 is far more than just like the Form 1120, which is the
22 corporate tax return, which is largely just numbers. This is
23 all about activities and governance. It allows the IRS to
24 figure out whether you are complying with the tax rules. The
25 IRS serves much more than just a financial role when it comes to

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1 tax exempt organizations.

2 And so in my experience, especially with larger
3 organizations, you know, there is a number of people involved.
4 There is the outside auditor who usually takes the lead on their
5 tax department on preparing the first draft of the 990. They
6 get input from the CFO and general counsel and CEO and other
7 departments. In some large organizations I work with, you know,
8 each department has to like signoff in different portions of the
9 990 to make sure it's complete. So, the Schedule J, if it has
10 questions, I mean I would think people like the CFO and the
11 general counsel would be two of the key people, but I certainly
12 can't say for sure.

13 THE COURT: Keep in mind the pace. I'm in carpal
14 tunnel syndrome avoidance.

15 THE WITNESS: Sorry about that.

16 Q Who typically signs these 990s?

17 A Typically it's usually the CFO, but that's what I see
18 the most on the signatures is the CFO.

19 Q And what typically happens after these 990s are signed?

20 A I mean after it's signed it gets filed.

21 Q And is there typically a review process that you've
22 seen in nonprofits before it gets signed and filed?

23 A Yes. That's what I was talking about. Yeah, there is
24 usually like a multi department signoff because it involves
25 inputs from so many different department, and they want to make

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1 sure they are capturing it and it's accurate and it's complete
2 and things like that, yes.

3 Q Do they typically in your experience are these things
4 submitted to the board of directors in draft form before they
5 are signed?

6 A Yeah. I mean the 990, since 2008 actually has a
7 question on there that says -- it doesn't say has the board
8 approved the 990, but they said has the board seen the draft of
9 the 990 before it was filed. So, because most want to check
10 yes, they make sure the board has viewed or had an opportunity
11 to view the draft 990 before it gets signed and filed.

12 Q You say "they make sure". Who makes sure?

13 A I mean, typically staff is making sure it gets before
14 the board. You know, I've seen it done different ways. It can
15 be a lot of big nonprofits have board, you know, portals that
16 they use for things like that. You'll get a message, you know,
17 that 2023 draft 990 is now available on the board portal. You
18 know, please be sure, if you're interested, take a look at it
19 and give us any feedback within the next 14 days or something
20 like that.

21 Q Or you can take it to a board meeting in draft form and
22 put it on the table and --

23 A Yeah.

24 Q -- and say to everyone --

25 THE COURT: Wait until the question is asked.

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1 THE WITNESS: Oh, sorry.

2 Q You can take it to a board meeting and say everyone
3 back there, go ahead and go back and look at it?

4 A I've seen that done before, but when I've advised
5 clients on it it's a pretty robust document. It's not just a,
6 you know, three or four page document. So, you kind of force
7 people to just quickly thumb through it at a break in a board
8 meeting to me isn't the most effective way to do it. It's not a
9 preferred way, but I've seen it done that way.

10 Q Once you've seen a 990, you know where the information
11 is that you're looking for, correct?

12 A I mean, I can only speak for myself. I can't speak for
13 others. I know where to look for things.

14 Q Well, you were pretty good in going from Schedule J
15 with me to the question to the box to the question to the
16 explanation. So, someone who has seen these year after year as
17 a director, if they were interested in knowing whether the
18 corporation was providing first class or charter travel to an
19 executive, they would know exactly where to look, correct?

20 A Presumably. Again, I can't read into someone else's
21 mind. I don't know how much they are paying attention to it.
22 Yeah, if someone has looked at a 990 for ten years in a row and
23 they know exactly what they are looking for, then they probably
24 know where to look for it, yeah.

25 Q Okay. Are transaction related to compensation -- Well,

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Cross-Tenenbaum-Correll

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1 in your experience is there a custom and practice with respect
2 to treatment of transactions related to compensation of
3 employees with regard to whether or not to -- those are
4 considered related-party transactions?

5 A Are you saying just paying like a salary for instance
6 to an employee, is that a related-party transaction? Is that
7 what you're asking?

8 Q I'm talking about if there is a transaction that
9 relates to compensation of an employee, is that typically
10 considered in your experience a related-party transaction?

11 A That's what I'm asking you. If you're saying like just
12 paying salary and benefits to an employee is not considered a
13 related-party transaction. For instance, if the organization is
14 hiring a vendor where, you know, an employee or board member or
15 someone has some financial interest or like they are just hiring
16 a board member to provide services, an otherwise uncompensated
17 board member providing services, that would be considered a
18 related-party transaction. There is a very specific definition
19 both for IRS and New York State law.

20 Q But if it's just an employment contract with an
21 employee, that's not a related-party transaction, right?

22 A No.

23 Q Okay. In your experience, do you typically see chief
24 executives relying on information from others to do their jobs?

25 A Absolutely.

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Cross-Tenenbaum-Correll

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1 Q And what kinds of people do they typically rely on?

2 A They typically rely on their senior staff. They rely
3 on their outside advisors, consultants, like attorneys and
4 accountants and investment advisors and insurance brokers and
5 consultants generally. There are a lot of consultants in the
6 nonprofit world in different areas. They rely on outside
7 lobbyists, outside PR and crisis communication consultants. You
8 know, a whole host of different folks.

9 Q Do they rely on other officers?

10 A When I say "senior staff", that's what I meant. But it
11 can also be relying on the volunteer officers, the unpaid
12 officers as well.

13 Q Do they rely on board counsel?

14 A You're talking about board legal counsel?

15 Q Yeah.

16 A Of course. Yes. I mean in some nonprofits the board
17 will have its own counsel separate from counsel for the
18 organization, which I've never been a fan of and I don't quite
19 understand the purpose of it except where you have an issue
20 where the board needs some independent counsel to look into like
21 what's going on at the staff level. But, yeah, a whole host of
22 folks.

23 In a lot of nonprofits too the CEO relies heavily on
24 the executive committee, you know, which is in most nonprofits
25 that's a smaller group, maybe six people or so that are

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1 typically comprised of the core volunteer officers of the
2 organization, and that's a very important group that the CEO
3 typically relies on.

4 Q Have you ever advised a nonprofit organization that
5 formed a special litigation committee?

6 A Yes.

7 Q Okay. And is -- is typically in your experience does a
8 chief executive rely on the special litigation committee to
9 handle litigation related matters?

10 A With the caveat that I'm not a litigator and I don't
11 provide litigation advice to my clients, but just from a
12 governance perspective --

13 Q Yes.

14 A -- that's the litigation committee that's going to be
15 advising on when we want to bring a case or appeal a case,
16 things like that, yeah, absolutely.

17 Q And typically in your experience the executive, chief
18 executive or senior executive would defer to the special
19 litigation committee on those kinds of matters, correct?

20 A I mean, it depends. You're talking about the sausage
21 making process of decisionmaking at a nonprofit. It's always a
22 combination of different votes. Sometimes some voices are more
23 significant than others. Have more experience. It's hard to
24 generalize on that.

25 Q You mentioned ex officio officer. Can you explain

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1 typically how that works in nonprofit practice? And I'm talking
2 about not legal practice but custom and practice.

3 A Yeah. Yeah. Sure. Ex officio, it's a Latin word that
4 means by virtue of the office. What that means is like for
5 instance it's common in most nonprofits for whoever serves as
6 the CEO, whatever you call it, executive vice president,
7 whatever the title is, sometimes it's the president, the CEO,
8 but whoever is the chief staff executive, it's not uncommon for
9 that person to serve ex officio as a member of the board often
10 in a nonvoting capacity. So, the CEO automatically being ex
11 officio nonvoting member of the board. That's a common
12 construct. And sometimes that will be the case for other
13 officers as well, like staff officers.

14 Q And in your experience in advising nonprofits have you
15 distinguished between voting directors and nonvoting directors
16 or nonvoting members of the board who are there simply ex
17 officio?

18 A So, I always have to explain this to clients. Ex
19 officio in voting or nonvoting are two completely different
20 constructs. One just means you're serving in this other role by
21 virtue of your office. So that if, you know, Jane Doe is
22 serving as the CEO, Jane automatically serves on the board of
23 directors. That person is a member of the board. Whether they
24 are voting or a nonvoting member is a separate issue. They
25 could be either. It's not really a favored practice for like

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1 staff to have a vote on the board of a nonprofit. I've
2 certainly seen it once in a while.

3 Usually the typical construct is whoever is going to
4 serve ex officio say on the board, they are going to serve in a
5 nonvoting capacity. That's not a legal issue. It's however you
6 want to define it.

7 Q Right. Have you ever, in your experience advising
8 nonprofits, seen an ex officio member of the board of directors
9 held liable for a vote that was taken by the board of directors
10 where that person, the ex officio person had no right to vote?

11 A So, I need a clarification. Are you saying the ex
12 officio member of the board was a voting member or a nonvoting
13 member?

14 Q Nonvoting.

15 A Well, obviously if they are a nonvoting member of the
16 board, they should not be voting.

17 Q Right. And if they don't vote the question is have you
18 ever seen anyone held liable for action taken by a board
19 pursuant to votes in which the ex officio member did not have
20 the right to vote?

21 A I mean so just because you don't have a vote, you're
22 still a member of the board. You still owe fiduciary duties.
23 So, if you're asking me have I seen a situation where a
24 nonvoting member of the board who owes fiduciary duties has been
25 accused of breaching their fiduciary duties, yes, but it's not

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1 because they didn't vote.

2 Q That's not the question I asked. The question that I
3 meant to ask was that have you ever in your experience seen
4 someone who did not vote for certain board action held liable
5 for the board action when they --

6 A Solely because they didn't vote?

7 Q They had no right to vote and didn't vote because they
8 didn't have the right to vote.

9 A Other than a situation where for instance they breached
10 their fiduciary duties, no, I wouldn't say that I've seen a
11 situation where someone was held or threatened to be held liable
12 solely because they did not vote when they did not in fact have
13 a right to vote.

14 Q Thank you. You talked about, and I'll do this very
15 quickly, you talked earlier about certain vendors who provide
16 unique services. You said really, really unique.

17 A Yeah. I was referring to when there is a sole source
18 exception to a procurement policy.

19 Q Right. So in your experience if you -- have you ever
20 seen a nonprofit organization develop a close relationship with
21 a membership recruitment firm that was recruiting members and
22 keeping member lists and communicating with members? Have you
23 ever advised anyone like that?

24 A Oh, sure. In the membership association world we
25 usually call that membership marketing. It means like marketing

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1 the sale of memberships basically.

2 Q And there is something special about that function,
3 correct, because you're dealing with people's personal
4 information, their names, personal data, correct?

5 A It's definitely a very important function for sure,
6 yeah.

7 Q And confidentiality is hugely important there, because
8 if people think they give you their name and they give you their
9 information they want to be sure that that's used in a proper
10 way, correct?

11 A Always. Yes. I would say that not just for members
12 but for donors generally.

13 Q So, if you're a nonprofit organization engaged in a
14 constitutionally protected activity, where you have the
15 obligation to protect the identities of the people who asked you
16 to speak for them, it would be particularly important to
17 maintain a long-term relationship with an organization that you
18 felt confident would protect the identities and personal
19 information of these members, correct?

20 A That's not what I said. I said it's really important
21 to maintain the confidentiality of the members/donors. What I
22 did not say is that it's important to have a long-term
23 relationship with a vendor solely because of that. I mean that
24 presumes that other companies, other vendors that do the same
25 thing aren't able to maintain the same degree of

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1 confidentiality. That would be a very unusual statement to
2 make.

3 Q So, I think you admitted that the NRA is an unusual
4 organization, correct?

5 A Sure.

6 Q Would you call it unique?

7 A Yes.

8 Q Okay. And would you call its members -- Well, I don't
9 want to characterize the members of the NRA. So you see the NRA
10 in a category apart from the other nonprofits that you have
11 advised in the past, at least in the sense of the activities in
12 which it engages, correct?

13 A It's a unique organization in terms of what it does for
14 sure and in terms of the number of members for sure. I wouldn't
15 say it's unique though in terms of how it carries out its
16 procurement policy or should carry out the conflict of interest
17 and related-party transactions policies, which is what I think
18 you're getting at. So, no, I wouldn't say those unique aspects
19 would justify, you know, what I said earlier having, you know,
20 an RFP for big vendors. And going through that RFP process ever
21 three or five years. I don't think anything about the NRA would
22 justify that sort of a practice, no.

23 Q Are you familiar with the case NAACP versus Alabama?

24 A Generally. It's been a while.

25 Q Do you -- What's your understanding of that case?

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1 A Honestly, it's been a while. I thought I'm not suppose
2 to opine on the law.

3 Q I'll represent to you that it was a case involving an
4 action. It was a case involving action by a state Attorney
5 General to try to get membership information from the NAACP,
6 which was a civil rights group that was operating in Alabama but
7 had been formed in New York. Does that refresh your memory as
8 to what that case was?

9 A Yes.

10 MR. THOMPSON: Objection, your Honor. Scope,
11 relevance.

12 THE COURT: Overruled.

13 Q And in that case the U.S. Supreme Court, not the New
14 York Supreme Court, ultimately ruled that it was
15 unconstitutional for the state Attorney General to try to force
16 this information from the NAACP to be disclosed because it would
17 chill free speech. Does that refresh your recollection?

18 MR. THOMPSON: Your Honor, counsel is testifying,
19 representing a case.

20 MR. CORRELL: I'm trying to refresh the witness'
21 recollection.

22 THE COURT: He's setting up a question, which I
23 would try to get to if you could.

24 MR. CORRELL: Thank you.

25 A That sounds generally consistent with my understanding

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1 of the case. Like I said, it's been a while since I reviewed
2 the details of it. That sounds about right to me.

3 Q So, if you were the chief executive of an organization
4 like the NAACP or the NRA and you saw one of your duties as the
5 chief executive was to protect the member information that
6 members were giving to you, then that would create a situation
7 that would be unusual in your experience if not unique, correct?

8 A I would agree that it's critically important to protect
9 that member information for sure. I would never argue with
10 that, no.

11 (Continue on the next page.)

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1 Q You talked earlier about -- about private -- travel by
2 private jet. You remember testifying about that?

3 A Um-hmm. Yes.

4 Q And you testified that you -- that there are some -- I
5 think you called them "NGOs" -- that conduct activities around
6 the world, and then you said, that's the only time you've seen
7 that happen. Is that your testimony?

8 A Yeah, when -- in response to a question from
9 Mr. Thompson. He asked me, have I seen the use by nonprofits of
10 private-charter travel and I said, in my experience, that's the
11 only time that I've encountered it outside of this case. It's
12 kind of with that NGO community, you know, doing relief and
13 development work in remote parts of the world where it's
14 impossible or very difficult to get to with commercial airlines.

15 Q And that's the only time you've seen a nonprofit
16 provide charter travel to executives?

17 A In my own personal experience, but again, that's just
18 my own personal experience. I -- I can't speak beyond that.

19 Q Have you ever heard of the "PGA Tour"?

20 A Sure.

21 Q And what is it?

22 A Well, my understanding is that the P -- I don't know if
23 the formal name is the Professional Golf Association or PGA
24 Tour, but they're a nonprofit 501(c)(6) professional
25 association.

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1 Q Have you ever looked at the 990 of the PGA Tour?

2 A I have not.

3 Q Would it surprise you to know that the PGA Tour is a
4 nonprofit that provides charter travel to its chief executive
5 and others?

6 A It would not surprise me to see that, but I didn't know
7 that before today.

8 MR. CORRELL: Your Honor, I'd like to have a
9 document marked for identification, for impeachment
10 purposes.

11 THE COURT: A hard copy or --

12 MR. CORRELL: I'm going to do it the old-fashioned
13 way, your Honor.

14 THE COURT: All right.

15 MR. CORRELL: I'm going to show opposing counsel
16 (indicating) and I'm going to ask to approach (handing).

17 And then I'm going to provide a copy to the court
18 reporter to be marked.

19 And the number would be WL X-221.

20 THE COURT: Sorry. Say it again?

21 MR. CORRELL: WLX 221 is the exhibit.

22 THE COURT: "WLX"?

23 MR. CORRELL: That's "Wayne LaPierre" --

24 THE COURT: Ah.

25 MR. CORRELL: -- "Exhibit 221."

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1 THE COURT: For ...?

2 MR. CORRELL: For identification.

3 (Exhibit so marked, then handed to witness.)

4 BY MR. CORRELL:

5 Q Mr. Tenenbaum, would you please take a moment and
6 familiarize yourself with this document?

7 (Pause.)

8 A I mean, I've reviewed the front page and I know what
9 I'm looking at, but --

10 Q To make it easy for you, I will -- I'm going to direct
11 your attention to page "38/50."

12 A Yeah, I'm looking at it.

13 Q And can you tell the jury, briefly, what this is?

14 A So this is Schedule J of the 2022 Form 990 for the --
15 for the PGA Tour, Incorporated. That's the schedule labeled
16 Compensation Information and that's one of those, since 2008,
17 newer schedules that the IRS asks for much more detailed
18 information about compensation of officers, directors and key
19 employees; and the first box checked is the box about whether
20 any of the key individuals engaged in first-class or charter
21 travel and the box is checked "Yes."

22 Q And please turn back to the first page for a moment.
23 It says, in the upper right-hand corner: "2022." Do you see
24 that?

25 A Yeah.

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1 Q And it says: "Open to public inspection." Do you see
2 that?

3 A Correct.

4 Q So this (indicating) is a public document; correct?

5 A Yes.

6 MR. CORRELL: Your Honor, I move this into evidence
7 under the Public Records Rule and ask the Court to take
8 judicial notice of it.

9 THE COURT: Any objection?

10 MR. THOMPSON: No objection, your Honor.

11 THE COURT: It's admitted.

12 (Exhibit so marked.)

13 MR. CORRELL: May we have this exhibit on the
14 screen?

15 THE COURT: Yes.

16 (Image displayed.)

17 MR. CORRELL: So, members of the jury, you can now
18 see what the witness is looking at and you can see that it's
19 a Return of Organization Exempt From Income Tax.

20 BY MR. CORRELL:

21 Q Mr. Tenenbaum, would you please --

22 MR. CORRELL: Well, if we could have Schedule J,
23 please ...?

24 And if you could, Ali, please mark or highlight the
25 question that Mr. Tenenbaum was referring to in the box --

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1 the first box -- that is checked for first-class or charter
2 travel.

3 (Image displayed.)

4 THE COURT: It's the page before that, I think.
5 You need the page before that.

6 Oh, no. It's all together.

7 MR. CORRELL: Actually, I think you've gotten ahead
8 of me.

9 THE TECHNICIAN: Okay.

10 MR. CORRELL: We're looking for the box, upper
11 left-hand corner.

12 (Different image displayed.)

13 Q Okay, there we go. It says: "Check" --
14 Could you read 1a, please, for the jury, Mr. Tenenbaum?

15 A Can I read 1a? Is that what you said?

16 Q Yes. Yes, just read it aloud.

17 A "Check the appropriate box(es) if the organization
18 provided any of the following to or for a person listed on Form
19 990, Part VII, Section A, line 1a. Complete Part III to provide
20 any relevant information regarding these items."

21 Q Mr. Tenenbaum, may I now direct your attention to the
22 explanation -- well, down to the box below?

23 (Image scrolled.)

24 MR. CORRELL: Ali, if you could take it to the line
25 below, where it asks if there is any written policy ...?

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1 (Image scrolled.)

2 BY MR. CORRELL:

3 Q Mr. Tenenbaum, would you read line -- item b, please?

4 A Sure.

5 "If any of the boxes on Line 1a are checked, did the
6 organization follow a written policy regarding payment or
7 reimbursement or provision of all of the expenses described
8 above? If 'No,' complete Part III to explain."

9 Q And then would you read 1b and the response?

10 A Oh. The response is "Yes."

11 Q Now, is there a place you go to see whether there is
12 any further explanation or further information in answer to that
13 question?

14 A Well, yes. If you look on the next page, Part III
15 [sic], "Supplemental Information," there is --

16 MR. CORRELL: May we have that, please, Ali?

17 (Image scrolled.)

18 THE WITNESS: No, it's the next page.

19 MR. CORRELL: Next page.

20 It's the --

21 THE WITNESS: The --

22 MR. CORRELL: The print at the bottom.

23 (Image scrolled.)

24 MR. CORRELL: There we go. All right.

25 And, Ali, will you please highlight the --

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1 Where it says, "Schedule J, Part I, Line A," it
2 starts, "In some cases ...", would you highlight that
3 sentence? Just the sentence, please? The first sentence.

4 (Image modified.)

5 BY MR. CORRELL:

6 Q And, Mr. Tenenbaum, will you please read that sentence
7 to the jury?

8 A Sure.

9 "In some cases, certain individuals listed on Part VII
10 and Schedule J may use first-class or charter travel,"
11 specifically, "a corporate plane of a tour subsidiary and/or a
12 third party) for business or personal use based upon security
13 concerns, privacy concerns, timing concerns, and length of
14 trip."

15 Q Thank you, Mr. Tenenbaum.

16 So, having seen this, do you still stand by your
17 previous answer: that you're not aware of any nonprofit
18 organization that provides charter travel, except NGOs that
19 provide travel abroad?

20 A Well, at the time I answered that question -- I was
21 asked if I was aware of any organizations that used charter
22 travel and my answer was accurate based on what I knew. Now
23 that I see this one (indicating), I would add this to the list
24 of nonprofits that I'm aware of where charter travel is
25 utilized.

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1 Q All right.

2 MR. CORRELL: Ali, could you put up the NRA's 990?

3 THE COURT: What number?

4 MR. CORRELL: I'm afraid I don't have the exhibit
5 number, your Honor.

6 All right, this is fine.

7 Q I've got a couple more questions for you.

8 Do you have any knowledge -- personal knowledge -- as
9 to what the threat level is for the NRA today, as we sit here?

10 A None, no.

11 Q Have you had --

12 Do you have any personal knowledge as to what the
13 threat level was when you started this assignment?

14 A No.

15 Q Do you have any idea how it fluctuates from day to day?

16 A I -- I really don't.

17 Q All right. And I think you testified earlier that
18 you've never advised or represented any chief executive who had
19 a threat level -- a personal threat level. Is that fair?

20 A Correct.

21 Q And you have no personal knowledge as to the threat
22 level that exists with respect to Mr. LaPierre --

23 A No.

24 Q -- correct?

25 And so, in giving all these opinions that you've given,

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1 you were not taking into account the special nature of the NRA
2 in terms of threats to the NRA or to its chief executive;
3 correct?

4 A No, because I was instructed to not comment on the NRA.
5 I was instructed to comment, just generally, on the nonprofit
6 industry practices and common, best practices that I'm aware of.

7 MR. CORRELL: Thank you.

8 MR. WERBNER: Mr. Phillips does not have any
9 questions.

10 MR. FLEMING: Very brief questioning.

11 (Pause.)

12 (Microphone handed to Mr. Fleming.)

13 CROSS-EXAMINATION

14 BY MR. FLEMING:

15 Q Hi, Mr. Tenenbaum. How are you?

16 A Good, thank you.

17 Q William Fleming for Mr. Frazer. I just have a few
18 questions for you.

19 A conflict-of-interest and related-party transaction
20 policy is a good thing, right?

21 A Having such a policy is a good thing, presuming that
22 the policy is complete and fulsome and -- and says and does the
23 right things. Yeah, you can't -- I would never say, just having
24 a policy that says "Conflict-of-Interest and Related-Party
25 Transaction Policy" at the top is, itself, going to be a good

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1 thing. The devil's in the details.

2 Q Okay. But if the state regulator called your
3 conflict-of-interest policy "comprehensive" and defining
4 conflicts of interest more broadly than required by law, that
5 would be a good thing; right?

6 A Yes.

7 Q Now, you would agree that --

8 You talked about questionnaires. Do you recall the
9 testimony?

10 A I'm sorry; could you repeat that?

11 Q Questionnaires.

12 A Questionnaires, yes. Conflict-of-interest
13 questionnaires.

14 Q Yes.

15 Would you agree that an ever-broader questionnaire that
16 captured more conflicts would be a good practice?

17 A More than what? I don't know what you mean.

18 Q To develop -- you -- you would be in favor --

19 If you advised clients, you would advise them to ask
20 more and more questions of your board to discern what are
21 conflicts of interest; right?

22 A You mean, is it better to be broader and more expansive
23 rather than narrower? Yes, absolutely.

24 Q All right.

25 Now, you explained that you advise clients, sort of --

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1 you called -- you said, as "outside general counsel." Do you
2 recall the term?

3 A Yes.

4 Q So, even though you're outside the business, you serve
5 in, sort of, a general counsel capacity; correct?

6 A Well, it depends on the client.

7 For some of our clients that have no in-house lawyer,
8 yes, I serve as their general counsel or our firm serves as
9 their general counsel firm. For those larger organizations that
10 have in-house counsel, I serve as outside counsel. I don't have
11 any, you know, legal title of "general counsel," but I use that
12 term more colloquially to mean, kind of, the broad array of
13 advice and counsel on nonprofit-specific legal issues.

14 Q Okay. And if a client came to you with a question
15 about a problem that you were not -- didn't feel -- sufficiently
16 expert in, you might refer that out to a different lawyer;
17 right?

18 A Happens all the time, yes.

19 Q You're not an expert on everything, right?

20 A No. I wish I was, but no.

21 (Laughter.)

22 Q And have you ever had occasion, as a lawyer, to rely on
23 third-party professionals; accountants, forensic people of
24 that -- people of that sort?

25 A Sure.

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1 In fact, a lot of times, when I'm conducting -- leading
2 -- an internal investigation for a nonprofit board involving,
3 say, financial improprieties, our firm will retain a forensic
4 accounting firm to dig in, you know, to the numbers and the
5 details and the transactions and the receipts and the payments
6 and all of those other things, because that's well outside of --
7 of my or our wheelhouse.

8 Q And where you do that, where you have hired another
9 firm to do that, you trust that they're going to do a good job;
10 correct?

11 A You always try, yes.

12 Q Okay.

13 A And, yes, if you hire a good firm, you have a lot of
14 trust.

15 Q And do you feel justified in relying on their work?

16 A So far, I've never had a bad experience with a forensic
17 accounting firm that we hired, if that's what you mean.

18 Q Okay.

19 A Some were stronger than others.

20 Q Now, I think you also testified that with respect to
21 officers, "the board or their bosses," I think you said. Does
22 that, roughly, encapsulate what you said?

23 A I was referring -- and I think I specifically said,
24 staff officers; like, officers who are employees of the
25 organization. Yes, the board is their boss.

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1 Q Okay. Now, you also indicated -- I think it's right
2 here (indicating) -- that where executives make information not
3 available, that would be something that would not be good --
4 good practice; right?

5 A Yeah. I -- I believe what I said was that if a board
6 or a committee of the board was asking, you know, some senior
7 staff to provide information or documentation about something
8 that they were concerned about, it would be problematic, in my
9 view, if the staff refused to comply with those requests.

10 Q Okay. But if the information was accessible, you're
11 aware, are you not, that there are time, place and/or manner
12 restrictions that can be put on it? Right?

13 A I mean, sometimes, like, I get the question from a CEO,
14 you know: "The board is asking for this; I'm concerned; you
15 know, this is really sensitive information." And what my usual
16 answer is: "Look, we have to provide it, at least to the
17 executive committee, but we can" -- you know -- "we can have
18 them sign an additional nondisclosure agreement; we can give
19 them reminders about confidentiality; but you just can't fail to
20 provide the information if it's something relevant."

21 Q Right. But if you provide it, you can put certain
22 reasonable restrictions on its accessibility; fair?

23 A Do you mean, like, for instance, providing only access
24 through some online portal so someone can't make a copy of it,
25 or that sort of a thing?

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1 Q Precisely.

2 A Yeah, that would absolutely be appropriate, as long as
3 they can, you know, freely access it and, like I had said
4 earlier with the example of the 990, not be rushed, you know, in
5 a 15-minute break at a meeting, to have to review something.

6 MR. FLEMING: Thank you.

7 THE WITNESS: Sure.

8 THE COURT: Anything further on redirect?

9 MR. THOMPSON: A few questions, your Honor.

10 (To Jury) Am I coming through all right? Can you
11 hear me? Great.

12 REDIRECT EXAMINATION

13 BY MR. THOMPSON:

14 Q Mr. Tenenbaum, you were asked a few questions by
15 Ms. Rogers about the qualifications for members of the audit
16 committee. Do you remember that?

17 A Yes.

18 Q And I believe you said that being a CPA or being a
19 lawyer, those would be good qualifications; is that right?

20 A Yes. Along with others, yes.

21 Q What are the other qualifications you would expect to
22 see in an audit committee member?

23 A I think I actually said some of them; things like
24 caring about compliance; you know, having an ability to not be a
25 wallflower; to -- to raise questions, raise red flags -- or ask

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1 questions, raise red flags -- not be, you know, just kind of a
2 yes-man, so to speak.

3 Q And, Mr. Tenenbaum, do you recall, Ms. Rogers asked you
4 a series of hypothetical questions about a hypothetical board
5 member using some salty language? Do you remember that?

6 A I sure do.

7 Q All right. And, I believe, part of the hypothetical
8 was whether this poor-language-using board member raised some
9 concerns at a future date -- whether they could still be
10 stripped of their committee assignments. Do you recall that?

11 A I recall it, but --

12 MS. ROGERS: Objection; mischaracterizing --

13 THE COURT: I can't hear you. I'm sorry.

14 MS. ROGERS: Sorry.

15 Mischaracterizes the prior testimony.

16 THE COURT: All right.

17 You mean, it's not the exact question that was
18 asked?

19 MS. ROGERS: Correct, your Honor.

20 THE COURT: All right. Well, the record will
21 ultimately show if it's exactly the same question.

22 Do you want to ask your question?

23 MR. THOMPSON: Yes. Thank you, your Honor.

24 BY MR. THOMPSON:

25 Q So let me step back, then: Let's take this

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1 potty-mouthed board member and let's assume that the board
2 member later makes -- raised concerns about the finances of the
3 organization.

4 Would it cause you concern if that board member was
5 then subsequently stripped of their board committee assignments?

6 A So, yeah. I think, if I recall the prior question, and
7 it was a hypothetical that was basically just using the
8 potty-mouth words; you know, like, that alone, is that enough
9 to -- to be a whistleblower, or something like that. I honestly
10 don't recall the details. But, you know, if -- if the same
11 person who, you know, used some salty language then later, you
12 know, was a whistleblower raising certain concerns, does that
13 mean that that person's concern should not be dealt with and
14 investigated? Absolutely not.

15 Q And if this hypothetical board member was joined in
16 raising her concerns by other board members, would those other
17 board members be tainted by the conduct of this one board
18 member?

19 A Well, like I said, if a -- one -- board member or a
20 bunch of board members are blowing the whistle on certain
21 concerns, regardless of what -- whether, you know, the board
22 chair or whoever believes that their president were acting in
23 good faith or not, whether they believed that it -- this was
24 sparked or motivated by some salty language, frankly, it doesn't
25 matter. It's still -- would still need to be investigated.

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1 And then later, like I said -- I was asked some other
2 hypotheticals along those lines. Later, if it turns out that
3 the people that blew the whistle themselves engaged in some
4 problematic or bad activity or violated some rules, then they
5 should be dealt with.

6 But it doesn't mean -- you still have to investigate
7 the concerns that are raised at the outset, regardless of what
8 you think someone's motivation is.

9 Q And Ms. Rogers also asked you a hypothetical about the
10 president of the organization receiving a \$980,000 contract. Do
11 you recall that?

12 A Yes.

13 Q And hypothetically, if the board were to ratify that
14 arrangement, what information would you expect them to have
15 before ratifying it?

16 A Well, first, I was unclear exactly what Ms. Rogers
17 meant by this. I didn't know if the -- if this was a volunteer
18 president or the -- or the executive vice president, paid CEO.
19 But I think she clarified that it was the -- kind of -- the
20 volunteer president. And I wasn't clear if it was, the
21 volunteer president is getting a contract to perform some
22 services for the organization or has, you know, a pot of money
23 that they can use to hire other vendors to perform services.
24 I -- I -- I honestly don't know. But here, maybe it doesn't
25 matter for purposes of your question.

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1 Either way, if the audit committee is later asked to
2 ratify that transaction, what I would expect, and just as New
3 York requires, is that --

4 THE COURT: We're not -- we're just talking about
5 your general experience.

6 A What I would expect is that the audit committee would
7 look and say: "Was it fair and reasonable and in the best
8 interests of the organization to enter into that? Does it put
9 the organization at risk for any violations of state or federal,
10 you know, nonprofit, corporate or federal tax law? Were there
11 other, better or less expensive alternatives or were
12 alternatives considered?" I would expect the audit committee to
13 document the basis for its decision, contemporaneously, through
14 meeting minutes. And then, finally, I would expect the audit
15 committee to ensure that new policies or procedures or practices
16 are put in place, moving forward, to be sure that that does not
17 happen again in the future.

18 Q And assuming that this \$980,000 contract was in
19 writing, would you expect the audit committee look at the
20 contract before ratifying it?

21 A Absolutely.

22 Q And would you expect the audit committee to ratify the
23 contract if the board member refused to provide it?

24 A Absolutely not.

25 Q Several of the defendants asked you questions about

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1 Schedule J of the 990. Do you recall those questions,
2 Mr. Tenenbaum?

3 A Generally, but you'll have to refresh my memory if you
4 want a specific ...

5 Q So, with respect to Schedule J, there's an item that
6 asks about first-class and charter travel; is that correct?

7 A Correct.

8 Q And it combines the two together; is that right?

9 A Correct.

10 Q And then it also asks whether or not any such travel
11 arrangements were pursuant to a written policy, right?

12 A Correct.

13 Q And you were shown an example regarding the PGA Tour.
14 Do you remember that?

15 A Yes.

16 Q And what kind of organization is the PGA Tour?

17 A They are a -- from what I generally know, and I
18 think -- actually, it's right here (indicating). Yeah, they're
19 a 501(c)(6), as I thought. They're a 501(c)(6) professional
20 association.

21 Q And you're referring to Wayne LaPierre Exhibit 221; is
22 that right?

23 A Correct.

24 Q All right.

25 A That's correct.

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1 Q And --

2 A And they're a Maryland nonprofit corporation, according
3 to that exhibit.

4 Q And I believe you --

5 MR. THOMPSON: Would it be possible to have the
6 exhibit brought back up? I don't think we have the
7 electronic version ourselves.

8 MR. PETERS: I would just object.

9 The point about the Maryland nonprofit versus the
10 New York nonprofit, those are -- that's a legal-conclusion
11 type of answer.

12 THE COURT: It's on the face of the exhibit, so ...

13 THE WITNESS: And I was just re --

14 THE COURT: Overruled.

15 THE WITNESS: You said, what type of organization
16 is it?

17 THE COURT: You might say it was not responsive to
18 any question, to which I would say, "Then it should be
19 stricken as not responsive. "

20 MR. PETERS: Objection, your Honor, as not
21 responsive.

22 THE COURT: Sustained.

23 MR. THOMPSON: And could we please go back to the
24 large box of text that was shown from Schedule J on page 39
25 of the exhibit?

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1 Thank you.

2 (Image displayed.)

3 BY MR. THOMPSON:

4 Q So, Mr. Tenenbaum, do you recall being asked a few
5 questions about -- it's at the bottom of page 39 of this
6 exhibit, the box of text.

7 A Yes.

8 Q And let's see ...

9 If I could please take you down --

10 So, in the next box of text, four lines down, towards
11 the end, where it reads, "first-class or charter travel is
12 in ..." Do you see that?

13 A You're talking about the box that's highlighted on the
14 screen (indicating)?

15 Q Yes, that's right.

16 A And --

17 Q So, four lines down, at the end of that line, it -- it
18 starts: "First-class and charter travel"?

19 A Yes.

20 Q Can you please read that for the jury?

21 A You're talking about the sentence that begins, "This
22 provision ..."?

23 Q Yes, that's right.

24 A "This provision of first-class or charter travel is in
25 accordance with written company policy and, when required" ([for

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1 example], personal use), the appropriate value is calculated and
2 reported as taxable to each applicable recipient in accordance
3 with the applicable tax rules."

4 Q In your experience, Mr. Tenenbaum, with respect to the
5 international NGOs that you've had experience with, is charter
6 travel governed by written policies, generally speaking?

7 A In my experience, yes.

8 Q Had you ever encountered charter travel at a nonprofit
9 that has not been governed by a written policy?

10 A Not that I'm aware.

11 Q And if a NR -- a nonprofit -- reports on its 990 that
12 it does have a written policy for charter travel, would you
13 expect it to have a policy -- a written policy -- for charter
14 travel?

15 A Yes.

16 Q Okay.

17 Do you recall, earlier, Mr. Tenenbaum, testifying about
18 the difference between a 501(c) -- a 501(c)(6) and a 501(c)(4)
19 organization?

20 A Yes.

21 Q What is that difference?

22 A So there's a lot of similarities, I would say. The
23 basic limitations, prohibitions, for the most part, are the same
24 between a -(c)(6) and a -(c)(4). Like, they can both engage in
25 unlimited lobbying; they can both engage in political campaign

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1 activity, as long as it's not more than half of their activity.
2 But the -- probably, the biggest difference from a federal
3 tax-law perspective is that a -(c)(6) has to primarily support
4 and further and promote an industry or a profession --

5 MR. CORRELL: Objection, your Honor.

6 I think we're getting into federal tax law here.

7 THE COURT: I think it's a question that came up
8 earlier, so it's fine.

9 A So the -- to repeat that last part:

10 A -(c)(6) organization has to primarily further the
11 interests of an industry or profession, whereas a -(c)(4) has to
12 have primarily a public benefit, as opposed to a private
13 benefit, and that's called a Private Benefit Doctrine. It only
14 applies to -(c)(3)s and -(c)(4)s, not to -(c)(6)s. So, to me,
15 I've always viewed that as the principal -- the biggest --
16 distinction, from a federal tax law perspective, between the two
17 categories.

18 Q And do you recall being asked some questions by counsel
19 for Mr. LaPierre about the, sort of, membership marketing
20 organizations and the role they play as vendors?

21 A Yes.

22 Q And in your experience, Mr. Tenenbaum, do membership
23 marketing vendors generally provide for the confidentiality of
24 the donor names for nonprofits?

25 A Well, generally, if, say, a membership marketing vendor

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1 is going out and soliciting and bringing in new members and
2 collecting, like, member -- you know -- names, addresses,
3 e-mails, things like that, absolutely. I would think that the
4 contract would have a provision that mandates confidentiality.
5 Same would go with donors, generally, like for a professional
6 fund-raiser.

7 Q Is that uncommon in the membership marketing industry,
8 in your experience?

9 A No. I would expect to see that in -- in every
10 contract.

11 Q And you were also asked a few questions, Mr. Tenenbaum,
12 about special litigation committees. Do you recall that?

13 A Yes.

14 Q And what are the situations in which an organization
15 might convene a special litigation committee, generally
16 speaking?

17 A Again, with the caveat that I'm not a litigator and I
18 don't advise my clients on their litigation strategy or anything
19 that -- like that, just from a general governance perspective,
20 when I've seen that -- and it's not the norm, but where I've
21 seen them is, you know, where a nonprofit organization engages
22 in substantial litigation. I've seen that from trade or
23 professional associations; I've seen it from -(c)(4)s, like the
24 NRA, that, you know, further a particular mission or cause and
25 that engage in active litigation in support of their mission.

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1 It's not uncommon to have a special litigation
2 committee to advise the board and the staff and others on
3 litigation strategy, what cases are most important, most
4 impactful to the cause, the mission, the industry, etcetera.

5 Q Is a special litigation committee ever used where there
6 might be a conflict-of-interest situation?

7 A I've never heard of that, no.

8 MR. THOMPSON: No further questions, your Honor.

9 THE COURT: Recross?

10 MS. ROGERS: Very short.

11 RE CROSS-EXAMINATION

12 BY MS. ROGERS:

13 Q So short that I'm not going to mess with this
14 microphone (indicating).

15 Mr. Tenenbaum, there's been a line -- a couple lines --
16 of the questioning about a president with a vendor contract.
17 They're a bit muddy, so just to tie that up:

18 In your expertise, based on your experience, in your
19 opinion, should the volunteer president of a nonprofit accept a
20 \$980,000 employment agreement from a vendor of the nonprofit
21 without getting approval from the board?

22 A Well, if the board has delegated that responsibility
23 for vetting related-party transactions, which is what that would
24 be, then -- and certainly, a conflict-of-interest transaction,
25 either way, if the audit committee is charged with vetting that

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1 and managing it and deciding what is in the best interests of
2 the organization, then the audit committee should be charged
3 with evaluating that and weighing in and signing off on that in
4 advance, before it happens.

5 Q So, if that president didn't get advance approval from
6 the audit committee in the situation you described, he'd be
7 doing something wrong; right?

8 A I would say, yes, that would be problematic.

9 MS. ROGERS: Thank you.

10 Nothing further.

11 MR. CORRELL: One or two.

12 (Continued on next page.)
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23
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25

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1 RE CROSS EXAMINATION

2 BY MR. CORRELL:

3 Q Mr. Tenenbaum, you said you would expect to see that --
4 you testified earlier that in sum and substance you would expect
5 to see that in a membership contract referring to a
6 confidentiality provision. Do you remember that testimony?

7 A Yeah. I said I would expect to see a strong
8 confidentiality provision in a contract between a nonprofit
9 organization and a membership marketing vendor that's going out
10 and soliciting new members and collecting their personal
11 information to provide to the nonprofit, yes.

12 Q Have you ever actually looked at a contract like that?

13 A Oh, sure.

14 Q Okay. And did you see a confidentiality provision in
15 it?

16 A Are you asking have I looked at these generally? I
17 probably reviewed hundreds of them. I'm not sure what you mean.

18 Q I'm asking if you've looked at hundreds of them, do you
19 recall seeing a confidentiality provision in all hundred of
20 them?

21 A I mean, I can't tell you for absolute certain, but I
22 cannot ever remember reviewing a contract with either a
23 membership marketing vendor or professional fundraiser, which is
24 a company that goes out and raise funds for an organization and
25 collect donor information that did not contain a confidentiality

Recross-Tenenbaum-Correll

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1 provision. I can't say that it's -- there has never been one.
2 I'm just saying in my recollection that would really strike me
3 as unusual. If we were reviewing it as a firm, we would insist
4 on putting that provision in there.

5 Q In your long practice as a nonprofit advisor, have you
6 ever seen a party to a membership marketing contract violate the
7 confidentiality provision?

8 A It's really hard to say. And I don't always know about
9 it. You know, we worked on these contracts in the beginning,
10 negotiating them, drafting them.

11 THE COURT: Just a yes or no.

12 A We deal with breaches. I really can't say. It's not
13 coming to mind. I can't say it didn't happen.

14 Q In fact, a client would not necessarily know if a
15 confidentiality agreement was violated because they wouldn't
16 know where their membership information went?

17 A They wouldn't necessarily be aware of a breach,
18 correct. Certainly possible, yes.

19 Q Okay. That's why you trust people you've worked with
20 for years and who have provided good service for years rather
21 than trying to shop around for the cheapest service provider
22 sometimes, correct?

23 A I wouldn't quite agree in that verbiage. What I would
24 say is that when you have a trusted vendor who does great work
25 for you and delivers great results and you trust them, then of

Recross-Tenenbaum-Correll

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1 course there is going to an incentive to want to continue to
2 work with them. But if you're asking does that alone justify a
3 sole source, you know, none RFP exception to a procurement
4 policy, I would not agree with that.

5 Q But you agree that institutional knowledge is important
6 in a relationship, correct?

7 A Yes. Absolutely.

8 Q Because people learn, they come to understand your
9 mission, correct?

10 A Yes.

11 Q They come to respect your mission, correct?

12 A Correct.

13 Q You don't want to go out and hire a mercenary who
14 doesn't care about your mission but is lowballing the person who
15 has served you well for years, correct?

16 A I would say all of those goals, desires are important
17 ones. But they don't justify sole source exceptions or non RFP
18 exceptions to a procurement policy. That's all.

19 Q Do you think in personal relationships people should
20 shop around occasionally to see if they could get a better deal?

21 A I mean, I see it happen all the time. All my auditor
22 friends hate it, because every three or five years and then the
23 organization has to do a new RFP. For auditors, they sometimes
24 end up with the same auditor. Even though they have very close
25 relationships with board members and the CFO and CEO, that's

Recross-Tenenbaum-Correll

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1 just the way that procurement policies work.

2 Q Do you have any clients who have been with you for
3 20 years?

4 A Yes.

5 Q Okay. And do they shop you around? Do they shop
6 services around?

7 A I will say that legal services tend to be one of those
8 areas that doesn't -- is not subject to RFPs in the same area,
9 in the same degree, but for those organizations that have
10 procurement policies that require that and have been part of
11 that, they do have to do an RFP, and a lot of times they come
12 back and hire me or us again and sometimes they don't. But
13 generally speaking legal services, and I've had these
14 conversations with auditor friends over the years, tend to not
15 be as subject to that as other types of vendors.

16 Q Thank you, Mr. Tenenbaum.

17 THE COURT: Anything further?

18 MR. THOMPSON: No, your Honor.

19 THE COURT: Thank you, sir. You're free to go.

20 (Witness excused.)

21 THE COURT: Can you stay with us another half hour
22 or do we need -- You need a break. Okay. We need a break.
23 It's fair.

24 THE COURT OFFICER: All rise. Jury exiting.

25 (Whereupon the jury panel departed the courtroom.)

PROCEEDINGS

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1 THE COURT: Okay. Just before we take our break I
2 received an inquiry through our public information office
3 what seems to be a request from a member of the press as to
4 whether we would post the admitted exhibits on NYSCEF. And,
5 you know, my view is that once a document is admitted as an
6 exhibit in a public trial, it is available. So, I would be
7 fine with that, using NYSCEF as the mechanism to do it. You
8 know, again at this point we're not into the thousands of
9 exhibits, but I'll just put that request out there and let
10 you all think about it. But from my perspective, in terms
11 of public access, it seems a reasonable request to me.

12 All right. I'll talk to you in about five minutes.

13 (Whereupon a recess was taken.)

14 THE COURT: While we're waiting for the jury, I was
15 reminded in terms of the Stipulation of Settlement, because
16 it doesn't involve all parties, it probably does require
17 Court signoff. So, we'll talk about it in the morning.

18 MR. FLEMING: Your Honor, is the jury coming in?

19 THE COURT: They are. I mean, I don't know where
20 they are.

21 MR. FLEMING: Exhibit 4 for Mr. Erstling appears to
22 be an inadvertently disclosed attorney/client communication.

23 THE COURT: An inadvertently what?

24 MR. FLEMING: Disclosed attorney/client
25 communication. It's Exhibit 421, PX 421. It might be

PROCEEDINGS

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1 fixable by literally just removing the first page, but I
2 just noticed it.

3 THE COURT: You're going to get to that in the
4 first --

5 MR. THOMPSON: It is one of the sooner exhibits,
6 your Honor. We're going to be walking through the policies.

7 THE COURT: Well --

8 MR. THOMPSON: We're happy to remove the top page.

9 THE COURT: You can show the rest of it and then we
10 can modify the exhibit to just not include the cover e-mail.

11 MR. THOMPSON: That's fine with plaintiff, your
12 Honor.

13 THE COURT: Does that work?

14 MR. FLEMING: It works. So the jury won't see it,
15 right?

16 MR. THOMPSON: Yes. We'll do that.

17 MR. FLEMING: Thank you.

18 THE COURT: Okay. So you are all able to negotiate
19 out of disputes every once in a while, so I appreciate that.
20 On that exhibit issue that I mentioned, I'm told in this
21 request that that was the procedure that was used in the
22 recent Attorney General action that was held in this
23 courtroom. So that's what lead the person to ask if we
24 could follow the same protocol in this case.

25 THE COURT OFFICER: All rise. Jury entering.

PROCEEDINGS

1 (Whereupon the jury panel entered the courtroom.)

2 THE COURT: Have a seat. Taking a break was a good
3 idea. We all needed a break.

4 Plaintiff, do you have your next witness ready?

5 MR. THOMPSON: Yes, your Honor. Plaintiff calls
6 Michael Erstling to the stand.

7 THE COURT: Okay. If you can please get the
8 witness.

9 THE COURT OFFICER: Witness entered.

10 THE COURT: Good afternoon. Please remain standing
11 and the clerk will swear you in.

12 THE COURT CLERK: Raise your right hand.

13 M I C H A E L J. E R S T L I N G, after having been duly
14 sworn by the court clerk, was examined and testified as follows:

15 THE COURT CLERK: State your name.

16 THE WITNESS: Michael J. Erstling.

17 THE COURT CLERK: Spell your last name.

18 THE WITNESS: E-R-S-T-L-I-N-G.

19 THE COURT CLERK: Business address.

20 THE WITNESS: 11250 Waples Mill Road, Fairfax,
21 Virginia, 22030.

22 THE COURT CLERK: Thank you. You may be seated.

23 THE COURT: Good afternoon, sir.

24 DIRECT EXAMINATION

25 BY MR. THOMPSON:

Direct-Erstling-Thompson

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1 Q Good afternoon, Mr. Erstling. My name is Stephen
2 Thompson. I am an attorney with the plaintiff.

3 Mr. Erstling, prior to 2021 you were the NRA's director
4 of budget and financial analysis, is that correct?

5 A Yes, sir.

6 Q And currently you are the director of finance, is that
7 correct?

8 A Yes, sir.

9 Q Do you have any additional titles other than that?

10 A No, sir.

11 Q And you are a certified public accountant, is that
12 right, Mr. Erstling?

13 A Yes, sir.

14 Q In your role as director of budget and financial
15 analysis your supervisor for a number of years was Rick Tedrick,
16 is that right?

17 A That is correct.

18 Q And Mr. Tedrick reported to Mr. Phillips when he was
19 the treasurer of the NRA, is that right?

20 A That is also correct.

21 Q And currently in your current position as director of
22 finance you report directly to the treasurer, Ms. Rowling, is
23 that correct?

24 A That's correct.

25 Q And that's Sonya Rowling, who is the current treasurer?

Direct-Erstling-Thompson

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1 A That's correct.

2 MR. THOMPSON: Could we please bring up PX 3341 for
3 identification.

4 Q Mr. Erstling, in your binder that is tab 27. It will
5 also be on the screen in front of you, whichever is easier for
6 you. I'm sorry. Let's just look at the binder first so we
7 don't have to turn the screens off.

8 THE COURT: What tab is it?

9 MR. THOMPSON: Twenty-seven, your Honor.

10 THE COURT: Why do they never start with tab one?
11 Never has it ever happened.

12 Q Do you have the document in front of you, Mr. Erstling?

13 A I do.

14 Q Do you recognize this to be the NRA's organizational
15 chart as of 2018?

16 A It appears, yes.

17 MR. THOMPSON: We would like to move for Exhibit PX
18 3341 into evidence, your Honor.

19 THE COURT: Any objection?

20 MR. PETERS: No objection.

21 THE COURT: Any objection from anyone?

22 MR. PETERS: No objection.

23 THE COURT: It's admitted.

24 Q So, Mr. Erstling, are you generally familiar with how
25 the NRA is structured in terms of its divisions?

Direct-Erstling-Thompson

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1 A Yes, sir.

2 Q And looking at the top of Exhibit 3341, the NRA is
3 governed by a 76 member board of directors, is that correct?

4 A That is correct.

5 Q And then there are three officers of the NRA who are
6 elected from among the members of the board of directors, is
7 that correct?

8 A I believe that is correct.

9 Q And that includes the president, yes?

10 A Yes.

11 Q And for a period of time the NRA's president was
12 Lieutenant Colonel Oliver North, is that right?

13 A That is collect.

14 Q Currently the president is Charles Cotton, is that
15 correct?

16 A That is correct.

17 Q And then there is also a first and a second vice
18 president, is that correct?

19 A Yes, sir.

20 Q And so in 2018 the first and second vice president
21 respectively were Mr. Childress and Ms. Meadows, is that
22 correct?

23 A Yes. According to this, this timeframe, yes.

24 Q And then there are, according to the bylaws of the NRA,
25 there are three salaried officer positions, is that correct?

Direct-Erstling-Thompson

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1 A Yes. That's correct.

2 Q And so that includes the executive vice president, is
3 that correct?

4 A Yes, sir.

5 Q Which is effectively the CEO of the NRA, is that fair
6 to say?

7 A That's fair to say, yes.

8 Q Currently that is Mr. LaPierre, is that right?

9 A Yes, sir.

10 Q And then at the end of the month it will be Mr.
11 Arulanandam, is that correct?

12 A Yes, that is correct.

13 Q And one of the other salaried officer positions at the
14 NRA is the treasurer, is that correct?

15 A That is correct.

16 Q So, in 2018 or well Mr. Phillips was the treasurer of
17 the NRA for at least part of 2018, is that correct?

18 A That is correct.

19 Q And then he was replaced subsequently by Mr. Spray, is
20 that right?

21 A That is correct.

22 Q And then the other salaried officer position at the NRA
23 is the secretary, is that correct?

24 A Yes, sir.

25 Q And currently that is Mr. Frazer, is that right?

Direct-Erstling-Thompson

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1 A That is correct.

2 Q And Mr. Frazer has been the secretary since
3 approximately 2015, is that right?

4 A I can't give you a specific date, but it's been a
5 while.

6 Q Okay. In 2018 Mr. Frazer was the secretary, is that
7 correct?

8 A That's correct.

9 Q Okay. So, the treasurer of the NRA is the top finance
10 officer for the NRA, is that correct?

11 A I would agree with that.

12 Q And often times but not always the treasurer also holds
13 the role of chief financial officer, is that right?

14 A That is correct.

15 Q Okay. So those are two distinct positions within the
16 NRA, is that correct?

17 A That is correct.

18 Q And Ms. Rowling at the moment is both the chief
19 financial officer or CFO as well as the treasurer, is that
20 right?

21 A That is correct.

22 Q Mr. Phillips, for the time that he was -- for most of
23 the time he was at the NRA was also the treasurer and CFO, is
24 that right?

25 A That is correct.

Direct-Erstling-Thompson

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1 Q And same thing for Mr. Spray?

2 A Mr. Spray came in as, I believe, CFO and he took over
3 the treasurer role as well a short while later.

4 Q And then the NRA has a number of other executives who
5 are not officers under the bylaws, is that correct?

6 A Yes, sir.

7 Q Okay. So that includes, if we look at the
8 Exhibit 3341, if you look at the left-hand most side there is
9 publications. That's one of the divisions of the NRA, right?

10 A That's correct.

11 Q And there is an executive director of publications who
12 is a not a bylaws officer of the organization, is that right?

13 A That's correct.

14 Q But is still a senior executive of the NRA, is that
15 correct?

16 A Yes, sir.

17 Q And the executive director level positions, those
18 report to the executive vice president, is that right?

19 A Yes, sir.

20 Q And in addition to Publications there is also the
21 Institute for Legislative Action, is that correct?

22 A Yes, sir.

23 Q Often called ILA or ILA?

24 A Yes, sir.

25 Q And that's the chief lobbying division for the NRA, is

Direct-Erstling-Thompson

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1 that fair to say?

2 A Yes, sir.

3 Q And then there is also General Operations, is that
4 right?

5 A Yes, sir.

6 Q And the -- What occurs in the general operations
7 department?

8 A For the most part it's our C3 programs. That's going
9 to be your gun safe program. It's going to be education and
10 training. It's going to be law enforcement training. It's
11 going to include our museum and also include for a small section
12 our adman services, which covers the building, the cafe at one
13 time, the range downstairs in the building. Those would be
14 included in that as well.

15 MR. THOMPSON: Your Honor, do you mind if I ask the
16 jury if they are able to hear Mr. Erstling all right?

17 THE JUROR: Barely.

18 THE COURT: Maybe if you could move closer.

19 MR. PETERS: May I ask that his answer be read back
20 again, because people had trouble hearing it.

21 THE COURT: Lori, do you want to read the last
22 answer back.

23 (Whereupon the above-requested testimony was read
24 back.)

25 Q And under the bylaws of the NRA, Mr. Erstling, the

Direct-Erstling-Thompson

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1 executive director of general operations is next in line to the
2 executive vice president position, is that correct?

3 A That's correct.

4 Q So if something were to happen to the executive vice
5 president, the executive director of general operations would
6 then step up to take that position, is that right?

7 A Yes, sir.

8 Q And that would be until there is a new election by the
9 board for the position, is that right?

10 A I believe that's correct.

11 Q Okay. And until December of last -- Withdrawn. Until
12 late last year Joe DeBergalis was the executive director of
13 general operations, is that correct?

14 A That's correct.

15 Q And Mr. DeBergalis is no longer with the NRA, is that
16 right?

17 A That's correct.

18 Q And in his stead is Mr. Andrew Arulanandam, is that
19 right?

20 A That is correct.

21 Q So, prior to becoming the executive director of general
22 operations, what was Mr. Arulanandam's position in the NRA to
23 the best of your knowledge?

24 A He was the managing director of public affairs.

25 Q And is it fair to say that public affairs is the public

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1 relations part of the NRA?

2 A I -- I don't if I would call it total public relations,
3 'cause I have a different understanding of public relations.
4 But yes, he's -- he's the speaker for the association
5 externally.

6 Q Okay. And so is Mr. Arulanandam now serving both the
7 role of director of public affairs as well as the executive
8 director of general operations?

9 A I -- I don't know what his responsibilities are as far
10 as public affairs. I do know he has taken over for general
11 operations. So, I just don't know the answer to what his
12 additional responsibilities are.

13 Q Okay. And just to close a loop on a few of the other
14 divisions. There is also the membership division, is that
15 right?

16 A That's correct.

17 Q And membership is the division responsible for
18 communicating with and also fundraising from and recruiting new
19 members for the NRA, is that fair?

20 A More -- more acquisition, renewal, fundraising. There
21 is a small component of communication, but that's usually
22 handled by the publications, because they are communicating with
23 our members on a monthly basis.

24 Q Okay. And until -- Well, withdrawn. Todd Grable was
25 formerly the executive director of membership, is that correct?

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1 A That's correct.

2 Q And do you know approximately when he left the NRA?

3 A I cannot give you a date.

4 Q And who is the current executive director of
5 membership?

6 A Derek Robinson.

7 Q Mr. Robinson used to be one of the people who reported
8 to Mr. Grable, is that correct?

9 A That is correct.

10 Q And then last but not least there is also the division
11 of advancement, is that correct?

12 A Yes, sir.

13 Q And advancement is responsible for donor cultivation
14 and high dollar donor -- Withdrawn. Advancement is responsible
15 for high value dollar donor cultivation, is that correct?

16 A As one of their sections, correct.

17 Q What else are they responsible for?

18 A In the Office of Advancement is our field operations
19 division. So, we have roughly 50 field representatives that are
20 out in each state, and they help committees in each state do
21 fundraising dinners.

22 Q Those are The Friends of the NRA events, is that right?

23 A That's correct.

24 Q Sometimes called FONRA?

25 A That is also correct.

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1 Q And, all right. Turning then to the Department of the
2 Treasurer. Underneath the Department of the Treasurer there is
3 the financial services division, is that correct?

4 A Yes, sir.

5 Q And that's where you sit, is that right, Mr. Erstling?

6 A Yes, sir.

7 Q And until Ms. Rowling became the current treasurer of
8 the NRA, that is also where she sat, is that right?

9 A That is also correct.

10 Q Mr. Tedrick, Rick Tedrick, he is the former head of
11 financial services division, is that correct?

12 A No, that's incorrect. So, he was always within the
13 treasurer's office. We, from financial services, reported up to
14 him though.

15 Q And within financial services there were different
16 departments as well, is that right?

17 A Yeah. There was accounting operations, which was
18 Sonya's sort of realm, and there was budgeting and financial
19 analysis which was my side of the organization.

20 Q Any other sort of divisions within financial services?

21 A Just underneath those -- those areas.

22 Q Okay. So, budgeting and financial analysis on the one
23 hand and accounts payable and accounting on the other hand
24 generally speaking?

25 A Accounts payable is a part of accounting operations,

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1 yes.

2 Q And Ms. Rowling was on the accounting operations side
3 before she became the treasurer, is that correct?

4 A That's correct.

5 Q I believe you said that both you and Ms. Rowling used
6 to report to Mr. Tedrick, who himself sat in the treasurer's
7 department, is that right?

8 A That's correct.

9 Q And that reporting structure has changed, is that
10 correct?

11 A It has.

12 Q So you -- Is it fair to say that your current role is a
13 combination of your previous role, doing budgeting and financial
14 analysis, as well as Ms. Rowling's role on the accounting
15 operations side?

16 A That is correct.

17 Q You now report directly to the treasurer rather than to
18 Mr. Tedrick, is that right?

19 A That is correct.

20 Q Mr. Erstling, the NRA has a policy governing approvals
21 for contracts, is that correct?

22 A That is correct.

23 Q And are you familiar with that policy?

24 A I am.

25 MR. THOMPSON: If we could please mark Plaintiff's

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1 Exhibit 421 for introduction.

2 Q This is tab one of your binder, Mr. Erstling.

3 THE COURT: It's marked already.

4 MR. THOMPSON: I'm sorry. To introduce it for
5 identification.

6 THE COURT: Was that tab one, did you say?

7 MR. THOMPSON: Yes, your Honor.

8 THE COURT: Finally.

9 MR. THOMPSON: Second one, your Honor.

10 Q Do you have the document, Mr. Erstling?

11 A Yes, sir.

12 Q Do you recognize this to be the NRA's policy manual as
13 of March of 2020?

14 A (Examining). I recognize it as a policy manual, but
15 this is not one that I would have used.

16 Q What is the document that you typically would have
17 used?

18 A There is the employee handbook and there is an
19 accounting operations policies. So, we would take pieces of
20 this that are specific to accounting operations and put it in
21 our own manual. This includes a significant amount of detail
22 that may not be relevant to the financial services division.

23 Q All right. Maybe we can try and pinpoint a little bit
24 more. So, using the page numbers at the bottom of the exhibit
25 it should say one out of however many. Can you please turn to

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1 page 101.

2 (Whereupon the witness complied with the above
3 request of counsel.)

4 Q And my question, Mr. Erstling, is just if you recognize
5 the policy towards the bottom of that page to be the NRA's
6 current purchasing policy?

7 MR. PETERS: Can you remind me of the page number
8 you're on right now?

9 MR. THOMPSON: Page 101, using the bottom most page
10 numbers.

11 THE COURT: Do you have the question in mind?

12 Q Sorry. The question is, do you recognize the policy
13 starting on page 101 of this exhibit to be the 2006 procurement
14 policy?

15 A Yes, sir.

16 Q And is this the policy that's currently in effect at
17 the NRA?

18 A I believe the policy has been updated.

19 Q But do you recognize this to be the policy that was in
20 effect in 2020?

21 A I believe so. Yes.

22 MR. THOMPSON: Your Honor, I would like to offer
23 the policy manual into evidence.

24 MR. WERBNER: No objection.

25 THE COURT: Okay. It might be faster going forward

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1 if there are some exhibits that you see in advance there is
2 no issue on, we could skip through the foundation thing. A
3 minute here, minute there. We're talking realtime.

4 MR. THOMPSON: Sure, your Honor.

5 Q So, Mr. Erstling, if I could take you to the next page.
6 This is page 102 using the exhibit page numbers. Under the
7 headline "Standards of Conduct and Ethical Guidelines", do you
8 see that?

9 A (Examining). Yes, sir.

10 Q These are the standards of conduct and ethical
11 guidelines that the NRA requires of all employees, officers and
12 members of the board of directors, is that correct?

13 A That is correct.

14 Q Okay. And it requires, for example, if you look at
15 point two, "Ethical business standards shall govern procurement
16 transactions, independence of judgment from vendors,
17 contractors, suppliers and others must be maintained", correct?

18 A That is correct.

19 Q And the next point number three, "Significant gifts
20 including but not limited to any item, service, favor, monies,
21 credits or discounts not available to others may not be part of
22 any purchasing decision or appear to influence any such
23 decision." Is that right?

24 A That is correct.

25 Q And this policy has been in effect since 2006, is that

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1 correct?

2 A Yes, sir.

3 Q And has it materially changed in that time to the best
4 of your knowledge?

5 A To the best of my knowledge it has not changed
6 materially.

7 Q Okay. This policy, the purchasing policy does not
8 permit verbal contracts, is that correct?

9 A I -- I don't know if that's in the policy. I'm sorry.

10 Q Does the NRA have a policy concerning verbal as opposed
11 to written contracts?

12 A Is there anything that you can show me in the document?

13 Q So let me withdraw it and ask it a different way. In
14 your opinion, Mr. Erstling, would a verbal contract violate any
15 of the NRA's policies?

16 A Not necessarily.

17 MR. THOMPSON: Can we please bring up Mr.
18 Erstling's litigation deposition at page 403.

19 MR. WERBNER: Your Honor, I'm going to object to
20 bringing up the deposition testimony. It's not proper
21 impeachment and it's hearsay.

22 THE COURT: Prior testimony can't be used to
23 impeach an answer?

24 MR. WERBNER: It can be used to refresh his
25 recollection but not to bring it up on the screen, the whole

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1 page of his testimony.

2 THE COURT: He can be shown his prior testimony and
3 asked -- No. The question is whether it's going to be shown
4 on the screen or not.

5 MR. WERBNER: Right.

6 THE COURT: Right. You can ask him to review it
7 and go through the questions and answers that were given,
8 but first of all it is also separately admissible as a
9 statement by party employees. So, actually if it's -- Well,
10 you can use it. Whatever is the easiest way to do it. I
11 can see why people typically give it to the witness to read,
12 but since it's testimony of a party, I don't really have a
13 problem with you doing it either way.

14 MR. THOMPSON: Is it all right if we show it on the
15 screen, your Honor?

16 THE COURT: Yes.

17 MR. THOMPSON: All right. Thank you.

18 Q So, Mr. Erstling, you were deposed in connection with
19 this litigation, is that right?

20 A That is correct.

21 Q And you gave truthful testimony at that deposition?

22 A I did.

23 Q And so do you recall the questions and answers that you
24 see on the screen from your deposition?

25 "QUESTION: Does the NRA have a policy regarding

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1 verbal as opposed to written contracts?

2 "ANSWER: When I read the policy I don't -- I don't
3 see an option for a verbal contract."

4 Do you see that?

5 A I do.

6 Q Was that testimony truthful at the time you gave it?

7 A It is truthful.

8 Q Okay. Verbal contracts are not best practices, would
9 you agree with me, Mr. Erstling?

10 MR. PETERS: Objection. Leading.

11 THE COURT: He's an employee of the defendant.

12 MR. THOMPSON: Yes, your Honor.

13 THE COURT: Overruled.

14 A Can you ask the question again, please.

15 Q Yes. Verbal contracts are not best practices, is that
16 right, Mr. Erstling?

17 A I would agree with that.

18 Q Looking at Exhibit 421, if you could please turn to
19 page 105. Looking under the section that starts "Competitive
20 bidding". Do you see that, Mr. Erstling?

21 A (Examining). Yes, sir.

22 Q "The NRA requires competitive bidding on goods or
23 services valued at or above \$5,000", is that correct?

24 A Yes, sir.

25 Q And if you could please turn to the next page. "A

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1 request for proposal is required for all purchases equal to or
2 above \$100,000", is that correct?

3 A That is correct.

4 Q And what is a request for proposal, Mr. Erstling?

5 A A request for proposal is a request to use funds of the
6 association.

7 MR. PETERS: I want to back up and object to
8 something before. I think we jumped to the second paragraph
9 without reading the first paragraph, which is "The NRA will
10 make every effort" --

11 MR. THOMPSON: Your Honor, objection.

12 THE COURT: Counsel, you can cover this on cross if
13 you want to add anything.

14 Q Now, Mr. Erstling, the policy does allow for certain
15 exceptions to the request for proposal process, is that correct?

16 A That is correct.

17 Q Those are listed under the heading labeled "Exceptions"
18 on page 106, is that right?

19 A Can you show me, please.

20 Q So page 106, bolded word "Exceptions". Do you see
21 that?

22 A Yes, sir. Now I do.

23 Q So this lists the exceptions to the requests for
24 proposal process, is that correct?

25 A Yes, sir.

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1 Q And so it includes exceptions for legal counsel
2 services, is that right?

3 A Yes, sir.

4 Q And political strategy?

5 A Yes, sir.

6 THE COURT: We're just about at the end of our day.
7 If you can wind up and we'll continue in the morning.

8 MR. THOMPSON: Yes, your Honor.

9 Q Public relations is another exception?

10 A Yes, sir.

11 Q Membership?

12 A Yes, sir.

13 Q Fundraising and marketing?

14 A Yes, sir.

15 MR. THOMPSON: We can stop there, your Honor.

16 THE COURT: So we're going to stop for the day.
17 We'll reconvene at 9:30 in the morning. Just to advise the
18 witness, during the break you're essentially still on the
19 stand, so you shouldn't discuss your testimony with anyone
20 really, but including counsel for either side while you're
21 still testifying, okay.

22 THE WITNESS: All right.

23 THE COURT: Thank you, sir. See you tomorrow
24 morning everyone, 9:30.

25 THE COURT OFFICER: All rise. Jury exiting.

1 (Whereupon the jury panel departed the courtroom.)

2 (Witness excused.)

3 THE COURT: Okay. I hope not to see or hear from
4 you before 9:30. Remember tomorrow we're down in 208 and
5 the overflow room -- Officer, is the overflow room 412
6 tomorrow?

7 THE COURT OFFICER: Yes.

8 THE COURT: We're in the smaller courtroom. The
9 overflow room will be 412. I'm not sure why it's a
10 different room. That's above my decisionmaking authority
11 apparently. So, I'll see you then.

12 (Whereupon the trial was adjourned to January 11,
13 2024 at 9:30 a.m.)

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1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK - CIVIL TERM - PART 3
 3 -----X
 4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
 5 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,
 6
 7 Plaintiff,
 8
 9 -against-
 10
 11 THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
 12 WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
 13 and JOSHUA POWELL,
 14
 15 Defendants.

16 -----X
 17 Index No. 451625/20 TRIAL 60 Centre Street
 18 New York, N.Y.
 19 January 11, 2024

11 B E F O R E:

12 HONORABLE JOEL M. COHEN,
 13 Justice; and a jury

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 16 OFFICE OF THE ATTORNEY GENERAL
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1 (Appearances continued:)

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Official Court Reporters

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1 THE COURT: All right, good morning.

2 So the issue that I flagged for this morning to
3 talk about was the Powell settlement, and I received a
4 letter this morning. I cleverly waited till the next day to
5 send it, so, thank you for that, but -- so I've reviewed
6 that.

7 Does the Government want to start?

8 There's, kind of, one provision I just want to ask
9 about, that they focus on, the provision in paragraph 10
10 that Powell "shall not take any action or make any statement
11 denying, directly or indirectly, the propriety of this
12 stipulation or expressing any view that the action is
13 without a factual basis." I just want to understand what
14 the breadth of that is.

15 I mean, obviously, nothing can overcome somebody's
16 oath.

17 MS. CONNELL: That's absolutely right, your Honor;
18 nothing can overcome somebody's oath.

19 The idea was that in -- typically, when charitable
20 officials or nonprofit officials settle with the Attorney
21 General's office, we do ask, and require, that they make
22 admissions of wrongdoing, which this contains.

23 So that's really talking about, you can't say,
24 "Well, I just signed that and I didn't" --

25 THE COURT: Well, the admissions -- I get that.

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1 MS. CONNELL: Yeah.

2 THE COURT: And so, expressing any view that the
3 action as against Mr. Powell is without merit --

4 MS. CONNELL: Yeah.

5 THE COURT: -- I understand that.

6 But the way it's written could be read --

7 MS. CONNELL: Yeah.

8 THE COURT: -- to say that he can't express any
9 view that the action against others is without merit, so
10 I'm -- that's what, obviously, the defendants are more
11 concerned about.

12 MS. CONNELL: Right.

13 Your Honor, I -- and I apologize not to have case
14 law ready for you, since I only just got this late last
15 night/early this morning. But there's a severability clause
16 in the agreement, I recall, and if that sentence is the
17 problem, we can just take that sentence out.

18 THE COURT: Yeah.

19 Well, I think, what I would say is that --

20 MS. CONNELL: Right. Just as to --

21 THE COURT: -- I would have to interpret that --

22 MS. CONNELL: Yeah.

23 THE COURT: -- in context as -- you know, if he's
24 asked questions about other defendants --

25 MS. CONNELL: Yeah.

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1 THE COURT: -- this settlement, in my judgment,
2 would not bind him to take any position other than whatever
3 he wants to say about the claims against others.

4 MS. CONNELL: Absolutely, your Honor.

5 A provision of the settlement is that he come to
6 court and offer truthful testimony. That's it. That's
7 the --

8 THE COURT: So what you're saying is that the
9 intention -- the reference to the "action" in paragraph 10
10 is intended to be limited solely to the action as against
11 Mr. Powell?

12 MS. CONNELL: Yes, your Honor.

13 And if we can amend that language to make it
14 clearer, that's fine with us.

15 THE COURT: Okay. Then let me -- with that, let
16 me --

17 I guess, Ms. Rogers, it was your letter.

18 It seems to me that, putting that issue aside, all
19 the rest of this is cross-examination, typical things that
20 you can do with somebody who has settled and agreed to come
21 to court to testify. I had a similar issue, as you flagged
22 in here (indicating), that, you know, somebody can agree not
23 to contest the charges against themselves -- and, frankly,
24 you have stood up in court and said not entirely flattering
25 things about Mr. Powell's conduct --

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1 MS. ROGERS: Yes.

2 THE COURT: -- either.

3 So why don't you just briefly summarize what you
4 think should happen, given this clarification that we just
5 had.

6 MS. ROGERS: Certainly, your Honor.

7 So that clarification does, I think, address the
8 most acute concern with the language of the settlement
9 agreement. But, given that this is an eleventh-hour, sudden
10 reversal of the testimony of a very key witness and given
11 that Mr. Powell's not scheduled to go on for a couple of
12 weeks, we also think a tailored deposition is appropriate
13 and can be accomplished.

14 THE COURT: Well, there's been new developments
15 with respect to a number of folks. Are you suggesting that,
16 you know, there should also be depositions of Mr. LaPierre,
17 Mr. Phillips? Because some things have changed, especially
18 with Mr. LaPierre.

19 MS. ROGERS: Well, some things have changed, your
20 Honor, but Mr. LaPierre has not suddenly gone on record and
21 endorsed statements that he previously denied, specifically
22 and unequivocally, under oath. This is a bit more of a
23 sudden reversal and in this analysis, how prejudicial is it,
24 how sudden is it, it's kind of a graduated analysis.

25 THE COURT: Yeah. The reason I don't find that

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1 terribly persuasive is, you know, it's not as if your
2 defense is predicated on Mr. Powell's conduct being
3 legitimate.

4 MS. ROGERS: It's not. But there are certain
5 allegations he previously denied that, at least, plaintiff
6 will allege indicate improper administration on the part of
7 the NRA.

8 So, for example, this McKenna transaction is one
9 fact pattern that we did expect Mr. Powell to defend on the
10 stand, and the NRA is aligned with him on some of those
11 granular factual contentions, and we don't know where he
12 stands on them now; presumably, not where he stood when he
13 testified under oath several times before.

14 MS. CONNELL: Your Honor --

15 THE COURT: Well, but you have that prior testimony
16 to impeach whatever he does say here.

17 So, I mean, it is -- it would be unusual to do this
18 kind of discovery now. And I recognize, you have to be
19 flexible as things happen, but it's not as if you don't have
20 him on the record if you need to cross-examine him.

21 MS. ROGERS: Correct, your Honor.

22 What we don't have is notice as to, specifically,
23 what granular factual sections he's reversing him himself
24 on. We're, presumably, going to find that out on the
25 witness stand in -- from a very significant witness in our

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1 trial.

2 So we have Fridays; we have weekends. We could
3 take two hours. It would be a tailored deposition, which we
4 offered Ms. Connell. We offered a couple of those. We
5 offered a tailored deposition of Ms. Rowling, of
6 Mr. Mensinger. So we've been amenable to some of that
7 last-minute discovery where there are significant new
8 developments and this is a significant new development.

9 THE COURT: Well, okay.

10 Let me hear from the AG.

11 MS. CONNELL: Your Honor, Mr. Powell was accused by
12 the NRA of taking approximately \$56,000 in excess benefits.
13 Mr. Powell proffered to the NRA -- he testified to all of
14 this; he disputed some of those charges. I think he
15 proffered something like \$45,000. He testified at length;
16 he was cross-examined by the NRA. He testified about the
17 McKenna transaction, and he's not going to, to my belief,
18 say that he lied or say that his view of that transaction is
19 different than what he testified to. There's no reason to
20 believe that.

21 An eleventh-hour settlement is, sort of, dramatic.
22 I think. As your Honor probably has experienced, in civil
23 matters, defendants frequently settle the claims as they
24 head into trial. There's nothing to see here. If
25 Mr. Powell contradicts his prior testimony, then they can

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1 certainly cross-examine him on the truth of that. They had
2 a full and fair opportunity to question him previously.

3 And in regard to the comparison, your Honor, even
4 as of last night or this morning, we're getting new
5 productions from defendants. We got a new expert report,
6 dated December 4th, from one of the experts in this case.

7 Mr. Mensinger, who Ms. Rogers mentioned, is a new
8 compliance officer who apparently was -- I don't know --
9 selected or hired in September 2023. I don't even know if
10 he started yet. We don't even have document discovery. We
11 have a few documents about him.

12 If we're reopening discovery about recent events,
13 then I think it's going to weigh heavily in favor of the
14 plaintiffs [sic] here. As you know, we have gotten charts
15 of recent repayments by Mr. LaPierre, and memos from
16 Ms. Rowling that appear to bless his repayments, for suits,
17 for travel, for other things we don't even know. If we're
18 going to talk about having fair discovery of recent events
19 and bringing this case up to the present moment, then it is
20 absolutely prejudicial to make it one-sided and offering us,
21 on the eve of trial, "Oh, you can have a tailored
22 deposition" of someone who shouldn't be testifying, is not
23 fair.

24 But, for Mr. Powell, they had that opportunity to
25 depose him. He has not worked at the NRA since January of

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1 2020. He was suspended before that; I think he was
2 suspended in September 2019.

3 So the record is what the record is, and I think,
4 your Honor, that this application should be denied.

5 THE COURT: Yeah.

6 Look, I'm going to take all of these requests for,
7 you know, horseback discovery during trial one by one, so
8 it's not going to be whataboutism just for that sake.

9 I don't think additional discovery is warranted
10 with respect to Mr. Powell, on this record.

11 I see somebody standing that I haven't heard from,
12 so let me ask you for your views before I finish.

13 MR. CORRELL: Thank you, your Honor.

14 Mr. LaPierre's name was mentioned. I just wanted
15 to say that your Honor should not use -- Mr. LaPierre's
16 prepared to submit to tailored discovery to address any
17 issues the attorney general feels she has.

18 Also, the expert report she referred to, she made
19 it sound like it was some big expert report. I think it was
20 one page or two, something that could be dealt with in 15
21 minutes in a deposition. So we're happy to do that, and I
22 wouldn't want the Court to keep that idea -- to take that as
23 a reason for denying the NRA the relief it's seeking.

24 THE COURT: Yeah, that's not the rationale.

25 I'm going to take each one of these on their own

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1 merits.

2 This kind of thing happens, and I think he's been
3 subject to discovery on his prior statements. And, you
4 know, witnesses sometimes testify and change when they're on
5 the stand. That's -- I think you've had the discovery that
6 the rules permit to prepare you for that.

7 Further, just to address one other thing that is
8 somewhat in the letter: I don't think that this settlement
9 prejudices the NRA's ability, to the extent that the statute
10 of limitations hasn't run, at least to pursue whatever
11 remedies it wants as to anyone.

12 You know, there are ways that the attorney general
13 can bring a derivative action on behalf of the NRA. That's
14 not what they did here.

15 So I don't think that the release that's in this
16 settlement -- to my reading, it doesn't bind the NRA, and
17 therefore -- so I don't think it prejudices the NRA's rights
18 to recover if it thinks that this is insufficient.

19 MS. ROGERS: Your Honor, would the Court --

20 Sorry. I'm too close to the microphone.

21 THE COURT: You got to find the goldilocks spot,
22 right?

23 MS. ROGERS: I'm working on it. Every day, I'm in
24 a new room with a new microphone, so --

25 THE COURT: You're good.

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1 MS. ROGERS: Would your Honor consider granting the
2 NRA leave to a sort of cross-claim in this action against
3 Mr. Powell, subject to statute of limitations and any other
4 defenses he might have?

5 THE COURT: To the extent that that's --

6 Based on just the request that you made, no. You
7 know, you can submit whatever you want. I -- this -- it's
8 too late and prejudicial to add a claim, in my view, that
9 could have been added whenever you wanted to, and so my
10 reaction to that, just off the cuff, is no. One thing that
11 we're not bereft of is enough claims to keep us busy.

12 But if you want to pursue that claim, preferably
13 somewhere else --

14 (Laughter.)

15 MS. ROGERS: We understand, your Honor. Thank you.

16 THE COURT: -- that's fine.

17 All right. And then, on the -- the last thing that
18 I had mentioned the night before: I, having thought about
19 it, think that the protocol that was used in the AG action
20 pending upstairs with respect to evidence that comes in --
21 both sides have made the point that this case involves a
22 fairly significant amount of public interest, and so it
23 seems to me that it would be consistent with the general
24 public's right to be informed as to public court proceedings
25 that the same protocol be followed here with respect to

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1 putting admitted evidence on the record [sic]. I'm going to
2 leave it to -- I think the attorney general probably has
3 experience with however it worked in the other trial.

4 I would be, certainly, open to individual requests.
5 For example, we redacted cell phone numbers, and if things
6 like that might require redaction, you know, I don't think
7 that being a witness here or being involved in discovery
8 necessarily means that we have to gratuitously broadcast
9 someone's cell phone or other kinds of personal information.

10 So, if it's ancillary and not relevant to really
11 understanding the case, I'll be open to a limited kind of
12 personal redaction along those lines, but otherwise, I think
13 that we should follow that approach.

14 Is that --

15 Yes, sir?

16 MS. CONNELL: Acceptable to the plaintiff.

17 MR. CORRELL: Your Honor, Kent Correll, for Wayne
18 LaPierre.

19 Would that apply also to healthcare information?

20 THE COURT: I'll look at each one separately, but
21 it might. I mean, it -- the relevance to the substance of
22 the case -- is a relevant consideration; in some of the
23 sealing opinions, that is taken into account.

24 So, you know, understanding somebody's cell phone
25 has literally nothing to do with the merits of the lawsuit,

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1 I would certainly be sensitive to, you know, personal
2 healthcare information. I would just have to at least
3 consider whether -- if it is particularly relevant to an
4 issue in the case -- whether redaction would be appropriate.

5 I'll just take them one at a time.

6 MR. CORRELL: That's all we ask, your Honor. Thank
7 you.

8 MS. CONNELL: Your Honor, one -- I'm sorry. One
9 last thing on that point:

10 The NRA has asserted that Mr. Tedrick is
11 unavailable and, I believe, supplied to the Court and
12 supplied to us an affidavit of health reasons. We ask that
13 that be made a record or an exhibit in this case. It's -- I
14 assume the NRA will say it's confidential, so that may be
15 one thing that you might want to exempt. It does not have a
16 PX number. I don't know how you'd like to handle the
17 admission. It could be a judicial -- whether it should be
18 an exhibit or just, in some way, placed in the record, we
19 would appreciate it.

20 THE COURT: Yeah. I, sort of, remember it being in
21 the record, but I must be wrong about that.

22 I -- yeah. I mean, it can be part of the record,
23 because the reason why we're permitting this testimony to
24 come in the way we're permitting it to come in is based on
25 demonstration, seemingly to everyone's satisfaction, of

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1 unavailability, but it -- well, at least nobody's challenged
2 it and asked for additional information. So that's fine.

3 I mean, we -- it can be -- we can handle it however
4 you want. It could be -- it should be in the court record,
5 one way or the other. If you want to make it an exhibit for
6 trial, that's fine, as part of explaining, you know, perhaps
7 to the jury that he's not here because of a health reason
8 and that's why we're hearing this testimony this way.

9 MS. CONNELL: Yeah. I had asked, yesterday, if we
10 could have the jury instructed that due to health concerns,
11 Mr. Tedrick cannot appear personally and testify, and that
12 he's appearing by audio deposition.

13 THE COURT: Right. The question is is whether, as
14 part of that, you need to --

15 MS. CONNELL: Right.

16 THE COURT: -- put in the record all of the details
17 around that.

18 MS. CONNELL: I do not believe we need to put it in
19 all the records, but I think -- records around that, on the
20 record, to the jury -- but I think, as part of that, we need
21 to put in, first, his affidavit; the health affidavit.

22 (To counsel) That wasn't filed on the docket,
23 right?

24 MS. ROGERS: It was not filed on the docket. We
25 designated it "highly confidential" because it contains

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1 details of a sensitive health condition.

2 And we have no objection to Ms. Connell's proposed
3 instructions to the jury that he's testifying by audio for
4 health reasons.

5 And to the extent that the affidavit needs to be
6 part of some court record, we don't object to that, either.
7 We would ask that if it's going to be publicly disclosed,
8 that we heavily redact it.

9 THE COURT: Yeah.

10 My preference on this is to have this be filed on
11 NYSCEF, not as an exhibit at trial, and you can file it
12 under seal. You're probably going to have to submit the
13 normal motion, but I would likely grant it.

14 MS. CONNELL: And, your Honor, we will also have to
15 file the Clip Report for Mr. Tedrick's deposition to be
16 played. That goes on the record, since it's my
17 understanding the court reporters don't retype down
18 (simulating) the transcript. So I understand that the Clip
19 Report should be made an exhibit of the Court, and we will
20 submit that to you.

21 THE COURT: The "Clip Report" is --
22 You mean the transcript excerpts?

23 MS. CONNELL: That's exactly right.

24 THE COURT: I don't know the lingo. Okay.

25 Yeah, I think that's right. It would not

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1 otherwise -- the testimony would not otherwise be in the
2 record unless it's in as a transcript.

3 MS. CONNELL: That's right.

4 So we'll assign it a PX number and provide it to
5 the parties and the Court.

6 Thank you.

7 THE COURT: All right, I think we're ready for the
8 jury.

9 (Pause.)

10 COURT OFFICER: All rise. Jury entering.

11 (The jury entered the courtroom.)

12 THE COURT: Have a seat.

13 Welcome back. Just another quiet day at the
14 courthouse, right?

15 All right, let's bring the witness in, please;
16 Mr. Erstling.

17 Is he out in the hallway?

18 COURT OFFICER: Yeah. Tom is getting him.

19 THE COURT: Okay.

20 (Pause.)

21 COURT OFFICER: Witness entering.

22 (The witness entered the courtroom.)

23 SECOND COURT OFFICER: Just come right up here
24 (indicating) and remain standing.

25 (The witness resumed the witness stand.)

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1 THE COURT: Have a seat.

2 (To court officer) He's already been sworn.

3 COURT OFFICER: Oh.

4 THE COURT: Have a seat.

5 (Witness seated.)

6 THE COURT: Good morning, Mr. Erstling. How are
7 you?

8 THE WITNESS: Very good, thank you.

9 THE COURT: Just a reminder that you're still under
10 oath from yesterday.

11 Do you understand that?

12 THE WITNESS: Yes, sir.

13 THE COURT: Okay. And just remember to stay
14 close-ish to the microphone.

15 Counsel, you may continue.

16 MR. THOMPSON: Thank you, your Honor.

17 M I C H A E L E R S T L I N G, called as a witness by the
18 plaintiff, having been previously duly sworn/affirmed, was
19 examined and testified further as follows:

20 DIRECT EXAMINATION CONTINUED

21 BY MR. THOMPSON:

22 Q Good morning, Mr. Erstling.

23 A Good morning.

24 Q You still have your binder with you; is that correct?

25 A I do.

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1 Q Great.

2 So, before we pick up where we left off yesterday
3 afternoon, Mr. Erstling, I'd like to ask a few questions about
4 Mr. DeBergalis.

5 So we spoke yesterday -- Mr. DeBergalis is the former
6 Executive Director of General Operations; is that correct?

7 A That's correct.

8 Q And did you have an understanding as to why
9 Mr. DeBergalis left the NRA?

10 A I do not.

11 Q Has anyone communicated to you a reason for
12 Mr. DeBergalis leaving the NRA?

13 A There was a -- a letter sent out, just thanking Joe for
14 his -- his service and announcing Andrew as the new temporary
15 head of General Operations.

16 Q And that was a letter from Mr. LaPierre; is that right?

17 A I believe that's correct.

18 Q So, Mr. Erstling, if you could please open back up tab
19 1 in your binder, which is PX 421, and if you could please go to
20 page 106 ...?

21 (Image displayed.)

22 MR. THOMPSON: For the members of the jury: The
23 exhibits will be back, sort of, over your shoulder this
24 morning (indicating).

25 A I'm there. Thank you.

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1 Q So we were -- we ended the day yesterday talking about
2 the "Exceptions" on page 106. Do you remember that,
3 Mr. Erstling?

4 A Yes, sir.

5 Q And then, if you could draw your attention to the last
6 sentence of that paragraph in the "Exceptions": "Any contracts
7 or Association business awarded in this capacity shall be
8 reported to Finance Committee on an annual basis."

9 Does that reporting happen, to the best of your
10 knowledge?

11 A Yes, it does.

12 Q How long -- or who is responsible for that reporting?

13 A The chief financial officer, treasurer.

14 Q So Ms. Rowling, at the moment; is that right?

15 A Yes, sir.

16 Q Do you know whether or not it happened while Mr. Spray
17 was the treasurer?

18 A I don't recall whether it happened or not. I know
19 it -- it's happened with Mrs. Rowling.

20 Q And do you know whether or not it happened while
21 Mr. Phillips was the treasurer?

22 A I don't recall it happening while Mr. Phillips was the
23 treasurer.

24 Q Do you regularly attend the Finance Committee meetings?

25 A Yes, I do.

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1 Q And there are, typically, four Finance Committee
2 meetings per year; is that right?

3 A That is correct.

4 Q It's usually one in January?

5 A Correct.

6 Q And then another at the annual meeting, in April or
7 May?

8 A Correct.

9 Q And then, is there another around September?

10 A That's also correct.

11 Q And a final one in December.

12 A The December one is not associated with a full board
13 meeting; it's primarily to discuss the -- the budget.

14 Q Okay. And do you typically attend all four committee
15 meetings per year, for the Finance Committee?

16 A I try to attend them. Sometimes I'll be attending
17 tele -- telephonically; I might not be in person.

18 Q Okay. And to the best of your recollection, you cannot
19 recall, while Mr. Phillips was the treasurer, the contracts
20 awarded pursuant to an exception to this policy being presented
21 to the Finance Committee; is that correct?

22 A I do not recall that happening.

23 Q And same thing with respect to Mr. Spray: Do you
24 recall the exceptions to this policy being presented to the
25 Finance Committee?

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1 A I -- I don't -- I can't recall that one.

2 Q And you said that Ms. Rowling has presented the
3 exceptions to the Finance Committee; is that right?

4 A That's correct.

5 Q When did that start, to the best of your recollection?

6 A I -- I know it's been presented at least two years,
7 because I've been involved in -- in preparing the -- the
8 document.

9 Q Okay. So since approximately 2021?

10 A Correct.

11 Q Before or after the bankruptcy in 2021?

12 A I don't know if I can put the timing on that. I'm
13 sorry.

14 Q And is review of the exceptions -- does that appear in
15 the minutes for the Finance Committee?

16 A Unfortunately, I -- I don't know -- I don't prepare the
17 minutes, so I don't know what's physically in the minutes.

18 Q Who's responsible --

19 Who is the secretary for the Finance Committee?

20 A Today it's David Warren.

21 Q And has Mr. Warren been the secretary for a number of
22 years?

23 A For a few years. Prior to that, I believe it was
24 Mr. Tedrick.

25 Q So, looking back at the policy, Mr. Erstling -- and if

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1 I could take you down to the Contracts and Approval Authority
2 section on the same page, 106 ...?

3 A Yes, sir.

4 (Image displayed.)

5 Q So this section outlines the approval procedures for
6 contracts that reach certain dollar thresholds; is that fair to
7 say?

8 A Yes, sir.

9 Q So the first one on page 106 -- page 106 -- is for
10 contracts worth greater than a hundred thousand -- or equal to
11 or greater than -- a hundred thousand dollars in a 12-month
12 period; is that right?

13 A That's correct.

14 Q All right. And for those contracts, A, they must have
15 the division director's signature, the executive vice
16 president's signature and the treasurer's signature; is that
17 correct?

18 A That's correct.

19 Q And then they also must be reviewed by the president
20 and one of the vice presidents; is that right?

21 A That's correct.

22 Q All right.

23 And then, turning to the next page, page 107 --

24 (Image scrolled.)

25 Q -- for contracts worth between \$50,000 and a hundred

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1 thousand dollars in a given year, they must have the appropriate
2 division director's signature and then one officer's signature;
3 is that right?

4 A That's correct.

5 Q Where an officer would be the executive vice president
6 or an exclusive director of ILA or General Operations or the
7 treasurer or secretary; correct?

8 A That's correct.

9 Q And then contracts under \$50,000 require the approval
10 of the division director and anyone who is assigned
11 responsibility for supervising the contract; is that right?

12 A That's correct.

13 Q And this policy (indicating) is still in place today;
14 is that right?

15 A That's correct.

16 Q And has been in place since at least 2006?

17 A I would agree; yes.

18 Q All right.

19 MR. THOMPSON: If we could please --

20 Q If you could please turn to tab 25 of your binder,
21 Mr. Erstling, this is Plaintiff's Exhibit 2566.

22 MR. THOMPSON: And, your Honor, I haven't heard any
23 objections to this exhibit, so I would move for its
24 admission.

25 THE COURT: Which tab is it, again?

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1 MR. THOMPSON: 25, your Honor.

2 THE COURT: Any objections from the defense side or
3 do you want to hear questioning?

4 MR. PETERS: What was the number?

5 MR. THOMPSON: PX 2566.

6 MR. WERBNER: I have no objection, your Honor.

7 MR. PETERS: I have no objection.

8 THE COURT: Okay, it's admitted.

9 (Image displayed.)

10 BY MR. THOMPSON:

11 Q Mr. Erstling, do you recognize this document?

12 A I do.

13 Q This is a policy from Mr. LaPierre that supplements the
14 policy we were just looking at a moment ago; is that right?

15 A I wouldn't call it a "policy" because I think the --
16 only the board could create policy, but, yes, it does reinforce
17 the policy that the board had.

18 Q Would you agree with me if I refer to it as a procedure
19 that Mr. LaPierre implemented?

20 A I -- I could agree with that.

21 Q And, Mr. Erstling, it's your understanding that this
22 memorandum, Plaintiff's Exhibit 2566 -- this applies to contract
23 renewals, right?

24 (Pause.)

25 MR. CORRELL: Objection, your Honor.

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The document speaks for itself.

MR. THOMPSON: Your Honor, I'm asking for his understanding.

THE COURT: Overruled.

(Continued on next page.)

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1 THE COURT: You can answer.

2 A It doesn't necessarily state that, but I would say yes.
3 It would probably be for contracts that renewed also.

4 Q If you could please turn to the second page of
5 Exhibit 2566, and if I can take you down towards the bottom
6 there is point under "action", that begins "When approving a
7 contract". This provision of this memorandum requires a
8 business case analysis for contracts that exceed \$100,000 in
9 value, is that correct?

10 A Yes, sir.

11 Q And what is a business case analysis, Mr. Erstling?

12 A A business case analysis describes the type of the
13 events. Who the vendor might be. What the amount is and what
14 the business purpose is. Why are we doing it. What is the --
15 What's the goal.

16 Q And there is a standard form that the NRA has for
17 completing a business case analysis, is that correct?

18 A That's correct.

19 Q And if you would please turn to page 4 of Exhibit 2566.
20 This is the form for completing a business case analysis, is
21 that right?

22 A (Examining). That's correct.

23 Q And then on the following page, page 5, this is the
24 form for obtaining the signatures of the appropriate persons for
25 contracts, is that right?

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1 A That's correct.

2 Q So, we've spoken a little bit about Mr. Spray. Craig
3 Spray was the CFO and treasurer between 2018 and beginning of
4 2021, is that right?

5 A That's correct.

6 Q And under Mr. Spray he implemented a procedure where
7 accounts payable must, to the best of its ability, tie invoices
8 that come into the NRA to existing contracts, is that correct?

9 A That's correct.

10 Q And that procedure did not exist prior to Mr. Spray
11 joining the NRA, is that correct?

12 A The procedure happened, but it wasn't -- it wasn't sort
13 of enforced, right.

14 Q So -- Great. Okay. Let's walk through that process a
15 little bit. So, a contract comes in. I'm sorry. An invoice
16 comes in that's related to an existing contract. Can you walk
17 me through what the procedure is for accounts payable when that
18 invoice comes in?

19 A So, accounts payable will look at a particular invoice
20 and first looking at its size they will make -- they will try to
21 make a determine if there is a purchase order. If there is a
22 contract for that particular item. Small items, \$25 items they
23 are not going to have a contract. Large items, \$25,000, \$50,000
24 or more they will attempt to figure out who the owner of that is
25 and see if we have a contract in our Excell database.

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1 A lot of times what they'll do is when they see an
2 invoice come in twice, that's a real trigger. So sometimes they
3 will see an invoice. They might not know if there is a contract
4 associated with it. When it comes in a second time that's a
5 trigger for them to say hey, this is the second time this has
6 come in. There should be -- there should be a contract for
7 this.

8 Q Great. And just to break down a few of the terms that
9 you used for the members of the jury. You referred to the owner
10 of the contract. And by that you mean the person responsible
11 for supervising it, is that correct?

12 A Yes. Contract or the invoice too. So, when you see
13 the face of the invoice, there might be someone's name on the
14 top. They might be the owner. Or a signature of approval on
15 the invoice, that might be the owner. So, yes.

16 Q Then you also mention the purchasing orders. So the
17 NRA utilizes both contracts and purchasing orders, is that
18 correct?

19 A That's correct.

20 Q And can you just briefly explain the difference between
21 a purchasing order and contract for the members of the jury?

22 A A purchasing order goes through our purchasing
23 department. So, they would go out and try to find a vendor that
24 can satisfy the request at the best price. So, they go out.
25 They look for that vendor. And they create a purchase order.

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1 And then when the invoice comes in, the invoice is matched to a
2 purchase order. So there is sort of -- we know that there has
3 been some review of -- of the request.

4 Q So, stepping back to talk about this process for
5 reviewing invoices and time of contracts when they come in. I
6 believe you testified that the process existed under
7 Mr. Phillips but was inconsistently followed, is that correct?

8 A I would say yes.

9 Q And this process occurs in accounts payable, is that
10 correct?

11 A That's the first line of defense, yes.

12 Q So, it sort of starts in accounting operations and then
13 works up, is that right?

14 A That is correct.

15 Q Okay. And Ms. Rowling was the head of accounting
16 operations under Mr. Phillips, right?

17 A That's correct.

18 Q So, while Ms. Rowling was the head of accounting
19 operations, she did not ensure that this process was
20 consistently followed, is that right?

21 A I said it's a process. We look for the invoice. We
22 look for the contract. If there is not a contract, then it gets
23 reported up, right. So she would get information from Portia,
24 and then she would then go higher. So I'm assuming she would
25 report that to Rick, and then Rick would report that to Woody.

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1 MR. THOMPSON: Move to strike as nonresponsive,
2 your Honor.

3 THE COURT: Overruled.

4 Q So, you are assuming that she was reporting up when
5 this process was not followed, is that right, Mr. Erstling?

6 A I can't -- I don't -- I wasn't -- My responsibility at
7 that time was budgeting. So I have no real insight into exactly
8 what the process was happening on her side of the -- of the
9 operation. I can tell you what the process is. I can't tell
10 you what was happening.

11 Q You know it was inconsistently followed while
12 Mr. Phillips was the treasurer, right?

13 A I believe it wasn't consistently followed.

14 Q And Ms. Rowling was the head of accounting operations
15 at that time, right?

16 A That's correct.

17 Q Mr. Erstling, is it fair to say that while Mr. Phillips
18 was the treasurer, you did not get the support that you felt you
19 needed from him as your boss' boss?

20 A I felt he wasn't present.

21 Q And can I expand on that, what you mean by "he wasn't
22 present"?

23 A We -- we did not as a staff meet regularly with
24 Mr. Phillips. When Mr. Spray arrived, we started to meet as a
25 staff on a regular basis, on a monthly basis. And it was

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1 extraordinarily enlightening to hear what was going on in all
2 aspects of -- of the financial staff, right. So, it wasn't just
3 me. It was everyone. It was Sonya. It was myself. It was
4 Emily Cummins. It was Rick Tedrick. It was Craig Spray. It
5 was David Warren. So, we were all sitting around a table
6 discussing the financials. We were discussing whatever finance
7 topics were of the day. That did not happen under Woody
8 Phillips.

9 Q And you thought that Mr. Phillips was not enforcing the
10 NRA's internal controls, right?

11 A I believe that to be correct.

12 Q And you thought that Mr. Phillips permitted millions of
13 dollars of spending that wasn't budgeted for, correct?

14 A I would say yes.

15 Q And you thought that Mr. Phillips permitted vague
16 invoicing from NRA vendors, correct?

17 A That is correct.

18 Q And you thought -- Withdrawn. How long were those
19 things going on for, Mr. Erstling, the vague invoicing for
20 example?

21 A Decades.

22 Q And what about the failure to enforce the NRA's
23 internal controls?

24 A It would have to be the same.

25 Q Mr. LaPierre was the executive vice president for that

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1 entire time, wasn't he?

2 A That's correct.

3 Q So all of the bad actions under Mr. Phillips' time as
4 the treasurer of the NRA happened on Mr. LaPierre's watch,
5 right?

6 MR. CORRELL: Objection, your Honor.

7 THE COURT: I -- I think the -- I'm going to
8 sustain that. Just the language is a little vague.

9 Q Mr. Phillips as the CFO of the NRA reported to Mr.
10 LaPierre, correct?

11 A Correct.

12 Q And as treasurer of the NRA he reported to the board of
13 directors, correct?

14 A Correct.

15 Q And for the entire time that Mr. Phillips was the CFO
16 and treasurer of the organization, Mr. LaPierre was the
17 executive vice president of the organization, correct?

18 A Correct.

19 Q And Mr. Phillips was communicating with the board of
20 directors at the same time, right?

21 A What I visionally saw was at those meetings. I don't
22 know of any other times that he may have been communicating.

23 Q You would agree with me that Mr. LaPierre was
24 ultimately responsible for the bad management under
25 Mr. Phillips, right?

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1 MR. CORRELL: Objection, your Honor. Calls for a
2 legal conclusion.

3 MR. THOMPSON: I don't think it calls for a legal
4 conclusion, your Honor.

5 THE COURT: I -- I refer -- The prior question
6 talked about all the bad conduct. Just left it that way.
7 You just said bad management. I think again it's just a
8 broad and sort of undefined phrase.

9 MR. THOMPSON: Sure.

10 Q So, would you agree with me, Mr. Erstling, that
11 permitting vague invoicing from vendors is bad management?

12 A Yes.

13 Q And would you agree with me that allowing millions of
14 dollars that are not budgeted for to be spent is bad management?

15 A Yes.

16 Q And so with that understanding of bad management would
17 you agree with me that Mr. LaPierre was ultimately responsible
18 for that bad management?

19 MR. CORRELL: Objection, your Honor. Same grounds.

20 THE COURT: Overruled.

21 A Yes.

22 Q The board of directors at the NRA also has a supervisor
23 responsibility, doesn't it, Mr. Erstling?

24 A Yes, sir.

25 Q And the board of directors is the highest authority in

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1 the NRA, is that right?

2 A Yes, sir.

3 Q And so the NRA board of directors was also responsible
4 for supervising the NRA during this period of bad management
5 that we've discussed, right?

6 A I would agree.

7 Q If you could please take a look at tab six of your
8 binder, Mr. Erstling. This is Plaintiff's Exhibit 964.

9 MR. THOMPSON: I haven't heard an objection to this
10 document, so I would move for its admission.

11 THE COURT: What tab again?

12 MR. THOMPSON: Tab six, your Honor.

13 MR. PETERS: What number?

14 MR. THOMPSON: 964.

15 MR. PETERS: No objection.

16 THE COURT: Okay. It's admitted.

17 Q So, Mr. Erstling, I'm not going to read it into the
18 record, but on the top of the page, the to -- the to line that
19 reads Erstling comma Michael, does that reflect to your work
20 e-mail address?

21 A (Examining). It does.

22 Q And you still use that work e-mail address?

23 A I do.

24 Q So if I could please take you to page 3 of this
25 exhibit, and looking at the bottom most e-mail on this page that

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1 is -- am I correct this is an e-mail from you to Mr. Tedrick
2 dated June 5, 2015?

3 A Yes, sir.

4 Q And take a moment please to just read your e-mail. Can
5 you tell me, Mr. Erstling, what was interesting about the
6 amounts being just under \$50,000 for each of the five
7 installments referred to here?

8 A It falls just under the \$50,000 policy level.

9 Q And we discussed that policy level a few minutes ago,
10 but that requires a certain number of signatures, is that right?

11 A That's correct.

12 Q It requires is it one officer's signature?

13 A Yes, sir.

14 Q And then also the division head responsible for it, is
15 that right?

16 A That's also correct.

17 Q Okay. And so was it your understanding at the time,
18 Mr. Erstling, of this e-mail that Mr. Phillips was attempting to
19 circumvent the \$50,000 threshold for invoices?

20 A I can't say that. I can say it's interesting, but I
21 don't know what his intent was.

22 Q So, Mr. Erstling, we were talking about the supervision
23 of the NRA. Mr. Frazer is currently the secretary and general
24 counsel at the NRA, correct?

25 A Correct.

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1 Q And approximately how long has he been in that position
2 to the best of your knowledge?

3 A More than five years.

4 Q And with respect to the bad management that you were
5 discussing, the vague invoicing and the failure to stay within
6 the budget, that occurred under Mr. Frazer's watch as well,
7 right, Mr. Erstling?

8 A Mr. Frazer was there.

9 Q And he's the general counsel of the organization,
10 right?

11 A That is correct.

12 Q He has a supervisory responsibility, right?

13 A I believe he does.

14 Q He's one of the NRA's officers?

15 A That is correct.

16 Q So, with respect to this tab six of your binder,
17 Exhibit 964, this payment of multiple installments just under
18 \$50,000, did that raise a red flag for you, Mr. Erstling?

19 A Not particularly, other than just the size of the
20 installments.

21 Q So, it didn't concern you that there were these
22 multiple installments just under the threshold for additional
23 signature requirements under the NRA policy?

24 A No, because I would have looked at what the sponsorship
25 was. I mean, what is the -- What's the total. What's the --

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1 what's the expense for. I mean, the \$50,000 requirement, that's
2 one thing, but it's not all the things. You have to look at the
3 totality of the transaction.

4 Q And do you recall looking at the totality of the
5 transaction for this particular transaction?

6 A I mean, this is 2015. So, I -- my memory is a bit
7 shaky for eight years ago.

8 Q So we've spoken a little bit about Mr. Spray. He
9 joined the NRA as CFO first in 2018, is that right?

10 A That's correct.

11 Q He joined in the spring of 2018?

12 A I believe that's also correct.

13 Q And then he was officially elected to treasurer towards
14 the end of 2018, is that right?

15 A I think that would have been -- I don't know the exact
16 day. I'm sorry.

17 Q That's fine. So, you mentioned that when Mr. Spray
18 joined the NRA he started having these regular meetings,
19 correct?

20 A Correct.

21 Q That was not something that you did with Mr. Phillips,
22 right?

23 A That's also correct.

24 Q And Mr. Spray started asking questions at those
25 meetings about the NRA's finances, right?

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1 A Not only was he asking but we were telling.

2 Q Please finish your answer.

3 A We were -- we were obviously excited to have somebody
4 that was listening. So, we go in and share what we could.

5 Q And you felt comfortable sharing your concerns with Mr.
6 Spray, is that right?

7 A That's right.

8 Q That's not something you felt comfortable about with
9 Mr. Phillips, is that fair to say?

10 A I didn't have the opportunity.

11 Q Why didn't you have the opportunity?

12 A There weren't meetings.

13 Q And Mr. Phillips was frequently not in NRA headquarters
14 in Alexandria, is that right?

15 A The headquarters are in Fairfax.

16 Q Fairfax, I'm sorry.

17 A He was not -- he was not in Fairfax a lot.

18 Q Mr. Phillips, for the last several years that he was at
19 the NRA, spent a great deal of time in Texas, is that right?

20 A That is also correct.

21 Q And so during these meetings with Mr. Spray that began
22 happening in 2018, you were discussing concerns about costs
23 increasing, right?

24 A Yes, sir.

25 Q And you were discussing concerns about variances

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1 between the budget versus actual spend, right?

2 A That's correct.

3 Q And so you mentioned that these meetings would be you
4 and several of your colleagues as well, is that right?

5 A That's correct.

6 Q Just to introduce them to the members of the jury. So
7 there is Sonya Rowling. We've spoken about.

8 A Yep.

9 Q At the time she was the head of the accounting
10 operations?

11 A Correct.

12 Q And then there was Lisa George as well, is that
13 correct?

14 A She's purchasing, yes.

15 Q And purchasing is separate from financial services but
16 also under the treasurer's office is that right?

17 A That's correct.

18 Q Okay. And then there was Rick Tedrick?

19 A That's correct.

20 Q Mr. Tedrick at the time and still is the managing
21 director of finance, is that right?

22 A That's correct.

23 Q And he sits in the office of the treasurer?

24 A That's correct.

25 Q And then there is David Warren also?

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1 A That's correct.

2 Q What's Mr. Warren's title?

3 A I don't know what his title is now. Sorry.

4 Q Is it fair to say Mr. Warren does a lot of financial
5 analysis, is that correct?

6 A That's correct.

7 Q And he came in with Mr. Spray, is that right?

8 A He came in shortly after Mr. Spray.

9 Q And does Mr. Warren sit in financial services or in the
10 treasurer's office?

11 A Physically or from a reporting structure? I'm not sure
12 how to answer the question.

13 Q Let's start with physically.

14 A Physically he used to sit up with the treasurer. Now
15 the treasurer is on the second floor. So, he sits with
16 financial services and the treasurer.

17 Q Okay. And then in terms of the organizational chart do
18 you know where he sits technically?

19 A He would be in the treasurer's office not in financial
20 services.

21 Q So, when Mr. Spray joined the NRA, he began making a
22 lot of internal control changes, is that fair to say?

23 A That's fair to say.

24 Q And is it fair to say that Mr. Spray was the one who
25 was leading the charge with respect to these changes -- to the

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1 enforcement of the NRA internal policies?

2 A He was a catalyst.

3 Q And then Mr. Spray left the NRA in January of 2021, is
4 that right?

5 A I believe that's correct.

6 Q And what is your understanding of why Mr. Spray left,
7 Mr. Erstling?

8 A At the time it was medical reasons. I've heard that he
9 was fired throughout this process.

10 Q And shortly before he left the NRA in 2000 -- I'm sorry
11 -- 2020 Mr. Spray refused to sign the NRA's Form 990, is that
12 right?

13 A That's -- Yes. To my understanding, yes.

14 Q If you could please turn to tab 26 of your binder, Mr.
15 Erstling. This is Plaintiff's Exhibit 2605.

16 MR. THOMPSON: I don't believe there has been an
17 objection to this one, your Honor. So, I would move for its
18 admission.

19 THE COURT: Any objection to Plaintiff's 2605?

20 MR. WERBNER: No objection.

21 MR. PETERS: No objection.

22 THE COURT: It's admitted. Counsel, I've been
23 mulling when to raise this. I've just been reconsidering
24 one earlier ruling I made and I want to clarify something --

25 MR. THOMPSON: Sure.

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1 THE COURT: -- to the members of the jury. The
2 witness is here to give his personal testimony about people
3 he worked with and things he observed. To the extent the
4 question was asked whether Mr. LaPierre is responsible for
5 things, initially I overruled the objection, but as I
6 thought about it, that's not really a fact question for this
7 witness. If there is testimony that he worked with Mr.
8 LaPierre and interacted with and can give testimony about
9 that, that's fine. But it's ultimately going to be your
10 decision as to, you know, people's responsibility for
11 things. So, it is, with deference to Mr. Correll, I think
12 it is correct as asked, as I scrolled back and looked at,
13 its in the nature of a legal conclusion. So, I'm going to
14 strike that question and answer. You can ask factual
15 questions about the witness' understanding of who supervised
16 who, and it will be up to the jury applying my instructions
17 what the legal responsibility is.

18 So, I think as I look back at that question as
19 asked, I think Mr. Correll's objection was well founded.
20 So, I didn't want to wait too long to tell you that in case
21 you want to ask other questions.

22 MR. CORRELL: Thank you, your Honor.

23 MR. FLEMING: Your Honor --

24 THE COURT: And he did not ask the same question
25 about Mr. Frazer.

LAS

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1 MR. FLEMING: Your Honor, there was an insinuation.
2 Based on your Honor's prior ruling I did not object.

3 THE COURT: I was listening very carefully, because
4 that's when I realized that if he did ask that question --
5 What I'm focused on to the jury is fact questions. Who did
6 what. What did he observe. And that's really what this
7 witness is here for. And going beyond that to talk about
8 whose responsibility legally it might be is -- is -- Even if
9 people might have a view of that, in this context that's
10 really your job and my job.

11 MR. PETERS: I also want to note that there wasn't
12 a foundation laid for the last set of questions about
13 Mr. Spray and why Mr. Spray left and what the basis for his
14 knowledge was.

15 THE COURT: That ship sailed. I just wanted to
16 correct an objection that I -- Just sometimes you reconsider
17 things and I did. All right.

18 MR. THOMPSON: Thank you, your Honor.

19 Q So, Mr. Erstling, is it your understanding that --
20 Withdrawn. From time to time, Mr. Erstling, Mr. Phillips would
21 communicate to you and your colleagues instructions from Mr.
22 LaPierre, is that correct?

23 A That is correct.

24 Q And Mr. Tedrick would do the same, is that correct?

25 A That is correct.

LAS

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1 Q So, you would sometimes get e-mails or other
2 communications that would say, from Mr. Phillips, that would say
3 Wayne wants us to do X, Y or Z, is that correct?

4 A That is correct.

5 Q So did you have any reason to doubt that those
6 instructions were being relayed from Mr. LaPierre through
7 Mr. Phillips?

8 A No, I did not.

9 MR. PETERS: Objection. It's not based -- There is
10 no foundation being laid for any of these.

11 THE COURT: Sustained. Just as to that question.

12 Q All right. So, we were looking at tab 26, Mr.
13 Erstling. Do you have that open? This is Plaintiff's
14 Exhibit 2605.

15 A Yes, sir.

16 Q And so looking specifically at the second page. Do you
17 recognize this to be the list of top concerns that you and your
18 colleagues presented to the auditing committee in 2018?

19 A Yes, sir.

20 Q And this was a collaborative effort between you and
21 several of your colleagues, is that right?

22 A That's right.

23 Q That was yourself, Ms. Rowling, Ms. George -- Oh,
24 withdrawn. I realize we didn't ask about two people. So, one
25 of the other individuals who was part of the meetings that you

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Direct-Erstling-Thompson

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1 began having with Mr. Spray was Emily Cummins, is that correct?

2 A That is correct.

3 Q What was Ms. Cummins' title at the time?

4 A She was director of tax and there might have been some
5 other areas.

6 Q Is it fair to say she was one of the people responsible
7 for the Form 990 filing for the NRA?

8 A That's correct.

9 Q And then she left the NRA in late 2018, is that
10 correct, approximately?

11 A Approximately.

12 Q And then one of the -- Was Portia Padilla ever a part
13 of those meetings?

14 A She wasn't part of the meetings but she provided -- she
15 provided input.

16 Q And so turning back to this top concern memo,
17 Exhibit 2605. It was a collaborative effort between yourself,
18 Ms. Rowling, Ms. George, Ms. Cummins and then to a lesser extent
19 from Ms. Padilla, is that correct?

20 A That's correct.

21 Q Okay. And then --

22 MR. PETERS: You made a reference in a previous
23 question about "these meetings". What were you referring
24 to?

25 THE COURT: That's not a proper objection. Go

LAS

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1 ahead.

2 Q So, this list of top concerns came about as a result of
3 your meetings with Mr. Spray in early 2018, is that correct?

4 A He was the catalyst that allowed us to come together
5 and -- and sort of discover the puzzle pieces, right. Not --
6 Each one of us did not have a total view of what was going on,
7 but together we were able to sort of piece together pieces of
8 information and to come up with this list.

9 Q And then ultimately this list was presented to the
10 auditing committee in July of 2018, is that correct?

11 A That's correct.

12 Q Who were the members of the auditing committee at the
13 time?

14 A It was Mr. Cotton. It was Mr. Coy. It was
15 Mr. Jenkins. It was -- There were two more. Right now I'm -- I
16 just can't come up with the names. Sorry.

17 Q Do you know if Carolyn Meadows was a member?

18 A That's correct.

19 Q And what about Herb Langford?

20 A Yep. Correct.

21 Q Those were the five members of the audit committee?

22 A Yes, sir.

23 Q And at the time Ms. Meadows was also a board officer,
24 is that correct?

25 A I believe that's correct.

LAS

1 Q So, who from -- from the people who prepared the list
2 of top concerns, who presented it to the audit committee in
3 2018?

4 A We were all there. We were all sitting around the
5 conference table. So, I would say all of us.

6 Q Was Ms. George there at the actual audit committee
7 meeting?

8 A Ms. George could not make it.

9 Q What about Ms. Padilla?

10 A Ms. Padilla was not there.

11 Q And Mr. Cotton, he was the chair of the audit committee
12 at the time?

13 A He was.

14 Q And Mr. Cotton and Ms. Meadows left the meeting before
15 your presentation began, is that correct?

16 A That's correct.

17 Q And that frustrated you, didn't it?

18 A It did.

19 Q After the July 2018 audit committee meeting when was
20 the next time that you spoke to a member of the audit committee?

21 A I -- I can't recall.

22 (Continue on the next page.)

23

24

25

Erstling - by Plaintiff - Direct/Thompson

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1 Q When was the next time you attended a meeting of the
2 Audit Committee, to the best of your recollection?

3 A It -- it may have occurred at the September board of
4 directors meeting.

5 Q But you're not sure?

6 A I'm not sure.

7 Q So let's walk through the Top Concerns memo for a bit,
8 Mr. Erstling.

9 So, looking again at page 2 of Exhibit 2605 --
10 Plaintiff's Exhibit 2605 -- let's start at the top.

11 (Image displayed.)

12 Q So item number 1 is, "Financial Conflicts of Interest
13 at the Senior Management and Board of Directors Level"; is that
14 right?

15 A That's correct.

16 Q And item 1-a. is, "Mr. Phillips and payments made to a
17 'significant other'"; is that right?

18 A That's correct.

19 Q What payments are referred to there?

20 MR. WERBNER: Your Honor, I'll object unless
21 there's a predicate of personal knowledge -- there's a lack
22 of personal knowledge, until that predicate is laid.

23 THE COURT: Um --

24 MR. THOMPSON: I could ask a foundation question.

25 THE COURT: I think that would be --

ALAN F. BOWIN, CSR, RMR, CRR

Erstling - by Plaintiff - Direct/Thompson

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1 So it's sustained.

2 BY MR. THOMPSON:

3 Q Mr. Erstling, do you have any personal knowledge about
4 the payments made to the "significant other" referred to in the
5 Top Concerns memo?

6 A At the -- at that time, I did not; now I do.

7 Q And what's the basis for your knowledge?

8 A These proceedings.

9 Q And so what is your understanding, Mr. Erstling, of the
10 payments made to a "significant other" referred to in the Top
11 Concerns memo?

12 MR. WERBNER: Your Honor, I'll object; hearsay.

13 THE COURT: By "these proceedings," you mean this
14 lawsuit?

15 THE WITNESS: Yes, sir.

16 THE COURT: Sustained.

17 Q So, walking through the List of Top Concerns memo,
18 Mr. Erstling, can you identify for me which, if any one, of
19 these were the items that you added to the list?

20 (Pause.)

21 A Item -- sorry.

22 Q No, please go ahead.

23 A Item number 2-b., "Lance Olson invoices for the
24 purchase of firearms."

25 Item 2-c., "Josh Powell purchase of computer assets."

ALAN F. BOWIN, CSR, RMR, CRR

Erstling - by Plaintiff - Direct/Thompson

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1 Item 4-a.

2 Item 4-d.

3 Part of 5.

4 I would say, that's pretty close.

5 Q Okay. So let's focus on the items under number 4.

6 We'll start with 4-a., "Associated TV." So this was related to
7 billing of \$1.8 million for rental of a house that belongs to
8 Stanton/McKenzie, an owner of Associated TV; is that right?

9 A That's correct.

10 Q And "Stanton/McKenzie," that refers to David McKenzie;
11 is that right?

12 A That is correct.

13 Q Also known as "David Stanton"?

14 A I believe that's also correct.

15 Q And Mr. Stan -- Mr. McKenzie -- I'm sorry -- was the
16 owner of Associated Television; is that right?

17 A Correct.

18 Q Mr. McKenzie is also, to the best of your
19 understanding, the owner of Membership Marketing Partners; is
20 that right?

21 A That's correct.

22 Q As well as Concord Social and Public Relations?

23 A Correct.

24 Q And Allegiance Creative Group; is that right?

25 A Correct.

ALAN F. BOWIN, CSR, RMR, CRR

Erstling - by Plaintiff - Direct/Thompson

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1 Q And if I refer to Membership Marketing Partners,
2 Allegiance Creative Group, and Concord Social and Public
3 Relations collectively as the "MMP entities," will you
4 understand what I'm referring to?

5 A Yes, sir.

6 Q Okay. Do you have an understanding as to what services
7 Associated TV provided to the NRA?

8 A At what -- at what point?

9 Q Let's say, between 2015 and 2018.

10 A I -- I know they did a -- a "Crime Strike" program;
11 they did some work with Eddie Eagle programs; they did some town
12 hall meetings; we sponsored a -- a -- a veterans viewing area at
13 a Christmas parade, and those are the things I would remember.

14 Q With respect to "Crime Strike," can you explain for the
15 members of the jury what "Crime Strike" is?

16 A From -- from the documentation that I've seen, "Crime
17 Strike" was a -- a program that, in segments, went over crimes
18 that occurred and how people defended themselves in those --
19 during those crimes.

20 Q Have you ever seen an episode of "Crime Strike,"
21 Mr. Erstling?

22 A I have not.

23 Q Do you have any personal knowledge as to whether or not
24 an episode of "Crime Strike" was filmed between 2015 and 2018?

25 A I have no knowledge.

ALAN F. BOWIN, CSR, RMR, CRR

Erstling - by Plaintiff - Direct/Thompson

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1 Q So, turning back to the Top Concerns memo and this item
2 4-a., it was your understanding that the NRA paid approximately
3 1.8 million to rent a house from Mr. McKenzie; is that right?

4 A That's what the invoice stated.

5 Q So, if you could please turn to tab 2 of your binder,
6 Mr. Erstling, this is Plaintiff's Exhibit 821.

7 MR. THOMPSON: I haven't heard an objection to
8 this, either, your Honor, so I would move for its admission.

9 THE COURT: It's actually -- I don't think the
10 document itself is --

11 MR. THOMPSON: If this is --

12 So it's a large Excel, your Honor, and if this is
13 one that we could show just to Mr. Erstling on this screen,
14 if we have to turn it off for the jury, if there's no
15 objection ...

16 THE COURT: Let's just see.

17 MR. PETERS: We had been told that you --

18 Oh. Is this one of the huge Excel PDFs?

19 MR. THOMPSON: It is not one of the general
20 ledgers. It's a collection -- well, I don't want to read
21 into the record what it is.

22 MR. PETERS: I mean, it's not in my binder, either.

23 We have the huge spreadsheets printed out, but I
24 didn't think we would need them.

25 THE COURT: That's not what this is, right?

ALAN F. BOWIN, CSR, RMR, CRR

Erstling - by Plaintiff - Direct/Thompson

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1 MR. THOMPSON: No, it's not a huge spreadsheet. It
2 is a spreadsheet.

3 THE COURT: All right. Do we have the ability --
4 I think this room has the ability to just show to
5 the witness. So, if you can identify it for -- or show it
6 for identification.

7 Hang on one second.

8 I don't know what -- I think this room is set up
9 for this; this is what we've done before.

10 This is off the record:

11 (Whereupon, the Court addressed the jury, off the
12 record.)

13 THE COURT: All right, we can go back on the
14 record.

15 So you can now show this just to the counsel and
16 the witness.

17 BY MR. THOMPSON:

18 Q So, first things first, Mr. Erstling: Just looking in
19 your binder, there's a cover e-mail for this Excel. Do you
20 recognize the sender of that e-mail?

21 A I do.

22 Q He was a staffer at the NRA who reported to you; is
23 that correct?

24 A That's correct.

25 Q And then do you recognize the attachment, which is on

ALAN F. BOWIN, CSR, RMR, CRR

Erstling - by Plaintiff - Direct/Thompson

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1 your screen (indicating)?

2 A I do.

3 Q And was this created for you by -- I'm going to ask you
4 to pronounce his name for me, please.

5 A Kai Hsieh.

6 Q Hsieh. Okay, thank you.

7 THE WITNESS: (To reporter) Would you like a
8 spelling?

9 COURT REPORTER: Yes, please.

10 THE WITNESS: K-a-i; Hsieh, spelled H-s-i-e-h.

11 Q Thank you, Mr. Erstling.

12 And did you request that Mr. Hsieh prepare this for
13 you?

14 A I'm guessing I did, because he provided it.

15 Q And to the best of your knowledge, is the information
16 in the attachment accurate and complete?

17 A Yes.

18 MR. THOMPSON: Move for admission of this exhibit,
19 your Honor.

20 MR. WERBNER: No objection.

21 MR. CORRELL: No objection, your Honor.

22 MR. PETERS: No objection.

23 THE COURT: It's admitted.

24 Q So, Mr. Erstling, this is a -- this -- the attachment
25 to --

ALAN F. BOWIN, CSR, RMR, CRR

Erstling - by Plaintiff - Direct/Thompson

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1 THE COURT: Now we have to turn it back on.

2 MR. THOMPSON: Oh, I'm sorry.

3 THE COURT: There's got to be a better way to do
4 this, but for now, we're just going to rely on the --

5 (Image displayed.)

6 THE COURT: There you go.

7 BY MR. THOMPSON:

8 Q So, Mr. Erstling, the attachments to Exhibit 821 is a
9 collection of ATI invoices and information about the invoices
10 that was prepared by Mr. Hsieh; is that correct?

11 A That's correct.

12 Q And if you can please look at tab 3 of the Excel ...

13 (Image scrolled.)

14 MR. THOMPSON: Oh, I'm sorry. No. If we can
15 please go to the 2015 "By Project" tab ...?

16 (Image displayed.)

17 MR. THOMPSON: Yeah.

18 Q And if you could look at row 16, where it reads, "Home
19 rental during filming in Hollywood Hills, California" ...?

20 Hopefully, we'll be able to expand that for you, but do
21 you see that?

22 A I do.

23 Q Okay. This is one of the invoices that you were
24 describing in the Top Concerns memo; is that correct?

25 A That's correct.

ALAN F. BOWIN, CSR, RMR, CRR

Erstling - by Plaintiff - Direct/Thompson

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1 Q And so it was a \$245,000 payment in August 2015?

2 A That's what the invoice said. That's what it was.

3 Q Okay.

4 MR. THOMPSON: And then, if we can please go to the
5 "Chart" tab ... And I think it may be -- you may have to
6 scroll over to get to it.

7 (Image scrolled.)

8 Q So, looking at the seventh row of the "Chart" tab,
9 where it reads, "Home rental" --

10 Do you see that?

11 A Yes, sir.

12 Q -- this shows how much the NRA paid for the home
13 rental, in total; is that correct?

14 A Through 2017, correct.

15 Q So it was about 1.795 million; is that right?

16 A 1.8 million, yep.

17 Q Right. And this was to rent Mr. McKenzie's home in
18 Hollywood; is that right?

19 A That's what the invoice said.

20 Q To the best of your knowledge, Mr. Erstling, did the
21 NRA ever receive any reimbursement for this payment -- these
22 payments -- for this house rental?

23 A I don't think reimbursement was --

24 Let me rephrase: I believe they went through and came
25 up with a more precise invoice.

ALAN F. BOWIN, CSR, RMR, CRR

Erstling - by Plaintiff - Direct/Thompson

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1 Q And when was that, to the best of your recollection?

2 A I don't recall.

3 Q And what's the basis for your understanding?

4 A I was told that they -- they had researched it and --
5 and determined it was equipment and things like that.

6 Q Who had researched it?

7 A And now I can't remember; I can't remember who.

8 MR. THOMPSON: So, your Honor, move to strike as
9 speculation.

10 MR. PETERS: I don't see how you can move to strike
11 this as speculation versus --

12 THE COURT: He's answering the question as best he
13 can.

14 MR. THOMPSON: So we can go ahead and take down
15 that exhibit.

16 (Image removed.)

17 Q One of the problems that Mr. Spray attempted to correct
18 was to move away from a "Wayne said" culture; is that fair to
19 say, Mr. Erstling?

20 A That is correct.

21 Q And if you could just please take a look at tab 4 of
22 your binder ...?

23 MR. THOMPSON: And this is Plaintiff's Exhibit 936,
24 which I will move to admit.

25 THE COURT: Any objection to 936?

ALAN F. BOWIN, CSR, RMR, CRR

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1 MR. PETERS: I think I know what he's talking
2 about.

3 No objection.

4 MR. WERBNER: No objection, your Honor.

5 MR. FLEMING: No objection.

6 MR. CORRELL: No objection, your Honor.

7 THE COURT: It's admitted.

8 (Image displayed.)

9 BY MR. THOMPSON:

10 Q So, Mr. Erstling, Exhibit 936 --

11 You have it in front of you?

12 A I do.

13 Q And this is an e-mail train -- e-mail chain -- between
14 you and Mr. Spray -- is that correct? -- as well as Mr. Tedrick
15 and Ms. Rowling?

16 A The top one is from Craig to the three of us.

17 Q And in Mr. Spray's e-mail, at the top of this e-mail
18 chain, he asks you to identify for him "odd" or "agreements with
19 Josh's fingerprints on it"; is that right?

20 A That's correct.

21 Q And he says, "Don't be cowed by people saying, 'It's
22 for Wayne'"; is that right?

23 A That's correct.

24 Q And so, into 2020 -- October of 2020 -- there was still
25 an issue of people trying to get things done through "Wayne

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1 said" approvals; correct?

2 A Change -- change is slow.

3 Q Change was slow; is that right, Mr. Erstling?

4 A Change happens over time, yes.

5 Q And so, this is two and a half years after Mr. Spray

6 joined the NRA; is that correct?

7 A It is.

8 Q And it's two months after this litigation was

9 commenced; is that right?

10 A I -- I don't know when the litigation was commenced;

11 I'm sorry.

12 Q So let's talk a little bit about Membership Marketing
13 Partners. The MMP entities -- Membership Marketing, Allegiance,
14 and Concord -- were NRA vendors for a number of years; is that
15 correct?

16 A That's correct.

17 Q Do you know approximately when they began as NRA
18 vendors?

19 A Maybe 2011, 2012?

20 Q So is it fair to say that they were vendors for
21 approximately a decade?

22 A Yes.

23 Q Okay. And Membership Marketing Partners and Concord
24 are no longer vendors of the NRA; is that correct?

25 A I -- I think it's Allegiance, maybe doing business as

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1 Membership Marketing Partners. I -- I -- I don't -- I know one
2 of them exists with a d/b/a.

3 Q Okay. So the NRA is still doing business with
4 Allegiance; is that correct?

5 A I believe that's correct.

6 Q Okay. And I believe you testified -- testified
7 before -- that, to the best of your understanding, David
8 McKenzie owns all three of the MMP entities; is that right?

9 A That's correct.

10 Q The MMP entities all have the same employees; is that
11 correct?

12 A Oh, I -- I have no idea what their employee structure
13 looks like; I'm sorry.

14 Q Do you know --

15 Between, let's say, 2018 and 2021, do you know where
16 the MMP entities' offices were located?

17 A There is one MMP office in the south tower of -- of our
18 headquarters building.

19 Q And thinking back to the Top Concerns memo,
20 Mr. Erstling, and we can bring it up if you would like to look
21 at it, but one of the other items that you specifically raised
22 was that MMP -- the MMP entities -- were being paid more than
23 what was called for in their contracts; is that correct?

24 A That is correct.

25 Q And you actually conducted an analysis of that

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1 overpayment; is that correct?

2 A That is correct.

3 MR. THOMPSON: And if we could please look at tab
4 12, which is PX 2361 ...?

5 Which I will move to admit.

6 (Pause.)

7 THE COURT: Without objection, it's admitted.

8 (Image displayed.)

9 Q So do you have tab 12 in front of you, Mr. Erstling?

10 A Visually, yes.

11 Q Okay. And do you recognize this document, or this
12 collection of documents, I should say?

13 A Can you scroll through the documents for me, please?

14 THE COURT: It's in the binder, as well.

15 THE WITNESS: What's the number?

16 Q Tab 12, Mr. Erstling.

17 (Pause.)

18 A Yes, sir.

19 Q This is a collection of documents that you prepared in
20 anticipation of that Audit Committee meeting in July of 2018; is
21 that right?

22 A That's correct.

23 Q Okay. And if I could please take you to page 5 of
24 Exhibit 2361 ...

25 (Image scrolled.)

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1 Q I apologize for how small it is, but my question is:
2 Is this the analysis that you performed of the overpayment on
3 the MMP-entity contracts?

4 A This is the analysis I performed on the contracts that
5 I had in my hand.

6 Q And that was going to be my next question,
7 Mr. Erstling: There is a -- you later found out that the
8 contracts you had differed from the actual final contracts; is
9 that correct?

10 A That's correct.

11 Q And they differed in that the contracts you had
12 provided for an automatic ten percent increase in the fee every
13 year; is that correct?

14 A That's correct.

15 Q That ten percent increase was not in the final
16 contracts; is that correct?

17 A That's correct.

18 Q So, in your analysis, you were assuming that that ten
19 percent increase was happening every year; is that right?

20 A That's correct.

21 Q And if --

22 Looking down at the bottom of page 5, where it says,
23 "Lifetime Value," am I correct that you estimated that there was
24 an approximately \$15 million gap between the as-written value of
25 the contracts and what was actually paid to the entities?

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1 A Correct, based on -- on the incorrect contracts I had.

2 Q Sitting here today, Mr. Erstling, do you know, if you
3 had not applied that ten percent that was not in the actual
4 final contracts, what the overpayment amount would have been?

5 MR. PETERS: Objection; compound.

6 THE COURT: Overruled.

7 A Can you ask the question again for me?

8 Q Of course.

9 Have you --

10 MR. THOMPSON: Let me withdraw and ask a different
11 question.

12 Q Have you conducted an analysis of what the overpayment
13 on the contracts was without taking into consideration that ten
14 percent increase?

15 A I -- I didn't complete any analysis like that.

16 Q Okay. And while we're in this exhibit, Mr. Erstling,
17 if I can take you back one page, to page 4 --

18 (Image scrolled.)

19 Q -- is this an analysis that you prepared of invoices
20 for McKenna and Associates?

21 A Yes, sir.

22 Q And if I can take you over to the --

23 Well, stepping back: One of the concerns that you and
24 your colleagues raised to the Audit Committee were large
25 payments to McKenna and Associates that were not called for by

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1 any written contract; is that correct?

2 A I believe that was correct, yes.

3 Q And if I can take you over the "Approvals" column on
4 page 4 of Exhibit 2361, does this reflect the approvals on the
5 invoices listed in this table?

6 A I believe that's correct, but without seeing the actual
7 invoice, I couldn't confirm. But I believe that that's correct.

8 Q And "WHP," does that refer to Mr. Phillips?

9 A Yes.

10 Q And "WL," does that refer to Mr. LaPierre?

11 A Yes.

12 Q And then, going down to where it says, "JLP" --
13 Do you see that?

14 A Yes.

15 Q -- is that Mr. Powell?

16 A That's correct.

17 Q Okay. So, to the best of your understanding,
18 Mr. Erstling, referring to this (indicating) document, some
19 combination of Mr. Powell, Mr. LaPierre and Mr. Phillips
20 approved these payments to McKenna and Associates; is that
21 correct?

22 A That's correct.

23 Q The NRA continued to pay the MMP entities above the
24 amount called for in the written contracts until 2022; is that
25 correct?

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1 (Image removed.)

2 MR. PETERS: Objection.

3 I don't think there's been a foundation for this
4 compound question, and I don't think it accurately states
5 the testimony thus far.

6 THE COURT: Well, he's asking a new question, so it
7 wouldn't be in the prior testimony. But I think the
8 objection as to foundation is probably fair.

9 So, sustained.

10 Q The NRA renegotiated its relationship with the MMP
11 entities in 2022; is that correct?

12 A That's correct.

13 Q Prior to that renegotiation, are you aware of any
14 contracts -- written contracts -- that provided for the amounts
15 that the NRA was paying to the MMP entities?

16 A There was not a written contract for that amount.

17 Q To the best of your understanding, the amounts above
18 and beyond what was called for in the written contracts were the
19 result of verbal approvals; is that correct?

20 A They were verbal agreements, correct.

21 Q And those verbal agreements were --

22 MR. THOMPSON: Withdrawn.

23 Q To the best of your understanding, Mr. Erstling, who
24 entered into those verbal agreements?

25 A Oh, I -- I -- I can't answer that question. I just --

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1 I'm not part of that relationship, so I don't know who asked
2 for -- for additional services.

3 Q Are you aware, Mr. Erstling, that there were several
4 amendments to the Membership Marketing Partners agreement
5 between 2011 and 2018?

6 A I believe I've seen -- seen amendments.

7 Q And those amendments did not change the dollar amount
8 called for in the underlying contract; is that correct?

9 MR. CORRELL: Objection, your Honor; Best Evidence
10 Rule.

11 THE COURT: You can answer.

12 Overruled.

13 A You would have to show me the amendments. I -- I don't
14 know what was -- I can't recall what's in those amendments at
15 this moment.

16 Q So you agreed earlier, Mr. Erstling, that the procedure
17 set forth by Mr. LaPierre with respect to business case analyses
18 applies to contract renewals; is that correct?

19 A I believe it -- it does.

20 Q Okay. Did you --

21 Have you, personally, ever seen a business case
22 analysis for any of the contract renewals with any of the MMP
23 entities?

24 A Yes.

25 Q Which one?

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1 A This last one.

2 Q So the most recent one, in 2022; is that correct?

3 A I believe, yes.

4 Q Prior to that, have you seen -- do you recall seeing --
5 any business case analyses for any other renewal or amendment of
6 an MMP entity contract?

7 A I -- I don't recall, but that doesn't mean it doesn't
8 exist.

9 Q You are currently the head of both Accounting
10 Operations and Budget and Financial Analysis; is that correct?

11 A That is correct.

12 Q And whose responsibility within the NRA is it to
13 maintain records of business justifications?

14 MR. CORRELL: Objection, your Honor; calls for a
15 legal conclusion.

16 THE COURT: I think, in this case --

17 By "responsibility," you mean functionally, who
18 is -- who is tasked with doing it?

19 MR. THOMPSON: That's right, your Honor.

20 THE COURT: Overruled.

21 MR. CORRELL: Objection withdrawn, your Honor.

22 A Functionally, everyone's responsible for keeping track
23 of -- of their contracts. It is -- it is the job of both [sic]
24 the Office of the General Counsel to have copies of contracts.
25 It's also the responsibility of Financial Services to have a

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1 copy of contracts.

2 Q And is it one of the functional responsibilities of
3 Financial Services to maintain copies of the business case
4 analyses for contracts?

5 A They would be part of the contract itself. It should
6 be a -- one package.

7 Q And so, to the extent that they exist, any business
8 case analyses for any of the MMP entity renewals or amendments
9 should be in Financial Services; is that correct?

10 A They should be, yes.

11 Q And to the best of your knowledge, you've never seen
12 one; is that correct?

13 A Well, I've seen the newest one.

14 Q Other than the most recent one, from 2022, you have not
15 seen one; is that correct, Mr. Erstling?

16 A I -- I don't recall seeing one.

17 Q Okay.

18 (Continued on next page.)

19

20

21

22

23

24

25

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1 Q To the best of your understanding, Mr. Erstling, is the
2 Office of General Counsel also functionally responsible for
3 maintaining contracts?

4 A They don't maintain contracts. I think they keep
5 copies of contracts.

6 Q Okay. And would their files, to the best of your
7 understanding, also include business case analyses to the extent
8 they exist?

9 A I'm not sure what their files would contain.

10 Q Within the NRA between 2015 and 2018 do you know who
11 was in charge of the -- of supervising the MMP entity
12 relationship?

13 A I believe that would have been Todd Grable.

14 Q And Mr. Grable is the former executive director of
15 membership, is that correct?

16 A That's correct.

17 Q One of your roles and responsibilities, Mr. Erstling,
18 is to prepare the NRA's budget every year, is that correct?

19 A That's correct.

20 Q That's been your responsibility since you joined the
21 NRA, is that correct?

22 A That is correct.

23 Q That was in 2001?

24 A It is.

25 Q And so typically speaking around Labor Day each year

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1 you meet with each division in the NRA to talk about the budget
2 for the following year, is that correct?

3 A That's correct.

4 Q And one division that has its own budget is the
5 executive vice president is that correct?

6 A That's correct.

7 Q So when you meet with the division, typically speaking
8 who within the division do you meet to discuss the budget?

9 A I would meet with the head of usually the different
10 divisions.

11 Q So, for example, you would meet with Mr. Grable for
12 Membership, is that correct?

13 A I would meet with Mr. Grable and his staff.

14 Q Mr. Schropp for Advancement?

15 A Correct.

16 Q And Mr. DeBergalis for General Operations while he was
17 the executive director?

18 A I would meet with Joe, yes.

19 Q But you didn't meet with Mr. LaPierre to talk about the
20 executive vice president budget, is that correct?

21 A That is correct.

22 Q And that -- the task of meeting with Mr. LaPierre was
23 left up to Mr. Phillips, is that right?

24 A It's left up to the treasurer, yes.

25 Q So, Mr. Spray, while he was the treasurer, would be the

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1 one who would meet on the executive vice president budget?

2 A That's correct.

3 Q And currently Ms. Rowling?

4 A Correct.

5 Q Within the executive vice president budget there is
6 also the executive vice president consulting budget, is that
7 correct?

8 A That is one line item, yes.

9 Q And as its name suggests, it's a part of the budget
10 that has those consultants for the executive vice president, is
11 that right?

12 A That's correct.

13 Q The process each year for -- Withdrawn. So, you would
14 never directly participate in any conversations about the
15 executive vice president budget period, is that correct?

16 A Can you ask that question again?

17 Q Yes. Withdrawn and I'll move on. You completed the
18 executive vice president consulting budget in a vacuum, is that
19 fair to say?

20 A It is fair to say that I am an expert in budgeting, and
21 I budgeted the EVP's office. It's also fair to say that I use
22 trend analysis to come up with a list of the EVP's consultants,
23 and I provide that list of consultants and the EVP budget to the
24 treasurer, so the treasurer can then talk to the EVP. Rarely
25 does a high level executive like the governor of New York or JP

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1 Diamond complete their own budget. They usually leave it to
2 staff people. And that's what I do.

3 Q So, if we can please look at tab five of your binder,
4 Mr. Erstling. This is Plaintiff's Exhibit 957.

5 MR. THOMPSON: I would move for admission of this
6 exhibit, your Honor.

7 MR. WERBNER: No objection.

8 MR. CORRELL: No objection, your Honor.

9 MR. PETERS: No objection.

10 THE COURT: Admitted.

11 Q Mr. Erstling, this is an e-mail chain between you and
12 Mr. Tedrick in 2015, is that right?

13 A (Examining). That's correct.

14 Q And looking at the top most e-mail, which is from you
15 to Mr. Tedrick, is that right?

16 A Yep.

17 Q And you write, "No. Sonya and I complete this budget
18 'in a vacuum'. We get no support/information from EVP office",
19 is that right?

20 A That's correct.

21 Q Was that accurate?

22 A It's -- it's accurate when I create the budget, yes.
23 But the budget is then turned over to the treasurer. The
24 treasurer then talks to the EVP, and the treasurer returns with
25 any changes. So if there are changes to be made to the budget,

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1 we would get those from the treasurer. But I don't work with
2 Wayne LaPierre directly on the budget.

3 Q You work with all the other executives, don't you, Mr.
4 Erstling?

5 A Different levels of executives have different
6 responsibilities. And that's the case with any organization.
7 The Attorney General doesn't do her own budget.

8 MR. THOMPSON: Move to strike as nonresponsive,
9 your Honor.

10 THE COURT: That one I'll agree with. So it's
11 stricken.

12 MR. PETERS: Not the whole answer, just the last
13 part, right?

14 THE COURT: Just the part that the Attorney General
15 budget.

16 Q If you could please take a look at tab seven of your
17 binder, which is Plaintiff's Exhibit 1001.

18 MR. THOMPSON: I will move to admit exhibit,
19 Plaintiff's Exhibit 1001.

20 MR. WERBNER: No objection.

21 MR. CORRELL: No objection, your Honor.

22 MR. PETERS: No objection.

23 THE COURT: It's admitted.

24 Q So, please feel free to look at the entire exhibit, Mr.
25 Erstling. But I'm going to be focusing for my first questions

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1 on page 2, which is the -- Well, do you recognize this to be the
2 Excell attached to the cover e-mail that is titled "EVP
3 Consulting"?

4 A (Examining). Yes, sir.

5 Q Okay. Or rather it's a PDF and not an Excell, is that
6 correct?

7 A Correct.

8 Q So, this is the budget for 2019 for the EVP consulting
9 budget, is that correct?

10 A That's correct.

11 Q So looking at the PDF on page 2, if you could please
12 look at row two where it reads "Froman, Sandra". Do you see
13 that?

14 A I do.

15 Q And Ms. Froman was a board member at the time, is that
16 right?

17 A That's correct.

18 Q And is she still a board member to the best of your
19 understanding?

20 A To the best of my knowledge, yes.

21 Q Okay. And so am I correct, Mr. Erstling, that the 2019
22 budget called for a total payment of \$39,180 to Ms. Froman for
23 speaking engagements?

24 A That's what I placed in the budget, yes.

25 Q Where did this information come from?

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1 A Historical. Historical averages.

2 Q So basically every year you would take the previous
3 year's budget for the executive vice president consulting budget
4 and then move it forward into the next year?

5 A I would take the previous year's actual expenses and I
6 would trend that into the future.

7 Q Okay.

8 A That's what I would hand over to the treasurer to talk
9 to the EVP about.

10 Q Okay.

11 MR. PETERS: Could you give Mr. Erstling just a
12 moment to read through the whole document.

13 Q If you need to, Mr. Erstling, please feel free to.

14 (Whereupon the witness complied with the above
15 request of counsel.)

16 Q Are you ready?

17 A I'm ready.

18 Q Great. Please take a look then at row three on the
19 same page where it reads, "Hammer, Marion". Do you see that?

20 A Yes, ma'am -- yes, sir. I'm sorry.

21 Q And am I correct that the 2019 budget called for a
22 total payment of \$270,000 to Ms. Hammer in 2019?

23 A Yes, sir.

24 Q Ms. Hammer is a former president of the NRA, is that
25 correct?

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1 A That's correct.

2 Q And is a current board member?

3 A That's correct.

4 Q And if you could please go down to row five where it
5 reads "David Keene".

6 MR. THOMPSON: That's K-E-E-N-E for our reporter.

7 Q Do you see that?

8 A Yes, sir.

9 Q Mr. Keene is also a former president of the NRA, is
10 that correct?

11 A That's correct.

12 Q And is a current board member?

13 A That's -- I believe so. Yes.

14 Q And the 2019 budget called for a total payment of
15 \$48,000 to Mr. Keene in 2019, is that correct?

16 A Yes.

17 Q And again so these are -- You put this budget together
18 using historical trends, is that correct?

19 A That's correct.

20 Q So for 2018 is it fair to assume that the NRA paid Mr.
21 Keene \$48,000, and that you then carried it forward into this
22 budget?

23 A It's fair to assume.

24 Q And then I would like to take you down please to row 14
25 where it reads Phillips comma Woody. Do you see that?

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1 A I do.

2 Q And the 2019 budget, executive vice president
3 consulting budget called for payments of \$360,000 to
4 Mr. Phillips, is that correct?

5 A That's correct.

6 Q Do you have any understanding as to what those payments
7 were for or were intended to be for?

8 A I was told that.

9 MR. WERBNER: I'll object to hearsay.

10 THE COURT: Told by who?

11 THE WITNESS: I can't remember. Sorry.

12 THE COURT: Another NRA employee?

13 THE WITNESS: Another NRA employee.

14 THE COURT: Sustain.

15 Q The NRA budget is approved by the NRA board of
16 directors every year, is that correct?

17 A That's correct.

18 Q Is that approved by the full board or is it just the
19 finance committee?

20 A The finance committee reviews and approves it and sends
21 it to the board for approval.

22 Q Okay. So it goes to the finance committee first, where
23 there might be some back and forth about the budget, is that
24 fair to say?

25 A That's fair to say.

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1 Q The finance committee will then recommend the budget to
2 the board for approval, is that right?

3 A That's correct.

4 Q When does the finance committee typically speaking get
5 the draft budget for the next year?

6 A So, we'll try to send it out prior to Thanksgiving. So
7 they have some time to review it by like the December -- the
8 first week of December. That's our goal.

9 Q Okay. And then recognizing that it may vary from year
10 to year, approximately when does the budget go to the full board
11 for approval?

12 A Usually the first week of January.

13 Q And so is it typically at the January meeting of the
14 board of directors that the budget is approved?

15 A That's correct.

16 Q The budget that goes to the finance committee, does
17 that provide division by division breakout of how the
18 individual -- Withdrawn. Let me try that again. The budget
19 that goes to the finance committee, does that provide for
20 example how much is budgeted for the Division of Advancement?

21 A Yes.

22 Q And does it provide how much is budgeted for the
23 Executive Vice President's Office?

24 A Yes.

25 Q And do you -- Are you a participant in the discussions

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1 with the finance committee about the budget?

2 A I am present and will answer questions when asked, but
3 usually it's the chief financial officer/treasurer that does the
4 presentation.

5 Q Okay. And typically speaking you do attend the meeting
6 where the finance committee reviews the draft budget, is that
7 correct?

8 A That's correct.

9 Q And in your entire time at the NRA since 2001, do you
10 recall any members of the finance committee asking questions
11 about what is being spent under the executive vice president
12 line item?

13 A I can't say I remember but, you know, there could have
14 been.

15 Q But you can't recall any specifically?

16 A Not, not to me directly.

17 Q Have you ever had any questions from members of the
18 finance committee about consultants that the executive vice
19 president is paying for?

20 A Not to me directly.

21 Q Looking back at Exhibit 1001, which is tab seven of
22 your binder, Mr. Erstling. On the cover e-mail it refers to
23 another PDF attachment, NRA County. Am I correct that should
24 read NRA Country?

25 A It should read NRA Country.

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1 Q What is NRA Country?

2 A NRA Country is an effort to help brand ourselves with
3 country music.

4 Q And was that -- was NRA Country -- Where did that fall
5 in the budget in terms of division?

6 A It's fallen in multiple places. At one point it was in
7 public relations. Now it's within general operations. It shows
8 in exhibits.

9 Q And for the time period that it was in public
10 relations, who would you meet with during the budget preparation
11 process to discuss the public relations budget?

12 A Usually I would roll that up and that would be the
13 treasurer.

14 Q You would meet with the treasurer on that?

15 A On that budget, yes.

16 Q And who would the treasurer speak to, to the best of
17 your knowledge, about the contents of the public relations
18 budget?

19 A I don't know where it went beyond that. I just
20 provided the treasurer with the PR budget, NRA Country, EVP, and
21 those three would come back to me with adjustments and changes.

22 Q And the NRA has a division of public relations,
23 correct?

24 A Yes.

25 Q And that's lead currently by Mr. Arulanandam?

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1 A That's different. That's public affairs.

2 Q I see. Okay. So what is the -- Where in the
3 organizational chart does public relations sit?

4 A Public relations sits by itself, but it's controlled by
5 the EVP.

6 Q So the public relations budget is also controlled by
7 the executive vice president, is that correct?

8 A Yes.

9 Q Okay. And has that been true for, to the best of your
10 knowledge, the entire time you've been at the NRA?

11 A That's true.

12 Q Okay. Mr. Erstling, the NRA filed for bankruptcy in
13 January of 2021, is that correct?

14 A That's correct.

15 Q The NRA was not insolvent at the time, correct?

16 A That is also correct.

17 Q You first learned about the filing of the bankruptcy
18 after it was filed, is that correct?

19 A That is correct.

20 Q Was that --

21 MR. FLEMING: Objection. Leading.

22 THE COURT: He's an employee of the defendants.
23 Overruled.

24 Q And did you first learn about the filing of the
25 bankruptcy through the sort of press release that went out from

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1 the NRA?

2 A Yes.

3 Q Were you surprised by the filing of the bankruptcy, Mr.
4 Erstling?

5 A No.

6 Q That's because nothing surprised you anymore at that
7 point, is that right?

8 MR. CORRELL: Objection, your Honor.

9 THE COURT: Overruled.

10 A There -- there were movements that were happening.
11 Movements that were alerting me that something was a flight.

12 MR. THOMPSON: If we could bring up Mr. Erstling's
13 litigation deposition starting at 241 -- I'm sorry --
14 page 244, line 14 through 245, two.

15 MS. ROGERS: Objection, your Honor. This is
16 improper impeachment. They should give him a chance to
17 refresh his recollection first.

18 MR. THOMPSON: I just ask the question based on his
19 prior statement. I just want to read it into the record.

20 MR. PETERS: Also nothing surprises me anymore when
21 his deposition was taken in 2022 versus how he files now,
22 that's not really impeachment. If he says nothing surprises
23 me --

24 THE COURT: You can state objections. Overruled.

25 Q So, Mr. Erstling, do you recall being asked whether you

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1 had a reaction to the bankruptcy?

2 A I do now.

3 Q And do you recall answering "No reaction"?

4 A Yes.

5 Q And you were asked, "Were you surprised" and --

6 A And I said "Nothing surprises me anymore".

7 Q Was that accurate at the time of your deposition?

8 A Yes.

9 Q Do you have any personal knowledge, Mr. Erstling, of
10 whether Craig Spray was informed about the filing of the
11 bankruptcy?

12 A I know that he knew it was coming.

13 Q And what is the basis for your understanding?

14 A My understanding is is that he transferred \$20 million
15 off the line to a bank in McLean to give us working capital
16 during a bankruptcy. So that tells me that he knew it was
17 coming.

18 Q When you say "off the line", are you referring to the
19 line of credit for the NRA?

20 A That's correct.

21 Q And when did that transfer occur?

22 A So, the bankruptcy was in 2021?

23 Q I can't answer your questions, Mr. Erstling. I'm
24 sorry.

25 A I believe the bankruptcy was in 2021. That would have

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1 been in late 2020.

2 Q Okay. Do you have any personal knowledge as to whether
3 or not Mr. Frazer knew that the bankruptcy was being filed?

4 A I have no knowledge of that.

5 Q Between 2018 and 2022 who was the head of Compliance
6 for the NRA, Mr. Erstling?

7 A Can you give me that question one more time? I lost
8 track.

9 Q Of course. Between 2018 until 2022 who was the head of
10 Compliance at the NRA?

11 A Compliance would go to the Office of General Counsel.

12 Q So, Mr. Frazer to the best of your understanding was
13 the head of Compliance for the NRA between 2018 and 2022?

14 A Correct.

15 Q The NRA started conducting compliance seminars for
16 staff in 2018, is that correct?

17 A That is correct.

18 Q You've attended some of those compliance seminars?

19 A I have not only attended, but I've given portions of
20 those compliance seminars.

21 Q When did you begin giving portions of those compliance
22 seminars?

23 A Probably 2021.

24 Q And did you attend the first compliance seminar in
25 2018?

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1 A I've attended every one that's been given at the NRA
2 headquarters.

3 Q And does that include the one that was in 2018 to the
4 best of your recollection?

5 A To the best of my recollection.

6 Q Do you recall, Mr. Powell, giving the introduction to
7 that compliance seminar?

8 A Yes, I do.

9 Q And board members were not in attendance at that first
10 seminar, is that correct?

11 A Board members had their own compliance seminar.

12 Q When?

13 A I don't know.

14 Q Do you know if it was in 2018?

15 A I don't know the answer to that.

16 Q Okay. Mr. LaPierre wasn't in attendance at that first
17 training seminar, was he?

18 A I -- I can't tell you whether he was or not. I -- I
19 remember seeing him at some. I don't remember seeing him -- I
20 can't tell you which ones I've seen him at and which ones I
21 haven't. I'm sorry.

22 Q So, Mr. Erstling, I just have a few documents that we
23 would like to get admitted. So, if I could please take you to
24 tab ten of your binder.

25 THE COURT: Counsel, before we move into this, I

LAS

1 would like to give the jury a break, because we've been
2 going for most of the morning. Let's take our morning
3 break.

4 MR. THOMPSON: Of course.

5 THE COURT OFFICER: All rise. Jury exiting.

6 (Whereupon the jury panel departed the courtroom.)

7 (Whereupon a recess was taken.)

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1 (The witness resumed the stand.)

2 THE COURT: All right, it's just going to be a
3 couple of minutes for the jury to finish.

4 (Pause.)

5 COURT OFFICER: All rise. Jury entering.

6 (The jury entered the courtroom.)

7 THE COURT: Okay, have a seat.

8 As you may be able to tell, they got the message
9 about it being too cold in here.

10 A JUROR: Thank you.

11 THE COURT: I will await your next message about
12 when it's too warm in here, which I expect at some point
13 during the afternoon, and we'll go back on the seesaw that I
14 mentioned before, between 50 degrees and a hundred. We're
15 doing our best.

16 It's an old building and we love it dearly.

17 That last part was not under oath.

18 (Laughter.)

19 THE COURT: Mr. Thompson, you can continue.

20 MR. THOMPSON: Thank you, your Honor.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. THOMPSON:

23 Q Mr. Erstling, at some point, did you conduct a review
24 of Tyler Schropp's expense reimbursements?

25 A Yes.

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1 Q And you identified that Mr. Schropp's expense
2 reimbursements that were being processed by the NRA were less
3 than you would expect for the -- one of the -- NRA's top
4 fund-raisers; is that right?

5 A That's correct.

6 Q And did that ultimately lead you to discovering that
7 Mr. Schropp was expensing through Ackerman McQueen?

8 A Eventually, that came out, but that was not my -- I --
9 I didn't know where the expenses were.

10 Q Who did you report your concern --

11 Let me start over: Were you concerned about
12 Mr. Schropp's expenses?

13 A I think, when Craig got here and we were looking for
14 stuff and then we started meeting with everybody, we just
15 started to find things that didn't look, maybe, right. And so,
16 in preparation for the Audit Committee meeting of July 30th, we
17 kept digging -- right? -- we kept looking for stuff, trying to
18 clean stuff up. And so this was one of the -- the, sort of,
19 anomalies that, you know, when you look at it on paper, it just
20 doesn't make sense.

21 Q And have you, personally, conducted any review of
22 Mr. Schropp's expenses on his Ackerman McQueen credit card?

23 A I have not.

24 Q Were Mr. Schropp's expenses one of the concerns you
25 raised to the Audit Committee in 2018, to the best of your

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1 recollection?

2 A Yes; it was part of the documents in that section that
3 we brought forward.

4 Q Okay. Going back to our discussion about the
5 Associated Television invoices, do you recall speaking about
6 that earlier?

7 A I do.

8 Q And I believe you said, Mr. Erstling, and please
9 correct me if I'm wrong, that you understand that ATI provided
10 updated invoices after they were approached about this issue; is
11 that right?

12 A I -- I was told that there was other things; there was
13 more technical equipment that was being rented.

14 Q Who were you told by?

15 A I -- I believe it was somebody on the financial staff.
16 It could -- it could have been -- it -- it could have been
17 Craig; it could have been Sonya. I can't recall who mentioned
18 it to me.

19 Q Do you recall ever, personally, seeing any
20 documentation justifying what was paid for in connection with
21 the house rentals?

22 A I did not see that final analysis.

23 Q Okay. So you have no personal knowledge about whether
24 or not there was in fact equipment rental or anything like that;
25 is that correct?

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1 A I was not part of the transaction; I -- I have no -- no
2 knowledge.

3 Q And we were speaking, Mr. Erstling, about the
4 MMP-entity contracts and whether or not they were being paid
5 more than was called for in the written contracts. Do you
6 recall that?

7 A I do.

8 Q Even after you brought your concern to the Audit
9 Committee in 2018, the NRA continued to pay the MMP entities
10 above what was called for in the written contracts; correct?

11 MR. PETERS: Objection; lack of foundation;
12 misstates the prior testimony.

13 MR. THOMPSON: I don't think I was characterizing
14 any testimony, your Honor.

15 THE COURT: It was a new question.

16 Overruled.

17 MR. THOMPSON: (To reporter) Would you mind
18 repeating the question?

19 COURT REPORTER: Your Honor ...?

20 THE COURT: Yes.

21 (The reporter read back the requested portion of
22 the record.)

23 A That's correct.

24 Q And I believe you testified that, to the best of your
25 understanding, that was pursuant -- that was pursuant to verbal

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1 agreements as to the amounts; is that right?

2 A That's correct.

3 Q Those verbal agreements violated NRA policy, right?

4 A Again, that's -- it's not written in the policy at all
5 about verbal contracts, so it's missing.

6 MR. THOMPSON: Can we please bring up
7 Mr. Erstling's litigation deposition, at page two-twenty --
8 219, starting at line 17, please, and then going to 220,
9 line 10?

10 (Image displayed, then modified.)

11 Q So, Mr. Erstling, do you recall testifying that verbal
12 agreements would violate NRA policy if there is an amendment to
13 a contract that exceeds a hundred thousand dollars per year?

14 (Pause.)

15 MR. PETERS: Again I -- okay. So he's being given
16 an opportunity to refresh his recollection.

17 THE COURT: Well, no.

18 Again, because this is a defendants' employee's
19 witness, all the testimony is, you know, admissible.

20 But are you just asking him to ...

21 MR. THOMPSON: Let me -- I'll rephrase the
22 question, your Honor.

23 Q Mr. Erstling, was your testimony at your deposition
24 that verbal agreements -- it would violate NRA policy if there
25 was an amendment to a contract that exceeds a hundred thousand

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1 dollars per year accurate?

2 A Yes.

3 Q Thank you.

4 (Image removed.)

5 Q Mr. Erstling, we were speaking about the bankruptcy and
6 I believe you said that you inferred that Mr. Spray had
7 knowledge about the bankruptcy because of a \$20 million
8 transfer, or that came off of the line of credit, that occurred
9 sometime in 2020; is that correct?

10 A Correct.

11 MR. CORRELL: Objection, your Honor; misstates
12 prior testimony.

13 I don't recall him using the word "inferred."

14 THE COURT: Well, the prior testimony is what it
15 is.

16 You can go ahead.

17 Q Would you agree with me, Mr. Erstling, that you
18 inferred from that transfer that Mr. Spray knew about the
19 bankruptcy?

20 A Yes.

21 Q Do you have any personal knowledge that Mr. Spray did
22 or did not in fact know about the bankruptcy?

23 A I have no personal knowledge. He never told me he knew
24 about the bankruptcy.

25 Q Okay. So you are just drawing an inference from this

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1 \$20 million transfer in 2020.

2 A Yes.

3 Q Going back to the Top Concerns memorandum -- and if you
4 would like to look at it, it's tab 26 of your binder, Exhibit
5 2605.

6 (Pause.)

7 (Image displayed.)

8 Q And the question, first, Mr. Erstling, is just: When
9 you and your colleagues were putting together the Top Concerns
10 memorandum, were you sharing documents with each other,
11 substantiating your concerns?

12 A With each other? Yes.

13 Q And did you receive documents from your colleagues
14 about the concerns that they had?

15 A I believe, yes.

16 Q Do you recall whether you received any documentation
17 related to the entity HomeTelos?

18 A I may have, yes, from Emily. Emily would have probably
19 brought that one forward.

20 Q Emily Cummins; is that right?

21 A Emily Cummins.

22 Q And so, to the best of your understanding, Ms. Cummins
23 was --

24 MR. THOMPSON: Well, withdrawn.

25 Q So, looking at the Top Concerns memo, Mr. Erstling,

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1 page 2 of Exhibit 2605, item 1-a., to the best of your
2 understanding, was -- this item related to Woody Phillips
3 concerning payments to HomeTelos?

4 A That's correct.

5 Q And that's based on the documentation that you reviewed
6 from Ms. Cummins?

7 A I believe that's correct.

8 Q Okay. And it's your understanding that HomeTelos was
9 owned by a "significant other" of Mr. Phillips?

10 A That was Emily's knowledge. I -- I didn't have that
11 knowledge at the time.

12 Q Okay. But Ms. Cummins relayed that information to you.

13 A She did.

14 Q Okay. And is that true for --

15 MR. THOMPSON: Withdrawn.

16 Q Is it fair to say that for the other items on the Top
17 Concerns memo that were not your specific concerns, that your
18 colleagues provided you with information to substantiate their
19 concerns?

20 A I would say yes.

21 Q All right. So, if you'd please turn to tab 10 of your
22 binder, Mr. Erstling ...

23 MR. THOMPSON: And this is Plaintiff's Exhibit
24 1099, and I will move for its admission. I have not heard
25 an objection yet.

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1 MR. CORRELL: Your Honor, there's a problem with
2 the exhibits. Mr. Conley [sic] had listed exhibits in a
3 certain order and then the order has been changed. So, if
4 we could have a brief delay so that we can locate the tabs
5 that he's referring to, which are different from the -- the
6 documents are in a different order for us -- just so that we
7 can have a chance to look at them before we are required to
8 decide whether to object.

9 THE COURT: Okay.

10 (Pause.)

11 MR. CORRELL: No objection your Honor.

12 MR. WERBNER: No objection.

13 THE COURT: Okay. It's admitted.

14 (Image displayed.)

15 MR. THOMPSON: All right. We can skip this one,
16 then.

17 (Image removed.)

18 Q Thank you, Mr. Erstling.

19 And then, next is tab 36, which is Plaintiff's Exhibit
20 5099, but specifically only pages 1 and 50 from that exhibit.

21 (Pause.)

22 MR. THOMPSON: And I would move for admission of
23 just pages 1 and 50 of Exhibit 5099.

24 MR. WERBNER: No objection.

25 MR. CORRELL: No objection, your Honor.

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1 MR. FLEMING: No.

2 THE COURT: Okay. It's --

3 Well, hang on.

4 MR. PETERS: No objection.

5 We might object to the foundation for asking about
6 it to Mr. Erstling, because I don't see his name on it, but
7 subject to a potential objection, it looks fine.

8 THE COURT: So you may object to questions about
9 it, but the --

10 MR. PETERS: Correct.

11 THE COURT: -- the document is --

12 All right. So it's admitted as an exhibit.

13 (Image displayed.)

14 BY MR. THOMPSON:

15 Q And for this Exhibit, tab 36, Exhibit 5099, if you
16 could please take a look at page 50, using the bottommost page
17 numbers, which should be the second page --

18 Do you have that?

19 A I do.

20 Q -- do you recognize this to be an invoice from Ackerman
21 McQueen, Mr. Erstling?

22 A Yes, sir.

23 Q And is this an example, Mr. Erstling, of the vague
24 invoices that you and your colleagues raised concerns about at
25 the Top Concern -- at the July 2018 Audit Committee meeting?

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1 A Yes.

2 Q And that's because it simply calls for payment related
3 to "Out of Pocket Expenses"; right?

4 A That's correct.

5 Q With no other detail provided, right?

6 A No other detail provided.

7 Q And looking --

8 Am I correct that, sort of, towards the bottom-right,
9 there is what appears to be a stamp from the Financial Services
10 Division? Is that right?

11 A That's correct.

12 Q And this is a stamp that's used for processing invoices
13 in the NRA?

14 A Correct.

15 Q And do you recognize the signature on the top line of
16 that, stamped "Mr. Tedrick"?

17 A "Rick Tedrick for Wilson H. Phillips."

18 Q "Rick Tedrick for Wilson H. Phillips"; is that correct?

19 A That's correct.

20 Q Okay. And the second signature, is that Mr. Frazer's
21 signature?

22 A That's John Frazer's signature.

23 Q Okay. And whose signature is the last signature?

24 A The last signature's going to be someone in AP, and --
25 so they sign it first, before they route it.

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1 Q Okay. So somebody in Accounts Payable will first sign
2 the invoice and then send it up the chain to whoever needs to
3 approve it; is that right?

4 A Correct.

5 Q And in this case, it went to Mr. Frazer?

6 A Went to Mr. Tedrick first and then Mr. Frazer.

7 Q Mr. Tedrick first and then Mr. Frazer, okay.

8 And -- all right.

9 So next up is tab 37.

10 (Image removed.)

11 MR. THOMPSON: And this is Plaintiff's Exhibit
12 5101, and we are specifically moving to admit pages 1, 7, 8,
13 39 and 40 of this exhibit.

14 THE COURT: I'll give the defendants a chance to
15 take a look at it.

16 MR. PETERS: Same as before: We have no objection
17 to admitting the exhibit but may have questions about it.

18 THE COURT: Okay.

19 Any objections?

20 MR. CORRELL: No objection, your Honor.

21 THE COURT: All right, it's admitted.

22 (Image displayed.)

23 Q And for this exhibit, Mr. Erstling, if you could
24 just -- well, take as much time as you need to review it. But
25 if you could please look through the attachments to Exhibit

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1 5101, which is pages 7, 8, 39 and 40, and let me know if these
2 are other examples of vague Ackerman McQueen invoices that you
3 and your colleagues were concerned about ...?

4 A Yes, sir.

5 (Image removed.)

6 Q Okay. Next up is tab 35, which is Plaintiff's Exhibit
7 5098.

8 MR. THOMPSON: And for this one, we are only
9 seeking to admit page 24.

10 MR. WERBNER: No objection.

11 MR. CORRELL: No objection, your Honor.

12 THE COURT: Same issue?

13 MR. PETERS: The same -- thanks.

14 THE COURT: Okay.

15 It's admitted.

16 (Image displayed.)

17 MR. THOMPSON: And I have a litany of others, your
18 Honor, to get in that I'm not going to ask Mr. Erstling any
19 questions about, so I can read those into the record and see
20 if there are any objections or we can handle it over the
21 lunch break.

22 THE COURT: At some point, are you going to show
23 them to the jury, or what's the plan on that? I mean --

24 MR. THOMPSON: They'll be included in summary
25 evidence, is the intention, your Honor.

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1 THE COURT: So at some point.

2 MR. THOMPSON: Yes, your Honor.

3 THE COURT: This won't be mysterious.

4 MR. THOMPSON: No. Okay.

5 THE COURT: All right.

6 Well, if you want to take care of the
7 administrative task of moving them in and seeing if there
8 are any objections, that's fine.

9 MR. THOMPSON: Sure.

10 So let me just quickly run through those.

11 MR. PETERS: And you're moving in invoices that
12 look like this, but maybe with other dates and other amounts
13 on them?

14 MR. THOMPSON: Correct. These will all be the
15 Ackerman out-of-pocket expense invoices.

16 MR. PETERS: Okay.

17 MR. THOMPSON: So next would be tab 34, Plaintiff's
18 Exhibit 5097, pages 22, 35 and 62.

19 THE COURT: No, I'm going to suggest something:
20 that we do this, you know, at a break, when the jury is not
21 here, because I think we can probably run through these
22 things relatively quickly.

23 MR. THOMPSON: That's fine with us, your Honor.

24 THE COURT: Okay.

25 MR. CORRELL: That's fine with us, your Honor.

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Erstling - by Plaintiff - Cross/Rogers

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1 THE COURT: All right. So let's ...

2 MR. THOMPSON: Okay. In that case, no more
3 questions, Mr. Erstling.

4 Thank you.

5 THE COURT: Okay, you may cross-examine.

6 CROSS-EXAMINATION

7 BY MS. ROGERS:

8 Q Mr. Erstling, good morning.

9 A Good morning.

10 Q I don't have much, so we should be able to get to lunch
11 soon.

12 You're a person of integrity, right?

13 A I believe so.

14 MR. THOMPSON: Objection; character evidence.

15 THE COURT: Overruled.

16 Q Is the NRA corrupt?

17 MR. THOMPSON: Objection; character evidence.

18 THE COURT: Um ...

19 MS. ROGERS: You're alleging the NRA's corrupt, so
20 surely, the witness should be able to disagree.

21 MR. THOMPSON: We're alleging that the NRA is
22 violating its internal policies and controls and not
23 managing itself correctly.

24 THE COURT: Sustained.

25 Q Mr. Erstling, to your knowledge, does the NRA violate

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Erstling - by Plaintiff - Cross/Rogers

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1 the policies and controls adopted by its board of directors?

2 A Now it --

3 MR. THOMPSON: Objection; vague.

4 THE COURT: Overruled.

5 Q You can answer.

6 A Now it does not. We've changed. We're -- we're a
7 different organization than we were back in 2015 to 2018.

8 Q And I think I heard you testify earlier that in 2018,
9 you began to compare notes with some of your colleagues --
10 Sonya, Portia, Lisa, and Emily -- right?

11 A That's correct.

12 Q Comparing notes about concerns that some of the board's
13 policies were being overridden, right?

14 A That's correct.

15 Q And then you came together and you brought those
16 concerns to the Audit Committee, right?

17 A On July 30th.

18 Q And then the next time you spoke to the Audit
19 Committee, I think you testified, was September of the same
20 year; right?

21 A That's to the best of my recollection.

22 Q So one month later.

23 A Yes.

24 Q Did you face any reprisals?

25 A No, ma'am.

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Erstling - by Plaintiff - Cross/Rogers

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1 Q To your knowledge, did any of the other colleagues who
2 came forward with you face any reprisals?

3 A Not to my knowledge.

4 Q You've been promoted since then, right?

5 A I have.

6 THE COURT: Counsel, leading was okay for the
7 opposing party.

8 MS. ROGERS: Well, I have one last question and
9 it's not a leading one:

10 Q If I worked at the NRA, for you or under you, and I
11 told you I had concerns that controls are being violated, what
12 would you tell me to do?

13 A I would tell you --

14 MR. THOMPSON: Objection.

15 It calls for a hypothetical. Speculation; opinion
16 evidence.

17 THE COURT: Overruled.

18 Q You can answer.

19 A So there's -- there's been the creation of -- of a
20 whistleblower policy; there's been the creation of a
21 whistleblower line, so you can phone this -- this -- this
22 whistleblowing line, be anonymous and make whatever report you
23 want to make. So, from that perspective, you don't even have to
24 be on the front lines. It doesn't have to be your name; you can
25 do it anonymously.

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Erstling - by Plaintiff - Cross/Rogers

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1 So those are the -- the changes that have -- that have
2 occurred.

3 MS. ROGERS: Thank you.

4 Nothing further.

5 Except I do need to note: We're not releasing
6 Mr. Erstling, because we intend to call him as part of our
7 chase in chief.

8 THE COURT: Understood.

9 MS. ROGERS: Thank you.

10 THE COURT: Mr. Correll?

11 MR. CORRELL: Thank you, your Honor.

12 Kent Correll, for Wayne LaPierre.

13 CROSS-EXAMINATION

14 BY MR. CORRELL:

15 Q Good morning, Mr. Erstling.

16 A Good morning.

17 Q Or afternoon.

18 I have one question for you: Did you ever talk to
19 Mr. LaPierre about any of your concerns?

20 A I did not.

21 MR. CORRELL: Thank you.

22 THE COURT: Any questions?

23 MR. WERNER: Yes, your Honor.

24 CROSS-EXAMINATION

25 BY MR. WERNER:

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Erstling - by Plaintiff - Cross/Werbner

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1 Q Mr. Erstling, my name is Mark Werbner and I represent
2 Woody Phillips.

3 THE COURT: Could you go over to the mic. a little?

4 MR. WERBNER: Oh.

5 (Mr. Werbner moved closer to the microphone.)

6 THE COURT: There you go.

7 Q I represent Woody Phillips.

8 We've heard a lot about MMP in this case. Did you say
9 that Todd Grable was the person that was responsible for the MMP
10 relationship?

11 A I believe he might be, yes. He was head of Membership.

12 Q All right. And regarding MMP, weren't the increases
13 evaluated and found to be appropriate?

14 A They were evaluated under Craig Spray.

15 Q And they were found to be appropriate?

16 A And they were found to be appropriate.

17 Q Mr. Phillips. Would you say he was a nice gentleman?

18 A He was a nice gentleman.

19 Q That was your view of him?

20 (No audible response.)

21 Q The policy manual that you were asked about --
22 remember, you were directed to page 106 early in your
23 examination?

24 A I believe so. Do I need to go there now (indicating)?

25 Q Well, I'm just going to ask you this: How many pages?

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Erstling - by Plaintiff - Cross/Werbner

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1 Isn't it about 300 pages; that policy manual?

2 A Yes, but that's not the policy manual that we use on a
3 day-to-day basis.

4 Q The one the Government asked you about is not the one
5 that you use on a daily basis?

6 A We use a subset of that policy manual that's related to
7 Financial Services and, you know, we don't worry about the
8 policies of the Air Rifle Committee.

9 Q How many pages is that policy?

10 A I would have to -- to see it.

11 Q Just an estimate.

12 A Probably 200 pages.

13 Q So that's 200 pages, and the one that you were given
14 today is 300 pages. That's 500 pages of policy manuals?

15 A Correct.

16 Q Are there other manuals that govern policies and
17 procedures of the NRA?

18 A There are other procedure manuals, yes.

19 Q How many hundreds of pages are those?

20 A Several hundred pages.

21 Q So could there be a thousand pages of policy manuals at
22 NRA?

23 A There could be a thousand pages of policies and
24 procedures, yes.

25 Q And do they change, from time to time?

ALAN F. BOWIN, CSR, RMR, CRR

Erstling - by Plaintiff - Cross/Werbner

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1 A They do change, from time to time.

2 Q You went to the Finance Committees, if I understood
3 your testimony correctly; is that right?

4 A Yes.

5 Q Did you ever tell the Finance Committee, between 2015
6 and 2018, that Mr. Phillips was doing anything wrong?

7 A I did not.

8 Q You had the opportunity throughout those years to talk
9 to the Finance Committee and state if you felt that there was
10 something he was doing wrong. You had that opportunity; didn't
11 you?

12 A I was there; yes.

13 Q Nothing prevented you from telling them about
14 Mr. Phillips if you felt there was something wrong in what he
15 was doing. Nothing prohibited that, did it?

16 A It did not prohibit it.

17 MR. WERBNER: I'll pass the witness.

18 Thank you, sir.

19 CROSS-EXAMINATION

20 BY MR. FLEMING:

21 Q Good morning, Mr. Erstling.

22 A Good morning.

23 Q I'm William Fleming. I represent Mr. Frazer.

24 I'd like to ask you some questions about the
25 whistleblowing in July of 2018.

ALAN F. BOWIN, CSR, RMR, CRR

1 Can you describe the role that Mr. Frazer played, if
2 any, in responding to your coming forward as a whistleblower?

3 A I -- I think he was genuinely active and listening. I
4 know he was present in the meeting. I know he was taking notes,
5 and he was there; he was present.

6 (Continued on next page.)

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ALAN F. BOWIN, CSR, RMR, CRR

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1 Q Did he meet with the whistleblowers before the
2 July 30th meeting in front of the audit committee?

3 A I -- I can't remember if he did. I just -- My memory
4 is, you know, a little shady on five years ago.

5 MR. FLEMING: Okay. I'm going to cull an exhibit
6 for identification, JFX 13, please, just for the witness not
7 the jury.

8 THE COURT: This requires coordination among a
9 couple of different experts.

10 MR. FLEMING: It does.

11 MR. PETERS: Can we move it into evidence?

12 Q Mr. Erstling, can you see the document yet?

13 A Not yet. Yes, sir.

14 THE COURT: Okay.

15 Q You have it. Mr. Erstling, look at this. Take your
16 time. Can you tell me -- Well, withdrawn. At the top, in the
17 to line it mentions your name at MErstling@NRAHQ.org. Is that
18 your e-mail address?

19 A It is.

20 Q Do you recall having, you know, take a chance to review
21 this, do you recall receiving this?

22 A (Examining). This does refresh my memory, yes.

23 Q Okay. And what does it refresh your memory about?

24 A So, it's from John Frazer. It's dated 7/27, which
25 would have been --

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1 THE COURT: Well, we're not going to -- Right now
2 he's asking --

3 MR. FLEMING: I'm sorry.

4 THE COURT: Do you want to move it into evidence?

5 MR. FLEMING: Yes, please.

6 THE COURT: Is there any objection?

7 MR. THOMPSON: Hearsay, your Honor.

8 MR. CORRELL: No objection, your Honor.

9 MR. PETERS: No objection.

10 THE COURT: Well, the part that I'm looking at
11 doesn't seem to be offered for the truth but just for the
12 fact that it was said, is that correct?

13 MR. FLEMING: Just to establish a meeting and yes.

14 THE COURT: Overruled. It's admitted. I don't
15 know whether there is any more than this, than what I'm
16 looking at though.

17 MR. FLEMING: It's just a one page document.

18 THE COURT: It's admitted. Just keep track of all
19 of these numbers 'cause we'll need it later.

20 MR. FLEMING: Yep.

21 THE COURT: So you can -- you can ask.

22 Q So, Mr. Erstling, July 27th was obviously before the
23 July 30th audit committee meeting?

24 A That's correct.

25 Q And Mr. Frazer met with yourself, Emily Cummins and

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1 Sonya Rowling and Rick Tedrick, is that correct?

2 A According to this memo, yes.

3 Q And that's generally the whistleblower group, although
4 I recognize there may be others, is that right?

5 A That's also correct.

6 Q Do you recall if those others were in the meeting?

7 A I can't recall.

8 Q Do you recall the meeting being an opportunity to
9 educate Mr. Frazer about your concerns?

10 MR. THOMPSON: Leading, your Honor.

11 THE COURT: Overruled.

12 A So, based on -- on what he's thanking us for, it was
13 our opportunity to explain accounting terminology and accounting
14 transactions to him. Yes.

15 Q Okay. But accounting transactions relating to your
16 concerns?

17 A Yes.

18 Q Okay. Now, it mentions in the document Grassroots
19 Behavioral Services. Do you see that?

20 A Yes, sir.

21 Q Can you -- Do you know what Grassroots Behavioral
22 Services is?

23 A Grassroots Behavioral Services is an offshoot of PM
24 Consulting and that was Brad O'Leary.

25 Q And was that a vendor of the NRA?

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1 A PM Consulting was -- was the membership, recruiting and
2 acquisition and fundraising prior to MMP.

3 Q Now, do you have any -- does this refresh your
4 recollection at all about whether Mr. Frazer directed you all
5 not to make any further payments to Grassroots Behavior?

6 A It says there, "I want to confirm in writing that no
7 payments should be made to Grassroots Behavioral Services until
8 further notice." So, it's him stopping it, yes.

9 Q Was Grassroots Behavioral included in your top concerns
10 that you talked about earlier this morning?

11 A I believe it was.

12 Q If you're not sure, we can turn back to that exhibit.
13 It's PX 2605.

14 THE COURT: What tab?

15 MR. THOMPSON: Tab 26, your Honor.

16 A Yes, sir. It's 4B.

17 Q Okay. Now, do you recall meeting with Mr. Frazer after
18 the July 30th audit committee meeting where you raised your top
19 concerns to the audit committee?

20 A Can you ask the question one more time? I'm sorry.

21 Q After you raised your top concerns or met with the
22 audit committee to express your top concerns, do you recall
23 that?

24 A Yes.

25 Q After that date did you also meet with Mr. Frazer to

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1 further discuss your concerns?

2 A I believe we did. I thought there was a meeting at
3 Sonya Rowling's office.

4 Q Now, this whistleblower occurred more than five years
5 ago now, right?

6 A A long time ago, yes.

7 Q Do you have a view on what if any effect it has had on
8 the organization?

9 A There has been so much change. New policies. New
10 whistle blowing opportunities to report. New policies and
11 procedures. Additional audit requirements. Just a level of
12 scrutiny that has -- was never there prior to us coming forward.

13 Q And how about your view on the levels of the
14 organization's compliance?

15 A Compliance is -- is a moving target. You're always
16 going for protection. You always want to make things better.
17 But it's significantly better than it was prior to 2018.

18 Q Now, in your view has Mr. Frazer played any role in
19 assisting the improvements you just mentioned?

20 A Yes. He's been spearheading compliance. He's been
21 spearheading interrelated party transactions. You know, his
22 review of that has been significant. He's part of the approval
23 process now for, you know, contracts and invoices. So, it's --
24 it's pretty significant.

25 Q And do you have any -- Last question about

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1 whistleblower -- do you have any view of Mr. Frazer's good faith
2 in that respect?

3 MR. THOMPSON: Objection. Calls for a legal
4 conclusion.

5 THE COURT: Can you narrow it to based on
6 interactions he's personally had with him.

7 Q I'll take the Judge's better question. Based on your
8 interactions with Mr. Frazer, do you have any basis to form a
9 conclusion about his good faith in addressing, after your
10 whistleblower complaints, all the matters you just talked about?

11 MR. THOMPSON: Same objection, your Honor.

12 THE COURT: Overruled.

13 A I believe Mr. Frazer has been a great partner for me.
14 You know, I've worked with him. I've conducted compliance
15 seminars with him. He's helped me tremendously on the 990 and
16 the 990-T, which I've just taken over. So his review on -- on
17 those matters has been excellent.

18 Q If I could switch topics. I would like to ask you, do
19 you know the process by which the NRA constructs and completes
20 its 990?

21 A That's a -- that's a really long process.

22 THE COURT: Hang on one second.

23 MR. THOMPSON: Outside the scope of direct, your
24 Honor.

25 THE COURT: I can't recall. I don't recall you

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1 asking about the 990s.

2 MR. THOMPSON: No, I don't believe I asked any
3 questions about the 990s.

4 THE COURT: Sustained. You can again in the
5 defense case.

6 MR. FLEMING: Understood.

7 Q Now, you mentioned earlier in your testimony that, I
8 took it down, change happened --

9 THE COURT: Just so the jury -- When I say "out of
10 scope", that just means the cross examination has to be
11 limited to the topics covered on direct. I don't mean it's
12 out of scope of the case. So that's why I mentioned that if
13 they want to bring this up later again, they can.

14 Q So, Mr. Erstling, you previously testified, I believe,
15 correct me if I'm wrong, that change happens over time?

16 A Yes.

17 Q Do you recall those words?

18 A I do.

19 Q And the change that happens over time, is it fair to
20 say is the change that you just discussed with me right now?

21 A Yes, sir.

22 Q Since the whistle blowing?

23 A Yes. Over the last five years.

24 Q Now, I believe you also testified that Mr. Frazer was
25 responsible for compliance at the organization, do you recall

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1 that?

2 A Yes, sir.

3 Q I would like to cull up your deposition from June of
4 2022. Go to page 300.

5 THE COURT: Is this impeaching anything or what is
6 this for?

7 MR. FLEMING: It is impeaching.

8 THE COURT: On a question just answered or before?

9 MR. FLEMING: From the Government.

10 THE COURT: Maybe put that in context first.

11 MR. FLEMING: Well I did, which is that before he
12 was asked about compliance, who was responsible for
13 compliance at the organization, and he said Mr. Frazer. So
14 this is directly related to that.

15 THE COURT: Maybe I missed that. Okay.

16 MR. FLEMING: The jury can get that, right? We've
17 been --

18 THE COURT: Yeah. I'll continue the same approach,
19 although it's slightly different when the adverse party
20 culls up prior testimony. In that situation it comes in
21 under a different rationale. This would be purely for
22 impeachment.

23 MR. FLEMING: I'll proceed however you would like
24 me to. I just have a couple of questions on it.

25 THE COURT: I think, given that this is, I suspect,

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1 not a terribly sensitive issue, why don't we proceed the
2 same way we proceed with the Government for now. Generally
3 speaking it is different.

4 MR. FLEMING: You can cull it up.

5 THE COURT: Yep.

6 Q So, I would like to take you through lines ten through
7 21. If you could just read that to yourself.

8 THE COURT: Can you just -- I think reading it is
9 the right way to do it, because it's impeaching. And if you
10 could stay near the microphone.

11 MR. PETERS: I think you might turn it on. I can't
12 hear you.

13 THE COURT: It is on. He's too far away from it.

14 Q Can you read lines ten through 21 to yourself, please?

15 A "QUESTION: You said the NRA" --

16 THE COURT: To yourself.

17 Q To yourself.

18 A I'm sorry.

19 (Whereupon the witness complied with the above
20 request of counsel.)

21 Q Did you finish? Okay. Does that refresh your
22 recollection who at the organization is responsible for
23 compliance?

24 A Yes, sir.

25 Q Okay. And who is responsible for compliance?

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1 A Everyone is responsible.

2 Q And in your testimony you indicated that Sonya Rowling
3 is head of compliance for financial items?

4 A Yes, sir.

5 Q Is that true today?

6 A That's still true today.

7 Q Mr. Frazer is responsible under your testimony for
8 compliance with governance items?

9 A Yes, sir.

10 Q What are governance items?

11 A It would be related-party transactions, the whistle
12 blowing. Those are the two that come to mind.

13 THE COURT: Counsel, we're about at the end of the
14 morning. Are you a minute away or do you want to continue
15 after lunch? I don't want to rush you on it.

16 MR. FLEMING: It's not a minute. It could be five
17 possibly, but if you prefer me --

18 THE COURT: Let's break then, because I have some
19 things to do.

20 MR. FLEMING: Okay.

21 THE COURT: Let's reconvene everyone at 2:15. Sir,
22 again during the break you're still on the stand
23 essentially. Don't discuss your testimony with anyone
24 including counsel.

25 THE COURT OFFICER: All rise. Jury exiting.

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PROCEEDINGS

1 (Whereupon the jury panel departed the courtroom.)

2 (Whereupon a luncheon recess was taken.) Afternoon
3 session.

4 *****

5 A F T E R N O O N S E S S I O N

6 *****

7 THE COURT: Just before the jury comes back. I
8 have been upstairs working on the Meadows transcripts. It
9 is substantially slower and harder going than the other,
10 Tedrick, both because of the nature and number of objections
11 and because it sprawls over three ways. What we're finding
12 is it's difficult to make decisions about something on
13 day one, because it might be relevant to something on
14 day three. And until you go through the whole thing, it's
15 difficult to do. It is -- it is an enormous pain in the
16 neck, all of which is to tell you that you should not expect
17 to get my notes back on this before the weekend. I don't
18 think it matters, because I don't see us getting to this
19 witness, given what you've told me about the other
20 witnesses. But I don't know what you can do to help us, but
21 this is a very difficult logistical problem. I'm doing my
22 best.

23 THE COURT OFFICER: All rise. Jury entering.

24 (Whereupon the jury panel entered the courtroom.)

25 THE COURT: Okay. As you can tell -- Have a seat.

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1 We moved from January through March, April. We're now
2 somewhere in mid July August in terms of temperature in the
3 room. We've called whoever it was that made it this hot to
4 make it legs hot. So we're doing the best I can or we can.
5 We tried the windows for a little bit but then it got too
6 cold over there (gesturing). But we're going to try to
7 regulate it a little bit as best we can.

8 MR. FLEMING: May I, Judge?

9 THE COURT: Yeah. Let's just get back to it.

10 Q So, Mr. Erstling, do you recall your testimony earlier
11 this morning about compliance training seminars?

12 A Yes, sir.

13 Q What were those?

14 A Compliance training seminars were a series of
15 presentations that were started, I believe, in 2018 to go
16 through related-party transactions and to talk about marshaling
17 the assets for the cause and not using assets for private
18 benefit and some other -- other issues that were in the
19 presentation.

20 Q And can I have Exhibit JFX 62 for identification
21 brought up just for the witness not the jury.

22 THE COURT: Okay. Is that it?

23 MR. FLEMING: Yes.

24 THE COURT: Is there going -- Are you going to move
25 this into evidence?

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1 MR. FLEMING: I am.

2 THE COURT: Is there an objection to this?

3 MR. THOMPSON: Hearsay, your Honor.

4 MR. CORRELL: No objection.

5 MR. PETERS: It looks like a business record.

6 THE COURT: Is it being offered for the truth of
7 any matters asserted or just that it exists?

8 MR. FLEMING: Just that it exists and it was given,
9 which I will establish.

10 THE COURT: So it's not being offered for the
11 truth. Why would it be hearsay?

12 MR. THOMPSON: Your Honor, to the extent that he's
13 going to be testifying as to the contents of the document in
14 that these are the policies and procedures and these are
15 what the NRA's standards are, I think that is for the truth
16 of the matter asserted.

17 THE COURT: Well, I don't think in the hearsay
18 sense that's -- Overruled. Again, this is -- You're going
19 to elicit testimony as to what this is and there are not
20 factual -- Are there factual statements in here that you're
21 going to be offering for --

22 MR. FLEMING: I have about a minute or two of
23 questions. Nothing substantive.

24 THE COURT: Okay. Conditionally I'll admit it. If
25 there is anything in here that seems like it is hearsay,

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1 I'll let you know. But if it's just to show that these are
2 standards and you're going to ask him whether they were
3 implemented or if he knows.

4 MR. FLEMING: I'm going to ask even less than that,
5 your Honor.

6 THE COURT: All right. Go ahead.

7 Q So, Mr. Erstling, can you -- do you recognize this
8 document?

9 A Yes, sir.

10 Q And can you tell the jury what it is?

11 A This is the PowerPoint presentation discussing
12 compliance and governance.

13 Q Do you recall it being given?

14 A I believe I was there.

15 Q Okay. And do you recall that the date of July 26th,
16 2018 was the date it was given?

17 A That's the date that's on the document. It's hard to
18 remember back five years what day something happened on.

19 Q And who presented the substance of this seminar?

20 A So, there were two --

21 THE COURT: Wait a minute. So, somebody else -- I
22 thought initially -- Somebody else prepared this and he's
23 not testifying this is in fact the one that he saw or at
24 least I don't know that he is. So, do you have somebody
25 later or some point who is going to say yes, this is in fact

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1 one that was prepared and presented?

2 MR. FLEMING: Yes. It was presented. And I don't
3 think Mr. Erstling -- I can ask him -- I don't think he's
4 familiar with how it was created.

5 THE COURT: Well, I know. But he just said he
6 doesn't know if this is exactly the one that he saw on a
7 certain date. I'm not really sure what you're doing with
8 it. I'll let you keep going.

9 MR. FLEMING: Let me try.

10 THE COURT: If you're representing whoever it is
11 that prepared this is going to testify that this is the
12 document that was prepared on that day, I'll accept that
13 representation subject to it happening.

14 MR. FLEMING: Mr. Frazer will ultimately testify
15 about that.

16 THE COURT: That's what I figured.

17 Q Mr. Erstling, do you recall the seminar?

18 A Generally speaking, yes.

19 Q Did you receive or see this document at the seminar?

20 A I saw a document, this document or one very similar to
21 it at the seminar.

22 Q Who presented the substance of the seminar?

23 A The substance of the seminar was presented by John
24 Frazer.

25 Q Had there been subsequent compliance training seminars

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1 since this first one?

2 A Yes. Multiple. Almost every year. Every year.

3 Q Putting aside the period of time with COVID, where
4 there was stay at home, how often is it given per year?

5 A At least once, sometimes twice. And then there is also
6 a make up version that's given for people that are not able to
7 attend the other in person sessions.

8 Q Do you have any awareness of whether the substance of
9 the seminar changes from seminar to seminar?

10 A The majority of it stays the same. There are some
11 changes. If we want to highlight a particular area, for
12 example, expense reports or something in -- in the area of
13 invoicing.

14 Q And I think you testified that you participate in some
15 of these more recent seminars, is that right?

16 A That's correct.

17 Q And what is your role with respect to that seminar?

18 A So, I would look at -- I would present the areas of
19 expense reports, because my staff deals with expense reports. I
20 would deal with invoices and making sure that people are -- are
21 following the proper coding and sign off on invoices.

22 Q Who do you work with to create the content for these
23 seminars?

24 A I work with John Frazer.

25 Q And are you able to tell the jury what the objective of

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1 these seminars is?

2 A The objective of the seminar is to refresh everybody's
3 memory that there are policies and procedures out there that we
4 have to follow, and this is our opportunity to sort of refresh
5 that memory.

6 Q Thank you.

7 MR. FLEMING: Nothing further.

8 THE COURT: Thank you. Any further -- Anything on
9 redirect?

10 REDIRECT EXAMINATION

11 BY MR. THOMPSON:

12 Q Just a few more minutes, Mr. Erstling. Mr. Erstling,
13 change happens over time right?

14 A It does.

15 Q You've been with the NRA since 2001?

16 A I have.

17 Q Ms. Rowling, how long has she been with the NRA?

18 A Longer than I have.

19 Q Mr. Tedrick, how long has he been with the NRA?

20 A Longer than I have.

21 Q And Mr. Arulanandam, how long has he been at the NRA?

22 A I do not know when Andrew started, so I can't tell you
23 how long he's been there.

24 Q To the best of your knowledge has he been there the
25 entire time that you have?

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1 A I -- I believe so.

2 Q And Mr. Phillips was the CFO and treasurer of the NRA
3 for about 25 years, is that right?

4 A He was there when I arrived up until his retirement.

5 Q Then Mr. LaPierre was the executive vice president of
6 the NRA for approximately 30 years, is that right?

7 A I believe that's correct.

8 Q And it wasn't until 2018 that you and your colleagues
9 brought forth your concerns to the audit committee, is that
10 right?

11 A That is correct.

12 Q You were asked a few questions, Mr. Erstling, about the
13 sort of size of the policy manual. Do you remember that?

14 A Yes.

15 Q If you could please take a look back at tab one of your
16 binder. This is Plaintiff's Exhibit 421. So, Mr. Erstling, I
17 believe you testified this is not the document that you rely on
18 when you are looking for policies, is that right?

19 A That's correct.

20 Q You know the policies that apply to the work that you
21 do for the NRA, is that fair to say?

22 A That's fair to say.

23 Q And so you have those materials, those policies
24 collected in a form for you to refer to, is that right?

25 A That's correct.

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1 Q And for your staff as well?

2 A Yes, sir.

3 Q You would expect the treasurer of the organization to
4 know which policies apply to them, right?

5 A I would assume, yes.

6 Q Okay. So you wouldn't expect the treasurer of the
7 organization to be detoured by the length of a policy manual,
8 right?

9 A If the policy applies, the policy applies.

10 Q You were asked, Mr. Erstling, about reprisals. Do you
11 remember that?

12 A Yes, sir.

13 Q In 2018 you met with outside counsel for the NRA in
14 connection with your concerns, is that correct?

15 A It is.

16 Q And at that meeting you saw a binder with pictures
17 of --

18 MS. ROGERS: Objection, your Honor. He's asking
19 about contents of communications with outside counsel.

20 MR. THOMPSON: No, your Honor. I'm asking about
21 what Mr. Erstling saw, saw at a meeting with counsel.

22 MR. PETERS: This is also outside the scope of
23 previous examinations.

24 MR. THOMPSON: Any reprisals, and I'm about to get
25 into what we allege is a reprisal.

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1 THE COURT: So it's information you have. You're
2 not asking him for information with his discussions with
3 counsel?

4 MR. THOMPSON: Correct, your Honor.

5 MS. ROGERS: Your Honor, may we approach?

6 THE COURT: I'm familiar with this area generally.
7 Well, there hasn't been a question yet, right?

8 MR. THOMPSON: Not a completed question, your
9 Honor.

10 THE COURT: Well, since I don't know exactly what
11 it is, I guess we'll have to just hear it separately first.
12 Can we do it up here or do we need to go back?

13 MR. THOMPSON: Whichever you prefer, your Honor.

14 THE COURT: We'll take a short break and do it back
15 in this room.

16 (Whereupon the following proceedings were held
17 outside the presence of the jury.)

18 THE COURT: Okay. What was the question going to
19 be so I could understand.

20 MR. THOMPSON: The question was going to be whether
21 or not Mr. Erstling saw a binder containing pictures of his
22 family in it during that meeting. And then the follow up
23 would be did that unnerve him.

24 THE COURT: Okay. And the objection is?

25 MS. ROGERS: So, the theory here is that someone

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1 told them that someone told them that when litigation
2 counsel --

3 THE COURT: Someone told them that someone told
4 them.

5 MS. ROGERS: So, Mr. Erstling never testified to
6 this. Ms. Rowling testified that she heard from Mr.
7 Erstling that when he met with outside litigation to be
8 interviewed as a potential witness in litigation, he looked
9 at counsel's prep binder, which was work product, and he saw
10 a picture of himself and his family. They are trying to
11 elicit that content of outside counsel's work product in a
12 meeting that he glanced across and might have gotten a sense
13 of during a privileged meeting.

14 THE COURT: First of all, I don't think that a
15 picture of him and his family would be attorney work
16 product.

17 MS. ROGERS: Well, if it was contained in like a
18 witness bio memo, it would be.

19 THE COURT: I disagree. The -- So, he hasn't given
20 testimony about this before. You're just seeing whether
21 it's, in fact, whether it's his personal testimony as well
22 as what you have only by hearsay at the moment.

23 MR. THOMPSON: That's right, your Honor.

24 THE COURT: Okay. Objection overruled.

25 (Whereupon the following proceedings were held in

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1 open court.)

2 THE COURT: Okay. The objection is overruled. You
3 can ask your question.

4 MR. THOMPSON: Thank you, your Honor.

5 Q During that meeting with outside counsel in 2018, Mr.
6 Erstling --

7 THE COURT: I would ask you to ask it as an open
8 question.

9 MR. THOMPSON: Okay.

10 Q Did you see a binder containing photographs of your
11 family during that meeting?

12 A It was a binder with one photograph.

13 Q And did that unnerve you, Mr. Erstling, at the time?

14 A It wasn't pleasant.

15 Q Mr. Erstling, you were asked if you were a person of
16 integrity. Do you remember that?

17 A I do.

18 Q Do you consider Mr. Phillips to be a person of
19 integrity?

20 MR. WERBNER: I'm going to object. This is a fact
21 witness, not an opinion witness.

22 THE COURT: You established that they worked
23 together for a long period of time.

24 MR. THOMPSON: Yes, your Honor.

25 THE COURT: I think this is at most a lay opinion

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1 of what one person thinks of another. I'll permit it.

2 MR. WERBNER: If I may just add an additional
3 objection. It should be limited to time and not what he's
4 heard as hearsay during the course of the proceedings.

5 THE COURT: That's fair. I mean, all we're looking
6 for with this witness is his personal eyewitness based.

7 MR. THOMPSON: That's right. I could rephrase the
8 question.

9 THE COURT: Go ahead.

10 Q So, you worked with Mr. Erstling for -- you worked with
11 Mr. Phillips for approximately 17 years, is that right?

12 A That's correct.

13 Q And you had the opportunity to observe Mr. Phillips
14 during that time, right?

15 A That's correct.

16 Q And as a result of your observations, did you come to
17 have any opinion about whether or not Mr. Phillips is a person
18 of integrity?

19 A During my working relationship with Mr. Phillips I
20 thought he was a person of integrity.

21 Q Did that opinion change at any point?

22 MR. WERBNER: I'm going to object if it goes into
23 hearsay based on subsequent e-mails. If I could take a
24 witness on voir dire.

25 THE COURT: Well, let's take it one step at a time,

LAS

Redirect-Erstling-Thompson

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1 I guess. You know, we're not here to base anything on what
2 you've heard. These questions and answers should be about
3 your personal observations of things, right, Mr. Thompson.

4 MR. THOMPSON: Yes, your Honor. So, I can withdraw
5 the question. Let me try it one more time.

6 Q You testified earlier, Mr. Erstling, that Mr. Phillips
7 permitted vague invoicing at the NRA, right?

8 A Yes.

9 Q And you testified earlier that Mr. Phillips also
10 allowed for amounts in excess of the budget to be spent, right?

11 A Yes.

12 Q And as a result of that management, did you --

13 MR. THOMPSON: I see shaking heads. I'll withdraw
14 that question.

15 THE COURT: Just ask fact questions.

16 MR. THOMPSON: Okay.

17 THE COURT: I think that's the safer way to go.

18 Q Mr. Erstling, all of the concerns that you and your
19 colleagues raised in the top concerns memo were real concerns,
20 correct?

21 A At the time we thought they were, yes.

22 Q And all of the things in the top concerns memo actually
23 occurred, right?

24 A Yes.

25 Q And they occurred for, in several cases, many years,

LAS

Recross-Erstling-Werbner

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1 right?

2 A That's correct.

3 MR. THOMPSON: No further questions.

4 THE COURT: Okay. Any further cross?

5 MR. WERBNER: I have a few questions.

6 THE COURT: Okay. Mr. Werbner.

7 MR. WERBNER: Thank you.

8 RECROSS-EXAMINATION

9 BY MR. WERBNER:

10 Q Mr. Erstling, during the many years you worked with
11 Woody Phillips, during that period of time as you worked side by
12 side with him, you found him to be of integrity, correct?

13 A I did.

14 Q And ethical?

15 A Seemed to be, yes.

16 MR. WERBNER: I'll pass the witness.

17 THE COURT: Anything further?

18 (No response.)

19 THE COURT: All right, sir. Thank you very much.

20 THE WITNESS: Thank you.

21 THE COURT: You're free to go. You're subject to
22 being recalled by the defense if they ask you to be a
23 witness. I can't completely let you go, but I could let you
24 go for now. Thank you.

25 (Witness excused.)

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1 THE COURT: And plaintiffs, your next witness.

2 MR. THOMPSON: The next witness will be Rick
3 Tedrick, your Honor, through designation.

4 THE COURT: Okay. So, folks, this next witness is
5 suffering an illness so is not able to be here in person.
6 And when you have an unavailable witness, which is what we
7 have, the parties have put together excerpts from a
8 deposition that was done during the course of this case and
9 it was both transcribed and also audio recorded. So, they
10 have each submitted excerpts and in this first set of
11 excerpts, this is the plaintiffs submitted -- the plaintiffs
12 submitted excerpts. The defendants are allowed to what we
13 call cross designate. So things that are from the same
14 transcript to put, you know, things in context, you know,
15 other parts of the transcript that they think you should
16 hear if you're hearing the plaintiff's. It's possible that
17 the defendants could also introduce some other parts of the
18 testimony in their part of the case. They may or may not.
19 But for now it's really the plaintiff's excerpts and
20 defendants' cross designations to, you know, fill out the
21 record. So, we have, I think, two hours and change of
22 watching and listening to the deposition testimony. I think
23 you'll see the person's picture on the screen along with the
24 words while you hear it. So, just get ready. That's going
25 to be the remainder of our afternoon and probably a little

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1 bit of tomorrow.

2 MR. THOMPSON: Your Honor, just for the Court's
3 convenience, we do have a binder with the exhibits if you
4 would like to follow along.

5 THE COURT: I'll be fine. Okay. So, with that we
6 will play the excerpts.

7 (Whereupon the excerpts of Mr. Tedrick's deposition
8 were played.)

9 THE COURT: Can we pause for a second. We've been
10 listening for quite a while. I'll let them take a break in
11 all of this. So let's take a short break and then we'll
12 come back and finish for the day.

13 THE COURT OFFICER: All rise. Jury exiting.

14 (Whereupon the jury panel departed the courtroom.)

15 THE COURT: Okay. I would just make a suggestion.
16 As I sit here looking through the Meadows transcript, to
17 think about other objections. I think you all should at
18 least think about trimming some of these. Playing long
19 audio transcripts is always difficult for people to focus
20 on. You can do what you want, because I've already reviewed
21 it for at least admissibility. But, you know, you just
22 might think about it, because if this one is going to last
23 two and a half hours, what I'm looking at for Meadows is
24 going to be most of a day. And you all just need to think
25 about, both sides, whether this is the way you want to spend

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1 your time at trial. You know, again now that we're into the
2 substance, you know, at least think about the throat
3 clearing stuff at the beginning. I think, you know, it's
4 difficult to have the jury focus, but I'm not criticizing
5 the questions or what you're doing. I just would ask you to
6 think about whether it's really in the best interests of
7 your respective cases to have what could be half a day or
8 more of -- of video, which goes at the pace of a deposition,
9 as opposed to what would happen in court. That's just a
10 suggestion. I'm going to make my rulings based on, you
11 know, legal admissibility. I'm happy to have you rethink
12 and make judgment calls after you get my rulings as to
13 whether yes, you can show five or six hours of video, that
14 doesn't mean you have to. Okay. Thank you. Be back in a
15 couple of minutes.

16 (Whereupon a recess was taken.)

17 THE COURT OFFICER: All rise. Jury entering.

18 (Whereupon the jury panel entered the courtroom.)

19 THE COURT: All right. Have a seat. Okay. Let's
20 continue with the playback.

21 (Whereupon the excerpts of Mr. Tedrick's deposition
22 were played.)

23 THE COURT: Counsel, we're going to break for the
24 day. Folks, we're going to reconvene tomorrow at 9:30.

25 Remember it's a half day tomorrow, just the morning. Same

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1 instructions as usual. Just don't discuss the case. Don't
2 do any research. I will see you tomorrow at 9:30. Thank
3 you all.

4 THE COURT OFFICER: All rise. Jury exiting.
5 (Whereupon, the jury panel departed the courtroom.)
6 (Whereupon, the trial was adjourned to January 12,
7 2024 at 9:30 a.m.)

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LAS

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

3 -----X

4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
5 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

6 Plaintiff,

7 -against-

8 THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
9 WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
10 and JOSHUA POWELL,

11 Defendants.

12 -----X

13 Index No. 451625/20 60 Centre Street
14 TRIAL New York, N.Y.
15 January 12, 2024

16 B E F O R E:

17 HONORABLE JOEL M. COHEN,
18 Justice; and a jury

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1 (Appearances continued:)

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LORI SACCO
Official Court Reporters

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1 THE COURT: Anything we need to cover before we get
2 the jury?

3 COURT OFFICER: We're not ready yet, Judge.

4 THE COURT: What's that?

5 COURT OFFICER: We're bringing the rest of the crew
6 up now, but we're not ready.

7 THE COURT: Well, I --

8 COURT OFFICER: Okay. I'm just saying, regarding
9 the jury.

10 MS. CONNELL: Your Honor, we have the corrected,
11 combined clip reports, which should be admitted, I
12 understand, as a Court exhibit, for Mr. Tedrick's deposition
13 that we've been listening to (indicating)?

14 THE COURT: Okay. Do you want to just --
15 What are you marking it as? Do you have a number?

16 MS. CONNELL: It would be Court Exhibit I, your
17 Honor, or we could make it a plaintiff's exhibit. But I
18 thought it was supposed to be marked as a Court exhibit.

19 THE COURT: All right, Court Exhibit I.

20 You want to show [sic] that to the court reporter
21 to mark it?

22 MS. CONNELL: Sure.

23 (Documents handed from Ms. Connell to the Court,
24 counsel and court reporter.)

25 MR. FARBER: Could we just clarify: There was a

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1 version circulated yesterday. Is this (indicating) the same
2 as that or has that been changed?

3 MS. CONNELL: No. It's been corrected, as I
4 understand it.

5 THE COURT: Why don't you take a look at it and we
6 can mark it after?

7 MR. FARBER: Thank you.

8 THE COURT: Okay.

9 (Pause.)

10 THE COURT: The jurors have a question about
11 something and they're writing me a note, so I'll -- when I
12 get it, I'll tell you what it says.

13 (Pause.)

14 THE COURT: Let's go on the record for something
15 else:

16 We haven't marked the other as Court Exhibit I yet,
17 so I'll mark this (indicating). I'll just read the note;
18 it's from one juror:

19 "I understand all four sets of lawyers deal with
20 different entities. It's obvious to us each lawyer dealing
21 [sic] with top executives. However, the NRA lawyer seems
22 like she is at times against her own company. Does this
23 make sense?

24 "Clarification of charges is [being] asked to make
25 clear by other members of the jury."

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1 I think -- you know, I can certainly have each
2 party -- each defendant lawyer -- stand up and say who they
3 represent.

4 And I think -- as to the question about the
5 charges, I think the best thing for me to do is to say
6 that -- you know, in the instructions and in the verdict
7 form -- that it will become clearer, rather than taking the
8 time to, kind of, go through all that right now.

9 Is there any other clarification you'd like to
10 make?

11 MS. ROGERS: Your Honor, one suggestion: In the
12 opening jury charges, we had suggested -- there's a criminal
13 Pattern Jury Instruction on multiple defendants and we
14 proposed a version of that, supplemented with some kind of
15 distinction between the corporation and its agents. If --
16 we'd be happy to revisit that if your Honor had issues with
17 it, but it might -- that's derived from a Pattern
18 Instruction and it might provide the clarification the jury
19 is seeking.

20 THE COURT: Okay. Well, I don't recall it as I sit
21 here right now, but if you want to send that to me again so
22 I can take a look at it, that would be fine.

23 I mean, look, I can make it clear that each
24 defendant is -- has to be -- judged separately, for now,
25 just so that they understand that and that, you know, there

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1 will be a charge making it clear what the charges are
2 against each.

3 But they know who the lawyers are; I think they're
4 just not entirely sure about how it all interrelates with
5 each other.

6 MR. FLEMING: Judge, I'm sorry; just one
7 clarification point: This is a note from one juror or is
8 she representing multiple jurors?

9 THE COURT: It's from one juror, at the top, and
10 when it's written in the first person, Juror No. 3.

11 But -- so I'll do the minimum, just to make that
12 point, that everybody has to be judged separately and that
13 we will try to -- we will make it clear as things go on who
14 represents who.

15 And if there's something that you can provide me
16 that might be helpful, which -- I can't remember, at this
17 point, now, why I -- I think I just decided to stay with the
18 standard form. We'll see how it goes.

19 All right, let's bring them in.

20 MS. ROGERS: Your Honor, very quickly, before we
21 bring the jury in: With respect to Court Exhibit I, these
22 Tedrick excerpts --

23 THE COURT: It's not going to be Court Exhibit I
24 anymore, because this is going to be Court Exhibit I.

25 MS. ROGERS: And the deposition designations, is

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1 there a way that we can inform the jury of the date of the
2 deposition? Because there will be items --

3 Like, for example, Mr. Tedrick was asked, "Do you
4 have any knowledge of the NRA having a compliance officer?"
5 on the date of the deposition, so the date is relevant.

6 THE COURT: Yeah, that's a fair point.

7 MS. CONNELL: Your Honor, we have no problem with
8 that. That is a fair point.

9 But we are going to be raising with your Honor, on
10 Tuesday morning, just some issues relating to the dates of
11 evidence as relevant and the statements about what's
12 happening in the NRA today, which is something -- post hoc
13 remedial measures -- we've raised a number of times. You
14 had wanted to make rulings as things became ripe for them;
15 we think things are becoming ripe.

16 And so we have no objection to putting the date on
17 the deposition or providing information like that, but we do
18 think this highlights an issue in the case.

19 MR. CORRELL: Your Honor, just one quick thing on
20 the juror's question:

21 As I heard it, she used the term "entities" to
22 refer to all defendants? If you could just distinguish
23 between "individual" and "entity" in discussing it, I would
24 appreciate that.

25 THE COURT: Yeah. I think they understand the

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1 individuals, but okay.

2 MR. FARBER: And, Judge, if I could raise a couple
3 of points with respect to the note, please ...?

4 I did not read that to indicate any ambiguity as to
5 who counsel represented, so I don't see a need, and I think
6 it would be a little awkward, to have counsel, at this
7 point, introducing themselves.

8 THE COURT: Yeah. I think they understand who
9 represents who. They may not understand how it all
10 interrelates --

11 MR. FARBER: Yes.

12 And I --

13 THE COURT: -- or one person may not understand how
14 it all interrelates.

15 MR. FARBER: Well, yes.

16 And I agree with the Court's intention about
17 explaining the charges; you'll give a charge at the close of
18 the case. However, as the comment your Honor made
19 indicating the suggestion that this seemed to represent the
20 view of more than one jurors, it -- or may -- it suggested
21 to me that there's some discussion about the case that may
22 be going on, and I would ask that your Honor remind the
23 jurors that they should not be discussing anything about the
24 case at this point in time.

25 THE COURT: Yeah. I actually think they do

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1 understand it. I think, one of them was raising the issue
2 to the court officer and the court officer correctly said,
3 "Write a note; do it that way."

4 MR. FARBER: Thank you.

5 THE COURT: Let's bring them down.

6 (Pause.)

7 COURT OFFICER: All rise. Jury entering.

8 (The jury entered the courtroom.)

9 THE COURT: All right, have a seat.

10 Welcome back.

11 Just before we get started: I did receive the note
12 with a question, and there will be more instructions on this
13 as we go, but for now, I just want to make it clear that
14 there are four separate defendants; there's the company and
15 then the three individuals, and each lawyer represents one
16 of those entities. And at the end of the day -- there was a
17 little bit of this in the openings, but you'll see it more
18 clearly at the end -- the claims are very specific. So
19 Claim 1 is against Entity 1, or whatever it is. And so each
20 claim is going to tell you who the defendants are with
21 respect to each claim. And your verdict will be separate
22 for each defendant, so each defendant is entitled to a
23 separate assessment.

24 And so that the lawyers are representing the
25 parties that they -- I think -- I don't think there's any

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1 confusion as to who represents who. But I think it will
2 become clearer as we go through and then, ultimately, when
3 we do the instructions at the end, you know, exactly what
4 you're being asked to decide. Okay? So -- but they each
5 represent their own client. And each of the entities, you
6 have to do your best to keep separate in your minds, and
7 ultimately, you're going to give a verdict separately for
8 each of them.

9 I'm not sure if that's a full explanation. In
10 part -- if you have continued -- if anyone has continued
11 questions, I'm happy to get more notes to zero in on
12 anything specific. I'm hopeful that as we proceed, it will
13 become clearer if it's not clear. Okay?

14 So let's move on.

15 So we're going to continue now with the readback
16 [sic] of testimony of Mr. Tedrick. There's, I understand,
17 about an hour left? Then we'll take a short break and then
18 have another break.

19 Okay? Everybody set?

20 COURT REPORTER: Judge, should we mark that as an
21 exhibit?

22 THE COURT: Yes; it's Court Exhibit I (handing).
23 (Exhibit so marked.)

24 THE COURT: Okay?

25 Okay, counsel, you can proceed with the playback.

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1 (Audio of Rick Tedrick further played in open
2 court.)

3 THE COURT: Counsel, one second.

4 (Audio stopped.)

5 THE COURT: I was also asked to tell the jury:

6 Can plaintiff's counsel, who's offering this
7 evidence, just state -- it will probably be on the exhibit,
8 but what was the date of the deposition?

9 MS. CONNELL: Certainly, your Honor.

10 I believe it was 4/28/22. So April 28th, 2022 is
11 the correct date of this deposition.

12 THE COURT: I was just asked to provide that
13 because there is some testimony asking, you know, about what
14 is the "current situation" as it's current as of that date.
15 Okay?

16 Okay.

17 (Said audio further played in open court.)

18 THE COURT: Okay. Is that the end of the playback?

19 MS. CONNELL: That is the end of the parties'
20 playback. Thank you, your Honor.

21 THE COURT: All right, folks, we'll take our
22 morning break and come back for our next witness.

23 Thank you.

24 COURT OFFICER: All rise. Jury exiting.

25 (The jury left the courtroom.)

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1 THE COURT: Okay, have a seat.

2 Through the magic of electronic communications, my
3 law clerk sent me the draft instruction that the defendants,
4 I guess, had included in the opening instructions and I've
5 looked at it and I think it could be helpful to add to what
6 I said. The only thing I'd modify is to reduce the number
7 of defendants from five to four. So it would be:

8 "There are four defendants before you and we are
9 thus conducting, effectively, four trials in one. It is
10 your obligation to evaluate the evidence as it applies or
11 fails to apply to each defendant separately. Each
12 instruction on the law must be considered by you. Each
13 instruction on the law must be considered by you as
14 referring to each defendant separately. You must return a
15 separate verdict concerning each cause of action against
16 each defendant and those verdicts need not be the same,
17 though they may be."

18 It's possible that that will help some of the
19 confusion. I view it as, at this point, pretty similar to
20 what I said, but to the extent that it's a little more
21 precise, I would propose to just read that to them.

22 MS. ROGERS: Your Honor, may I ...?

23 To more squarely address what seems to be the
24 source of that juror's confusion, we were thinking of
25 proposing to supplement that Pattern Instruction with a

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1 sentence lifted pretty closely from the not-for-profit
2 corporation statute, and that sentence would be: "The NRA
3 is a corporation managed by its board of directors."

4 THE COURT: Yeah, it's interesting that you make
5 that point, because I was going to say that that may be
6 really more an underlying question and it's one that I've
7 been mulling for the closing instructions, and I'm not ready
8 to give that to the jury at this point because I think it's
9 something that I want to talk to you about.

10 I think they may be raising the question as to what
11 conduct is attributable to the NRA legally, and based on the
12 NRA's opening statement, they may believe that the position
13 is that the conduct, for example, by the senior officers is,
14 as a legal matter, not attributable to the NRA and that,
15 really, it's only board-level-approved decisions that are
16 attributable to the NRA.

17 And I'm -- I -- I guess, I'll be looking for the
18 parties to ultimately provide some argument back and forth
19 on that, because I'm not sure that that's right: that as a
20 matter of law, if senior executives of a company do
21 something -- there's certainly many areas of the law where
22 the company is bound by what officers do.

23 Now, if you had a cause of action against
24 directors, in their own name, for a breach of fiduciary
25 duty, those individuals might have an argument that, "Well,

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1 you know, we didn't know about it," and then the argument
2 would be whether they properly exercised their oversight
3 authority and they should have known about it. But when you
4 bring it to the corporate level, I think it will be an
5 important instruction, at the end of the day, to the jurors.

6 But I think it would -- as I currently view it --
7 it would be too narrow to read them a sentence suggesting,
8 which I think the sentence you just suggested would suggest,
9 that it's really only the board that matters. And you may
10 persuade me of that ultimately, but I'm not there yet.

11 MS. ROGERS: Thank you, your Honor.

12 We do have -- I know there are copious written
13 submissions, and I don't know if your Honor is looking for
14 more -- and this issue is touched on in some of them --
15 annotations to the jury charge, whatever your Honor would
16 like, to boil down into a specific number of pages.

17 THE COURT: I think the best approach is: My law
18 clerk and I are digging through that now and I will feed
19 back to you where I am -- after sifting through it, where I
20 end up, and it may be a sort of an iterative process.

21 But it could be that that's the kernel of their
22 concern, because they may ultimately be grappling with --
23 well, just as an example of what we saw before, you know,
24 they have, and are hearing, evidence of things done by
25 lower-level employees who are not defendants and they may be

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1 trying to figure out: "Well, what's the relevance of that?
2 If it doesn't go to the individual defendant, does it
3 somehow escape -- is it relevant to the NRA?"

4 So I think we're going to -- I think it will be an
5 important instruction, especially given how defenses is
6 [sic] -- I was going to say "evolving," but maybe it's
7 always been. But at least as I've heard it more clearly
8 stated this week, the question of what's attributable to the
9 NRA and what's not is, I think, an important question.

10 MR. CORRELL: Your Honor, if I may, there's also
11 the reverse question of: What is attributable to the
12 individual defendants when the board takes action by vote
13 and if you have an individual defendant who does not vote?
14 And I would ask that you'd consider that issue.

15 THE COURT: Yeah. I think it can go in multiple
16 directions and I think, you know, giving the jury a clear
17 legal instruction as to responsibility -- legal
18 responsibility -- in various circumstances is certainly
19 something that should -- would be helpful.

20 MS. CONNELL: Your Honor, I'm sorry; if I can just
21 be made -- heard -- briefly on this ...?

22 THE COURT: Sure.

23 MS. CONNELL: While we normally would agree with
24 and suggest that multiple-defendant instruction, I think,
25 given the nature of the juror's question, we just would like

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1 to look at the transcript of the question and think about it
2 over the weekend and, if at all, we would offer something on
3 Tuesday morning.

4 The reason I bring this [sic] is: You are correct,
5 and you have your finger on it, that the defense of the NRA
6 has evolved; that the presentation has, very clearly, been a
7 very big change in direction to, "there are" -- you know, by
8 the NRA -- that "it's only actions of the board; they would
9 have to prove board liability."

10 And I think, in light of this confusion, clearly,
11 the jury is struggling with, "Well, can we attribute the
12 action of some of these defendants and some of these other
13 employees to the NRA?" I'm a little bit concerned about
14 whether that instruction would be a little confusing, and
15 we'd like to just take a closer look at it.

16 And I will tell you, in response to a letter, I
17 think, that was put in on January 4th or 5th by the NRA, as
18 to the corporation only being liable for the actions of its
19 whole board, we're going to put in a very brief letter
20 submission, probably tonight; two or three pages, at most.
21 We think the authority is squarely against this and we would
22 really be against any instruction that would muddy that
23 water for the jury.

24 THE COURT: And if you want to send a letter,
25 that's fine, but the ultimate end aim of that is the jury

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1 instructions at the end.

2 MS. CONNELL: Absolutely, your Honor.

3 But at the same time, we have a number of weeks of
4 instruction -- of trial -- going on and if there's an issue
5 that we can flag and all be aware of so that we don't go too
6 far down the road the wrong way, we think, better early than
7 too late. So we'd like to bring that up.

8 And so for that reason, your Honor, just regarding
9 the issue presently before the Court, we would say, can we
10 just wait at least until Tuesday before giving that
11 instruction?

12 THE COURT: Look, I don't think it's urgent to give
13 this because I feel like I gave something similar to it
14 already.

15 You can take a look at it, and we'll make a copy of
16 Court Exhibit I so that you can each have the document
17 itself; I think I probably read it correctly.

18 But that's fine. So I'll just hold on this.

19 I think it's possible that they may have the more
20 substantive issue that Ms. Rogers flagged, given especially
21 the second comment in there about seeking clarification
22 about the charges. And I think it's -- in that way, it may
23 be kind of an insightful comment, because there are -- it
24 may seem to them that you two are ships passing in the
25 night. And at the end of the day, that sometimes happens at

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1 trial; sometimes the instructions at the end are what they
2 have to follow.

3 So I'll look forward to reading your letter.

4 And, again, we're working on the instructions.

5 It is helpful to have heard the openings and to see
6 the case develop in terms of our work on the instructions.
7 Certainly, it would have been better if they would have come
8 together more quickly and more in a form that I could work
9 with more easily, but it's also very common that we're
10 working on jury instructions together throughout the trial,
11 and ultimately, that's the way this one is going. So we'll
12 try to get it done as soon as we can.

13 MS. CONNELL: I agree, your Honor.

14 I'm sorry; I know the break is kind of short, but
15 just to make it as productive as possible:

16 For housekeeping, we have distributed
17 electronically, as well as one or two hard copies of, the
18 corrected Clip Report (indicating), which would now be Court
19 Exhibit II, and we ask to submit that. I don't want it to
20 fall through the cracks.

21 THE COURT: Yeah, we can have it marked as Court
22 Exhibit II, and it's ...

23 Well, we are actually admitting this into evidence;
24 are we not?

25 MS. CONNELL: That's exactly right, your Honor.

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1 THE COURT: So, as I think about it, I'm not sure
2 why it's a court exhibit. It should be -- it's a
3 plaintiff's exhibit. You're submitting this testimony as
4 evidence, right?

5 MS. CONNELL: I'm fine with that.

6 And I thought it was a court exhibit because it
7 includes counter-designations, but a plaintiff's exhibit is
8 a hundred percent fine. I just want to make sure it makes
9 it onto the record.

10 THE COURT: The exhibits may say "Plaintiff's
11 Exhibit" or "Defendant's Exhibit." They're not -- they
12 don't belong to one side or the other; they're exhibits
13 admitted into evidence in the case.

14 So why don't we, instead of calling it "Court
15 Exhibit II," just find --

16 This is the first case I've had where there are no
17 JX exhibits, which are "joint exhibits," which is -- would
18 be -- more helpful to me, frankly, if we had those. So,
19 if -- but if you -- whatever you all -- you guys can talk
20 about it. If you want to call it "JX 1," so it's a joint --
21 so it doesn't look like it's being offered by one side or
22 the other ... or if you want to call it "PX 1." Whatever
23 you want to call it is fine, but I think it should be a
24 trial exhibit, not a court exhibit.

25 MS. CONNELL: 100 percent, your Honor. We can

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1 label it PX 5302 -- I'm sorry -- 5103.

2 THE COURT: How about --

3 Are you going to mark it or you want the court
4 reporter to do that?

5 MS. CONNELL: If we could have the court reporter
6 mark it, your Honor ... Or we could mark it.

7 THE COURT: I'm looking behind you and it looks
8 like somebody can do it relatively easily.

9 MS. CONNELL: Yes.

10 THE COURT: So why don't we work on marking that
11 and we'll formally introduce it in the jury's presence after
12 the break.

13 MR. FARBER: Judge, I have to --

14 MR. FLEMING: Before it's marked ...

15 MR. FARBER: Judge, I have an objection.

16 THE COURT: To what?

17 MR. FARBER: To this being introduced into evidence
18 as opposed to being marked as a court exhibit -- you can
19 call it whatever you want, court exhibit or trial exhibit.

20 What happened is, we played a deposition just as if
21 the witness testified at trial. I don't think it's proper
22 to have, as an exhibit that gets sent back to the jury --
23 this has listed, you know, who designated what and things
24 like that.

25 THE COURT: Well, it shouldn't say that.

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1 MR. FARBER: It does.

2 THE COURT: Well, it shouldn't say that.

3 Look, I need to look at this thing.

4 The reason why there has to be some transcript is
5 because it's not otherwise available on a court transcript,
6 because the court reporters don't type out what's going on.

7 So, if you want to change the form of that so that
8 it's just a listing of -- if you think that the --

9 I haven't seen what you're talking about, but I
10 assume it doesn't have the objections in the left-hand
11 corner.

12 MR. FARBER: Well, no, Judge. But it -- it has --
13 there are -- there is other stuff.

14 Judge, I -- I have no --

15 The idea of it being a court exhibit, it then
16 becomes the same as a transcript; if the jury should ask to
17 see a transcript of that portion, just as if they should ask
18 to see [sic] a transcript of any testimony that's given
19 live, it would be available to them, but it's not separately
20 introduced as an exhibit in evidence. I think, marking it
21 as a court exhibit then puts it in exactly the same place as
22 the transcript that the court reporter is preparing.

23 THE COURT: I think it's possible, though, you're
24 slightly overthinking this whole thing.

25 MS. CONNELL: I do too, your Honor.

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1 THE COURT: One way or the other, the words on the
2 page should be available for the jury if they want to see
3 it.

4 You all talk about it.

5 You know, I don't know what the notations in the
6 margin are; they just seem to say, "no overlap." And I
7 don't think they should get anything that they didn't see on
8 the screen, which would just be the words.

9 MS. CONNELL: No, your Honor, they wouldn't.

10 We provided a sample Clip Report yesterday; we got
11 some feedback; we've changed it. So what I would suggest:
12 If defendants would get us unified comments, we'll change
13 it; we'll submit it; we'll be done with it.

14 THE COURT: I don't care about anybody's
15 comments --

16 MS. CONNELL: Right.

17 THE COURT: -- because all I want are the words
18 that the jury saw, and nothing else; none of the marginal
19 stuff.

20 You know, the jury did see --

21 The duration, we can get rid of that column.

22 The ID, you can get rid of that column.

23 The designation, they did see the line. Those
24 numbers do appear on the screen; the line and page, so
25 that's okay because that's what they saw.

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1 So simplify this --

2 MS. CONNELL: Perfect.

3 THE COURT: -- and I'll be fine.

4 We can call it a court exhibit; we can call it a
5 different exhibit. I don't really care. I don't think it
6 matters.

7 MS. CONNELL: I don't think so either, your Honor.

8 And a final housekeeping note: We are taking your
9 advice and we're going to be cutting back deposition
10 designations for unavailable witnesses and witnesses who are
11 outside the subpoena power of the Court, and we're going to
12 be providing those to the defendants very, very quickly.

13 And we're sorry for this process. Hopefully, it
14 will be easier as we --

15 THE COURT: Look, one point I want to make:

16 My comments were not directed to one side or the
17 other, as both sides designated quite a lot. So whatever
18 you can shorten, obviously, that will, you know, help us get
19 through all of this. That's fine.

20 In terms of our work on it, I'm going to continue
21 working on what we have because I don't want to slow that
22 down and then you can, obviously, take stuff out on your own
23 if you want to; just make sure both sides know what you're
24 doing.

25 MS. CONNELL: Yes, your Honor.

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1 We'd ask that you continue to work on Ms. Meadows.
2 We're going to get back Spray. We'll have -- Craig Spray's
3 designations. We'll have those to the defendants later
4 today and ask for cutbacks on the counter-designations and
5 get those to you as soon as possible.

6 THE COURT: He's unavailable or outside the
7 subpoena range?

8 MS. CONNELL: Yes, he's outside our subpoena range
9 and he no longer works for the NRA. He is on the NRA's
10 witness list. I haven't had confirmation if he'll appear in
11 person. If he'll appear in person, we would prefer him in
12 person here.

13 MS. ROGERS: At this point, we would expect to call
14 him by designation.

15 THE COURT: By deposition, you mean?

16 MS. ROGERS: Yeah, by deposition.

17 MR. FLEMING: As would I, your Honor. He's on my
18 list as well.

19 THE COURT: Okay.

20 All right. Well, if you want to -- if you want to
21 have some sort of rest, why don't you go take your break and
22 then we'll go get the jury.

23 (Recess.)

24 (Continued on next page.)

25

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PROCEEDINGS

1 THE COURT OFFICER: All rise. Jury entering.

2 (Whereupon the jury panel entered the courtroom.)

3 THE COURT: All right. Welcome back. Have a seat.
4 Plaintiff, are you prepared to call your next witness?

5 MS. CONNELL: Yes, your Honor. The People call
6 Defendant Wilson Phillips.

7 THE COURT: Okay. Mr. Phillips, can you come
8 forward, please. Good morning, sir.

9 THE COURT CLERK: Raise your right hand.
10 W I L S O N P H I L L I P S, after having been duly sworn by
11 the court clerk, was examined and testified as follows:

12 THE COURT CLERK: State your name.

13 THE WITNESS: Wilson Phillips.

14 THE COURT CLERK: Spell your last name.

15 THE WITNESS: P-H-I-L-L-I-P-S.

16 THE COURT CLERK: Business address. If not, your
17 home address.

18 THE WITNESS: I'm retired. 4602 -- Just lost my
19 train of thought. 4602 Gilbert Avenue, Dallas, Texas. Do
20 you need a zip code? 75219.

21 THE COURT CLERK: Thank you. You may be seated.

22 THE COURT: Thank you, sir. Okay. Counsel, you
23 may inquire.

24 MS. CONNELL: Thank you, your Honor.

25 DIRECT EXAMINATION

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1 BY MS. CONNELL:

2 Q Good morning, Mr. Phillips.

3 A Good morning, Ms. Connell.

4 Q How are you. Mr. Phillips -- I'm sorry. This seems
5 loud to me. Mr. Phillips, you were CFO and treasurer of the NRA
6 from 1993 until 2018, correct?

7 A Correct.

8 Q And during your time as CFO you reported to Wayne
9 LaPierre, right?

10 A That's correct.

11 Q And you were also appointed by the board to be
12 treasurer of the NRA, is that correct?

13 A Yes.

14 Q And as treasurer you reported to the board of the NRA,
15 is that right?

16 A That's right.

17 Q In 2018 you retired from the NRA, correct?

18 A That's correct.

19 Q And Craig Spray was hired as your successor?

20 A Yes.

21 Q And your time at the NRA overlapped somewhat with
22 Mr. Spray, right?

23 A Several months.

24 Q Okay. He worked as the CFO initially?

25 A He did.

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1 Q And then after you left he became the treasurer, is
2 that right?

3 A I believe so.

4 Q Your last day of work at the NRA was December 31st,
5 2018, right?

6 A That's correct.

7 Q Okay. And that was your last day because you actually
8 agreed to stay on a little longer at the request of the audit
9 committee and Mr. LaPierre, is that correct?

10 A That's correct.

11 Q Okay. And you did not leave the NRA because you were
12 fired, right?

13 A Right.

14 Q And you did not leave the NRA because you were facing
15 suspension, right?

16 A Right.

17 Q And you did not leave the NRA because you were facing
18 any disciplinary action, is that accurate?

19 A That's accurate.

20 Q Okay. You retired because you wanted to?

21 A Yes.

22 Q Okay. In fact, the NRA gave you a post-employment
23 contract, right, Mr. Phillips?

24 A That's correct.

25 Q Okay. Mr. Phillips, I'm going to show you a document

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1 that has been marked tab 42. It's actually in the black binder
2 that's in front of you. I apologize for starting at the end.
3 This is PX 2493 for identification.

4 THE COURT: Is there any objection to this exhibit?

5 MR. FARBER: I don't know what it is at the moment.
6 Those tabs don't correspond to what we have.

7 MR. CORRELL: Your Honor, we had this problem
8 yesterday. We were given a list of exhibits, and then our
9 tabs doesn't correspond, so it makes it really hard.

10 THE COURT: It's PX 2493.

11 MS. CONNELL: Your Honor, I could clarify. We did
12 provide that we were supplementing our exhibit list. It is
13 included in tab one. That was part of a larger file. We
14 thought it would be easier to break it out into tab 42.
15 It's Mr. Phillips' consulting agreement.

16 MR. CORRELL: Your Honor, I object to the
17 examination proceeding until we have the same as what Ms.
18 Connell has.

19 MS. CONNELL: Your Honor, the parties discussed
20 witness binders and agreed identification of exhibits would
21 be sufficient. We did that.

22 THE COURT: We've been able to operate the way
23 we've been doing it. So let's just continue. Anyway, do
24 you all have it now? It's the independent consulting
25 agreement.

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1 MR. CORRELL: Your Honor, I've been handed another
2 exhibit binder. I'm going to check and see if that is the
3 case.

4 THE COURT: Okay. 42.

5 MS. CONNELL: Thank you.

6 Q Mr. Phillips --

7 THE COURT: Hang on a second. I haven't given you
8 a ruling yet. Is there any objection to it?

9 MR. CORRELL: This one appears to be the same
10 order, so I'm satisfied.

11 MR. FARBER: No objection.

12 THE COURT: That's what I was waiting for. Without
13 objection, it's admitted.

14 MS. CONNELL: Thank you. Can we publish this
15 exhibit to the jury, please.

16 Q Mr. Phillips, this is your post-employment consulting
17 agreement with the NRA, correct?

18 A (Examining). Correct.

19 Q And if you turn to page 5 at the bottom of the
20 agreement -- excuse me -- page 5 of the agreement. Can you see
21 at the bottom there are two signatures?

22 A Yes.

23 Q Whose signatures are those?

24 A The first one is Pete Brownell and the second one is
25 mine.

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1 Q Who is Pete Brownell?

2 A He was president of the board of directors at the time.

3 Q And can you please turn to page 6.

4 (Whereupon the witness complied with the above
5 request of counsel.)

6 Q There are more signatures on this page, correct?

7 A Yes.

8 Q And the signatures are Pete Brownell and yours as well?

9 A Correct.

10 Q And then there is another signature, right?

11 A Yes.

12 Q And whose that signature?

13 A Carolyn Meadows.

14 Q Who is Ms. Meadows?

15 A Ms. Meadows was the first vice president at the time, I
16 think.

17 Q So your signature and Mr. Brownell's are dated May 5th,
18 2018, correct?

19 A Yes.

20 Q And that's the date you executed this agreement, right?

21 A Yes.

22 Q And so at the time you executed this agreement
23 Mr. Brownell was a board officer of the NRA?

24 A Yes.

25 Q And Ms. Meadows was a board officer of the NRA?

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1 A Correct.

2 Q Okay. Mr. Phillips, can you please -- Actually, under
3 this contract you were to receive \$30,000 a month after you
4 retired from the NRA, right?

5 A Right.

6 Q And for that you were also suppose to receive rental of
7 an office, correct?

8 A That's correct.

9 Q The NRA would pay for you to rent an office?

10 A Yes.

11 Q The NRA would pay an amount up to \$3,500 a month for
12 you to rent an office, correct?

13 A That's correct.

14 Q Okay. And so under this agreement you would receive
15 \$360,000 a year in payment from the NRA, correct?

16 A Yes.

17 Q Plus the office rental?

18 A Yes.

19 Q Plus expense reimbursements you may incur, right?

20 A Yes.

21 Q You heard Mr. Erstling's testimony, right?

22 A I did.

23 Q And you know that the NRA has a procurement policy,
24 correct?

25 A Correct.

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1 Q And that procurement policy has requirements for
2 contracts that would cost the NRA more than \$100,000 in a given
3 year, correct?

4 A That's correct.

5 Q And that included signature of a board officer -- of
6 two board officers, correct?

7 A Correct.

8 Q And completion of a business case analysis, correct?

9 A Correct.

10 Q And, Mr. Phillips, you're aware of the conflict of
11 interest policy that the board had?

12 A I am.

13 Q And you're aware that where there is a potential
14 conflict of interest or related-party transaction, it had to be
15 approved by the board in advance, correct?

16 A I believe so. I don't recall.

17 Q Okay. Mr. Phillips, at the time that you were an NRA
18 -- the treasurer of the NRA, your compensation was set initially
19 by the officers compensation committee which made a
20 recommendation, correct?

21 A Yes.

22 Q And it would make a recommendation for the compensation
23 to be paid to you in the coming year, right?

24 A I'm sorry. Repeat that, please. The last part.

25 Q Sure. In September, in the September board meeting

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1 each year the officers compensation committee would meet, right?

2 A That's right.

3 Q And they were suppose to make a recommendation as to
4 all the compensation you would receive from the NRA in the
5 coming year, right?

6 A When you say "all of the compensation", I don't recall
7 exactly how the --

8 Q Sure.

9 A -- the resolution for -- from the compensation
10 committee read but --

11 Q Their suppose to recommend your bonus, right?

12 A Yes.

13 Q And your salary?

14 A Yes.

15 Q And they are suppose to be aware of any other
16 compensation you were receiving, correct, from the NRA?

17 A I don't know. I don't know how that read.

18 Q Well, let's take a look at this agreement. Did you
19 present this agreement to the audit committee before you
20 executed it?

21 A I did not.

22 Q Okay. And did you present it to the officers
23 compensation committee before you signed it?

24 A I did not.

25 Q And did you make sure that the board approved it?

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1 A No. I wouldn't have been there when the board would
2 approve that because I was retiring.

3 Q This was executed in May of 2018, right?

4 A That's correct.

5 Q And you were, in May of 2018, the CFO and/or treasurer
6 of the NRA, right?

7 A That's correct.

8 Q Okay. And, Mr. Phillips, under this contract there
9 were two types of services you were suppose to provide, is that
10 correct?

11 A That's correct.

12 Q If you can look at page 1 of the agreement, under one,
13 appointment of consulting -- a consultant, subdivision (b), do
14 you see that?

15 A (Examining). I do.

16 Q Okay. This agreement called for you to produce or
17 consult, excuse me, for you to use your expertise for the NRA
18 to consult with the CFO and treasurer of the organization,
19 right, after your retirement?

20 A (Examining). I'm trying to read to see if it's broader
21 than that.

22 Q I actually would like to focus on subdivision one right
23 now.

24 A Okay. It says "To provided advisory services to the
25 organization".

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1 Q Right. After you retired from the NRA, did you provide
2 consultant services under subdivision one of this paragraph to
3 the NRA?

4 A Yes, I did.

5 Q Who did you provide those services to?

6 A To -- We were working on projects in the advancement
7 area, where I worked with Wayne Sheets and --

8 Q Mr. Phillips, you didn't speak to Wayne LaPierre after
9 you retired as part of your consulting services under this
10 agreement, right?

11 A I spoke to him sometime at some point when we heard
12 about the Attorney General's Office. I didn't talk to him after
13 that. I don't remember the date.

14 Q Mr. Phillips, is it your testimony that you spoke to
15 Wayne LaPierre and provided consulting services to him under
16 this agreement?

17 A No.

18 Q Okay. So you didn't talk to him to provide consulting
19 services under this agreement, is that correct?

20 A Not to Mr. LaPierre.

21 Q Okay. And you also did not speak to Mr. Spray to
22 provide consulting services under this agreement after you
23 retired, is that correct?

24 A That's correct.

25 Q Okay. Turning to subdivision two. You were also --

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1 This agreement also contemplated that you would provide
2 consulting services with regard to major donor gifts or donor
3 cultivation, right?

4 A Yes.

5 Q And, in fact, you never referred a major donor to the
6 NRA, correct, under this agreement?

7 A Under this agreement. I've worked with existing donors
8 under this agreement.

9 Q But you didn't point to a single new donor to the NRA
10 under this agreement, right?

11 A No.

12 Q And you didn't provide a single additional -- You
13 didn't -- Your work didn't result in a single additional donor
14 donating to the NRA, is that correct?

15 A I don't -- I don't believe that. I know what we had
16 started working on was a project to bring young wealthy men into
17 an organization, a suborganization that we call Young Guns.

18 Q Right. So you contemplated starting a new project
19 called Young Guns in Texas, right?

20 A I didn't -- I don't remember the in Texas part but yes.

21 Q It would -- You would refer potential donors to local
22 advancement of fundraising representatives in Texas, right?

23 A That's correct.

24 Q Okay. But that never really got off the ground, right?

25 A I don't know, because I retired and they -- I had no

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1 more communication at that point on these subjects. I still
2 worked with advancement offices though.

3 Q Mr. Phillips, I'm going to stop you for one second.

4 MS. CONNELL: Can the jury hear Mr. Phillips?

5 THE JUROR: Barely.

6 THE WITNESS: I'm sorry. I'll lean in here.

7 Q If you can move it closer to you, sir. Thank you.

8 Mr. Phillips, you did some work on Young Guns, right?

9 A That's right.

10 Q And you stopped it at some point because the NRA
11 stopped paying you in May 2019, right?

12 A That's right.

13 Q Okay. So, you -- At the time you stopped working on
14 it, you had only received -- you had only started discussions
15 with local advancement representatives, right?

16 A Yes.

17 Q Okay. And one of the local advancement representatives
18 you were talking to was Mr. Pond, correct?

19 A That's correct.

20 Q You had a few lunches with him?

21 A That's correct.

22 Q But you didn't identify specific prospective donors
23 that Mr. Pond was unaware of, right?

24 A That's correct.

25 Q Okay. And you didn't reach out to any prospective

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1 donors identified by Mr. Pond or by you, right?

2 A Well, the program had not made any progress when NRA
3 stopped paying.

4 Q So, in the first five months that you were receiving
5 \$30,000 a month from the NRA, plus payment for office space,
6 plus expenses, you didn't consult with Mr. LaPierre, Mr. Spray,
7 right?

8 A Correct.

9 Q And you didn't refer a single donor to the NRA,
10 correct?

11 A I don't know what came from our Young Guns work that we
12 did to begin with, but I'm unaware of any.

13 Q And you had a few lunches with Mr. Pond, but you didn't
14 move forward or reach out to any donors?

15 A That's correct.

16 Q Okay. So when the NRA cut off your contract, you had
17 been paid \$150,000 as part of your \$30,000 flat rate fee, right?

18 A That's correct.

19 Q And you had received \$3,500 per month as part of your
20 rent, correct?

21 A That's correct.

22 Q And expenses?

23 A Yes.

24 Q What's The Campfire Club?

25 A The Campfire Club is a New York club of gentlemen that

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1 are shooters -- it's a shooting club. And I was a member of
2 that. It was a networking club for me.

3 Q And you had the NRA pay for the cost of that, of
4 joining the yearly cost of The Campfire Club for you under this
5 agreement, right?

6 A Yes.

7 Q Why did the NRA stop paying you under this agreement?

8 A I don't know exactly.

9 Q Okay. Did you ever ask?

10 A No. I guessed.

11 Q I don't want you to guess, sir. You never called up
12 the NRA and say hey, I had this agreement. Why are you not
13 paying me?

14 A No.

15 Q Okay. Mr. LaPierre knew about this post-employment
16 consulting agreement, right?

17 A I believe so.

18 Q In fact, you believe so because Mr. LaPierre was in the
19 room when you executed this post-employment consulting
20 agreement, right?

21 A He was.

22 Q Okay. So there is a room with you and Mr. Brownell and
23 Ms. Meadows and Mr. LaPierre, right?

24 A That's right.

25 Q And, in fact, at the same time that you were executing

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1 your post-employment agreement, you executed a post-employment
2 agreement for Mr. LaPierre, right?

3 A I'm very unclear on the timing of that. It was at a
4 board meeting, and we were standing up in front of the board.
5 The only part I remember was executing mine.

6 MS. CONNELL: Can we bring up --

7 Q Mr. Phillips, I would like to draw your attention to
8 tab 14.

9 MS. CONNELL: That's PX 3073.

10 THE COURT: That's in the white binder?

11 MS. CONNELL: In the white binder, your Honor.

12 Q So, Mr. Phillips, for your convenience the white binder
13 has the lower number. So, please bring up Exhibit 14.

14 A Is that tab 14?

15 Q Tab 14. I'm sorry. PX 3703.

16 THE COURT: Are you going to be moving this one
17 into evidence?

18 MS. CONNELL: Are there any objections? I heard
19 none.

20 MR. FARBER: May I have a moment to find the
21 document?

22 THE COURT: Sure.

23 MR. FARBER: No objection.

24 THE COURT: Anything else?

25 MR. CORRELL: No objection, your Honor.

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1 THE COURT: It's admitted.

2 MS. CONNELL: Thank you. May this be published,
3 please.

4 Q Mr. Phillips, I'm showing you what has been marked
5 Plaintiff's Exhibit 3073. Can you please look at page 2 of this
6 document?

7 A (Examining). I have it.

8 Q Is that your signature on this page?

9 A Yes, it is.

10 Q And what's the date of your signature?

11 A May 5th, 2018.

12 Q And who else signed this document?

13 A Wayne LaPierre, Pete Brownell, Carolyn Meadows.

14 Q And it was notarized, right?

15 A Yes.

16 Q Who is it notarized by?

17 A Lisa Supernaugh. I'll spell that for you.

18 Q Yes, please. I'm sure Lori would like that.

19 A S-U-P-E-R-N-A-U-G-H.

20 Q Who is Lisa Supernaugh?

21 A Lisa was my assistant.

22 Q How many years was she your assistant for?

23 A Many.

24 Q And Ms. Supernaugh would help you oversee your work at
25 the NRA, correct? She was your assistant?

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1 A That's correct.

2 Q Okay. Mr. Phillips, this agreement is a contract
3 extension for an employment agreement for Mr. LaPierre, correct?

4 A That's correct.

5 Q And if you turn to page 1, it contemplated that he
6 would be paid \$1.3 million for the year 2019, correct?

7 MR. CORRELL: Your Honor, objection. The document
8 speaks for itself.

9 THE COURT: Overruled. I mean, that's true, but
10 you can -- I assume you're going to ask him to read more
11 than the words.

12 MS. CONNELL: I am, your Honor.

13 Q Do you see that, sir?

14 A I do.

15 Q It also called for higher payments for years 2020 to
16 2025, correct?

17 A Yes. On the next page.

18 Q Right. And if you look at the paragraph underneath
19 this it says that "During this five year period the NRA will
20 have use of your name and likeness as mutually agreed upon",
21 right?

22 A Correct.

23 Q Did you complete a business case analysis for this
24 contract extension?

25 A No.

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1 Q Did you have this contract extension approved by the
2 audit committee of the NRA?

3 A No.

4 Q Before you agreed to these amounts, did you do any
5 analysis of whether this -- this -- whether these payments were
6 based on something other than your assessment of Mr. LaPierre's
7 work?

8 A The assessment of a group of peoples.

9 Q I'm asking what you did, Mr. Phillips.

10 A I agreed with it.

11 Q Okay. But you didn't yourself do any assessment of
12 this amount? Who suggested 1.3 and 1.5 million?

13 A I don't know.

14 Q And if you turn to page 2, you see that there is an
15 additional period of time contemplated under the contract,
16 right?

17 A That's correct.

18 Q So, it calls for Mr. LaPierre to be paid \$1.5 million
19 between 2026 and 2028, right?

20 A That's correct.

21 Q And \$1.3 million from 2029 to 2030, correct?

22 A Correct.

23 Q And that would be --

24 MR. CORRELL: Your Honor, I object. This document
25 is -- purports to be an extension of a prior contract that

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1 has terms that form part of the alleged agreement. So I
2 would ask that the State be required to put the entire
3 document in if she's going to be questioning this witness
4 about the document.

5 THE COURT: You can bring that in on your
6 questioning. Go ahead.

7 Q And it called for Mr. LaPierre to be paid \$1.3 million
8 between 2029 and 2030, right?

9 A Correct.

10 Q And, Mr. Phillips, you also didn't do any separate
11 assessment of the basis for paying Mr. LaPierre this amount in
12 those years, right?

13 A That's correct.

14 Q Okay. And to your knowledge was this contract ever
15 placed before the audit committee?

16 A I'm not aware that it was.

17 Q Okay. Do you know if this contract is still in effect?

18 A I don't know.

19 Q Okay. So, I would like to move on to a slightly
20 different topic.

21 MS. CONNELL: We can take this down. Thank you,
22 Mr. Stephenson.

23 A Can I change the binder?

24 Q You can change the binder.

25 A Which one do you want?

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1 Q Actually keep the white binder. Please turn to page 1
2 of tab one.

3 MS. CONNELL: Your Honor, I received an objection
4 to one page of Exhibit PX 343, which is tab one, but I'm
5 only seeking to admit pages 1 and 2.

6 THE COURT: Okay. So, you're going to change then
7 the exhibit?

8 MS. CONNELL: Yes, your Honor.

9 THE COURT: So when you -- So you're going to --
10 It's just going to be the first two pages of Exhibit PX 343.

11 MS. CONNELL: That's exactly right.

12 THE COURT: Is there any objection to the exhibit
13 as amended?

14 MS. ROGERS: As amended, no objection.

15 THE COURT: Anyone else?

16 MR. FARBER: Can I have a moment just to look at
17 it, your Honor?

18 THE COURT: Sure.

19 MR. FARBER: (Examining).

20 A I'm ready.

21 Q Yes, sir. We're waiting.

22 MR. FARBER: Can I find out what the specific page
23 is that's being removed from the exhibit?

24 THE COURT: Everything other than the first two.

25 MR. FARBER: Pardon me?

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1 THE COURT: Everything other than the first two.

2 MR. FARBER: No objection.

3 THE COURT: All right. The first two pages are
4 admitted as PX 343 as modified.

5 Q Mr. Phillips, I'm directing your attention to page 1
6 and 2 of tab one. Do you see this document?

7 A (Examining).

8 Q Or these documents?

9 A Yes.

10 Q Okay. What is page 1?

11 A Page 1 is -- is a bill under the contract, my contract
12 with the NRA for the -- it's July billing for 2019.

13 Q So, when you billed the NRA, you billed it under the
14 name of an LLC named WHiP, capital W, capital H, small I,
15 capital P, LLC correct?

16 A That's correct.

17 Q That's an entity owned by you?

18 A That's correct.

19 Q And you would bill the NRA just showing a flat rate of
20 \$30,000, right?

21 A That's correct.

22 Q And then you would also bill the NRA \$3,500 for your
23 office space, correct?

24 A That's correct.

25 Q And you submitted an invoice like this to the NRA for

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1 every month until May, through May, correct?

2 A That's correct.

3 Q And the NRA, the last one the NRA paid was May,
4 correct?

5 A Correct.

6 Q Okay. Can we turn to page 2, please. What -- This
7 is -- this is an invoice reflecting your payment of rent,
8 correct?

9 A That's correct.

10 Q And you paid rent to an entity known First Preston HT?

11 A That's correct.

12 Q What is First Preston HT?

13 A It's -- it's a, for my purposes, it was the landlord
14 for -- in a brand new building, an office building.

15 Q Okay. First Preston HT was your landlord, right?

16 A Was my what?

17 Q Your landlord for your office, right?

18 A Yes.

19 Q Do you know any of the owners of First Preston HT?

20 A I do.

21 Q Is Ms. Richards an owner of First Preston HT?

22 A She's one of the owners.

23 Q And who is Nancy Richards?

24 A She's a friend.

25 Q You had been friends with her for a long time, correct?

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1 A I have.

2 Q And you had been romantically involved with her for
3 some time, right?

4 A No. I had been for some time.

5 Q Right.

6 A But I have not been for a long time.

7 Q When did you stop being romantically involved with Ms.
8 Richards?

9 A I didn't put it on the calendar, but it was quite some
10 time ago. Ten years or more ago.

11 Q At the time you rented from First Preston HT your
12 testimony is that you were just friends with her?

13 A That's correct.

14 Q Would you say close friends?

15 A Yeah. Still close friends.

16 Q Okay. So, just looking back at the first page of tab
17 one, Exhibit PX 343, the page 1. This invoice doesn't specify
18 any particular work you had done for the NRA, correct?

19 A That's correct. It was not required under the
20 contract.

21 Q And do you know, when you issued these invoices, how
22 the NRA knew what, if any, work you were doing under this
23 contract, right?

24 A Repeat that please.

25 Q When you issued these invoices like this invoice, you

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1 didn't know how the NRA would know whether or if you were doing
2 any work under this post-employment contract, right?

3 A Well, people within the NRA that I may have worked with
4 would know, but NRA as an entity did not know. Its officers did
5 not know.

6 Q Mr. Phillips, do you recall being deposed in this
7 action?

8 A Yes.

9 Q And when you were deposed in this action, you took an
10 oath, correct?

11 A I did.

12 Q And you took an oath to tell the truth?

13 A Yes.

14 Q And you tried to tell the truth then, right?

15 A I did try.

16 Q And you were asked questions?

17 A I was.

18 Q By my colleague Mr. Wang, correct?

19 A Yes.

20 Q And you answered those questions, right?

21 A Yes.

22 MS. CONNELL: Jessie, can we bring up Mr. Phillips'
23 testimony from 8/10.21, page 86, lines 23 to 87, line five.

24 Q So, Mr. Phillips at your deposition you were asked,
25 "How did the NRA know that you were doing any work under the

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1 terms of this agreement", right? I read that accurately?

2 A Correct.

3 Q And your answer was, "I don't know", correct?

4 A Yes.

5 Q Okay.

6 MS. CONNELL: You can take that down. Thanks,
7 Jessie.

8 Q Mr. Phillips, when you worked -- The NRA's corporate
9 headquarters are in Fairfax, Virginia, correct?

10 A Correct.

11 Q While you were CFO and treasurer of the NRA, would you
12 agree that it was an important position in the NRA?

13 A Yes.

14 Q And you had oversight over financial matters involving
15 the whole NRA, right?

16 A Yes.

17 Q Its a top officer position, right?

18 A Yes.

19 Q And so you lived -- Strike that. For a long time you
20 owned a home in Vienna, Virginia, correct?

21 A Correct.

22 Q And you lived there for a large portion of the time
23 that you worked at the NRA, right?

24 A No. There was a time early, after I joined the NRA,
25 where my ex-wife lived in that house, at that address.

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1 Q Okay. So but you lived in Vienna, Virginia for a long
2 time while you worked at the NRA?

3 A I did, right.

4 Q In 2015 you bought a property in Dallas, Texas, a home
5 in Dallas, Texas, right?

6 A Correct.

7 Q And you also lived there while you worked at the NRA,
8 correct?

9 A Correct.

10 Q And you started living in Dallas in 2015, right, at
11 least part time?

12 A At least part time.

13 Q And for the last two to three years you were NRA's CFO
14 and treasurer, you spent about 60 percent of your time in
15 Dallas, correct?

16 A That's correct.

17 Q Okay. And you would commute back and forth to work
18 part of the time in Virginia at the headquarters, right?

19 A Correct.

20 Q Okay. And you sought reimbursement from the NRA for
21 your commuting costs, right?

22 A I wouldn't call those commuting costs, but for the cost
23 of the travel. We had looked at it and determined that the cost
24 was about the same, because I was spending so much time in
25 Dallas.

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1 MS. CONNELL: Move to strike, your Honor. It was a
2 yes or no answer. I asked if he sought reimbursement.

3 THE COURT: I'm not going to strike it.

4 MR. FARBER: Judge, also Ms. Connell cut off the
5 witness in the middle of an answer. I don't think it's
6 appropriate.

7 THE COURT: If the question is yes or no on cross
8 examination, although it's a little awkward sometimes,
9 largely I'll try to keep the answers to a yes or no.

10 THE WITNESS: I understand.

11 THE COURT: But I don't think any -- anything
12 inappropriate occurred there. Go ahead.

13 Q And the NRA paid for the costs of you to go back and
14 forth between Dallas and Virginia, correct?

15 A Yes.

16 Q And after you sold your home in Vienna, Virginia you
17 sometimes stayed at hotels while you were working as NRA's CFO
18 and treasurer, right?

19 A Yes.

20 Q And you asked the NRA to pay for those costs, right?

21 A Yes.

22 Q You submitted those costs to the NRA for reimbursement,
23 right?

24 A Correct.

25 Q And the NRA paid those costs, right?

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1 A Yes.

2 Q You never submitted or identified those costs to the
3 officers compensation committee, did you?

4 A You need to describe again what kind of costs these
5 were.

6 Q Sure. The NRA paid for flights back and forth for you
7 for three years between Dallas and Virginia, correct?

8 A Correct.

9 Q And the NRA paid for costs for you to stay in hotels in
10 Virginia at times while you're working as NRA's CFO and
11 treasurer?

12 A That's right.

13 Q Who processed those reimbursement requests?

14 A Can you state that another way?

15 Q Sure. You submitted those requests for reimbursement
16 to Portia Padilla, right?

17 A Yes.

18 Q And where in the NRA organize chart does Ms. Padilla
19 fit?

20 A In the accounting services area, accounts payable
21 department, I believe.

22 Q And that would be under your supervision, correct?

23 A Yes.

24 Q Okay. Did you personally let the officers compensation
25 committee know that the NRA was paying for the costs of you to

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1 fly back and forth between Dallas and Virginia?

2 MR. CORRELL: Objection, your Honor. The question
3 assumes that the costs were compensation and that's a legal
4 issue.

5 THE COURT: Overruled.

6 Q You can answer, sir.

7 A I'm sorry. Please restate.

8 MS. CONNELL: Can you read that back, Lori. I'm
9 sorry.

10 THE COURT: Yes, please.

11 (Whereupon the above-requested testimony was read
12 back.)

13 A No.

14 Q Okay. And did you personally let the officers
15 compensation committee know that the NRA was paying for the cost
16 of your hotel stays in Virginia while you were working as NRA
17 CFO and treasurer?

18 MR. CORRELL: Objection. Same objection. It
19 assumes that the expense at issue is properly characterized
20 as compensation and that there was a requirement to submit
21 that to the compensation committee.

22 THE COURT: Overruled. It doesn't assume either of
23 those things.

24 Q You can answer that.

25 A I know. I'm confused. That -- that I would be staying

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1 in hotels in Virginia when I -- when I -- in Virginia, correct?

2 Q Yes. Mr. Phillips, you had the NRA pay for your stays
3 in Virginia, right?

4 A I got it. Yes.

5 Q And did you tell the officers compensation committee
6 that the NRA was paying for your hotel stays in Virginia while
7 you were NRA's CFO and treasurer?

8 A No.

9 Q Okay. And, Mr. Phillips, did Mr. LaPierre know that
10 you were working part time from Dallas during the last years of
11 your services as NRA's CFO and treasurer?

12 MR. CORRELL: Objection, your Honor.

13 Q To your knowledge.

14 THE COURT: It's overruled.

15 A Please restate that.

16 Q To your knowledge did Mr. LaPierre know that you were
17 working part time in Dallas during the last three years of your
18 service as CFO and treasurer?

19 A I don't know what he knew.

20 Q Okay. Did you ever tell him that you were living in
21 Dallas part time?

22 A I thought he knew I had bought a house there.

23 Q Okay. What is the basis for your thinking he knew?

24 A I can't tell. I don't have an answer to that.

25 Q Okay. Mr. Phillips, you're familiar with a company

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1 called HomeTelos, correct?

2 A Correct.

3 Q That's H-O-M-E-T-E-L-O-S. HomeTelos is a software
4 development company, correct?

5 A Correct.

6 Q HomeTelos was a vendor of the NRA from approximately
7 2014 to 2017, right?

8 A That's correct.

9 Q And HomeTelos is owned by an individual named Nancy
10 Richards, correct?

11 A Correct.

12 Q Ms. Richards is the person you identified who was your
13 landlord or had an ownership interest First Preston HT, right?

14 A Correct.

15 Q Ms. Richards is the one you identified as a close
16 friend, right?

17 A Right.

18 Q And, Mr. Phillips, I would like to show you a document
19 that's been marked PX 2570. It's tab nine in your white binder.
20 Can you please take a look at that.

21 A Is that going to come up on the screen too?

22 Q It will. It will.

23 A Can I wait?

24 THE COURT: See if there are any objections to it.

25 MR. FARBER: One moment, your Honor, please. No

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1 objection.

2 MR. CORRELL: No objection, your Honor.

3 MS. ROGERS: No objection.

4 THE COURT: It is admitted.

5 MS. CONNELL: Thank you, your Honor.

6 Q Mr. Phillips, you can see it on the screen now if that
7 makes it easier.

8 A It does.

9 Q You might want to keep that handy, because I may ask
10 you to page through it a little bit.

11 A Okay.

12 Q For now let's take a look at page 1. This is a
13 contract review sheet, right?

14 A (Examining). Yes.

15 Q And you prepared this contract review sheet, right?

16 A Most of that is my writing.

17 Q Right. And it's a contract review sheet for an
18 agreement between HomeTelos and the NRA, correct?

19 A That's correct.

20 Q And it called for HomeTelos to be paid \$71,848 a month
21 for 14 months, right?

22 A That's correct.

23 Q And this agreement was negotiated by you and Tony
24 Hayes, right?

25 A Correct.

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1 Q And the responsible officer approval for this contract
2 is you, right?

3 A Correct.

4 Q If you look down under the third line of signature
5 block, right, or the second line we'll start out with, there was
6 no signature from purchasing review, right?

7 A Correct.

8 Q And you signed both for financial and business review,
9 right?

10 A Correct.

11 Q And for the treasurer's office?

12 A Yes.

13 Q And the date of your signature is September 2nd, 2014,
14 right?

15 A That's right.

16 Q And if you turn to page 2, this is the business case
17 analysis sheet for this contract, right?

18 A That's correct.

19 Q And it called for a yearly dollar amount of \$215,544 in
20 2014?

21 A Yes.

22 Q And \$790,328 in 2015, correct?

23 A That's correct.

24 Q And you and Mr. Hayes negotiated that amount?

25 A Actually Mr. Hayes and his department negotiated that

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1 amount. I wasn't involved in that.

2 Q But on page 1 you said it was negotiated by you and Mr.
3 Hayes, right?

4 A Well, I was aware of the negotiation going on.

5 Q Okay. The analysis of this contract was prepared by
6 you, right?

7 A That's correct.

8 Q And moving on to page 12. If we can go to page 12 of
9 this document for just a second. That's your signature on this
10 contract, right?

11 A (Examining). Yes.

12 Q I'm sorry. Take a step back, Mr. Phillips. Following
13 the business case analysis is the NRA's contract with HomeTelos,
14 right? If you look at pages three --

15 A Hang on.

16 Q -- through 17, that's your contract, the NRA contract
17 with HomeTelos, right?

18 A That's correct.

19 Q So, on page 12 you signed that contract on behalf of
20 the NRA, right?

21 A I see what you have. Yes.

22 Q Okay. So, HomeTelos ultimately was paid more than
23 \$1.4 million for services performed for the NRA, correct?

24 A I believe so.

25 Q And at the time that you entered into this agreement on

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1 behalf of the NRA with HomeTelos, you didn't disclose your
2 relationship with Ms. Richards to the audit committee, right?

3 A I don't think it was required but no.

4 Q Okay.

5 THE COURT: Counsel, is there -- is the first page
6 of the contract missing from this exhibit? It looks like
7 the first page of the contract is page 2.

8 MS. CONNELL: Your Honor, I believe this is how it
9 was presented to us, but I will correct it if I can confirm
10 that. Maybe we can -- Can we still publish it to the jury
11 and I'll confirm?

12 THE COURT: Yes. I'm anticipating a question when
13 somebody takes a look at it because it starts on page 2.

14 MS. CONNELL: If you look at the Bate stamp number.

15 THE COURT: It's all consecutive of what was in the
16 package but the contract itself.

17 MS. CONNELL: Right. We'll look into that.

18 THE COURT: Okay. I -- I just wanted to let you
19 know I'm reading along.

20 MS. CONNELL: Thank you. I have no doubt of your
21 close attention, your Honor.

22 Q Mr. Phillips, you said that you didn't think it was --
23 that you were required to disclose this to the audit committee,
24 is that right?

25 A That's correct.

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1 Q But ultimately -- Actually can we stop there for one
2 second. Who is Lisa Barrentine?

3 A She was the president of HomeTelos.

4 Q She was a partner of Ms. Richards, right?

5 A Not exactly, but for this purpose you can say partner.

6 Q You ultimately did disclose your contract to the audit
7 committee after it was over, right?

8 A That's correct.

9 Q Can you please turn to tab 13.

10 MS. CONNELL: This is PX 2673. I would ask if
11 there are any objections.

12 MR. FARBER: Could I have a moment to look at the
13 document, your Honor?

14 THE COURT: Yes.

15 MR. FARBER: (Examining).

16 MS. ROGERS: No objection.

17 MR. FARBER: No objection.

18 MR. CORRELL: No objection, your Honor.

19 THE COURT: It's admitted.

20 MS. CONNELL: Thank you.

21 Q Mr. Phillips, the contract between NRA and HomeTelos
22 ended in 2017, correct?

23 A I don't -- I don't -- I don't recall when it ended.

24 Q Okay. So, one second. I'm sorry. I'm taking you back
25 to the contract so you can see it. If you look at tab nine,

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1 Mr. Phillips. If you look at page 2 of tab nine, the business
2 case analysis sheet.

3 A (Examining).

4 Q At the top it says "Yearly dollar amount for 2014 and
5 2015", right?

6 A Correct.

7 Q But the HomeTelos arrangement with the NRA actually
8 continued to 2017, right?

9 A I -- I don't know. I really wasn't involved much with
10 this contract.

11 Q So at the time -- Let me ask you a question. If you
12 look at page 2 of 2013 it says this is your disclosure, right?

13 THE COURT: I'm sorry. Which exhibit are you in
14 now?

15 MS. CONNELL: Sure.

16 MR. FARBER: I believe we're talking about 2673 not
17 2013.

18 MS. CONNELL: I'm sorry.

19 MS. ROGERS: To be clear, your Honor, so the
20 document isn't misstated, this is an e-mail to Mr. Phillips
21 from himself.

22 THE COURT: I'm not sure what document we're
23 talking about.

24 Q If you could look at tab 13.

25 MS. CONNELL: Counsel, PX 2673. I believe your

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1 Honor has admitted this already, if I'm not mistaken.

2 THE COURT: Yes.

3 Q What is page 1 of this document, Mr. Phillips?

4 A That's the back of the first page?

5 Q Yes. The front page.

6 A Okay. It's an e-mail to me from me.

7 Q And what is it dated?

8 A It is dated 2018, September 6th.

9 Q So in September 2018 you sent an e-mail to yourself,
10 right?

11 A That's correct.

12 Q Relating to the disclosure to HT Solutions, right?

13 A That's correct.

14 Q And page 2 is a -- the disclosure, right?

15 A Yes.

16 Q And did you -- You wrote this disclosure, right?

17 A (Examining). I believe someone wrote it for me.

18 Q Who wrote it for you, Mr. Phillips?

19 A I don't know.

20 Q Is it possible that counsel wrote it for you?

21 MS. ROGERS: Objection.

22 THE COURT: You can ask it as a direct question.

23 Q Mr. Phillips, who -- if you didn't write it, who do
24 you -- Strike that.

25 MS. ROGERS: The witness testified he doesn't know.

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1 Q Mr. Phillips, this is your attempt to disclose your
2 relationship with Ms. Richards relating to the HomeTelos
3 contract, correct?

4 A Yes.

5 Q And what prompted you to make this disclosure?

6 A I think you've heard testimony earlier that the NRA was
7 trying to bring its compliance up to a level.

8 Q And so was it suggested that you should make a
9 disclosure regarding HomeTelos?

10 A I really don't remember where this came from.

11 Q As you sit here today you have no recollection of how
12 or why you made this disclosure regarding HomeTelos?

13 A I could guess why. I just don't recall the time.

14 Q I don't want you to guess.

15 A I know.

16 Q Do you know why as you sit here today you made a
17 disclosure regarding HomeTelos?

18 A No.

19 Q Okay. If you look at paragraph 5 -- I'm sorry. Strike
20 that. So, you don't know why you made the disclosure. Can you
21 tell me about how this wording of this disclosure came about?

22 A I don't know.

23 Q So, you didn't write this?

24 A I don't recall.

25 Q Is it -- Do you not recall if you wrote it or you

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1 didn't write it?

2 A I don't recall.

3 Q Okay. Mr. Phillips, do you know whether the contents
4 of this disclosure are accurate?

5 A (Examining). They appear to be.

6 Q Do you know whether this disclosure was submitted to
7 the audit committee?

8 A I don't know.

9 Q So, Mr. Phillips, you don't know if you wrote this, and
10 you don't know if it was submitted to the audit committee, is
11 that accurate?

12 A That's accurate.

13 Q Is it true to the best of your knowledge that HomeTelos
14 was paid approximately \$1.3 million between September 2014 and
15 May 2017 as it says in paragraph 5?

16 A I have no reason to believe this is not a true
17 statement.

18 Q To your knowledge was any other business case analysis
19 prepared in relation to HomeTelos than the one we reviewed?

20 A No.

21 Q And to your knowledge was any other contract prepared
22 with regard to HomeTelos other than the one we've looked at?

23 A No.

24 Q Okay. Mr. Phillips, Ms. Richards and Ms. Barrentine
25 didn't have an expertise in online training, right?

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1 A I don't -- I don't know all their qualifications. They
2 had become a big software company though.

3 Q Their specialty was in real estate, correct?

4 A Originally.

5 Q So, when you say the contract was -- the contract --
6 When it says here "The contractor was well qualified to perform
7 the required services", you don't particularly know whether
8 that's true, right?

9 A I do know more.

10 Q But you didn't prepare this?

11 A I did not.

12 Q And you don't know whether they were particularly
13 qualified to perform the services related to the NRA Outdoors
14 Outfitter Program, right?

15 A I do.

16 Q You did at the time that you entered into the
17 HomeTelos -- that they entered into the HomeTelos agreement,
18 right?

19 A Yes. Yes.

20 Q What other companies did you look at as part of that
21 agreement? Strike that. At the time that you entered into the
22 HomeTelos agreement on behalf of the NRA, had the NRA performed
23 an RFP for those services?

24 A I don't know how they got -- I don't know who
25 originated it. Within NRA it Tony Hayes and a former general

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1 operations executive director at NRA who had the hunter services
2 under his command. They brought it to me. I did not seek this
3 out.

4 Q So, Mr. Phillips, you don't know, when you executed the
5 HomeTelos contract, whether the NRA had performed an RFP for
6 those services, right?

7 A I did not know.

8 Q Did you check to see if they had?

9 A I did not.

10 Q And you did not disclose your relationship with Ms.
11 Richards until after that contract term was over, is that
12 correct?

13 A That's correct.

14 Q And, in fact, isn't it true, Mr. Phillips, that during
15 the time of the HomeTelos contract, you purchased a home with
16 Ms. Richards, correct?

17 A No.

18 Q You did not purchase a home with Ms. Richards in 2015?

19 A No.

20 Q Did you ever purchase a home with Ms. Richards?

21 A No.

22 Q Mr. Phillips, can you please turn to, in the black
23 binder, to what is marked as tab 41. It is PX 732.

24 A Would that be on the screen?

25 Q Not yet.

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1 THE COURT: Tab 41.

2 THE WITNESS: Okay.

3 THE COURT: Any objection to this one?

4 MR. FARBER: At the moment I don't see the exhibit,
5 your Honor, nor do I think counsel for the others.

6 MR. CORRELL: I don't have it either.

7 THE COURT: It's not in your binder?

8 MR. FARBER: It's not on the list of exhibits that
9 was provided.

10 MS. ROGERS: I think it was disclosed late or last.

11 MS. CONNELL: We added some exhibits last night,
12 your Honor.

13 THE COURT: Last night?

14 MS. CONNELL: Yeah. They were exhibits that were
15 already on our exhibit list. They were added to the list
16 for Mr. Phillips as disclosed exhibits previously.

17 THE COURT: To facilitate this, it's a one page
18 document. Maybe -- What we're going to do is we're going to
19 put it on the screen. For now we're going to keep the jury
20 screen dark just until we figure this out. Or we're going
21 to try. Okay. You can put it on the screen.

22 MS. CONNELL: Apologize, your Honor, for the
23 difficulty.

24 THE COURT: It should be on your screen now.

25 Q Mr. Phillips, can you look at this document, please?

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1 A (Examining). I see it.

2 THE COURT: Before we do it, now that they have it,
3 is there any objection to the questioning on this?

4 MR. FARBER: I -- I don't have objections to
5 questions, your Honor, but I do have an objection to it
6 being offered.

7 THE COURT: On what ground?

8 MR. FARBER: The ground that I don't have a record
9 of it being identified or provided to us.

10 THE COURT: Well, there is a Bates number in
11 discovery. So -- (pause).

12 MR. FARBER: Yeah. Looking at some e-mails I
13 believe it was provided to us at 10:00 a.m. this morning,
14 your Honor, which was during court.

15 MS. CONNELL: I believe we identified the Bates
16 number last night, your Honor. We provided an exhibit list
17 of documents we intended to use with this witness well in
18 advance.

19 THE COURT: Assuming I'm not going to exclude it
20 based on the exact timing of when you got an e-mail about
21 it, do you have a substantive objection to the exhibit?

22 MR. FARBER: Assuming they lay a foundation, no.

23 MS. ROGERS: NRA has none.

24 THE COURT: I'll admit it.

25 MS. CONNELL: Thank you.

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1 Q So, Mr. Phillips, in -- you currently live at a
2 property on Gilbert Avenue in Dallas, Texas, right?

3 A That's correct.

4 Q And 2015 you contemplated at least buying this property
5 with Ms. Richards, correct?

6 A I don't recall ever talking about buying it with her.

7 Q Is that Ms. Richards' signature on this document?

8 A (Examining). Yes, it is.

9 Q And did you ultimately purchase this house with Ms.
10 Richards?

11 A No.

12 Q But you contemplated it in 2015, correct?

13 A I don't recall that. I remember we saw the house when
14 we were together.

15 Q Do you doubt that this is your signature on this
16 document?

17 A No.

18 Q And so it is your signature on this document?

19 A It is.

20 Q You ultimately went through with this purchase,
21 correct?

22 A I went through the purchase, but not this purchase that
23 you're looking at. I bought it outright by myself.

24 Q By yourself without Ms. Richards?

25 A Yes.

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1 Q Mr. Phillips, you have gone on trips with Ms. Richards,
2 right?

3 A That's correct.

4 Q And in 20 --

5 MS. CONNELL: You can take this down. Thank you,
6 Jessie.

7 Q In 2018 you took a trip, a yacht trip with Ms.
8 Richards, right?

9 A Correct.

10 Q You won a charity auction, a yacht trip that you -- you
11 won a yacht trip as part of a charity auction, right?

12 A Not exactly.

13 Q At a charity event the person who bid on a yacht trip
14 didn't pay for it, so you paid the money and therefore won the
15 yacht trip, right?

16 A Yes. It was not at the event. It was later.

17 Q Right. So, you and Ms. Richards in 2018 took a yacht
18 trip to Rome, correct?

19 A Italy.

20 Q Rome, Italy or just Italy generally?

21 A Italy.

22 Q A sightseeing tour of Italy?

23 MR. FARBER: Can we ask Ms. Connell to not talk
24 over Mr. Phillips. It's hard for me to hear the answers.

25 THE COURT: I was curious whether it was going to

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1 be Rome, Georgia.

2 MS. CONNELL: Hard to get to by yacht, but I'm not
3 a yacht expert.

4 THE COURT: You never know.

5 Q Mr. Phillips, you paid for that yacht trip, right?

6 A Yes.

7 Q How much did you pay?

8 A \$25,000.

9 Q And what was the name of the yacht that you were on?

10 It was The Grand -- I'm sorry.

11 A I needed help. The Grand Illusion.

12 Q Right. And that was a yacht trip, the yacht owned by
13 the McKenzies, right?

14 A One. There is an Illusion and a Grand Illusion.

15 Q This is one of the yachts owned by the McKenzies?

16 MR. FARBER: Again, your Honor, Ms. Connell is
17 beginning her questions while Mr. Phillips is answering, and
18 it's difficult at least for me to hear and not fair to the
19 witness.

20 THE COURT: Let's try to do better to separate the
21 questions and the answers, okay.

22 MS. CONNELL: Yes, your Honor.

23 Q Mr. Phillips, that's one of the yachts owned by the
24 McKenzies, correct?

25 A That's correct.

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1 Q And so you -- after that trip you disclosed it to the
2 audit committee, right?

3 A That's correct.

4 Q And you disclosed it to the audit committee because the
5 yacht was owned by an NRA vendor, right?

6 A That's correct.

7 Q Okay.

8 THE COURT: We're about two minutes away from the
9 end of the morning.

10 MS. CONNELL: I was going to move on to a new
11 topic, your Honor. Maybe this is a good place to break.

12 THE COURT: Okay. It is a good time to break.
13 We're going to break for the day. We are -- The Court is
14 closed on Monday. So, I will see you all Tuesday at 9:30.
15 Okay. Have a good weekend. Remember the instructions. Not
16 to discuss the case either among yourselves or with anyone
17 else over the weekend. And have a good few days off.

18 THE COURT OFFICER: All rise. Jury exiting.

19 (Whereupon the jury panel departed the courtroom.)

20 THE COURT: Just, Mr. Phillips, just a reminder
21 that over the weekend, although it's odd, you are still
22 essentially on the stand, so it's as if we were continuing.
23 So during that period you should not discuss the substance
24 of your testimony with anyone and that includes your
25 counsel. Okay.

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1 MR. FARBER: Judge, I object to that. As
2 Mr. Phillips is my client, he has a due process right to
3 consult with me about this case, and I don't think --

4 THE COURT: He can consult with you about the case
5 but not about his testimony.

6 MR. FARBER: Well, I think the two are intertwined,
7 your Honor.

8 THE COURT: That's not true.

9 MR. FARBER: Understood.

10 THE COURT: This is a common instruction. You
11 couldn't have a break and talk to him about his testimony
12 now. So the same goes for during a break. You could talk
13 about the case, but you can't discuss his testimony while
14 he's on the stand.

15 MR. FARBER: Substantive testimony.

16 THE COURT: Substantive. You can talk about
17 logistics and things like that.

18 All right. Tuesday, 9:30. I have a sneaky
19 suspicion I'll be hearing from you maybe in between, but I
20 hope you all have a pleasant weekend and we'll see you then.

21 MS. ROGERS: Thank you, your Honor.

22 MS. CONNELL: Thank you, your Honor.

23 (Witness excused.)

24 (Whereupon the trial was adjourned to January 16,
25 2024 at 9:30 a.m.)

LAS

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

-----X
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against- Index No. 451625/20

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

Defendants.

-----X

CONTINUED JURY TRIAL

60 Centre Street
New York, New York
January 16, 2024

B E F O R E: HONORABLE JOEL M. COHEN,
Supreme Court Justice

A P P E A R A N C E S:

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LORI SACCO
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1 MS. CONNELL: Your Honor, I understand that the
2 Court is actively working on the electronic display system
3 which we prepared before Mr. Phillips resumes taking the
4 stand. Can we just have a few minutes?

5 THE COURT: Yes. I wanted to chat briefly about
6 one of the letters over the weekend. So, I saw just briefly
7 the letter from Mr. Fleming about the Tedrick transcript.
8 You know, I did see occasionally in the rebuttal sections
9 and elsewhere there were some areas where questions were cut
10 off and it seemed a little incomplete, and where it was very
11 clear that the whole question was suppose to be included I
12 tried to put a note. And I did see some others where there
13 was an answer and then the shading was gone. So the People
14 were not going to include the rest of the testimony. My
15 view of it was, you know, I wasn't going to insert myself to
16 say well, you know, it might make sense to put the rest of
17 the testimony where the witness says just a flat no to
18 something and then there were some follow-up questions.

19 So, you know, I -- I take it from the back and
20 forth that there was no formal protocol about what to do
21 with the reply designations that the State had put in. I
22 will say that just the one that Mr. Fleming pointed out, it
23 does seem to me that if that was not intended to leave out
24 the rest of the testimony where he is just asked the part
25 that was included was do you believe the 2020 990 form was

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1 accurate and the answer is no as of today no, I think that
2 was the end of the testimony. I did notice when I was
3 reading through it that there were some other questions
4 after that.

5 So, again my assumption when I was reading it all
6 is that everybody knew all of the designations. So, my
7 inclination is to supplement by playing those other few
8 questions just to round out what he meant by the no. Does
9 the State have an objection to that? Putting aside whether
10 it's anyones, you know, fault about how the designation
11 process was suppose to work.

12 MS. CONNELL: Your Honor, I -- I would just say in
13 regard to formal protocol, we did have a formal protocol. I
14 have to say the deposition designations have been pretty
15 torturous. We'll be getting Mr. Sprays' to you this
16 morning. We tried to cut it down and ended up with new
17 counter designations and going back and forth.

18 With regard to Mr. Tedrick, we did give them to all
19 parties to review.

20 THE COURT: The reply.

21 MS. CONNELL: Yes, with everything highlighted,
22 replies highlighted. That was all there. And I really
23 frankly I don't have any objection to the jury hearing a
24 full answer, full anything. But I do sort of object to just
25 that being highlighted now at this point because counsel

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1 didn't review this earlier, especially when we're -- we
2 spent the entire weekend going back and forth on other
3 designations, other cuts. Again, as I said, additional
4 counter designations when we cut back on our designations.
5 I feel like the defendants will have a time in their case in
6 chief to play what they want and that should be the time.

7 THE COURT: Right. I was going to say that. One
8 way or the other it's going to come in, because I think we
9 recognize that with Tedrick and Meadows, since their
10 unavailability came up so late, the defendants will be free
11 to play whatever excerpts they want. So I guess it's a
12 question of whether -- inputting it in right now will be a
13 little jarring, and it may make sense to do it all as part
14 of whatever the defendants are doing with Mr. Tedrick.

15 Mr. Fleming since you were the one that brought
16 this up, I'm happy to have this ultimately be in front of
17 the jury, the other three questions and answers. It's going
18 to come a little bit out of left field if we just did it
19 right now. It may make more sense to be part of the defense
20 case. What do you think?

21 MR. FLEMING: I would disagree, your Honor. Couple
22 things just sort of, you know, factual background. The
23 parties went through designations and counter designations
24 pretty standard in my view. And then the part that
25 Ms. Connell is saying we had a chance to review was after it

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1 was submitted to the Court. Maybe it's my error and you
2 know I'm not looking to blame anyone here. The fact is my
3 presumption, and I think all the defendants presumptions, is
4 that was a mere transmittal to your Honor of the work that
5 we had done.

6 THE COURT: The version that came to me that had
7 the red shaded areas which were the reply, you saw that only
8 when I saw that?

9 MR. FLEMING: I didn't even see it then, your
10 Honor. I heard it in court on Friday. And it struck me
11 that didn't make any sense.

12 THE COURT: Let me put it this way. You received
13 it.

14 MR. FLEMING: Yes. I had an opportunity to see it
15 on the fifth, only after it went to the Court. As I said, I
16 viewed that as a mere transmittal. Didn't feel the need to
17 check up on the Government's fidelity to what we talked
18 about. I'm also concerned, highly concerned that the jury
19 is now sitting with this misimpression for what could be
20 weeks before defendants are able to correct it. And I just
21 think that would be unfair.

22 MS. CONNELL: Your Honor, may I just quickly make a
23 correction? Your Honor, we agreed on a protocol that
24 included reply designations. You're correct on putting your
25 finger on the fact that we weren't told, it wasn't even

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1 substantiated that Mr. Tedrick and Ms. Meadows would be
2 unavailable until literally the first week, and we acted as
3 quickly as we could. Those reply designations were
4 literally you could see reply designation. They were
5 highlighted I think too.

6 THE COURT: They were sent to the defendants the
7 same time they were sent to the Court?

8 MS. CONNELL: Yes, your Honor. Unfortunately as a
9 result of --

10 THE COURT: Again I recognize it was a quick
11 process. I'm -- I'm not throwing anybody under the bus in
12 terms of fault here. But I am going to -- between the two
13 witnesses today, what I would like to have you guys do is
14 tee up just the last question that went to Mr. Tedrick, I
15 think it was the very last one, and add to that the three
16 additional questions and answers from page 327, lines three
17 through nine. And I'll just give a very short statement to
18 them saying inadvertently a short section was -- was not
19 included, and so we're just going to play you the rest of
20 that testimony. I think Mr. Fleming's point is well taken,
21 that it probably is better to do it sooner rather than
22 later. It would have been better to do it the next day but
23 we're all working hard. So, at least now though going
24 forward everybody should know what the -- what the protocol
25 is. So, that's what I'll do. Can that be ready to go after

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1 Mr. Phillips is done?

2 MS. CONNELL: We could check, your Honor. It
3 sounds like it's doable.

4 THE COURT: It sounds like it's doable, okay. Is
5 that sufficient? I don't want to interrupt Mr. Phillips'
6 flow.

7 MR. FLEMING: Completely sufficient, your Honor.
8 Thank you.

9 THE COURT: All right. The jurors are now ready.
10 Are we still waiting for anything on the --

11 MS. CONNELL: Your Honor, we have one question.
12 The witness' binders, we're having trouble locating.

13 THE COURT: Were we downstairs?

14 MS. CONNELL: We were here and we believe they were
15 left here.

16 THE COURT: Maybe over here. I can give them mine.

17 THE COURT OFFICER: I got them.

18 THE COURT: They were locked away for safekeeping.

19 MS. CONNELL: Your Honor, may we add two exhibits
20 real quickly?

21 THE COURT: You want those up at the witness?

22 MS. CONNELL: Yes.

23 THE COURT: The ones that the officer just gave you
24 should be up here?

25 MS. CONNELL: Yes. We're just going to add two

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1 exhibits that we e-mailed to the defendants last night.

2 THE COURT: Got it. All right. So, why don't we
3 get the jurors ready then.

4 Mr. Phillips, do you want to come up and take your
5 spot up here. Good morning.

6 Counsel, do you want to add those to mine? I can
7 just follow along. I'm adaptable. Thank you. Are we ready
8 for the jury?

9 MS. CONNELL: We are, your Honor. Your Honor,
10 there is yet a third binder. We haven't used exhibits from
11 it.

12 THE COURT OFFICER: All rise. Jury entering.
13 (Whereupon the jury panel entered the courtroom.)

14 THE COURT: Okay. Have a seat. Welcome back
15 everyone. Very impressed that you all fought your way here
16 through the snow. Thank you for that.

17 Okay. Mr. Phillips, just a reminder that you are
18 still under oath. Is that okay?

19 THE WITNESS: Yes, sir.

20 W I L S O N P H I L L I P S, after having been previously duly
21 sworn by the court clerk, was examined and testified further as
22 follows:

23 THE COURT: Remember to stay close to the
24 microphone. Counsel, you may continue.

25 MS. CONNELL: Thank you, your Honor.

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1 CONTINUED DIRECT EXAMINATION

2 BY MS. CONNELL:

3 Q Mr. Phillips, you didn't discuss your testimony with
4 anyone over the weekend, right?

5 A I did not.

6 Q Perfect. Mr. Phillips, you've been here while we've
7 discussed the name of a company called Ackerman McQueen, right?

8 A Correct.

9 Q And you're familiar with Ackerman McQueen, right?

10 A Yes.

11 Q While you were CFO and treasurer of the NRA, Ackerman
12 McQueen was one of the NRA's largest vendors, right?

13 A That's right.

14 Q Okay. It was a PR agency primarily, right?

15 A Yes.

16 Q Meaning public relations, correct?

17 A Yes.

18 Q And one of its founders was Angus McQueen, right?

19 A That's correct.

20 Q Okay. Did you meet with representatives of Ackerman
21 McQueen while you were with the NRA?

22 A Yes.

23 Q And did Mr. LaPierre?

24 A Yes.

25 Q Mr. LaPierre often met with Agnes McQueen to discuss

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1 Ackerman's work for the NRA, correct?

2 A Correct.

3 Q And you sometimes took part in those meetings, right?

4 A Yes.

5 Q Did you ever see Mr. McQueen yell at Mr. LaPierre?

6 A I don't believe so.

7 Q Okay. The meetings were usually held at Ackerman's
8 offices in Dallas or Oklahoma City, right?

9 A Right.

10 Q And the NRA had contracts with Ackerman McQueen called
11 services agreements, correct?

12 A That's correct.

13 Q Mr. Phillips, I would like you to turn to tab 33. I
14 think it should be in one of the black binders.

15 A I have it.

16 Q Okay. Can you please take a look at that document,
17 sir?

18 (Whereupon the witness complied with the above
19 request of counsel.)

20 Q Have you ever seen this -- oh, I'm sorry, Mr. Phillips.
21 Let me know when you have it.

22 MS. CONNELL: Your Honor, this is tab 33, which is
23 PX 506 for identification.

24 THE COURT: Okay. Is there any objection to this
25 one?

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1 MR. FARBER: No, your Honor.

2 MS. ROGERS: No objection.

3 THE COURT: It's admitted.

4 MS. CONNELL: Thank you.

5 Q Mr. Phillips, are you there at tab 33?

6 A Yes. Yes, I am.

7 Q Thank you. Have you seen this document before?

8 A I don't -- I don't recall. There was a serves
9 agreement.

10 Q Can you please turn to page 12 of the agreement.

11 THE COURT: Counsel, hang on one second. I think
12 the screens are not quite ready.

13 MS. CONNELL: Sure.

14 A I have it.

15 Q Okay. And is that Wayne LaPierre's signature?

16 A Yes.

17 Q And who else has signed this document?

18 A Bill Winkler, Mr. William Winkler.

19 Q Who was Mr. Winkler?

20 A Ackerman McQueen's chief financial officer.

21 Q And if you turn back to page 1, this is a services
22 agreement dated May 1st, 1999, correct?

23 A That's correct.

24 Q And you received a copy of this agreement at that time,
25 right?

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1 A I would expect so.

2 Q Okay. Under this agreement Ackerman McQueen was
3 suppose to be paid by the NRA in two primary ways, is that
4 right?

5 A I'm sorry. Can you repeat that.

6 Q Sure. Under this agreement Ackerman McQueen was
7 suppose to be paid from the NRA in two primary ways, correct?

8 A I'd have to read this. I don't recall how -- how we
9 were suppose to pay them.

10 Q Mr. Phillips, I direct your attention to page 4 of the
11 agreement. Do you see the bottom of the page where it says
12 "compensation"?

13 A Yes.

14 Q So, this provides that one way Ackerman would be paid
15 was an \$89,000 per month flat fee, correct?

16 A Correct.

17 Q And another way it was to be paid was on commissions
18 for advertising, sales and that type of things, correct?

19 A That's correct.

20 Q Please turn to page 6 and to (d) especially. Under
21 this agreement any special assignments not provided for in the
22 two types of payments we discussed must be approved in advance
23 and in writing by the executive vice president, correct, or his
24 designee?

25 A (Examining). That's what this provision says.

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1 Q And at the time of this agreement Wayne LaPierre was
2 the executive vice president, right?

3 A That's correct.

4 Q And Mr. LaPierre to your knowledge spoke to Ackerman
5 McQueen about special projects, right?

6 A Right.

7 Q And he negotiated the work that Ackerman was going to
8 do, right?

9 A Yes.

10 Q And this agreement automatically renews, correct?

11 A Can you point me to the provision?

12 Q Sure. If I could direct your attention to page 10 at
13 the bottom of the page, sir.

14 A (Examining).

15 Q And to the second -- the -- the first -- I'm sorry.
16 The last full sentence that begins with "Without such written
17 notice".

18 A (Examining). Yes.

19 Q Mr. Phillips, this was the governing agreement between
20 Ackerman McQueen and the NRA until 2017, is that right?

21 A I don't recall when it changed.

22 Q Do you know of any other agreement between the time
23 this agreement was executed in 2017?

24 A I do not.

25 Q Okay. Mr. Phillips, can you please turn to tab 34.

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1 This is a document marked PX 3145.

2 MS. CONNELL: I don't believe I received any
3 objections on this, your Honor.

4 MS. ROGERS: No objection.

5 THE COURT: Are you offering it?

6 MS. CONNELL: Yes.

7 THE COURT: It's admitted.

8 MS. CONNELL: Thank you.

9 Q Mr. Phillips, have you ever seen this document before?

10 A (Examining). I'm not familiar with it. I don't recall
11 seeing this.

12 Q Mr. Phillips, can you please take a look at page 11 of
13 this agreement.

14 A I have it.

15 Q Do you see that there are signatures there?

16 A I do.

17 Q Whose signatures are those?

18 A Allan Cors, who was president of the NRA at that time,
19 and Melanie Montgomery.

20 Q Who is Ms. Montgomery?

21 A She's, I don't know what position exactly, but Ackerman
22 McQueen, she was one of the people responsible for their
23 connection with NRA.

24 Q So, Ms. Montgomery worked for Ackerman McQueen while
25 you were CFO and treasurer, correct?

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1 A That's correct.

2 Q Is it fair to say that you would speak with Ms.
3 Montgomery on occasion?

4 A Yes.

5 Q And is it fair to say that you would discuss Ackerman
6 McQueen's business with the NRA with Ms. Montgomery?

7 A I would.

8 Q And you also would discuss Ackerman McQueen's business
9 with the NRA with Bill Winkler, right?

10 A Yes.

11 Q Okay. Turning back to the first page of this
12 agreement, Mr. Phillips, do you see that it was dated the 30th
13 day of April, 2017?

14 A I do.

15 Q Mr. Phillips, do you -- do you believe that this is the
16 2017 services agreement between Ackerman McQueen and the NRA?

17 A I believe so.

18 Q Okay. Please turn to page 9 of this agreement. And I
19 would like to draw your attention to Roman numeral nine in
20 particular. Mr. Phillips, in terms of additional work or
21 directions given to Ackerman McQueen, this agreement is clear
22 that Ackerman McQueen is authorized to act only upon written
23 communications received from the NRA executive vice president or
24 his designee, correct?

25 A That's correct.

LAS

Direct-Phillips-Connell

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1 Q And at that time that was Wayne LaPierre?

2 A Yes.

3 Q Were you his designee for communications with Ackerman
4 McQueen?

5 A I don't believe so.

6 Q Okay. To your knowledge was this agreement ever
7 subject to competitive bidding?

8 A I don't think so.

9 Q Okay. And there was no business case analysis
10 completed for this, correct?

11 A No.

12 Q I would direct your attention back to page 1 for a
13 second. This agreement also incorporates an agreement with an
14 entity known as Mercury Group, right?

15 A That's right.

16 Q What is Mercury Group?

17 A Mercury Group was a wholly owned subsidiary of Ackerman
18 McQueen that dealt with more issue based advertising and -- and
19 advice.

20 Q Was Mercury Group headed up by a different leadership
21 team than Ackerman McQueen?

22 A I don't know from their perspective, but from NRA's
23 perspective they were mostly the same people with -- with some
24 differences maybe.

25 Q Is one of those differences Tony Makris?

LAS

Direct-Phillips-Connell

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1 A Yes.

2 Q And who is Tony Makris?

3 A Tony had some role with leadership more specific to
4 Mercury Group.

5 Q Mr. Makris was a friend of Mr. LaPierre's, correct?

6 A I believe so.

7 Q And they went -- they traveled together on occasion,
8 right?

9 A Yes.

10 Q And had you ever heard Mr. Makris described as like a
11 brother to Mr. LaPierre?

12 A Yes.

13 Q And so the NRA paid Mercury Group, correct?

14 A Yes.

15 Q Do you know how much in 2017 the NRA was paying Mercury
16 Group?

17 A No.

18 Q The NRA also paid what was known as supplemental
19 invoices to Mr. Makris, right?

20 A That's correct.

21 Q Do you know how much those supplemental invoices to Mr.
22 Makris were?

23 A I do not.

24 Q Do you know whether those supplemental invoices had the
25 approvals of board officers as required under the NRA's

LAS

Direct-Phillips-Connell

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1 procurement policy?

2 A I don't -- I don't know, but I'm not aware that they
3 did.

4 Q So as far as you know they didn't?

5 A Yes.

6 Q Mr. Phillips, can you please turn to tab 35. And this
7 is marked for identification as PX 3589.

8 MS. CONNELL: I don't believe I received an
9 objection to this, your Honor.

10 MS. ROGERS: No objection.

11 MS. CONNELL: Move.

12 MR. FARBER: No objection.

13 THE COURT: All right. Hearing no other, it's
14 admitted.

15 Q Mr. Phillips, can you look at the top of this document?

16 A Yes.

17 Q This is an amendment titled "Amendment Number One to
18 Services Agreement", right?

19 A Yes.

20 Q And it is between the NRA and Ackerman McQueen, right?

21 A Correct.

22 Q And it is approximately a year after the prior
23 amendment, right?

24 A I'm sorry. Repeat that, please.

25 Q So we just looked at a services agreement dated

LAS

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1 April 2017 between Ackerman and the NRA, right?

2 A Yes. You said the prior agreement?

3 Q Yes.

4 A Gotcha.

5 Q In May of 2018 the NRA's entering into this amendment

6 number one to the services agreement, correct?

7 A Correct.

8 Q Can you please turn to page 2 of this document?

9 (Whereupon the witness complied with the above
10 request of counsel.)

11 Q Is that your signature there?

12 A Yes, it is.

13 Q And it was signed by Mr. Brownell, right?

14 A Yes.

15 Q Who was the NRA president?

16 A Yes.

17 Q And by Carolyn Meadows who was also a board officer of
18 the NRA, right?

19 A Yes.

20 Q Under this amendment the NRA had to pay Ackerman
21 McQueen for quote talent and employees, correct?

22 A That's correct.

23 Q And it specifically identifies under paragraph 2,
24 payments for including but not limited to Dana Loesch. I never
25 pronounce her name correctly.

LAS

1 A Close enough.

2 Q Thank you. And there is a blank, right?

3 A Yes.

4 (Continue on the next page.)

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LAS

Phillips - by Plaintiff - Direct/Connell

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1 Q Do you know who else this agreement was intended to
2 cover?

3 A Well, my copy has "Oliver North" filled in.

4 Q You're looking at PX 3589, sir?

5 A Yes.

6 Q Oh.

7 MR. CORRELL: Your Honor, it's different than the
8 exhibit that's in my binder.

9 MS. CONNELL: As is mine.

10 THE COURT: I think he's looking at the other page.

11 MS. CONNELL: Oh, thank you. Thank you, your
12 Honor. I'm sorry. I was focused on paragraph 2.

13 Q If we move down to paragraph 3, Mr. Phillips and,
14 actually, turn over to paragraph -- to page -- 2, "Oliver North"
15 is also identified there; correctly -- correct?

16 A That's correct.

17 Q So this agreement called for the NRA to pay Ackerman
18 McQueen for monies that Ackerman McQueen would pay to Oliver
19 North, right?

20 A That's right.

21 Q And you signed this agreement, right?

22 A I did.

23 Q And if the NRA failed to make payments on time, under
24 this agreement, it would have to take out a letter of credit to
25 ensure that monies would be paid to Ackerman McQueen; right?

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Phillips - by Plaintiff - Direct/Connell

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1 A Can you send me to the right paragraph here
2 (indicating)?

3 Q Sure.

4 If you look, for example, at paragraph 2, at the bottom
5 half --

6 A I see it.

7 Q -- the sentence beginning "Accordingly."

8 A Yeah. That's true.

9 Q So this para -- this amendment number 1 to the Services
10 Agreement was executed on May 6, 2018; correct?

11 A That's correct.

12 Q And that was entered into at the NRA's annual meeting
13 in 2018, right?

14 A That's the -- that's the right date.

15 Q And Oliver North was elected president of the NRA at
16 that annual meeting; correct?

17 MS. ROGERS: Objection; misstates facts.

18 THE COURT: I --

19 Hang on a second.

20 Well, I don't know whether it misstates facts. I
21 have no basis to know, one way or the other. She's just
22 asking a fact question. So we have a fact witness here.

23 Q Mr. Phillips, do you know whether, at any time,
24 Mr. North -- Lieutenant Colonel North -- was elected president
25 of the NRA?

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Phillips - by Plaintiff - Direct/Connell

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1 A I -- I think so. I'm just -- I'm really trying to get
2 the sequence there, because at this meeting, there was a lot of
3 things going on that I was not involved in. But I --

4 Q Do you --

5 A -- I believe he got elected for a year.

6 Q Okay. And do you know whether Mr. North's election as
7 NRA president occurred at the annual meeting in 2018?

8 A That would have been the date.

9 Q Okay. During your time as CFO and treasurer, I think
10 we mentioned that Ackerman McQueen was one of the largest
11 vendors of the NRA; right?

12 A Right.

13 Q In fact, in 2016 alone, NRA paid Ackerman McQueen at
14 least \$21 million; right?

15 A I don't -- I don't know.

16 Q Mr. Phillips, can you turn to tab 21, please?

17 A Same binder?

18 Q No. I think it's in a different binder. It's the
19 other (indicating) -- chunky, black binder.

20 A Okay.

21 THE COURT: 21 is probably the white binder.

22 MS. CONNELL: Excuse me?

23 THE COURT: Tab 21 is probably the white one.

24 MS. CONNELL: It's tab 21 and it's been marked for
25 identification as PX 2251. This is the NRA's 2016 990.

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Phillips - by Plaintiff - Direct/Connell

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1 -- CHAR500. Excuse me.

2 THE COURT: Right you are.

3 That's the new one I got this morning?

4 MS. CONNELL: Yes --

5 THE COURT: Okay.

6 MS. CONNELL: -- if it wasn't delivered last week.

7 A I have it now, Ms. Connell.

8 Q Okay.

9 MS. CONNELL: I don't know if there are any
10 objections to this, your Honor.

11 MS. ROGERS: No objection.

12 MR. FARBER: No objection.

13 MS. CONNELL: I ask that it be admitted.

14 THE COURT: Hearing none, it's admitted, PX 2251.

15 Q Mr. Phillips, this is the NRA's CHAR500 for the year
16 2016; right?

17 A Yes. Yes.

18 Q And the CHAR500 is an annual regulatory filing that the
19 NRA makes with the Office of the Attorney General's Charities
20 Bureau, right?

21 A Correct.

22 Q And is that your signature on the front page?

23 A It's my signature, but I believe it's from the
24 signature machine.

25 Q When you say, "it's from the signature" -- you mean --

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Phillips - by Plaintiff - Direct/Connell

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1 "machine," you mean, it's an electronically applied signature;
2 right?

3 A Correct.

4 Q To electronically apply your signature, someone at the
5 NRA must have a special code to enter; correct?

6 A Correct.

7 Q To whom did you give your code?

8 A Lisa Supernaugh.

9 Q And Lisa Supernaugh's your assistant at the NRA, right?

10 A That's correct.

11 Q You hired her, right?

12 A She eventually came to work -- she worked for me, but I
13 think she was hired in a different position earlier.

14 Q But had you hired her for that different position
15 earlier?

16 A Well, she was in my office; it's possible.

17 Q Okay. So Ms. Supernaugh worked for a number of years
18 as your assistant, right?

19 A That's correct.

20 Q Did you ever know her to falsely use your electronic
21 signature?

22 A No.

23 Q Okay. So that's your electronic signature on page 1;
24 correct?

25 A Yes, correct.

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Phillips - by Plaintiff - Direct/Connell

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1 Q And to your knowledge, that signature was not
2 unauthorized; right?

3 A That's right.

4 Q And, Mr. Phillips, the CHAR500 for a given year is
5 actually filed in November of the following year, right?

6 A Yes.

7 Q So the CHAR500 for 2016 would be filed in or about
8 November of 2017, right?

9 A Correct.

10 Q Okay. So, just for the purposes of these questions, I
11 would like to direct your attention to page 18 --

12 MS. CONNELL: One second.

13 Q Mr. Phillips, the CHAR500 attaches the NRA's IRS Form
14 990 as a required attachment; right?

15 A I believe so.

16 Q And it also attaches the financial statement audit for
17 that year, right?

18 A I believe so.

19 Q Okay. So now can you please turn to page 18 of this
20 document?

21 A We have it on the screen (indicating). Is that page
22 18?

23 Q That's right.

24 So, Mr. Phillips, does this refresh your recollection
25 as to whether, in 2016, the NRA paid Ackerman McQueen at least

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Phillips - by Plaintiff - Direct/Connell

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1 \$21 million?

2 A Yes.

3 Q Okay. So, taking a step back --

4 MS. CONNELL: You can take that down. Thank you,
5 Jesse.

6 (Image removed.)

7 Q Taking a step back: Ackerman McQueen, like some
8 vendors, would bill the NRA for costs under its contract; right?

9 A That's correct.

10 Q And it would bill for some disbursements it -- for
11 costs Ackerman McQueen incurred in performing its duties under
12 the contract, right?

13 A That's correct.

14 Q But then there was a separate reimbursement process for
15 something called "out-of-pocket expenses," right?

16 A Yes.

17 Q And these were sometimes called "OOPs"; correct?

18 A I never did that. I don't know. I never heard that.

19 Q Okay. So we'll call them "out-of-pockets," okay?

20 A Correct.

21 Q And this was a different -- this was a different type
22 of reimbursement than the standard Ackerman reimbursement,
23 right?

24 A I'm not -- I'm not sure there's a difference.

25 Q Well, out-of-pocket expense reimbursements, as they

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1 were billed by Ackerman to the NRA, were for expenses incurred
2 by NRA executives and employees, for which the NRA then paid
3 Ackerman; right?

4 A Yes.

5 Q You were aware that Ackerman billed the NRA with
6 invoices for what was called out-of-pocket expenses; right?

7 A That's right.

8 Q And you were familiar with these invoices, right?

9 A Yes.

10 Q And so, the N -- the -- Ackerman would send an invoice
11 to the NRA that simply said "out-of-pocket expenses" and had a
12 figure, right?

13 A Right.

14 Q And the NRA would pay that amount.

15 A That's correct.

16 Q Okay.

17 You previously testified that many of the out-of-pocket
18 expenses were travel-related, right?

19 A That's right.

20 Q And just to be clear, crystal-clear, these were
21 expenses incurred by NRA employees.

22 A Yes.

23 Q And executives.

24 A Yes.

25 Q Okay.

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1 A But they -- they might also bill, through Ackerman
2 McQueen, travel on behalf of the NRA.

3 Q That might also be included in OOP expenses, right?

4 A I'm not sure how they keep their records on that.

5 Q Okay. You're not sure how they kept their records for
6 the out-of-pocket expenses.

7 A No, I'm -- I'm -- I'm not sure how they did, for their
8 staff, the work on behalf of NRA -- how they billed it out.

9 Q Are you sure of what the -- what Ackerman put in its
10 out-of-pocket expenses that it billed to the NRA?

11 A I'm not positive.

12 Q Okay. The NRA had its own travel and expense
13 reimbursement policy; correct?

14 A Correct.

15 Q And that policy, as we've talked about, required NRA
16 employees to fly coach without prior written permission; right?

17 A I don't recall.

18 Q Okay. Do you know whether that policy required that
19 employees receive approval for travel in the expense -- travel
20 and entertainment-related expenses?

21 A Yes.

22 Q Okay. And do you know whether it required NRA
23 employees to travel economically?

24 A Yes.

25 Q Mr. Phillips --

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Phillips - by Plaintiff - Direct/Connell

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1 One second, Mr. Phillips. I'm sorry.

2 (Pause.)

3 MS. CONNELL: Actually, this is not a tab, but to
4 try and refresh Mr. Phillips' recollection, Jesse, can we
5 bring up PX 655?

6 THE COURT: Is that already in evidence?

7 MS. CONNELL: I do not believe that it is, your
8 Honor. It's not.

9 THE COURT: So --

10 MS. CONNELL: Can we just show it to --

11 THE COURT: Yeah. We have to, just for the moment,
12 turn off the jury monitors.

13 MS. CONNELL: This is the Employee Handbook from, I
14 believe, 2015. Mr. Phillips, while you were CFO and
15 treasurer of the NRA, the NRA had what was called an
16 Employee Handbook; right?

17 A That's correct.

18 Q And that Employee Handbook included information for
19 employees that they might need, right?

20 A That's right.

21 Q And it included some relevant policies of the NRA that
22 employees should be aware of, right?

23 A I think so.

24 Q Mr. Phillips, if you'd like, we can page through this
25 book so you can take a look, but does this appear to be the

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Phillips - by Plaintiff - Direct/Connell

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1 Employee Handbook that you're familiar with?

2 A Yes.

3 MS. CONNELL: Your Honor, I move for its admission.

4 THE COURT: Any objection?

5 MS. ROGERS: Your Honor, we would only note that
6 we've seen a version of this in the record that is
7 incomplete and without being able to page through every
8 page, I don't know if this is that version. But we can
9 check when we're not in session, and subject to that caveat,
10 we have no objection.

11 THE COURT: All right.

12 Well, it's admitted for now. If there's any issue
13 with the document, we can correct it, if need be.

14 MS. CONNELL: Absolutely, your Honor.

15 And I will say that there are various versions of
16 this book because it would be added to year after year. So
17 there may be more than one that ultimately is admitted.

18 THE COURT: Okay.

19 (Image displayed.)

20 BY MS. CONNELL:

21 Q Mr. Phillips, I'd like to direct your attention to page
22 183 of PX 655.

23 Do you see this, Mr. Phillips?

24 A I do.

25 Q This is the Travel Expense Reimbursement Policy for the

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Phillips - by Plaintiff - Direct/Connell

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1 NRA employees, right?

2 A I have it, yes.

3 Q And the purpose of this policy is to incur the lowest
4 practical and reasonable expenses for the NRA, right?

5 A Yes.

6 Q That makes sense, right? The NRA wants to make sure
7 it's spending its money wisely, right?

8 A That is correct.

9 Q Okay. And the purpose is to avoid even the appearance
10 of impropriety in any travel expenses, right?

11 A Yes.

12 Q Okay. And the handbook lays out procedures for travel
13 on page 186, right?

14 We can turn to that so you can see it, sir.

15 A Let's turn --

16 Q Yes, let's take a look.

17 So, at the top of the page, it says: "Procedures For
18 Travel Advances and Expense Reimbursement," right?

19 A That's right.

20 Q And if you look down, "Travelers" -- under subheading
21 4 -- "Travelers are required to use the transportation that gets
22 them to where they need to go in the most cost-effective method
23 to the NRA," right?

24 A That's right.

25 Q And if you look down to the next paragraph, regarding

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1 "Commercial Airfare and Rail Transportation," only coach-class
2 tickets or their equivalent are generally reimbursable; right?

3 A Yes, that's what the policy says.

4 Q Okay. For Mr. -- Mr. Phillips, if we go further down
5 in regard to "Lodging" -- to the next page -- to "Lodging, Meals
6 and Entertainment Expense," NRA employees have to provide
7 receipts for all costs over \$50; right?

8 A Yes.

9 Q And those receipts have to show the date, place and
10 business reason for the expense if it's not obvious; correct?

11 A I'm still searching for it here (indicating).

12 Q It might be in the next paragraph.

13 A Oh, okay.

14 (Image modified.)

15 Q Oh, there we go (indicating).

16 A Yes.

17 Q Okay. And that makes sense because you don't want
18 employees just spending NRA money on personal business, right?

19 A That's right.

20 Q You want them to spend money to advance the mission of
21 the NRA; correct?

22 A That's correct.

23 Q And if we go --

24 The NRA rules also required that, for entertainment --
25 if we go further down -- the employee must describe the specific

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1 business purpose, including the enter -- the persons or parties
2 entertained; right?

3 A That's correct.

4 Q So, if an NRA executive is going to go out for an
5 expensive dinner and pay a lot of money for cigars or bottles of
6 wine, they have to support that expenditure by showing what they
7 were doing and who they were doing it with; right?

8 A That's correct.

9 Q Okay. So, before the NRA will pay monies for an
10 employee's travel, that employee would have to submit those
11 expenses to the NRA staff and they'd be reviewed for compliance
12 with this policy; right?

13 A That's correct.

14 Q That's how it was supposed to work, right?

15 A Yes.

16 Q Okay. So let's go back to the out-of-pocket invoices.
17 Any expenses that were billed by NRA employees through
18 the out-of-pocket expenses, for those expenses, the NRA didn't
19 get receipts and substantiation submitted to the Financial
20 Services Department; right?

21 A Right.

22 Q Okay. In fact, for the travel and expenses billed to
23 the NRA by Ackerman through the out-of-pocket expenses, those
24 were -- the out-of-pocket expense invoices -- were not
25 accompanied by proof of a business justification; right?

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1 A Right. They were available for audit.

2 Q But they --

3 MS. CONNELL: I move to strike, your Honor.

4 THE COURT: Overruled.

5 Q They were not given to the NRA with the out-of-pocket
6 expenses, right?

7 A That's right.

8 Q And they were not given to the NRA --

9 MS. CONNELL: Strike that.

10 Q They did not even --

11 The out-of-pocket expense invoices didn't even identify
12 what the purposes of those expenditures were, right?

13 A I believe so. I believe you're correct.

14 Q So, Mr. Phillips, I'd like to direct your attention to
15 tab 39 that's previously been identified as PX 5101.

16 MS. CONNELL: Your Honor, pages 1, 7, 8, 39 and 40
17 of this document have already been admitted, and I'd like
18 to --

19 THE COURT: Well, hang on.

20 So what -- you're showing just those pages again or
21 you're showing the whole thing?

22 MS. CONNELL: First, I would like to show page 2 --
23 Well, strike that.

24 First, I'd like to show page 7, which has been
25 admitted.

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1 THE COURT: So, just so the jury and I can -- if
2 they want to look back at some point, do you know, by
3 chance, the exhibit number?

4 MS. CONNELL: Sure.

5 It's tab 39, PX 5 --

6 THE COURT: No.

7 MS. CONNELL: Sorry.

8 THE COURT: Which was the version that was
9 admitted?

10 MS. CONNELL: So it was admitted as PX 5101, but
11 only those pages.

12 THE COURT: Oh.

13 MS. CONNELL: The whole exhibit has not been
14 admitted yet.

15 THE COURT: I see. Okay.

16 MS. CONNELL: So, actually, your Honor, I had
17 wanted to start out with page 7, which has been admitted
18 into evidence.

19 THE COURT: Okay. So, at this point, we're still
20 dealing with the version of the exhibit that is just certain
21 pages.

22 MS. CONNELL: That's right, your Honor.

23 And I think it would be wiser if, once we get this,
24 we have the whole exhibit admitted or those portions that
25 have been admitted, we'll separate out.

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1 THE COURT: Okay.

2 MS. ROGERS: And, your Honor, our only objection is
3 that this is a compilation, it looks like, of distinct
4 documents and the witness is not on the cover e-mail. So we
5 would only ask that if new pages are admitted, that a
6 foundation be laid for them.

7 THE COURT: Okay. I'd just ask, were these
8 produced in discovery in this form? It looks like there are
9 consecutive Bates numbers.

10 MS. CONNELL: Yes, your Honor.

11 MS. ROGERS: Yes, your Honor. This is an e-mail
12 from one person to another, attaching a compilation of
13 different invoices.

14 THE COURT: Right.

15 MS. ROGERS: And they were produced in discovery as
16 a document family. But the witness -- the witness
17 appears -- well, I won't -- I won't testify.

18 THE COURT: But this document, the AG didn't put
19 these together.

20 MS. ROGERS: The AG did not compile them. They
21 were compiled in a document family produced in that form.
22 Some of the documents may involve the witness and some may
23 not.

24 MS. CONNELL: Your Honor, if you look at page 1 of
25 the document which has been admitted, it's a transmittal

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1 e-mail within the NRA that says: "Please refer to the
2 attached file"; "Year 2018, [January to February]." It was
3 Ackerman McQueen invoices and ACH invoices, "ACH" meaning
4 wire-transfer banking records.

5 THE COURT: Right. So I think these are a
6 compilation of business records and I think you've explained
7 to the jury, this is a selection of them.

8 But I don't see an objection to -- you know, if the
9 other side had, sort of, formed them into a group, that
10 would be one thing. So I'll admit this.

11 MS. CONNELL: Can we admit the entire document,
12 5101, your Honor?

13 THE COURT: Yes.

14 MS. CONNELL: Thank you.

15 BY MS. CONNELL:

16 Q Then, Mr. Phillips, I would like to draw your attention
17 to page 2, please.

18 (Image displayed.)

19 Q Mr. Phillips, this is an electronic transfer --
20 Electronic Funds Transfer Remittance Advice; right?

21 A That's correct.

22 Q And that's, sort of, a fancy way of saying, this is a,
23 sort of, receipt or reflection that the NRA has paid these
24 electronic funds to Ackerman McQueen; correct?

25 A Yes, paid by wire.

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1 Q Right, paid by wire.

2 And so, the amount of this payment was \$306,240.61;

3 right?

4 A That's correct.

5 Q And this is -- these are for -- excuse me.

6 This payment is for invoices dated January 5th, 2018;

7 right?

8 A Yes.

9 Q I would like to draw your attention to invoice number
10 154706 at the top and 154707 at the top. This document reflects
11 that those two invoices, among the others, have been paid by the
12 NRA; correct?

13 A Correct.

14 Q Okay. Now please turn to page 7 of this document.

15 (Image scrolled.)

16 Q This is an out-of-pocket expense invoice from Ackerman
17 McQueen; correct?

18 A Correct.

19 Q And it has added onto it some stamps and notes showing
20 processing within the NRA; correct?

21 A Yes.

22 Q And it's directed to your attention.

23 A Yes.

24 Q And it's dated January 5th, 2018; right?

25 A Yes.

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1 Q And all it says, in terms of a description of what the
2 bill is for, is, "Out-of-pocket expenses"; right?

3 A That's correct.

4 Q And just above where it says, "Out-of-pocket expenses,"
5 it says, "NR-OOP"; right?

6 A That's right.

7 Q Okay. And you would agree with me, Mr. Phillips, that
8 this invoice provides no detail whatsoever of what the
9 \$77,085.15 the NRA was paying for was for, right?

10 A That's right.

11 Q Please turn to page 8, Mr. -- oh, I'm sorry.

12 On this page, Mr. Phillips, does this indicate that
13 someone had signed for or approved payment of this invoice?

14 A Yes; it looks like two signatures.

15 Q And whose signatures are those?

16 A The first one is, "Rick Tedrick for" -- I can't tell
17 what that is.

18 Q Is it possible it says, "Wilson Phillips" or "Wilson H.
19 Phillips"?

20 A No. It's possible -- it's possible it says, "WHP," "H"
21 being my middle initial.

22 Q So that would indicate it was for you; correct?

23 A Yes.

24 Q Did Mr. Tedrick occasionally sign or approve invoices
25 for you?

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1 A Occasionally.

2 Q Okay. And who is the other name, below that?

3 A It's a familiar signature, but I don't know.

4 Q Do you believe that to be John Frazer, Mr. Phillips?

5 A Could be.

6 Q Okay. Do you know anyone else named -- with a similar
7 signature who would have signed this?

8 A Well, that was the one -- the other one I was thinking
9 of was John Sigler.

10 Q It could have been John Sigler, you think?

11 A Yes.

12 Q And who's Mr. Sigler within the NRA?

13 A He's a past president.

14 Q So do you -- you don't know whether that's John Sigler
15 or John Frazer?

16 A I think it's John Frazer.

17 Q You think it's John Frazer.

18 A Yes.

19 Q Okay.

20 Please turn to page 8, Mr. Phillips.

21 (Image scrolled.)

22 Q This is another example of an out-of-pocket expense
23 invoice; correct?

24 A Correct.

25 Q And these invoices, like this one, contain no detail

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1 other than the description "out-of-pocket expenses"; right?

2 A Right.

3 Q And this one is for a hundred thousand dollars, right?

4 A Correct.

5 Q And just to draw your attention up, this is invoice

6 number 14 -- 154707.

7 A Yes.

8 Q Do you see that?

9 A I do.

10 Q So, when we looked before at the remittance form, we
11 have proof that the NRA paid this; correct?

12 A Correct.

13 MS. CONNELL: And this one's -707, Jesse.

14 Thank you.

15 Q So the NRA paid an invoice that simply says,
16 "out-of-pocket expenses, a hundred thousand dollars"; right?

17 A Correct.

18 Q And so --

19 MS. CONNELL: You can take that down. Thank you,
20 Jesse.

21 (Image removed.)

22 Q Mr. Phillips, the out-of-pocket expense reimbursement
23 system allowed NRA employees to bill for travel and
24 entertainment expenses without submitting the substantiation
25 required by the NRA to the NRA; correct?

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1 A I'm sorry; repeat that.

2 Q Sure.

3 So, if an NRA executive, say, bills a hotel room and
4 dining costs or anything else to Ackerman McQueen, under this
5 arrangement, those expenses would be passed back to the NRA
6 simply as an out-of-pocket expense; right?

7 A That's right.

8 Q And that officer would have gotten reimbursed without
9 submitting to the NRA proof of the business purpose for those
10 expenditures, right?

11 A That's right.

12 Q And proof of compliance with the travel and
13 reimbursement policies of the NRA; correct?

14 A That's correct.

15 Q Others within the NRA were aware of this out-of-pocket
16 expense system; correct?

17 MR. CORRELL: Objection; calls for speculation,
18 your Honor.

19 Q To your knowledge.

20 THE COURT: Well, why don't you lay a foundation
21 for that.

22 MS. CONNELL: Sure.

23 Q Mr. Phillips, you approved payment of these
24 out-of-pocket expense invoices; correct?

25 A That's correct.

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1 Q And others within the NRA reviewed these out-of-pocket
2 expense invoices and also approved their payments, right?

3 A Repeat that, please?

4 Q Well, for example, if you look at page 8, we see
5 signatures from the Financial Services Division for approving
6 the payments; right?

7 A Yes. That's true.

8 Q And to your knowledge, were there -- who within the NRA
9 was aware of this arrangement by which the NRA would pay
10 Ackerman for out-of-pocket expense invoices?

11 A I'm trying not to speculate here. I would expect, some
12 of the people in the Financial Services Division.

13 Q Mr. Phillips, Tyler Schropp was aware of the
14 out-of-pocket expense invoice reimbursement; right?

15 A That's correct.

16 Q And he was and is the head of the NRA's Advancement
17 Division; right?

18 A That's correct.

19 Q And, Mr. Phillips, was Wayne LaPierre aware of this
20 out-of-pocket expense reimbursement system, to your knowledge?

21 MR. CORRELL: Objection; calls for speculation.

22 THE COURT: Lack of foundation? Is that your
23 point?

24 MR. CORRELL: Yes, your Honor.

25 THE COURT: Sustained.

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1 MS. CONNELL: Your Honor, Rick -- I'm sorry.

2 Q Mr. Phillips, Rick Tedrick was the Managing Director of
3 Finance; right?

4 A That's right.

5 Q And he still is; correct? To the best of your
6 knowledge?

7 A It's been five years.

8 Q Okay.

9 A I know there have been changes there.

10 MS. CONNELL: Withdrawn.

11 Q He was aware and approved out-of-pocket expense
12 payments while you were CFO and treasurer at the NRA, right?

13 A That's right.

14 Q And Mike Erstling also was aware of -- to your
15 knowledge -- was aware of the out-of-pocket expense
16 reimbursements while you were at the NRA; correct?

17 A That's right.

18 Q And did you ever --

19 So you knew that Mr. LaPierre --

20 MS. CONNELL: Strike that.

21 Q You knew that Mr. LaPierre had a close relationship
22 with Ackerman McQueen, right?

23 A Yes.

24 Q And you knew that he frequently discussed the business
25 relationship between Ackerman McQueen and the NRA with Angus

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1 McQueen, for example; right?

2 A Yes.

3 Q And to the best of your knowledge, was he aware that
4 there were things Ackerman McQueen paid for that were
5 reimbursements for NRA employees?

6 MR. CORRELL: Objection, your Honor; foundation.

7 THE COURT: Are you asking -- there's a more
8 specific way to ask what the basis of his knowledge is.

9 (Continued on next page.)

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1 Q Mr. Phillips, do you know whether Wayne LaPierre was
2 aware of this arrangement?

3 A I don't for certain.

4 Q Do you have any reason to believe that he was?

5 A Yes.

6 Q And what's the basis of that -- that reason?

7 A Well, there would have been transactions that he would
8 know was paid through Ackerman McQueen.

9 Q Can you describe those transactions?

10 A Typical travel, that sort of thing.

11 Q His own travel?

12 A His own travel.

13 Q That was billed through Ackerman McQueen?

14 A That's right.

15 Q And then billed to the NRA as an out-of-pocket invoice?

16 A That's right.

17 Q You never had a problem with the level of detail on the
18 out-of-pocket invoices, right?

19 A No.

20 Q Okay. And no one came to you with a problem about the
21 level of detail on the Ackerman out-of-pocket expense invoices,
22 right?

23 A Not that I recall.

24 Q Under the services agreement with Ackerman there could
25 be yearly audits of Ackerman's billing to the NRA, correct?

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1 A That's correct.

2 Q Including out-of-pocket expenses, right?

3 A Correct. That's right.

4 Q Did you perform yearly audits of Ackerman's
5 out-of-pocket expense invoices?

6 A I did on two occasions.

7 Q And those two occasions were in or about the year --
8 Well, what years did those two occasions?

9 A The first time was a long time ago. That's all I can
10 say. And then followed up a couple years later. I just wanted
11 to see what the process was.

12 Q And you didn't have -- Strike that. Mr. Phillips, to
13 do these audits you would have to go to Ackerman McQueen's
14 offices, right?

15 A That's correct.

16 Q And you on occasion had Rick Tedrick go to Ackerman's
17 offices to look at Ackerman's records, right?

18 A That's right.

19 Q But isn't it true that you didn't have Rick Tedrick go
20 look at the out-of-pocket expenses after 2014?

21 A It's possible he didn't go after that. I thought he
22 was going annually.

23 Q But you didn't check to see if anyone was auditing the
24 out-of-pocket expense invoices?

25 A No.

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1 Q Okay. Mr. Phillips, why were the records, if any,
2 relating to the out-of-pocket expense invoices maintained at the
3 Ackerman headquarters?

4 A For various reasons. I can give you a couple.

5 Q Well, what I'm mainly interested in, Mr. Phillips, is
6 why didn't the NRA simply ask Ackerman to give the NRA any
7 records they had that would substantiate the out-of-pocket
8 invoice expenses?

9 A Well, some of the things they did were sensitive and
10 like a lot of organizations their employees were within NRA that
11 just get curious and sneak through the files.

12 Q So you were concerned that NRA employees might get
13 curious and look through the files that would substantiate the
14 expenses of NRA employees and executives, right?

15 A These would be people that had no need to know and
16 should not know information like that.

17 Q So you had the proof or any substantiation of the tens
18 of thousands, actually hundreds of thousands of dollars of
19 expenses incurred as out-of-pocket expenses, you had that kept
20 by Ackerman McQueen at Ackerman McQueen's offices, correct?

21 A That's correct.

22 Q And you didn't want it sent to or provided to the NRA
23 for the NRA's offices because you didn't want NRA employees to
24 see those records, right?

25 A Not all NRA employees.

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1 Q You didn't want -- You could have kept them securely at
2 the NRA headquarters, right?

3 A That's correct.

4 Q Okay. But you didn't want them to see things that
5 might make headlines, isn't that right?

6 A That's correct.

7 Q So you didn't trust NRA employees, but you trusted the
8 employees of a third party vendor, right?

9 A Well, this was a process that was in place when I was
10 hired and I agreed with it.

11 Q So who put that process in place?

12 A I don't recall.

13 Q But you maintained it in place, right?

14 A Yes.

15 Q In fact, Mr. Phillips, out-of-pocket invoices included
16 things like payment for a parking space for you in Dallas,
17 correct?

18 A I had a parking space when I went to their office in
19 Dallas. I don't think I had a permanent parking place.

20 Q You didn't have Ackerman McQueen pay for you to have a
21 parking space maintained in Dallas?

22 A No. I never asked for that. I don't -- I knew when I
23 went to their office I could get in.

24 Q You never asked for it. Do you know whether they
25 provided it, sir?

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1 A I had a chip on my car key ring that would allow me to
2 park in their garage.

3 Q And Ackerman out-of-pocket invoices included payments
4 for dinners at Landini's restaurant in Old Town Alexandria,
5 right?

6 A Yes.

7 Q And Landini's is a very, very nice Italian restaurant?

8 A Very nice.

9 Q NRA employees billed tens of thousands of dollars for
10 dinners there, right?

11 A Yes.

12 Q And the NRA itself did not have records substantiating
13 the business purposes for those expenditures, right?

14 A Maybe not stating. Sometimes the relationships is
15 long-term, then it's obvious what the relationship is.

16 Q But the NRA, sir, did not have records substantiating
17 the business purposes of tens of thousands of dollars spent at a
18 fancy Italian restaurant near NRA headquarters, right?

19 A That's correct.

20 Q And there was a cigar bar associated with Landini's
21 restaurant, right?

22 A Yes.

23 Q And the name of that cigar bar was?

24 A You have to help me there.

25 Q 113 Rex, does that sound familiar?

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1 A I've heard Rex. I never heard the 113.

2 Q 113 in Roman numerals, do you recall?

3 A No.

4 Q Well, the NRA spent tens of thousands of dollars at
5 this cigar bar, correct?

6 A Yes.

7 Q Okay. So, Mr. Phillips, allowing NRA employees to
8 submit expenses through out-of-pocket invoices, would you agree
9 with me, violated the NRA's -- the NRA's travel and expense
10 reimbursement policy?

11 A I think it was achieved a different way by having the
12 audits.

13 Q But you didn't have any audits after 2014 as far as you
14 know, right?

15 A As far as I know.

16 Q Before that you know about two audits, correct?

17 A Well, I knew Rick Tedrick went other times. I went
18 twice.

19 Q But you weren't there when Mr. Tedrick was doing his
20 audits, right?

21 A No.

22 Q You don't know specifically what he looked at, right?

23 A No. He's a former auditor from a big firm.

24 Q You put a lot of faith in Mr. Tedrick, correct?

25 A That's correct.

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1 Q Did you have any reason to doubt Mr. Tedrick's
2 reliability?

3 A No.

4 Q Do you ever recall instances where Mr. Tedrick had to
5 be escorted out of the NRA headquarters?

6 A I heard this in his testimony and I don't -- I really
7 don't recall that happening, although some of the testimony
8 sounded familiar.

9 Q Do you recall any instances where it was, the NRA had
10 concerns that Mr. Tedrick had a drinking problem?

11 A Yes.

12 Q And so you knew that Mr. Tedrick potentially had a
13 drinking problem, right?

14 A That's correct.

15 Q And how long did you know that for?

16 A A couple of years.

17 Q Okay. Mr. Phillips, you know Lieutenant Colonel North,
18 right?

19 A I do.

20 Q And you've known him for years, right?

21 A I have.

22 Q And he was a board member of the NRA?

23 A Off and on, yes.

24 Q And to your knowledge Lieutenant Colonel North cared
25 about the NRA, right?

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1 A Yes.

2 Q And he cared about Wayne LaPierre, right?

3 A I think so.

4 Q Okay. And at some point in 2018 you became aware that
5 Lieutenant Colonel North and Ackerman McQueen were going to
6 enter into a contract between them, correct?

7 A Yes.

8 Q And that Ackerman would pay Lieutenant Colonel North,
9 right?

10 A I don't know how the contract worked. I don't recall
11 how it worked at least. I did see that. We looked at something
12 earlier today and I saw that there.

13 Q Well, isn't it true that you understood that Lieutenant
14 Colonel North and Ackerman McQueen would enter into a contract.
15 The NRA would pay Ackerman McQueen for monies Ackerman McQueen
16 paid Lieutenant Colonel North?

17 A I hate to make you repeat that again if you could.

18 Q Sure. Is it true you understood in 2018 that Ackerman
19 McQueen were going to enter into a contract whereby it would pay
20 Lieutenant Colonel North money, right?

21 A I saw that in the contract we looked at earlier. I was
22 not involved in their discussions with Mr. North.

23 Q What I'm asking about is if you were aware of an
24 arrangement by which Ackerman McQueen would pay Lieutenant
25 Colonel North, and the NRA would reimburse Ackerman McQueen for

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1 those costs?

2 A I was aware when I saw it today.

3 Q Mr. Phillips, you were deposed in a lawsuit between the
4 NRA and Ackerman McQueen, right?

5 A I've been deposed in a lot. That one I don't remember,
6 but you can go ahead and maybe it will come back to me.

7 Q Do you remember sitting down for questions by -- asked
8 by counsel for Ackerman McQueen in August of 2021?

9 A I do.

10 Q Okay.

11 MS. CONNELL: Jessie, can you bring up that
12 Ackerman deposition at page 167.

13 Q I'm sorry, Mr. Phillips, for the delay.

14 MR. CORRELL: Your Honor, objection. I don't think
15 it's appropriate to publish the entire deposition to the
16 jury. If there is an excerpt that he's going to be
17 questioned about, I think that's the proper way to proceed.

18 MS. CONNELL: Your Honor, I've just asked that
19 page 167 which has --

20 THE COURT: We can start with that. It's a prior
21 statement of a defendant.

22 MS. CONNELL: A party, right.

23 MR. CORRELL: Your Honor, one other objection. Mr.
24 LaPierre was not a party to that litigation, and we have an
25 objection to using prior statements in other litigation

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1 against Mr. LaPierre.

2 THE COURT: For now it's being used with
3 Mr. Phillips. So, overruled.

4 Q Okay. Mr. Phillips --

5 MS. CONNELL: I don't know why it's not coming up
6 on my screen, Jessie.

7 Q Mr. Phillips, in that deposition you were under oath,
8 correct?

9 A That's correct.

10 Q And you swore to tell the truth?

11 A Yes.

12 Q And you did your best to tell the truth, right? And in
13 that deposition you were asked at some point in time in 2018, in
14 early 2018, did you become aware that Colonel North and Ackerman
15 McQueen were going to enter into a contract, right? Do you see
16 that question?

17 A What line?

18 Q Twenty-three.

19 A (Examining). Yes.

20 Q Okay. And you responded yes, correct?

21 A That's correct.

22 Q And if we continue on, you were then asked, Isn't it
23 true that the intent was -- I'm sorry. "Isn't it true that the
24 intent was that Colonel North and Ackerman McQueen would enter
25 into a contract and then the NRA would pay Ackerman McQueen to

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1 then turn around and compensate Colonel North under their
2 contract", right?

3 A That's the way I understood it.

4 Q And you weren't a party to that contract, but that's
5 what you understood, right?

6 A That's correct.

7 Q And you were aware --

8 MS. CONNELL: Thank you Jessie.

9 Q You were aware that Colonel North was going to be
10 entering into an employment contract with Ackerman McQueen,
11 right?

12 A I can't -- I can't. This is where the memory issue is
13 there. It's not there. I'm sorry.

14 MS. CONNELL: Jessie, can you bring up the same
15 deposition at page 182, 18.

16 Q Mr. Phillips, do you recall being asked whether you
17 recalled in or around May of 2018 being -- being aware that
18 Colonel North was going to be entering into an employment
19 agreement with Ackerman McQueen? Do you recall being asked
20 that?

21 A I do.

22 Q And you answered, "I knew they were discussing", right?

23 A Yes.

24 Q Then you were asked, "You knew they were discussing
25 Colonel North being an employee of Ackerman McQueen, correct?"

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1 And your answer was "Correct"?

2 A Correct.

3 Q Exactly. Thank you.

4 MS. CONNELL: You can take that down. Thank you,
5 Jessie.

6 Q And Melanie Montgomery of Ackerman McQueen gave you a
7 copy of the contract with Colonel North at that time, right?

8 A I really don't recall this.

9 Q Do you recall whether Ackerman McQueen had
10 representatives at the NRA's annual meeting in 2018?

11 A Yes.

12 Q And Melanie Montgomery was an employee of Ackerman
13 McQueen?

14 A Yes.

15 Q Do you recall her handing you an envelope with Colonel
16 North's contract in it?

17 A I do.

18 Q You took that back to the NRA headquarters, right?

19 A I did.

20 Q And you didn't look at the contract. You just looked
21 at it to make sure it was a contract, right?

22 A I don't even remember that part.

23 Q Okay. But you recall getting the contract?

24 A Yes.

25 Q And taking it?

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1 A I remember getting something in an envelope.

2 Q Not just something. You took a look at it to see what
3 was in the envelope, right?

4 A Probably.

5 Q Okay.

6 MS. CONNELL: Jessie, can we bring up that same
7 deposition at page 170, and specifically 14, 170, line 14.

8 Q Mr. Phillips, do you recall being asked whether you
9 recall reviewing Colonel North's -- "Do you recall reviewing a
10 draft of Colonel North's contract with Ackerman McQueen at any
11 point prior to its execution?" Do you see that?

12 A Yes.

13 Q You were asked that?

14 A Mm-hmm.

15 Q You answered, "I think the first copy I saw of it was
16 when it was executed. Melanie Montgomery gave me a copy, right?"

17 A Right.

18 Q Okay. If we go down further to page, I believe it's
19 page 71, line four.

20 MR. FARBER: Seventy-one or 171?

21 MS. CONNELL: Seventy-one, line four.

22 Q And you were asked, "Do you recall Ms. Montgomery
23 actually providing you a copy of the Colonel North and Ackerman
24 McQueen contract in May of 2018", right?

25 A Yes.

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1 Q And you said, "I recall her giving me an envelope. And
2 I looked at the first page of it, and it was the Oliver North's
3 contract", right?

4 A Right.

5 Q And at that time you stated that you believed that to
6 be true, right?

7 A That's right.

8 Q You have no reason to disbelieve it now?

9 A No.

10 Q Okay. And you took it back with you, this envelope,
11 with the contract back to NRA headquarters, right?

12 A I think so.

13 Q Okay. Do you know whether you provided it to anything
14 else at the NRA?

15 A No.

16 Q No, you didn't or no, you cannot recall?

17 A No, I cannot recall.

18 MS. CONNELL: Jessie, can we go down to page 172,
19 line one.

20 Q So, Mr. Phillips, do you recall being asked -- or I'm
21 sorry, we'll have to go up to the previous page. There we go.
22 Do you recall being asked what you did with that envelope and
23 that contract that you were provided by Ms. Montgomery? You
24 were asked that, right?

25 A That's right.

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1 Q And you answered, "I put it with my materials going
2 back to Virginia, but I've honestly tried to think about what I
3 did with it and I can't remember", right?

4 A That's right.

5 Q "Do you recall if you provided it to anyone else at the
6 NRA", right, you were asked?

7 A Yes.

8 Q And you answered, "I do not recall". I'm sorry. We
9 have to page up a little bit. I'm getting ahead of you.

10 A Right.

11 Q Right. And now if we go down to the next question and
12 answer. You were asked, "Do you recall at any point in time
13 from May 28th to the present whether anyone associated with the
14 NRA had asked you whether or not you had a copy of Colonel
15 North's contract with Ackerman McQueen", right?

16 A Right.

17 Q You said, "They have not"?

18 A Yes.

19 Q Okay.

20 MS. CONNELL: Thank you, Jessie.

21 Q So, you were aware in May of 2018 that Lieutenant
22 Colonel North was entering into a contract with NRA vendor
23 Ackerman McQueen, correct?

24 A Yes.

25 Q And Lieutenant Colonel North had just been elected

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1 president of the NRA, right?

2 A I'm really cloudy on the timing and the sequence of
3 things.

4 Q Sure. So, at the annual meeting in 2018 Lieutenant
5 Colonel North became the NRA's president, right?

6 A I can't -- I can't say that. Probably, but I really --
7 the timing of those meetings.

8 Q Right.

9 A I was -- I was retiring and I just -- I just don't
10 recall.

11 Q Mr. Phillips, you retired as of December 31st, 2018,
12 right?

13 A Yes.

14 Q Okay. So in 2018 you were still CFO and treasurer for
15 some portion of it?

16 A Well, I think Craig Spray had come in by then.

17 Q In 2018 Craig Spray came in and took over CFO, right?

18 A Yes.

19 Q But you retained the title of treasurer for some period
20 of time while he was there?

21 A Yes.

22 Q So both you and Mr. Spray overlapped within the NRA
23 during 2018, correct?

24 A Correct.

25 Q Okay. So in 2018 you were still a treasurer within the

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1 NRA, correct?

2 A I was, correct.

3 Q And do you recall at some point Mr. -- Lieutenant
4 Colonel North was elected NRA president?

5 A Yes.

6 Q Okay. And so in May 2018 you were aware that
7 Lieutenant Colonel North was entering into a contract with NRA
8 vendor Ackerman McQueen, right?

9 A Yes.

10 Q And that the NRA would be paying Ackerman McQueen for
11 the costs of that contract, right?

12 A Yes.

13 Q Okay. The position of president of the NRA is usually
14 a volunteer position, right?

15 A That's correct.

16 Q It's unpaid, correct?

17 A That's correct.

18 Q And you didn't bring to the attention of the audit
19 committee that this contract was being entered into, correct?

20 A That's correct.

21 Q And do you know who executed this agreement on behalf
22 of the NRA?

23 A I do not.

24 Q Okay. Did you prepare a business case review sheet for
25 the contract?

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1 A No.

2 Q And did you ensure that the contract had been signed
3 off on by at least two board officers?

4 A No.

5 Q Lieutenant Colonel North was to be paid over a million
6 dollars a year under the contract, right? Correct?

7 A I don't -- I don't recall. I was really out of the
8 negotiations because I was on my way out.

9 Q Okay. But you knew about the contract, and you didn't
10 feel the need to inform the audit committee?

11 A It's true.

12 Q Okay. Mr. Phillips, I almost called you Lieutenant
13 Colonel Phillips. Excuse me. I don't know if that's a
14 promotion. Mr. Phillips, going back to the out-of-pocket
15 expense reimbursement invoices for a moment. You spoke to
16 Melanie Montgomery and Bill Winkler about those invoices on
17 occasion, right?

18 A I believe so.

19 Q Do you recall an occasion where you asked that Tyler
20 Schropp be given an Ackerman credit card so his expenses could
21 go directly to Ackerman McQueen without being reviewed by the
22 NRA?

23 A I remember discussing his charges about that. I just
24 don't remember the details.

25 Q Do you remember asking that Ackerman McQueen or

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1 agreeing that Ackerman McQueen should issue Tyler Schropp a
2 credit card?

3 MR. CORRELL: Objection, your Honor. Compound.

4 Q Do you remember agreeing that Ackerman McQueen should
5 issue Tyler Schropp a credit card?

6 A The way I remember that is -- is that I thought he had
7 an Ackerman card anyway. We hired him from Ackerman and so
8 that's been my thinking. So, I have nothing to -- I have
9 nothing to say what you stated was not true. But my
10 understanding had always been different.

11 Q So the head of Advancement, Tyler Schropp was a former
12 Ackerman McQueen employee, correct?

13 A Correct.

14 Q And the NRA hired him, correct?

15 A That's correct.

16 Q And you thought that Tyler Schropp still had an
17 Ackerman McQueen credit card for which he would charge expenses
18 for the NRA?

19 A No. I just -- I really don't recall how that worked.
20 I thought we were continuing, he already had a process in place
21 for charging the NRA and that he would keep that.

22 Q So you thought there was already a process by which
23 Tyler Schropp could bill NRA expenses on his Ackerman credit
24 card and Ackerman would bill them through to the NRA?

25 A That's correct.

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1 Q And that would be part of the out-of-pocket expenses?

2 A That's correct.

3 Q You don't recall a discussion with Melanie Montgomery
4 about getting Tyler Schropp a credit card when he was already a
5 NRA employee so he could use that for his expenses?

6 A I don't recall that part.

7 Q Do you recall having a conversation with Melanie
8 Montgomery, an Ackerman McQueen executive, about Tyler Schropp
9 using an Ackerman McQueen credit card to hide his own expenses
10 from NRA review?

11 A I wouldn't characterize it that way.

12 Q To -- Do you recall having a conversation with Melanie
13 Montgomery about getting Tyler Schropp an Ackerman McQueen
14 credit card so that his expenses would not be subject to review
15 by NRA employees?

16 A Yes.

17 Q And during that conversation did you also discuss with
18 Ms. Montgomery that that would be a good system by which Mr.
19 LaPierre's expenses would also be shielded from NRA review?

20 MR. CORRELL: Objection, your Honor. Foundation.

21 THE COURT: Overruled.

22 A I don't remember that conversation.

23 Q Did you ever discuss with Ms. Montgomery ways that
24 Ackerman McQueen could help hide some of -- Excuse me. Strike
25 that. Do you recall ever discussing with Ms. Montgomery ways

LAS

Direct-Phillips-Connell

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1 that Ackerman McQueen could help pay for Mr. LaPierre's expenses
2 so that they would not be subject to review by NRA employees?

3 A I wouldn't characterize it that way.

4 Q Well, did you ever discuss with Melanie Montgomery ways
5 that Ackerman McQueen could assist in paying for Mr. LaPierre's
6 expenses so that they would not have to go through the financial
7 services division?

8 A Yes.

9 Q And when did that discussion happen?

10 A I don't know. It's been five years since I was there
11 and before that.

12 Q Do you recall having that discussion with Mr. Winkler
13 as well?

14 A Yes.

15 Q Okay. And, in fact, Mr. Schropp was given an Ackerman
16 McQueen credit card, right?

17 A I would assume so.

18 Q In fact, some of Mr. LaPierre's private jet travel
19 expenses were billed through Ackerman McQueen, correct?

20 A That's correct.

21 Q And did you discuss with Ackerman McQueen those private
22 jet expenses and whether they could be billed through Ackerman
23 McQueen?

24 A I don't recall that.

25 Q Well, there came a time when the 990, the IRS Form 990

LAS

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1 questions changed, right?

2 A Yes.

3 Q And there came a time when that form started to ask
4 does the organization have a policy on first class and charter
5 travel, right?

6 A That's correct.

7 Q And when that changed occurred, did you discuss with
8 Ackerman McQueen how to handle reporting Mr. LaPierre's private
9 jet travel?

10 A I remember a conversation with Melanie Montgomery and
11 Bill Winkler before the new 990 requirement came, I remember a
12 meeting where I told them that was coming. That there would be
13 disclosure of that on the 990.

14 Q Right. And you asked whether Ackerman McQueen could do
15 something so that NRA employees would not see monies being paid
16 on those expenses, right?

17 A I don't remember that, but it's possible.

18 Q Okay. And did they agree to help you?

19 A I don't recall.

20 (Continue on the next page.)

21

22

23

24

25

LAS

Phillips - by Plaintiff - Direct/Connell

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1 THE COURT: Counsel, it's about time for our
2 morning break.

3 MS. CONNELL: Sure.

4 THE COURT: Members of the jury, we're going to
5 take a short break for our mid-morning and I'll see you in a
6 few minutes.

7 MS. CONNELL: Thank you, your Honor.

8 COURT OFFICER: All rise. Jury exiting.

9 (The jury left the courtroom.)

10 (The witness stepped down.)

11 (Recess.)

12 THE COURT: All right, we can go back on the
13 record.

14 I just -- I received a juror note, which we'll mark
15 as Court Exhibit II. I've read it to the -- to counsel.
16 It's a personal note about a family medical issue for one of
17 the jurors, and I just wanted to -- I passed it along to
18 counsel. We'll discuss later exactly how to deal with the
19 juror's question about what to do if the family health issue
20 becomes more serious, and so we'll just table that for now.

21 But we'll, for the moment, mark this (indicating)
22 as Court Exhibit II (handing).

23 (Exhibit so marked.)

24 THE COURT: All right. Are we ready for the
25 jurors?

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Direct/Connell

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1 MS. CONNELL: Your Honor, I understand the
2 courtroom tech is buggy right now, so, hopefully, we can --

3 THE COURT: Since 2001 or just right now?

4 MS. CONNELL: The screens are not working.

5 Well, I see that they're buzzing in and out and
6 blinking, and there's a delay to bring up exhibits. So I
7 think the only option is to move forward as best we can, but
8 if we have to switch back to paper, that would require a
9 little shuffling on our part.

10 THE COURT: All right. Let's soldier on for now
11 and we'll see how it goes.

12 (The witness resumed the stand.)

13 (Pause.)

14 COURT OFFICER: All rise. Jury entering.

15 (The jury entered the courtroom.)

16 THE COURT: Okay. Please be seated.

17 Okay. Counsel, you may continue.

18 MS. CONNELL: Thank you.

19 DIRECT EXAMINATION CONTINUED

20 BY MS. CONNELL:

21 Q Mr. Phillips, I'd just like to talk to you for a second
22 about a couple policies of the NRA that we haven't covered.

23 The NRA has bylaws; am I correct?

24 A That's correct.

25 Q Can you please turn to tab 18 of your binder? It's one

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Direct/Connell

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1 of the thicker, black binders. It should be the -- perhaps --
2 the first tab.

3 (Pause.)

4 A I have it.

5 Q Do you recognize this document?

6 A Yes. It looks like the cover of the Bylaws that get
7 issued periodically.

8 MS. CONNELL: I don't believe I have objections to
9 their admission.

10 MS. ROGERS: No objection.

11 MR. FARBER: No objection.

12 THE COURT: Okay. They're admitted.

13 MS. CONNELL: And that's PX 2692, for everybody.

14 (Image displayed.)

15 Q Mr. Phillips, I'd like you to direct your attention to
16 page 11 of these Bylaws. And I apologize: The tech's being a
17 little buggy today; there may be some flashing.

18 The Bylaws set out the duties of officers of the NRA;
19 correct?

20 A That's correct.

21 Q And that includes the duties of the treasurer, right?

22 A Yes.

23 Q So, if we direct our attention down to section E --

24 Well, if you look first at section 2 on page 16, you'll
25 see, it says, "Duties of Officers" in the middle of the page;

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Phillips - by Plaintiff - Direct/Connell

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1 correct?

2 A Just a second.

3 (Pause.)

4 MR. FARBER: Are we on the page of the exhibit or
5 the Bylaws?

6 MS. CONNELL: We're using the exhibit -- the page
7 numbers on the bottom of the PX -- by the "PX" stamp. That
8 makes it easy and uniform to go through.

9 THE COURT: Oh.

10 Q It's a little blinky, but you should be able to see it.

11 A I'd rather stay with it here (indicating) than the fine
12 type on the Bylaws.

13 Q And you see that the Bylaws set out the duties of the
14 officers; correct?

15 A Correct.

16 Q And if you look further down on that same page, under
17 E --

18 MS. CONNELL: And again I apologize to the Court
19 and the jury for the blinking, but it's a tech problem --

20 THE COURT: I don't think it's blinking.

21 THE WITNESS: Not so much anymore.

22 MS. CONNELL: Oh, good. Perfect. Mine's just
23 going crazy.

24 Q Mr. Phillips, the treasurer has to operate in
25 accordance with the financial policies set forth by the board of

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Phillips - by Plaintiff - Direct/Connell

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1 directors or the executive committee; correct?

2 A Correct.

3 Q And the treasurer has charge of the NRA's books of
4 account and financial operations, right?

5 A That's correct.

6 Q And that was true during your time as CFO and treasurer
7 of the NRA; correct?

8 A Yes.

9 MS. CONNELL: Okay. Thank you, Jesse.

10 (Image removed.)

11 Q The NRA had a Statement of Corporate Ethics while you
12 were treasurer and CFO; correct?

13 A Yes.

14 Q Okay. And that Statement of Corporate Ethics required
15 employees and officers to report suspected violations of NRA
16 policies; correct?

17 A I don't recall. I won't deny it.

18 Q Okay. Let's try and speed things up, so we're going to
19 move past that.

20 Mr. Phillips, to your knowledge, the NRA, while you
21 were CFO and treasurer, did not have a written policy regarding
22 payment or reimbursement for first-class or private-charter
23 travel; isn't that true?

24 MR. CORRELL: Objection, your Honor; calls for a
25 legal conclusion.

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Direct/Connell

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1 THE COURT: Overruled.

2 A Repeat it, please? Sorry.

3 Q Sure.

4 While you were CFO and treasurer of the NRA, isn't it
5 true that the NRA did not have a written policy regarding
6 payment or reimbursement of first-class or private-charter
7 travel?

8 A That's true.

9 Q And while you were CFO and treasurer of the NRA, the
10 NRA did not have a policy regarding payment or reimbursement of
11 expenses relating to health or social club initiation fees;
12 correct?

13 A I -- I don't recall that.

14 Q Okay. Mr. Phillips, you recall testifying in this
15 action -- in your deposition in this action -- correct?

16 A Yes.

17 Q And, again, you were sworn to tell the truth at that
18 time and you tried to tell the truth; correct?

19 A Correct.

20 Q Okay.

21 MS. CONNELL: Jesse, can you please bring up page
22 170, lines 8 through 13, of that deposition?

23 (Image displayed.)

24 Q Mr. Phillips, in your deposition in this action, you
25 were asked:

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Phillips - by Plaintiff - Direct/Connell

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1 "While you were treasurer and CFO, did the NRA
2 follow a written policy regarding payment or reimbursement
3 or provision of all the expense" --

4 Oh, I'm sorry. I'm reading the wrong thing.

5 "While you were Treasurer and CFO, did the NRA
6 follow a written policy regarding payment or reimbursement
7 or provision of expenses relating to health or social club
8 or initiation fees?"

9 You were asked that, right?

10 A Right.

11 Q And your answer was: "Not to my knowledge." Right?

12 A Yes.

13 Q And that was true when you gave it; correct?

14 A Yes.

15 Q Mr. Phillips, to your -- while you were CFO and
16 treasurer of the NRA, the NRA did not have a written policy
17 regarding payment or reimbursement of housing allowances; is
18 that correct?

19 A That's correct.

20 Q I'd like to move on to a different topic, Mr. Phillips:
21 You're familiar with an individual named David
22 McKenzie; correct?

23 A I am.

24 Q And his wife, Laura?

25 A Yes.

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Direct/Connell

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1 Q Are you friendly with them?

2 A Yes.

3 Q And to your knowledge, is Mr. LaPierre friendly with
4 them?

5 A Yes.

6 Q And the McKenzies control Membership Marketing
7 Partners; is that correct?

8 A That's correct.

9 Q Okay. Mr. McKenzie purchased this company from a man
10 named Brad O'Leary, right?

11 A Correct.

12 Q At the time, it had been called "PM Consulting"; right?

13 A That's right.

14 Q To your knowledge, did the NRA continue to pay money to
15 Mr. O'Leary even after he had sold PM Consulting to the
16 McKenzies?

17 A I believe so.

18 Q Okay. He con -- the NRA continued to pay Mr. O'Leary
19 \$20,000 a month; correct?

20 A I don't recall the amount.

21 Q Okay. I'll get back to that in a second.

22 Mr. McKenzie, after he purchased PM Consulting, called
23 the company "Membership Marketing Partners"; right?

24 A Yes.

25 Q And then he broke the company into three separate

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Direct/Connell

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1 corporations, right?

2 A That's correct.

3 Q Membership Marketing Partners?

4 A That's one.

5 Q And Allegiance? Creative ...?

6 A Yes. That's two.

7 Q And Concord Social; correct?

8 A That's correct.

9 Q Okay. So the McKenzies controlled all three entities,
10 to your knowledge.

11 A Yes.

12 Q And while you were CFO and treasurer, all three
13 entities were rented space within the NRA headquarters --

14 A Yes.

15 Q -- correct?

16 A Yes.

17 Q Same offices? Same office?

18 A Yes.

19 Q Same employees.

20 A There may have been one or two exceptions, but mainly
21 the same employees.

22 Q Okay.

23 MS. CONNELL: Could we please --

24 Q Mr. Phillips, could you look at tab 27, which has been
25 marked for identification as PX 2093?

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Direct/Connell

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1 THE COURT: It's in a different book.

2 THE WITNESS: Oh.

3 MS. CONNELL: I'm sorry, your Honor. The choice
4 was one giant binder (simulating) or three.

5 A What's the tab number, again?

6 Q 27.

7 THE COURT: I don't think that's in that one
8 (indicating).

9 Q It's tab 27, PX 2093.

10 A Tab 27, right?

11 Q Yes, please.

12 MS. CONNELL: Your Honor, this is a compendium of
13 documents as they were produced to us.

14 (Pause.)

15 MS. ROGERS: No objection by the NRA.

16 THE COURT: Any objection?

17 MR. CORRELL: No objection, your Honor.

18 THE COURT: All right. PX 2093 is admitted.

19 MS. CONNELL: Thank you, your Honor.

20 Q Mr. Phillips, I first would like to direct your
21 attention to page 7 of this agreement -- of this document.

22 (Image displayed.)

23 Q You can see the page numbers at the very bottom --

24 A Yeah.

25 Q -- next to the PX number.

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Phillips - by Plaintiff - Direct/Connell

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1 A Okay. I think I have the right -- it says: "PX-2093,
2 page 7 of 15"?

3 Q Perfect. Thank you, sir.

4 A Okay.

5 Q Mr. Phillips, this is a December 1st, 2011, agreement
6 between Membership Marketing Partners and the NRA; is that
7 correct?

8 A Correct.

9 Q And, if you turn to page 14 of this document, is that
10 your signature on this page?

11 (Image scrolled.)

12 A Yes.

13 (Image modified.)

14 Q So you executed this agreement between the NRA and MMP.

15 A Yes.

16 Q And it was your -- your --

17 It was executed on December 16th, 2011; correct?

18 A Yes.

19 Q Okay. This 2011 agreement with MMP stayed in place
20 until it was amended in 2015; correct?

21 A That -- I don't recall the timing of that.

22 Q Okay. Well, Mr. Phillips, let's take a look at --
23 Well, while we're here, can you please take a look at
24 page 15?

25 A I have it.

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Phillips - by Plaintiff - Direct/Connell

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1 (Image scrolled.)

2 Q And this provides that, effective December 1st, 2011,
3 the NRA will pay a management fee of \$400,000 per month to MMP;
4 correct?

5 A Correct.

6 Q Okay. There were separate agreements for Allegiance
7 and Concord, right? This is just for MMP, right?

8 A That's correct.

9 Q Okay. So now, if you can please turn to page 3 of this
10 document --

11 (Image scrolled.)

12 Q -- this is the First Amendment --

13 Oh, I'm sorry.

14 A I'm sorry.

15 Q Page 3.

16 A Page 3 --

17 Q Yes.

18 A -- is the page number at the very bottom or on the
19 copy?

20 Q On the very bottom, next to where it says "PX-2093."

21 A Okay. Sorry.

22 It says "First Amendment"?

23 Q Right.

24 So this is the First Amendment to the December 2011

25 Membership Marketing Partners contract; correct?

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Direct/Connell

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1 A Yes.

2 Q And it extended the contract for five additional years,
3 starting December 1st, 2016; right?

4 A Correct.

5 Q And would be automatically extended every three years
6 thereafter, right?

7 A Correct.

8 Q And, if you turn to the next page, you signed this
9 agreement; right?

10 (Image scrolled.)

11 A Yes.

12 Q And so did Mr. LaPierre.

13 A Yes.

14 Q So this was the First Amendment to the 2011 contract,
15 as far as you know; right?

16 A As far as I know.

17 Q Okay. Please take a look at page 5.

18 (Image scrolled.)

19 A I have it.

20 Q This is the Second Amendment to the 2011 agreement,
21 right?

22 A That's right.

23 Q And it was entered into, if you turn to the next page,
24 on January -- in -- on January 30th, 2017; right?

25 (Image modified.)

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Direct/Connell

815

1 A January 30th, 2017?

2 Q Right.

3 A That's right.

4 Q So this Second Amendment was entered into while the
5 First Amendment contract was still in force, right?

6 (Pause.)

7 Q Maybe I can clarify that.

8 A Yeah. If you -- if you would, that would help. I
9 don't have a --

10 Q We just looked at the First Amendment to the MMP
11 contract, right?

12 A Yes.

13 Q And that was signed in April of 2015, right?

14 A Correct.

15 Q And it extended the term of the contract -- of the MMP
16 contract -- for five years, and with three-year renewal terms;
17 right?

18 A Um-hmm. Correct.

19 Q So, within that five-year period, the NRA signs another
20 amendment; right? This Second Amendment.

21 A I do see that.

22 Q And this again extends the MMP contract for an
23 additional five years, right?

24 A Yes, to 2021.

25 Q That's correct; commencing December 1st, 2021.

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Direct/Connell

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1 A Yes.

2 Q So it would go through to 2026, right?

3 A Yes.

4 MR. CORRELL: Objection, your Honor.

5 The document speaks for itself. She's reading it
6 incompletely. There's another clause that provides an out
7 in the event of notice to the other party.

8 THE COURT: I think the question was fine.

9 Overruled.

10 MS. CONNELL: Thank you, your Honor.

11 (Image removed.)

12 Q Mr. Phillips, we saw that the con -- the 2011 contract
13 provided for a management fee of \$400,000 per month to be paid
14 to MMP; correct?

15 A Correct.

16 Q And, in fact, that management fee went up over the
17 years; correct?

18 A That's my understanding.

19 Q Okay. And, actually, I'd like you to take a look at
20 tab 29, sir, please, and I'd specific --

21 Oh, I'm --

22 MS. CONNELL: Your Honor, this is tab 29. It's PX
23 1695. This is a packet of documents as they were produced
24 to us.

25 (Pause.)

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Direct/Connell

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1 THE COURT: Any objection?

2 MS. ROGERS: No objection.

3 MR. FARBER: No objection.

4 MR. CORRELL: No objection.

5 THE COURT: All right, it's admitted.

6 MS. CONNELL: Okay.

7 (Image displayed.)

8 BY MS. CONNELL:

9 Q Mr. Phillips, looking at PX 1695, I'd like to draw your
10 attention to page 4. This is a business -- this is a Contract
11 Review Sheet relating to the MMP contract; correct?

12 A I'm still trying to get to the page. Thank you.

13 Q Sure.

14 A Yes.

15 Q Okay. And this indicates that the contract was
16 negotiated by you, right?

17 A That's what it says.

18 Q Okay. And the date of the Contract Review Sheet is
19 12/12/11, right?

20 A That's right.

21 Q And below that are signatures; correct?

22 A Yes.

23 Q Ms. Rowling signed? On 1 --

24 A Yes.

25 Q On January 12th, 2012?

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Phillips - by Plaintiff - Direct/Connell

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1 A That's right.

2 Q And someone from Legal signed on January 12th, 2012;
3 right?

4 A That's right.

5 Q And Mr. LaPierre signed, but his signature is undated;
6 right?

7 A Yes.

8 Q But the MMP contract went into effect in December of
9 2011; correct?

10 A You have to help me out here again.

11 Q The MMP contract went into effect in December of 2011;
12 correct?

13 A That's the date on the contract signature, yeah.

14 Q Okay. On the -- on the MMP agreement.

15 A Yes.

16 Q Okay. So now I'd like to take a look --

17 If you turn to page 5, David Keene also signed this
18 contract; right?

19 A Take me there again. Where -- where am I looking for
20 it?

21 Q Sure. It's page 5 of PX 1695.

22 A I have that.

23 Q Okay. And this shows a signature by David Keene;
24 correct?

25 A Yes. It's very, very faint, but I -- I can tell

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Phillips - by Plaintiff - Direct/Connell

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1 enough.

2 Q And it doesn't have a signature by another board
3 officer on that page, right?

4 A That's right.

5 Q But on the next page, it has a signature by Mr. Cors;
6 Allan Cors, right?

7 A Yes.

8 Q Dated February 9th, 2012; right?

9 A It's either the 9th or the 7th.

10 Q That's true. It's -- it's a little hard to read.

11 A Yes.

12 Q So either February 9th or February 7th.

13 And the next page, at page 7, is the Business Case
14 Analysis Sheet; correct?

15 A That's correct.

16 (Image scrolled.)

17 Q And that was prepared by you, right?

18 A No. It might have been prepared through my office.

19 Q So where it says, "Analysis prepared by: Wilson
20 ... Phillips," that's inaccurate?

21 A Yes.

22 Q Okay. So somebody else --

23 A Somebody within my office probably signed it or
24 prepared it.

25 Q Did you review this Business Case Analysis Sheet before

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Direct/Connell

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1 it was submitted for signatures?

2 A I -- I don't recall; it was a long time ago.

3 Q Okay. Mr. Phillips, attached to the Business Case
4 Analysis Sheet is a contract; correct?

5 (Image scrolled.)

6 A Yes.

7 Q And directing your attention to page 15, this is an
8 unsigned version of the MMP contract; right?

9 (Image scrolled.)

10 A Yes.

11 Q And directing your attention now -- I'm sorry to make
12 you flip back and forth -- to page 10 of this agreement, at
13 paragraph 2-A --

14 (Image scrolled.)

15 A I have it.

16 Q -- that paragraph says that there is a ten percent
17 annual cap on the increase in management fees by MMP; right?

18 A You said, "an annual cap"; correct?

19 Q Yes.

20 A Yes.

21 Q And do you know whether that ten percent annual cap was
22 in the agreement signed with MMP?

23 A I do not know.

24 Q Okay. Mr. Phillips, were you aware --

25 It's true that MMP increased their management fees by

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Direct/Connell

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1 more than ten percent annually; isn't that correct?

2 A That's correct.

3 Q Okay. Were you aware, during the term of the 2011
4 contract, that Mr. LaPierre was using Mr. McKenzie's yachts?

5 A Yes.

6 Q And were you aware that during the term of the 2011
7 contract, Mr. LaPierre was traveling with the McKenzies?

8 A I really -- I -- I -- I'm not sure I was aware of that.

9 Q Do you know --

10 Did you know that Mr. LaPierre and his wife went to
11 Europe with the McKenzies?

12 A No.

13 Q Do you know whether Mr. LaPierre and his wife went to
14 India with the McKenzies?

15 A No.

16 Q Do you know whether the McKenzies paid for the
17 LaPierres to travel?

18 A Well, I -- I -- I believe they -- they had, um -- you
19 know, they -- they traveled together some, but the times I'm --
20 I'm aware of is -- is two times; it had -- where there was --
21 cultivating someone else to come work with the NRA; you know, a
22 celebrity.

23 Q So you were unaware of Mr. LaPierre and Mrs. LaPierre
24 taking vacations paid for by the McKenzies, if that occurred?

25 A That's -- that's correct.

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Phillips - by Plaintiff - Direct/Connell

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1 Q Okay. Did Mr. LaPierre ever disclose that to you?

2 A No.

3 Q Do you know whether he disclosed that to the Audit
4 Committee at any time while you were CFO and treasurer?

5 A No, I don't know that.

6 Q Okay.

7 In fact, Mr. Phillips, by 2018, the management fee
8 charged by MMP had increased to \$961,850 per month; right?

9 A I don't know the exact. I won't -- I won't deny that.

10 Q Okay. Mr. Phillips, I would like to direct your
11 attention to tab 10.

12 (Image removed.)

13 MS. CONNELL: Your Honor, this is PX 2641.

14 THE COURT: It's in the white binder?

15 MS. CONNELL: It's in the white binder, yes, sir.

16 THE COURT: She's just trying to keep us on our
17 toes, I think.

18 MS. CONNELL: I know. Get you a workout today.

19 (Pause.)

20 A Tab 10?

21 Q Yes, please.

22 A Okay, I'm there.

23 MS. CONNELL: Your Honor, this is a number of
24 documents bundled together as they were produced to us. I'm
25 not sure if we have objections to them.

ALAN F. BOWIN, CSR, RMR, CRR

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1 MS. ROGERS: No objection.

2 MR. CORRELL: No objection, your Honor.

3 MR. FARBER: No objection.

4 MR. FLEMING: None from me.

5 THE COURT: It's admitted.

6 (Image displayed.)

7 BY MS. CONNELL:

8 Q Mr. Phillips, I'd like to draw your attention to page 2
9 of tab 10, please. This is a letter addressed to you from
10 Richard Charnley; correct?

11 A Yes.

12 Q Dated August 14th, 2018?

13 A That's correct.

14 Q And Mr. Charnley indicates that he represents
15 Membership Marketing Partners; correct?

16 A That's correct.

17 Q And Mr. Charnley seems to be responding to two letters
18 that he received from the NRA, right? One letter dated August
19 7th and the other dated August 8th?

20 A Yes.

21 Q And on page 3, Mr. Charnley is writing to confirm that
22 the NRA is going to pay all currently open invoices and to ask
23 that if the NRA's disputing an invoice, it provide a basis for
24 the same; right?

25 (Image modified.)

ALAN F. BOWIN, CSR, RMR, CRR

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1 A That's right.

2 Q Do you recall talking to Mr. Charnley at this time?

3 A No.

4 Q Do you recall reaching out to MMP about its invoices at
5 this time?

6 A No.

7 Q Can you please turn to page 4 of tab 10, which is PX
8 2641?

9 (Image displayed.)

10 A I have it.

11 Q Okay. Mr. Phillips, this is a letter directed to
12 Gurney Sloan -- G-u-r-n-e-y, S-l-o-a-n -- of Membership
13 Marketing Partners; correct?

14 A That's correct.

15 Q And it asks for Membership Marketing Partners to allow
16 an audit of its records; correct?

17 A Yes.

18 Q And specifically, it asks for documents substantiating
19 the MMP's performance or costs incurred, and management fee
20 increases; right?

21 A Yes.

22 Q And the letter appears to be signed by you; correct?

23 A There's a -- yeah, it appears to be. The --

24 You're now on page 4 of 6?

25 Q I'm on page 4 of 6.

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1 A Yes.

2 Q That's correct, sir?

3 A That's correct.

4 Q Is that your signature?

5 A That's the -- that's my signature that's on the
6 facsimile.

7 Q I'm sorry? "... That's on ..."?

8 A It's a facsimile signature.

9 Q Right. So it's an electronic signature?

10 A An electronic signature.

11 Q Do you recall signing this document?

12 A I don't recall.

13 Q Do you believe that this document was signed on your
14 behalf, inappropriately?

15 A No.

16 Q Okay. So it may be that someone at the NRA signed it
17 electronically, appropriately.

18 A Yes.

19 Q Okay. Please take a look at page 5, the August 8th
20 letter. Right?

21 A Yes.

22 Q You see it, sir?

23 A I've got it.

24 (Image scrolled.)

25 Q Okay. In paragraph A, you indicate that the MMP

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1 agreement specifies that the monthly payment -- the monthly
2 management fee -- payable by the NRA shall be \$400,000; correct?

3 A That's correct.

4 Q Which fee shall increase -- shall under no
5 circumstances increase by more than ten percent annually, right?

6 A That's correct.

7 (Continued on next page.)

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ALAN F. BOWIN, CSR, RMR, CRR

1 Q Nevertheless, MMP has invoiced the NRA for management
2 fees in the amount of \$961,850 per month since the start of
3 2018, right?

4 A Right.

5 Q And the NRA had been paying for those management
6 increases until this letter objection, right?

7 A That's correct.

8 Q Okay. Mr. Phillips, did the NRA continue to pay the,
9 to your knowledge, the increase management fee for MMP after you
10 sent this letter?

11 A I -- I don't know. This was a timing when Craig Spray
12 had come in. So, I really don't have a basis to know.

13 Q So you stayed at the NRA until December 31st, 2018?

14 A Fall of 2018.

15 Q Okay. And you don't know whether the NRA continued to
16 pay the increase management fee?

17 A I do not know.

18 Q Okay. Mr. Phillips, could you look at tab three in the
19 white notebook. You get to keep that notebook.

20 MS. CONNELL: Your Honor, I don't know if I have an
21 objection to this.

22 MS. ROGERS: No objection.

23 MR. FARBER: What's the exhibit number?

24 MS. CONNELL: It's exhibit number PX 748.

25 MR. FARBER: No objection.

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1 MR. CORRELL: No objection.

2 THE COURT: It's admitted.

3 Q Mr. Phillips, this is an e-mail chain between you and
4 Mr. Tedrick, correct?

5 A That's correct.

6 Q And Mr. Tedrick has raised in July 2015 a fee increase,
7 a large fee increase he indicates, right?

8 A Yes.

9 Q And your response is that "Wayne has approved",
10 correct?

11 A Yes.

12 Q Mr. LaPierre didn't -- you didn't have any proof that
13 he approved it in writing, correct?

14 A No.

15 Q Mr. LaPierre would sometimes give you verbal approvals
16 for such increases, right?

17 A Yes.

18 Q Okay. You and Mr. LaPierre negotiated the MMP
19 agreements, right?

20 A Some of them.

21 Q Okay. And you were involved in those negotiations,
22 right?

23 A I was.

24 Q Okay. Mr. Phillips, do you recall testifying in the
25 NRA's bankruptcy proceeding in 2021 at a deposition?

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1 A I think -- I just don't remember. There were a lot of
2 depositions at the time. So, if you would just ask that I could
3 answer. I just don't know about the bankruptcy.

4 Q Why don't we put a pin in that and we'll get back to
5 that.

6 A Okay. That's great.

7 Q If you can open tab two, please, Mr. Phillips. That's
8 in the white notebook as well.

9 MS. ROGERS: No objection to this.

10 MR. CORRELL: No objection, your Honor.

11 MR. FARBER: No objection.

12 MR. FLEMING: No objection.

13 THE COURT: It's admitted.

14 MS. CONNELL: Thank you, your Honor.

15 Q Mr. Phillips, the cover letter to this is an e-mail
16 dated June 14, 2019, correct?

17 A Yes.

18 Q And you had already left the NRA as of that time,
19 right?

20 A That's right.

21 Q But if you notice in the body of the e-mail it says,
22 Mr. Drexler, and let's stop for a second. Who is Murray
23 Drexler?

24 A He worked for Associated Television, and he was in a
25 financial role. I don't know if he was their financial officer

1 or not.

2 Q He also worked for MMP, right?

3 A Yes.

4 Q Okay. And Mr. Drexler says, "Attached please find a
5 document that explains increases in our fees", correct?

6 A Correct.

7 Q And he says he believes it was sent to Woody or Legal,
8 right?

9 A Yes.

10 Q So now I'm going to ask you to turn to the attached
11 document.

12 A I have it.

13 Q Okay. If you can look at page 4, please.

14 (Whereupon the witness complied with the above
15 request of counsel.)

16 Q And specifically the fourth bullet. Mr. Drexler
17 indicates that "All fee increases were negotiated with the
18 ownership of MMP entities and approved by the NRA's executive
19 vice president and treasurer." Do you see that?

20 A I see that.

21 Q And that statement is true, correct?

22 A Why -- I don't remember the approval by either the
23 executive vice president or the treasurer, but it's possible. I
24 agreed with some of the increases.

25 Q From 2011 until the time you left the NRA, MMP would

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1 submit invoices to the NRA, correct?

2 A Correct.

3 Q And those invoices would be submitted to what, the
4 accounts payable department of the NRA?

5 A Eventually. I don't know where they were addressed to
6 start.

7 Q Okay. But eventually departments that you supervised
8 would process and pay those invoices, correct?

9 A That's right.

10 Q Okay. So while you were CFO and treasurer you paid
11 these invoices from MMP, correct?

12 A Yes.

13 Q And do you recall or do you take issue with the amounts
14 of invoicing put forward in this document? Let me strike that.
15 Do you recall reviewing this document when you were CFO and
16 treasurer?

17 A Which -- which document?

18 Q Tab two, the document beginning at page 2.

19 A (Examining). Yes. This is where it talks about the
20 growth and the new processes for online billing and so forth. I
21 agreed with it, the principles that it is laid out here.

22 Q Did you ever complete a new business case review sheet
23 for the MMP agreement?

24 A I did not.

25 Q And did you ever seek officer, board officer signoff

1 for increased payments to MMP?

2 A I don't recall that.

3 Q But you were friends with the owners of MMP, correct?

4 A We worked together for 20 years, but they were on the
5 West Coast. I was the East Coast. We were friendly.

6 Q Okay. And Mr. LaPierre was friends with the McKenzies,
7 right?

8 A Yes.

9 MS. CONNELL: Okay. You can take that down. Thank
10 you very much, Jessie.

11 Q Mr. Phillips, earlier we were talking about Tony
12 Makris. Do you recall that?

13 A I do.

14 Q And we talked about the NRA paying quote unquote
15 "supplemental" invoices for Tony Makris. Do you recall that?

16 A Yes.

17 Q And is it accurate that Mr. Makris was paid \$600,000
18 per year under those supplemental invoices?

19 A Can you show me something?

20 Q One second.

21 MS. CONNELL: Can we please bring up PX 2650.
22 That's tab 11. That should be in the white binder. Don't
23 bring it up yet, Jessie. It's not admitted. Sorry.

24 Q Can you take a look at tab 11, sir. In particular I
25 would like to direct your attention to page 2 of tab 11.

1 (Whereupon the witness complied with the above
2 request of counsel.)

3 Q You can keep looking all the way back to page 7 of tab
4 11. Okay. These are invoices from Tony Makris, right?

5 A Yes.

6 Q And they are directed to Lisa -- I'm sorry. Did the
7 NRA receive these invoices as part of its regular course of
8 business?

9 A I believe so.

10 MS. CONNELL: Is there any objection?

11 MR. FARBER: No objection.

12 MS. ROGERS: No objection.

13 MR. CORRELL: No objection.

14 THE COURT: PX 2150 is admitted.

15 Q So, Mr. Phillips, these are invoices from 2018 from
16 Tony Makris to the NRA, correct?

17 A That's correct. I'm going to get rid of the white
18 binder if you don't mind.

19 Q Sure. Sure. From 2017?

20 A Yes.

21 Q And onward from Tony Makris?

22 A Yes.

23 Q What is Under Wild Skies, that's Mr. Makris' company,
24 right?

25 A It's a company but it's also the name of a TV show

1 that's basically African hunting.

2 Q Okay. So Mr. Makris was billing the NRA, and you'll
3 see in the middle column it says, "Description, supplemental
4 invoice", correct?

5 A That's correct.

6 Q And he was billing them \$97,500 in each of these
7 months, right?

8 A That's correct.

9 Q And that amount is just below the \$100,000 procurement
10 cutoff for the NRA, correct? For the NRA's procurement policy?

11 A That's correct.

12 Q And Mr. Makris, who had agreed to pay these invoices,
13 these supplemental invoices by Mr. Makris?

14 A Ask the first part of that again. I'm sorry.

15 Q Sure. Who had authorized Mr. Makris to submit these
16 supplemental invoices to the NRA?

17 A Well, it would have been, I don't see anything signed
18 off here, either me or Wayne LaPierre.

19 Q Do you recall negotiating an agreement where
20 Mr. Makris, Mr. LaPierre's close friend, would be paid \$97,500 a
21 month as a supplemental invoice?

22 A Sorry. You have to ask it one more time.

23 Q Sure. Do you recall negotiating an agreement where
24 Mr. Makris, Wayne LaPierre's close friend would be paid \$97,500
25 a month as a supplemental invoice to the NRA?

1 A I don't recall negotiating an agreement. I remember
2 its existence.

3 Q Okay. Do you know whether Wayne LaPierre negotiated
4 that agreement?

5 A I don't.

6 Q Do you know who else besides yourself or Wayne LaPierre
7 could have negotiated that agreement?

8 MR. CORRELL: Objection, your Honor. Question is
9 embedded with a fact that's not in evidence.

10 THE COURT: Sustained.

11 Q Would anyone else at the NRA have had the authority to
12 negotiate this agreement on behalf of the NRA besides you and
13 Mr. LaPierre?

14 A Possibly someone with membership, but most likely Mr.
15 LaPierre and me.

16 Q And no matter who negotiated, an agreement of this size
17 would have had to have been put in writing, right?

18 A That's correct.

19 Q There would have had to have been a contract, right?

20 A That's correct.

21 Q And a business case analysis, right?

22 A That's correct.

23 Q And two board officers would have had to sign off on
24 it, right?

25 A That's correct.

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1 Q All the other requirements applicable to procurement of
2 a contract this size, right?

3 A Yes.

4 Q And did you ever see any of that for this agreement?

5 A I don't recall seeing it.

6 Q Okay. And yet the NRA paid these invoices, correct?

7 A Yes.

8 Q For years, right?

9 A Years, meaning more than one year, possibly.

10 Q Okay. Mr. Phillips, if you look at page 2 of this
11 exhibit, at the bottom where it says "officer", are those your
12 initials?

13 A Yes.

14 Q Okay. You can put that down.

15 MS. CONNELL: Thank you, Jessie.

16 Q Mr. Phillips, during your time as NRA's CFO and
17 treasurer, you were aware of a portion of the NRA budget called
18 the EVP budget, right?

19 A Yes.

20 Q That's the executive vice president budget?

21 A That's correct.

22 Q And that was the budget that was overseen by Wayne
23 LaPierre, correct?

24 A That's correct.

25 Q And you believe that Mr. LaPierre was aware of who was

1 being paid through the EVP budget, correct?

2 A We reviewed it once a year during budget time.

3 Q Okay. So you would see consulting or other agreements
4 for payments under the EVP budget, correct?

5 A That's correct.

6 Q And you believe Mr. LaPierre was aware of those,
7 correct?

8 A Yes.

9 MR. CORRELL: Objection. Foundation, your Honor.
10 No basis for that belief.

11 THE COURT: Response.

12 MS. CONNELL: Mr. -- I think I can correct it.

13 Q Mr. Phillips, there were consulting contracts paid
14 under the EVP budget, correct?

15 A Correct.

16 Q And there were payments for severance agreements,
17 correct?

18 A I'm not aware of a specific one, but that's possible.

19 Q Well, let's take a look at one.

20 A Okay.

21 Q Okay. Who is Kyle Weaver?

22 A He's a former executive director of General Operations.

23 Q And Mr. Weaver was terminated by the NRA, correct?

24 A That's correct.

25 Q And you don't know the reason for the termination,

1 right?

2 A I do not.

3 Q And Mr. Weaver was escorted out of the NRA headquarters
4 with security, right?

5 A I don't know that.

6 Q Okay. I would like to direct your attention to tab 31,
7 which is PX 595. One of the big black binders, yeah.

8 A Tab 35, right?

9 Q Thirty-one, please.

10 A Okay.

11 MS. CONNELL: I don't know if there are any
12 objections to this exhibit.

13 MR. FARBER: No objection.

14 MR. CORRELL: No objection.

15 MS. ROGERS: No objection.

16 THE COURT: It's admitted, PX 595.

17 MS. CONNELL: Thank you.

18 Q This is an agreement regarding termination of
19 employment, release, confidentiality and nondisparagement
20 between the NRA and Kyle Weaver, correct?

21 A That's correct.

22 Q And if you turn to page 7, you'll see that Mr. Weaver
23 signed this agreement, right?

24 A Yes.

25 Q And if you turn to page 8, you signed this agreement,

1 right?

2 A Yes.

3 Q And would you consider this a consulting agreement or a
4 severance agreement?

5 A Severance.

6 Q Okay. And under this agreement Mr. Weaver was to be
7 paid 1.83 million, right? I would direct your attention --

8 A Do you have a page number?

9 Q Sure. On page 1, under "Payments and consideration of
10 this agreement".

11 A (Examining). Yes.

12 Q Who negotiated this agreement on behalf of the NRA?

13 A One I'm pretty sure of is outside counsel Steve Hart.

14 MS. SACCO: Steve?

15 THE WITNESS: Hart, H-A-R-T.

16 Q Who approved of it on behalf of the NRA?

17 A I signed it. That and a witness and Mr. Weaver, the
18 only signature I see here.

19 Q Who decided to fire Mr. Weaver?

20 A I don't know for sure. I think it was Wayne LaPierre.

21 Q And who decided that Mr. Weaver should be paid
22 \$1.83 million after he was fired?

23 A I don't remember. I think it was negotiation with
24 counsel for Weaver.

25 Q But you don't know who determined that, okay.

1 Mr. Phillips, during --

2 MS. CONNELL: You can take that down. Thank you,
3 Jessie.

4 Q Mr. Phillips, during your time as NRA's CFO and
5 treasurer -- Strike that. In regard to Mr. Weaver's termination
6 agreement, did you complete a business case analysis?

7 A No.

8 Q Did you get approval of two board officers?

9 A No.

10 Q Did you otherwise comply with the NRA's procurement
11 policy?

12 A It's not procurement. It's severance.

13 Q So, you didn't take any steps, like trying to get board
14 approval for payment of \$1.83 million, right?

15 A No.

16 Q Okay. To your knowledge did Mr. Weaver ever consult
17 for the NRA after he was terminated?

18 A Not to my knowledge.

19 Q Okay. Do you know a man named Mr. Mercurio?

20 A Yes.

21 Q Who is Mr. Mercurio?

22 A For many years he was the head of our membership
23 division.

24 Q And what is Member Drive, Mr. Phillips?

25 A It was a -- it was a company that had amassed a very

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1 large equivalent of a mailing list of 60 million names. It was
2 to procure or to get -- I'm thinking of the right way to say
3 this -- to basically for affinity programs. Affinity programs
4 are those like credit cards organizations have.

5 Q To get an NRA credit card, for example?

6 A Right. Anyway, that's what it was.

7 Q Did you ever have an ownership interest at Member
8 Drive?

9 A I did.

10 Q And did -- was that during the time that you were the
11 NRA's CFO and treasurer?

12 A Actually not ownership. I consulted with them.

13 Q Okay.

14 A But it was when it was -- it was during the time I was
15 treasurer.

16 Q You had employment or some consulting arrangement with
17 Member Drive under which you were paid, correct?

18 A That's correct.

19 Q While you were NRA's CFO and treasurer, correct?

20 A Yes.

21 Q While you were consulting for Member Drive Susan
22 LaPierre worked there, right?

23 A Yes.

24 Q And Holly Mercurio worked there, correct?

25 A Yes.

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1 Q Mr. -- Mr. Phillips, can you speak into the mike a
2 little bit more.

3 A I'm sorry.

4 Q I'm getting notice that it's hard to hear you. And
5 Holly Mercurio was the husband of Mr. Mer -- I mean the wife of
6 Mr. Mercurio who worked at the NRA, correct?

7 A That's correct.

8 Q And as an NRA officer, you signed an agreement to pay
9 Mr. Mercurio a flat rate of \$10,000 per month totally separate
10 from whatever salary or bonus he received from the NRA, correct?

11 A I don't remember that. Say that again.

12 Q Sure. Do you remember ever paying or agreeing to pay
13 Mr. Mercurio or agreeing for the NRA to pay Mr. Mercurio \$10,000
14 a month?

15 A No.

16 Q Mr. Phillips, could you turn to tab 43, which is PX
17 1804. It has a Post-it note in lieu of a tab.

18 MS. CONNELL: Your Honor, this is part of a packet
19 of documents that were produced to us by the NRA.

20 A I have pages flying out here. I got it. Tab 43,
21 right?

22 Q Yes, please, sir.

23 A Sorry about that. Okay.

24 Q Okay. Mr. Phillips, I would like to direct your
25 attention to page 7 of tab 43. Have you seen this document

1 before, sir?

2 A (Examining). Well, I see I signed it, but I'm not
3 familiar with it.

4 MR. FARBER: Could we get an exhibit number?

5 MS. CONNELL: It's exhibit number 1804.

6 MS. ROGERS: We object to this document on
7 completeness. It's appended to an internal memo knowing
8 that the document is incomplete and the employee is confused
9 by it.

10 MR. FARBER: Can we find out if this is one of the
11 exhibits that the AG's office identified for use late last
12 night.

13 MS. CONNELL: This is an exhibit that we identified
14 late last night, your Honor. This is a packet of documents
15 produced by the NRA, and it relates to the contracts with
16 Mr. Mercurio.

17 MR. FARBER: Could we see a copy of the exhibit,
18 because I don't have one.

19 MR. FLEMING: I don't either.

20 MS. CONNELL: They are in the plaintiff's exhibits
21 that were produced previously, your Honor, some time ago.

22 THE COURT: Is this the only copy of this that the
23 Attorney General has?

24 MS. CONNELL: As far as I know, your Honor, yes.

25 MR. FARBER: This is also your tab 32.

1 THE COURT: It looks to be.

2 MS. CONNELL: I'm sorry, your Honor. We had
3 previously identified it as tab 32.

4 THE COURT: It's the same thing?

5 MS. CONNELL: Same thing. So the late night
6 production shouldn't be a problem here. If we can refer to
7 tab 32, PX 1804.

8 THE COURT: Again the question remains the same I
9 suppose. So, the only version of this contract you have is
10 this version that's in here?

11 MS. CONNELL: Your Honor, I believe that that's
12 true. What we could do is admit pages seven through 15 of
13 this and pending presenting it to Mr. Frazer as a complete
14 exhibit.

15 THE COURT: To Mr. Frazer?

16 MS. CONNELL: Mr. Frazer, yes.

17 THE COURT: I mean, as it is, it is, you know, this
18 on its face doesn't seem to have gone to Mr. Phillips. So,
19 it is maybe a bit confusing to question him about a partial
20 document that he's not --

21 MR. CORRELL: Your Honor, my objection is lack of
22 foundation. There is no indication that he's seen this
23 document.

24 THE COURT: Well, I mean, she can ask if he's aware
25 of an agreement that's referenced here. But so you can go

1 that far. I'm a little uncomfortable about questioning him
2 about the substance of it based on what's in front of me.

3 MS. CONNELL: So, your Honor, I would ask that we
4 admit PX 1804, pages seven through 15 now, and plaintiff
5 reserves the right to seek admission of the entire document
6 through Mr. Frazer.

7 THE COURT: Well, it's the contract that's from
8 seven through 15. Are those all complete documents?

9 MS. CONNELL: Yes, as far as I know, your Honor,
10 this is what was produced to us.

11 MR. FLEMING: Your Honor, I may have missed it.
12 What's the incomplete part? That's what I'm unsure of.

13 THE COURT: I am as well now.

14 MS. CONNELL: Me too.

15 MS. ROGERS: If you look at it -- Maybe it would be
16 better to briefly approach. I think the completeness
17 concern which exists in the original document family there,
18 a concern was express about completeness, does pertain to
19 the 2016 addendum, which is pages seven through 15.

20 THE COURT: Why don't we do this. Since we're
21 close to the end of the morning, why don't you sort of move
22 on past this and perhaps you can just discuss the document.
23 I mean, look, if this is the only version that they have,
24 it's a little difficult to prevent them from using it. But
25 that portion of it does seem to be a contract signed by the

1 witness. So I'm inclined to -- to let counsel question.
2 But why don't you skip over this just for the moment unless
3 this is really the last thing you have.

4 MS. CONNELL: I'm sorry. I want to make sure I
5 understand. Page 7 says at the bottom of the agreement
6 "shall be signed", and then the next pages are the signature
7 pages.

8 THE COURT: Right.

9 MS. CONNELL: I want to make sure I understand
10 where the incompleteness is.

11 (Continue on the next page.)
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1 THE COURT: Are you referring to an earlier page,
2 Ms. Rogers?

3 MS. ROGERS: Yeah, I'm referring to the page with
4 Bates label ending 5042. Is that in your Honor's version?

5 MS. CONNELL: So we --

6 THE COURT: Yeah, page 1 of the exhibit.

7 MS. ROGERS: Right.

8 So I'm referring -- I'm looking at the two -- at
9 the -- at the small, second to last, short, second-to-final
10 paragraph, and then the comments above that about the
11 incompleteness of the documents and the 2016 addendum.

12 MS. CONNELL: Well, your Honor, the incompleteness
13 is a discussion about this agreement, generally. It's not,
14 I don't believe, specifically referring to the contracts but
15 to the compliance with the NRA policy.

16 THE COURT: Yeah, there's -- the contract itself
17 doesn't seem to be missing any pages.

18 So, look, this is the version you have. I'm going
19 to, for now, admit pages 7 through 15 of this, which is what
20 has been produced to you and you can ask the witness about
21 it, since his name is on that. So I'll admit that part, and
22 as to whether the rest of it comes in, I'll reserve
23 judgment.

24 MS. CONNELL: And I think Ms. Rogers was referring
25 to an addendum that's referred to that, to my knowledge, we

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1 do not have.

2 THE COURT: Okay.

3 MS. CONNELL: So -- okay.

4 THE COURT: So, if you just stick to the contract
5 portion for now ...

6 MS. CONNELL: Sure.

7 (Image displayed.)

8 BY MS. CONNELL:

9 Q So, Mr. Phillips, page 7 of Exhibit 18 -- 1804 -- is a
10 Contract Extension Agreement, dated January 1st, 2018, between
11 the NRA and Mr. Marcario; correct?

12 A Yes.

13 Q And it extends a previous agreement; correct?

14 A Yes.

15 Q And it extends all terms of that previous agreement;
16 correct?

17 A Yes.

18 Q Now, if you turn to page 10, please --

19 (Image scrolled.)

20 Q -- this is a consulting agreement between the NRA and
21 Mr. Marcario, dated January 1st, 2016; right?

22 A Yes.

23 Q And this agreement provides that Mr. Marcario will be
24 paid \$10,000 per month, right?

25 And you can look at page 11, section 3.

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Phillips - by Plaintiff - Direct/Connell

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1 A Yes.

2 Q And during the time that this agreement was entered
3 into, Mr. Marcario was an NRA employee; correct?

4 A I don't know. I'm -- I'm totally confused by ...
5 trying to get a timeline on what I'm looking at here
6 (indicating).

7 Q So this agreement is January 1st, 2016; right?

8 A That's correct.

9 Q And it provides that he shall be paid a base -- shall
10 be paid \$10,000 per month for services rendered under the
11 agreement; right?

12 A That's what it says, that's right.

13 Q And underneath that, it says he'll also be paid
14 expenses; right?

15 A Yes.

16 Q And Mr. Marcario was paid under this agreement
17 thereafter; correct?

18 A It appears to have been that he was paid --

19 Q Right.

20 A -- because he went for the extension.

21 Q And Mr. Marcario was, at some point, an NRA employee;
22 correct?

23 A Yes.

24 Q And do you know whether, at any time during the time of
25 these payments, he was an NRA employee?

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Direct/Connell

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1 A I do not.

2 Q Do you know whether he was an NRA employee when this
3 was negotiated?

4 A Do not.

5 Q Did you negotiate this agreement with Mr. Marcario?

6 A No.

7 Q Do you know who did?

8 A I don't.

9 Q Okay. Mr. Phillips, did you bring this agreement to
10 the attention of the Audit Committee?

11 A No.

12 Q Did you have this agreement approved by two board
13 officers?

14 A No.

15 Q Did you complete a Business Case Analysis for this
16 agreement?

17 A I didn't.

18 Q You can put that aside, for now.

19 (Image removed.)

20 Q Mr. Phillips, who is Sandy Froman?

21 THE COURT: Just a heads-up, counsel: We have
22 about ten minutes or a little less than.

23 MS. CONNELL: I'll try and finish up.

24 THE COURT: You don't have to finish, but I'm just
25 letting you know we're going to take a break in ten minutes

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Direct/Connell

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1 or so.

2 A Sandy Froman?

3 Q Yes.

4 A She was a former president of the NRA and she was,
5 um ...

6 Q A board member, right?

7 A She was a board member for years, and then president
8 for the normal two-year term.

9 Q And the NRA paid Ms. Froman during the time that she's
10 been a board member; correct?

11 A As a board member, yes. After -- after she became --
12 after her term as president exhausted, we -- the NRA -- paid her
13 for some office support because she was -- she was a lawyer and
14 she was speaking all over for -- on behalf of the NRA.

15 Q So the NRA paid Ms. Froman for some office support as a
16 board member, right?

17 A That's correct.

18 Q And there was no specific process that was in place at
19 the time to supervise the NRA's relationship with Ms. Froman,
20 right?

21 A No.

22 Q So there was no one making sure that Ms. -- how many
23 speeches Ms. Froman was giving or that the NRA was getting its
24 value for its money paid, right?

25 A Well, not specifically, but, you know, it's a small

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1 group of people that know what other -- each other are doing.

2 Q So who supervised the relationship with Ms. Froman?

3 A I think she -- she acted on her own.

4 Q Okay. And was there a specific process in place at the
5 NRA to supervise relationships like Froman's?

6 A There was no -- no specific one, as I recall.

7 Q And you approved payments to Ms. Froman; correct?

8 A Yes.

9 Q And did you bring those payments --
10 Those payments went on for many years. They went on
11 from 2013, right?

12 A Yes, they did.

13 Q At least; correct?

14 A Well, it went on -- it went on from when her term as
15 president ended until -- if you told me it was still happening
16 today, I couldn't deny that.

17 Q Okay. And you, of course, in 2013, went to the Audit
18 Committee to get that preapproved; right?

19 A No.

20 Q Did you go in 2014?

21 A No, not to the Audit Committee. It was on -- it was on
22 the list of -- to the Finance Committee to see where the
23 contracts were.

24 Q Sure. So the board knew about it, right?

25 A That's correct.

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1 Q As far as you knew.

2 A As far as I knew.

3 Q But no one vetted it through the Audit Committee.

4 A Well, sometimes they're the same people.

5 Q Sometimes they're the same people, but you don't know
6 whether the Audit Committee did the analysis necessary for a
7 related-party transaction; right?

8 A They did not take any action that I know of.

9 Q Okay. Until at least 2017, at the earliest; right?

10 A Yes.

11 Q The NRA paid Ms. Froman over \$216,000 between 2013 and
12 2018, right?

13 Q Something like that.

14 A Something like that.

15 Q Right.

16 Who is Marion Hammer?

17 A Marion Hammer is another former board member that runs
18 a -- an organization in -- in Florida, for the Second Amendment.

19 Q I'm sorry. Ms. Froman's contracts, her consulting
20 agreement or how -- whatever that arrangement was, was paid out
21 of the EVP budget; right?

22 A That's correct.

23 Q So, to your knowledge, would Mr. LaPierre have been
24 aware of these payments to Ms. Froman?

25 A Yes.

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1 Q Okay. And Ms. Hammer was a board member -- is a board
2 member -- right?

3 A Correct.

4 Q And she's a former president of the NRA; correct?

5 A That's correct.

6 Q And for years, the NRA paid Ms. Hammer without a
7 written agreement; right?

8 A I -- I don't know if there was a written agreement for
9 her work through her company.

10 Q And Ms. Hammer was paid out of the EVP budget, right?

11 A That's right.

12 Q So, to your knowledge, Mr. LaPierre would be aware of
13 the amounts paid to Ms. Hammer; correct?

14 A I would think so.

15 Q And --

16 A At least, be aware that there were payments.

17 Q And for several years, there was no written agreement
18 with regard to payments to Ms. Hammer; right?

19 A I don't recall.

20 Q Do you recall testifying in your deposition in this
21 case that, for several years, there was no written agreement
22 with Ms. Hammer?

23 A You have the transcript; I would agree.

24 Q Sure.

25 A I don't -- I just don't remember it.

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1 MS. CONNELL: Jesse, can we bring up Mr. Phillips'
2 litigation transcript at pages 247/4 through 249/5?

3 (Image displayed.)

4 Q Ms. Hammer is a supporter of Mr. LaPierre, right?
5 Mr. Phillips?

6 A I think so.

7 Q Okay.

8 So, Mr. Phillips, you were asked if the NRA has paid
9 Ms. Hammer for consulting services for decades; correct?

10 And you answered: "Correct."

11 Right?

12 A Yes.

13 Q And you were asked whether, for several years, there
14 was no written agreement in connection with those payments to
15 Ms. Hammer.

16 You see that, right?

17 A I see that.

18 Q And you answered: "I believe so." Right?

19 A Correct.

20 Q And you were asked:

21 "And the lack of a written agreement would be in
22 violation of the NRA's policy; correct?"

23 And your answer was: "It wouldn't follow the
24 letter of the policy."

25 Right?

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1 A Correct.

2 Q And you were asked:

3 "Meaning it would be in violation of the policy;
4 correct?"

5 And then:

6 "Yeah, I'm just asking you, Mr. Phillips --

7 "Yeah.

8 "-- as you're sitting here today, you think the
9 contracts not being written would violate the NRA's policy."

10 And your answer was: "I didn't follow the policy."

11 Correct?

12 A Correct.

13 Q And, again, Ms. Hammer was paid out of the EVP budget.

14 A Correct.

15 Q Right?

16 A That's correct.

17 MS. CONNELL: Okay. I think that's good place to
18 break, your Honor.

19 THE COURT: All right.

20 We'll take our lunch break and reconvene at -- I
21 think, today I'm going to need to reconvene at 2:30, just 15
22 minutes later. Sorry.

23 See you all at 2:30.

24 COURT OFFICER: All rise. Jury exiting.

25 (The jury left the courtroom.)

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1 MR. FLEMING: Your Honor, could I raise an issue
2 now or would you prefer it after lunch?

3 THE COURT: I have to run.

4 MR. FLEMING: Done.

5 THE COURT: All right.

6 (The witness stepped down.)

7 (Luncheon recess.)

8 A f t e r n o o n S e s s i o n:

9 THE COURT: Have a seat.

10 I don't recommend going outside.

11 All right. Before we get the jury, Mr. Fleming,
12 you had something?

13 MR. FLEMING: Yes, your Honor.

14 We've all been working hard, and over the weekend,
15 we endeavored, based on the plaintiff's cutting of
16 Mr. Spray's deposition, to look through what they'd done,
17 indicate whether we'd accept it, and I went even further.

18 So, based on the changing circumstances of the
19 case, I actually offered to remove three
20 counter-designations that I had previously made that they
21 did not object to this next go-round. I added 11 lines of
22 additional counter-designations that I thought were
23 pertinent to, sort of, the case as it stands now.

24 And previously, in November, before I even knew
25 what the case, kind of, was going to -- what shape it was

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1 going to take, I had not made specific objections but
2 insisted that the objections made at the time of the
3 deposition be, sort of, ruled on.

4 And I've removed that, in my notice to the
5 Government over the weekend, and indicated three specific
6 objections; and based on that, what I understand is, I
7 received a letter today, while we were in court -- haven't
8 read it fully, but my understanding is, they object to my
9 efforts.

10 So I just wanted to express that we're trying to, I
11 think, make this more efficient and more cogent, but I think
12 I'm getting opposition. I just wanted to flag it.

13 THE COURT: Okay. Well, I am starting to look at,
14 I think, the materials that we got, I believe. Are your
15 objections incorporated in what we have or are they not?

16 MR. FLEMING: I don't know. I would have to --

17 (To counsel) I don't know what you forwarded to the
18 Court, based on what we did this weekend.

19 MR. THOMPSON: We'll double-check, your Honor, but
20 I believe that we did incorporate Mr. Fleming's objections
21 and just noted our objection to this late adding of the
22 objection.

23 THE COURT: That's the normal "objection"
24 objection.

25 (Laughter.)

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1 THE COURT: And do you object to his objection
2 objection?

3 MR. FLEMING: I will not do that.

4 (Laughter.)

5 MS. CONNELL: We will reserve our right. I'll do
6 that.

7 THE COURT: I'll take a look at that.

8 It went a little faster once I understood the
9 principle now. A lot of the counter-designations are
10 ultimately fine except they need to go in the defendants'
11 case, because that's just the way it is.

12 All right, are we ready for the jury?

13 MS. CONNELL: Yes, your Honor.

14 (Pause.)

15 THE COURT: Mr. Phillips, why don't you come
16 forward.

17 (The witness resumed the stand.)

18 (Pause.)

19 COURT OFFICER: Is the Court ready for the jury?

20 (The Court nodded.)

21 COURT OFFICER: All rise. Jury entering.

22 (The jury entered the courtroom.)

23 THE COURT: Welcome back.

24 Have a seat.

25 THE COURT: Okay. Ms. Connell, you may continue.

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1 MS. CONNELL: Thank you, your Honor.

2 DIRECT EXAMINATION CONTINUED

3 BY MS. CONNELL:

4 Q Mr. Phillips, earlier, I had asked you about whether
5 the NRA payments to Ms. Froman and Ms. Hammer came out of the
6 EVP budget; correct?

7 A Correct.

8 Q And you said that they had, right?

9 A I believe so.

10 Q And we discussed, very briefly, a man named Brad
11 O'Leary; right?

12 A That's correct.

13 Q And he was the owner of PM Consulting, the precursor,
14 or prior company, to MMP; right?

15 A That's correct.

16 Q And the NRA agreed to pay Mr. O'Leary money after PM
17 Consulting closed its doors, right?

18 A Yes.

19 Q Okay. Can we take a look at tab 8, please? That's PX
20 1657.

21 THE COURT: White binder.

22 A Tab 7?

23 Q Tab 8, please, Mr. Phillips. Thank you.

24 A I have it.

25 MS. CONNELL: Are there any objections to this

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1 exhibit?

2 MR. FARBER: No objection.

3 MS. ROGERS: No objection.

4 THE COURT: It's admitted.

5 MR. CORRELL: No objection.

6 MS. CONNELL: Thank you, your Honor.

7 (Image displayed.)

8 Q Mr. Phillips, I'm showing you a document that's been
9 marked PX 1657. Could you please take a look at page 2?

10 This is an agreement between the NRA and Brad O'Leary;
11 correct?

12 A That's correct.

13 Q And the organization or corporation Mr. O'Leary formed
14 was known as "Grassroots Behavioral Systems," right?

15 A That's correct.

16 Q And directing your attention to page 6 -- I mean --
17 sorry -- page 7 of this document --

18 (Image scrolled.)

19 Q -- you signed this agreement; correct?

20 A That's correct.

21 Q In August of 2012?

22 A Yes.

23 Q And in August of 2012, MMP was already a going option;
24 right? I mean, a going concern. Correct?

25 A I don't remember the timing, but it probably happened

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1 co -- coincidental, about the same time.

2 Q So, in 2011, you signed an agreement with MMP on behalf
3 of the NRA -- correct? -- that we looked at earlier.

4 A If that's the date -- I don't know the date, but I -- I
5 will agree with you.

6 Q Okay. Can I direct your attention to page 4 of this
7 document, please?

8 (Image scrolled.)

9 Q And specifically to paragraph 3, "Compensation."

10 (Image modified.)

11 Q Under this agreement, the NRA paid -- is paying --
12 Grassroots \$20,000 per month; correct?

13 A Yes.

14 Q Okay. And turning your attention to page 5, for
15 "Term" --

16 (Image scrolled.)

17 Q -- this contract was supposed to go on for five years;
18 correct?

19 A That's correct.

20 Q And, in fact, the NRA paid Mr. O'Leary \$20,000 per
21 month for five years; right?

22 A I believe so.

23 Q For a total of \$1.2 million; correct?

24 A Yes.

25 Q To your knowledge, was there a Business Case Analysis

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1 or Signature Sheet done for this agreement?

2 A Not to my knowledge.

3 Q Okay. This contract does not comply with the NRA's
4 procurement policy for contracts above a hundred thousand
5 dollars, right?

6 A Correct.

7 Q And this contract was paid under the EVP budget;
8 correct?

9 A I believe so.

10 Q And the main relationship between Mr. O'Leary and the
11 NRA was through Mr. LaPierre; correct?

12 A That's correct.

13 Q Okay. You can set that aside now. Thank you.

14 (Image removed.)

15 Q Mr. Phillips, you know who Millie Hallow is; correct?

16 A Yes.

17 Q And she reported to Wayne LaPierre while you were NRA's
18 CFO and treasurer?

19 A Yes.

20 Q And you're aware that concerns were raised in the early
21 2000s about Ms. Hallow's use of an NRA credit card, right?

22 A That's correct.

23 Q And yet, after that, she was given a corporate American
24 Express Card -- right? -- from the NRA.

25 A Can you -- can you tell me a year? I wasn't aware of

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1 that.

2 Q Mr. Phillips, while you were NRA's CFO and treasurer,
3 the NRA had American Express accounts; correct?

4 A That's correct.

5 Q And people within the NRA were issued cards under these
6 accounts, right?

7 A That's correct.

8 Q There was an account with Rick Tedrick's name?

9 A Correct.

10 Q And there was an account with your name; correct?

11 A That's -- that's right.

12 Q And there were sub -- there were cards issued under
13 each of those accounts, right?

14 A That's correct.

15 Q Mr. Phillips, if you could please look at what we've
16 marked as tab 44, it's PX 1494 ...

17 (Pause.)

18 Q It has a --

19 A It's the black binder (indicating)?

20 Q Yes. It's the last tab.

21 MS. CONNELL: This is a tab, counsel, added last
22 night.

23 A All right.

24 (Pause.)

25 A Okay. I have it.

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1 Q Okay. Thank you, sir.

2 Well, Mr. Phillips, the NRA regularly got statements
3 from the NRA [sic]; correct?

4 THE COURT: "Statements from ..."?

5 MS. CONNELL: I'm sorry.

6 Q -- from the American -- from the American Express
7 Corporation.

8 A I'm sorry. Start -- start that again, please?

9 Q Sure.

10 The NRA regularly got statements from American Express;
11 correct?

12 A That's correct.

13 Q And they would maintain those statements in the regular
14 course of its business; correct?

15 A Correct. Correct.

16 MS. CONNELL: I ask, your Honor, that this be moved
17 into admission.

18 MS. ROGERS: No objection.

19 MR. CORRELL: No objection.

20 MR. FARBER: No objection.

21 (Pause.)

22 MR. FLEMING: None. Sorry.

23 THE COURT: Waiting for the full echo. Thank you.

24 It's admitted.

25 MS. CONNELL: Thank you.

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1 (Image displayed.)

2 BY MS. CONNELL:

3 Q Mr. Phillips, I'd like you to take a look at page 2 of
4 this document -- I'm sorry -- page 3 of this document.

5 A I have it.

6 Q Okay. This is an American Express statement directed
7 to Rick Tedrick, right?

8 A That's correct.

9 Q And this is an American Express statement, if you look
10 at the top, from 12/22/2017; right?

11 A Yes.

12 Q And, if you turn to look at page 6 of this document, it
13 lists people who have cards under Mr. Tedrick's account; right?

14 (Image scrolled.)

15 A That's correct.

16 Q And that includes "Millie Hallow" -- right? -- if you
17 look near the bottom?

18 A Yes.

19 Q It also includes "Carolyn Meadows"?

20 A Yes.

21 Q "David Keene"?

22 (Pause.)

23 Q I can go in order, if we work our way down.

24 A That would help.

25 Q Third down is "Sandra Froman," right? She had a card?

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1 A That is correct.

2 Q And a few more below her is "John Sigler." He had a
3 card, right?

4 A That's correct.

5 Q And right below him, "David Keene" had a card.

6 A That's correct.

7 Q And Tyler Schropp had a card; correct?

8 A Where is that?

9 Q Right below Mr. Keene.

10 A Right. I got it.

11 Q And James Porter II had a card, right?

12 A Yes.

13 Q Mr. Porter is a former NRA president, right?

14 A Yes.

15 Q And then a current NRA Board member, right?

16 A Correct.

17 Q And Pete Brownell had a card, right?

18 A That's right.

19 Q A board member?

20 A Board member.

21 Q And at some point, he was NRA president; right?

22 A Yes, as most of these (indicating).

23 Q Okay.

24 (Continued on next page.)

25

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1 Q And then if we go down we see Ms. Hallow had a card?

2 A Yes.

3 Q And Ms. Meadows had a card, right?

4 A Yes.

5 Q And Ms. Meadow is an NRA board member?

6 A Yes.

7 Q And former NRA president, right?

8 A Yes.

9 Q You can put that to the side. Thank you. Mr.
10 Phillips, before we took the break, I spoke to you about your
11 testimony or your deposition in the NRA bankruptcy. Do you
12 recall that?

13 A That's correct.

14 Q And you're aware that there is a time in 2021 when the
15 NRA declared bankruptcy, right?

16 A Correct.

17 Q Well, filed a bankruptcy proceeding?

18 A Yes.

19 Q And do you recall coming to give a deposition in that
20 proceeding?

21 A I do.

22 Q And in that deposition you were sworn in, right?

23 A That's correct.

24 Q Asked to tell the truth? Sworn to tell the truth,
25 right?

1 A Yes.

2 Q And you were asked questions?

3 A Yes.

4 Q And you gave answers, right?

5 A I did.

6 Q And in response to many of the questions that you were
7 asked, you invoked your Fifth Amendment right to be free from
8 self incrimination, right?

9 A That's correct.

10 Q And, in fact, you invoked your Fifth Amendment right,
11 for example, when asked about whether Millie Hallow had a
12 corporate credit card, right?

13 A I suppose.

14 MS. CONNELL: Jessie, can we bring up the
15 bankruptcy deposition at page 35, lines ten to 14.

16 A I see.

17 Q So, you were asked about whether the NRA issued a
18 corporate credit card to Ms. Hollow, right?

19 A Correct.

20 Q You declined to answer based upon the privilege
21 provided to you by the Fifth Amendment of the United States
22 Constitution?

23 A That's right.

24 Q And you invoked your Fifth Amendment when asked whether
25 there was even an investigation of an appropriate credit card

1 usage, right?

2 A Correct.

3 Q And you invoked your Fifth Amendment right when asked
4 about who signed off or how it was determined who would sign off
5 on the NRA's 990s, right?

6 A That's correct.

7 Q In fact, you invoked your Fifth Amendment right
8 hundreds of times, right?

9 A I suppose.

10 Q Okay. And --

11 A Many.

12 Q -- Mr. Phillips, you invoked your Fifth Amendment right
13 because you had a good faith belief by answering the questions I
14 asked you there, you might be subject to criminal liability,
15 right?

16 A No.

17 Q So you invoked your Fifth Amendment right for some
18 other reason than you had a good faith belief you would be
19 subject to criminal liability?

20 A Well, can I explain it in a different way?

21 Q No, sir. I'm just asking you if you believed you might
22 be subject to criminal liability.

23 A Yes.

24 Q Okay. Mr. Phillips, are you familiar with a company
25 called 501C Solutions?

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1 A Yes.

2 Q And that was an NRA vendor, right?

3 A That's correct.

4 Q And the NRA paid that company for years for services,
5 correct?

6 A That's correct.

7 Q And that company is owned by the daughter-in-law of
8 Nancy Richards, right?

9 A Yes.

10 Q Caroline Richards, correct?

11 A Yes.

12 Q And the NRA paid \$5,000 a month to 501C Solutions,
13 right?

14 A I don't know that.

15 Q But the NRA paid 501C Solutions?

16 A 501C Solutions was not her company. It was Tom Drew's
17 company.

18 Q Did Ms. Richards work there, Caroline Richards?

19 A Yes. Her job was to greet people when they had events
20 and deal with tickets for the events.

21 Q Ms. Richards was also affiliated with Windsor & Park,
22 right?

23 A That's all the same.

24 Q So, 501C Solutions and Windsor & Park, it's your
25 testimony, are the same?

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1 A No.

2 Q Windsor & Park was also a vendor of the NRA, correct?

3 A It was a vendor to 501(c)(3) -- 501C Solutions.

4 Q I'm sorry, Mr. Phillips, to cut you off.

5 A It's all right.

6 Q Isn't it true that the NRA paid Windsor & Park \$6,000 a
7 month?

8 A I don't know.

9 Q It did pay money to Windsor & Park though, right?

10 A Yes.

11 Q And Caroline Richards was employed there, right?

12 A Yes.

13 Q And she's the daughter-in-law of Nancy Richards, your
14 close friend, right?

15 A That's correct.

16 Q Okay. Mr. Phillips, while you were CFO and treasurer
17 of the NRA, you knew Mr. LaPierre flew by private or charter
18 jets, right?

19 A Yes.

20 Q The NRA did not have a policy that was -- would require
21 Mr. LaPierre to travel solely by private or charter jet during
22 that time, right?

23 MR. CORRELL: Objection, your Honor, to the extent
24 that it calls for a legal conclusion.

25 THE COURT: Overruled.

1 A Was it overruled?

2 THE COURT: You can answer it, if you know.

3 Q It was overruled.

4 A Repeat the question, please.

5 Q Sure. While you were CFO and treasurer of the NRA, the
6 NRA did not have a policy that would require Mr. LaPierre to fly
7 by private or charter jet?

8 A Correct.

9 Q Okay. You're familiar with an individual named Gayle
10 Stanford, right?

11 A Yes.

12 Q And she is -- she was the travel consultant for Mr.
13 LaPierre, correct?

14 A Yes.

15 Q And she would sometimes do travel for a few other
16 people at the NRA?

17 A Yes.

18 Q Like Tyler Schropp?

19 A I don't know.

20 Q Okay. Millie Hallow?

21 A Again, I don't know.

22 Q But she wasn't the travel agent for all of the NRA,
23 right?

24 A No.

25 Q Meaning when most NRA employees wanted to make plans to

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1 travel, they used a company, a different company?

2 A That's correct.

3 Q But Mr. LaPierre used Ms. Stanford. While you were CFO
4 there was never a competitive bidding for Ms. Stanford's
5 services, right?

6 A No.

7 Q Okay. She was actually already doing Mr. LaPierre's
8 travel when you became CFO, right?

9 A That's correct.

10 Q Okay. You spoke to Ms. Stanford about issues relating
11 to her payments, right?

12 A I did.

13 Q Okay. And Ms. Stanford billed the NRA through two
14 different companies, right?

15 A That's correct.

16 Q One was II and IS, right?

17 A That's correct.

18 Q And one was known as GS2, right?

19 A Sounds right.

20 Q But they were both just Ms. Stanford's companies,
21 right?

22 A Yes.

23 Q Okay. Did you ever ask Ms. Stanford to bill for Mr.
24 LaPierre's travel services through two different companies?

25 A No.

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1 Q But you're aware she did that?

2 A I am.

3 Q Did you know whether Mr. LaPierre asked her to do that?

4 A I do not.

5 Q Did you ever ask Mr. LaPierre whether he asked her to
6 do that?

7 A No.

8 Q Did you ask her why she billed that way?

9 A No. I assumed she was in some transition with the
10 company, her companies.

11 Q But she billed under these two companies for years,
12 right?

13 A I really don't recall. I didn't -- I didn't see these
14 bills all the time.

15 Q But you knew both companies were hers?

16 A Yes.

17 Q Ms. Stanford also billed the NRA and the NRA ILA
18 separately, right?

19 A Yes.

20 Q Now, the NRA ILA is a division within the NRA, correct?

21 A Yes. It has, under the bylaws, has some physical walls
22 built around it. So, it would indicate you need to bill
23 separately to them versus NRA.

24 Q Great. So, her billing would go both to the NRA and to
25 ILA, right?

1 A Yes.

2 Q And Ms. Stanford also billed for part of her services
3 through Ackerman McQueen, right?

4 A Can you say that another way, 'cause I'm not aware of
5 that.

6 Q Sure. Ms. Stanford billed \$4,000 a month as a flat
7 rate through Ackerman McQueen's out-of-pocket expense system,
8 right?

9 A Okay. Correct.

10 Q Thank you. And Ms. Stanford billed the NRA and the NRA
11 ILA \$15,000 a month for her services, right?

12 A Each?

13 Q No, together.

14 A Together. I don't know.

15 Q You agreed to her monthly fee amount, right?

16 A Possibly.

17 Q Okay.

18 A It's been a long time.

19 Q Well, you discussed Ms. Stanford's monthly billing rate
20 with her, right?

21 A I believe so. I just really don't recall.

22 Q Okay. And ultimately you signed and approved whatever
23 that monthly rate was that was paid, right?

24 A Yes.

25 Q You don't know that it wasn't \$15,000 a month, right?

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1 A That's correct.

2 Q It might have been? It could have been?

3 A Right.

4 Q And then she billed \$4,000 a month to Ackerman, right?

5 A Right.

6 Q To be paid through the NRA through the out-of-pocket
7 expense system?

8 A Yes.

9 Q Ms. Stanford also booked a commission or billed a
10 commission for the flights and travel that she booked, right?

11 A I don't know.

12 Q Okay. Did Ms. Stanford raise the issue of the NRA
13 paying for her benefits with you?

14 A There was -- there was a period where we had one
15 discussion where it was -- she was like a full-time employee but
16 not getting employee benefits and I listened.

17 Q Is it after that conversation that you agreed for Ms.
18 Stanford to increase her monthly rate?

19 A I don't remember that. I remember that first
20 conversation.

21 Q Okay. Mr. Phillips, you directed Ms. Stanford to bill
22 the NRA and the NRA ILA separately, right?

23 A I would have, yes.

24 Q Okay. And is it incorrect to say that you told her she
25 could add a ten percent commission to her bill?

1 A I don't recall that.

2 Q Did you ever review Ms. Stanford's invoices?

3 A I would occasionally. Lisa Supernaugh would show me
4 something, and I looked at some of those invoices. I wouldn't
5 say I reviewed them. Sorry about that.

6 Q No. I'm sorry I interrupted you, sir. Is your answer
7 complete?

8 A Yes.

9 Q Okay. Who would regularly reviewed Ms. Stanford's
10 invoices?

11 A I think Lisa Supernaugh would be one and that's the
12 only one I can think of.

13 Q But there was no policy or procedure in place governing
14 who was to look at all of Ms. Stanford's invoices, right?

15 A I don't believe so.

16 Q Okay. And again Lisa Supernaugh was your assistant?

17 A That's correct.

18 Q And there was no specific policy in place as to who Ms.
19 Supernaugh should take Ms. Stanford's invoices to for review,
20 right?

21 A I don't think so.

22 Q Okay. And you don't know if Gayle Stanford shopped
23 around to find the most economical means for travel for Mr.
24 LaPierre, right?

25 A I do not.

1 Q Okay. While you were CFO and treasurer of the NRA,
2 there was never a written contract for Ms. Stanford's services,
3 is that accurate?

4 A Not that I'm aware of.

5 Q Okay. So there was no business case analysis, right,
6 and there was no signoff by board officers, correct?

7 A That's correct.

8 Q Okay. I would like to jump to another topic now,
9 trying to clean up here. Mr. Phillips, you're familiar with an
10 entity known as Wbb, correct? Wbb Investments, LLC?

11 A Yes.

12 Q You signed the operating agreement on behalf of the
13 NRA, correct? Strike that. That's confusing.

14 A I need context on that.

15 Q Mr. Phillips, would you please look at tab 17, PX 3138.

16 A Black or white?

17 Q It's the white binder, sir.

18 A Thanks. Tab 17?

19 Q Tab 17.

20 (Whereupon the witness complied with the above
21 request of counsel.)

22 A I have it.

23 MS. CONNELL: I don't know if there is an objection
24 to this exhibit.

25 MS. ROGERS: No objection.

1 MR. FARBER: No objection.

2 MR. CORRELL: No objection.

3 MR. FLEMING: I have none either, Judge.

4 THE COURT: Then it's admitted.

5 MS. CONNELL: Thank you, your Honor.

6 Q Mr. Phillips --

7 THE COURT: It's PX 3138, right?

8 MS. CONNELL: That's exactly right, 3138.

9 Q Mr. Phillips, this is the operating agreement of Wbb
10 Investments, LLC, right?

11 A Yes.

12 Q And if you turn and take a look at page 33 of this
13 agreement, that's your signature, right?

14 A Is it way in the back?

15 Q Yes. It's the second to last page.

16 A Okay.

17 Q It's also on the screen in front of you.

18 A Thank you. Yes. That's my signature.

19 Q And you signed on behalf of the NRA?

20 A I did.

21 Q And there is a signature of someone else, right?

22 A Yes.

23 Q Who is that?

24 A Bill Winkler.

25 Q And he signed on behalf of DJ Investments, LLC, right?

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1 A That's correct.

2 Q Bill Winkler was an executive, he was actually the CFO
3 of Ackerman McQueen, right?

4 A That's correct.

5 Q This is a 34 page agreement, right?

6 A It was a lot of pages. I need to look.

7 Q You do not need to look, sir. This is essentially an
8 agreement to form a company to purchase property in Dallas,
9 Texas, right?

10 A Yes.

11 Q And the property that was being looked at to purchase
12 was for Wayne and Susan LaPierre, correct?

13 A That's correct.

14 Q And please look at page 34. This is the very last page
15 in the binder. Actually it's up on the screen now if that makes
16 it easier. This indicates that The National Rifle Association
17 would have a 99 percent share in Wbb Investments, right?

18 A That's correct.

19 Q And would make a capital contribution of \$6.5 million,
20 right?

21 A Correct.

22 Q And DJ Investments, LLC would have a one percent share,
23 right?

24 A That's correct.

25 Q And it would have a capital contribution of \$10?

1 A Yes.

2 Q Okay. When I asked you about Wbb Investments at the
3 NRA's bankruptcy proceeding, you invoked your Fifth Amendment
4 right against self incrimination, right?

5 A I suppose. Yes.

6 Q Okay. To your knowledge did Wayne and Susan LaPierre
7 look at potential properties in Dallas, Texas to purchase -- for
8 purchase by Wbb Investments?

9 A I don't know to be purchased by Wb, B & B, but they
10 were looking at properties in the Dallas area.

11 Q And to your knowledge did they identify a potential
12 property they were interested in?

13 A I'm aware of one property.

14 Q And that was a home, right?

15 A Yes.

16 Q Near a golf course?

17 A I don't know.

18 Q Okay. There was no business case analysis ever
19 performed for the operating agreement of Wbb, right?

20 A That's correct.

21 Q And you never received signoff on either the president
22 or any of the vice presidents, right?

23 A One of the rules in the nonprofit area for real estate
24 is it takes a hundred percent of the board of directors to
25 purchase real estate. So, I knew this was never going to

1 happen.

2 Q So you thought this agreement would never happen?

3 A That's correct.

4 Q And yet, Mr. Phillips, you wrote a check for \$70,000 in
5 regard to this agreement, right?

6 A I didn't personally, but yes from NRA.

7 Q Sure.

8 A It was to hold -- to hold the house until something
9 else could occur.

10 Q Okay. Can we take a look at tab 15, please.

11 MS. CONNELL: I don't know if there are any
12 objections.

13 MS. ROGERS: The NRA didn't produce this. So,
14 subject to foundation, there is no objection.

15 MR. CORRELL: Same.

16 MR. FARBER: No objection.

17 MR. FLEMING: No objection.

18 THE COURT: Do you have a foundation for this one?

19 MS. CONNELL: I'll ask some questions, your Honor.

20 THE COURT: Okay.

21 Q Mr. Phillips, do you see this invoice from Wbb
22 Investments, LLC?

23 A I do.

24 Q And it's directed to Wilson Phillips at The National
25 Rifle Association, right?

1 A Yes.

2 Q And did you receive this invoice while you were at the
3 NRA?

4 A I did.

5 Q And did you cut a check to pay this \$70,000?

6 A Yes.

7 MS. CONNELL: Your Honor, I would ask this be
8 admitted, although I think page 2 of it we could exclude.

9 Actually if we could take it down for a second,
10 Jessie. I don't want page 2 shown yet.

11 Q Mr. Phillips, have you seen page 2 of this exhibit?

12 A I'm not sure where to find page 2.

13 THE COURT: In the back.

14 Q It's on the back of the invoice.

15 A Okay. I'm blank on the back. It's this one
16 (indicating)?

17 THE COURT: Yes.

18 MS. ROGERS: Your Honor, we would object to the
19 admission of page 2. We think it was created for purposes
20 of litigation by Ackerman.

21 THE WITNESS: What do I do?

22 THE COURT: It gets into the middle of the question
23 to the witness.

24 MS. CONNELL: I'm interested in the answer.

25 THE COURT: Ask it again.

1 Q Mr. Phillips, have you ever seen page 2 of this
2 exhibit?

3 A I don't believe so.

4 Q Okay.

5 MS. CONNELL: Your Honor, we would ask that page 1
6 alone be admitted, and we would agree to remove page 2 from
7 this.

8 THE COURT: What about page 3?

9 MS. CONNELL: It seems to be a repeat of page 1.

10 THE COURT: All right. So with that it's admitted
11 solely with respect to page 1 of PX 3134.

12 Q Mr. Phillips, will you look at tab 16, please.

13 A I have it.

14 Q Have you ever seen this document before?

15 A (Examining). No.

16 Q Can you look at page 2.

17 A (Examining).

18 Q Do you see?

19 A I have that.

20 Q Right. Do you see your signature on that document?

21 A I do. This is a facsimile signature again but --
22 (pause).

23 Q So you're saying it's your electronic signature?

24 A My electronic signature.

25 Q Was this -- Do you have any reason to believe that your

1 electronic signature was put on this document without your
2 authorization?

3 A No.

4 Q So, this was, this signature was applied with your
5 authority?

6 A Correct.

7 Q And do you recognize what your signature is affixed to?

8 A It's an earnest money check for \$70,000.

9 Q And who is that earnest money?

10 MS. CONNELL: Oh, your Honor, may I move for
11 admittance of this page of the document, and then I'll lay a
12 foundation for the next page.

13 MR. FARBER: Can we get an exhibit number, your
14 Honor?

15 THE COURT: PX 3137. Which is "this page" that
16 you're referring to?

17 MS. CONNELL: Page 2.

18 THE COURT: So, are you now breaking up the exhibit
19 into multiple pieces or what?

20 MS. CONNELL: I think I'm going to have to lay the
21 foundation separately for the two pieces. So, I would like
22 to ask him about this and then ask him about page 1 since --

23 THE COURT: Why don't you do all of the foundation
24 and then we can -- I would rather just not admit it
25 piecemeal.

1 MS. CONNELL: Sure.

2 Q So, Mr. Phillips, you said this was earnest money,
3 correct?

4 A That's correct.

5 Q In regard to the Wbb Investments transaction, right?

6 A That's correct.

7 Q And if you turn back to page 1, did you give that --
8 did you give the earnest money to Wbb Investments?

9 A Well, I had it sent to them.

10 Q And to your knowledge did Wbb -- Well, who is "them"?

11 A Wbb Investments.

12 Q And who at Wbb Investments did you send it to?

13 A Probably Bill Winkler.

14 Q Okay. And to your knowledge did Mr. Winkler deposit
15 the check?

16 A Yes.

17 Q Okay. And does this document reflect the depositing of
18 the earnest money check?

19 THE COURT: Counsel, I think the way you're doing
20 this, both pages seem to have one page that's -- that seems
21 to be an NRA document. The other page would be something
22 that would be filled out by the recipient, is that right?

23 THE WITNESS: That's correct.

24 THE COURT: Both pages do. Even the second page.

25 So, I -- I don't know what the foundation is for the

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1 authenticity of the document, if it was produced by a third
2 party. I don't know that it isn't. I don't have a
3 foundation right now for any of it.

4 MS. CONNELL: Right. The page 2 reflects a check
5 issued by the NRA, your Honor.

6 THE COURT: The top part of it does.

7 MS. CONNELL: The top part of it does. And the NRA
8 was the majority owner of Wbb Investments. That this was
9 produced from a third party doesn't change that we've
10 established the NRA was the 99 percent owner of Wbb
11 Investments.

12 THE COURT: That may all be true but the -- that
13 doesn't really satisfy the requirement to determine that
14 this is --

15 MS. CONNELL: Your Honor, we're going to have Mr.
16 Winkler as a witness in this case. So, why don't we put a
17 pin in this until we have a person who could testify. Thank
18 you.

19 THE COURT: Authenticity is the word that was
20 sliding by my brain. It took me a while to get to it.

21 Q So, Mr. Phillips, you did write or have the NRA write a
22 \$70,000 check to Wbb Investments, correct?

23 A That's correct, and they returned it.

24 Q Right. And you were concerned about the balance of the
25 money that was owed to Wbb Investments, right?

1 A Yes.

2 Q And you corresponded with your successor Craig Spray
3 about it, right?

4 A I don't remember that.

5 Q Mr. Phillips, can you turn to tab 40. This will be PX
6 1514.

7 THE COURT: Black binder?

8 MS. CONNELL: Yes.

9 THE COURT: Counsel, as a head's up, this is
10 another one that has a bunch of cell phone numbers on it.

11 MS. CONNELL: Yes, your Honor. We're going to
12 redact that once he authenticates it. We'll redact the
13 phone numbers.

14 THE COURT: Okay.

15 MS. ROGERS: Subject to foundation, no objection.

16 MR. CORRELL: No objection, your Honor.

17 A Okay. I have page 40. I mean, tab 40, is that right?

18 Q Excuse me. What?

19 THE COURT: Tab 40, yes, PX 1514.

20 MS. CONNELL: Yes. Thank you, your Honor.

21 A Yes.

22 Q Mr. Phillips, you know who Craig Spray is, correct?

23 A Yes.

24 Q And you have occasionally texted Mr. Spray, right?

25 A I have.

1 Q And you texted him while you both worked at the NRA, is
2 that correct?

3 A That's correct.

4 Q And there is a number there displayed next to the
5 initials W.P. Don't read that number out loud. Is that a
6 number that belonged to you?

7 A (Examining). Yes.

8 Q And did you sometimes conduct NRA business by text?

9 A Yes.

10 Q And in this instance were you texting with Mr. Spray?

11 A Yes.

12 MS. CONNELL: Your Honor, I ask that with the
13 personal numbers redacted, this Exhibit 1514 be admitted.

14 MR. FARBER: No objection.

15 THE COURT: It's admitted.

16 MS. CONNELL: Your Honor, you see the version
17 showed has the numbers redacted.

18 THE COURT: Thank you.

19 Q This is a text string about the purchase of the home in
20 Dallas, right?

21 A Can I read it for a second?

22 Q Sure. Please do.

23 A (Examining). Okay.

24 Q Mr. Phillips, Mr. Spray told you that Rick and Sonya
25 are freaking out, right?

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1 A More or less.

2 Q Because they had Googled the address. It says and
3 found out the owner -- and found the owner with the last name
4 Winkler, right?

5 A Yes.

6 Q This is in reference to the house that was being looked
7 at for Wayne and Susan LaPierre, right?

8 A That's correct.

9 Q And your response was, "Wait until they get the big
10 check request", right?

11 A I just saw that, yes.

12 Q What was the big check request? It was the remainder
13 of the 6.5 million, right?

14 A No. No. It was the \$70,000. That's a big check.

15 Q That is a big check. And Mr. Spray said, "The deep
16 state is working overtime on this one", right?

17 A Yes.

18 Q What was?

19 MR. FLEMING: I'm sorry. Objection. I think it --
20 I think the columns go in the opposite direction
21 chronologically.

22 THE COURT: I was curious about that.

23 MS. CONNELL: I'm sorry.

24 Q I'm sorry, Mr. Phillips. I'm reading it from the
25 bottom. I should be reading it from the top looking at the

1 times. So, my apologies. If we go back and start at the top,
2 Mr. Spray said, "I've asked Rick to call you as he needs a W-9
3 to process the payment", right?

4 A I'm lost.

5 Q At the very top of the Spray --

6 A Yes. I see it.

7 Q Okay. And he told you he's getting a lot of pushback
8 from the team, right?

9 A Yes.

10 Q That's regarding the check to Wbb Investments, right?

11 A Yes.

12 Q Regarding the purchase of the Dallas house, right?

13 A Yes.

14 Q And Mr. Spray said, "The check is in Lisa's office",
15 right?

16 A (Examining).

17 THE COURT: It's highlighted on the screen, if you
18 would rather look at it that way underneath your book.

19 Q Yes. It is highlighted. It makes it much easier.

20 A (Examining). That's correct.

21 Q And when he says "Lisa", did you understand him to be
22 referring to Lisa Supernaugh?

23 A Yes.

24 Q She was going to overnight the check, right?

25 A Yes.

1 Q To Bill Winkler, right?

2 A Yes.

3 Q Okay. And when Mr. Spray said, "The deep state is
4 working overtime on this one", what did you understand him to
5 mean?

6 A I don't know.

7 Q You had no understanding of that?

8 A Well, in this context, I'm not even sure knowing him
9 what he defines deep state as.

10 Q And you responded, "Wait until they get the big check
11 request", right?

12 A Yes.

13 Q By that you were referring to the \$70,000 check?

14 A That's correct.

15 Q That was already in Lisa's office, right?

16 A Yes.

17 Q So they would get a big check request after the check
18 had already been cut?

19 A I don't -- I'm looking at this. I have no idea of the
20 timeframe and sequence of this. I could see it here, but I just
21 don't recall.

22 Q Well, under the Wbb investment operating agreement the
23 NRA at some point would have to pay \$6.5 million, right?

24 A If they proceeded with the purchase of the property.

25 Q Right.

1 A I knew we were never going to do that.

2 Q But you had already had the NRA cut a check for
3 \$70,000, right?

4 A The 70,000 was to hold it until possibly we found a
5 different buyer for that house.

6 Q So, the NRA was already partial owner of that house at
7 that point, is that your testimony?

8 A No. No.

9 Q So, it was money to hold the house until the NRA found
10 another buyer for it?

11 A Like earnest money. We were parallel to all the other
12 discussions, we were trying to find a donor that could buy the
13 house or some other solution to the property. Earnest money was
14 to hold the property until we could figure that out.

15 (Continue on the next page.)

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1 Q You were trying to find an NRA donor to purchase the
2 house?

3 A Could be a friend.

4 Q And it turned out that Sonya and Rick were freaking out
5 because they saw the house was in the last name of Bill Winkler;
6 right?

7 A Yes.

8 Q -- was in the last name Winkler.

9 And by signing the operating agreement with WBB
10 Investments, you knew that you were violating NRA policies;
11 right?

12 A I wouldn't characterize it that way, but I -- I knew we
13 weren't going to have those materials needed to cut the check.

14 Q You knew, Mr. Phillips, that you were not acting in
15 accordance with NRA policies; right?

16 A Yes.

17 Q Thank you.

18 Mr. Phillips, has the NRA --

19 The NRA's demanded that you pay money back to it,
20 right?

21 A What?

22 Q Has the NRA ever demanded that you pay money back to
23 it, since you retired?

24 A You need to tell me more.

25 Q Sure.

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Phillips - by Plaintiff - Direct/Connell

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1 Has the NRA made any request that you, Wilson Phillips,
2 repay money to the NRA, since you retired?

3 A I really -- I really don't recall what you're talking
4 about.

5 Q Right. So you are unaware of any request by the NRA
6 that you repay money to it.

7 A You need to tell me more.

8 Q Has the NRA ever contacted you, after you retired, and
9 asked you to pay money to it?

10 A I don't recall that happening.

11 Q Okay. And the NRA has never sued you; correct?

12 A I don't recall that, either, no.

13 Q Okay.

14 MS. CONNELL: Thank you, Mr. Phillips.

15 THE WITNESS: Okay.

16 MS. CONNELL: I'll pass the witness.

17 THE COURT: Why don't we --

18 Can we take a short break before you do your cross?

19 MS. ROGERS: Yes.

20 THE COURT: All right, we'll take a short break.

21 COURT OFFICER: All rise. Jury exiting.

22 (The jury left the courtroom.)

23 (The witness stepped down.)

24 (Recess.)

25 THE COURT: Mr. Phillips, why don't you come back

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Phillips - by Plaintiff - Cross/Rogers

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1 up. Thanks.

2 (The witness resumed the stand.)

3 (Pause.)

4 COURT OFFICER: The Court's ready for the jury?

5 (The Court nodded.)

6 COURT OFFICER: All rise. Jury entering.

7 (The jury entered the courtroom.)

8 THE COURT: Okay. Have a seat, please.

9 Any cross-examination from the defense?

10 MS. ROGERS: Yes.

11 Let me just make sure my microphone is working.

12 Can everyone hear me?

13 JUROR NO. 3: Barely.

14 MS. ROGERS: Let's turn it up.

15 Can everyone hear me now? How this?

16 (Jurors nodded.)

17 MS. ROGERS: Okay.

18 CROSS-EXAMINATION

19 BY MS. ROGERS:

20 Q Good afternoon, Mr. Phillips.

21 A Good afternoon.

22 Q Just before we broke, the Government asked you if you
23 had paid back any money to the NRA. Do you recall that?

24 A Yes.

25 Q Did you receive any money from WBB Investments?

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Phillips - by Plaintiff - Cross/Rogers

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1 A No.

2 Q Did you receive any money from Member Drive?

3 A Member Drive? Yes.

4 Q Yes. Was that NRA money?

5 A No.

6 Q Did you receive any money from Grassroots Behavioral
7 Services?

8 A No.

9 Q Did you receive any money from Ackerman McQueen?

10 A No.

11 Q Did Tony Makris provide you any money that came to him
12 under those supplemental invoices?

13 A No.

14 Q Did you receive any money from 501c Solutions?

15 A No.

16 Q Did you receive any money from Kyle Weaver?

17 A No.

18 Q You also testified, Friday, that you wore two hats
19 during your time at the NRA; CFO and treasurer, right?

20 A Yes.

21 Q And as CFO, you reported to Wayne LaPierre, the CEO;
22 right?

23 A Yes.

24 Q But as treasurer, your reporting obligations ran
25 directly to the board; right?

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1 A That's right.

2 Q And in your capacity as treasurer, you delivered a
3 formal report to the board three times a year; right?

4 A Yes.

5 Q And you also made reports to the Finance Committee of
6 the board, right?

7 A That's correct.

8 Q And, in fact, you delivered reports to the Finance
9 Committee about every month; right?

10 A Yes.

11 Q And occasionally, you would also attend meetings of the
12 Audit Committee and report to that committee; right?

13 A Yes.

14 Q So, between full board meetings and Finance Committee
15 meetings and Audit Committee meetings and monthly reports
16 between meetings, would it be safe to say that during your time
17 as treasurer, you addressed the NRA Board hundreds of times?

18 A That's correct.

19 MS. CONNELL: Objection; leading, your Honor.

20 THE COURT: Excuse me?

21 MS. CONNELL: I'm sorry.

22 Objection; leading.

23 THE COURT: I was going to ask, are you taking the
24 position that this is an adverse witness?

25 MS. ROGERS: Well, the witness is being sued by the

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1 Government for alleged breaches of duty to my client and the
2 Government is asking that he be ordered by this jury that he
3 pay damages to my client. So if that's not an adverse
4 witness, I don't know what is.

5 MS. CONNELL: Your Honor, may we approach?

6 THE COURT: Um ...

7 MS. CONNELL: It's fine.

8 THE COURT: Overruled.

9 BY MS. ROGERS:

10 Q All right. Mr. Phillips, in your capacity as
11 treasurer, you also communicated with the NRA's outside
12 auditors; right?

13 A Right.

14 Q Those were independent accountants, hired by the NRA to
15 make sure its financials were in order; is that fair?

16 A That's fair.

17 Q And before you came to work at the NRA, you were also a
18 Certified Public Accountant at a major audit firm; right?

19 A Yes.

20 Q PricewaterhouseCoopers, right?

21 A Well, it was "Pricewaterhouse" at the time.

22 Q Right.

23 And in the early years of your tenure at the NRA, the
24 NRA's outside auditor was Pricewaterhouse; right?

25 A That's correct.

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1 Q Now, that wasn't because of your prior relationship;
2 that was --

3 A No.

4 Q -- just a coincidence, right?

5 And in the later years, the NRA switched to an auditor
6 called "RSM"; is that right?

7 A That's correct.

8 Q Would you agree with me that both Pricewaterhouse and
9 RSM are both reputable accounting firms?

10 A Yes.

11 Q You trusted them to get the NRA audits right, right?

12 A Yes.

13 Q And one reason you trusted Pricewaterhouse and RSM was
14 that you knew CPAs abide by a code of ethics, right?

15 A That's correct.

16 Q A CPA has to be honest and candid, right?

17 A Yes.

18 Q Being candid means that if you see something that's
19 important or might be important, you disclose it; right?

20 A Yes.

21 MS. CONNELL: Objection, your Honor.

22 This is speculative, about what CPA's did or didn't
23 do. This is part of the allegations of the case. We should
24 keep it specific to the --

25 MS. ROGERS: The witness was a CFO and a CPA, and

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1 he supervised CPAs.

2 THE COURT: Overruled.

3 BY MS. ROGERS:

4 Q And, Mr. Phillips, would it be fair to say, in layman's
5 terms, that a duty of candor means, if you see something, you
6 say something?

7 A That's fair.

8 Q And the NRA was entitled to trust its CPAs to do that,
9 right?

10 A That's right.

11 Q All right. Let's talk about the Audit Committee --

12 Oh, one more thing: Mr. Phillips, did you retain your
13 CPA license during your time at the NRA?

14 A Did I obtain it or retain it?

15 Q Did you keep up your license?

16 A I kept it up for a period of time and then let it
17 lapse.

18 Q Okay. We talked about the Audit Committee a minute
19 ago. Charles Cotton was on the Audit Committee during your time
20 at the NRA, right?

21 A Yes.

22 Q Herb Langford?

23 A Yes.

24 Q Curtis Jenkins?

25 A I don't remember Curtis Jenkins, but it's possible.

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1 Q All right. Well, let's talk about those committee
2 members you do remember from the times you addressed the Audit
3 Committee.

4 Would you agree with me, Mr. Phillips, that Charles
5 Cotton is a man of integrity?

6 A Yes.

7 Q What about Herb Langford?

8 MS. CONNELL: Objection.

9 THE COURT: Hang on.

10 MS. CONNELL: I'm sorry, your Honor.

11 I said, "objection" to the characterization of
12 Mr. Cotton and whether he acted in conformity thereto.

13 THE COURT: That -- I don't think that was the
14 question.

15 Go ahead.

16 Q The question was: In your view, Mr. Phillips, was
17 Charles Cotton a man of integrity?

18 A Yes.

19 Q What about Herb Langford?

20 A Yes.

21 Q What about the other members of the Audit Committee
22 that you remember?

23 A Yes.

24 Q I'm going to ask the same question about the accounting
25 staff that you relied on when you made your reports to the

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1 board. Do you think Rick Tedrick is a man of integrity?

2 A Yes.

3 Q What about Sonya Rowling?

4 A Yes.

5 Q What about Mike Erstling?

6 A Yes.

7 Q If those people took the same oath you took today to
8 tell the truth, you would expect them to tell the truth; right?

9 A I would.

10 Q And you have the same view of Craig Spray.

11 A I don't know Craig that well.

12 Q In 2017, as you prepared to retire, you hired an
13 executive search firm to find your replacement; right?

14 A That's correct.

15 Q And Craig was the candidate you selected, right?

16 A That's correct.

17 Q And an NRA vendor called McKenna and Associates helped
18 to recruit and hire Craig, too; right?

19 A I believe so.

20 Q Craig was a former naval officer; is that right?

21 A Yes.

22 Q And he also had been the CFO of a major public company,
23 right?

24 A Yes.

25 Q And --

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1 A Two.

2 Q -- you thought Craig --

3 Sorry. Go ahead.

4 A Two, I believe.

5 Q Two.

6 A Um-hmm.

7 Q And you thought Craig would be a good CFO and treasurer
8 for the NRA, right?

9 A Yes.

10 Q Because you thought he was honest?

11 A Sorry?

12 Q Because you thought he was honest, right?

13 A I missed that. I'm sorry.

14 Q Well, you thought Craig would be a good CFO, and you
15 thought he was honest; right?

16 A Honest, yes.

17 Q And you would expect him --

18 If he took the same oath you took today, to tell the
19 truth, you would expect Craig Spray to testify truthfully;
20 right?

21 A Yes.

22 Q So Craig didn't become treasurer right away, did he?

23 A That's correct.

24 Q He started as CFO in the spring of 2018, right?

25 A Yes.

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Phillips - by Plaintiff - Cross/Rogers

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1 Q And would you agree it would be fair, Mr. Phillips,
2 that your plan was to mentor him and ease him in, in the CFO
3 role, so that he would be prepared to put on the treasurer hat,
4 too, when you retired that fall?

5 A Yes.

6 Q And one of the first things you did -- right? -- was,
7 you introduced Mr. Spray to the NRA's major vendors?

8 A Yes.

9 Q Including Ackerman McQueen, right?

10 A Yes.

11 Q Do you recall traveling to Ackerman's offices with
12 Craig Spray in June 2018?

13 A I don't remember the date exactly, but I do -- around
14 that time, I took him up to introduce him to --

15 Q And you introduced him to Bill Winkler, right?

16 A Yes.

17 Q And Melanie Montgomery?

18 A Yes.

19 Q And Angus McQueen?

20 A Yes.

21 Q And Tony Makris?

22 A Yes.

23 Q And do you recall learning that within hours of that
24 meeting, Ackerman McQueen demanded that Craig Spray be fired?

25 A I heard that that was -- I didn't hear it directly, but

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1 yes.

2 Q It would be fair to say that Mr. Spray, during that
3 meeting, asked some questions about what Ackerman was billing
4 for?

5 A It would be fair to say.

6 Q Did you think any of the questions he asked were in any
7 way inappropriate?

8 A No.

9 MS. CONNELL: Objection, your Honor; hearsay.

10 Q But you --

11 THE COURT: Overruled.

12 Q But you heard that Ackerman demanded that Mr. Spray be
13 let go after he asked those questions, right?

14 MS. CONNELL: Objection, your Honor.

15 Sorry.

16 THE COURT: That one --

17 MS. ROGERS: I'm going to ask how it impacted the
18 witness' thinking.

19 THE COURT: Well, I'll sustain the objection
20 because I think that's being offered for the truth of the
21 matter asserted and it wasn't -- he wasn't an eyewitness.

22 Q Well, I'll ask you this, Mr. Phillips: Did you fire
23 Craig Spray after that meeting?

24 A No.

25 Q Did you think he should be fired?

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1 A I didn't know the facts.

2 Q You didn't think him asking questions about Ackerman
3 McQueen was a fireable offense, right?

4 A Right.

5 Q All right. Did you ever hear Ackerman McQueen --
6 During your time at the NRA, did you ever hear Ackerman
7 McQueen referred to as the "Deep State"?

8 A No. I had another -- I had another person -- or not
9 person, but type of person -- that I considered the Deep State.

10 Q But did you ever hear anyone else call Ackerman the
11 "Deep State"?

12 A No.

13 MS. CONNELL: Objection, your Honor.

14 (No audible ruling.)

15 Q All right. Let's look back at Plaintiff's Exhibit 506,
16 which is tab 33 in your binder.

17 (Image displayed.)

18 Q You testified earlier that this is a contract between
19 NRA and Ackerman McQueen.

20 Now, it's true, isn't it, Mr. Phillips, that under the
21 contract, Ackerman McQueen was not allowed to bill the NRA for
22 any old expense it wanted? Right?

23 A That's correct.

24 Q And let's look at section 3-A on page 6.

25 THE COURT: Sorry; what document are we on?

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1 MS. ROGERS: So it's section 3-A on the numbered
2 page 6, and my colleague is going to bring up this language
3 on the screen.

4 A 3-A. I have it.

5 Q Yeah.

6 (Image modified.)

7 Q And I'm going to direct your attention, Mr. Phillips,
8 to where it says that out-of-town travel expenses shall require
9 prior written approval in accordance with the written procedures
10 established by the executive vice president or his designee.

11 Do you see that?

12 A I see that.

13 Q So this contract required Ackerman to follow the NRA's
14 written travel expense policies, right?

15 A Yes.

16 Q And you're not aware of any written procedures
17 established under this contract that deviated from the NRA's
18 internal travel expense policies, right?

19 A I'm not aware.

20 Q But Ackerman didn't follow the NRA's internal travel
21 expense policies, right?

22 A I don't think so.

23 Q Ackerman violated this contract, in your view; right?

24 A This (indicating) is their -- I'm looking at their
25 contract -- right? -- terms. That's correct.

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1 Q Okay.

2 Now, you testified earlier that receipts and backup
3 proving what Ackerman was expensing were retained at Ackerman's
4 offices and were being sent along to the NRA with the invoices;
5 right?

6 A Correct.

7 Q But they were subject to audit, and I think you
8 testified that Rick Tedrick, each year, would visit Ackerman's
9 offices and audit those invoices; right?

10 A I thought he was going once a year, but it was less
11 time than that. And then I went twice.

12 Q Do you recall whether Mr. Tedrick made written reports
13 to you about what he was fining during throws visits?

14 A I think he did.

15 Q Do you recall whether Mr. Tedrick reported to you that
16 there was no business-purpose backup for any of Tony Makris's
17 expenses?

18 A I don't recall that.

19 Q Do you recall whether Mr. Tedrick reported to you that
20 Tony Makris appeared to be cutting and pasting receipts and
21 changing the dates?

22 MS. CONNELL: Objection, your Honor; hearsay.

23 A No, I --

24 THE COURT: Hang on.

25 THE WITNESS: Oh, sorry. Sorry about that.

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1 THE COURT: Sustained.

2 Q All right. Now, it's true, Mr. Phillips, isn't it,
3 that after Craig Spray joined the NRA --

4 MS. ROGERS: Well, strike that.

5 Q Would you agree with me that after Craig Spray joined
6 as CFO in the spring, he began to promote more in-person
7 meetings and collaboration among the NRA accounting staff?

8 A Yes.

9 Q All right. And by the summer of 2018,
10 compliance-training seminars were being rolled out at the NRA;
11 right?

12 THE COURT: "Rolled out," did you say?

13 MS. ROGERS: Were being -- had begun. Had
14 commenced.

15 THE COURT: All right. The transcript was saying
16 "ruled out."

17 MS. ROGERS: Okay. Roll -- that's a big
18 difference, so I'll ask it freshly:

19 Q Mr. Phillips, do you recall that by the summer of 2018,
20 as you prepared to retire and Mr. Spray prepared to step into
21 your chair, that compliance-training seminars were happening at
22 the NRA?

23 A That's correct.

24 Q All right. And I'd like to put up one of those; that
25 is, PX 2567.

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1 THE COURT: Is this in evidence?

2 MS. ROGERS: It's one of plaintiff's exhibits and I
3 don't think it's been admitted yet, but we presume plaintiff
4 has no objection; and the NRA has no objection.

5 MS. CONNELL: Your Honor, one second, please.

6 THE COURT: Sure.

7 MR. FLEMING: No objection from me.

8 MS. CONNELL: Your Honor, I don't believe there's a
9 foundation to put this in with this witness, and we would
10 object on that basis.

11 THE COURT: Well, the question is to the
12 admissibility of the document.

13 MR. FLEMING: Your Honor?

14 THE COURT: Hang on.

15 Foundation is only relevant if you're looking for a
16 foundation as a basis for getting it into evidence. So
17 if -- the question is maybe a different question, whether
18 they can question him about it if he doesn't know anything
19 about it, but the document's either admissible or it isn't.

20 MS. CONNELL: It is admissible if the proper
21 foundation is laid, your Honor.

22 There are a number of -- we don't object that this
23 is a business record of the NRA, but we're not sure that
24 this witness can speak knowledgeably about it.

25 THE COURT: That's a different question.

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1 MS. CONNELL: Yes.

2 THE COURT: But you don't object to the document
3 being -- you agree that the document is admissible in
4 evidence in this case.

5 MS. CONNELL: Yes, your Honor.

6 THE COURT: So it's admitted.

7 MS. CONNELL: Okay, your Honor.

8 THE COURT: Now, whether you can object to
9 questions that they ask is up to you, but the foundation is
10 not relevant -- is not the issue anymore.

11 MS. CONNELL: Okay, your Honor.

12 THE COURT: What is the document?

13 BY MS. ROGERS:

14 Q Mr. Phillips, you testified a moment ago that you
15 remember compliance-training seminars happening at the NRA in
16 the summer, as you prepared to retire; right?

17 A Yes.

18 (Image displayed.)

19 Q Do you recognize this as a presentation from one of
20 those seminars?

21 A I don't, but it could be.

22 Q Okay. And I'll show you a couple of slides to see if
23 that refreshes your recollection.

24 MS. ROGERS: Let's show him one.

25 (Pause.)

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1 (Images displayed.)

2 Q Do you recall compliance training, that summer, on
3 transactions implicating covered persons that might raise the
4 appearance of a conflict of interest?

5 A I didn't attend one of these, but this looks familiar.
6 I flipped through. It's kind of the graphics that look familiar
7 to me.

8 Q I understand.

9 And this was summer of 2018, right?

10 A Yes.

11 Q And then, in July 2018, a couple of months before he
12 was scheduled to step into your role as treasurer, Craig Spray
13 had a massive heart attack; right?

14 A That's correct.

15 Q Did you have discussions about staying on longer as
16 treasurer so that Craig could recover?

17 A I had one discussion about staying on longer, but it
18 was -- it was not related to Craig's healing.

19 Q Now, during the same period, on July 30th, 2018,
20 several whistleblowers in your department came forward to the
21 Audit Committee with some process concerns about vendor
22 expenses; right?

23 A That's correct.

24 Q And do you recall attending that Audit Committee
25 meeting?

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1 A Not for that part of it.

2 Q Would it be accurate to say, Mr. Phillips, that you
3 were at the meeting but you stepped out of the room when the
4 whistleblowers gave their presentation?

5 A Yes.

6 Q And shortly after that meeting, isn't it true that
7 letters went out under your signature to vendors, including
8 Ackerman and MMP, demanding documentation for their expenses?

9 A I saw some of those.

10 Q And you testified, Friday, that the reason you made
11 your HT Solutions disclosure in 2018 was that the NRA was
12 correcting things? I think that's what you said.

13 Can you tell the jury a little bit --

14 MS. CONNELL: Objection to the characterization of
15 the evidence.

16 (No audible ruling.)

17 MS. ROGERS: Sorry. I don't mean to interrupt the
18 witness.

19 Q But please answer.

20 THE COURT: All right.

21 A I'm sorry; you gotta repeat the question.

22 Q Sure.

23 Well, I was trying to recall your testimony because it
24 was a little unclear in my realtime transcript. Ms. Connell
25 asked you, Friday, why you made that HT Solutions disclosure in

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1 2018.

2 A Right.

3 Q Can you tell the jury why?

4 A Yes.

5 We were -- we were in the process of taking a fresh
6 look at a lot of things and just out of an abundance of caution,
7 or compliance, I made that discussion -- or made that
8 disclosure -- even though I didn't think it was necessary.

9 Q All right. Mr. Phillips, in your role as treasurer,
10 when you interfaced with the auditors every year, you would sign
11 a representation letter to them; right?

12 A Yes.

13 Q And you represented, year to year, to the auditors that
14 you were not aware of any fraud or allegations of fraud at the
15 NRA; right?

16 A That's right.

17 Q And you represented that related-party transactions
18 were being properly disclosed, right?

19 A Yes.

20 Q And you represented that you were one of the people
21 responsible for the NRA's internal controls, right?

22 A Yes.

23 Q And you represented that, as far as you were aware,
24 there were no deficiencies in the internal controls; right?

25 A That's correct.

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1 Q And in sum and substance, you made the same
2 representations to the board that you were making to the
3 auditors; right?

4 A Yes.

5 Q Just as you were entitled to rely on Pricewaterhouse
6 and RSM to be candid, would you agree with me, Mr. Phillips,
7 that the board had a right to rely on you to be candid in your
8 reports?

9 THE COURT: Hang on.

10 MS. CONNELL: Objection, your Honor.

11 THE COURT: Grounds?

12 MS. CONNELL: Your Honor, that's asking him to --
13 to, basically, opine on a -- an ultimate issue in this case,
14 something that's for the jury, and usurp the role of the
15 jury.

16 THE COURT: Sustained.

17 MS. ROGERS: I'm going to try to ask this a
18 slightly different way:

19 Q Mr. Phillips, did you think that you had a duty to be
20 candid with the board?

21 A Yes.

22 Q All right. Mr. Phillips, Ms. Connell asked you about
23 testimony you gave at the bankruptcy proceeding, in a deposition
24 where you answered questions from the Government (indicating)
25 and you also answered questions from the NRA; right?

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1 A Yes.

2 Q And Ms. Connell recalled that you took the Fifth
3 Amendment in response to some of those items, right?

4 A Yes.

5 Q And those included questions about your fiduciary duty
6 to the NRA, right?

7 A I don't recall all the questions; there were a lot of
8 questions.

9 Q Do you recall that you took the Fifth Amendment in
10 response to questions about Ackerman McQueen?

11 A Again, a lot of questions, a lot of different
12 depositions; I don't remember which were which.

13 Q Well, you did testify a minute ago that one reason you
14 invoked your Fifth Amendment right against self-incrimination
15 was that you thought there was a chance of criminal liability;
16 right?

17 A Those were your words.

18 Q Well, they were Ms. Connell's words, but I'm asking you
19 now in my words.

20 A I'm sorry.

21 Q You invoked your Fifth Amendment right because you
22 thought that a truthful answer to those questions raised a risk
23 of criminal liability, right?

24 A Well, we had been hearing about the attorney general of
25 New York coming after the NRA; we didn't know what that meant,

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1 and my advice from counsel was to take advantage of my Fifth
2 Amendment right.

3 Q And I want to be clear, Mr. Phillips, that I'm not
4 asking you to divulge the advice from your lawyer, but I do want
5 to know: Would you agree with me, sir, that if there was a
6 crime here, it was a crime against the NRA?

7 MS. CONNELL: Objection, your Honor.

8 THE COURT: Sustained.

9 MS. ROGERS: I have nothing further.

10 CROSS-EXAMINATION

11 BY MR. CORRELL:

12 Q Good afternoon, Mr. Phillips.

13 A Good afternoon.

14 Q How are you?

15 A I'm good, thanks.

16 Q Good. I just have a couple of questions.

17 First, on Friday you testified, I believe, that
18 Mr. LaPierre was in the room when you signed your consulting
19 agreement?

20 A Yes.

21 Q Where was that room?

22 A It was the -- the -- where the board met, and I can't
23 remember what -- what hotel or where it was.

24 Q Can you remember what town it was in; what city?

25 A I really don't. If --

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1 Q Do you remember how many of the 76 directors were in
2 the room?

3 A Most of them.

4 Q And was the room loud?

5 A No.

6 Q Was the board in session?

7 A No.

8 Q Were people milling about?

9 A Yes.

10 Q And can you tell the jury exactly where Mr. LaPierre
11 was standing at the time you signed your agreement?

12 A I can't.

13 Q Was he standing anywhere near you?

14 A I don't know that for sure.

15 Q Did you show him --

16 A We were -- we were -- I sat next to him in -- in the
17 board meeting, but we were -- it was a break; we were standing
18 up and, kind of, huddled and he could have been on the other
19 side of the room (indicating).

20 Q Okay. And did you show him the agreement before you
21 signed it?

22 A No.

23 Q Did you show him the agreement after you signed it?

24 A I don't recall that, but it's possible not.

25 Q Okay. Did Mr. LaPierre --

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1 Let's switch subjects: The \$70,000 check. Did
2 Mr. LaPierre direct you to send that check?

3 A No.

4 Q Did he know about that check?

5 A I doubt it.

6 Q You had no conversation with him about the check before
7 it went out?

8 A No. It -- this was -- I -- I was talking to the --
9 Melanie Montgomery and Angus McQueen.

10 Q And the fact is, he was on the road at the time;
11 correct? Can you recall that?

12 A I don't -- I don't recall, but I don't deny that. He
13 was always on the road.

14 Q When you say, "He was always on the road," how much
15 time --

16 A Traveling.

17 Q -- how much time did he typically spend on the road?

18 A A lot. I remember, one year we counted back and it was
19 46 nights, giving a speech or being somewhere out of town.

20 Q All right.

21 MR. CORRELL: Thank you, Mr. Phillips.

22 THE WITNESS: Um-hmm.

23 THE COURT: Okay. We're changing up the order.

24 MR. FLEMING: Thank you.

25 Apologies.

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1 THE COURT: Moving from cleanup to third.

2 MR. FLEMING: Yes. Yes, moving up in the order.

3 (Laughter.)

4 CROSS-EXAMINATION

5 BY MR. FLEMING:

6 Q Good afternoon, Mr. Phillips.

7 A Good afternoon.

8 Q How are you?

9 A I'm all right, thank you.

10 Q Do you recall testifying about Ackerman McQueen?

11 A Yes.

12 Q Now, Ackerman McQueen was a relationship that started
13 in 1999; is that right?

14 A I would have thought earlier, but I -- I don't have the
15 information in front of me.

16 Q At least 1999?

17 A At least 1999.

18 Q Okay. And was it one of the NRA's largest
19 relationships?

20 A Yes.

21 Q A valuable relationship?

22 A Yes.

23 Q And so, it was in existence at least 16 years of the
24 time Mr. Frazer began at the NRA; is that right?

25 A Yes.

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1 MS. CONNELL: Objection to leading, your Honor.

2 The defendants have a joint defense here.

3 MR. FARBER: Objection, your Honor.

4 Can we approach, please? I think counsel's

5 comments are inappropriate before the jury.

6 THE COURT: Yeah, I --

7 Do you claim adversity, or is there any real need

8 to do it this way?

9 MR. FLEMING: Well, your Honor, I'm really just
10 trying to cut through it all. I think there probably is
11 some adversity, but not necessarily specifically between
12 Mr. Frazer and Mr. Phillips. But certainly, in the -- in
13 the -- on the defense side, it's not --

14 THE COURT: I'll sustain the objection.

15 (Continued on next page.)

16

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ALAN F. BOWIN, CSR, RMR, CRR

Cross-Phillips-Fleming

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1 Q Now, Mr. Phillips, you previously testified about
2 sending out an audit letter in 2018 to Ackerman McQueen, do you
3 recall that testimony?

4 A Yes.

5 Q Can you describe what you did?

6 A Well there was -- there were letters asking for
7 information. Pretty much all I remember.

8 Q Sent to Ackerman?

9 A To Ackerman McQueen, yes.

10 Q And do you recall how Ackerman McQueen reacted to that
11 letter?

12 A I don't.

13 Q Do you recall that they were upset and maybe pushed
14 back on your -- on the NRA's requests?

15 A I believe -- I believe so. I read something that was a
16 pushback.

17 Q And ultimately is it not true -- Tell me what happened
18 to the Ackerman McQueen NRA relationship ultimately?

19 A Well, I don't know firsthand.

20 Q Do you have any understanding of what happened?

21 A I think it disintegrated.

22 Q And terminated, ended?

23 A Ended.

24 Q And this is, even though as you referred to it, you
25 called Mr. LaPierre and Mr. Makris brothers on questioning from

LAS

Cross-Phillips-Fleming

925

1 Ms. Connell, right?

2 A Yes.

3 Q And that occurred after 2015 when Mr. Frazer started,
4 is that right?

5 A That's right.

6 Q Now, if you could cull up tab 35.

7 THE COURT: Tab 35.

8 THE WITNESS: Is it white?

9 THE COURT: No. The black binder.

10 MR. FLEMING: This is in evidence.

11 THE COURT: PX 3589.

12 Q Mr. Phillips, do you recall being asked questions about
13 this document today?

14 A I do.

15 Q And if I could direct your attention to the paragraph
16 numbered two, the second line where it says, "All service fee
17 billing under this services agreement for talent and employees
18 who work through AMC". Do you see that?

19 A No. About how far down in the paragraph is it?

20 Q It's actually the fourth line or the second line of the
21 body paragraph.

22 THE COURT: Which?

23 A I'm lost.

24 Q Withdraw the question. Let me instead direct your
25 attention to paragraph number three.

LAS

Cross-Phillips-Fleming

926

1 A Okay.

2 Q Do you see in the body of paragraph 3 where it refers
3 to the words "third parties"?

4 A (Examining). Yes.

5 Q Okay. And in the last line on that page it refers to
6 "AMC, third party NRA contracts", do you see that?

7 A Yes.

8 Q And if we could flip to the next page it lists -- Well,
9 do you see Oliver North's name there?

10 A Yes.

11 Q Is he described as a third party contract?

12 A Yes.

13 Q And this agreement, what's the date of this agreement?

14 A May 6th, 2018.

15 Q And were you aware that Mr. Lieutenant Colonel North
16 entered into a contract with AMC in May of 2018?

17 A I don't recall that.

18 Q Do you recall any efforts by Mr. Frazer to hunt down
19 that contract?

20 MS. CONNELL: Objection, your Honor. Leading.

21 THE COURT: Overruled.

22 A I don't.

23 MR. FLEMING: Now, could we cull up PX 655.

24 Q Before you do that, Mr. Phillips, as treasurer what is
25 your role with respect to the NRA's Form 990?

LAS

Cross-Phillips-Fleming

927

1 A Well, I had staff that worked for me that prepared it
2 and reviewed it and then we would have it for signature in
3 November every year and file it.

4 Q Did you sign it usually?

5 A Yes.

6 Q Every year?

7 A I don't think so.

8 Q Most years?

9 A Most years.

10 Q Okay.

11 MR. FLEMING: Ali, can you cull up 2008 NRA 990 not
12 for the jury yet.

13 THE COURT: You have to do something with the
14 screens. They want to show a document to the witness but
15 not the jury.

16 MR. FLEMING: This is at JFX 29 for identification.

17 THE COURT: Okay.

18 THE WITNESS: What kind of binder is that in?

19 THE COURT: It's not going to be in the binder. It
20 will be on the screen.

21 MR. FLEMING: Can we scroll down to the beginning
22 of the 990.

23 Q So, Mr. Phillips, do you see what's in front of you?

24 A Yes.

25 Q And what is it?

LAS

Cross-Phillips-Fleming

928

1 A (Examining). It's the 2008 Form 990.

2 Q Okay. And do you recall this document?

3 A Yes.

4 Q Is this a document you signed?

5 A Yes.

6 Q Is this a document that is produced in the ordinary
7 course of the business of The National Rifle Association?

8 A Yes.

9 MR. FLEMING: I would move its admission.

10 MS. CONNELL: No objection, your Honor.

11 MR. FARBER: No objection.

12 MS. ROGERS: No objection.

13 MR. CORRELL: No objection.

14 MR. FLEMING: You can show the jury.

15 THE COURT: It's admitted.

16 MR. FLEMING: If we go to Schedule J, please.

17 Q Mr. Phillips, are you familiar with Schedule J of a
18 Form 990?

19 A Not -- not in detail. You can refresh my memory by
20 looking at it. I've seen a lot of them.

21 Q Okay. Take your time. Look at it.

22 A Okay.

23 (Whereupon the witness complied with the above
24 request of counsel.)

25 A Okay.

LAS

Cross-Phillips-Fleming

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1 Q And do you recall -- Well, can you describe what a
2 Schedule J displays or reveals?

3 A I would say it had to do with compensation as a side
4 item, it is compensation, but it covers things like how is
5 compensation set and what elements of compensation there are.

6 Q Okay. And do you recall testifying earlier under
7 examination from Ms. Connell that in or around 2008 additional
8 disclosures were going to be required on the Form 990?

9 A That's correct.

10 Q Do you recall the 2008 was the first of those years?

11 A I do now, because I've seen it here but yes.

12 Q Okay. Now if I could direct your attention to the
13 question 1(a), in particular the line, first class or charter
14 travel.

15 A Yes.

16 Q What did the NRA say with respect to that box?

17 A Well, they checked the box, which means that they
18 provided that benefit to certain employees.

19 Q Okay. And can you tell us what the NRA check with
20 respect to question 1(b)?

21 A That the organization follow a written policy regarding
22 first class or charter travel.

23 Q Okay. Now, what if anything did you do to reach the
24 conclusion that the NRA followed a written policy?

25 A I don't recall.

LAS

Cross-Phillips-Fleming

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1 Q Did someone else do this for you?

2 A Yes.

3 Q Whom was that?

4 A There are two people. One was Emily Cummins, who was
5 the main preparer of this, and I think this is a year where an
6 RSM tax partner, nonprofit tax partner Jim Sweeney participated
7 also.

8 Q Okay. Now do you recall being asked questions today by
9 Ms. Connell about the NRA's travel policy --

10 A Yes.

11 Q -- for employees?

12 A Yes.

13 Q Okay. And do you recall being asked questions about
14 the desires to keep it low cost and that makes sense and
15 questions of that nature?

16 A Yes.

17 Q All right. Now, do you recall the travel policy,
18 expressing that it sets forth business travel and entertainment
19 expenses normally encountered in business situations, but that
20 it cannot address every conceivable situation? Do you recall
21 that?

22 A No. I don't recall it, but it's what I would think it
23 said.

24 Q And in that circumstance, where you have a situation
25 that is not typical, do you recall that the policy, at least the

LAS

Cross-Phillips-Fleming

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1 NRA expressed that you should use and exercise sound business
2 judgment and common sense when deciding travel questions?

3 A Yes.

4 Q All right. And your testimony is that Ms. Cummins and
5 Mr. Sweeney determined that that was a written policy covering
6 first class or charter travel, is that right?

7 MS. CONNELL: Objection, your Honor. It's leading
8 and speculating on what two people not here are thinking.

9 MR. FLEMING: It's concluding what his testimony
10 just was.

11 THE COURT: Not quite. I mean, I think you took it
12 another step and so sustained. It was a leading question.

13 Q Did you -- What was your opinion of Ms. Cummins'
14 abilities?

15 A Very high. She was detailed oriented. She loved this
16 990, which most accountants would rather not see in every year,
17 but she liked it.

18 Q She was a tax accountant, wasn't she?

19 A Yes.

20 Q As opposed to a financial statement accountant?

21 A Yes.

22 Q She had worked at Ernst & Young, is that right?

23 A I don't recall that.

24 MS. CONNELL: Objection, your Honor. I'm sorry.

25 THE COURT: It's been asked and answered. Go

LAS

Cross-Phillips-Fleming

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1 ahead.

2 Q What was your opinion of Mr. Sweeney?

3 A He was the best there was in the business.

4 Q And is that just you talking or are you referring to
5 his reputation, you know, more wide than just you?

6 A Right.

7 MS. CONNELL: Objection, your Honor.

8 THE COURT: Overruled.

9 A Yeah. He was -- For one thing RSM at the time was
10 predominant, because it was based in Washington, D.C., did most
11 large nonprofit audits and tax in the world. He was the head of
12 their tax practice.

13 Q Okay. Thank you. So, Mr. Phillips, with respect to
14 Schedule J for subsequent years, 2009, 2010, '11, '12, '13, '14,
15 do you recall ever changing the Schedule J representation that
16 the NRA followed a written policy with respect to charter or
17 first class travel?

18 MS. CONNELL: Objection, your Honor.

19 A I don't recall --

20 THE COURT: Hang on.

21 THE WITNESS: I'm sorry.

22 THE COURT: Overruled. You can answer.

23 A I don't recall ever changing that.

24 Q And the NRA, am I correct, disclosed by checking the
25 box that it engaged in charter travel for the years that it

LAS

Cross-Phillips-Fleming

933

1 engaged in travel charter, is that right?

2 A Yes.

3 MS. CONNELL: Objection, your Honor.

4 THE COURT: Sustained on the leading still. But
5 it's not a high crime misdemeanor, but try to adjust it if
6 you can.

7 Q Now, do you recall being asked questions about the
8 NRA's procurement policy today?

9 A I think it came up. I don't remember specifics though.

10 Q Okay. Does the NRA's procurement policy pertain to
11 invoices that the NRA receives?

12 A Yes.

13 Q Are you sure about that?

14 MS. CONNELL: Objection, your Honor.

15 THE COURT: Overruled.

16 A Ask the question again.

17 Q Does the NRA's procurement policy, which relates to
18 procurement, does it not, services and contracts, things of that
19 nature, is that right?

20 A That's correct.

21 Q Does the procurement policy and its requirements
22 pertain to NRA invoices that it receives?

23 A Well, eventually you get an invoice.

24 Q Right. But there are two separate things, is that
25 right?

LAS

Cross-Phillips-Fleming

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1 A Yes, they are two separate things.

2 Q Okay. And do you need officer signoff and all those
3 other requirements that you need for a contract say of over
4 \$100,000 to pay an invoice?

5 A There is a distinction to meet.

6 Q Okay. Have you ever approved invoices for services
7 that you did not contract for?

8 A Yes.

9 Q So, can you tell us what the process is for that
10 approval as you do it?

11 A Well, let's take one of the large items of procurement.
12 NRA sends out magazines to 5 million people every month and buys
13 paper by the trainload. And there is a procurement policy there
14 to go through, check out what the market rates are for paper and
15 then execute.

16 Q Well, when you get an invoice about a contract that you
17 don't know about, do you do any due diligence?

18 A Ask the person who is responsible for the contract if
19 you don't know what it's about.

20 Q Okay. Do you confirm that they have received the
21 services that they contracted for?

22 A Yes.

23 Q And do you confirm that the payment is the correct
24 payment?

25 A Someone does that.

LAS

Cross-Phillips-Fleming

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1 Q Okay. But do you ever do that?

2 A I might or if it was something I'm familiar with.

3 Q When you're satisfied with those answers, will you
4 approve an invoice at that point?

5 A Yes.

6 Q Even though you don't know about the contract itself,
7 right?

8 MS. CONNELL: Objection, your Honor.

9 A It's possible.

10 THE COURT: Overruled.

11 THE WITNESS: I'm sorry.

12 THE COURT: You can answer.

13 THE WITNESS: Okay.

14 A It's possible if I know the parties and know what the
15 topic is and I pretty much know who had done diligent work.

16 Q Now, do you recall being asked questions about Mr.
17 Mercurio?

18 A Yes.

19 Q Okay.

20 MR. FLEMING: Sorry, your Honor. I just need to
21 find the document.

22 Q It would be exhibit -- tab 32, which is PX 1804.

23 A I have it.

24 MR. FLEMING: Hold on. I think page 7 through 15
25 was admitted.

LAS

Cross-Phillips-Fleming

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1 THE COURT: Which tab is this?

2 MR. FLEMING: Thirty-two, I believe.

3 MS. ROGERS: This is a document which only a
4 portion was admitted, right?

5 THE COURT: Just the contract part, pages seven to
6 15. That's the part you're going to go to, Mr. Fleming.

7 MR. FLEMING: I'm a little unclear. Is the first
8 e-mail in or no?

9 MS. CONNELL: No, just pages seven through 15.

10 MR. FLEMING: I'll withdraw those questions then.
11 I was under a misimpression.

12 Q Now --

13 A Are we leaving that page?

14 Q We're going to leave that page. My apologies. Do you
15 recall being asked questions about Sandy Froman?

16 A Yes.

17 Q Who is Sandy Froman?

18 A Sandy is a former president of the NRA. She's -- I
19 think she had some roles with the NRA Foundation also.

20 Q You were asked questions today about her having a, you
21 know, sort of a payment relationship with the NRA since 2013?

22 A Yes.

23 Q Okay. Now, you were also asked whether you took that
24 transaction to the audit committee for pre approval. Do you
25 remember the question?

LAS

Cross-Phillips-Fleming

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1 A Yes.

2 Q Are you familiar with The New York Not-For-Profit
3 Revitalization Act?

4 A No.

5 Q Okay. Do you recall Mr. Frazer in January of 2016
6 getting the board to adopt a new conflict of interest and
7 related-party transaction policy?

8 A I do recall that.

9 Q Do you recall the audit committee being authorized,
10 duly authorized to examine and evaluate related-party
11 transactions?

12 A That's correct.

13 Q And that was in January of 2016, that's your
14 recollection?

15 A It's about the right timeframe.

16 Q Okay. And --

17 MS. CONNELL: Objection, your Honor, to the
18 leading.

19 THE COURT: Maybe a second late but going
20 forward --

21 MS. CONNELL: I apologize.

22 THE COURT: -- yes.

23 Q Now you were also asked that or you were asked question
24 about that Ms. Froman's relationship was not taken to the audit
25 committee until 2017. Do you recall the question?

LAS

Cross-Phillips-Fleming

938

1 A No. Repeat that.

2 Q Repeat the question?

3 A Yes.

4 Q Do you recall being asked by Ms. Connell today about
5 whether the -- Ms. Froman's relationship was not taken to the
6 audit committee until 2017?

7 MS. CONNELL: Objection, your Honor. That's not --
8 I don't believe that was the question.

9 THE COURT: Again, the record will reflect what it
10 is. I don't know off the top of my head. I'll let counsel
11 ask if he recalls it that way. You can answer.

12 THE WITNESS: Okay.

13 A Yes.

14 Q Do you have any understanding about whether that
15 transaction was taken to the audit committee earlier than that?

16 A To the audit committee, I don't know for sure, but I
17 don't expect, unless there was a cross member of the audit
18 committee that was also on the finance committee, that it would
19 have been reported to them.

20 MR. FLEMING: I have nothing further. Thank you
21 very much.

22 THE COURT: Okay.

23 MR. FARBER: Excuse me, your Honor. This appears
24 to have come apart.

25 THE COURT: The court officers are eyeing you very

LAS

Cross-Phillips-Farber

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1 nervously. It's state equipment.

2 MR. FARBER: May I proceed, your Honor?

3 THE COURT: Yes, please.

4 CROSS EXAMINATION

5 BY MR. FARBER:

6 Q Good afternoon, Mr. Phillips.

7 A Good afternoon.

8 Q Can you hear me?

9 MR. FARBER: Is this microphone working, your
10 Honor?

11 THE COURT: Yes.

12 Q So, Mr. Phillips, you were asked some questions on
13 examination by Ms. Connell and then by Ms. Rogers, who stepped
14 out a moment ago, about you asserting your Fifth Amendment
15 privilege in the bankruptcy, in a deposition in connection with
16 a bankruptcy proceeding. Do you recall those questions?

17 A I do.

18 Q You gave a deposition in this case, didn't you,
19 Mr. Phillips?

20 A Yes.

21 Q Okay. For how many days?

22 A At least two days. I think there may have been a time
23 I was called back too.

24 Q And during that deposition you were asked questions by
25 Mr. Wang, Ms. Connell's colleague?

LAS

Cross-Phillips-Farber

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1 A Yes.

2 Q And by lawyers for the other parties in this case, do
3 you recall that?

4 A I recall that.

5 Q Okay. And you were asked about the same matters that
6 were -- you were questioned about over the past couple of days
7 in this case, correct?

8 A Yes.

9 MS. CONNELL: Objection, your Honor.

10 A Correct.

11 THE COURT: On leading?

12 MS. CONNELL: On leading, your Honor, and on
13 characterizing it as being the same issues.

14 THE COURT: I'll sustain on the leading. If you
15 can open it up a little bit.

16 MR. FARBER: Okay.

17 Q Mr. Phillips, do you recall the subject matters you
18 were asked about during that deposition?

19 A Yes.

20 Q Okay. What did they relate to?

21 A The business of the NRA. I'm not -- (pause).

22 Q The questions that you were asked, how did they compare
23 to the issues in this case?

24 A Oh, I think that was a different -- it was a
25 bankruptcy.

LAS

Cross-Phillips-Farber

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1 Q I'm talking now, Mr. Phillips, about the questions that
2 you were asked in your deposition in connection with this
3 litigation.

4 A Same.

5 Q When you say "same", what do you mean by "same"?

6 A They were about the same questions that I got earlier.

7 Q Earlier in this trial?

8 A In this trial, yes.

9 Q And did you assert your Fifth Amendment privilege in
10 response to those questions?

11 A No.

12 Q Okay. And, Mr. Phillips, were you a party to the
13 bankruptcy case?

14 A No.

15 Q And I believe that during her questioning Ms. Connell
16 asked you about whether you thought you might be subject to
17 criminal liability. Do you recall that testimony?

18 A Yes.

19 Q Okay. Did you believe you had done anything wrong?

20 A No.

21 Q Okay. Now, when Ms. Rogers was asking you questions a
22 few minutes ago, she mentioned the fact that you had been a CPA
23 for a major public accounting firm.

24 A Yes.

25 Q Okay. What is a CPA? First of all, what do those

LAS

Cross-Phillips-Farber

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1 initials stand for?

2 A It's certified public accounting.

3 Q And what is a certified public accountant?

4 A Well, they have different roles, but basically it's
5 a -- it's like a recognition of someone whose had an accounting
6 degree from college and then had experience before. I think
7 it's still a four day test. And it covers basic accounting and
8 disclosure rules as well as other aspects of -- of business
9 accounting.

10 Q And did you take that test at some point, Mr. Phillips?

11 A Yes. I took it the year I graduated from college.

12 Q Okay. What college was that?

13 A Wake Forest.

14 Q And did you major in something at Wake Forest?

15 A Majored in accounting.

16 Q And you took that exam. Did you pass that exam?

17 A Finally, yes.

18 Q And Ms. Rogers also asked you about others at the NRA,
19 other employees at the NRA who were certified public
20 accountants. Do you recall that testimony?

21 A I do.

22 Q Okay. And I believe she mentioned a few individuals.
23 Mr. Tedrick?

24 A Yes.

25 Q Was he a certified public accountant?

LAS

Cross-Phillips-Farber

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1 A Yes.

2 Q And Ms. Rowling, was she a certified public accountant?

3 A I believe so.

4 Q And Mr. Erstling, was he a certified public accountant?

5 A Yes.

6 Q When you were hired by the NRA, I believe you testified
7 earlier that was in approximately 1993, is that correct?

8 A I think it was 1992, but it could be 1993.

9 Q My recollection is probably wrong. In the early 90's
10 when you were hired --

11 A Yes.

12 Q -- what was the size of roughly the financial services
13 division when you were hired?

14 MS. CONNELL: Objection, your Honor.

15 A Outside the scope.

16 THE COURT: Overruled.

17 A Maybe 20 to 30 people.

18 Q And did it change over time when you were --

19 A Well, it grew over time to I don't know what it is
20 today but probably between 40 and 60 when you count everybody.

21 Q And when you say probably 40 or 60 when you count
22 everybody, at what point in time? Was that at the point in time
23 when you retired?

24 A Yes.

25 Q And do you recall how many CPAs the NRA had when you

LAS

1 were hired?

2 A Zero.

3 Q So you were the first?

4 A I was the first.

5 Q Okay. Who hired Mr. Tedrick?

6 A I did.

7 Q Who hired Ms. Rowling?

8 A I think Mr. Tedrick did the initial search and I hired,
9 along with him, hired Ms. Rowling.

10 Q What about Mr. Erstling?

11 A Same.

12 Q So, Mr. Phillips, I want to talk to you for a few
13 minutes about the post-employment consulting agreement that you
14 were questioned about.

15 MR. FARBER: Can we get Plaintiff's Exhibit 2493 in
16 evidence, which is up on the screen.

17 Q Mr. Phillips, this is a consulting agreement. This is
18 your consulting agreement, correct?

19 A That's correct.

20 MR. FARBER: And could we go to the last page of
21 this, please. Excuse me. The next to last page at the
22 bottom.

23 (Continue on the next page.)

24

25

Phillips - by Plaintiff - Cross/Farber

945

1 Q So, you see, there's a signature line at the bottom
2 there, Mr. Phillips?

3 A Yes.

4 Q Who signs that on behalf of the National Rifle
5 Association?

6 A Pete Brownell.

7 Q And who was Pete Brownell at the time?

8 A He was the president.

9 Q Okay. And as president, was he also a member of the
10 board of directors of the NRA?

11 A Yes.

12 Q And did you sign this agreement, Mr. Phillips?

13 A I ...

14 No. Well, maybe on the next page, but right here
15 (indicating), this is my printed signature.

16 (Image scrolled.)

17 A Yeah, I did sign it (indicating).

18 Q And on whose behalf did you sign this agreement?

19 A My own.

20 Q Were you acting on behalf of the NRA in connection with
21 this agreement?

22 A No.

23 Q Okay.

24 MR. FARBER: And could we just scroll down a little
25 further in this agreement?

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Cross/Farber

946

1 (Image scrolled.)

2 Q And there's another signature there. Who's signature
3 is that?

4 A Carolyn Meadows'.

5 Q And what was Ms. Meadows' role at the NRA at the time,
6 if you recall?

7 A I believe she was first vice president at the time.

8 Q Was she also, in that capacity, a member of the board
9 of directors of the NRA?

10 A Yes.

11 Q And I believe you were asked some questions about
12 whether you, personally, presented this agreement to the NRA's
13 Audit Committee. Do you recall those questions?

14 A I do.

15 Q Okay. And you were asked whether you made sure that
16 the board of directors of the NRA approved this agreement. Do
17 you recall that?

18 MS. CONNELL: Objection, your Honor.

19 THE COURT: Overruled.

20 A I don't recall the question at the time.

21 Q The question was: You were asked some questions about
22 whether this agreement was -- excuse me -- whether you made sure
23 that the board of directors of the NRA approved this agreement.
24 Do you recall those questions?

25 A I do.

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Cross/Farber

947

1 Q Okay. Was it your role, as the person entering into
2 this agreement with the NRA, to present that to the board of
3 directors?

4 A No.

5 MS. CONNELL: Objection, your Honor.

6 THE COURT: Overruled.

7 Q And were you represented by an attorney in connection
8 with this agreement?

9 A I was.

10 Q Okay. And who was that attorney?

11 A His last name is -- is Dycio. It's Mark Dycio. It's,
12 like, D-y-c-i-o.

13 Q And was the NRA represented by an attorney?

14 A Yes.

15 Q Was it the same person?

16 A Steve Hart.

17 Q And so, who did Mr. Hart represent in connection with
18 that?

19 A NRA.

20 MR. FARBER: Can we scroll up to the first
21 clause -- the first page -- please?

22 Excuse me. The second page. I'm sorry.

23 (Image scrolled.)

24 MR. FARBER: I apologize. Back up to the first
25 page.

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Cross/Farber

948

1 (Image scrolled.)

2 MR. FARBER: Stop.

3 BY MR. FARBER:

4 Q So, under "B," where it says, "Consulting services to
5 be provided" and that -- it says: "Consultant agrees to perform
6 the following services throughout the term of this agreement on
7 an ongoing basis."

8 MR. FARBER: Could we scroll up, please?

9 (Image scrolled.)

10 MR. FARBER: I'm sorry; down, so we could see more
11 of the document, please.

12 (Image scrolled.)

13 MR. FARBER: Okay. Thank you.

14 So we can see (i) and (ii), please?

15 (Image scrolled.)

16 MR. FARBER: Small one and small two.

17 (Image scrolled.)

18 MR. FARBER: Thanks.

19 BY MR. FARBER:

20 Q And following that, it says: "Consultant shall provide
21 advisory services and the benefit of its expertise in all
22 appropriate areas including but not limited to areas related to
23 his prior duties as CFO and treasurer of the organization."

24 And then the next small paragraph provides: "The
25 consultant will coordinate activities ..." and continues on.

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Cross/Farber

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1 You were asked some questions, Mr. Phillips, about --
2 by Ms. Connell (indicating) -- about services that you provided
3 pursuant to this agreement. Do you recall those questions?

4 A I do.

5 Q Okay. Were you ever asked by NRA personnel to do
6 anything under this agreement that you refused to do?

7 A No.

8 Q And were you available to perform the services that are
9 outlined here (indicating) during the period of time that this
10 consulting agreement was in effect?

11 A Yes.

12 Q Were you asked, during the period of time of this
13 consulting agreement, to meet with counsel for the NRA?

14 A Yes.

15 Q Okay. And that was the lawyers from the Brewer
16 (indicating) firm; is that correct?

17 A That's correct.

18 Q Okay. Did you meet with them, as requested?

19 A Yes.

20 Q Did they ask you questions?

21 A Yes.

22 Q Did you answer all their questions?

23 A I did.

24 Q Okay.

25 And do you recall, Mr. Phillips, yesterday [sic], being

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Phillips - by Plaintiff - Cross/Farber

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1 asked some questions about whether, at some point, you bought a
2 home in Dallas? You recall that?

3 A I do.

4 Q Okay. And you were asked questions about the costs for
5 your travel from Dallas to Virginia and back. Do you recall
6 those questions?

7 A I do.

8 Q Okay. And you were asked whether or not the NRA paid
9 for those travel costs. Do you recall that, Mr. Phillips?

10 A I do.

11 Q And you testified, when Ms. Connell was examining you,
12 that -- that -- you said, "We looked at it." Do you recall
13 that?

14 A Yes.

15 Q What did you mean by that?

16 A Well, I knew -- I knew that I had work in Dallas and I
17 had work in Virginia and that they were about equal in terms of
18 time spent on the work there, and I was just trying to estimate,
19 was it fair to -- I was going to be traveling to one place or
20 the next, however we set it up.

21 Q Okay. And so, when you said there's "work in Dallas,"
22 you were asked some questions earlier today about your meetings
23 with Ackerman McQueen. Do you recall that?

24 A Yes.

25 Q Okay. And did Ackerman McQueen have an office in

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Phillips - by Plaintiff - Cross/Farber

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1 Dallas?

2 A Yes.

3 Q Okay. Did you go to Ackerman McQueen meetings on
4 behalf of NRA in Dallas?

5 A I don't -- I don't recall the timing of when I was an
6 employee and when I was not, for that, but I'm pretty sure I had
7 some meetings with Ackerman McQueen in Dallas; at their office
8 there.

9 Q Okay. Did they also have an office in Oklahoma?

10 A Yes.

11 Q And did you go there, as well?

12 A Yes.

13 Q Okay. And can you describe any of the other business
14 that you --

15 Do you recall any other specific business you did for
16 the NRA in Dallas?

17 A Well, there were several things that were, kind of,
18 looking toward the future and one was a distance learning. It's
19 basically since COVID, and everybody knows what it is, but at
20 the time, we were working on a -- a -- a distance-learning type
21 of activity for people that were related to the gun industry.
22 That was -- that was one thing.

23 The -- there -- there were -- in Dallas, there were
24 lots of people that were -- that worked for -- worked for our
25 foundation or knew people that we might want to call to bring in

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Proceedings

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1 to work with us, and the NRA has a -- has a person --
2 Advancement has a person on-site in Dallas, but I worked with
3 him sometime to go out and help cultivate some of these other
4 relationships.

5 Q Mr. Phillips --

6 THE COURT: Counsel, just a heads-up: We're a
7 couple of minutes away from the time to break, so when --

8 MR. FARBER: This would be a convenient time, if
9 you'd like.

10 THE COURT: All right.

11 So we'll break for the day. We're going to
12 reconvene at 9:30 tomorrow. See you all bright and early.

13 And the typical instructions: Don't talk about the
14 case. Don't research the case.

15 And I will see you then.

16 COURT OFFICER: All rise. Jury exiting.

17 (The jury left the courtroom.)

18 THE COURT: All right, see you all tomorrow.

19 (To witness) Same instructions.

20 MS. CONNELL: Your Honor?

21 MR. FARBER: Just, have you decided what message --
22 what reply -- to give to the juror?

23 I'm sorry. Have you decided what reply to give to
24 the juror? Because I worry that this is obviously something
25 on her mind.

ALAN F. BOWIN, CSR, RMR, CRR

Proceedings

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1 THE COURT: Yeah.

2 Look, what we've told her is, "Keep us informed"
3 and then, if anything happens, we'll -- you know -- we'll
4 deal with it then.

5 My view is is that if she needs to go, she needs to
6 go, and she'll -- I don't -- my -- my lean is is that we
7 just keep going forward rather than halting the whole trial
8 to wait for her to come back, since we won't know. So I
9 don't anticipate demanding that she stay here if the worst
10 happens with the family member.

11 So, if anybody has any different views on that,
12 I'll certainly listen.

13 MR. FARBER: No, I have no different view, your
14 Honor. I was just inquiring as to what she was told.

15 THE COURT: That would be my plan, is that if she
16 gets a call requiring her, in my judgment, to be with
17 family, then that's why we have alternates.

18 MR. FARBER: Thank you, your Honor.

19 THE COURT: Anybody have a different view?

20 MS. CONNELL: Your Honor, I am not speaking to
21 that. I have one other issue I wanted to raise with you.

22 THE COURT: Okay, so that's the plan.

23 What's next?

24 MS. CONNELL: I just wanted to let the Court know:
25 One of our designated witnesses for this week is Christopher

ALAN F. BOWIN, CSR, RMR, CRR

1 Cox, the former head of the NRA's ILA. He is only available
2 on the 18th and the 19th, and so we may ask to take him out
3 of order, interrupt. He cannot come in the following week.

4 So we're going to try and play it by ear and plan,
5 but I wanted to let the parties and the Court know that.
6 I'm sorry for any inconvenience.

7 THE COURT: All right.

8 Well, my practice, and I think most, is, especially
9 for nonparties, we can make accommodations. So we'll --

10 You know, it's your -- it's still part of your
11 case, so you can decide if you want to put a witness that
12 you're talking to on hold. I would strongly prefer, though,
13 it be after a witness is done rather than stopping in the
14 middle of, say, cross-examination.

15 MS. CONNELL: I agree, your Honor.

16 I just want to make sure he's able to be fully
17 questioned before he leaves. So ...

18 THE COURT: Okay. All right, see you tomorrow.

19 MR. FARBER: Thank you.

20 THE WITNESS: Thank you, your Honor.

21 THE COURT: Thank you.

22 (To witness) Same instructions about not discussing
23 your testimony.

24 (Whereupon, the matter was adjourned to Wednesday,
25 January 17, 2024 at 9:30 a.m.)

ALAN F. BOWIN, CSR, RMR, CRR

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

3 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
4 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

5 -against-

6 THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
7 WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
8 and JOSHUA POWELL,

Defendants.

-----X
9 Index No. 451625/20 TRIAL 60 Centre Street
10 New York, N.Y.
11 January 17, 2024

12 B E F O R E:

13 HONORABLE JOEL M. COHEN,
14 Justice; and a jury

15 A P P E A R A N C E S:

16 STATE OF NEW YORK
17 OFFICE OF THE ATTORNEY GENERAL
18 LETITIA JAMES
19 Attorneys for the Plaintiff
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21 New York, N.Y. 10005
22 BY: MONICA A. CONNELL, ESQ.
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23 Attorneys for the Defendant National Rifle Association
24 750 Lexington Avenue, 14th Floor
25 New York, N.Y. 10022
BY: SVETLANA M. EISENBERG, ESQ.
SARAH B. ROGERS, ESQ.

ALAN F. BOWIN, CSR, RMR, CRR

1 (Appearances continued:)

2

3

4

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ALAN F. BOWIN, CSR, RMR, CRR
LORI SACCO
Official Court Reporters

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ALAN F. BOWIN, CSR, RMR, CRR

Proceedings

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1 THE COURT: All right. Good morning, everyone.

2 The jury's ready.

3 I'll ask for a time check as the week goes on, just
4 to see where we are.

5 Just an observation that we seem to be not getting
6 through as many witnesses as planned, so just sort of bear
7 that in mind as you're -- as you're moving along. There's
8 still five weeks or so to get everything done, but never too
9 early to focus on your time budgeting.

10 All right. I think we're all set -- are we? -- to
11 get going?

12 (Counsel nodded.)

13 THE COURT: All right, let's get the jury.

14 MR. FARBER: Your Honor, do you want Mr. Phillips
15 on the witness stand now (indicating)?

16 THE COURT: Yes, please.

17 Beat me to it.

18 W I L S O N P H I L L I P S, a defendant herein, called as
19 a witness by the plaintiff, having been previously duly
20 sworn/affirmed, resumed the witness stand.

21 (Pause.)

22 COURT OFFICER: Court ready to receive the jury?

23 (The Court nodded.)

24 COURT OFFICER: All rise. Jury entering.

25 (The jury entered the courtroom.)

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Cross/Farber

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1 THE COURT: Good morning, everyone. Have a seat.

2 Welcome back.

3 Everybody all set?

4 Okay. Mr. Farber, you may continue.

5 MR. FARBER: Thank you, your Honor.

6 THE COURT: Do you have your mic on? There you go.

7 MR. FARBER: I do. Is it working?

8 JUROR NO. 3: Not too well.

9 MR. FARBER: How's this?

10 THE COURT: No. It doesn't seem to be on.

11 MR. FARBER: Hmm ...

12 (Pause.)

13 MR. FARBER: Is this any better? Well ...

14 THE COURT: Is there an on-off switch on that
15 thing?

16 (Court officers assisted Mr. Farber.)

17 MR. FARBER: How's that, your Honor?

18 THE COURT: Better, in that it's now on.

19 (Laughter.)

20 MR. FARBER: Thank you.

21 THE COURT: Thanks, officers.

22 MR. FARBER: May I proceed?

23 THE COURT: Yes.

24 CROSS-EXAMINATION CONTINUED

25 BY MR. FARBER:

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Cross/Farber

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1 Q Good morning, Mr. Phillips.

2 A Good morning.

3 Q Yesterday, and I guess it was on Friday, you were asked
4 some questions by Ms. Connell about the span of your career at
5 the NRA and I think you testified that you were hired -- you
6 began work -- in approximately the early '90s; is that correct?

7 A That's correct.

8 Q Okay. Were you a member of the NRA at that time?

9 A Not when I was hired.

10 Q Did you become one afterwards?

11 A Yes.

12 Q Are you one today?

13 A Yes.

14 Q Okay. Did you know -- did you know Mr. LaPierre at the
15 time that you were hired or before you were hired?

16 A No.

17 Q Now, when you testified when Ms. Connell asked you
18 questions at the start of your examination, she asked you
19 whether you were CFO and treasurer of the NRA from 1993 until
20 2018, and you said that was correct. You recall that testimony?

21 A Yes.

22 Q Were you on leave at all during that period of time?

23 A No.

24 Q Did you have any medical leaves?

25 A I had an injury on a bicycle. I wouldn't call it

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Cross/Farber

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1 "leave," but I was out for the better part of a month.

2 Q What happened?

3 A I was going fast, downhill; hit a pothole; front --
4 front wheel got stuck there and just flipped me over
5 (simulating).

6 Q And what injuries did you suffer as a result of that?

7 A I have a plate in my head here (indicating) and broke
8 both these bones (indicating) -- compound fracture -- and just
9 scrapes and cuts everywhere else.

10 Q And you said you were out for a period of time. Do you
11 recall approximately how long it was?

12 A Well, I was in the hospital, I think, for about ten
13 days; and after that, just recuperating, so maybe another week.

14 Q And approximately when was that accident?

15 A About ten years ago.

16 Q And after you went back to work, did you notice any
17 after-effects from the injury?

18 A I didn't, but I had friends and co-workers that said
19 they thought I was having trouble sequencing things. I wasn't
20 sure what that meant, but putting things in order.

21 Q Okay. And when Ms. Connell was asking you questions
22 the other day about your contract with Ms. -- excuse me -- about
23 the NRA's contract with Oliver North, in response to one
24 question you said something about, "That's the memory issue
25 there." Do you recall that testimony?

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Cross/Farber

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1 A I do.

2 Q What were you referring to?

3 A Well, I have -- just -- just recently -- have noticed
4 it's -- I think -- I've been doing some tests at the hospital,
5 but it's memory recall and sometimes that manifests itself as --
6 you know, everybody has had it -- where you walk into a room and
7 can't remember why you were there and that sort of thing, but
8 it's more exaggerated, more frequent.

9 Q And are you being treated by a doctor at the moment?

10 A I'm in a -- a program with Baylor University Hospital
11 and University of Texas Southwestern, in their memory centers.

12 Q Now, Mr. Phillips, when Ms. Connell asked you about
13 your retirement in 2018, she asked you whether you were
14 terminated. Do you recall that?

15 A I do.

16 Q Okay. And what was your response?

17 A I was not; I retired.

18 Q Okay. Why did you retire at that time?

19 A I had set 70 years old as a good time to retire, and
20 that's right around the time of my 70th birthday.

21 Q How old are you now?

22 A Seventy-five.

23 Q And, Mr. Phillips, we talked a little yesterday about
24 the changes in the NRA over time. Can you describe for the jury
25 how, over the course of your years -- 25-or-so years -- as

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Cross/Farber

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1 treasurer and CFO, the NRA grew?

2 A Yes.

3 I was -- I was hired during Wayne LaPierre's first --
4 first year as chief executive officer and so the -- there was
5 the organizational things going in terms of growth in
6 membership, and all of that, that were -- were happening and I
7 was part of that. We also had very few qualified accountants in
8 the accounting area, so we had to get people hired and build a
9 program there to -- to recognize the larger organization.

10 Q And what was the difference in membership,
11 approximately, from when you started at the NRA to when you
12 left?

13 A Yeah. I don't remember the initial, but it's
14 somewhere, a million to a million and a half when I started and
15 five million when I retired.

16 Q And what about revenue at the NRA; how did that change
17 over time?

18 A Well, it -- it grew tremendously. I just can't --
19 can't tell you the numbers, but they were a significant amount
20 of -- of revenue.

21 MR. FARBER: Can we get pulled up on the screen --
22 I'd like to have an exhibit, just for
23 identification only at the moment, WPX 27?

24 THE COURT: You just need to coordinate with
25 turning the screens off.

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1 (Pause.)

2 THE COURT: Okay. What's the exhibit number?

3 MR. FARBER: WPX 27.

4 THE COURT: "WPX"?

5 MR. FARBER: Yes.

6 THE COURT: -"27"?

7 THE WITNESS: Do I have that?

8 THE COURT: No.

9 MR. FARBER: Not yet.

10 BY MR. FARBER:

11 Q Okay, Mr. Phillips --

12 MR. FARBER: And can we just scroll down to the
13 bottom of the page, so Mr. Phillips can view this?

14 Q Mr. Phillips, do you recognize this exhibit?

15 A I do.

16 Q What is it?

17 A It was a document that I prepared. My retirement was
18 coming up soon and I wanted to do a presentation to the board --
19 to the NRA Board -- about the changes during the period from
20 when I was hired till the current time, five years ago.

21 MR. FARBER: And can we scroll back up to the top,
22 please?

23 Q And, Mr. Phillips, how did you go about preparing this
24 document?

25 A The source was the audited annual report from 1991 and

ALAN F. BOWIN, CSR, RMR, CRR

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1 then the 2018 financial statements.

2 MR. FARBER: Your Honor, I offer WPX 27.

3 MS. CONNELL: Your Honor, I don't know that we've
4 ever seen this.

5 (To counsel) Does this have a Bates number and was
6 it produced in discovery?

7 MR. FARBER: It was -- it was provided as one of
8 our exhibits a long time ago --

9 MS. CONNELL: Your --

10 MR. FARBER: -- when the exhibits were exchanged.

11 MS. COUTU: It was also produced in discovery.

12 THE COURT: It was produced in discovery?

13 MS. COUTU: Yes. Yes.

14 MS. CONNELL: I don't see a Bates number on it.

15 MR. FARBER: Judge, there's no requirement that we
16 put Bates numbers on exhibits. That's not a basis for an
17 objection.

18 THE COURT: No. The question is whether it was
19 produced during the discovery process, and typically, when
20 it's produced in the discovery process, there are numbers on
21 the bottom; right?

22 MR. FARBER: Yes, that's correct.

23 This version -- I don't know if this version has
24 numbers on them, but we're representing to you that it was.

25 MS. CONNELL: Your Honor, I'll take that

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Phillips - by Plaintiff - Cross/Farber

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1 representation. That's fine.

2 THE COURT: Okay. It's admitted.

3 MR. FARBER: Can we scroll back up to the top,
4 please?

5 Thank you.

6 (Image displayed.)

7 BY MR. FARBER:

8 Q So, Mr. Phillips, now referring to what's now in
9 evidence as WPX 100, what was the -- looking at the first
10 line -- what was the NRA's cash and cash equivalents in 1991 as
11 compared to 2018?

12 A Well, it was -- it was a growth of -- from \$194,000 to
13 \$39 million.

14 Q And what was the change in investments?

15 A It went from 80 -- 80 million -- in 1991 to 133 million
16 in 2018.

17 Q And what was the change in total assets?

18 A Total assets increased by \$202 million.

19 Q And if you go down to the bottom of the "Assets"
20 column ...?

21 (Image scrolled.)

22 MR. FARBER: Scroll back up, please?

23 (Image scrolled.)

24 MR. FARBER: Thank you.

25 Q -- you see, there's a line that says "Net Assets."

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Cross/Farber

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1 What does "Net Assets" mean?

2 A Oh, I see it. It's -- it's basically assets less the
3 liabilities associated.

4 Q So what were the NRA's net assets in 1991, before you
5 started?

6 A 2,769,000.

7 Q And what were they in 2018?

8 A 144,733,000.

9 MR. FARBER: And could we just scroll down, so we
10 have the "Statement of Revenue and Expenses"?

11 (Image scrolled.)

12 MR. FARBER: Thank you.

13 Q And what was the change in member dues from 1991 to
14 2018?

15 A It went from 52,000 -- I mean \$52 million -- a year to
16 \$170 million a year.

17 Q And how much did total revenues increase over that
18 period of time?

19 A \$325 million.

20 Q And then, under "Expenses," there are a number of
21 categories. "Legislative Programs, Public Affairs,
22 Publications; Safety, Education and Training; Grant Programs;
23 Shows and Exhibits" are some of them. What are those expenses?

24 A Those are the program areas, mostly, of -- of -- of
25 what NRA did. For example, "Public Affairs" would have been

ALAN F. BOWIN, CSR, RMR, CRR

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1 public outreach; "Publications" were the magazines that went to
2 five million members every -- every month.

3 Q And are those in furtherance of the NRA's mission?

4 A Yes.

5 MS. CONNELL: Objection, your Honor.

6 We've gone far outside the scope, and we've been
7 leading for some time.

8 THE COURT: I agree in --

9 I think the scope, I'm okay with; but try to change
10 the nature of the questions, if you can.

11 MR. FARBER: Certainly, your Honor.

12 Q There's a line that says, "Grant Programs." What are
13 grant programs?

14 A The -- the -- the NRA, as well as the NRA Foundation,
15 both, would make -- make grants for -- for various types of
16 things to -- to -- mostly, to cover local programs of shooting,
17 safety, all of those things.

18 Q And what does "Safety, Education and Training" refer
19 to?

20 A Kind of what it says. It's -- there's -- NRA's roots
21 were based in education about shooting, safety, hunting and all
22 those skills.

23 MR. FARBER: Could we scroll down to "Assets Not in
24 Financials," please?

25 (Image scrolled.)

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Phillips - by Plaintiff - Cross/Farber

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1 MR. FARBER: Thank you.

2 Q Under "Assets Not in Financials," there's a heading,
3 Document Planned Gifts. What are planned -- excuse me --
4 "Documented Planned Gifts." What are planned gifts?

5 A Well, planned gifts are where people will leave a
6 contribution to the NRA in their will; and "documented" means
7 they've documented that to the NRA, so that there's a record in
8 place for that.

9 Q And what were the documented planned gifts at the NRA
10 when you started working there?

11 A Zero.

12 Q And in 2018 ...?

13 A \$308 million.

14 Q There's a -- the next line there is "Building Value."
15 Where was the NRA's headquarters when you started working there?

16 A It was in Midtown in Washington, D.C.

17 Q Okay. And where was it when you left?

18 A It was in Fairfax, Virginia.

19 Q Approximately when did the NRA move there?

20 A It was one of the -- one of the first jobs that I was
21 handed when I was hired was to have to -- we had to deal with
22 the American Disabilities Act [sic] and the building downtown in
23 D.C. had lots of problems and we were going to have to get out
24 to make the changes. But it was everything from size of
25 elevators to a lot of core-type services. So we decided to

ALAN F. BOWIN, CSR, RMR, CRR

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1 consolidate the various locations we were in one big building
2 somewhere in the D.C. area, and so I kind of led a search to
3 find that and we -- we bought the building that they're
4 currently in today.

5 Q And what was the change in membership in the NRA from
6 '91 to 2018?

7 A Oh, there we go (indicating).

8 Two and a half million members to 5.2 million members.

9 Q Okay.

10 MR. FARBER: Thank you. We can take that exhibit
11 down.

12 (Image removed.)

13 Q Mr. Phillips, yesterday, you were asked some questions
14 about an entity called WBB Investments? Do you recall that?

15 A I do.

16 Q And asked questions about the potential purchase of a
17 house in Dallas. Do you recall that?

18 A I do.

19 Q Okay. Why was the NRA looking into buying a house in
20 Dallas?

21 A Well, there had been a number of threats on Wayne
22 LaPierre's life. He traveled a lot, but he needed a place to
23 have a -- have a safe place that -- if he needed to go there.

24 Q And there was some testimony yesterday about a \$70,000
25 check. Why did you have the NRA write a \$70,000 check?

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Cross/Farber

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1 A Well, at the time, we wanted to -- we hadn't worked out
2 exactly how the house, or a place, would be either bought or
3 found a place to use it and this was one possibility. In my
4 mind, if we could find a donor or someone that may purchase it
5 and make it available, we wanted to keep that option open. So
6 the \$70,000 was the equivalent of earnest money, to keep the
7 purchase in -- potentially -- in place.

8 Q And when you say, "this was one possibility," what were
9 you referring to by "this"?

10 A That particular house.

11 Q And you said, "We hadn't worked out the details."
12 Who's the "we" that you're referring to?

13 A Well, it was -- I think, Angus McQueen was -- was
14 involved; I had become aware of it, and I can't remember who
15 else was there.

16 Q What was Mr. McQueen's role?

17 A He -- he led the PR firm.

18 Q What was his role in this project --

19 A In this --

20 Q Please let me finish, so we don't talk over each other,
21 Mr. Phillips.

22 A I'm sorry.

23 Q What was Mr. McQueen's role in this project to search
24 for a potential house for Mr. LaPierre?

25 A I -- I think he led -- led it. At least, he was

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Cross/Farber

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1 significant in trying to resolve this -- the problem with
2 where -- of Mr. LaPierre's safety.

3 Q And you used the phrase "earnest money." What is
4 earnest money?

5 A Earnest money's like a deposit, and it's called that in
6 real estate. It just basically says you're prepared to go
7 through with the deal. Otherwise, you may lose your deposit.

8 Q Did that transaction for that house ever get done?

9 A No.

10 Q And what happened to the \$70,000?

11 A Came back to the NRA.

12 MR. FARBER: Can we pull up PX 2570, which is in
13 evidence, please?

14 (Image displayed.)

15 Q So, Mr. Phillips, this is --

16 MR. FARBER: Could we go back to the screen before,
17 please, with the full page?

18 (Image scrolled, then modified.)

19 Q So, Mr. Phillips, what is this first page on 2570?

20 A It's the Contract Review Signature Sheet for
21 purchase -- I mean -- for contract with a company called
22 HomeTelos.

23 Q And it says, under "Negotiated by, T. Hayes and W.
24 Phillips." Do you see that, Mr. Phillips?

25 A I do.

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Cross/Farber

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1 Q And who is T. Hayes?

2 A That's Tony Hayes, who was the head of IT for NRA.

3 Q So, when you say he was the head of IT for the NRA,
4 what were his responsibilities?

5 A He was a division director for anything that had to do
6 with systems and computer operations.

7 Q And there are some other signatures on this page.
8 Under "Legal Review," do you know what name is there?

9 A I'm sorry; repeat that?

10 Q So there are some other signatures --

11 A Yeah.

12 Q -- on this Contract Review Signature Sheet,
13 Mr. Phillips. Do you see that?

14 A I do.

15 MR. FARBER: And maybe, if we could just blow up
16 the bottom half of this -- this document -- please ...?

17 (Image modified.)

18 Q So the first one, next to "Legal Review," there's a
19 name. Do you know who that is?

20 A Yes. He's one of NRA's internal attorneys.

21 Q And who is -- what's the name?

22 A "Michael Blaz."

23 MR. FARBER: And then, if we could scroll down a
24 little, please ...?

25 (Image scrolled.)

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Cross/Farber

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1 Q Then, under "Financial and Business Review," are those
2 your signatures?

3 A Yes.

4 Q Okay. And then, next to "Executive Vice President,"
5 who's signature is there?

6 A I can't tell.

7 Q Okay. How about "President" and "Vice President"?

8 A Yeah. Allan Cors is First Vice President and the --
9 the President is Jim, or James, Porter.

10 Q And were they members of the board of directors of the
11 NRA?

12 A Yes; they were President and First Vice President.

13 MR. FARBER: So, can we scroll down to the next
14 page, please?

15 (Image scrolled.)

16 MR. FARBER: If you can stop there ...?

17 (Image fixed.)

18 Q Okay. This is the Business Case Analysis Sheet.

19 MR. FARBER: And if we could scroll down a little
20 bit, please, under --

21 (Image scrolled.)

22 MR. FARBER: Stop.

23 (Image fixed.)

24 Q Under "Analysis," who prepared this analysis,
25 Mr. Phillips?

ALAN F. BOWIN, CSR, RMR, CRR

1 A I was -- I was part of it and Tony Hayes, I'm pretty
2 sure, but within his department, I don't know.

3 Q So Ms. Connell asked you some questions about whether
4 HomeTelos had any expertise in the information technology area.
5 Do you recall that?

6 A I do.

7 Q Okay. Can you read to the jury what it says under item
8 2, please?

9 A It says: "HomeTelos has been successful in providing
10 'management' and other hunter-support services to state wildlife
11 agencies. They also have extensive experience in consolidating
12 realtime basis data, such as regulations, key dates, etcetera,
13 already available in various sites on the Web, to enable a
14 one-stop view of pertinent information. They will also
15 integrate some other elements, such as GPS mapping tools, into
16 the tools available to our hunters."

17 Q Okay. And why did the NRA need these services at this
18 time?

19 A NRA had a -- had a program to try to match people who
20 wanted a particular kind of hunt with the outfitter and -- and
21 then track it through and have feedback at the end of the hunt
22 that would be available for -- for people. This is similar to
23 a -- something for the wildlife agencies that they had worked
24 on.

25 (Continued on next page.)

ALAN F. BOWIN, CSR, RMR, CRR

Cross-Phillips-Farber

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1 Q And can you read the third item under analysis?

2 A "When it was decided to bring the outfitters program
3 inhouse, we considered developing the support system inhouse or
4 having Ackerman McQueen incorporate the development into the" --
5 into the "IS with the new membership system for the next
6 15 months and Ackerman McQueen with web consolidation well into
7 2015. Incorporating the third party" to -- "into development of
8 a major system will house two beneficial attributes. One, it
9 will" keep -- "help compress the timeline for completion and it
10 will prove we can work with outside developers without losing
11 the common image in our web presence."

12 Q Thank you, Mr. Phillips. Now, you were asked some
13 questions about whether you disclosed the HomeTelos transaction
14 to the audit committee of the NRA board of directors before you
15 entered into it. Do you recall those questions?

16 A I recall the question.

17 Q Did you?

18 A Before I entered it?

19 Q Yes.

20 A I don't think so.

21 Q Okay. Why not?

22 A Just the timing and availability.

23 Q Did you believe you were required to?

24 A Oh, no, I didn't think it was a related party that we
25 were contracting with.

LAS

Cross-Phillips-Farber

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1 Q And when you say you didn't think it was a related
2 party, what do you mean by related party --

3 A Well --

4 Q Let me finish my question please, Mr. Phillips.

5 A Sorry.

6 Q What do you mean by related party?

7 A Well, we had -- a related party would be someone close
8 where it would affect your -- your judgment in -- or affect your
9 performance in carrying out a contract. Generally that means a
10 family member or some other definitions that I can't recall at
11 the moment.

12 Q Was there a definition that you were referring to?

13 A I was -- I was -- I was referring to -- I asked some
14 people inhouse, some of our inhouse attorneys what qualifies.
15 And I heard family member.

16 MS. CONNELL: Objection, your Honor, on hearsay.
17 To the extent the question and the answer are producing
18 hearsay, especially regarding privileged matters, if we're
19 going to open privilege.

20 MR. FARBER: It's his state of mind, your Honor.

21 THE COURT: Well, first of all, the objection
22 should come from the other side.

23 MS. ROGERS: Well --

24 THE COURT: This --

25 MS. ROGERS: -- the NRA does object to questions

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1 that would call for the content of legal advice rendered by
2 NRA attorneys to NRA executives in their official capacity.

3 THE COURT: Sustained.

4 MR. FARBER: I'll move on. We can take this
5 exhibit down.

6 Q You recall you were asked some questions by Ms. Connell
7 about the house that you currently live in. Do you recall that?

8 A I do.

9 Q Okay.

10 MR. FARBER: Can we get up Plaintiff's Exhibit 732,
11 please.

12 THE COURT: Is that in evidence?

13 MR. FARBER: Yes.

14 Q And this is 4602 Gilbert Avenue in Dallas, Texas?

15 A Yes.

16 Q Okay. That's your -- Is that your current home?

17 A Yes.

18 Q Okay. Who owns that home?

19 A I do.

20 Q With anybody else?

21 A No.

22 MS. CONNELL: Thank you.

23 MR. FARBER: Your Honor, I would like to pull up
24 for identification only a document that I've marked as WPX
25 100.

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1 THE COURT: Okay.

2 MR. FARBER: Would your Honor like a copy?

3 THE COURT: Sure.

4 Q So, Mr. Phillips, could you --

5 MR. FARBER: Maybe we could blow this up a little
6 bit.

7 Q I'm going to ask you, Mr. Phillips, to take a look at
8 this document, and let us know when you've looked at the first
9 page.

10 MR. FARBER: Go up to the top, please. And then
11 scroll down.

12 A (Examining).

13 Q Have you read the first page, Mr. Phillips?

14 A I read enough.

15 MR. FARBER: The second page, please.

16 Q Have you had a chance to review it, Mr. Phillips?

17 A Yes.

18 Q Do you know what the document that I've marked for
19 identification as WPX 100 is?

20 A Can you go back up. I think it's a deed. It's the
21 name I recognize as the previous owner. Yeah. It's a deed for
22 my current house.

23 MR. FARBER: Your Honor, I offer WPX 100.

24 MS. ROGERS: No objection.

25 MS. CONNELL: No objection, your Honor.

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1 MR. CORRELL: No objection.

2 THE COURT: It's admitted. You can turn the
3 screens back on. Thanks.

4 Q And if you look at the top paragraph, Mr. Phillips,
5 beginning with "That the undersigned Kimberly A. Comer, herein
6 referred to as grantor", do you see that paragraph?

7 A (Examiner). Yes.

8 Q Who is Ms. Comer?

9 A She's the previous owner of my property.

10 Q Okay. And it says, "These presence does hereby grant,
11 sell, convey onto", what's the name after that, Mr. Phillips?

12 A Wilson Phillips.

13 Q Okay. And the property that's referenced there, what
14 property is that?

15 A That's my current house.

16 Q The same one that we looked at in the other exhibit?

17 A Yes.

18 Q Thank you.

19 MR. FARBER: We can take that down.

20 Q And Ms. Connell also asked you about a yacht trip that
21 you took on a yacht that was owned by Mr. McKenzie. Do you
22 recall that?

23 A I do.

24 Q Okay. And who paid for that trip?

25 A I did.

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1 Q Okay.

2 MR. FARBER: Can we get pulled up WPX 16 for
3 identification, please. I've prepared a redacted version of
4 this.

5 MS. CONNELL: Thank you.

6 MS. ROGERS: Thank you.

7 MR. CORRELL: Thank you.

8 MR. FLEMING: Thank you.

9 MR. FARBER: Your Honor, I have one for the Court
10 if you would like.

11 Q Mr. Phillips, do you see what's been marked for
12 identification as WPX 16?

13 A (Examining). I do.

14 Q Do you recognize it?

15 A I do.

16 Q What is it?

17 A It's a check from me to The Race to Erase MS.

18 Q What was that? Why did you write that check to The
19 Race to Erase MS?

20 A The Race to Erase MS organization had -- had a -- like
21 I forgot the word.

22 Q Charity auction?

23 A Yes. Thank you. Apologize. They had a charity
24 auction. And the original purchaser at the auction fell
25 through. And I became aware of this through Ms. McKenzie and

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1 took -- took that problem off of MS, Race to Erase MS hands.

2 Q Is this a check that you wrote to pay for the yacht
3 trip?

4 A That's correct.

5 MR. FARBER: I'm not sure if this is already in
6 evidence in another form. I would offer this, Exhibit 16.

7 THE COURT: Hearing no objection.

8 MS. CONNELL: No objection, your Honor.

9 MS. ROGERS: No objection.

10 MR. CORRELL: No objection.

11 MR. FLEMING: No objection.

12 THE COURT: It's admitted.

13 MR. FARBER: Can we have it published to the jury.

14 (Whereupon the exhibit was published to the jury
15 panel.)

16 Q And, Mr. Phillips, on whose account is this check
17 drawn?

18 A It's from my personal account.

19 MR. FARBER: Thank you. We can take that exhibit
20 down.

21 Q Mr. Phillips, I would like to talk for a few minutes
22 about Ackerman McQueen. And you recall Ms. Connell asked you
23 whether they were primarily the PR agency for the NRA. Do you
24 recall that?

25 A I do.

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1 Q Okay.

2 MR. FARBER: Could we get Plaintiff's Exhibit 506
3 pulled up, please.

4 THE COURT: Is that in evidence?

5 MR. FARBER: Yes, it is, your Honor.

6 THE COURT: Okay.

7 Q And, Mr. Phillips, this is the services agreement with
8 Ackerman McQueen that you were asked some questions about by --
9 by Ms. Connell, isn't that right?

10 A That's right.

11 Q Okay. So -- And I would like to direct your attention
12 down to item one on this contract. It says "services". Do you
13 see that?

14 A (Examining). I do.

15 MR. FARBER: Okay. If we could stop there, please.

16 Q So under (a), can you read for the jury what it says,
17 please at the top. Just the heading.

18 A Just the heading. "Public Relations/Political
19 Strategy/Strategic Marketing Services".

20 Q And read the next paragraph that follows, please.

21 A "Services which include a combination of generating
22 earned media, responsive public relations, political
23 consultation and strategic thinking to promote a positive image
24 of the NRA as described below."

25 Q And there are a number of bullets that follow that?

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1 A Yes.

2 MR. FARBER: Can we go to the next page, please.

3 Q And then there is a topic. Can you read topic B also
4 under services?

5 A Yes. Title is "Advertising/Creative Services".

6 Q And please read that -- that paragraph to the jury.

7 A "The services described below (with the exception of
8 media planning and placement, which is addressed separately as a
9 subcategory of this section) will be provided to NRA on a
10 project, job basis on the fair market value of the work as
11 determined by Ackerman McQueen and take into consideration among
12 other things the hourly rates of the personnel assigned to the
13 job and the time required to complete the job."

14 Q You can stop there, Mr. Phillips. Then there is some
15 bullets under, that is that correct?

16 MR. FARBER: You can scroll down and stop right
17 there.

18 A Yes.

19 Q So what's the first one? We won't go through all of
20 them.

21 A Speech writing services.

22 Q And the second?

23 A "Conceive, copyright and design produce and produce
24 local regional and national print and broadcast advertising" --

25 Q I'm sorry, Mr. Phillips.

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1 A That's all right. Do you want me to finish?

2 Q Please.

3 A -- "and other appropriate forms of communication to
4 present NRA's message."

5 MR. FARBER: Can we scroll down to the next heading
6 there.

7 Q What does that say?

8 A "Media Planning and Placement Services."

9 MR. FARBER: Scroll down further. Stop.

10 Q The next heading?

11 A "New Media Internet Services".

12 MR. FARBER: Keep going, please. Okay. We can
13 stop there. Thank you.

14 Q You've testified some about Angus McQueen, do you
15 recall?

16 A I do.

17 Q And what was Angus McQueen's role at Ackerman McQueen?

18 A He was the CEO, president, owner.

19 Q And can you describe his relationship with Mr.
20 LaPierre?

21 A They worked together a lot on all those topics that we
22 just read through.

23 Q Did you work with him as well?

24 A Yes. Some meetings.

25 Q And you also testified about Bill Winkler. Who was

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1 Mr. Winkler?

2 A He was their CFO, Ackerman McQueen's CFO.

3 Q What was your view of him as a CFO?

4 A He was good. He's strong.

5 Q What about his organization, did you have a view of
6 that?

7 A I worked with a few of the people in his organization
8 that were extremely competent.

9 Q Were any of them CPA's?

10 A I don't know.

11 Q And you were also asked some questions by Ms. Connell
12 about why backup records were maintained, backup records for
13 expenses that were billed to the NRA were maintained at Ackerman
14 McQueen's facility instead of the NRA. Do you recall those
15 questions?

16 A I do.

17 Q Okay. And in one of your answers you said there were
18 some things that were sensitive. Do you recall that testimony?

19 A I do.

20 Q What did you mean by that?

21 A May have been some of the travel, recurring travel
22 destinations for Mr. LaPierre. It would be that. They were
23 sensitive that we wanted to keep them close.

24 Q And why would travel destinations of Mr. LaPierre
25 something that the NRA wanted to keep close?

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1 A Well, his -- his security was really important to us
2 and we -- we wanted to keep -- anything we could do to make it
3 more secure, we would try to do.

4 Q And you also mentioned, when Ms. Connell was asking why
5 you did not feel comfortable or as comfortable having those
6 records at the NRA, that there were, I think the phrase you
7 used, were people that snooped through files. What were you
8 referring to by that?

9 A Well, it's a political organization, and we just have
10 to keep information on a need to know basis.

11 Q And when you say "it's a political organization", what
12 do you mean?

13 A NRA is -- it's -- it's -- part of its business is in
14 politics. So the nature of the people want to know as much as
15 they can.

16 Q Had there been any instances where there were leaks of
17 information?

18 A I -- I heard of some.

19 Q Is that a concern?

20 A Yes.

21 Q Was any of the information that was kept at Ackerman
22 McQueen kept there to keep it from the board of directors of the
23 NRA?

24 A No.

25 Q I think you also testified in response to some

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1 questions either yesterday or on Friday that no one ever came to
2 you about a problem with the level of detail in the Ackerman
3 McQueen out-of-pocket invoices. Do you recall that testimony?

4 A No. Can you repeat that?

5 Q I believe you were asked whether anyone came to you and
6 expressed a concern about the level of detail or the lack of
7 detail in the Ackerman McQueen out-of-pocket invoices. Do you
8 recall that?

9 A I do.

10 Q Okay. And you testified that you do not recall that
11 happening?

12 A That's correct.

13 Q Did Sonya Rowling ever come to you with such a concern?

14 MS. CONNELL: Objection, your Honor. We're leading
15 again.

16 THE COURT: Overruled. You can answer.

17 A I can't recall a time.

18 Q I'm sorry. I didn't hear you.

19 A I can't recall a time that she did.

20 Q How about Mr. Erstling, did he?

21 A The same.

22 Q And what about Mr. Tedrick, did he?

23 A No.

24 Q I would like to go back to the topic of Under Wild
25 Skies.

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1 MR. FARBER: Can we pull up Plaintiff's
2 Exhibit 2650, which is in evidence. If we could scroll down
3 the page, please. Just go to the top of this page, please.
4 To the top, please. Thank you.

5 Q So, Mr. Phillips, this is one of the Under Wild Skies
6 invoices that you testified about the other day, correct?

7 A (Examining). Correct.

8 Q And you testified I believe that Under Wild Skies was a
9 TV show about African hunting, do you recall that testimony?

10 A I do.

11 Q When you say it was a TV show about African hunting,
12 can you describe in more detail what the show was about?

13 A It was hunting in Africa.

14 Q Okay. Can you describe what these hunts were?

15 A Yeah. The -- Maybe a good way to describe this is that
16 in filming this show, they would go for a couple of months to
17 various hunting preserves in Africa and film for different kinds
18 of hunts and kind of rotate some people through with Tony Makris
19 being kind of the constant. He was the MC. They would hunt.
20 They -- they talk about their hunts at the end of the day. It
21 was actually a well produced hunting show on television.

22 Q And what are the costs of hunt roughly?

23 A Yeah. If I were to go --

24 MS. CONNELL: Objection, your Honor. This calls
25 for him to speculate on the costs of numerous hunts over

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1 years, and he doesn't have a basis for it. No foundation
2 for the scope.

3 THE COURT: Overruled. If you know, you can
4 answer.

5 A It depends on what you're hunting.

6 Q What were some of the things that were the subject of
7 the hunts on the Under Wild Skies?

8 A Cape Buffalo is one. It's a very dangerous animal. I
9 can't tell you what they cost. It's an expensive hunt.
10 Thousands of dollars in trophy fee. But --

11 Q What's a trophy fee?

12 A Trophy fee is what you pay -- pay the country or the
13 preserve where the -- where the hunt is done. And if you are
14 successful in shooting the animal there, you pay the fee.

15 MR. FARBER: So, can we just scroll down to the --
16 Thank you.

17 Q So, under description here it says "supplemental
18 invoice". Do you see that, Mr. Phillips?

19 A (Examining). That's correct.

20 Q And the NRA had a contract with Under Wild Skies to pay
21 for the production of these shows, is that correct?

22 A That's correct.

23 Q Okay. What was the purpose of the supplemental
24 invoices? What were those payments for?

25 A The way I related to supplemental was from time to time

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1 they would take others on the hunt when filming was going on and
2 let them participate. These would be large donors. Could be
3 people cultivating to bring into the organization. Kind of
4 that's the way -- that was my interaction with the
5 supplementals.

6 Q What was the benefit to the NRA of having these others
7 large donors as you've described them on -- on these hunts?

8 MS. CONNELL: Objection, your Honor. Lack of
9 foundation. This is again beyond the scope. We don't know
10 what donors. There is no foundation for this. This is
11 Mr. Phillips justifying.

12 THE COURT: Overruled.

13 A Well, a big one, I'll admit this is a large
14 relationship, but one ended with a man named Robert Peterson
15 who --

16 MS. ROGERS: Object to the extent that the witness
17 is identifying names of NRA donors.

18 THE WITNESS: I'm sorry. Okay.

19 MR. FARBER: I think what he's about to identify is
20 public.

21 MS. ROGERS: The NRA doesn't object to details of
22 hunts or testimony about the level of donations that were
23 cultivated, but we owe our donors confidentiality.

24 THE COURT: I'm not aware of that being an
25 evidentiary privilege in a court proceeding.

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1 MS. ROGERS: It's -- it's been treated as one at
2 various stages of this and other NRA litigation because of
3 the NAACP Alabama issue.

4 THE COURT: That's when the government is trying to
5 get access to membership lists. I mean, I'm fine if it's
6 not really necessary to -- for the juries understanding to
7 know the names of the individuals if we don't have to get
8 into them. But I'm not aware of an evidentiary basis to
9 exclude it. So if you -- if there is no need to get into
10 it, that's fine, but the objection is overruled.

11 Q You can continue, Mr. Phillips.

12 A I don't need to give a name. But the person I have in
13 mind, a magazine publisher. He's deceased. But in his estate
14 he left the NRA a gun collection probably worth \$50 million and
15 his estate built out the museum that houses that today.

16 Q Where is that museum?

17 A If Fairfax, Virginia, NRA headquarters.

18 Q What is that museum?

19 A Called The National Firearms Museum, I believe.

20 Q How did the NRA get that donor?

21 A Mainly through Tony Makris' cultivation of the donor
22 and his wife and their attorney.

23 MR. FARBER: Thank you. We can take down this
24 exhibit. Can we put up Plaintiff's Exhibit 1657, which is
25 in evidence, please. We can stop there.

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Cross-Phillips-Farber

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1 Q So, Mr. Phillips, you recall being asked some questions
2 about this agreement between Grassroots Behavioral Systems,
3 Bradley O'Leary and/or Brad O'Leary and the NRA?

4 A Yes.

5 Q Okay. What value did Mr. O'Leary provide to the NRA?

6 A Well, Mr. O'Leary was -- when I was hired had just
7 taken over the membership, marketing activities as an outside
8 consultant. And he really was in my opinion a marketing genius.
9 He added value in taking what had, when I was hired, had been a
10 once a year membership drive into what was an ongoing 12 months
11 a year membership and contribution drive. And that's about it.

12 Q And why -- Did you execute this agreement on behalf of
13 the NRA?

14 A Can you take me to the bottom?

15 MR. FARBER: If you can go to the bottom.

16 A I did.

17 Q So, from your perspective why was it in the NRA's
18 interest to enter into this agreement for Mr. O'Leary after he
19 was no longer the owner of his company?

20 A Well, he had the ability to add value. I know people
21 myself, and Wayne LaPierre talked to him after he had sold his
22 company to David McKenzie.

23 MR. FARBER: You can take that exhibit down. Can
24 we put up Plaintiff's Exhibit 360, which is in evidence,
25 please. Thank you.

LAS

Cross-Phillips-Farber

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1 Q So, Mr. Phillips, do you recall being asked some
2 questions about MMP in the past, yesterday and when you
3 testified for the first time, do you recall that?

4 A Yes.

5 Q Okay. How did the services that MMP provided to the
6 NRA change over the period of time that you were there?

7 A Yeah. Yes. It was dramatic change with the advent of
8 more online activity.

9 Q Can you explain what that means when you say as a
10 result of more online activity?

11 A Okay. Well, at the beginning the fundraising and
12 membership sales were pretty much send a piece of mail or call
13 them on the telephone, ask them to join or ask them to give.
14 And then hope they send in the money. As things developed and
15 technology developed everything got very fluid. The phone still
16 worked. Some people responsive to that. Some people were
17 responsive to direct mail. But it also opened up the ability to
18 do all kinds of online marketing. And it was changing
19 constantly. Probably still is today.

20 Q Okay. And this memo that's entitled MMP Group
21 Services, NRA increased its services in billing, have you
22 reviewed it?

23 A I remember it.

24 Q And under the section -- I'm not going to go through
25 all of it -- but under growth of responsibilities in key areas,

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1 can you just read the first sentence of the first bullet?

2 A Okay. "MMP entities now manage all digital marketing
3 for NRA membership."

4 Q And the same for the second bullet.

5 A "All promotions now include mailings, multiple e-mail
6 followups, web pages, SEO", which I can't at the moment think of
7 what that means, "SEO for web pages, AB testing for web pages,
8 advance user interface design, digital advertising support for
9 some packages and more involved tracking and analytics."

10 Q And the next bullet, the first sentence?

11 A "We", meaning MMP "have significantly expanded our
12 membership and acquisition efforts. Our mail volume has grown
13 to an estimated 33 million pieces in 2018 from approximately 22
14 million pieces in 2011."

15 MR. FARBER: Can we scroll down slowly. Keep
16 going. Keep going. Thank you.

17 Q So there are a number of other bullets, Mr. Phillips.
18 Is what's written there accurate from your perspective?

19 A Yes.

20 Q And the next heading?

21 A "Hiring and Real Estate".

22 Q And if you could read the first bullet under there,
23 please.

24 A "Since 2011 we have hired three writers, two user
25 interface designers, to two designers and seven digital team

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1 members."

2 Q And then the first sentence of the next bullet.

3 A "Due to the increase in demands NRA has placed on MMP
4 and subsequent staff growth, we rented additional space on the
5 fifth floor of the NRA building. We subsequently moved the
6 digital team to office space in Old Town Alexandria so we could
7 tape the younger digital talent pool in D.C. and be closer to
8 the Google and Facebook communities on Capitol Hill."

9 Q Thank you. I'm not going to go through the rest of
10 this.

11 MR. FARBER: We can take that exhibit down. Thank
12 you.

13 Q So, Mr. Phillips, you were also asked some questions
14 about Gayle Stanford. Do you recall those questions?

15 A I do.

16 Q And I believe you testified that you did not, in
17 response to a question I believe from Ms. Connell, that you did
18 not see her bills all the time. Do you recall that testimony?

19 A I do.

20 (Continue on the next page.)

21

22

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Phillips - by Plaintiff - Cross/Farber

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1 Q Okay. Was it your job, personally, to review all of
2 the NRA's bills?

3 A No.

4 Q Okay. Approximately how many different invoices would
5 the NRA receive in a month?

6 A I -- I could not tell -- it's a whole lot.

7 Q When you say, "a whole lot," could you give the jury a
8 sense of the order of magnitude? Are we talking hundreds,
9 thousands, tens of thousands?

10 A I'd say, thousands; in the low thousands.

11 Q Okay. And how did the Financial Services Division
12 handle review of those invoices during your period of time
13 leading it? Who did it?

14 A I'm sorry?

15 Q Who did it?

16 A There were staff -- staff that did that. Depending on
17 what the nature of the -- the item was, it would be different
18 staff. One was Portia Padilla.

19 Q Mr. Phillips, Ms. Rogers asked you a series of
20 questions about what she referred to as "representation letters"
21 that you provided to the NRA's outside auditors on an annual
22 basis. Do you recall those questions?

23 A I do.

24 Q And what is a representation letter to an auditor?

25 A It's a -- to an auditor, it's kind of a recognition

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Phillips - by Plaintiff - Cross/Farber

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1 that it's the auditor and the -- the client, or the -- the
2 company, doing the filing work together. It's -- that's good
3 enough.

4 Q Okay.

5 MR. FARBER: Could we get pulled up, for
6 identification only, what's been marked as WP -- Exhibit WPX
7 21?

8 THE COURT: Hang on a second. We're going to turn
9 the screens off.

10 (Pause.)

11 THE COURT: Okay.

12 Q Mr. Phillips, could you take a look at what's on your
13 screen and has been premarked as WPX 21? And we'll go through
14 it so you can review it, and after you've done that, let me know
15 if you recognize it.

16 THE COURT: Is there any objection to this?

17 MS. ROGERS: No objection.

18 MR. CORRELL: No objection.

19 MS. CONNELL: Yes, your Honor, there's an objection
20 to this. It's outside the scope. I don't know that this is
21 a business record of the NRA. It's hearsay, I think.

22 MS. ROGERS: The NRA produced this document during
23 discovery.

24 THE COURT: Go ahead. You can establish a
25 foundation, but --

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Phillips - by Plaintiff - Cross/Farber

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1 MR. FARBER: Thank you, your Honor.

2 If we could just scroll down through the document
3 slowly, so Mr. Phillips can review it ...?

4 (Pause.)

5 MR. FARBER: Keep going, please.

6 (Pause.)

7 BY MR. FARBER:

8 Q Okay. Mr. Phillips, have you had a chance to review
9 this?

10 A Yes.

11 Q Okay. And what is it?

12 A It's the NRA's representation letter to -- to the
13 auditors, I think, for 2017 --

14 MS. CONNELL: We'll withdraw the objection, your
15 Honor. I thought it was the Aronson letter.

16 We'll withdraw our objection.

17 THE COURT: Yeah. It's in evidence.

18 MR. FARBER: Thank you.

19 Can you get that published to the jury, please?

20 THE COURT: Yes.

21 (Image displayed.)

22 Q Okay, Mr. Phillips.

23 MR. FARBER: So can we go, now, to the last page of
24 this document.

25 (Image scrolled.)

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Phillips - by Plaintiff - Cross/Farber

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1 MR. FARBER: And stop there, please, and just ...

2 (Image fixed.)

3 Q You signed this document, Mr. Phillips?

4 A I did.

5 Q Okay. And whose signature is under yours?

6 A Rick Tedrick.

7 Q And whose signature is under Mr. Tedrick's?

8 A Sonya Rowling.

9 Q And what's the title that she lists?

10 A She lists "Director of Financial Reporting and
11 Accounting Operations."

12 Q Was that her role at the time?

13 A It was her role at the time.

14 MR. FARBER: And can we scroll down? I'm not going
15 to go through each of these, but keep going.

16 (Image scrolled.)

17 Q There's a signature, "Angela St. Onge"? Who was she?

18 A Yes. Her title was NRA Comptroller, but she worked for
19 Sonya Rowling and that group; the accounting group.

20 MR. FARBER: Let's scroll back up to the second
21 page, please, at the bottom?

22 (Image scrolled.)

23 MR. FARBER: Thank you.

24 Q So --

25 MR. FARBER: And can we highlight item 9?

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Phillips - by Plaintiff - Cross/Farber

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1 (Image modified.)

2 Q So can you read that to the jury, please, Mr. Phillips?

3 A Yes. It says: "We have no knowledge of any
4 uncorrected misstatements in the financial statements."

5 Q Okay.

6 MR. FARBER: And then go down to the next page,
7 please?

8 (Image scrolled.)

9 MR. FARBER: Stop at 11, please, and can we
10 highlight that?

11 (Image fixed, then modified.)

12 Q And what does that say?

13 A "All transactions have been recorded in the accounting
14 records and are reflected in the financial statements."

15 Q And then the first sentence of item 12.

16 A "It is our responsibility to establish and maintain
17 internal controls over financial reporting."

18 MR. FARBER: And then can we highlight 13, please?

19 (Image modified.)

20 A Read?

21 Q Yes, please.

22 A "We have no knowledge of allegations of fraud or
23 suspected fraud affecting the entity's financial statement,
24 involving management, employees, others."

25 MR. FARBER: And then, can we go down to 15,

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Cross/Farber

1001

1 please, and can we highlight the first sentence of that?

2 (Image scrolled, then modified.)

3 A "We have no knowledge of noncompliance or suspected
4 noncompliance with laws and regulations whose effects should be
5 considered when preparing financial statements."

6 Q And then item 17.

7 (Image modified.)

8 A "We have disclosed to you the entity of the entity's
9 related parties and all the related-party relationships and
10 transactions of which we are aware."

11 MR. FARBER: And then, finally, could we highlight
12 18?

13 (Image modified.)

14 A "We are aware of no significant deficiencies, including
15 material weaknesses, in the design or operation of internal
16 controls that could adversely affect the NRA's ability to
17 record, process, summarize [or] report on financial data."

18 MR. FARBER: And can we go back to the last page
19 for a minute? Scroll up to the top, please?

20 (Image scrolled.)

21 MR. FARBER: Thank you.

22 Q So -- and you signed this, Mr. Phillips?

23 A Yes.

24 Q Okay. Did you believe those statements to be true when
25 you made them?

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Cross/Farber

1002

1 A I did.

2 Q Okay. And the signatures beneath yours, by
3 Mr. Tedrick, Mr. Rowling [sic], Ms. St. Onge, and others, what
4 did those signify to you?

5 A That they agreed with the -- what we just read.

6 Q Did you rely upon them doing this?

7 A Yes.

8 MR. FARBER: Could I have one moment, your Honor?

9 (Pause.)

10 MR. FARBER: No further questions, your Honor.

11 THE COURT: Okay.

12 Ms. Connell, anything on redirect?

13 MS. CONNELL: Yes, your Honor, very brief. Very
14 brief.

15 MR. FARBER: May I just have a moment to vacate?

16 THE COURT: Sure.

17 MR. FARBER: Thank you.

18 MS. CONNELL: Do you need a hand?

19 MR. FARBER: I also need to disentangle. I
20 apologize.

21 (Pause.)

22 MR. FARBER: Thank you.

23 MS. CONNELL: Thanks, Mr. Farber.

24 REDIRECT EXAMINATION

25 BY MS. CONNELL:

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Redirect/Connell

1003

1 Q Mr. Phillips, we meet again.

2 A Good morning.

3 Q Just a few brief questions, sir.

4 MS. CONNELL: Actually, can we please bring back up
5 that last exhibit? I think it was marked as WPX 21 and
6 admitted into evidence.

7 MS. ROGERS: No objection.

8 THE COURT: Can you put that one back up? Thanks.

9 (Image displayed.)

10 Q Mr. Phillips, this is the retention letter that the NRA
11 provided to RSM in 2017, right?

12 A Representation letter.

13 Q Representation letter. I'm sorry:

14 A Correct.

15 Q And would you agree with me that a financial statement
16 audit often involves an interaction between the entity, like the
17 NRA, and the auditor? Right?

18 A Correct.

19 Q And would you agree with me that the accuracy of the
20 financial statement audit depends somewhat on the information
21 provided by the organization to the auditor? Right?

22 A That's correct.

23 Q So, if the leadership of the organization withholds
24 important information from the auditor, that could affect the
25 outcome of the audit; right?

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Redirect/Connell

1004

1 A Depending on materiality, yes.

2 Q Sure.

3 And if the leadership wanted to mislead the auditor --
4 I'm not saying that occurred here, but if they did -- that could
5 affect the outcome of the audit, right?

6 A Again depending on materiality.

7 Q Okay.

8 At the time you were NRA's CFO and treasurer, did you
9 know that Ms. Hallow had misused NRA credit cards?

10 A Yes.

11 Q And did you know that Ms. Hallow had used NRA funds to
12 pay for her son's wedding?

13 A I did not know that.

14 Q Okay. Did you, at some point, come to learn that?

15 A Yes.

16 Q And the NRA learned that, right?

17 A Yes.

18 Q Was that information shared with RSM?

19 A I don't know. At the time I learned, I was retired.

20 Q Okay. Could you please take a look at paragraph 2 at
21 the top of page 1?

22 (Image scrolled.)

23 Q In paragraph 2, the NRA is acknowledging the
24 responsibility for designing, implementing and maintaining
25 internal controls; right?

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Redirect/Connell

1005

1 A That's correct.

2 Q Internal controls are things like the NRA's procurement
3 policy, right?

4 A Yes.

5 Q And that procurement policy essentially says, as we've
6 discussed, that before the NRA lets more than a hundred thousand
7 dollars a year go out the door to a particular vendor, certain
8 requirements must be met; right?

9 A Yes.

10 Q There should be a written contract, right?

11 A Correct.

12 Q And approval by board officers, right?

13 A Correct.

14 Q And other requirements; correct?

15 A Correct.

16 MS. CONNELL: You can take that down, please.

17 (Image removed.)

18 Q And there were many instances that we discussed where
19 that wasn't followed; correct?

20 A Correct.

21 Q A few minutes ago, we discussed -- I think your counsel
22 discussed with you -- payments to Mr. O'Leary, right?

23 A Yes.

24 MS. CONNELL: Can we bring up PX 1657, please? I
25 think that's the settlement agreement with Mr. O'Leary.

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Redirect/Connell

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1 (Image displayed.)

2 THE COURT: Is that already in evidence?

3 MS. CONNELL: It is in evidence, your Honor.

4 THE COURT: Okay.

5 Q Mr. Phillips, I'm showing you the Settlement
6 Agreement -- what's termed by the NRA and Mr. O'Leary as a
7 settlement agreement -- between Mr. O'Leary and his organization
8 Grassroots and the NRA. Why was it termed a settlement
9 agreement?

10 A I don't know.

11 Q And this agreement, as we discussed, did not get the
12 type of board approval and review approval called for by the
13 NRA's internal controls; right?

14 A Again, I -- I don't remember.

15 Q Okay. So, under this agreement, \$1.2 million was paid
16 to someone who's friendly with Mr. LaPierre; correct?

17 A Yes.

18 Q Okay. And was there any reason that --

19 MS. CONNELL: Strike that.

20 Let's move on.

21 You can take that down. Thank you, Jesse.

22 (Image removed.)

23 Q Your counsel asked you about WBB Investments, right?

24 A Yes.

25 Q That's purchasing a house for Wayne and Susan LaPierre

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Redirect/Connell

1007

1 to use for safety, right? Is that correct?

2 A Start over, please. I'm sorry. I lost the thought.

3 Q Sure. You were talking about WBB Investments, right?

4 A Yes.

5 Q And that was an organization founded between the NRA,

6 with a 99 percent interest --

7 Right?

8 A That's correct.

9 Q -- and DJ Investments, with a one percent interest;
10 right?

11 A That's right.

12 Q And DJ Investments seemed to be some sort of affiliate
13 of Ackerman; is that accurate?

14 A That's correct.

15 Q And that was to purchase a property in Dallas,
16 allegedly, for the safety of Wayne and Susan LaPierre; right?

17 A Yes.

18 Q Mr. Phillips, we saw evidence that you cut a check, or
19 there was a check cut, for \$70,000; correct?

20 A That's correct.

21 Q And that you had indicated to Mr. Spray, "Wait till
22 they see the check -- the big check"; right?

23 A Correct.

24 Q And yet you testified, "I knew this was never going to
25 happen"; right?

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Redirect/Connell

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1 A Correct.

2 Q So it -- it -- the -- if there was a safety concern
3 with regard to Susan and Wayne LaPierre in twenty -- at the time
4 that that all occurred; I believe it was 2018 -- you didn't go
5 to the board and say, "We need a resolution to purchase real
6 estate for Wayne and Susan"; right?

7 A That's correct.

8 Q And you didn't ask the board to pass a resolution to do
9 that, right?

10 A That's correct, but I -- I --

11 Q You didn't --

12 A -- I repeatedly said, "This cannot happen without full
13 board approval."

14 Q And yet, you didn't take any steps to get full board
15 approval; right?

16 A This was all in the context of one or two days.

17 Q You didn't --

18 A No.

19 Q -- take any steps to get full board approval, right?

20 A No.

21 Q And yet, you know Mr. and Mrs. LaPierre went and looked
22 at properties; right?

23 A Yes.

24 Q And you formed a corporation with Mr. Winkler, right?

25 A Yes.

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Redirect/Connell

1009

1 Q And, Mr. Phillips, in fact --

2 MS. CONNELL: Well, strike that.

3 Let's move on.

4 Q You talked about HomeTelos with your counsel, right?

5 A Yes.

6 Q And you said, I believe, that you didn't -- part of the
7 reason you didn't go to the Audit Committee was availability;
8 you didn't have the time. Right?

9 A I don't recall that.

10 Q Okay. Well, that contract went on from 2014 to 2017;
11 right?

12 A That's correct.

13 Q And you could have found the time in a three-year
14 period, right?

15 A Right.

16 Q And, you said, you didn't think that you had to was
17 another reason that you didn't go forward; right?

18 A Right.

19 Q Okay.

20 A I didn't think she qualified as a related party.

21 Q Mr. Phillips, the NRA has a statement on corporate
22 ethics, right?

23 A Yes.

24 Q And that is a policy designed to make sure that
25 questionable inter -- transactions get reviewed by the Audit

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Redirect/Connell

1010

1 Committee; right?

2 A That's correct.

3 MS. CONNELL: Can we please bring up tab --

4 First, before we show it to the -- to the jury:

5 Q I'd like to show you --

6 Do you have your binders, sir?

7 A I have them.

8 Q Can you look at tab 24, please? It's PX 2485.

9 A Which color?

10 MS. CONNELL: It's the white one, I believe.

11 THE COURT: No.

12 THE WITNESS: No.

13 MS. CONNELL: Oh, no. It's in the black one, sir.

14 (Pause.)

15 MS. CONNELL: Any objection?

16 MS. ROGERS: None.

17 MS. CONNELL: It's PX 2485. It's tab 24.

18 MR. FLEMING: No objection.

19 MR. CORRELL: No objection.

20 THE COURT: It's admitted.

21 MR. FARBER: No objection.

22 (Image displayed.)

23 Q Mr. Phillips, this is -- I'm showing you what is the

24 NRA's Statement of Corporate Ethics as of January 26, 2015.

25 It's on the screen, sir, if that would make it easier.

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Redirect/Connell

1011

1 A Oh.

2 Q I'm sorry. I know the binders are unwieldy.

3 THE COURT: Sorry. This is tab 24?

4 MS. CONNELL: Yes, but it's PX 2485.

5 THE COURT: Okay. I'm maybe missing a page in my
6 binder, but that's okay.

7 MS. CONNELL: I'm sorry, your Honor. Do you want
8 me to hand you the paper document?

9 THE COURT: No. I can follow.

10 MS. CONNELL: Okay.

11 BY MS. CONNELL:

12 Q This is the Statement of Corporate Ethics that --
13 During most of your time as NRA's CFO and treasurer,
14 there was a Statement of Corporate Ethics; right?

15 A I believe so.

16 Q Okay. And you understood that this statement was
17 binding upon you, right?

18 A Yes.

19 Q And at the very beginning, this statement states that
20 "it's the policy of the NRA to conduct the Association's
21 business in an honest and forthright manner"; right?

22 A Correct.

23 Q And in the second paragraph, it says that "all
24 employees must comply with the applicable bylaws and policies,
25 as well as all relevant laws and regulations, in conducting the

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Phillips - by Plaintiff - Redirect/Connell

1012

1 Association's business"; correct?

2 A Correct.

3 Q And: "No violation of the spirit or intent of these
4 bylaws, policies, laws and regulations will be tolerated."
5 Right?

6 A Correct.

7 Q And under heading 1, if we go further down --
8 (Image scrolled.)

9 Q -- "Association employees shall not become involved in
10 any activity which might influence, be reasonably expected to
11 influence, or give the appearance of influencing their objective
12 business judgment ..." Right?

13 A Correct.

14 Q And further down, at paragraph 4 --
15 (Image modified.)

16 Q -- "Employees who are officers, directors, division
17 directors or activity supervisors" --
18 That includes you, right?

19 A Correct.

20 Q -- among other things, have to, under subdivision D,
21 report all known or suspected violations of said policies to the
22 EVP of the Association, the treasurer of the Association, or
23 other persons they designate as appropriate; right?

24 A Correct.

25 Q And finally, in the next paragraph down, if a question

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Phillips - by Plaintiff - Redirect/Connell

1013

1 arises about a particular course of conduct, it's supposed to be
2 brought to the Office of General Counsel; right?

3 A That's correct.

4 Q And failure of these policies [sic] could lead to
5 discipline, right?

6 A That's right.

7 Q Okay. Mr. Phillips, Ms. Richards was viewed by many --
8 to your knowledge, was Ms. Richards viewed by many within the
9 NRA as your partner or significant other?

10 A I -- I can't -- I can't say, many people within the
11 NRA.

12 Q Some people within the NRA.

13 MR. FARBER: Objection.

14 Could we get a time frame, your Honor?

15 Q At any time that you were working within the NRA.

16 A Go back and ask the question again, please.

17 Q Do you know of any instances where some employees of
18 the NRA thought Ms. Richards was your partner or significant
19 other?

20 MR. CORRELL: Your Honor, objection; calls for
21 speculation as to a vast group of unidentified people.

22 THE COURT: Overruled.

23 A The first time I heard that used was when I -- I read
24 it in the list of complaints from the whistleblowers.

25 Q So the "whistleblowers," you're talking about other --

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Phillips - by Plaintiff - Redirect/Connell

1014

1 you're talking about Financial Services employees who came
2 forward and complained about special treatment for
3 Ms. Richards -- that was given to Ms. Richards; right?

4 A No. They said I had a contract with a related party
5 and called her a "related party" or "significant other."

6 Q That's right. And they perceived Ms. Richards as your
7 significant other; correct?

8 A Yes.

9 Q And she would sometimes get a spouse pass for NRA
10 events, right?

11 A I can't think of one time for that.

12 Q Okay. Mr. Phillips, you're still very close with the
13 Richards family; right?

14 A I am.

15 Q You go to family events?

16 A Yes.

17 Q You support family causes, like college causes and
18 things like that; right?

19 A I have.

20 Q And when we talked about that disclosure that you made
21 in 2018, I think -- am I correct in understanding, that wasn't
22 drafted by you; that was drafted by legal counsel? Right?

23 A That's correct.

24 Q Okay. You talked a moment ago about --

25 MS. CONNELL: You can take this (indicating) down.

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Redirect/Connell

1015

1 Thank you, Jesse.

2 (Image removed.)

3 Q You talked a moment ago about the yacht trip that we
4 had covered originally, right?

5 A Correct.

6 Q That you won, or that you bid on, in a charity auction;
7 right?

8 A Yes.

9 Q That yacht trip was taken in July of 2019, right?

10 A Correct.

11 Q And the check that you showed us was after that;
12 correct? Was dated -- was paid after that.

13 MS. CONNELL: Can we bring up the check? I believe
14 it is -- oh, I'm sorry.

15 Q The yacht was in 2018. Sorry.

16 MS. CONNELL: Can we bring up WPX --

17 MR. FARBER: Objection, your Honor.

18 MS. CONNELL: -- 16?

19 MR. FARBER: Objection, your Honor.

20 Counsel should actually be asking questions, not
21 testifying.

22 MS. CONNELL: I'm sorry. I can correct that, your
23 Honor. That's a fair -- fair complaint.

24 Can we please bring up PX 3298? I don't have a tab
25 number for your Honor. That's for impeachment.

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Redirect/Connell

1016

1 THE COURT: Is that in evidence?

2 MS. CONNELL: It is not in evidence.

3 Can we bring it up on -- just to show the witness,
4 the Court and the parties?

5 Thank you, Jesse.

6 (Pause.)

7 BY MS. CONNELL:

8 Q Mr. Phillips, I'm showing you an e-mail right now. Do
9 you recognize the e-mail address at the top as an e-mail address
10 you have used?

11 A It's mine.

12 Q Okay. And do you recognize the person it's directed
13 to: "rkercennek@" --

14 A Yes.

15 Q And is this an e-mail you sent?

16 A Yes.

17 Q And does this -- is this e-mail from July 2018?

18 A Correct.

19 Q And, Mr. Phillips, this is an e-mail that you forwarded
20 to "rkercennek," an e-mail that you had received from Beverly
21 Ware below; correct?

22 A That's correct.

23 MS. CONNELL: Your Honor, I --

24 Q Is this a true and accurate copy of an e-mail you
25 received and forwarded?

ALAN F. BOWIN, CSR, RMR, CRR

Phillips - by Plaintiff - Redirect/Connell

1017

1 A It appears to be.

2 Q Okay.

3 MS. CONNELL: Your Honor, I ask that it be admitted
4 into evidence.

5 MR. FARBER: No objection.

6 THE COURT: It's admitted.

7 MS. ROGERS: No objection.

8 (Image displayed.)

9 Q Mr. Phillips, does this e-mail refresh your
10 recollection as to when the yacht trip with Ms. Richards
11 occurred?

12 A Yeah. I see "July 12th" and "13th" and I'm trying to
13 find the year. Can you help me out?

14 Q Yes. I'm sorry.

15 A I'm jumping all around. I see the date but I don't see
16 the year.

17 Q So it's sent July 5th, 2018 and it talks about a
18 itinerary in July.

19 A Okay.

20 Q Does that refresh your recollection?

21 A Yes.

22 Q Did it occur in July 2018?

23 A Yes.

24 Q Okay. Thank you.

25 Mr. Phillips, you took this yacht trip with

ALAN F. BOWIN, CSR, RMR, CRR

1018

1 Ms. Richards; correct?

2 A That's correct.

3 Q And, actually, while we're talking about Ms. Richards,
4 I just want to ask you about HomeTelos for a second.

5 You just testified that Ms. Richards' company was --
6 had adequate experience to perform that contract; right?

7 A Yes.

8 Q And yet, the NRA hadn't put the contract out for
9 competitive bidding, as far as you know; right?

10 A As far as I know.

11 Q Right.

12 So a contract that was for -- I think it was -- it was
13 over a million; I think it was 1.3 million -- was given to a
14 company that was run by your close friend, right?

15 A Correct.

16 Q Okay. Mr. Phillips, do you remember whether you paid
17 for this yacht trip before or after you took it?

18 A It was about the time of the -- of the trip; it could
19 have been just as we got back.

20 (Continued on next page.)

21

22

23

24

25

ALAN F. BOWIN, CSR, RMR, CRR

Redirect-Phillips-Connell

1019

1 MS. CONNELL: Thank you.

2 THE COURT: Counsel, we're at the time for a
3 typical morning break. If you're one or two questions from
4 being done.

5 MS. CONNELL: One or two minutes, your Honor.

6 THE COURT: Okay.

7 MS. CONNELL: Thank you.

8 Q Mr. Phillips, you mentioned that it was for security
9 purposes that Ackerman McQueen maintain records relating to NRA
10 executive expenses at their headquarters, right?

11 A Correct.

12 Q And yet yesterday you testified that the intention was
13 to avoid people within the NRA seeing documents that quote
14 "might make headlines", right?

15 A Correct.

16 Q And so, Mr. Phillips, the concern was leaks that could
17 be embarrassing to NRA executives, right?

18 A Yes.

19 Q Okay. We talked -- you talked a few minutes ago about
20 supplement about invoices from Under Wild Skies, right?

21 A Yes.

22 Q Under Wild Skies did produce a television show that had
23 to do with safaris and things like that, right?

24 A Correct.

25 Q Susan and Wayne LaPierre usually went on these safaris,

LAS

Redirect-Phillips-Connell

1020

1 right?

2 A Yes.

3 Q And the safaris themselves would be very, very
4 expensive if you were to pay for them as a consumer, right?

5 A That's correct.

6 Q But the supplemental payments that were in the same
7 amount every month to Tony Makris didn't have to do with the
8 production of Under Wild Skies, isn't that true?

9 A That's true.

10 Q Mr. Phillips, you were asked about Gayle Stanford a few
11 minutes ago, right?

12 A I've been asked about Gayle Stanford. I don't
13 remember.

14 Q A lot of times?

15 A Yes.

16 Q You knew she was splitting her bills between two
17 companies, right?

18 A I did.

19 Q You knew she was billing the NRA through NRA and NRA
20 ILA and Ackerman, right?

21 A Yes.

22 Q And if you had wanted to set up a more secure system,
23 you were someone within the NRA who could have tried to under-
24 take an official security protocol for billing private jets,
25 right?

LAS

Redirect-Phillips-Connell

1021

1 A Yes.

2 Q Okay. And finally, Mr. Phillips, we looked at PX 360.

3 MS. CONNELL: If we could bring this up. This is
4 in evidence, your Honor. This is my final couple of
5 questions. I'm sorry, Judge.

6 Q Mr. Phillips, you spoke really briefly about an injury
7 you suffered, correct, from a bike accident?

8 A Yes.

9 Q That was over ten years ago?

10 A About ten years ago.

11 Q And when I questioned you about this at an earlier
12 deposition, you said you returned to your work after that bike
13 accident as the NRA's CFO, right?

14 A That's correct.

15 Q And treasurer?

16 A And treasurer.

17 Q And you continued in that position for years, right?

18 A Yes.

19 Q And you were able to complete your duties in that role?

20 A Yes.

21 Q Thank you. And, Mr. Phillips, this document --

22 MS. CONNELL: If we can page down, please.

23 Q -- this document was prepared by MMP to justify its fee
24 increases, correct?

25 A I believe so.

LAS

Redirect-Phillips-Connell

1022

1 Q And those fee increases --

2 MS. CONNELL: If you go down a little bit further
3 please, just to take a look at the fee increases. Can we
4 page down even to page 4, I think. Yes, Jessie. I'm sorry.
5 A little bit further.

6 Q So, the fee increases were quite significant, right?
7 Membership Marketing Partners management fee, that's the base
8 fee paid went from 400,000 a month to 961, right?

9 A Yes.

10 Q And the other MMP entities also increased, right?

11 A Yes.

12 Q There was no reason that a new contract reflecting this
13 increase in management fees couldn't have been drafted and
14 appropriately approved within the NRA, right?

15 A Could have been done.

16 Q Thank you very much, sir.

17 THE COURT: All right. You have more questions?

18 MS. ROGERS: I have a bit more. I can do it after
19 the break.

20 THE COURT: Why don't we take our morning break and
21 we'll see you shortly.

22 THE COURT OFFICER: All rise. Jury exiting.

23 (Whereupon the jury panel departed the courtroom.)

24 (Whereupon a recess was taken.)

25 THE COURT OFFICER: All rise. Jury entering.

LAS

Recross-Phillips-Rogers

1023

1 (Whereupon the jury panel entered the courtroom.)

2 THE COURT: Okay. Everybody have a seat, please.

3 Okay. Any further questioning from the defendants?

4 MS. ROGERS: Very briefly by the NRA.

5 RECROSS EXAMINATION

6 BY MS. ROGERS:

7 Q I have a couple of questions relating to the board.

8 MS. ROGERS: And without taking too much time, I do
9 want to introduce today a board representative, Charlie
10 Beers is with us in the audience. He's the director of the
11 NRA. He drove here I think through three hours of snow from
12 Glenville, New York, where he is the fire chief. So we
13 welcome Mr. Beers.

14 Q Mr. Phillips, you testified earlier that the purpose of
15 keeping the details underlying the Ackerman expenses at Ackerman
16 was not to conceal those expenses from the board, right?

17 A Correct.

18 Q But you would agree with me until the 2018 audit the
19 board never would have seen those expenses, right?

20 A If they had asked.

21 Q But they didn't?

22 A They didn't ask.

23 Q No one told them to ask, right?

24 A Right.

25 Q No one alerted them that those expenses might contain

LAS

Recross-Phillips-Rogers

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1 improper out-of-pocket items, right?

2 A Correct.

3 Q And not only would the board not have seen those
4 expenses or known that there were red flags with those expenses,
5 you would agree with me, sir, that Sonya Rowling wouldn't have
6 seen them, right?

7 A Ask that again. I'm sorry.

8 Q You would agree with me until 2018 Sonya Rowling would
9 never have laid eyes on the Ackerman OOP expenses, right?

10 A That's correct.

11 Q To be clear, I know the abbreviation OOP was not
12 understood by everyone. When I say OOP, I mean out-of-pocket,
13 you understand that?

14 A I do.

15 Q Like that invoice we saw offered for \$306,000 said
16 out-of-pocket. You understand that's what I'm referring to?

17 A I do.

18 Q Now Angela St. Onge wouldn't have seen those either,
19 right?

20 A Right.

21 Q Portia Padilla wouldn't have seen them?

22 A That's right.

23 Q And those out-of-pocket expenses included the meals at
24 the restaurant called Landini's that Ms. Connell asked you
25 about, right?

LAS

Recross-Phillips-Rogers

1025

1 A That's correct.

2 Q That's the place where the tabs could run tens of
3 thousands of dollars, right?

4 A I'm not aware of the amounts.

5 Q Were you aware of whether Josh Powell was a frequent
6 user of the tab at Landini's?

7 A Yes.

8 Q Tony Makris?

9 A Yes.

10 Q Chris Cox?

11 A I don't know.

12 Q Not Sonya Rowling, right?

13 A Not Sonya Rowling.

14 Q Not Portia Padilla?

15 A No.

16 Q Angela St. Onge was not spending tens of thousands of
17 dollars on cigars and liquor at Landini's, right?

18 A Right.

19 Q Earlier you were asked about one of the statements in
20 the management representation letter, and your answer was
21 something like not to what I consider a material extent. Do you
22 recall that answer? I'll be a little more specifically. I
23 think your lawyer asked you about a place in the rep letter to
24 RSM where you were asked if there were fraud or internal control
25 lapses. And in your answer you referenced a concept called

LAS

Recross-Phillips-Rogers

1026

1 materiality. Do you remember that?

2 A That's right.

3 Q Could you explain to the jury what you meant by that?

4 MS. CONNELL: Objection your Honor.

5 THE COURT: Overruled.

6 A Materiality would be a standard of that. It's true,
7 but it's not big enough to really make any difference. If it
8 was material, it would -- it would make a different.

9 Q That's a concept in accounting, right?

10 A Yes.

11 Q Did you, as a former accountant in your capacity as a
12 financial executive at the NRA, have in mind a dollar threshold
13 for which you considered material?

14 A It would depend on the type of transaction.

15 Q Ballpark? Depending on the type of transaction. You
16 were asked earlier about the Wbb Investments transaction which
17 never went through, right?

18 A That's right.

19 Q And I think you testified for your lawyer that Angus
20 McQueen was involved in those discussions, but you couldn't
21 remember who else was there, right?

22 A That's right.

23 Q Bill Winkler was pretty involved in that, right?

24 A I think so. I just can't -- Well, definitely was. I
25 can't remember him being in the room or rather we talked on the

LAS

Recross-Phillips-Correll

1027

1 phone.

2 Q But he's the person that formed the LLC, right?

3 A That's right.

4 Q Bill Winkler was also involved in those discussions you
5 had about using Tyler Schropp's credit card to pass through
6 expenses in a manner that would reduce scrutiny of those
7 expenses, right?

8 A Correct.

9 MS. ROGERS: Nothing further.

10 MR. CORRELL: If I may, your Honor.

11 THE COURT: Sure.

12 RE CROSS EXAMINATION

13 BY MR. CORRELL:

14 Q Mr. Phillips, Wayne LaPierre had nothing to do with the
15 HomeTelos contract, correct?

16 A That's correct.

17 Q You never talked to him about that contract, correct?

18 A I don't think so.

19 Q How long have you known Mr. LaPierre?

20 A Since 1992 or 1993.

21 Q And you were asked some questions about Landini's
22 previously. Do you recall that?

23 A Yes.

24 Q And there were some discussion of cigars?

25 A Yes.

LAS

Recross-Phillips-Farber

1028

1 Q Have you ever seen Mr. LaPierre smoke a cigar?

2 A I've never seen him want to be in a room with cigars.

3 Q Have you ever seen him take a drink of alcohol?

4 A No.

5 Q Thank you.

6 MR. CORRELL: No further questions.

7 MR. FARBER: Briefly, your Honor.

8 RECROSS EXAMINATION

9 BY MR. FARBER:

10 Q Good morning again, Mr. Phillips.

11 A Good morning.

12 THE COURT: It's a lot of books for briefly.

13 MR. FARBER: I'm disorganized. I apologize.

14 Q You were asked some questions by Ms. Phillips, excuse
15 me, Ms. Phillips, by Ms. Connell about what's in evidence as
16 Plaintiff's Exhibit 2485.

17 MR. FARBER: Could we get that pulled up, please.

18 Q The statement of corporate ethics. Do you recall that
19 Mr. Phillips?

20 A I do.

21 Q And I believe --

22 MR. FARBER: If we could turn to the second page.
23 The heading "Ethical Business Relationships".

24 Q She asked you some questions about that section. Do
25 you recall that, Mr. Phillips?

LAS

Recross-Phillips-Farber

1029

1 A Yes.

2 Q Okay. In the context of the HomeTelos transaction and
3 Nancy Richards, do you recall that?

4 A I do.

5 Q Okay. Does the NRA have a policy manual, Mr. Phillips?

6 A It does.

7 MR. FARBER: Could we get pulled up just for
8 identification for the moment PX 561.

9 THE COURT: Is this not in evidence yet?

10 MR. FARBER: I don't believe it's in evidence.

11 THE COURT: There was one version of it I thought
12 that was but maybe.

13 MS. ROGERS: I think the employee handbook is in
14 evidence.

15 THE COURT: Okay.

16 MR. FLEMING: Your Honor, I think this was admitted
17 under a different witness.

18 MS. CONNELL: I think a different version was, but
19 I have no objection to this being admitted.

20 Q Let me ask one question. Do you recognize PX 561, Mr.
21 Phillips?

22 A I recognize what it says it is.

23 THE COURT: He's looking at the cover page right
24 now. I don't have it.

25 MR. FARBER: I see.

LAS

Recross-Phillips-Farber

1030

1 A Yes.

2 MR. FARBER: Can we go to the -- display 561, the
3 cover page for the jury, please.

4 THE COURT: So, there is no objection to admitting
5 this. Do you want to admit it into evidence?

6 MR. FARBER: I'm sorry, your Honor. I should have
7 offered it. I offer 561.

8 THE COURT: Okay. It's admitted.

9 Q And, Mr. Phillips, is this a copy of the policy manual?

10 A Yes.

11 MR. FARBER: Could we go to page 92 of the
12 document, which is page -- excuse me -- page 91 of the
13 document, which is page 85. It's 91 of 281, would be page
14 85 in the document.

15 Q So this is a section of the policy manual that's marked
16 "Standards of Conduct and Ethical Guidance". Do you see that,
17 Mr. Phillips?

18 A I do.

19 Q Could you go down to the next page, please. Stop right
20 there, please. And under this it says "related-party
21 transactions". Do you see that Mr. Phillips?

22 A Yes.

23 Q Okay. And could you read -- Could you tell the members
24 of the jury, please, what it says under "related-party
25 transactions"?

LAS

Recross-Phillips-Farber

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1 A Yes. From the beginning?

2 Q Yes, please.

3 A "Related-party transactions are transactions conducted
4 with an individual or vendor that is related to an employee,
5 officer or director of the association. A related party is
6 defined as any person bearing a relation to the employee,
7 officer or director of the association, including any members of
8 the employees immediate family, including but not limited to
9 spouse, parents, children, siblings, mothers and fathers-in-law,
10 sons and daughters-in-laws, brothers and sisters-in-laws and
11 nonemployee members of the household."

12 Q Thank you, Mr. Phillips. Was -- Did Ms. Richards fit
13 any of those categories?

14 A No.

15 MR. FARBER: Nothing further, your Honor.

16 MS. CONNELL: I'm not going to say it, your Honor,
17 probably too long, but just a short question or two.

18 THE COURT: But you did say it.

19 MS. CONNELL: I couldn't help it. Can we bring up
20 561, please. Can we go to the section on page 91, right
21 before that labeled conflicts of interest.

22 REDIRECT EXAMINATION

23 BY MS. CONNELL:

24 Q Mr. Phillips, you understand that a related-party
25 transaction is a subset of a type of transaction called conflict

LAS

Redirect-Phillips-Connell

1032

1 of interest transactions, right?

2 A Yes.

3 Q Okay. And the NRA has a policy against conflicts of
4 interest, correct?

5 A That's correct.

6 Q And if you look at the paragraph that begins
7 "employees, officers and directors", do you see that?

8 A Yes.

9 Q As NRA's CFO and president -- CFO and treasurer, not
10 president, excuse me, you were prohibited from acting in a
11 manner that may create a conflict or appearance of a conflict
12 between your personal interest and those of the association,
13 right?

14 A That's correct.

15 Q Thank you, sir.

16 THE COURT: Okay. All right. Thank you, sir.
17 You're free to go back out there.

18 THE WITNESS: Thank you, your Honor.

19 THE COURT: Okay. Thank you.

20 (Witness excused.)

21 THE COURT: So, before we go to the next witness,
22 there was one cleanup item that we're going to take care of.
23 Earlier in the trial last week you heard an audio transcript
24 of Mr. Tedrick. And inadvertently there was a question at
25 the end of it, and there were a couple of other questions

LAS

PROCEEDINGS

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1 after that that should have been included in the -- in the
2 playback and wasn't. So, it's really just I think three or
3 four questions. So we're going to play it back for you, if
4 it's available hopefully, the question that you heard and
5 then the I think it's three follow-up questions just to
6 round out the questioning. So, if we can run that for the
7 jury, that would be very helpful.

8 (Whereupon the video was played.)

9 THE COURT: Okay. Those last few questions were
10 the ones that weren't included before. All right. Is the
11 State prepared to call its next witness?

12 MR. THOMPSON: Yes, your Honor. The State calls
13 Sonya Rowling.

14 THE COURT: Okay. Good morning.

15 THE COURT CLERK: Raise your right hand.

16 S O N Y A R O W L I N G, after having been duly sworn by the
17 court clerk, was examined and testified as follows:

18 THE COURT CLERK: State your name.

19 THE WITNESS: Sonya Rowling.

20 THE COURT CLERK: Can you spell your last name.

21 THE WITNESS: R-O-W-L-I-N-G.

22 THE COURT CLERK: Business address.

23 THE WITNESS: 11250 Waples Mill Road, Fairfax,
24 Virginia 22030.

25 THE COURT: It would help if you keep close to the

LAS

Direct-Rowling-Thompson

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1 microphone, if you can. Thank you. Counsel, do I have one
2 of those binders or are they both for the witness?

3 MR. THOMPSON: One is for the Court. Thank you.

4 THE COURT: Do we need to install any supports
5 under the floor here? Okay. Thank you.

6 MR. THOMPSON: Testing. Is that working? All
7 right.

8 DIRECT EXAMINATION

9 BY MR. THOMPSON:

10 Q Good morning, Ms. Rowling.

11 A Good morning.

12 Q Ms. Rowling, you joined the NRA in 1999, is that
13 correct?

14 A Yes.

15 Q And you became the NRA's director of accounting
16 operations and financial reporting in 2006, is that correct?

17 A Yes.

18 Q So just to situate the jury. Accounting operations was
19 one half of financial services division, is that correct?

20 A Yes.

21 Q With the other half being the budgeting half that was
22 lead by Mr. Erstling?

23 A That's correct.

24 Q And in your role in accounting operations you reported
25 to Mr. Tedrick, is that correct?

LAS

Direct-Rowling-Thompson

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1 A Yes. That's correct.

2 Q And as the director of accounting operations you were
3 responsible for supervising accounts payable, is that correct?

4 A Yes. That's correct.

5 Q And is it fair to say that generally speaking accounts
6 payable was responsible for monitoring all of the money going
7 into and out of the NRA?

8 A They -- I don't know if monitoring is the correct term
9 there, but they were responsible for cutting checks.

10 Q Okay.

11 A Not going, coming into. Definitely not.

12 Q And Mr. Phillips was the treasurer of the NRA for most
13 of your time at -- in accounting operations, is that correct?

14 A Yes.

15 Q And then in 2018 the NRA conducted an executive search
16 for Mr. Phillips' replacement, is that correct?

17 A Yes.

18 Q And that resulted in Mr. Spray coming in as first CFO
19 and then later the treasurer of the NRA, is that correct?

20 A Yes.

21 Q To the best of your knowledge, Ms. Rowling, were you
22 considered as a potential candidate in 2018 for the role of CFO
23 or treasurer?

24 A I don't know.

25 Q Okay. And then you held your role as director of

LAS

Direct-Rowling-Thompson

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1 accounting operations until early 2021, is that correct?

2 A Yes.

3 Q And at that point you were approached by Mr. LaPierre
4 to become and asked to be the interim CFO for the NRA, is that
5 correct?

6 A Yes, it is.

7 Q That was after Mr. Spray left the NRA in late January,
8 early February, is that correct?

9 A Yes.

10 Q And that was shortly after the NRA filed for
11 bankruptcy, is that correct?

12 A Yes. That was the timing.

13 Q And to the best of your knowledge, Ms. Rowling, no
14 executive search was conducted prior to you becoming the interim
15 CFO of the NRA, is that correct?

16 A Not to my knowledge.

17 Q And to the best of your knowledge there was no
18 executive search conducted prior to you becoming -- being
19 elected to the treasurer position, is that correct?

20 A Not to my knowledge.

21 Q Okay. And you are still today the NRA's CFO and
22 treasurer, is that correct?

23 A That is correct.

24 Q In your current role as treasurer you are responsible
25 for making sure that the NRA operates in accordance with the

LAS

Direct-Rowling-Thompson

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1 NRA's financial policies, is that correct?

2 A Yes.

3 Q And is it fair to say that your role as treasurer -- in
4 your role as treasurer today you have significantly greater
5 responsibility than you did in your role in accounting
6 operations?

7 A Yes.

8 Q So, for example, currently today you're responsible for
9 managing the NRA's investment strategy, is that correct?

10 A Investment strategy?

11 Q Yes.

12 A Yes.

13 Q You also are responsible for requests for proposals, is
14 that right?

15 A I'm -- I'm -- If there were -- I'm not following your
16 question actually. I'm sorry.

17 Q Sure. So, in your role in accounting operations did
18 you ever conduct any requests for proposals?

19 A Yes.

20 Q In -- in -- With respect to what vendors?

21 A Me, personally?

22 Q Yes.

23 A Auditing, processing credit cards. I believe those
24 were the two I was involved with.

25 Q And in your current role as treasurer, do you supervise

LAS

Direct-Rowling-Thompson

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1 the request for proposals for other vendors?

2 A The vendors under my direct supervision, yes.

3 Q Okay. And in your role as treasurer, you report
4 directly to the NRA's board of directors, is that correct?

5 A Yes.

6 Q In your role as CFO you report to Mr. LaPierre
7 currently, is that correct?

8 A Yes.

9 Q So, before Mr. Spray joined the NRA in early 2018, the
10 approval procedure for contracts worth in excess of \$100,000 per
11 year was not followed, correct?

12 A It wasn't consistently followed.

13 Q So let's walk through a few contracts. This is tab 23
14 of your binder, Ms. Rowling, Plaintiff's Exhibit 2093, which is
15 already in evidence. And if I could take you please, so we're
16 using the page numbers that are at the very bottom center of the
17 page, Ms. Rowling. Once you have it, if you could please go to
18 page 3.

19 (Whereupon the witness complied with the above
20 request of counsel.)

21 Q And the question, Ms. Rowling, is do you recognize this
22 to be the first amendment to the contract between the NRA and
23 Membership Marketing Partners?

24 A It seems to be, yes.

25 Q And to the best of your knowledge, Ms. Rowling, was

LAS

Direct-Rowling-Thompson

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1 there a business case analysis prepared for the first amendment?

2 A For the first amendment, not that I'm aware of.

3 Q Was there a signature review sheet for this first
4 amendment to the Marketing Partners contract?

5 A I don't recall seeing it.

6 Q Okay. And then if you could please -- if you could
7 please go to tab 24 of your binder.

8 MR. THOMPSON: And so this is Plaintiff's
9 Exhibit 3131, which I will move to admit.

10 THE COURT: Hang on a second. Am I correct that
11 this is just a signature page?

12 MR. THOMPSON: It is, your Honor.

13 THE COURT: It's page 8 of 9. Is it connected to
14 some document that's already in evidence?

15 MR. THOMPSON: Yes, your Honor. We need to
16 establish that, if there is an objection, which I'm not sure
17 there is one.

18 MR. FLEMING: There is an objection.

19 MR. CORRELL: It's not a complete document. He
20 needs to lay a foundation.

21 MR. THOMPSON: It was produced to us in that
22 fashion.

23 THE COURT: It was produced page 8 of 9 with
24 nothing else around it?

25 MR. THOMPSON: Correct.

LAS

Direct-Rowling-Thompson

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1 THE COURT: Good luck with your questions.

2 Q Ms. Rowling, if you could go back to tab 23, please, to
3 start. And if you could please go to page 8, I believe.

4 MR. THOMPSON: If you could go down one more
5 please, Jessie. Keep going please. Get to the signature
6 page.

7 Q All right. Ms. Rowling, this is the signature page for
8 the original Membership Marketing Partners contract, correct?

9 A Hold on.

10 Q I'm sorry. It is page 14 of 15.

11 A Right. But I have to look at the pages before to
12 confirm.

13 Q No. I understand.

14 A Thank you. (Examining). It is a signature page. I
15 know that there are times when we have two. So, it is
16 definitely a signature page.

17 Q Okay. And so this is Exhibit 2093, and it's page 14,
18 but this is the signature page for the first Membership
19 Marketing Partners contract, is that correct?

20 A Again, it is a signature page. I can't determine if
21 it's a complete document, because at times when you have two
22 people signing a document, you'll get a second page.

23 Q Okay.

24 A So it is a signature page from that document.

25 Q Great. And then so you'll see is that Mr. Phillips'

LAS

Direct-Rowling-Thompson

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1 signature in the first authorized signatory line?

2 A Yes.

3 Q It's dated December 16, 2011?

4 A Yes.

5 Q Okay. Now if you could please look at page -- tab 24.

6 THE COURT: I think this one we're not putting on
7 the screen yet.

8 MR. THOMPSON: Correct. Yes.

9 THE COURT: Okay.

10 Q And do you agree with me, Ms. Rowling, that this -- it
11 says page 8 of 9 at the bottom of this document?

12 A Yes.

13 Q And you'll see that it is signed by -- Is that
14 Mr. Phillips signature there in the authorized signatory?

15 A Yes.

16 Q Also dated December 16, 2011?

17 A That's correct.

18 Q And then below that whose signature is that?

19 A (Examining). Mr. LaPierre's signature.

20 MR. THOMPSON: Move to admit, your Honor.

21 THE COURT: As what exactly?

22 MR. THOMPSON: Move to admit as the complete
23 signature page to the original Membership Marketing Partners
24 contract.

25 THE COURT: Yeah. I guess the jury will be able to

LAS

Direct-Rowling-Thompson

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1 compare the two when you lay them side by side, right.

2 MR. THOMPSON: Take it down. Okay.

3 THE COURT: Is there any objection to this? I now
4 understand what's going on here.

5 MS. EISENBERG: No, your Honor.

6 MR. CORRELL: No, your Honor.

7 THE COURT: You can admit it and the jury can make
8 their own mind up.

9 MR. THOMPSON: Okay.

10 THE COURT: Or I should say you could ask the
11 witness if you want.

12 Q And so, Ms. Rowling, just so the jury can take a look
13 here. We've got on the left-hand side of the screen, that is
14 the signature page that was in Exhibit 2093 for the Membership
15 Marketing Partners contract. And on the right-hand side is the
16 Exhibit 3131, is that right?

17 A (Examining). It is.

18 Q Okay. And so on the right-hand side of the screen we
19 have Mr. Phillips' signature at the top followed by Mr.
20 LaPierre's signature, is that correct?

21 A Yes.

22 Q Okay. And then if you could please go to tab 25 of
23 your binder, which is Plaintiff's Exhibit 2139.

24 MR. THOMPSON: Which I will move into evidence.

25 THE COURT: Any objection to this one?

LAS

1043

1 MS. EISENBERG: No objection, your Honor.

2 MR. CORRELL: No objection, your Honor.

3 THE COURT: Okay. It's admitted.

4 Q And if you could please first go to page 4, Ms.
5 Rowling. Do you recognize this to be the original agreement
6 between the NRA and Concord Social and Public Relations?

7 A Yes.

8 Q Okay. And if you could please then go back to page 2.
9 And do you recognize that to be the first amendment to the
10 Concord Social and Public Relations contract?

11 A Yes.

12 Q And to the best of your knowledge, Ms. Rowling, there
13 was no business case analysis prepared for this first amendment,
14 is that correct?

15 A On the first amendment, I don't know.

16 Q Okay.

17 A I don't see one.

18 (Continue on the next page.)
19
20
21
22
23
24
25

LAS

Rowling - by Plaintiff - Direct/Thompson

1044

1 Q So, stepping back, Ms. Rowling: One of --

2 MR. THOMPSON: Withdrawn.

3 Q The Financial Services Division was supposed to
4 maintain copies of contracts that were used to pay invoices; is
5 that correct?

6 A Yes.

7 Q Okay. So was Financial Services Division also supposed
8 to maintain any business case analysis that was prepared for a
9 contract?

10 A Yes.

11 Q And so, to the best of your knowledge, the Financial
12 Services Division did not have any business case analysis for
13 this First Amendment to the Concord Social and Public Relations
14 contract; is that correct?

15 A I don't recall, off the top of my head, if we had one
16 or not.

17 Q And if you could please go to the next page -- this is
18 page 3 of Exhibit 2139 -- that's Mr. Phillips's signature there,
19 at the top; is that correct?

20 (Image scrolled.)

21 A Yes.

22 Q Followed by Mr. LaPierre's signature?

23 A Yes.

24 Q Okay. And to the best of your knowledge, Ms. Rowling,
25 did this First Amendment to the Concord contract change the

ALAN F. BOWIN, CSR, RMR, CRR

Rowling - by Plaintiff - Direct/Thompson

1045

1 payment terms of the original Concord agreement?

2 A Payment terms? Do you mean -- specify. Dollar
3 amounts?

4 Q So the management fee that was called for, did it
5 change the amounts of the management fee from the original
6 Concord contract?

7 A No, it did not.

8 Q Okay. And then, if you could please go to page 12 of
9 this exhibit, 2139, do you recognize that to be the Second
10 Amendment to the Concord Social and Public Relations contract?

11 (Image scrolled.)

12 A Yes.

13 Q And again to the best of your knowledge, no business
14 case analysis for this contract; right?

15 A Not that I'm aware.

16 Q And no Signature Review Sheet; is that right?

17 A I'm sorry; what was that?

18 Q No Signature Review Sheet?

19 A Not that I'm aware.

20 Q And then, on the next page, so page 13, that's
21 Mr. LaPierre's signature at the top there; is that right?

22 (Image scrolled.)

23 A Yes.

24 Q Followed by Mr. Phillips'?

25 A Yes.

ALAN F. BOWIN, CSR, RMR, CRR

Rowling - by Plaintiff - Direct/Thompson

1046

1 Q Okay. And between the date of this contract in January
2 of 2017 -- this Second Amendment -- and 2022, are you aware of
3 any other amendments or changes to the Concord contract?

4 A I'm sorry; to what date, exactly?

5 Q Until 2022.

6 A Yes. I mean, to -- to Concord?

7 Q Yes.

8 A I don't believe so.

9 Q Okay. And then, if you can please turn to tab 26 of
10 your binder, which is Plaintiff's Exhibit 1725 --

11 MR. THOMPSON: Which I will offer -- also move into
12 evidence.

13 (Image removed.)

14 THE COURT: Any objections?

15 MS. EISENBERG: No objection, your Honor.

16 MR. CORRELL: No objection, your Honor.

17 THE COURT: Without objection, it's admitted;

18 PX 1725.

19 (Image displayed.)

20 Q And if you could please go to page 34 of this exhibit,
21 Ms. Rowling ...?

22 (Image scrolled.)

23 Q And the first question is just if you recognize this to
24 be the NRA's original agreement with Allegiance Creative Group.

25 A Yes.

ALAN F. BOWIN, CSR, RMR, CRR

Rowling - by Plaintiff - Direct/Thompson

1047

1 Q Okay. And then, if you can go to page 10, please --
2 I'm sorry -- page 43 of the exhibit ...

3 (Image scrolled.)

4 Q And do you recognize that to be Mr. Phillips'
5 signature?

6 A I apologize. If you can give me a minute ...?

7 Q No, of course.

8 A Yes.

9 Q Okay. And then, if you could please go all the way
10 back to page 3 of this exhibit ...

11 (Image scrolled.)

12 Q And do you recognize this to be the first amendment
13 between Allegiance Creative Group and the NRA?

14 A Apologize. I have to read it because it doesn't say
15 "first."

16 Q Of course.

17 A Thank you.

18 THE COURT: Page 2, you mean?

19 MR. THOMPSON: Page 3 of the exhibit, your Honor.

20 THE COURT: Maybe I'm in the wrong --

21 Which tab are we in?

22 MR. THOMPSON: We are in tab 26.

23 THE COURT: Okay. That's why. I was in the wrong
24 tab.

25 A It -- it appears to be a -- a first. It doesn't say

ALAN F. BOWIN, CSR, RMR, CRR

Rowling - by Plaintiff - Direct/Thompson

1048

1 that, but ...

2 Q Okay. And then, on the signature page, the next page,
3 page 4 --

4 (Image scrolled.)

5 Q -- that's Mr. Phillips' signature at the top?

6 A Yes.

7 Q Followed by Mr. LaPierre?

8 A Yes.

9 Q And again, Ms. Rowling, to the best of your knowledge,
10 no business case analysis for this amendment; is that correct?

11 A I don't recall.

12 Q And no Signature Review Sheet, to the best of your
13 knowledge?

14 A No.

15 Q Okay. All right.

16 And then, just very briefly, if you can turn all the
17 way back to tab 48 of your binder ...

18 MR. THOMPSON: And this is Exhibit 2260, which I
19 will offer into evidence.

20 (Image removed.)

21 (Pause.)

22 THE COURT: Is there any objection to this one?

23 MS. EISENBERG: No objection, your Honor.

24 MR. CORRELL: No objection, your Honor.

25 MR. FLEMING: None.

ALAN F. BOWIN, CSR, RMR, CRR

Rowling - by Plaintiff - Direct/Thompson

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1 MS. COUTU: No, your Honor.

2 THE COURT: Good.

3 It's admitted.

4 Q And so, starting, Ms. Rowling, on page 7, please ...?

5 (Image displayed.)

6 Q And my question is: Do you recognize this to be the
7 NRA's contract with Associated Television International?

8 A Yes.

9 Q And then, if you can go back; so, starting on page 2 --
10 and please feel free to review it, Ms. Rowling, but just
11 flipping through from page 2 to page 6, do you recognize these
12 to be the Contract Review Signature Sheet and Business Case
13 Analysis for the Associated Television International contract?

14 (Image scrolled.)

15 A Yes.

16 Q And so, on page 2, where it reads, "Negotiated by,"
17 that says that this contract was negotiated by Mr. LaPierre and
18 Mr. Phillips; is that correct?

19 A That's what it says, yes.

20 Q Okay. Great.

21 Ms. Rowling, are you aware of any disclosures that
22 Mr. LaPierre made during the bankruptcy from 2021 about any
23 conflicts of interest that he may have?

24 A Yes.

25 Q What is your understanding of his disclosure?

ALAN F. BOWIN, CSR, RMR, CRR

Rowling - by Plaintiff - Direct/Thompson

1050

1 A He disclosed a relationship with the owner of
2 Associated Television.

3 Q And is that also the owner of Membership Marketing
4 Partners?

5 A Yes.

6 Q And that's a man by the name of David McKenzie; is that
7 right?

8 A Yes.

9 Q Okay. So that was in early 2021 when he made that
10 disclosure; is that right?

11 A The time frame sounds correct.

12 Q Okay. If you can please go to tab 36 of your binder,
13 which is Plaintiff's Exhibit 2425 ...?

14 (Image removed.)

15 MR. THOMPSON: Which I will offer into evidence.

16 (Pause.)

17 THE COURT: Any objection?

18 MS. EISENBERG: No objection.

19 MR. CORRELL: No objection.

20 MS. COUTU: No objection.

21 THE COURT: Okay. It's admitted; PX 2425.

22 Q So just a few background questions, Ms. Rowling:

23 In 2022, the NRA renegotiated its relationship with
24 Membership Marketing Partners, Allegiance and Concord; is that
25 right?

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Rowling - by Plaintiff - Direct/Thompson

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1 A That's correct.

2 Q And it consolidated all of the services into a single
3 contract with one of those three entities; is that right?

4 A Yes.

5 Q Okay. And if you could please go to page 2 --

6 Oh, I -- well ...

7 So, first of all, this is -- Exhibit 2425 is -- a
8 memorandum of understanding between the NRA and MMP that was put
9 together as part of the -- that -- renegotiation; is that
10 correct?

11 A Yes.

12 Q Okay. And ultimately, the NRA entered into a contract
13 with Allegiance; is that correct?

14 A Yes.

15 Q Okay. So, if you could please go to page 2 of this
16 exhibit, 2425 --

17 (Image scrolled.)

18 Q -- under "Compensation," the NRA agreed to pay a
19 monthly fee of \$775,000 to MMP; is that correct?

20 A To Allegiance.

21 Q To Allegiance ultimately; is that right?

22 A Yes, that's correct.

23 Q Okay. That was about a 40 percent reduction in the
24 monthly fees that the NRA was paying to MMP, Allegiance and
25 Concord collectively; is that correct?

ALAN F. BOWIN, CSR, RMR, CRR

Rowling - by Plaintiff - Direct/Thompson

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1 A That's -- yes.

2 Q Okay. It was between 1.4 and 1.5 million a month; is
3 that right?

4 A Prior to this?

5 Q Yes.

6 A Yes.

7 Q Okay. And then, if you can go to page 4, please, of
8 Exhibit 2425 --

9 (Image scrolled.)

10 Q -- in the "It is so agreed," there is a signature on
11 behalf of MMP. Is that Murray Drechsler's signature?

12 A I believe it is.

13 Q And Murray Drechsler is the CFO of the MMP entities; is
14 that right?

15 A That's correct.

16 Q And then, is that your signature; like, an electronic
17 signature for you?

18 A Yes.

19 Q Okay. And then, under that is a signature from
20 Mr. LaPierre; is that right?

21 A Yes.

22 Q And this is dated -- or his signature is dated -- July
23 29, 2022?

24 A Yes.

25 Q So this is about a year after Mr. LaPierre disclosed

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1 his conflict of interest with the owner of Membership Marketing
2 Partners; is that right?

3 A I'm not sure when Mr. LaPierre disclosed. We -- we --
4 his conflict. We talked earlier about Mr. Phillips and what he
5 disclosed; his conflict.

6 Q So just to clarify: I believe you testified earlier
7 that Mr. LaPierre disclosed a conflict with David McKenzie over
8 the course of the bankruptcy in 2021; is that correct?

9 A I -- I apologize. I thought you had said "Phillips."
10 Maybe I was wrong, but, um ...

11 Q Okay. So are you aware of any disclosures that
12 Mr. LaPierre made with respect to conflicts of interest during
13 the bankruptcy in 2021?

14 A That time frame sounds appropriate.

15 Q Okay. And what are the conflicts that Mr. LaPierre
16 disclosed, to the best of your understanding?

17 A A relationship -- a personal relationship -- with the
18 owners of -- with the owner of MMP and ATI.

19 Q And then, if you could please go to tab 38 of your
20 binder, Ms. Rowling, which is Plaintiff's Exhibit 2426 ...

21 MR. THOMPSON: Which I will offer into evidence.

22 THE COURT: Any objection on this exhibit?

23 MS. EISENBERG: No objection, your Honor.

24 MR. FLEMING: No objection.

25 MR. CORRELL: No objection.

ALAN F. BOWIN, CSR, RMR, CRR

Rowling - by Plaintiff - Direct/Thompson

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1 MS. COUTU: No objection.

2 THE COURT: It's admitted.

3 (Image displayed.)

4 BY MR. THOMPSON:

5 Q So, Ms. Rowling, this Exhibit, 2426, this is the
6 Contract Review Signature Sheet that was prepared for the new
7 Allegiance contract in 2022; is that correct?

8 A Yes.

9 Q Okay. And if you can just go down to the middle of
10 this first page, under "Legal Review," is that Mr. Frazer's
11 signature?

12 A Yes.

13 Q Okay. And then that's your signature in the first
14 line, for the "Financial & Business Review"; is that right?

15 A Yes.

16 Q And then Mr. Erstling under that?

17 A Yes.

18 Q And then, "VS for Wayne LaPierre," is that Vanessa
19 Shahidi for Wayne LaPierre?

20 A Yes.

21 Q And Vanessa Shahidi is the Chief of Staff of the NRA;
22 is that correct?

23 A Yes.

24 Q And she reports directly to Mr. LaPierre?

25 A Yes.

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Rowling - by Plaintiff - Direct/Thompson

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1 Q Now, going back up to the top of the page, under
2 "Responsible Officer Approval," that says Mr. LaPierre; right?

3 A That's correct.

4 Q So Mr. LaPierre, in August of 2022, is listed as the
5 responsible officer approving the membership -- I'm sorry -- the
6 new Allegiance contract; is that correct?

7 A He's listed there as the responsible officer because
8 Membership reports directly to him. So he would be listed as
9 the responsible officer over where that division resides.

10 Q Doesn't everyone report to Mr. LaPierre?

11 A Yes, but if there is a -- there are specific officers
12 who would have other divisions under them. Myself, I have
13 Information Services; that would fall under me and my name would
14 be listed there (indicating).

15 Q But Mr. Grable, at the time, was the head of
16 Membership; wasn't he?

17 A And not an officer, so he reported directly to Wayne.

18 Q And so, the approving officer for this contract was
19 somebody who had disclosed a conflict of interest with the
20 contract; is that correct?

21 A It's -- it's not. He's acknowledging that he's aware
22 of this contract that falls under his purview.

23 Q And he is the responsible officer approving it; right,
24 Ms. Rowling?

25 A Overall, I -- he probably is approving it in that

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Rowling - by Plaintiff - Direct/Thompson

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1 sense.

2 Q Okay. And so, Ms. Rowling, starting at page 4 of this
3 exhibit, 2426 --

4 (Image scrolled.)

5 Q -- is this the final contract that was entered into
6 between the NRA and Allegiance?

7 A It -- it appears to be, yes.

8 Q Okay. And was this contract --

9 If you can go all the way back to the signature pages
10 that start on the -- page 11 --

11 (Image scrolled.)

12 Q -- was this signed on August 18, 2022?

13 A Yes.

14 Q Okay. And if you can flip back to the first page --

15 (Image scrolled.)

16 Q -- there are signatures from Mr. Cotton, Mr. Lee, and
17 Mr. Coy, for the President, First Vice President, and Second
18 Vice President, respectively; is that right?

19 A Yes.

20 Q And those are also dated August 18, 2022; is that
21 right?

22 A Yes.

23 Q Was this provided to -- was this contract provided to
24 Mr. Cotton, Mr. Lee, and Mr. Coy before the contract was signed?

25 A Yes. It's my understanding, it was.

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1 Q And so they received it and then signed it on the same
2 day that the contract was signed; is that correct?

3 A Yes.

4 Q Okay.

5 MR. THOMPSON: If we could --

6 Q So this is not in your binder but it has been admitted
7 into evidence, Ms. Rowling; Plaintiff's Exhibit 360.

8 MR. THOMPSON: And if you can go to the second
9 page, please, Jesse ...

10 (Image displayed.)

11 Q Ms. Rowling, do you recognize this document?

12 A Yes.

13 Q This is a document that was prepared by MMP and
14 provided to the NRA; is that correct?

15 A Yes.

16 Q And in it, MMP provides justifications for increases in
17 the management fee paid to the three MMP entities over the
18 years; is that correct?

19 A Yes.

20 Q You never asked Mr. LaPierre whether any of the
21 statements in this Exhibit 360 were accurate, did you?

22 A Mr. LaPierre?

23 Q Yes.

24 A No.

25 Q Did you ever ask Mr. Phillips?

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1 A No.

2 Q To the best of your knowledge, did anyone at the NRA
3 ask Mr. LaPierre whether any of the statements in Exhibit 360
4 were accurate?

5 MR. CORRELL: Objection, your Honor; calls for
6 speculation.

7 MR. THOMPSON: I'm just asking, to her knowledge,
8 your Honor.

9 THE COURT: Yes. If it was in front of you, yes.

10 A I'm not aware. No one's mentioned that to me.

11 THE COURT: Okay.

12 Q And to the best of your knowledge, Ms. Rowling, has
13 anyone at the NRA asked Mr. Phillips whether or not the
14 statements in Exhibit 360 are accurate?

15 MS. COUTU: Objection, your Honor.

16 THE COURT: Same -- overruled.

17 I mean, he's asking for your personal knowledge.

18 THE WITNESS: I have no personal knowledge.

19 THE COURT: Okay.

20 Q And for many years, the NRA was, in fact, paying the
21 three MMP entities amounts above what were called for in the
22 original contracts; is that correct?

23 A Yes.

24 Q And, in fact, to take MMP as an example, the original
25 contract called for monthly payments of about \$400,000; is that

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1 correct?

2 A Yes.

3 Q And by the time the contract was renegotiated in 2022,
4 the NRA was paying nine hundred and sixty-one thousand dollars,
5 eight hundred -- \$961,850 to MMP; is that correct?

6 A Yes.

7 Q Okay. And that was all done pursuant to verbal
8 approvals by either Mr. LaPierre or Mr. Phillips; is that
9 correct?

10 A I -- I have no personal knowledge of -- of that.

11 Q Okay. And so, when an invoice comes in to Financial
12 Services, where that invoice is tied to a contract, Financial
13 Services is supposed to determine that the invoice matches the
14 amount called for in the contract, where possible; is that
15 correct?

16 A If possible.

17 Q And so, for the period of time when the NRA was paying
18 Membership Marketing Partners, Concord and Allegiance amounts
19 above what was called for in the contract, an invoice would come
20 in and Financial Services had no way to determine whether or not
21 that was the correct amount to pay; is that correct?

22 A Not -- no, it's not correct.

23 Q What is incorrect about my question?

24 A Financial Services isn't making a determination on
25 whether services existed with a con -- with a -- with an

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1 invoice. They are a processor of information. So, when a
2 invoice comes down, it has approvals. They rely on the
3 approvals and that those people approving the invoice are
4 certifying in their approval that services were performed.

5 Q Right. So the contract copies that Financial Services
6 had for Membership Marketing Partners, for example, called for
7 monthly payments of \$400,000; right?

8 A Correct.

9 Q And then an invoice would come in for \$961,000 --
10 \$961,850 -- for that contract; right?

11 A That's correct.

12 Q And so, Financial Services would look at the contract
13 and look at the invoice and say, "These don't match"; right?

14 A They -- they could do that, yes.

15 Q Okay. And then they would just have to rely on
16 whoever's approval to pay the invoice, even though there was no
17 matching amount in the contract; right?

18 A Correct.

19 Q And who was approving the invoices between 2018 and
20 2022?

21 A I'd have to see who -- who was -- I'd have to see an
22 invoice with a -- with a name on it.

23 Q Okay. You agree with me, Ms. Rowling, that verbal
24 contracts are a violation of the NRA's policies; right?

25 A I don't know that our contract policy specifically

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1 states that, but it's not ideal.

2 Q It's not a best practice, right?

3 A It isn't, no.

4 (Image removed.)

5 Q Before Mr. Spray joined the NRA, there were instances
6 where NRA vendors were paid without an existing contract; right?

7 A I would have to have a specific, but I believe that was
8 the case.

9 Q So, for example, the NRA was paying Sandra Froman --
10 right? -- for a period of years?

11 A Yes.

12 Q Did Ms. Froman have a contract with the NRA, to the
13 best of your knowledge?

14 A I don't recall, off the top of my head.

15 Q And Ms. Froman is a current board member; is that
16 right?

17 A Yes.

18 Q And a former president of the NRA?

19 A Yes.

20 Q What about Dave Butz? The NRA was paying Mr. Butz for
21 a period of time; correct?

22 A Yes.

23 Q Was there a contract for Mr. Butz?

24 A Again, I -- I don't recall, off the top of my head.

25 Q Okay. What about David Keene? The NRA was paying

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1 David Keene for a period of time; correct?

2 A Yes.

3 Q Was there a contract for Mr. Keene, to the best of your
4 knowledge?

5 A Again I don't recall.

6 Q Mr. Butz was a former board member of the NRA; is that
7 correct?

8 A Yes.

9 Q And Mr. Keene -- is he a current board member?

10 A He is.

11 Q And is he a former president?

12 A Yes.

13 Q Okay. For a period of time, Mr. Phillips'
14 administrative assistant was Lisa Supernaugh; is that correct?

15 A Yes.

16 Q And Mr. -- I'm sorry. Ms. Supernaugh still works at
17 the NRA; is that correct?

18 A Yes.

19 Q Okay. And while Mr. Phillips was treasurer,
20 Ms. Supernaugh would tell Accounts Payable to process expense
21 reimbursements for Joshua Powell that did not have the
22 appropriate backup; is that correct?

23 A Yes.

24 Q And for years, several NRA senior executives were
25 passing expenses to the NRA through Ackerman McQueen as an

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1 intermediary; correct?

2 A I'm aware -- I'm aware that there were some, yes.

3 Q And that would happen through Ackerman's out-of-pocket
4 expense invoices; is that correct?

5 A Yes.

6 Q Okay. And the executives who were doing that included
7 Mr. LaPierre, right?

8 A Yes.

9 Q And Tyler Schropp?

10 A Yes.

11 MR. THOMPSON: And that's S-c-h-r-o-p-p, for our
12 reporter.

13 Q And Mr. Schropp is the current Executive Director of
14 Advancement; is that correct?

15 A Yes.

16 Q Advancement is the -- one of the -- fund-raising arms
17 of the NRA; is that correct?

18 A That's correct.

19 Q Okay.

20 And as we mentioned, Ms. Rowling, these invoices that
21 would come in to the NRA from Ackerman, they would just say
22 "out-of-pocket expenses," with no additional detail; correct?

23 A Yes.

24 Q And Financial Services would process and pay those
25 invoices; right?

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1 A Yes.

2 Q In your opinion, Ms. Rowling, do invoices with that
3 lack -- level of lack -- of detail violate any NRA policies?

4 A Yes.

5 Q Did they at the time?

6 A Yes.

7 Q And Financial Services would still pay them, right?

8 A That's correct.

9 Q Why would Financial Services pay the invoices even
10 though they violated NRA policy?

11 A There was an understanding that audits were taking
12 place of the out-of-pocket expenses relating to Ackerman
13 McQueen.

14 Q And those were audits being conducted by Mr. Tedrick?

15 A Yes.

16 Q Did you ever, personally, speak with Mr. Tedrick about
17 the audits that he was conducting?

18 A No.

19 Q And so, where did your understanding that these audits
20 were occurring come from?

21 A I didn't speak in detail about what his audits
22 entailed; we were told audits were taking place.

23 Q Told by whom?

24 A I believe I heard it through a colleague.

25 Q Do you recall which colleague?

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1 A I don't.

2 Q Okay. Ms. Rowling, you do not believe that
3 Mr. Phillips was fulfilling his duties as treasurer when he was
4 failing to enforce the NRA's hundred-thousand-dollar contract
5 policy; correct?

6 A Correct.

7 Q And you thought that Mr. Phillips was not fulfilling
8 his duties when he failed to require appropriate business
9 purpose justification for vendors; right?

10 A I'm -- I'm sorry; can you repeat that?

11 Q Sure.

12 MR. THOMPSON: Let me withdraw and ask again.

13 Q So you believe that Mr. Phillips was not fulfilling his
14 duties as treasurer when he failed to require appropriate
15 business purpose justification for expense reimbursements;
16 correct?

17 A Correct, yes.

18 Q And you thought that he was failing in his duties by
19 allowing NRA employees to have Ackerman credit cards, right?

20 A Yes.

21 Q And while Mr. Phillips was the treasurer of the NRA,
22 there were certain vendors that you considered to be
23 untouchable; right?

24 A Yes.

25 Q And those were vendors that you couldn't question,

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1 right?

2 A Well, we couldn't -- I guess I don't -- what do you
3 mean, "couldn't question"?

4 I mean, did we have a direct relationship to talk to
5 them? No, we did not. We did not question them directly.

6 Q So an invoice would come in from --

7 Well, let me step back: Ackerman McQueen was one
8 vendor that you considered untouchable; is that correct?

9 A Yes.

10 Q And so, an Ackerman McQueen invoice would come in and
11 you and your colleagues did not feel you could question the
12 amount in the invoice; right?

13 A Correct.

14 (Continued on next page.)

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ALAN F. BOWIN, CSR, RMR, CRR

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1 Q And you came to understand over your time at the NRA
2 that those invoices were always approved, correct?

3 A I -- I don't know. We got approved invoices in the
4 financial services division. I can't say if there were others
5 that came in that were not approved.

6 Q So, the NRA has a budget for its vendors, is that
7 correct?

8 A Yes.

9 Q And Ackerman -- The Ackerman spending would frequently
10 exceed what was budgeted for, is that correct?

11 A Yes.

12 Q No matter how much it exceeded the budget, the amounts
13 were always approved to be paid to Ackerman, is that correct?

14 A Again, I can't say if something was always approved.

15 Q Do you recall being deposed in connection with your
16 litigation in this matter, Ms. Rowling?

17 A Yes.

18 Q And you gave truthful testimony at that litigation?

19 A Yes.

20 Q That deposition. I'm sorry. Do you recall testifying
21 that "We were always informed this", meaning Ackerman was
22 approved, "this is going forward even if it wasn't in the
23 budget"?

24 A Yes.

25 Q Okay. And that was accurate?

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1 A Yes, but you were asking me if all invoices were always
2 approved. I can't say that they were. If we didn't see it, we
3 didn't know if something got rejected or not.

4 Q But can you remember a single instance where an
5 Ackerman invoice was not approved?

6 A I wouldn't know.

7 Q All right.

8 THE COURT: I'm going to ask the IT people to
9 increase the volume on the witness' mike.

10 THE WITNESS: I don't think it was on.

11 THE COURT: That might be part of the problem.

12 Thank you.

13 Q If you could please turn to tab three of your binder,
14 Ms. Rowling.

15 THE COURT: Counsel, just a head's up we have about
16 seven minutes before our break.

17 MR. THOMPSON: Okay. Thank you, your Honor. This
18 is Plaintiff's Exhibit 2179, which I will offer into
19 evidence subject to redaction of the phone numbers in this
20 exhibit.

21 THE COURT: Are you moving this in?

22 MR. THOMPSON: I'm sorry. I'm moving it into
23 evidence, your Honor.

24 THE COURT: Is there any objection from defendants?

25 MS. EISENBERG: No objection.

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1 MR. CORRELL: No objection.

2 MS. COUTU: No objection.

3 MR. FLEMING: No objection.

4 THE COURT: It's admitted subject to redacting.

5 Q So, Ms. Rowling, without reading the number out loud,
6 is that your phone number next to your name at the top of
7 exhibit 2179?

8 A Yes.

9 Q And in this text message you're communicating with
10 Emily Cummins, is that correct?

11 A Yes.

12 Q Emily Cummins was a former colleague of yours?

13 A Yes.

14 Q What was Ms. Cummins' title, if you recall?

15 A Managing director of compliance and something, I'm not
16 exactly sure.

17 Q Okay. And then if you could turn to page 3 of this
18 exchange, about half way down there is a text message from
19 Ms. Cummins to you, "That's ironic about trying to control how
20 they view their accounting. The problems with (c)(4) excessive
21 spending aren't in the ILA." Do you see that?

22 A (Examining). Yes.

23 Q If you could turn to the last page, I'm sorry not the
24 last page, page 4. You respond to Ms. Cummins and "Yes,
25 everyone knows where the spending problem is, but that is

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1 untouchable and the real reason behind the need for control."

2 Do you see that?

3 A Yes.

4 Q And who were you or what were you referring to in this
5 text message as being untouchable?

6 A Ackerman McQueen.

7 Q Okay. In 2018, while you were in the director of
8 accounting operations, you had a direct report named Portia
9 Padilla, is that correct?

10 A Yes.

11 MR. THOMPSON: P-A-D-I-L-L-A for our reporter.

12 Q Ms. Padilla was in accounts payable, is that correct?

13 A Yes.

14 Q And she's still at the NRA, is that right?

15 A Yes, she is.

16 Q Okay. Ms. Padilla came to you on several occasions to
17 report pressure she received from Ms. Supernaugh to pay things
18 that Ms. Supernaugh reported to have been approved by
19 Mr. Phillips, is that correct?

20 A Yes.

21 Q Or to have been approved by Mr. LaPierre?

22 A Yes.

23 Q Or by Mr. Powell?

24 A Yes.

25 Q Okay.

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1 MR. THOMPSON: Your Honor, I'm about to start a new
2 exhibit.

3 THE COURT: Why don't we take our lunch break now,
4 and we'll reconvene at 2:15.

5 During the break you're essentially still on the
6 stand, so you shouldn't discuss the substance of your
7 testimony with anyone while we're away.

8 THE WITNESS: Yes.

9 THE COURT: Thank you.

10 THE COURT OFFICER: All rise. Jury exiting.

11 (Whereupon the jury panel departed the courtroom.)

12 THE COURT: See everybody at 2:15.

13 (Whereupon a luncheon recess was taken.)

14

15 *****

16 A F T E R N O O N S E S S I O N

17 *****

18

19 MR. THOMPSON: The parties have just stipulated to
20 a few of the 990s being put into evidence. And we would
21 like to put them on the record, if we may.

22 THE COURT: The jury should be aware of what I'm
23 admitting, so I would rather do it when they are here.

24 MR. THOMPSON: Sure. Of course.

25 THE COURT: Is that just to speed up things on the

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1 witness testimony?

2 MR. THOMPSON: That's right, your Honor.

3 THE COURT: We'll have the witness on and then you
4 can do whatever you're going to do to admit things in
5 advance.

6 MR. THOMPSON: Okay. Thank you, your Honor.

7 THE COURT: I would also note that I'm uploading, I
8 did so order the stipulation of settlement. I put a note in
9 there specifically saying, you can read it, but in substance
10 it says that it's premised in part on the representation
11 that was made about paragraph 10 applying only to the claims
12 against Mr. Phillips, and that it does not apply to or
13 restrain in any way truthful testimony about claims against
14 any of the other parties.

15 MS. STERN: Your Honor, I think you meant
16 Mr. Powell.

17 THE COURT: Everything I said, if I said another
18 name, it was Mr. Powell. Anyway, I'm fairly confident I
19 used the right word in the written order that is being
20 uploaded as we speak. All right. Let's get the jury.

21 THE COURT OFFICER: Is the Court ready for the
22 witness?

23 THE COURT: Yes. Let's have the witness come up
24 too. Thanks.

25 THE COURT OFFICER: All rise. Jury entering.

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1 (Whereupon the jury panel entered the courtroom.)

2 THE COURT: Okay. Welcome back everybody. Have a
3 seat. Okay. Mr. Thompson, you may continue. I understand
4 you may have some stipulation that will speed things along
5 in terms of introduction of exhibits. By the way, I did ask
6 them to boost the volume on the witness' mike. We'll see
7 what happens.

8 MR. THOMPSON: Yes, your Honor. Am I coming
9 through all right? Okay. We would like to move several of
10 the Form 990s for the NRA into evidence. So, the 2014 990,
11 which is Plaintiff's Exhibit 3563. The 2015 990, which is
12 Plaintiff's Exhibit 3564. The 2016 990, which is
13 Plaintiff's Exhibit 3565. The 2017 990, which is
14 Plaintiff's Exhibit 161. I believe the 2019 is already in
15 evidence. And then I'm actually -- I don't have the exhibit
16 number for the 2020 at the moment, but the 2021 990 is
17 Plaintiff's Exhibit 225. And the 2022 990 is Plaintiff's
18 Exhibit 226.

19 THE COURT: And I take it that it's been stipulated
20 these are all admissible?

21 MS. EISENBERG: Yes, your Honor.

22 MR. CORRELL: Yes, your Honor.

23 THE COURT: Okay. So that will speed things along
24 when these come in. They are all admitted. So you can
25 treat them as such when they come up in the testimony.

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1 MR. THOMPSON: Thank you, your Honor. Plaintiff's
2 Exhibit No. 2374 is the 2020 990.

3 THE COURT: That's admitted.

4 Q Good afternoon, Ms. Rowling. So before we broke for
5 lunch we were discussing some concerns that Ms. Padilla had
6 raised to you about Ms. Supernaugh telling Ms. Padilla to
7 approve things on Mr. Phillips' behalf, right?

8 A Not approve, no.

9 Q To process things on Mr. Phillips' behalf, right?

10 A That's correct.

11 Q Okay. If you could please turn to tab 22 of your
12 binder, which is Plaintiff's Exhibit 2053, which I will move to
13 admit.

14 THE COURT: Any objections to this document?

15 MS. EISENBERG: No, your Honor.

16 MR. CORRELL: No, your Honor.

17 MS. COUTU: No, your Honor.

18 MR. FLEMING: No objection.

19 THE COURT: Okay. It's admitted.

20 Q So, Ms. Rowling, this is Plaintiff's Exhibit 2053,
21 which is an e-mail that Ms. Padilla sent you in April of 2018,
22 is that correct?

23 A (Examining). Yes.

24 Q And you actually asked Ms. Padilla to put this e-mail
25 together to send to you, is that correct?

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1 A Yes.

2 Q And in this e-mail Ms. Padilla is describing instances
3 where Lisa Supernaugh has instructed Ms. Padilla to process
4 things because Mr. LaPierre or, I'm sorry, because Mr. Phillips
5 told her to, correct?

6 A I believe it states that she had a perceived threat
7 from Mr. Phillips. Like Ms. Supernaugh wasn't necessarily
8 saying Mr. Phillips said to approve this. It was a, this needs
9 to be approved.

10 Q Okay. And if you can look at the last paragraph on the
11 first page that carries over to the second page. Ms. Padilla
12 writes, "It seems that when I raise inconvenient or
13 controversial questions, I'm likely to hear answers like 'Woody
14 said to pay this as submitted' or 'Josh will throw a fit' or 'We
15 don't want this to reach Wayne' or 'Jerry said to pay this'. Do
16 you see that?

17 A Yes.

18 Q That's referring to Woody Phillips, right?

19 A Yes.

20 Q Joshua Powell?

21 A Yes.

22 Q Wayne LaPierre?

23 A Yes.

24 Q And then Joe DeBergalis, right?

25 A Yes.

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1 Q And Mr. DeBergalis is the former head of General
2 Operations, is that correct?

3 A Yes.

4 Q Okay. And you actually sent Ms. Padilla's e-mail along
5 to Human Resources, is that correct?

6 A Yes, I did.

7 Q Did you provide it to the head of Human Resources,
8 Linda Crouch?

9 A Yes.

10 Q You never heard anything back from Ms. Crouch about the
11 e-mail, correct?

12 A I approached Ms. Crouch about the e-mail.

13 Q What did Ms. Crouch say about the e-mail?

14 A She informed me that she had a discussion with Ms.
15 Supernaugh.

16 Q With Ms. Supernaugh?

17 A Mm-hmm.

18 Q Do you know what the sum or substance of that
19 conversation was?

20 A No.

21 Q Okay. You were one of the authors of the top concerns
22 memo that was presented to the audit committee in the summer of
23 2018, correct?

24 A Yes.

25 Q The concerns that you and your colleagues raised in the

Direct-Rowling-Thompson

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1 top concerns memorandum, did you, prior to providing that
2 memorandum to the audit committee, did you discuss any of those
3 concerns with Mr. Phillips?

4 A Not directly.

5 Q Did you ever discuss them with Mr. LaPierre?

6 A Not directly.

7 Q With Mr. Frazer?

8 A No, not directly.

9 Q You did discuss them with Mr. Tedrick, correct?

10 A Yes.

11 Q And then Mr. Tedrick would tell you that he was going
12 to talk to Woody about it for example?

13 A Yes. And if I can clarify. We didn't necessarily
14 bring those specific concerns up to other people. They were
15 general types of concerns.

16 Q General types of concerns, like invoices not having
17 sufficient detail, right?

18 A Correct.

19 Q General concerns like management subordinating its
20 interests to vendors, right?

21 A No. That was not something I ever brought up.

22 Q When you brought your concerns regarding, for example,
23 vague invoicing to Mr. Tedrick, he, to the best of your
24 knowledge, didn't do anything about it, right?

25 A No. My understanding was that he had gone or knew that

Direct-Rowling-Thompson

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1 Woody had either approved it himself or had said that these are
2 fine. We know about them. We know the support. So that's what
3 he relayed to me. I had no reason not to believe him.

4 Q Right. You had no reason not to believe him, is that
5 correct?

6 A That's correct.

7 Q And the actual detailing in the invoices didn't change,
8 correct?

9 A No.

10 Q So the invoices continued to be unacceptably vague,
11 right?

12 A They continued to be vague.

13 Q And the vagueness was a violation of NRA policy, right?

14 A Well, I don't know that vagueness is necessarily a word
15 in the NRA policy. The NRA policy required a description on an
16 invoice or a business purpose associated.

17 Q A business purpose that these invoices lacked, right?

18 A I'm sorry. Could you repeat that?

19 Q A business purpose that these invoices lacked, right?

20 A I mean, it would depend. I mean, an invoice, if it's
21 associated with a contract, would necessarily have a contract
22 behind it. So, there could be a -- a description on the invoice
23 that wasn't necessarily clear of what the business purpose was.
24 It could say, you know, payment number two from this contract.
25 So, an invoice might not have a business purpose on it.

Direct-Rowling-Thompson

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1 Q Right. So an invoice that says out-of-pocket expenses
2 and requires payment of a few hundred thousand dollars is
3 unacceptably vague, right?

4 A It's definitely vague.

5 Q Okay. And is a violation of NRA policy that requires a
6 business purpose before paying an invoice, right?

7 A Yes.

8 Q So, it wasn't until Mr. Spray joined the NRA in 2018
9 that you brought your concerns to anyone in senior management,
10 is that correct?

11 A Mr. Spray provided us, provided me and my colleagues a
12 platform to do so. We held meetings. We held weekly meetings
13 for him to learn and understand the organization. So there was
14 a clear difference there in -- in my role and how I reported.

15 Q Right. So the question is, it wasn't until Mr. Spray
16 joined the NRA in 2018 that you brought any of your concerns to
17 senior management, right?

18 A Directly, correct.

19 Q Okay. Mr. Tedrick was not a part of the process in
20 compiling the top concerns, correct?

21 A His role was basically I e-mailed the list to him. So
22 he was involved in that respect. I know he was asked to provide
23 input by Mr. Spray.

24 Q But you were worried about Mr. Tedrick altering the top
25 concerns memo, weren't you?

Direct-Rowling-Thompson

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1 A Yes. We wanted to make sure that everything that was
2 on there got -- got submitted.

3 Q So, you did not want Mr. Tedrick altering the
4 memorandum, correct?

5 A Correct.

6 Q And you were worried about him doing so, right?

7 A I wasn't sure. So, I wanted to make sure that it
8 wasn't altered. It was important that it wasn't altered.

9 Q And then you prepared -- I'm sorry -- you prepared a
10 personal statement for the audit committee meeting in July of
11 2018, correct?

12 A Prior to the audit committee meeting I prepared a
13 statement.

14 Q Yes. And ultimately you did not give that statement at
15 the audit committee meeting, is that correct?

16 A That is correct.

17 MR. THOMPSON: Can we please --

18 Q If you could please turn to tab five of your binder.

19 MR. THOMPSON: This is Plaintiff's Exhibit 3009,
20 which I will move to admit.

21 THE COURT: Any objection?

22 MS. EISENBERG: No objection, your Honor.

23 MR. CORRELL: No objection.

24 MS. COUTU: No objection.

25 MR. FLEMING: No objection.

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1 THE COURT: It's admitted, Plaintiff's
2 Exhibit 3009.

3 Q So, if I could take you down to the third paragraph.
4 Well first, Ms. Rowling, this is the personal statement that you
5 prepared, correct?

6 A Yes.

7 Q And if I could take you down to the third paragraph.
8 You write, "I fully believe this meeting is being manipulated in
9 a way as to try to explain away our issues or try to claim the
10 items on the list are fixed before we could present to them as
11 whistle blowing." This accurately reflects how you were feeling
12 at the time you wrote this, correct?

13 A Correct.

14 Q And you actually believed there was a mistake that you
15 did not present this to the audit committee, correct?

16 A No. I believe I had said that it was a mistake that I
17 did not announce myself at that committee meeting as a
18 whistleblower specifically.

19 Q Do you recall -- So, we spoke earlier. You recall
20 testifying at your deposition in this action?

21 A Yes.

22 Q And you gave truthful testimony?

23 A Yes.

24 Q Okay.

25 MR. THOMPSON: Can we please play the clip from

Direct-Rowling-Thompson

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1 page 176, line nine through 177, line four.

2 (Whereupon the video is being played.)

3 MR. THOMPSON: You can stop it there, Jessie.

4 Q That testimony was accurate at the time you gave it,
5 right, Ms. Rowling?

6 A Yes.

7 Q Okay. And then the audit committee ultimately released
8 a report in September of 2018, is that correct?

9 A Yes.

10 Q And when you got that report, it made you feel sick,
11 correct?

12 A That was, yes, that was a statement in a text.

13 Q If you could please look at tab six of your binder,
14 which I will move to admit subject to redacting the personal
15 information.

16 THE COURT: Any objection?

17 MS. EISENBERG: No objection, your Honor.

18 MR. CORRELL: No objection, your Honor.

19 THE COURT: Okay. It's admitted.

20 MR. THOMPSON: Just for the record, this is
21 Plaintiff's Exhibit 3085.

22 Q Ms. Rowling, this is a text exchange between you and
23 Ms. Cummins, correct?

24 A Yes.

25 Q From September of 2018, is that right?

Direct-Rowling-Thompson

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1 A Yes.

2 Q And you asked Ms. Cummins if she had seen the audit
3 committee meetings, do you see that?

4 A Correct.

5 Q There you were referring to the audit committee minutes
6 that were released in September of 2018?

7 A Yes.

8 Q And Ms. Cummins responds "No". And you reply, "I have
9 them. When I get in, I will come by. They make me sick." Is
10 that right?

11 A Yes.

12 Q Does that accurately reflect how you felt at the time?

13 A At the time.

14 Q And over the summer of 2018 you and your colleagues
15 each individually met with external counsel for the NRA to
16 discuss your concerns, is that correct?

17 A Yes.

18 Q And one of your colleagues, Ms. Cummins, reported to
19 you that her meetings with counsel did not go well, is that
20 correct?

21 A Yes.

22 Q And Ms. Cummins ultimately left the NRA in the fall of
23 2018, is that correct?

24 A Yes. I think that time sounds right.

25 Q Okay. Now at the time that the audit committee

Direct-Rowling-Thompson

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1 released its report in September of 2018, you felt like the
2 audit committee was fixing isolated instances or incidences
3 instead of fixing the root cause of the problems that you and
4 your colleagues had identified, is that correct?

5 A At that time.

6 Q Ms. Rowling, you were considering leaving the NRA
7 between 2018 and the beginning of 2021, is that correct?

8 A Yes.

9 Q And you and your colleagues would discuss whether or
10 not you could find employment outside of the NRA, correct?

11 A Yes. It's a natural discussion.

12 Q And that's because you know the NRA being a political
13 lightning rod, it might be difficult to find other employment, is
14 that correct?

15 A There was always that concern.

16 Q But then you stopped considering leaving the NRA after
17 you became the acting CFO in February of 2021, is that correct?

18 A Yes.

19 Q At its highest your salary as director of accounting
20 operations was about 180,000, is that correct?

21 A Yes.

22 Q And then when you became acting CFO in February of
23 2021, your salary increased to 400,000, is that correct?

24 A Yes.

25 Q Is that your current salary, 400,000?

1 A Yes.

2 Q Okay. To the best of your knowledge, Ms. Rowling,
3 between 2018 and 2022 who was responsible for the NRA's
4 compliance?

5 A 2018 to '22? I mean, compliance is the responsibility
6 of everyone in the organization. There are different roles
7 depending on -- the treasurer's role has some specific
8 compliance requirements in certain policies we have. And I know
9 the secretary and general counsel's office has specific
10 compliance requirements associated in that role as well.

11 (Continue on the next page.)

12

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Rowling - by Plaintiff - Direct/Thompson

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1 Q Are you aware of anyone at the NRA who has gone back
2 through expense reimbursements that were paid to NRA board
3 members while Mr. Phillips was treasurer to determine whether or
4 not board members received excess benefits?

5 A There would really be no reason to do that; not expense
6 reports. Expense reports always went through the normal
7 accounts payable process, which would have identified any
8 issues. I mean, Ms. Padilla was always very open about any
9 issues she would find. As well, the secretary's office issues
10 statements whenever board members travel through -- through --
11 for meetings, that there's a per diem rate and the secretary's
12 office, in their review of those expense reports, would -- would
13 have marked down anything that should -- was above and beyond
14 what was supposed to happen.

15 Q But, as we discussed -- I'm sorry.

16 Were you finished, Ms. Rowling?

17 A Yes.

18 Q But, as we discussed earlier, occasionally, while
19 Mr. Phillips was the treasurer, Accounts Payable would be
20 directed to pay something even though it didn't have appropriate
21 expense backup; right?

22 A He would on occasion, but I don't recall ever there
23 being an issue pointed out to me by Ms. Padilla about board
24 members.

25 Q But you don't know, right?

ALAN F. BOWIN, CSR, RMR, CRR

Rowling - by Plaintiff - Direct/Thompson

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1 A She would have pointed those out to me.

2 Q But she didn't?

3 A No.

4 Q Okay. And you don't, personally, know whether or not
5 anyone has reviewed board member expenses paid while
6 Mr. Phillips was the treasurer to see whether or not they had
7 the appropriate expense backup; right?

8 A I didn't feel it was necessary.

9 Q But you didn't, right?

10 A No, I did not.

11 Q Okay.

12 If you can please turn to -- or, actually, we'll pull
13 this one up on the screen. So this is already admitted into
14 evidence, the 2019 990, Plaintiff's Exhibit 159.

15 MR. THOMPSON: And if we can please go to page 99
16 of the exhibit ...?

17 (Image displayed.)

18 MR. THOMPSON: And if we can blow up the last box,
19 the one that says, "board member travel" ...?

20 (Image modified.)

21 MR. THOMPSON: Thank you.

22 Q So, Ms. Rowling, in the 2019 990, the NRA reported that
23 it was undertaking a review of whether or not certain board
24 members received business or first-class travel without prior
25 authorization; is that correct?

ALAN F. BOWIN, CSR, RMR, CRR

Rowling - by Plaintiff - Direct/Thompson

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1 A Yes.

2 Q And you were one of the people responsible for that
3 review; is that correct?

4 A Not responsible for the review. I was gathering
5 information associated with that review.

6 Q Right. So you were tasked with giving -- gathering the
7 data that would be used for the review; is that fair to say?

8 A Yes.

9 Q Okay. And that review occurred shortly before the
10 NRA's 2020 990 was filed in 2021; is that correct?

11 A The original review started, actually, before the
12 filing of this '19 990 and then there was an added request of
13 looking for years further back, right before this filing of this
14 990.

15 Q And so, that latter process, the one going further back
16 to look at board member travel, that occurred shortly before the
17 2020 990 was filed in 2021; correct?

18 A Yes.

19 (Image removed.)

20 Q Okay. And so, tab 7 of your binder contains the cover
21 e-mail for a spreadsheet, and I can -- we can -- show you the
22 spreadsheet separately.

23 MR. THOMPSON: But to begin with, I would like to
24 move into evidence Plaintiff's Exhibit 1914, if there's no
25 objection.

ALAN F. BOWIN, CSR, RMR, CRR

Rowling - by Plaintiff - Direct/Thompson

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1 THE COURT: Is the exhibit just the cover e-mail or
2 does it also include the attachment?

3 MR. THOMPSON: It will also include the attachment.

4 THE COURT: Okay. Do the defendants object?

5 MS. EISENBERG: No objection, your Honor.

6 MR. CORRELL: No objection.

7 MS. COUTU: No objection.

8 MR. FLEMING: No objection.

9 THE COURT: Okay. PX 1914 with attachment is
10 admitted.

11 MR. THOMPSON: Thank you.

12 (Image displayed.)

13 BY MR. THOMPSON:

14 Q So, looking at the cover e-mail first, Ms. Rowling, do
15 you recognize this to be the 2017 data that you provided to
16 Mr. Frazer as part of this review of board member travel?

17 A Well, this -- this e-mail is about an e-mail I sent to
18 Rick, but -- Mr. Tedrick -- but that -- it looks like that would
19 have been the -- the Excel surrounding the 2017 data.

20 Q Sure.

21 MR. THOMPSON: And can we pull up the Excel,
22 please?

23 (Image displayed.)

24 Q So, Ms. Rowling, we can, you know, scroll over or down
25 as you would like, but does this appear to be the collection of

ALAN F. BOWIN, CSR, RMR, CRR

Rowling - by Plaintiff - Direct/Thompson

1090

1 data from the NRA's travel vendor that was used to determine
2 whether or not board members flew with appropriate authorization
3 in 2017?

4 A Yes.

5 Q Okay.

6 And then --

7 MR. THOMPSON: We can take that down, Jesse.

8 (Image removed.)

9 Q And I would also like to show you Plaintiff's Exhibit
10 628, which is not in evidence -- and we'll need to turn off the
11 screens -- for identification.

12 628.

13 THE TECHNICIAN: That was 628.

14 MR. THOMPSON: That was 1914, I think, that we just
15 did.

16 Oh, sorry.

17 (Image displayed.)

18 THE COURT: So not --

19 MR. THOMPSON: Sorry.

20 Can you take this (indicating) down for a second?

21 (Image removed.)

22 MR. THOMPSON: Can we turn off the TV [sic], so we
23 can have Ms. Rowling look at it? Thank you.

24 THE COURT: Hang on one second.

25 (Pause.)

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Rowling - by Plaintiff - Direct/Thompson

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1 BY MR. THOMPSON:

2 Q So, Ms. Rowling, on the screen is an Excel that we've
3 marked as Plaintiff's Exhibit 628. Does this appear to be the
4 spreadsheet that was provided by the NRA's travel vendor,
5 showing the flight data for 2018?

6 A For 2018? Yes.

7 Q Okay.

8 MR. THOMPSON: And I would move to admit this into
9 evidence, your Honor.

10 THE COURT: Any objection?

11 MS. EISENBERG: The NRA has no objection, your
12 Honor.

13 MR. CORRELL: No objection.

14 MR. FLEMING: No objection.

15 MS. COUTU: No objection.

16 THE COURT: Okay. It's admitted.

17 (Image displayed.)

18 Q So, Ms. Rowling, in connection with that review of
19 board member travel that was reported in the 2019 990, your role
20 in the process was to collect this data, like the data in
21 Exhibit 628, and provide it to Mr. Frazer; is that correct?

22 A Yes.

23 Q And then Mr. Frazer, to the best of your understanding,
24 was the one who made a determination as to whether or not board
25 member travel that was first or business class was authorized;

ALAN F. BOWIN, CSR, RMR, CRR

Rowling - by Plaintiff - Direct/Thompson

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1 is that correct?

2 A Yes.

3 Q You had no role in that substantive determination about
4 whether or not it was authorized; correct?

5 A Correct.

6 Q Okay.

7 MR. THOMPSON: And you can take that down. Thank
8 you, Jesse.

9 (Image removed.)

10 Q And if you'd look at tab 21 of your binder,
11 Ms. Rowling, this is Plaintiff's Exhibit 2347, which is the --

12 MR. THOMPSON: Well, which I would move into
13 evidence.

14 THE COURT: Any objection?

15 Isn't this one you already moved in?

16 MR. THOMPSON: This is an amended one, your Honor,
17 not the original.

18 THE COURT: Okay.

19 Is there an objection to that one?

20 MS. EISENBERG: No objection.

21 MR. CORRELL: No objection.

22 MS. COUTU: No objection.

23 THE COURT: So this was outside the stipulation as
24 to the other ones?

25 (Laughter.)

ALAN F. BOWIN, CSR, RMR, CRR

Rowling - by Plaintiff - Direct/Thompson

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1 THE COURT: All right. Well, I'll go out on a limb
2 and admit it.

3 (Image displayed.)

4 BY MR. THOMPSON:

5 Q Ms. Rowling, this is the NRA's 2020 990 -- the amended
6 version -- correct?

7 A It's a little hard for me to tell, but I might have to
8 take your word for it.

9 Q If we look over -- towards the top, there's a little
10 "b, check if applicable," on the left-hand side and do you see,
11 there's a little mark, an amended return (indicating)?

12 A Yes, I see that.

13 Q Okay. And then you electronically signed this 990; is
14 that correct?

15 A Yes.

16 Q Okay. And then, if we can please go to page 88, using
17 the bottommost page numbers and the last box on that page ...

18 (Image scrolled.)

19 Q Let me know when you're there.

20 This reflects the NRA's report of the conclusion of its
21 review of the review of board travel; correct?

22 A Of ... of first-class and business-class flights, yes.

23 Q Okay. And the NRA reported that it believes such
24 travel was for a legitimate business purpose; correct?

25 A Yes.

ALAN F. BOWIN, CSR, RMR, CRR

Rowling - by Plaintiff - Direct/Thompson

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1 Q Okay. And, again, you did not have any role in making
2 that determination as to whether or not it was for a legitimate
3 business purpose; correct?

4 A No, I did not.

5 Q Okay. To the best of your knowledge, Ms. Rowling, did
6 Mr. Frazer make that determination?

7 A That's my understanding, yes.

8 Q Do you have any understanding of anyone else who was
9 involved in the process?

10 A I -- I don't know.

11 Q All right.

12 MR. THOMPSON: If we could please bring up
13 Plaintiff's Exhibit 2512, which is already in evidence, the
14 2018 990 ...

15 (Image displayed.)

16 Q And if we could go to page 16, please ...

17 (Image scrolled.)

18 Q And we're looking at section B, question 12.

19 (Image modified.)

20 Q So, Ms. Rowling, looking at question 12c of the NRA's
21 2018 990, the NRA reported that it consistently monitored and
22 enforced compliance with a conflict-of-interest policy; correct?

23 A Yes.

24 Q The NRA was paying the MMP entities in 2018; correct?

25 A Correct.

ALAN F. BOWIN, CSR, RMR, CRR

Rowling - by Plaintiff - Direct/Thompson

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1 Q The NRA was also paying an entity called McKenna and
2 Associates in 2018; correct?

3 A Correct.

4 Q And that was one of the entities that you and your
5 colleagues raised a concern about in the Top Concerns memo; is
6 that correct?

7 A Yes.

8 Q Specifically, because Joshua Powell, his --

9 MR. THOMPSON: I'm sorry. Did I just turn off?

10 Oh, there we go.

11 Q -- because Mr. Powell's wife worked for McKenna and
12 Associates; is that correct?

13 A That's correct.

14 Q And as far as you know, that was an undisclosed
15 conflict of interest; is that right?

16 A As far as I knew.

17 Q All right. And there were several other conflicts of
18 interest that you and your colleagues raised concerns --

19 MR. THOMPSON: Testing ...

20 Let me withdraw and try again.

21 Q There were also several other conflicts of interest
22 that you and your colleagues raised concerns about in the Top
23 Concerns memorandum; is that correct?

24 A Yes.

25 Q And that was in 2018; correct?

ALAN F. BOWIN, CSR, RMR, CRR

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1 A Yes.

2 Q Okay. And then, if we can please go to page 53 of
3 Exhibit 2512 ...

4 So this is Schedule J.

5 MR. THOMPSON: And if we could please look at
6 questions 1a through 2, just blow that up ...

7 (Image scrolled, then modified.)

8 MR. THOMPSON: Thank you.

9 Q So, in Schedule J, this is where the NRA reports
10 whether it provided certain benefits to certain executives; is
11 that correct?

12 A Yes.

13 Q And it also reports whether or not that was done
14 pursuant to a written policy; correct?

15 A Correct.

16 Q And it also requires the organization to say whether or
17 not it required substantiation prior to reimbursing for any of
18 those benefits; correct?

19 A "Prior"? I'm sorry; can you repeat that?

20 Q Sure.

21 MR. THOMPSON: Let me withdraw and try again.

22 A Sorry.

23 Q Question 2 of Schedule J here (indicating), Part I,
24 asks: "Did the organization require substantiation prior to
25 reimbursing or allowing expenses incurred by all directors,

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1 trustees and officers?" Right?

2 A Correct.

3 Q Okay. So the NRA reported, for 2018, that it did
4 provide first-class or charter travel; correct?

5 A Yes.

6 Q And travel for companions?

7 A Yes.

8 Q And housing allowances?

9 A Yes.

10 Q And health or social club dues.

11 A Yes.

12 Q And then the NRA reported that it followed a written
13 policy with respect to each of those items; correct?

14 A This -- this box is a little -- was a little confusing
15 in that I believe our paid preparer of this form at the time
16 took this to say, "Do some of -- do any of these have a policy?"
17 and the answer was "Yes." But if you were to go to where it
18 says, "If 'no,' please complete Part III," the explanation was
19 actually there, anyways, even if -- even though we didn't mark
20 the box itself "no."

21 So I -- I believe the paid preparer, at that point, had
22 a different view on how to check that box.

23 MR. THOMPSON: Move to strike as nonresponsive,
24 your Honor.

25 THE COURT: Overruled.

ALAN F. BOWIN, CSR, RMR, CRR

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1 Q Ms. Rowling, yes or no: The NRA reported, in 2018,
2 that the organization followed a written policy regarding the
3 payment or reimbursement or provision of all of the expenses
4 described in Part I, question 1a; correct?

5 A That box was marked "yes" --

6 Q Okay.

7 A -- to that question.

8 Q All right. And then, if we can, please -- if you can
9 look at tab 18 of your binder, this is another amended 990.

10 MR. THOMPSON: Which I will move into evidence;
11 Plaintiff's Exhibit 2346.

12 (Image removed.)

13 THE COURT: Any objection?

14 MS. EISENBERG: None, your Honor.

15 THE COURT: It's admitted.

16 (Image displayed.)

17 Q So, Ms. Rowling, this is the NRA's amended 2018 990;
18 correct?

19 A Yes.

20 Q Which you signed in November of 2021; correct?

21 A Yes.

22 Q Okay. And if you can please go to page 6 --

23 (Image scrolled.)

24 Q -- we're looking at section B, question 11a and -b.

25 (Image modified.)

ALAN F. BOWIN, CSR, RMR, CRR

Rowling - by Plaintiff - Direct/Thompson

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1 Q "Has the organization provided a complete copy of this
2 Form 990 to all members of its governing body before filing the
3 form?" And the NRA checked "yes"; correct?

4 A Yes.

5 Q And you did not provide a copy of the amended return to
6 the full board before it was filed, did you?

7 A No.

8 Q Okay. And then please go to page 96 of Exhibit 2346.

9 (Image scrolled.)

10 Q So, Ms. Rowling, this is Schedule J of the amended
11 2018 990, and the NRA reported that it provided first-class
12 travel, travel for companions, housing allowances, and health
13 and social club dues in 2018; correct?

14 A Yes.

15 Q And then the NRA again checked that it followed a
16 written policy regarding payment or reimbursement or provision
17 of all of the expenses described in Part I, question 1a;
18 correct?

19 A That box is checked "yes."

20 Q You didn't do anything to ensure the accuracy of this
21 statement when you filed the amended 2018 990, did you?

22 A I relied on the process of -- that we have in place in
23 order to compile the information for this 990 and the fact that
24 it was done by a paid preparer.

25 Q Yeah. And so, the paid preparer recommended that you

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1 check "no" to a box that says "reimbursement or provision of all
2 of the expenses described above"?

3 THE COURT: I think you may have --

4 MR. THOMPSON: Cut out there?

5 THE COURT: You may not have used the word that you
6 were intending to use.

7 MR. THOMPSON: Oh, okay.

8 Let me withdraw and try again.

9 Q So, did you rely on your paid preparer when answering
10 "yes" to a question asking whether or not the NRA followed a
11 written policy regarding reimbursement or provision of all of
12 the expenses described in Part I, question 1a, of the 990?

13 A I was not involved in the original process, so I wasn't
14 going to question that original process. I was not involved in
15 the preparation of the original 2018 990.

16 Q The NRA did not, in fact, follow a written policy
17 regarding travel -- charter travel -- in 2018; correct?

18 A That's correct.

19 Q The NRA did not follow a written policy regarding
20 travel for companions in 2018; correct?

21 A Let me restate that: We didn't have a written policy
22 regarding those things.

23 Q Right. So the NRA didn't follow a written policy
24 regarding any of these things -- right? -- except for
25 first-class travel.

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Rowling - by Plaintiff - Direct/Thompson

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1 A That's correct.

2 Q Okay. So the NRA's paid preparer, to the best of your
3 understanding, recommended that because you have -- because the
4 NRA, at the time, had -- a policy governing first-class travel,
5 that it was okay to check "yes" to question 1b of Schedule J;
6 correct?

7 A And then provide explanation on Part III.

8 Q The ... Let me go to the Part III explanation.

9 MR. THOMPSON: I think it's one or two pages down,
10 Jesse.

11 (Image scrolled.)

12 MR. THOMPSON: There we go. Great.

13 Q So the --

14 MR. THOMPSON: I'm sorry.

15 (Image modified.)

16 MR. THOMPSON: There we go.

17 Q So this is page 98 of Exhibit 2346.

18 Are you referring to the explanation that begins, "Part
19 I, line 1a," at the top here (indicating), Ms. Rowling?

20 A Yes.

21 Q So that says: "Charter travel was used on occasions
22 when travel logistics or security" --

23 THE COURT: Read a little more slowly.

24 MR. THOMPSON: I'm sorry.

25 Q -- "Charter travel was used on occasions when travel

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1 logistics or security concerns precluded other available
2 options"; correct?

3 A Yes.

4 Q It doesn't say that there was no policy for charter
5 travel; correct?

6 A No, but the -- the requirement is to say what it was
7 used for, not that there was no policy. It said, "Please
8 explain."

9 (Pause.)

10 Q Ms. Rowling, a paid preparer did not sign the amended
11 2018 990; correct?

12 A That's correct.

13 Q Did an external consultant review the amended 2018 990?

14 A I don't recall.

15 Q The NRA had an external consultant for reviewing 990s
16 at the time; correct?

17 A Yes.

18 Q That was Aronson -- is that right? -- at the time?

19 A Aronson would review their -- the -- the 990s that were
20 done with -- when they were our auditors, but we also had a tax
21 attorney reviewing 990s.

22 Q Okay.

23 MR. THOMPSON: So can we go back up, please, to
24 page 96, Jesse, of Exhibit 2346?

25 (Image scrolled.)

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1 Q So question 1b, Ms. Rowling, asks: "If any of the
2 boxes on line 1a are checked, did the organization follow a
3 written policy regarding payment," etcetera, "of all of the
4 expenses described above? If 'no,' complete Part III to
5 explain." Correct?

6 A Yes.

7 Q And so, you're interpreting that to mean, you don't
8 have to explain whether or not you have a policy in Part III?

9 A I -- no, I don't. It doesn't say that. It says,
10 "explain."

11 Q Right. You're only supposed to explain if you check
12 "no"; correct?

13 A Correct.

14 Q And so, the NRA was checking "yes" and then not saying
15 whether or not it had a policy in its Part III explanation;
16 correct?

17 A The -- the NRA, at that time, was -- was -- was
18 basically saying -- let me -- let me back up.

19 Q It was a yes-or-no question, Ms. Rowling.

20 THE COURT: She can answer.

21 MR. THOMPSON: Okay.

22 A We've changed the way we've answered that question
23 going forward. In hindsight, it probably should have been
24 marked "no." But there was no intent to try to provide, or not
25 provide, information, because the information was actually

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1 provided.

2 Q Except you didn't provide the information that there
3 was no policy for charter travel; correct?

4 A Well, we didn't specifically state that, but we filled
5 out as if it was -- the question asks, "If there's no policy,
6 please explain." So the assumption there is, you explain when
7 there is no policy.

8 Q Is that the assumption you expect for somebody who sees
9 the mark [sic] checked "yes," that all of the above -- all of
10 the above reimbursements are provided pursuant to a written
11 policy?

12 A No. Like I said, we have -- since this return has been
13 filed, we filed other ones with a different answer.

14 Q You don't always rely on your tax consultant when
15 answering questions in the 990, do you, Ms. Rowling?

16 A We rely on multiple sources.

17 Q For example, you have in the past determined not to ask
18 your external tax consultant about information that should be
19 disclosed on Schedule J because you were concerned she would
20 tell you to provide too much information; right?

21 A The -- the e-mail that you are referring to, if you
22 would like to submit that, did not disclose a verbal
23 conversation that was had between myself and someone else on
24 that --

25 Q Sure.

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1 A -- on this e-mail. I mean ...

2 Q Let's take a look at it; tab 20, please, of your
3 binder, which is Plaintiff's Exhibit 56.

4 MR. THOMPSON: Which I will move to admit.

5 THE COURT: Any objection?

6 MS. EISENBERG: None, your Honor.

7 MR. CORRELL: No, your Honor.

8 THE COURT: It's admitted.

9 (Image displayed.)

10 Q All right. So, at the top, Ms. Rowling, this starts
11 with an e-mail exchange between you, Mr. Tedrick, and Arif
12 Rahman; correct?

13 A Yes.

14 MR. THOMPSON: And that's R-a-h-m-a-n.

15 Q Who is Mr. Rahman?

16 A He was an employee that worked on the 990s.

17 Q Okay. And so, this is an e-mail exchange that concerns
18 disclosure of social club dues on Schedule J of the 990;
19 correct?

20 A Yes.

21 Q And if you could please turn to page 2, looking at your
22 e-mail at the top of the page --

23 (Image scrolled.)

24 Q -- you write: "I don't think we have to name names or
25 dollar amounts when checking the box 'yes,'" the "box" being

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1 question 1a, asking if social club dues were paid for on the
2 990; correct?

3 A Yes.

4 Q And then Mr. Tedrick, at the top of that page, carrying
5 over from the previous page, asks: "Can we ask Kathy for some
6 good language for here"; right?

7 A Yes.

8 Q And "Kathy" there is Kathy Cuddapah; is that correct?

9 A Yes.

10 MR. THOMPSON: And let me find how to spell
11 Ms. Cuddapah's name for our reporter.

12 That's C-u-d-d-a-p-a-h.

13 Q Ms. Cuddapah was the lead tax partner at Aronson in
14 2020; correct?

15 A Yes.

16 Q And then, in response to Mr. Tedrick's e-mail about
17 whether you should ask your Aronson tax partner for the language
18 on Schedule J, you write: "The issue with asking Kathy is,
19 she's going to say we need to state names and amounts, too, but
20 the actual instructions do not say we need to say that. This
21 was also confirmed by the legal team Craig is working with.
22 Arif can go ahead and ask but I expect she will say that."

23 Right?

24 A Yes.

25 (Continued on next page.)

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1 Q And Mr. Tedrick responds, "Agreed. Don't ask", right?

2 A Yes.

3 Q Okay. And then you did not, in fact, ask your Aronson
4 tax partner, the person you paid to consult with on preparing
5 schedule -- well the entire 990, about what information should
6 be disclosed in Schedule J, correct?

7 A Arif spoke with her. However, the instructions don't
8 require it and tax attorneys said it was not required. There
9 was really no reason to continue asking. When you have
10 difference of opinions you -- when the actual 990 instructions
11 do not require it, there was no reason to add it.

12 MS. ROGERS: The NRA is going to instruct Ms.
13 Rowling not to testify about the content of legal advice
14 from tax attorneys or any other NRA lawyers.

15 MR. THOMPSON: I think we've opened the door, your
16 Honor.

17 THE COURT: It's actually in the e-mail. But I
18 think you've gone as far as you need to go. I don't think
19 there is any broader opening than that.

20 Q What legal team are you referring to in your e-mail,
21 Ms. Rowling?

22 A That was Don Land.

23 Q And did Mr. Land review the entirety of the 990?

24 A Yes, he did.

25 Q Did Mr. Land sign the 990?

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1 A No, he did not.

2 Q The NRA hired Aronson to be its tax consultant for the
3 990 in 2020, correct?

4 A Yes.

5 Q And you didn't think to ask your tax consultant for her
6 advice on the interpretation of the 990 instructions about
7 disclosures in Schedule J?

8 A As I said, Arif had a verbal conversation with Kathy on
9 that.

10 Q Did you personally witness that conversation?

11 A No, I did not.

12 Q Okay. So, prior to the bankruptcy in 2021 the NRA had
13 two separate credit card programs, correct?

14 A Yes.

15 Q One was a Wells Fargo card that was used by most NRA
16 staff members for business expenses, is that correct?

17 A Certain NRA staff members.

18 Q Certain NRA staff members. And then separately there
19 was also an AmEx card program, correct?

20 A Correct.

21 Q And the way that worked is that Mr. Tedrick had a line
22 of cards and Mr. Phillips had a line of cards, correct?

23 A Yes.

24 Q And those cards were in their names individually. So,
25 for example, Mr. Tedrick's card was in his name, correct?

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1 A Yes.

2 Q Okay. It wasn't an NRA card, it was Tedrick's card
3 that was used for NRA business, correct?

4 A No. It was Tedrick's credit behind the card.

5 Q Right. And in the past Mr. Tedrick had unfettered
6 access to use the points that were generated on the AmEx card,
7 correct?

8 A I am not fully familiar with what they were used for.
9 I know what I've allowed under me.

10 Q And one thing that you allowed under you was for Mr.
11 Tedrick to use the points to purchase a Bahamas trip for himself
12 in December of 2021, correct?

13 A Actually that's a little confusing. The way -- And I
14 have -- Because Mr. Tedrick had his own personal card and then
15 cards underneath him, all the points rolled up into one line. I
16 had Mr. Tedrick separate out the points that he accumulated
17 versus the points that he accumulated personally on his personal
18 charges. Had nothing to do with business. Those were separate
19 from what charges were incurred by business.

20 So, the points, even though it looks like on the
21 statements that they were utilizing NRA points, they actually
22 weren't. They were utilizing his personal points.

23 Q Mr. Tedrick had a personal AmEx card and an NRA AmEx
24 card, correct?

25 A He did.

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1 Q And --

2 A But the points rolled up into the top. Because they
3 were all under the same credit. I know this is not easy to
4 understand but -- (pause).

5 Q He generated points separately on his personal card
6 from his business card, correct?

7 A He did.

8 Q And then he used points generated by the NRA card to
9 pay for a Bahamas trip in 2021, correct?

10 A No. No. That's not how it came out. I know it --
11 It's a little bit tricky. All of his points, because it was all
12 under his -- under an umbrella of a credit rolled into the same
13 points basket. So, he tracked separately for me what would be
14 considered personal.

15 MR. THOMPSON: Can we bring up, please, Ms.
16 Rowling's deposition, page 291, 16, I think, to 19.

17 Q So, Ms. Rowling, at your deposition in 2022 you were
18 asked, "He", meaning Mr. Tedrick, "used points from his NRA AmEx
19 card to finance that trip, is that correct?" And you answered,
20 "Yes, used NRA points to pay for that", correct?

21 A Yes. That was my confusion at the time too and how
22 that rolled up.

23 Q Okay. But that is how you testified in 2022.

24 A Again, in trying to figure out all of this, I have
25 since received completely separate reporting on what was NRA

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1 points and what was his.

2 Q Okay.

3 MR. THOMPSON: Move to strike as nonresponsive,
4 your Honor.

5 THE COURT: Overruled.

6 Q Several years ago Aronson recommended that the NRA
7 conduct an audit of its credit cards, is that correct?

8 A Yes.

9 Q And you conducted an audit of the Wells Fargo cards, is
10 that correct?

11 A Yes.

12 Q To the best of your knowledge no such audit was
13 conducted of the AmEx cards, is that correct?

14 A Not -- not a full lot of it, no.

15 Q To the best of your knowledge no audit of the kind that
16 was recommended by Aronson was conducted of the AmEx cards, is
17 that correct?

18 A Not that I'm aware of.

19 Q Ms. Rowling, you have observed occasions where Mr.
20 Tedrick appeared to be intoxicated at work, is that correct?

21 A There was an appearance of that.

22 Q You did not know that the bankruptcy was being filed in
23 2021 prior to its being filed, is that correct?

24 A That's correct.

25 Q Okay. And after the bankruptcy ended, you conducted an

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1 analysis of how much the NRA's bankruptcy in Texas cost the NRA,
2 is that correct?

3 A Yes.

4 Q You determined that it cost the NRA between ten and
5 \$12 million, is that correct?

6 A That's -- that sounds about right.

7 Q In the end the bankruptcy also had a number of
8 unintended consequences for the NRA, correct?

9 A Yes.

10 Q For example, the NRA's FedEx account was suspended?

11 A Yes.

12 Q And the NRA lost its AmEx card?

13 A Yes.

14 Q And then the NRA also suffered reputational harm with a
15 number of its vendors, correct?

16 A Yes.

17 Q So, Ms. Rowling, the NRA suffered reputational harm
18 with a number of its vendors as a result of the bankruptcy, is
19 that correct?

20 A Yes.

21 Q So, for example, the NRA had a relationship with a
22 number of its longer standing vendors, which included push out
23 payments on invoices to give you more breathing room, for
24 example, is that correct?

25 A Yes.

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1 Q And you lost the ability to do that with some of your
2 vendors, is that correct?

3 A Yes.

4 Q If you could please look at tab 40.

5 MR. THOMPSON: We can pull this up on the screen
6 please, Jessie. This is Plaintiff's Exhibit 3002.

7 THE COURT: Is it in evidence?

8 MR. THOMPSON: It is not yet in evidence, your
9 Honor.

10 THE COURT: All right. So you have to turn the
11 screen off momentarily.

12 Q So, Ms. Rowling, for Plaintiff's Exhibit 3002, do you
13 recognize this e-mail?

14 A (Examining). I mean, I see it, yes.

15 Q We can pull up the attachments. Do you recognize these
16 to be Excell's that you maintained in the course of the NRA
17 business?

18 A Yes.

19 MR. THOMPSON: Move to admit, your Honor.

20 THE COURT: I think she has to be able to see the
21 attachments to be able to confirm.

22 MR. THOMPSON: Sure. Can we please bring up the
23 first attachment, Jessie.

24 Q Do you recognize this to be an Excell that you
25 maintained, Ms. Rowling?

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1 A (Examining). Yes.

2 MR. THOMPSON: Can we pull up the second
3 attachment.

4 Q And this one as well, Ms. Rowling?

5 A (Examining). Yes.

6 THE COURT: Any objection?

7 MS. EISENBERG: None, your Honor.

8 MR. CORRELL: No, your Honor.

9 MS. COUTU: No, your Honor.

10 MR. FLEMING: No objection.

11 THE COURT: It's admitted.

12 Q Sticking with this Excell, Ms. Rowling, this is a --
13 this is the budget for EVP consulting services between 2008 and
14 2018, is that correct?

15 A Let's -- let's be clear. What you're showing is not
16 the actual budget.

17 Q This is the amounts actually paid out of the budget, is
18 that correct?

19 A That's correct.

20 Q Okay. And so what this spreadsheet shows is the
21 amounts actually paid out of the EVP consulting budget between
22 2008 and 2018, correct?

23 A Yes.

24 Q And that's what the actual means? It's the actual
25 amount spent?

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1 A Yes.

2 Q Okay. And then if you could please --

3 MR. THOMPSON: You can take that down, Jessie.

4 Q If you could please look at tab 49 of your binder.

5 It's the very last tab.

6 MR. THOMPSON: I'm not sure there is an objection
7 to this, so I will move to admit it as Plaintiff's
8 Exhibit 5104.

9 THE COURT: Any objection?

10 MS. EISENBERG: None, your Honor.

11 MR. CORRELL: None.

12 MS. COUTU: No, your Honor.

13 MR. FLEMING: No.

14 THE COURT: It's admitted.

15 Q Ms. Rowling, do you recognize this to be a printout
16 from the Institute For Legislative Actions general ledger?

17 A (Examining). I can't -- I didn't create this document.

18 I can't verify that that's the case or not.

19 Q Okay.

20 A And I've just seen it two days ago for the first time.

21 Q Okay. Are you familiar --

22 MR. THOMPSON: We can take that down, Jessie.

23 Q Are you familiar with the public relations budget?

24 A I know it exists.

25 Q Did you have any role in the public relations budget

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Direct-Rowling-Thompson

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1 while you were in accounting operations?

2 A No, I did not.

3 Q Do you have any familiarity with the vendors that were
4 included in the public relations budget?

5 A Some.

6 Q Was Ackerman included in the public relations budget to
7 the best of your knowledge?

8 A Yes.

9 Q What about Associated Television International?

10 A It sounds right.

11 Q Under Wild Skies?

12 A Yes.

13 Q Do you know if Ms. Hallow had a business expense -- a
14 business expense line item in the public relations budget?

15 A I can't. I can't speak to that today.

16 Q What about The Washington Times, do you know if that
17 was in the public relations budget?

18 A I don't recall.

19 Q Youth for Tomorrow?

20 A Don't recall where those were.

21 Q Okay. Ms. Rowling, you're familiar with the concept of
22 Wayne said approvals, right?

23 A With that concept, yes.

24 Q Wayne set approvals currently violate the NRA's
25 internal controls, right?

LAS

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1 A The Wayne set approvals aren't allowed at this point.

2 Q Right. And they haven't been allowed since Mr. Spray
3 joined the NRA, correct?

4 A That's correct.

5 Q Okay. You're familiar with Chris DeWitt?

6 A Yes.

7 Q And DeWitt is spelled D-E-W-I-T-T, capital W. Mr.
8 DeWitt was an employee in Advancement, is that correct?

9 A Yes.

10 Q And he reported to Mr. Schropp, is that right?

11 A Yes.

12 Q And was Mr. DeWitt was fired in 2022?

13 A Yes.

14 Q Do you know why he was fired?

15 A It was a continual habitual issue with expense reports,
16 credit cards. Could be other things, but that was what I was
17 aware of.

18 Q Right. So, for years Mr. DeWitt repeatedly violated
19 the NRA's credit card and expense reimbursement policies, is
20 that fair to say?

21 A Yes.

22 Q Okay. And you brought Mr. DeWitt's credit card and
23 expense reimbursement issues to Mr. Schropp's attention several
24 times, didn't you?

25 A Yes. It was brought to him several times.

LAS

Direct-Rowling-Thompson

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1 Q That was over a several year period, is that correct?

2 A Yes.

3 Q So if you can look at tab 13 of your binder, which is
4 Plaintiff's Exhibit 1476.

5 MR. THOMPSON: Which I will move to admit.

6 THE COURT: Any objection?

7 MS. EISENBERG: None, your Honor.

8 MR. CORRELL: No, your Honor.

9 MS. COUTU: No, your Honor.

10 THE COURT: Hearing none, it's admitted.

11 Q So, Ms. Rowling, this is an e-mail from Ms. Padilla to
12 you and Mr. Tedrick in August of 2017, correct?

13 A Yes.

14 Q And in this e-mail is it fair to say that Ms. Padilla
15 is describing a number of Mr. DeWitt's improper expenses?

16 A Yes.

17 Q And those included spending more in June for rental
18 cars than Chris Cox, Wayne LaPierre and Tyler Schropp's monthly
19 vehicle leases combined, correct?

20 A That is what she says, but I'm not sure that that's
21 actually true but -- (pause).

22 Q And if you look at page 2 of this Exhibit 1476, this is
23 an invoice for a tuxedo rental, is that correct?

24 A Yes.

25 Q And Mr. DeWitt spent about \$958 on a tuxedo rental?

LAS

Direct-Rowling-Thompson

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1 A Yes.

2 Q Okay. And then if you can go to the next tab in your
3 binder, tab 14, which is Plaintiff's Exhibit 2050.

4 MR. THOMPSON: I will also offer this into
5 evidence.

6 THE COURT: Any objections?

7 MS. EISENBERG: No objection.

8 MR. CORRELL: No objection.

9 MS. COUTU: No objection.

10 THE COURT: Hearing none, it's admitted.

11 Q So, Ms. Rowling, this -- so you are not on the top most
12 e-mail. You are on the e-mail that Ms. Padilla sent on
13 February 22nd, 2018 at 3:54 p.m., right?

14 A Yes.

15 Q And this is another example of Mr. DeWitt's improper
16 expenses, correct?

17 A Yes.

18 Q So, for example, if you go to the very -- page 5, the
19 last page, you can see about half way down the column Mr. DeWitt
20 had a number of Apple iTune expenses, right?

21 A Yes.

22 Q And car washes, right?

23 A Yes.

24 Q And then at the top it looks like there is a \$779
25 charge to LinkedIn, right?

LAS

Direct-Rowling-Thompson

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1 A Yes.

2 Q Mr. Schropp would stop any efforts to discipline Mr.
3 DeWitt, right?

4 A I -- Yes. I mean, he would not necessarily discipline,
5 but well I guess maybe you could call it discipline.

6 Q And if you can take a look please at tab 16 of your
7 binder, which is Plaintiff's Exhibit 1758.

8 MR. THOMPSON: Which I will offer into evidence
9 subject to redaction of the personal information.

10 THE COURT: Any objection?

11 MS. EISENBERG: No objection.

12 MR. CORRELL: No.

13 THE COURT: It's admitted subject to the redaction.

14 Q So, Ms. Rowling, this is a text message from you to
15 Mr. Spray in October of 2018, correct?

16 A Yes.

17 Q And you write, "Tyler Schropp had always been the one
18 to put a stop to any action against Chris in the past", correct?

19 A Yes.

20 Q And Chris there is Chris DeWitt?

21 A Yes.

22 Q Okay. Mr. DeWitt's issues with expense reimbursements
23 continued until he was fired, is that correct?

24 A I know there were instances. I don't know if they --
25 how prevalent, but there were definite issues and continuing

LAS

Direct-Rowling-Thompson

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1 issues with his expenses.

2 MR. THOMPSON: If we can please --

3 Q If you could please look at tab 17 of your binder,
4 which is Plaintiff's Exhibit 2137.

5 MR. THOMPSON: Which I will offer into evidence.

6 THE COURT: Any objection to this one?

7 MR. CORRELL: No objection.

8 MS. EISENBERG: No objection.

9 MR. FLEMING: No objection.

10 THE COURT: It's admitted.

11 Q Ms. Rowling, starting on the second page, this is -- it
12 starts with an e-mail from Mr. Schropp asking for a raise for
13 Mr. DeWitt based on a Wayne said approval. Is that fair to say?

14 A Yes.

15 Q And this is in June of 2021, correct?

16 A Yes.

17 Q This is shortly after the bankruptcy ended?

18 A Yes.

19 Q And you respond, "Physically signed paperwork. Must be
20 submitted to HR in order for this process to happen. It cannot
21 be Wayne said", right?

22 A Yes.

23 Q Then Ms. Crouch is the head of HR, is that correct?

24 A Yes.

25 Q Is she still the head of HR?

LAS

Direct-Rowling-Thompson

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1 A Yes.

2 Q And she writes to you separately that, "Mr. Grable
3 attempted something similar with respect to bonuses for some of
4 Mr. Grable's -- people in Mr. Grable's department, correct?

5 A Yes.

6 Q And Mr. Grable was the former head of Membership, is
7 that right?

8 A That's correct.

9 Q When did Mr. Grable leave?

10 A I don't know the exact timeframe of his departure.

11 Q Was it last year or the year before, to the best of
12 your recollection?

13 A The years have all muddled together. I don't want to
14 try to guess at this point.

15 Q And Ms. Crouch writes, "I remain stunned that we have
16 to revisit this frequently." She then relays the issue with Mr.
17 Grable and writes, "People have learned nothing", right?

18 A Yes.

19 Q And you respond, "I hear you. It's ridiculous", right?

20 A Yes.

21 Q Wayne said approval being a violation of internal
22 controls was not new in June of 2021, correct?

23 A No.

24 MR. THOMPSON: No further questions, your Honor.

25 THE COURT: Okay. Why don't we take our afternoon

LAS

1 break now and then we'll go to the other questioning.

2 THE COURT OFFICER: All rise. Jury exiting.

3 (Whereupon the jury panel departed the courtroom.)

4 (Whereupon a recess was taken.)

5 (Continue on the next page.)

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Rowling - by Plaintiff - Cross/Eisenberg

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1 (The witness resumed the stand.)

2 (Pause.)

3 COURT OFFICER: The Court is ready for the jury?

4 THE COURT: Yes.

5 COURT OFFICER: All rise. Jury entering.

6 (The jury entered the courtroom.)

7 THE COURT: Okay. Welcome back. Have a seat,
8 please.

9 Okay, cross-examination?

10 MS. EISENBERG: Yes, your Honor.

11 CROSS-EXAMINATION

12 BY MS. EISENBERG:

13 Q Good afternoon, Ms. Rowling.

14 A Hi.

15 Q You testified earlier about speaking to the Audit
16 Committee in or around July of 2018. Do you remember telling us
17 about that?

18 A Yes.

19 Q Leading up to that meeting, what, if any, conversations
20 did you have with Craig Spray?

21 A Do you mean immediately leading up to that meeting? I
22 didn't have any. He was out on medical.

23 Q What about in general?

24 A In general, yes, of course.

25 Q Can you tell us about those conversations?

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1 A Sure. We would -- I would have meetings with
2 Mr. Spray; we were -- we would discuss any -- any sorts of -- of
3 things, including some of these issues.

4 Q And did he encourage you to convey these issues to
5 other individuals within the organization?

6 A Yes, he did.

7 Q To whom did he encourage you to convey them?

8 A The first was the Brewer firm, and then again to the
9 Audit Committee.

10 Q And did you convey them to the Brewer firm?

11 A Yes.

12 Q Did you convey them to the Audit Committee?

13 A Yes.

14 Q Charles Cotton was a member of the Audit Committee at
15 the time, right?

16 A Yes.

17 Q Had you conveyed any of those concerns to him before
18 the meeting?

19 A Yes, I did.

20 Q You mentioned that Mr. Spray was on medical leave, I
21 believe?

22 A Yes.

23 Q Can you tell us a little bit about that, and the timing
24 of that relative to the meeting?

25 A It was about a week and a half to two weeks before the

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1 meeting; Mr. Spray suffered a massive heart attack and was not
2 available.

3 Q And how, if at all, did that affect your state of mind
4 going into that meeting, when you knew he wasn't necessarily
5 going to be there or at the NRA while he was recovering?

6 A There was a -- a lot of concern. He was the -- the
7 person who gave us that empowerment to -- to go to the
8 committee, so him not being there as, kind of, our -- our -- our
9 safety net was a little -- was scary.

10 Q And how, if at all, did that relate to the personal
11 statement that you prepared leading up to the meeting?

12 A Well, that -- that definitely had something to do with
13 it.

14 Q Please describe what happened at the meeting with the
15 Audit Committee.

16 A The Audit Committee had basically invited us to -- to
17 share what we -- what we had on that memo. Each individual
18 person who had something to -- to add or -- or talk about --
19 each piece -- spoke. The Audit Committee was extremely
20 receptive. At the end, they -- Mr. Coy specifically -- said:
21 "We hear you. It might seem like this is going to take a while
22 to address your concerns, but please know they will be
23 addressed, and they are going to be addressed."

24 Q We looked earlier at a text message you exchanged with
25 Emily Cummins in September of 2018 about the Audit Committee's

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1 report. Do you remember --

2 A Yes.

3 Q -- looking at that text?

4 A I do.

5 Q And it's clear from the text message that you were
6 somewhat upset based on the report, and can you tell us how you
7 feel about that report now?

8 A Well, now I realize that the discussions we had at that
9 meeting were all in executive session; they could not have been
10 reported on that -- on that report. So, even though what --
11 where we felt like we weren't heard, that was really more of
12 a -- a kind of a secretarial issue relating to minutes of a
13 meeting.

14 Q Understood.

15 And external counsel Steve Hart, is that someone you
16 knew while he was affiliated with the NRA?

17 A Yes.

18 Q Is he still affiliated with the NRA?

19 A No, he's not.

20 Q We talked a little bit -- or you and
21 Mr. Thompson talked -- about the issues that you raised with the
22 Audit Committee. Do you remember overrides of internal controls
23 being one of them?

24 A Yes.

25 Q Let's pick a date; let's say, August 1st, 2020. Would

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1 you say -- or to what extent, if any, do you -- have you seen
2 external -- have you seen internal control overrides since
3 August 1st, 2020?

4 MR. THOMPSON: Objection on relevance and scope,
5 your Honor. Questioning was limited to 2022 and before.

6 THE COURT: I don't think I can slice it that
7 finely.

8 Overruled.

9 Go ahead.

10 Q Would you like the question repeated?

11 A Yes, please.

12 Q You told us about one of your concerns being override
13 of internal controls.

14 A Yeah.

15 Q To what extent, if any, have you seen internal controls
16 overridden at the NRA since August 1st, 2020?

17 A I have not seen any of those controls overridden.

18 Q You also told us that one of the concerns that you
19 conveyed to the Audit Committee was that expense reimbursements
20 were sometimes happening without appropriate backup. Remember
21 that testimony?

22 A Yes.

23 Q To what extent, if any, have you seen inappropriate
24 expen -- I'm sorry.

25 To what extent have you seen expense reimbursements

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1 happen without appropriate backup since August 1st, 2020?

2 MR. THOMPSON: Same objection, your Honor.

3 THE COURT: Overruled.

4 A I have not been notified of any, and I would rely on my
5 staff to do so.

6 Q There was testimony earlier about certain expenses
7 being paid through Ackerman's OOP. Do you remember that
8 testimony?

9 A Yes.

10 Q To what extent, if any, have you seen executive
11 expenses being paid through Ackerman's OOP since August 1st,
12 2020?

13 A None.

14 Q What about through expense invoices from any other
15 vendor?

16 A I'm sorry; can you repeat that?

17 Q Have you seen --

18 To what extent, if any, have you seen NRA executive
19 expenses being reimbursed through out-of-pocket expenses of any
20 vendor of the NRA --

21 MR. THOMPSON: Same objection.

22 THE COURT: Overruled.

23 Q -- since August 1st, 2020?

24 A None. There have been none.

25 Q Mr. Thompson played for us a recording from a

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1 deposition that you gave in this case, and fair to say that you
2 became somewhat emotional when you were asked questions about
3 the meeting?

4 A Yes.

5 Q Can you tell us a little bit about what made you feel
6 that way at the time?

7 A We had -- I had heard through a colleague that Steve
8 Hart, who we referred to earlier, who was an outside advisor --
9 that there was a -- that he wanted to try to manipulate this --
10 our -- our list and our concerns to make it be the accountants'
11 fault.

12 MS. ROGERS: And I think this testimony is okay,
13 but I'm just going to caution the witness again not to
14 reveal the content of legal advice requested or received
15 from any NRA lawyer.

16 Q So I think the question that you were answering is:
17 Tell us a little bit about what made you so emotional during the
18 deposition.

19 A Yeah.

20 Well, that was -- that was the extent of it. I mean,
21 it was -- it was -- at the time, when -- when you're going
22 through something like bringing up whistleblowing issues,
23 you're -- you're stepping outside of -- almost kind of like on a
24 limb and you hope that people are there to protect you, and I
25 have found that I have been. But at the time, you just --

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1 there's concern. You're -- you're speaking out against
2 potential wrongdoing of your ultimate bosses; not -- it's not an
3 easy thing to do. And when you have advisors to those people
4 wanting to feel like they want to manipulate, you don't know if
5 they've talked to them or if they're just hearing this story
6 that they want to make it the accountants' fault.

7 And so, that's what made me very emotional about
8 talking about that.

9 Q Let's talk a little bit about Chris DeWitt. What has
10 been your experience with his expense reimbursement requests
11 while he was still at the NRA?

12 A Ms. Padilla would always flag them. She -- if there
13 were missing documents, missing items. When it was on a credit
14 card, she would actually -- until we received all of the backup
15 that was needed, she would put it into a receivable account,
16 meaning he was expected to pay it back until we had received the
17 proper documentation. If we did not receive proper
18 documentation, if it was determined to be personal, he would
19 actually have to reimburse that.

20 It changed a little with -- when there were actual
21 expense reports. Where he had already incurred the expense, if
22 something came through, it wouldn't even be paid; it would be
23 rejected up-front.

24 And at -- at another point, he was given a travel
25 advance and we wouldn't give a second one until the advance was

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1 substantiated with legitimate business expenses.

2 So there was -- he seemed to be this habitual problem.
3 It was either late or it was -- especially with the credit
4 cards, just not -- no documentation until we could -- we'd have
5 to chase it down. It was time-consuming on the staff to try to
6 chase that down.

7 Q Did you have an understanding as to what Mr. Schropp's
8 view was of Mr. DeWitt as an Advancement employee?

9 A He was a very valued Advancement employee, with
10 relationships with donors that were deemed critical to the
11 organization.

12 Q And despite him being valued in that regard, did you,
13 personally, agree with the decision to discontinue his
14 employment at the NRA?

15 A I did.

16 MR. THOMPSON: Objection; leading, your Honor.

17 THE COURT: Overruled.

18 Q Let's talk a little bit about Ms. Padilla.
19 Mr. Thompson asked you if she still works here. Can you please
20 tell the members of the jury about her career at the NRA?

21 A Ms. Padilla has been with the NRA for almost 20 years,
22 if not 20 at this point; a very valued employee, very diligent
23 and knowledgeable in all things accounts payable.

24 Q And what role, if any, does she play at the NRA in
25 terms of enforcing its internal controls?

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1 A She is the -- you know, the "last line of defense," we
2 tend to call her. It -- it will not get past her if it's not
3 appropriate, going forward.

4 Q Let's talk a little bit about MMP and other companies
5 affiliated with David McKenzie.

6 In or around 2018 and 2019, did Mr. Spray, as far as
7 you know, conduct a review related to payments to those
8 companies?

9 MR. THOMPSON: Foundation and hearsay, your Honor.

10 THE COURT: Maybe you can --

11 I don't want her to testify about what she heard
12 from others but what she's observed herself.

13 MS. EISENBERG: Certainly.

14 Q Did you have any personal firsthand observation of any
15 work that Mr. Spray did with regard to payments to those
16 companies?

17 A I don't -- I don't recall any firsthand knowledge of --
18 of that.

19 Q Understood.

20 Switching topics: You have told Mr. Thompson and the
21 members of the jury (indicating) that you, I believe, had seen
22 Mr. Tedrick, you believe, impaired. Have you seen him in that
23 condition since you became the CFO and treasurer of the NRA?

24 A Well, I want to qualify that we are, a lot, remote; but
25 I have not noticed any of that, at all, with Mr. Tedrick.

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1 Q And how do you assess his performance -- his work
2 performance -- at the NRA?

3 A He's -- it -- he's valuable. He's got a lot of
4 institutional knowledge, he's been there longer than I have, and
5 he's -- his work performance has been above par.

6 MS. EISENBERG: I have no further questions.

7 THE COURT: Thank you.

8 Mr. Correll?

9 MR. CORRELL: Yes, your Honor. I have a few.

10 CROSS-EXAMINATION

11 BY MR. CORRELL:

12 Q Good afternoon, Ms. Rowling.

13 Mr. LaPierre recused himself from the contracting
14 process with the McKenzie companies; correct?

15 A That's correct.

16 MR. THOMPSON: Foundation, your Honor, and leading.

17 THE COURT: True as to both.

18 MR. CORRELL: I can rephrase, your Honor.

19 THE COURT: Okay.

20 Q Did Mr. LaPierre take any action to dispel this notion
21 of -- that his relationship with Mr. McKenzie was in any way
22 influencing the NRA's decisions in its contracting with the
23 McKenzie companies?

24 MR. THOMPSON: Foundation and leading, your Honor.

25 THE COURT: Well, to your personal knowledge, you

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1 can answer.

2 A Yes. He actually made the -- the decision not to be
3 in -- specifically to not be involved in any contract
4 negotiations relating to the MMP entities.

5 Q Were you involved in any contract relations with the
6 MMP entities?

7 A I was.

8 Q And did you see Mr. LaPierre in the room?

9 A He was never involved.

10 Q Did you communicate with him about the negotiations?

11 A Not about the negotiations.

12 Q Okay. And who else was involved in those negotiations?

13 A Mr. Frazer and --

14 Q And Mr. Frazer is the general counsel of NRA; correct?

15 A Yes.

16 -- and other counsel.

17 Q Did MMP make any presentations to any committees or to
18 the board about what it was doing for the NRA?

19 A I don't recall ever being at a -- a meeting where they
20 did, but I can't say.

21 Q You testified -- you were asked earlier -- about this
22 notion of "Wayne said."

23 A Um-hmm.

24 Q Did Wayne ever ask you to do a transaction without
25 formal approval?

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1 A No, he did not.

2 Q And was it your understanding that when someone said
3 that Wayne had said something, that that always was necessarily
4 true?

5 A Not necessarily. I -- I think, a lot of people used it
6 just as a -- a threat, even if he hadn't had any knowledge
7 whatsoever.

8 Q Did you think that the NRA should have conducted an
9 executive search before hiring you to the position of CFO and
10 treasurer?

11 A Not necessarily.

12 Q Executive searches take time; correct?

13 MR. THOMPSON: Leading.

14 THE COURT: Sustained.

15 Q Is there any -- are there any disadvantages to
16 conducting executive searches that you're aware of?

17 A Well, obviously, they're time-consuming; but bringing
18 someone in who knew absolutely nothing about the organization at
19 the time I was brought in would have probably been detrimental.

20 Q So, do you have any opinion as to whether the decision
21 not to hire an executive search firm under those circumstances
22 was a good business judgment or a bad business judgment?

23 A I would say, it was good business judgment.

24 MR. THOMPSON: Legal conclusion, your Honor.

25 THE COURT: It's already been answered and I didn't

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1 hear an objection. Sorry.

2 MR. CORRELL: Was that overruled, your Honor?

3 THE COURT: It's asked and answered.

4 MR. CORRELL: Thank you, your Honor.

5 Q Do you have a sense of how much -- any sense of how
6 much -- money the MMP generated for the NRA over the time that
7 you've been associated with the NRA?

8 A Oh. You're -- you're talking in the range of 75 to 90
9 million a year.

10 Q And did the --

11 When COVID came, did you notice any difference in the
12 circumstances that MMP was facing in terms of what it was doing,
13 reaching out for membership and fund-raising?

14 A I'm not sure I understand exactly what you're asking.

15 Q Did you --

16 Did COVID have any impact on the work that MMP was
17 doing for the NRA, that you were aware of?

18 A I'm not -- I -- I don't recall anything specific about
19 COVID.

20 Q Did you inform Wayne LaPierre of the problems with
21 Mr. DeWitt's expense reports, at any point?

22 A I don't recall. I -- I was in a meeting with --
23 with -- with Mr. Schropp and Mr. LaPierre in discussing his
24 potential and eventual pay increase. I just don't recall if
25 that was brought up. I voiced my -- that I didn't think it was

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1 appropriate for him to get that pay increase, but I don't recall
2 exactly what was said.

3 Q How long after that was Mr. DeWitt terminated?

4 A Less than a year; maybe nine months, at the most.

5 Q And was that --

6 You testified that that was the result of further
7 misuse of expense or a credit card; is that correct?

8 A Not on a credit card.

9 MR. THOMPSON: Leading.

10 (No audible ruling.)

11 Q Oh, I'm sorry. That you -- you testified that that was
12 the result of his not following some procedure; is that correct?

13 A That's correct.

14 Q Did Mr. LaPierre push back on that at all?

15 A Not at all.

16 Q In fact, he supported that; correct?

17 MR. THOMPSON: Leading.

18 THE COURT: Sustained.

19 Q Did you form any opinion of the outside auditors?

20 A Which outside auditors?

21 Q Well, we'll take the ones -- the ones that you had --
22 Let's start in 2015. Who was the outside auditor?

23 A In 2015?

24 Q Yes.

25 A RSM.

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1 Q And did you form any --

2 Did you have any opinion as to the outside auditors and
3 whether they were doing their jobs properly?

4 A I -- yeah. I thought they were doing their job.

5 Q And then, after that, who became auditors?

6 A Aronson.

7 Q And what did you think of them?

8 A That they were also -- are also -- excellent. They're
9 still our -- our auditors under a different name now, but yes.

10 Q And did you have any opinion as to the tax preparer
11 that was assisting on 990s during this period?

12 MR. THOMPSON: Foundation, your Honor.

13 THE COURT: He asked if she had an opinion.

14 Which -- but what period is "this period"?

15 Q Let's take the period 2015 to present.

16 A They -- the tax preparers -- have, you know --

17 Well, let me -- let me back up: The -- we had paid

18 preparers during a time period through -- up until -- 2018.

19 They're highly regarded in their field. Working with RSM, there
20 was -- I never had any doubt that they were excellent in their
21 jobs.

22 Q Did they -- did they interview you as part of the
23 audits?

24 A The tax people?

25 Q No. Now I'm talking about the outside auditors.

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1 A Yes, they did.

2 Q And did you answer their questions truthfully?

3 A Yes.

4 Q Did they ever ask you a question that you refused to
5 answer?

6 MR. THOMPSON: Hearsay, your Honor.

7 THE COURT: No.

8 Overruled.

9 A No, they did not.

10 Q Did they ever ask for information that you refused to
11 give them?

12 A No, they did not.

13 Q Did Mr. LaPierre have an Ackerman McQueen credit card?

14 A Not that I'm aware of.

15 Q You used the word "untouchable," I think, in a -- in an
16 e-mail. Was that your word or was that a word you heard from
17 someone else?

18 A I -- I don't -- I know I had heard it from others; from
19 someone else, as well.

20 Q So it wasn't one you came up with yourself.

21 A No.

22 (Continued on next page.)

23

24

25

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Cross-Rowling-Correll

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1 Q Did you ever receive or did the NRA to your knowledge
2 ever receive an inquiry from the IRS about any 990 that was
3 filed on your watch?

4 A Yes.

5 Q When did that happen?

6 A About -- Just recently. A couple months ago maybe.
7 Right before the holidays.

8 Q But in all these years in which you were working with
9 the NRA in connection with the preparation of 990s, did the IRS
10 ever inquire --

11 A No.

12 Q -- as to your responses to any of these questions?

13 A No. They have not.

14 Q Did the Attorney General of the State of New York?

15 A No.

16 MR. THOMPSON: Objection, your Honor. Time period.
17 Relevance. Foundation.

18 MR. CORRELL: Time period of Ms. Rowling's
19 employment.

20 THE COURT: Overruled. You can answer. Did you
21 answer?

22 THE WITNESS: I thought I did.

23 A I've never seen any inquiry regarding -- (pause).

24 Q You were asked a question about the reputational harm,
25 as to whether there was any reputational harm caused to the NRA

LAS

Cross-Rowling-Correll

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1 by the NRA's decision to seek protection under the bankruptcy
2 code. Do you remember that question?

3 A Yes.

4 Q In your opinion did the NRA suffer any reputational
5 harm from statements that Letitia James has made about The
6 National Rifle Association in the press?

7 MR. THOMPSON: Objection. Leading. Relevance.
8 Scope, your Honor.

9 THE COURT: Sustained.

10 Q Are there any other events that have occurred during
11 your time at the NRA that have in your view impacted the
12 reputation of the NRA negatively?

13 MR. THOMPSON: Same objection, your Honor.

14 THE COURT: Sustained.

15 MR. CORRELL: No further questions. Thank you.

16 CROSS EXAMINATION

17 BY MS. COUTU:

18 Q Good afternoon, Ms. Rowling. My name is Lisa Coutu,
19 and I represent Mr. Wilson Phillips. I just have a few
20 questions. I'm going to try not to repeat any of the other
21 questions that have already been asked.

22 Now, Mr. Thompson asked you a couple of questions about
23 MMP. Do you recall those questions?

24 A Yes.

25 Q And specifically Mr. Thompson asked you some questions

LAS

Cross-Rowling-Coutu

1143

1 regarding payments that exceeded the MMP contracts. Do you
2 recall that?

3 A Yes.

4 Q And after the July 30th, 2018 audit committee meeting
5 the NRA mailed letters to vendors?

6 A That's correct.

7 Q And that included the NRA requesting documents from MMP
8 to show the reason for the escalation of payments, right?

9 MR. THOMPSON: Leading, your Honor.

10 THE COURT: Overruled.

11 A Yes.

12 Q And in response to that letter the NRA received
13 documents, correct?

14 A Yes, it did.

15 Q Okay. And those documents MMP ultimately provided
16 support for those increases, right?

17 A Yes, they did.

18 Q And I believe Mr. Thompson showed you what has been
19 admitted into evidence PX 360. Do you recall that?

20 MS. COUTU: Why don't we bring up the document.
21 Zach, please. Thank you.

22 Q Do you recall this being brought up with Mr. Thompson?

23 A (Examining). Yes.

24 Q Okay. And you said you reviewed this document?

25 A The attachment you mean?

LAS

Cross-Rowling-Coutu

1144

1 Q Yes.

2 A Yes. I have reviewed that document.

3 MS. COUTU: Can we please scroll one page down.

4 Q And this is a document the NRA received from MMP
5 detailing the increases in services and increases in billing and
6 how those were coordinated, correct?

7 A Yes.

8 Q Okay. And having reviewed this document, did you think
9 it was accurate?

10 MR. THOMPSON: Foundation, your Honor.

11 THE COURT: I mean, she's asking her. So it has to
12 be based on your personal knowledge.

13 A I have reviewed this document. I have no reason to
14 think it's not accurate, but I'm not a principal involved in the
15 day-to-day activities of what MMP does.

16 Q Understand. In April of 2021, when you were CFO, you
17 believed that the payments to MMP were appropriate, right?

18 A Yes.

19 Q And you were comfortable making those payments to MMP
20 in April 2021 because you thought the value that MMP brought in
21 in terms of revenue far exceeded the costs, right?

22 A Yes.

23 Q And as you sit here today you're still comfortable
24 making payments to MMP, right?

25 A Yes.

LAS

Cross-Rowling-Coutu

1145

1 Q And that's because you thought that the services MMP
2 provided were invaluable to the NRA, right?

3 A Yes. I mean, their revenue that they bring in was well
4 above the expense.

5 Q So you believed the MMP relationship of the payments
6 were in the best interests of the NRA?

7 A Yes.

8 Q And you thought that that further interests, the goals
9 and the mission of the NRA, right?

10 MR. THOMPSON: Objection. Leading, your Honor.

11 THE COURT: Overruled.

12 A Yes.

13 MS. COUTU: Sorry. I'm flipping to make this
14 faster for everyone.

15 THE COURT: That you should not apologize for.

16 Q And as the current CFO and treasurer of the NRA, you
17 would say that just because you sign a form 990 does not mean
18 that you are responsible for every detail that's inside that
19 990, correct?

20 A That's correct.

21 Q You rely on many individuals in putting together the
22 materials for that Form 990, right?

23 A Yes.

24 Q And that includes other individuals within the NRA
25 itself, right?

LAS

Cross-Rowling-Coutu

1146

1 A Yes.

2 Q That includes Rick Tedrick?

3 A Yes.

4 Q That includes John Frazer?

5 A Yes.

6 Q That includes other people within the accounting
7 department as well?

8 A Yes.

9 Q Who are CPAs, some of them?

10 A That's correct.

11 Q That also includes some outside experts such as Aronson
12 I heard you mention before, right?

13 A Yes.

14 Q And I believe you just testified that before Aronson it
15 was RSM?

16 A Yes.

17 Q And you were asked some questions by Mr. Thompson
18 regarding the top concerns memo that you presented or was
19 presented to the audit committee in July of 2018, correct?

20 A Yes.

21 Q And in that top concerns memo there were complaints of,
22 among other things, financial conflict of interest at the senior
23 management and board of directors level?

24 A Yes.

25 Q And also of senior management override of internal

LAS

Cross-Rowling-Coutu

1147

1 controls?

2 A Yes.

3 Q In violating accounts payable procedures, IST
4 purchasing procedures, travel and expense reports, right?

5 A Yes.

6 Q Now earlier you had testified I believe with
7 Mr. Thompson that before being appointed as CFO you were the
8 director of accounting and of operations and financial
9 reporting, right?

10 A Yes.

11 Q As director you managed the entire accounting
12 department with all of the financial reporting, internal and
13 external, correct?

14 A I want to be clear. The audited financial statements
15 and the internal accounting, yes. There is financial
16 information and a lot of external reporting.

17 Q You managed the audits I think you were just saying?

18 A Yes.

19 Q And as the director you were one of the primary people
20 that the NRA, responsible for interfacing with the NRA's
21 auditors, whether it be Aaronson -- excuse me, at that time it
22 was RSM, right?

23 A Yes. I was one of the primary.

24 Q They would physically come to the NRA's offices, right,
25 to conduct their audits?

LAS

Cross-Rowling-Coutu

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1 A Yes.

2 Q In the preliminary stage it would be for about a week?

3 A Yes. That's correct.

4 Q In the final stage they would be there for about six
5 weeks at the NRA, right?

6 A Yes.

7 Q The NRA's financial statements are audited annually,
8 right?

9 A That's correct.

10 Q And as part of that audit process, RSM asked you
11 whether you were aware of any fraud at the NRA, correct?

12 A Yes.

13 Q That's part of what's called the manager -- management
14 representation letter?

15 A Yes.

16 Q Okay. And in that letter which is done at the end of
17 the audit process, certain representations are made by
18 management, right?

19 A Yes.

20 Q You were a signatory to that management representation
21 letter?

22 A Yes. At some point I was added. I don't recall the
23 exact day.

24 Q At this time I would like to pull up to the witness and
25 to counsel, 'cause I don't believe it's been admitted into

LAS

Cross-Rowling-Coutu

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1 evidence yet, WPX 22.

2 THE COURT: Okay. If we can just turn off the
3 monitors, please.

4 MS. COUTU: Unless there is no objection to this
5 being admitted.

6 MS. ROGERS: No objection by the NRA.

7 MR. CORRELL: No objection.

8 MR. THOMPSON: I'm waiting for the document to show
9 up, your Honor.

10 MR. FLEMING: No objection.

11 MS. COUTU: I think that's coming soon.

12 MR. THOMPSON: No objection, your Honor.

13 THE COURT: All right. It's admitted. You can
14 turn it back on.

15 MS. COUTU: Do you mind making it bigger, Zach,
16 please.

17 Q Ms. Rowling, do you recognize this document?

18 A (Examining). Yes.

19 Q Is this the 2018 management representation letter to
20 RSM?

21 A Yes.

22 Q And directing your attention to -- Actually just very
23 quickly, while we're here, it's dated March 7th, 2018?

24 A Yes.

25 MS. COUTU: Okay. Now if we could go down to the

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1 bottom of page 4, please. Scroll down a little bit further.

2 Q Is that your signature?

3 A (Examining). Yes.

4 MS. COUTU: Scroll back up if you could to the
5 first page. To item one. Excuse me. Yeah.

6 Q So, in this letter you acknowledged your responsibility
7 for the design, implementation and maintenance of internal
8 control relevant to the preparation and fair presentation of
9 consolidated financial statements that are free from material
10 misstatement whether due to fraud or error, is that right?

11 A Yes.

12 Q You also acknowledged your responsibility for the
13 design, implementation and maintenance of internal control to
14 prevent and detect fraud?

15 A Yes.

16 Q And you represented that all transactions have been
17 recorded in the accounting records and are reflected in the
18 consolidated financial statements, right?

19 A Yes.

20 Q And you represented that you had no knowledge of
21 allegations of fraud or suspected fraud affecting the entities
22 consolidated financial statements, right?

23 A Yes.

24 Q And that included allegations of fraud or suspected
25 fraud related to management?

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Cross-Rowling-Coutu

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1 A Yes.

2 Q And it also included allegations of fraud related to
3 employees who have significant roles in internal controls as
4 well?

5 A Yes.

6 Q You also represented that you had no knowledge of
7 noncompliance or suspected noncompliance with laws and
8 regulations whose effects should be considered when preparing
9 consolidated financial statements?

10 A Yes.

11 Q You also represented you had disclosed to RSM the
12 identity -- of the identities related parties and all the
13 related party relationships and transactions of which you were
14 aware?

15 A Yes.

16 Q And you -- Excuse me. You represented you were aware
17 of no significant deficiencies including material weaknesses in
18 the design, operation of internal controls that could adversely
19 affect the NRA's ability to record, process, summarize and
20 report financial data, right?

21 A Yes.

22 Q And when you made all of these representations in March
23 of 2018, you believed them, right?

24 A I did.

25 Q And you did your due diligence before you made these

LAS

Cross-Rowling-Coutu

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1 representations, right?

2 A Yes.

3 Q Ms. Rowling, you were also --

4 MS. COUTU: We can take this down. Thank you,
5 Zach.

6 Q -- you were also a signatory to the management
7 representation letter of 2017, right?

8 A Yes.

9 MS. COUTU: At this time I would like to pull up
10 what's been actually admitted into evidence WPX 21.

11 Q Ms. Rowling, do you recognize this document?

12 A (Examining). Yes.

13 Q Okay. And this is the management representation letter
14 from March 8th of 2017, correct?

15 A Yes.

16 Q And scrolling to the bottom again, page 4, please. And
17 is that your signature in the middle of the page?

18 A Yes.

19 Q Okay. And so did you make the same representations in
20 this March 2017 management representation letter as you had in
21 the March 2018 management representation letter?

22 A Yes.

23 Q And you believed those to be true when you made those
24 in March of 2017?

25 A Yes.

LAS

Cross-Rowling-Coutu

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1 Q You performed your due diligence before you made those
2 representations when you sign on to this March 2017
3 representation letter, right?

4 A Yes.

5 MS. COUTU: You can take this down. Thank you.

6 Q And you were also a signatory to the management
7 representation letter in 2016 as well, right?

8 A Yes.

9 MS. COUTU: At this time I would like to publish to
10 the jury WPX 20, unless there are any objections.

11 MR. THOMPSON: No objection.

12 MS. ROGERS: No objection.

13 MR. CORRELL: No objection.

14 MR. FLEMING: No objection.

15 THE COURT: What is the exhibit number?

16 MS. COUTU: WPX 20, your Honor.

17 THE COURT: It's admitted.

18 Q Ms. Rowling, do you recognize this document?

19 A (Examining). Yes.

20 Q And is this the March 2016 management representation
21 letter?

22 A Yes.

23 MS. COUTU: And again scrolling to the bottom
24 please. Slightly up. There you go.

25 Q Is that your signature?

LAS

Cross-Rowling-Coutu

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1 A (Examining). Yes.

2 Q Okay. And did you make the same representations in
3 this March 2016 management representation letter that you had in
4 2017 and in 2018?

5 A Yes.

6 Q Okay. And again did you believe those representations
7 in March 2016 when you made them?

8 A Yes.

9 Q And you performed your due diligence before you made
10 those representations, right?

11 A Yes.

12 Q And you did the same thing in 2015, is that right?

13 A Yes.

14 Q Okay.

15 MS. COUTU: No further questions at this time.

16 Thank you.

17 THE COURT: Thank you.

18 CROSS EXAMINATION

19 BY MR. FLEMING:

20 Q Hi, Ms. Rowling. William Fleming. I represent
21 Mr. Frazer. I'll be brief. You've testified about this. Can
22 you just tell the jury, do you have a view on the importance of
23 compliance at the NRA?

24 A Yes. Compliance has really become a way of life at the
25 NRA. There are seminars, there are -- for all employees. And

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Cross-Rowling-Fleming

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1 Mr. Frazer is really a huge part of that process.

2 Q Well, you beat me to the punch. Have you had occasion
3 to work with Mr. Frazer on compliance issues?

4 A Yes. All the time.

5 Q Now, do you do any work to help identify related-party
6 transactions to pick one example?

7 A The accounting team does, yes.

8 Q What does the accounting team do in that respect?

9 A The accounting team looks for payments made to -- to
10 potential related party and keeps track and then provides that
11 list to the secretary's office to compare against the financial
12 disclosure questionnaires.

13 Q Is that an accounts payable function, to check
14 expenditures?

15 A It's done in the accounts payable area, but it's also
16 part of our 990 process. So, our 990 tax individual was working
17 with AP.

18 Q So, I'm just going to press you to be a little granular
19 and explain exactly how that works, if you know.

20 A Okay.

21 Q How the accounts payable is used to identify potential
22 related-party transactions.

23 A So, they -- they would run an accounts payable ledger.
24 So, every payment made to any board member potentially. They
25 would look to see if that payment was made for just an everyday

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Cross-Rowling-Fleming

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1 reimbursement expense versus something else.

2 Q And you would provide that information to Mr. Frazer?

3 A Yes.

4 Q So, I would like to show you a document for
5 identification.

6 MR. FLEMING: It's Plaintiff's Exhibit PX 1792.

7 THE COURT: So, you don't want -- Do you want to
8 admit that?

9 MR. FLEMING: I do want to admit it, but it's not
10 been admitted yet.

11 THE COURT: Before we go through the process of
12 turning the screens off, do you want to see if there is any
13 objections to it.

14 MR. FLEMING: Sure. This is not the exact
15 document, but it's a form of this document. It's in the
16 same family.

17 THE COURT: It's PX from the plaintiff's list?

18 MR. FLEMING: Yep.

19 THE COURT: Any defendants have any objections?

20 MS. ROGERS: I suspect not, but can we see the
21 document?

22 THE COURT: Yes.

23 MR. THOMPSON: No objection.

24 MS. ROGERS: (Examining). No objection.

25 MR. CORRELL: No objection, your Honor.

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1 THE COURT: Okay. It can be admitted and you can
2 publish it.

3 MR. FLEMING: Okay.

4 Q So, Ms. Rowling, can you take a look at Plaintiff's
5 Exhibit 1792 and tell me if you recognize it?

6 A You'll give me a minute to --

7 Q Sure. Take your time.

8 A -- read it. (Examining). Yes, I recognize this
9 document.

10 Q Okay. And at the bottom of the --

11 MR. FLEMING: If we can scroll down to, I guess,
12 the original e-mail from Mr. Frazer to Rick Tedrick on
13 July 28th.

14 Q There is a number of questions and answers in bold. Do
15 you know who provided the answers in bold?

16 A I don't really -- I can't really tell what's in bold.
17 I'm sorry. It's hard to tell on the screen what's in bold.

18 Q Let me direct your attention to the first page of the
19 document. Towards the bottom there is an e-mail from you to
20 Mr. Frazer saying, "See answers below".

21 A Okay.

22 Q Do you recall helping Mr. Frazer find the answers to
23 his questions?

24 A Yes.

25 Q Okay. And is this an example of the type of thing you

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Cross-Rowling-Fleming

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1 just described, where the accounts payable function can help him
2 identify related-party transactions?

3 A Yes.

4 Q Okay. And to your observation, has Mr. Frazer ever
5 neglected to follow up information you provide him in this
6 respect?

7 MR. THOMPSON: Leading, your Honor.

8 THE COURT: I don't think so. Overruled.

9 A No, he has never -- never failed to.

10 Q Now, do you know who Emily Cummins is?

11 A Yes.

12 Q Do you know who James Sweeney is?

13 A Yes.

14 Q And you've been at the NRA since 1999 you testified, is
15 that right?

16 A Yes.

17 Q Okay. Who is Mr. Sweeney?

18 A Mr. Sweeney was the tax preparer from RSM.

19 Q When was he -- Did he prepare the NRA's tax return?

20 A At some point he did. I wasn't involved directly in
21 that process.

22 Q Do you recall when he did it?

23 A Without looking at the 990s, he would have signed them
24 also.

25 Q And do you have any understanding of Mr. Sweeney's

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1 background and reputation?

2 A Yes. My -- my understanding was he was an expert in
3 his field basically was what -- how I heard Ms. Cummins in
4 introducing him to the audit committee.

5 Q Okay. And Ms. Cummins was a colleague of yours?

6 A That's correct.

7 Q What was her function at the NRA?

8 A I said earlier I can't remember her exact title. She
9 was managing director of compliance and something. I don't
10 recall the rest of her title.

11 Q Did she perform any role with respect to the 990?

12 A Yes. She worked with an individual in the financial
13 services division to prepare the 990.

14 Q Was she what you might describe as the top person at
15 the NRA working on the 990?

16 A Yes.

17 Q Okay. And what was your sense or are you able to
18 describe your feelings about her capability and competence?

19 A I thought she was very competent.

20 Q Now, I would like to show you, are you familiar with
21 the NRA's employee travel policy?

22 A Yes.

23 Q Okay.

24 MR. FLEMING: Can I cull up PX 655.

25 THE COURT: Just a heads up. We're about seven

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Cross-Rowling-Fleming

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1 minutes away.

2 MR. FLEMING: I'm squeezing to get it done.

3 THE COURT: I mean, you know, I don't think -- I
4 suspect there may be some other questions after you. Just
5 giving you a heads up.

6 MR. FLEMING: 655 is in evidence, yes. Can you
7 turn to page 183 of the exhibit.

8 Q So, Ms. Rowling, I have shown you -- I'm showing you
9 the first page of the NRA's travel policy. Do you recognize it?

10 A (Examining). Can I ask what version this is?

11 Q You can ask someone but not me. Well, let me just ask
12 you if you're familiar with certain language?

13 A Yes.

14 THE COURT: Is there a date on the front page?

15 THE WITNESS: There wasn't when I saw it pop up.

16 THE COURT: Okay.

17 MR. FLEMING: If I could just highlight the third
18 to last paragraph, starting "The policy set forth below".

19 Q So, Ms. Rowling, I want you to look at this language
20 and tell me if you recognize it or are familiar with it?

21 A (Examining). Yes.

22 Q Now, is it your understanding that travel at the NRA
23 does not always conform to standard situations, is that fair?

24 MR. THOMPSON: Leading, your Honor.

25 THE COURT: Sustained.

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Cross-Rowling-Fleming

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1 Q Okay. So it says, "A policy cannot address every
2 conceivable situation." Do you see that?

3 A Yes.

4 Q Now, you've given testimony today about charter travel
5 at the NRA. Do you recall the testimony?

6 A Yes.

7 Q Who is the person who travels -- who are the people
8 that travel by charter in your experience?

9 A Mr. LaPierre and then potentially others if they were
10 traveling with Mr. LaPierre.

11 Q And do you have any understanding of why Mr. LaPierre
12 travels by charter?

13 A Yes.

14 Q And what is that?

15 A He has had considerable threats against his person and
16 it was a security reason for his charter travel.

17 Q Okay. Now, is Mr. LaPierre's situation unique at the
18 NRA?

19 A Yes.

20 Q Okay. And so he is not your typical employee travel,
21 is that fair?

22 MR. THOMPSON: Foundation. Leading, your Honor.

23 THE COURT: Sustained.

24 Q Now, in the next sentence of this it says, "In
25 situations not covered by this policy, sound business judgment

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Cross-Rowling-Fleming

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1 and common sense should be used." Do you see that?

2 A Yes.

3 Q Do you view charter travel for Mr. LaPierre, given the
4 situation you just testified about, to be a proper exercise of
5 business judgment and common sense?

6 MR. THOMPSON: Leading. Legal conclusion, your
7 Honor.

8 MR. CORRELL: Your Honor, the AG has asked a lot
9 about policies and whether people viewed policies being
10 followed. I think this is a fair question.

11 MR. THOMPSON: I think there is a difference
12 between that and -- I'm sorry.

13 THE COURT: I guess the witness is an accountant.
14 So we're here to hear her answers based on her personal
15 knowledge. And the way you asked it does use words that
16 might be interpreted differently by various different kinds
17 of people. So, I would be more comfortable if you would
18 address it to her personal knowledge and personal experience
19 and personal background.

20 Q Well, given that instruction, are you able to answer
21 the question?

22 MR. THOMPSON: Same objection, your Honor.

23 THE COURT: Overruled.

24 Q If you're able.

25 A Can you kind of repeat the -- I'm sorry.

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Cross-Rowling-Fleming

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1 Q Well --

2 THE COURT: I wager not.

3 MR. FLEMING: I'm sorry.

4 Q In your personal experience and in your personal
5 observations do you have a personal view as to whether Mr.
6 LaPierre traveling by charter airplane is an exercise of common
7 sense?

8 MR. THOMPSON: Foundation, your Honor.

9 THE COURT: You're asking her in her role as an
10 accountant for the company?

11 MR. FLEMING: I'm asking her really in her
12 experience as a human, really just at the organization whose
13 been there for -- since 1999.

14 THE COURT: Sustained.

15 MR. FLEMING: Okay.

16 Q Let me move on. So you were asked questions today
17 about Schedule J of the Form 990. Do you recall that?

18 A Yes.

19 Q Okay. And in it you were asked about questions 1(a)
20 and 1(b). Do you remember what those were?

21 A Yes.

22 Q Those were the box checks?

23 A Box checks.

24 Q What do those box checks reflect?

25 A Activities that occurred during that year.

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Cross-Rowling-Fleming

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1 Q Okay. And then 1(b) would ask about whether the
2 organization followed a written policy with respect to those
3 activities, right?

4 A Correct.

5 Q Okay. In your -- To your understanding since 1999 or
6 since the beginning of schedule -- Withdrawn. Do you know when
7 Schedule J was first required?

8 A Somewhere around maybe 2009 or '10.

9 Q Okay. And in that time, ever since Schedule J has been
10 required, do you have any understanding of whether the NRA has
11 checked anything other than yes with respect to following a
12 written policy with respect to charter travel?

13 A I have not gone back to look other than the ones that
14 have been presented. So -- (pause).

15 Q Back in 2010 who was doing the NRA's 990?

16 A I -- I don't recall at that point.

17 Q Do you recall whether Emily Cummins was doing it back
18 then?

19 A I don't recall what timeframe she started. I'm going
20 to be honest.

21 Q All right.

22 THE COURT: I think we're going to wrap up for the
23 day.

24 MR. FLEMING: One more question.

25 THE COURT: Sure.

LAS

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1 Q Do you recall whether Mr. Sweeney was involved back
2 then?

3 A We -- we were still utilizing -- we were utilizing RSM
4 at the time. So, it's a good chance that he was -- he was there
5 at that time as well.

6 MR. FLEMING: Your Honor, I still have about three
7 or four questions.

8 THE COURT: We'll pick it up. If I was going to
9 release the witness, I would feel differently, but I have a
10 feeling I assume there will be some redirect.

11 MR. THOMPSON: Yes, your Honor.

12 THE COURT: So let's pick it back up in the morning
13 at 9:30. See you all tomorrow. Same instructions about
14 please don't do any research. See you all tomorrow.

15 THE COURT OFFICER: All rise. Jury exiting.

16 (Whereupon the jury panel departed the courtroom.)

17 THE COURT: Just for the witness' benefit, during
18 the break, you're still effectively on the stand. So during
19 that time you shouldn't talk to anyone about your testimony,
20 including any of the lawyers or anyone else. Thank you.
21 See you all tomorrow.

22 (Whereupon the trial was adjourned to January 18,
23 2024 at 9:30 a.m.)

24

25

LAS

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

-----X
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against- Index No. 451625/20

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

Defendants.

-----X

CONTINUED JURY TRIAL

60 Centre Street
New York, New York
January 18, 2024

B E F O R E: HONORABLE JOEL M. COHEN,
Supreme Court Justice

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LORI SACCO
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PROCEEDINGS

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1 THE COURT: Have a seat. So, a couple of the
2 jurors are running late from commuting I think, as was I
3 actually, but I understand they are in the building, on
4 their way up. So it gives us a couple of minutes to talk
5 about the protocol for giving notice of witnesses and
6 documents.

7 I saw the letter from the -- I don't know if it was
8 from all the defendants, but these are informal protocols,
9 but they are important, especially when there is an
10 unrealistic number of marked exhibits. So, I -- I would --
11 You know again, there is no statutory mandate about
12 employing notice, but it does help move things along,
13 because then there is less objection, there is less delays
14 when exhibits are introduced and the like. So, I'll give
15 the Government a chance to let me know. My guess is it's
16 just a function of just a lot of things going on at once.

17 I certainly agree with the spirit of the request in
18 the defendants' letter that the parties give each other at
19 least 24 hours notice of who the witnesses are and if
20 possible the documents that are going to be used. So, any
21 reaction to the letter I received?

22 MR. THOMPSON: A few, your Honor. It's seven
23 documents that we're using with Mr. Cox today that we
24 informed the parties about last night. And the parties have
25 known that Mr. Cox was going to be on since Monday of this

LAS

PROCEEDINGS

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1 week. I believe it was yesterday, although time has lost
2 meaning a little bit, that we said that Mr. Cox needs to go
3 today for his schedule purposes. And the NRA left out of
4 its letter that they already have the documents for the
5 witnesses going on Friday and that they know who the
6 witnesses are. And I'm not sure what they're referring to
7 with getting like -- we added three exhibits to Ms. Rowling
8 Monday evening, and then Ms. Rowling went on Wednesday. So,
9 I'm not -- We're not sure what the problem is.

10 THE COURT: The fact that it's seven documents
11 makes me feel better. Like I said, there is a certain
12 amount of flexibility that we all need given how hard
13 everybody is working. You know, I'll be able to tell just
14 by how the trial goes whether things are going off the rails
15 in terms of people not having any idea what's coming. So,
16 seven documents, I mean, in my career I've gotten those the
17 morning of and you live with it. It's not ideal, but that's
18 not a crushing amount, I don't think. But, I do think, you
19 know, trying to stick to at least a 24 hour notice of
20 witnesses and documents would be very, very helpful.

21 At this point the only enforcement I guess I would
22 say is that, you know, if I find that failure to do that is
23 leading to delays, that delay will count against the party
24 who is not cooperating in terms of how we sort of count up
25 what's going on here. I'm not of the mind right now, there

LAS

PROCEEDINGS

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1 was one of the requests I think I saw, to prevent you from
2 using exhibits today. Given the circumstances, I don't
3 think that would be a proportionate response.

4 So, I don't want to spend a lot of time on this. I
5 think you're going to want the same courtesy from the
6 defendants, which I'll expect them to provide. So, why
7 don't we, you know -- You probably have been using this any-
8 way. Why don't we use a 24 hour rule here. And if there
9 are extenuating circumstances, that's fine. But we can talk
10 about those. But I think that's a reasonable protocol to
11 have in place for all sides.

12 MR. THOMPSON: Yes, your Honor. Thank you.

13 THE COURT: Okay. Is the jury all here? Okay.
14 Just so I'm clear. Are we going to stop Ms. Rowling in
15 midstream to have Mr. Cox go? How is that going to work?

16 MR. THOMPSON: We expect very limited redirect. So
17 we can finish with Ms. Rowling and bring Mr. Cox in, your
18 Honor.

19 THE COURT: Who is questioning Ms. Rowling right
20 now?

21 MR. FLEMING: I am, your Honor.

22 THE COURT: Okay. Let's bring the witness in.
23 Thanks.

24 MS. CONNELL: Mr. Cox I believe had been in the
25 jury line. I think he's now up here, where he should be,

LAS

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1 but I'm waiting.

2 THE COURT: We don't need him quite yet. There is
3 still defense questioning.

4 MS. CONNELL: I said jury line.

5 THE COURT: He's getting to meet lots of fellow New
6 Yorkers. Good morning.

7 THE WITNESS: Good morning.

8 THE COURT OFFICER: All rise. Jury entering.

9 (Whereupon the jury panel entered the courtroom.)

10 THE COURT: Good morning everyone. Have a seat,
11 please. It sounds like some of you had the same kind of
12 commute I had this morning with slow trains and lots of
13 people. I appreciate you getting here.

14 All right. We're going to continue with the
15 witness. Mr. Fleming, I think you were in the middle of
16 your examination.

17 MR. FLEMING: Yes.

18 S O N Y A R O W L I N G, after having been previously duly
19 sworn, was examined and testified further as follows:

20 CROSS EXAMINATION

21 BY MR. FLEMING:

22 Q Good morning, Ms. Rowling.

23 A Good morning.

24 Q So, I would like to start by going back to an exhibit
25 that I showed you yesterday just for a few additional questions.

LAS

Cross-Rowling-Fleming

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1 MR. FLEMING: Can I cull up exhibit PX 1792.

2 Q Ms. Rowling, I asked you questions about this, and you
3 indicated or testified that this was an example of the cross-
4 checking method that the treasurer's office employs with the
5 secretary's office to identify related-party transactions. Do
6 you recall the testimony?

7 A Yes.

8 Q Okay. So, if I could direct your attention to -- there
9 is a list on -- at the bottom of the e-mail that Mr. Frazer
10 asked Mr. Tedrick about a list of people. Do you see those?
11 Can you see those?

12 A (Examining).

13 MR. FLEMING: Scroll up a little bit higher to
14 the -- Right there.

15 Q So, you see that he's asking about Marion Hammer, do
16 you see that?

17 A Yes.

18 Q And Julie Golub?

19 A Yes.

20 Q And Chris Titus?

21 A Yes.

22 Q I want to ask you about Illing New. Who is Illing New?

23 A She's a board member.

24 Q Okay. And when you were provided the bolded response
25 that there are no payments to New in 2017 or 2018, what had you

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1 done to determine that?

2 A Ran accounts payable ledger reports to see if there
3 were any payments directly to that name.

4 Q Okay.

5 MR. FLEMING: If we can scroll up to the e-mail
6 from Mr. Frazer to Ms. Rowling dated July 29th at 8:43 a.m.
7 on page 2 of 5. Right there.

8 Q Do you recall this e-mail where Mr. Frazer is asking
9 you questions about Ms. New?

10 A Yes.

11 Q What do you recall he was trying to do there?

12 A Reconcile what was on the financial disclosure
13 questionnaire to what our response was from accounts payable.

14 Q Well, in fact, isn't he saying that he's noticed that
15 Publications has been running articles that Ms. New had written?

16 MR. THOMPSON: Leading, your Honor.

17 THE COURT: Let this one go.

18 Q What is Publications?

19 A Publications is a division that produces magazines for
20 the association.

21 MR. FLEMING: If we can scroll up.

22 Q People including Mr. Erstling sort of respond to Mr.
23 Frazer's question.

24 MR. FLEMING: It spans the bottom of page 1 of 5 to
25 the top of page 2 of 5. Is there a way to kind of -- Yep.

LAS

Cross-Rowling-Fleming

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1 Well let's just stick with page 1, please.

2 Q Ms. Rowling, if you see at the middle of page 1,
3 July 29th at 9:30 a.m. you write this e-mail. Did you do
4 further investigation into Ms. New to respond to Mr. Frazer's
5 question?

6 A That would have been that same accounts payable report
7 that was run, that could say yes, we paid her directly in 2015.

8 Q Okay. So is it fair to say that even though the
9 treasurer's office and its staff and yourself possibly even had
10 determined that Ms. New had received no payments from the NRA,
11 Mr. Frazer was continuing to check out to see if there might be
12 something that might be a related-party transaction? Is that
13 fair?

14 MR. THOMPSON: Leading, your Honor.

15 THE COURT: Sustained.

16 Q Did you understand Mr. Frazer to be following up,
17 notwithstanding receiving information that he had, that Ms. New
18 had received no payments?

19 A Yes.

20 Q Okay. All right. So, Ms. Rowling, I would like to ask
21 you about, you were a whistleblower, correct?

22 A Yes.

23 Q In July of 2018?

24 A Yes.

25 Q Okay. Do you recall what role Mr. Frazer played in

LAS

Cross-Rowling-Fleming

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1 addressing yours and others whistleblower concerns?

2 A He was actively involved in that process. We met,
3 myself and some colleagues met with him immediately after to
4 discuss some of the various issues and how to get those
5 resolved.

6 Q Do you recall meeting with him before the July 30th
7 audit committee meeting about your whistleblower top concerns?

8 A I don't recall.

9 MR. FLEMING: Can I call up JFX 13, please.

10 THE COURT: Is that in evidence?

11 MR. FLEMING: It's in evidence. Sorry. Yes.

12 THE COURT: Okay.

13 Q So, Ms. Rowling, take a look at this e-mail and see if
14 it refreshes your recollection about a meeting with Mr. Frazer
15 concerning the top concerns.

16 (Whereupon the witness complied with the above
17 request of counsel.)

18 A Okay. Yes.

19 Q Do you recall this meeting?

20 A Not off the top of my head.

21 Q Do you recall any direction at all respecting
22 Grassroots Behavioral at or about the time of the audit
23 committee meeting on July 30?

24 A I -- I really don't. I don't. I'm sorry.

25 Q Okay. No problem. So last question for you. Based on

LAS

Redirect-Rowling-Thompson

1176

1 your observations and experiences with Mr. Frazer, did you ever
2 know a situation where he was not trying to do the right thing
3 for the NRA?

4 MR. THOMPSON: Objection. Leading, your Honor.

5 THE COURT: Overruled.

6 A No. I do not.

7 MR. FLEMING: Thank you so much.

8 THE WITNESS: Thank you.

9 THE COURT: Redirect.

10 REDIRECT EXAMINATION

11 BY MR. THOMPSON:

12 Q Good morning, Ms. Rowling.

13 A Good morning.

14 Q Am I coming through? All right. Ms. Rowling, you
15 testified yesterday that the audit committee was receptive to
16 you and your colleagues concerns, do you recall that?

17 A Yes.

18 Q Who were the members of the audit committee at the time
19 of the July 2018 meeting?

20 A Charles Cotton, Dave Coy, Curtis Jenkins, Herb
21 Langford, Carolyn Meadows.

22 Q And Mr. Cotton and Ms. Meadows both left the meeting
23 prior to you and your colleagues presenting your concerns, is
24 that correct?

25 A Yes.

LAS

Redirect-Rowling-Thompson

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1 Q And you cannot recall after that July 2018 meeting the
2 next time that you spoke to a member of the audit committee
3 about the concerns that were raised in the top concerns memo, is
4 that correct?

5 A Yes.

6 Q Do you recall testifying yesterday that you have not
7 seen internal control override since August 1st of 2020?

8 A Yes.

9 Q The complaint in this action was filed in August of
10 2020, correct?

11 A Yes.

12 Q And the NRA filed for bankruptcy in January of 2021,
13 correct?

14 A Yes.

15 Q And then after the bankruptcy Mr. LaPierre attempted to
16 verbally approve a raise for Chris DeWitt, correct?

17 A No.

18 Q Mr. Schropp attempted to verbally approve a raise for
19 Chris DeWitt that he claims Mr. LaPierre had approved, correct?

20 A Yes.

21 Q And you testified that Mr. DeWitt was a very valued
22 advancement employee. Do you recall that?

23 MS. EISENBERG: Mischaracterizes his testimony.

24 THE COURT: Overruled.

25 A I testified that that that's what I was told, that he

LAS

Redirect-Rowling-Thompson

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1 was a very valuable employee.

2 Q So valued that it took six years of improper expenses
3 for him to be fired, right?

4 A He had improper expenses that were paid back. So,
5 nothing was ever -- the NRA was not out assets with respect to
6 Mr. DeWitt.

7 Q But it still took six years for him to be fired,
8 correct?

9 A Yes.

10 Q Six years of improper expenses on a credit card and
11 then expense reimbursement requests, right?

12 A Yes.

13 Q And you testified that you have not seen expense
14 reports without appropriate backups since August 1st of 2020,
15 right?

16 A I have not been notified of any.

17 Q But Mr. DeWitt was fired in the fall of 2022?

18 A Right, but again those were not processed. So, the
19 process works. They're not being processed. And that's what
20 the -- I assumed my testimony was stating.

21 Q Okay. But he attempted to process improper expense
22 reimbursement requests, right?

23 A Humans are fallible.

24 Q And that happened between August 1st of 2020 and the
25 present, right?

LAS

Redirect-Rowling-Thompson

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1 A Yes.

2 Q Okay. And Millie Hallow was not fired until the fall
3 of 2022, right?

4 A Correct.

5 Q And you testified that Mr. LaPierre was not involved in
6 the contract negotiations with MMP that occurred in 2022, right?

7 A Correct.

8 Q You weren't directly involved in those negotiations
9 either, right?

10 A I was with the attorneys.

11 Q With the NRA's attorneys?

12 A That's correct.

13 Q You did not have any direct involvement in the
14 negotiations between the NRA and MMP, correct?

15 A I'm not -- I was in direct communication with the
16 attorneys as those -- those negotiations were taking place.

17 Q You never spoke to a representative of MMP in
18 connection with the negotiations, correct?

19 A I actually did.

20 Q When was that?

21 A I had a conversation with Mr. Knight regarding the
22 negotiations.

23 Q That was -- So the contract, the new contract was
24 entered into in August of 2022, correct?

25 A Yes.

LAS

1 Q You were deposed in July of 2022, correct?

2 A Yes.

3 Q And as of the time of your deposition in 2022 you had
4 had no direct involvement in the negotiations of the MMP
5 contract, right?

6 A Correct.

7 Q So you had no personal knowledge of whether or not Mr.
8 LaPierre was having any involvement directly in the negotiations
9 of the MMP contract, right?

10 A I don't suspect my lawyers are going to lie to me, but
11 I guess I don't have personal knowledge that he didn't have a
12 conversation.

13 (Continue on the next page.)

14

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LAS

Rowling - by Plaintiff - Redirect/Thompson

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1 Q So it was your lawyers who informed you that --

2 MS. ROGERS: Objection; objection to questions
3 eliciting what the lawyers told Ms. Rowling.

4 And Ms. Rowling is instructed not to testify about
5 advice lawyers gave her.

6 THE COURT: I'm not sure that's a question about
7 advice. That's a fact question, right?

8 MR. THOMPSON: Yes, your Honor.

9 THE COURT: Overruled.

10 Q So, Ms. Rowling, your lawyers informed you that
11 Mr. LaPierre did not have any direct negotiations in the MMP
12 contract?

13 A Yes.

14 Q Okay.

15 You were asked whether, in your time at the NRA, the
16 Attorney General of the State of New York has ever inquired as
17 to the NRA's responses to the questions on the Form 990. Do you
18 recall that?

19 A Yes.

20 Q And you're aware that the Attorney General of the State
21 of New York represents the plaintiff in this action?

22 A Yes.

23 Q And that this action involves inquiries into the NRA's
24 responses to the questions on the Form 990?

25 A Yes.

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Rowling - by Plaintiff - Redirect/Thompson

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1 Q And you're aware that the Attorney General's office
2 commenced an investigation into the NRA in 2019?

3 A Yes.

4 Q And that that investigation also related to the NRA's
5 responses to the Form 990s?

6 A I thought their -- the investigation was related to the
7 CHAR500, not the 990s specifically, but it could be my mistake.

8 Q The 990 is attached to the CHAR500; correct?

9 A Absolutely.

10 Q Okay. And the CHAR500: Just for the jury's sake, that
11 is the -- the form that is filed with the Attorney General's
12 office in New York every year; is that correct?

13 A Yes.

14 Q Okay.

15 You testified that Mr. Spray was the one who gave you
16 and your colleagues empowerment to go to the Audit Committee.
17 Do you recall that?

18 A Yes.

19 Q You didn't go to Mr. Frazer with your concerns before
20 going to Mr. Spray; correct?

21 A I'm trying ... This is -- the -- the assumption here
22 is that I had knowledge of every single item on this list of
23 concerns. I didn't. So, on the ones that I had some personal
24 knowledge of, I actually had discussed one of them with -- with
25 Mr. Frazer --

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Rowling - by Plaintiff - Redirect/Thompson

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1 Q Okay.

2 A -- but -- but around the same time that it was -- I was
3 -- discussing them with Mr. -- Mr. Spray.

4 Q So, was it before or after you spoke with Mr. Spray
5 that you recall speaking with Mr. Frazer?

6 A It was six years ago; I don't know.

7 Q And so, with Mr. Fleming, just a moment ago, you could
8 not recall the conversation that you had with Mr. Frazer prior
9 to the July 2018 meeting that he was trying to refresh your
10 recollection about; right?

11 A That was -- the one I'm referring to is different from
12 that one, in particular.

13 Q Okay. And you cannot recall when that took place other
14 than that it was in 2018.

15 A The information I had heard was probably around the
16 April time frame that I relayed to Mr. Frazer.

17 Q And Mr. Spray joined in March of 2018?

18 A That's correct.

19 Q Okay. You did not bring any of the concerns that you
20 had to Mr. Phillips, directly; correct?

21 A Directly? No.

22 Q Or to Mr. LaPierre.

23 A Directly? No.

24 Q So, Mr. Spray was the one who gave you empowerment to
25 bring your concerns to the Audit Committee; correct?

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Rowling - by Plaintiff - Redirect/Thompson

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1 A Yes.

2 Q And Mr. Spray was the outsider who was hired through an
3 executive search process, right?

4 A Yes.

5 Q What is your understanding as to why Mr. Spray left the
6 NRA?

7 MS. EISENBERG: Your Honor, outside the scope.

8 THE COURT: Sustained.

9 MR. THOMPSON: No further questions, your Honor.

10 THE COURT: Anything further?

11 MS. EISENBERG: Very briefly, if I may, your Honor.

12 Thank you very much.

13 RE-CROSS-EXAMINATION

14 BY MS. EISENBERG:

15 Q Good morning.

16 Ms. Rowling, yesterday, we took a look at a
17 communication in which you referred to a vendor as an
18 "untouchable." Do you remember that?

19 A Yes.

20 Q To what extent, if any, since August 1st, 2020 have you
21 perceived that there have been any vendors of the NRA whom you
22 have perceived to be untouchable?

23 MR. THOMPSON: Scope, your Honor?

24 THE COURT: It's outside the scope of the --

25 MR. THOMPSON: Of the redirect, your Honor.

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Rowling - by Plaintiff - Recross/Eisenberg

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1 THE COURT: Right. But I think, in this context,
2 given how many people have questioned the witness, the scope
3 can be what the other people have asked, as well.

4 So, overruled.

5 A Would you mind repeating the question?

6 Q Absolutely.

7 A Thank you.

8 Q Since August 1st, 2020, to what extent, if any, have
9 you believed any vendor of the NRA to be "untouchable"?

10 A There are none.

11 Q You said, "There are none"?

12 A There are none.

13 Q We talked about Mr. DeWitt being let go. How many
14 employees does the NRA have, approximately?

15 A Currently? 350.

16 Q And was that about the number of employees the NRA had
17 on or about the date that he was let go?

18 A Yes.

19 Q We also talked about Millie Hallow being let go.
20 Remember testifying about that?

21 A Yes.

22 Q Did the NRA also have around the same number of
23 employees around that time?

24 A Yes.

25 Q You mentioned that Charles Cotton and Carolyn Meadows

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Rowling - by Plaintiff - Recross/Eisenberg

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1 left early from the Audit Committee meeting. Did you receive an
2 explanation of any kind as to the reason?

3 A Yes; they had a flight they needed to catch. But I had
4 already had conversations with -- with Mr. Cotton, prior to that
5 meeting.

6 Q And that's what you testified about yesterday, right?

7 A Yes.

8 Q Are you confident that the process has been working
9 since August 1st, 2020?

10 MR. THOMPSON: Leading, your Honor.

11 THE COURT: Overruled.

12 (The witness gesticulated.)

13 Q Are you confident that the process has been working
14 since August 1st, 2020?

15 A Yes.

16 Q And are you confident that the -- that compliance has
17 been a top priority at the NRA since that same date?

18 MR. THOMPSON: Leading, your Honor.

19 THE COURT: Assuming you're close to the end --

20 MS. EISENBERG: My last question, your Honor.

21 THE COURT: -- overruled.

22 MS. EISENBERG: Thank you.

23 A Yes, I'm confident.

24 MS. EISENBERG: I'll pass the witness.

25 Thank you.

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Rowling - by Plaintiff - Recross/Correll

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1 RECCROSS-EXAMINATION

2 BY MR. CORRELL:

3 Q Good morning, Ms. Rowling.

4 A Good morning.

5 Q Kent Correll, for Wayne LaPierre.

6 THE COURT: I'm not sure we're picking you up on
7 your mic yet.

8 MR. CORRELL: Hello? Testing ...

9 THE COURT: You need to move it a little.

10 (Mr. Correll adjusted his microphone.)

11 THE COURT: There you go.

12 MR. CORRELL: Check, check.

13 Q Good morning, Ms. Rowling.

14 Kent Correll, for Wayne LaPierre.

15 I asked you a question yesterday, which I think may
16 have been a little confusing, about whether you had any
17 knowledge of the NRA having received any inquiry from the
18 Attorney General's office with respect to the 990. Let me try
19 to clarify my question: When did you start work for the NRA?

20 A In 1999.

21 Q And to your knowledge, did the NRA receive any inquiry
22 from the Attorney General's office about the 990 or the CHAR500
23 in 1999?

24 A Not to my knowledge.

25 Q In 2000?

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Rowling - by Plaintiff - Recross/Correll

1 A Not to my knowledge.
2 Q In 2001?
3 A Not to my knowledge.
4 Q In 2002?
5 A Not to my knowledge.
6 Q In 2003?
7 A Not to my knowledge.
8 Q In 2004?
9 A Not to my knowledge.
10 Q In 2005?
11 A Not to my knowledge.
12 Q In 2006?
13 A Not to my knowledge.
14 Q In 2007?
15 A Not to my knowledge.
16 Q In 2008?
17 A Not to my knowledge.
18 Q In 2009?
19 A Not to my knowledge.
20 Q In 2010?
21 A Not to my knowledge.
22 Q In 2011?
23 A Not to my knowledge.
24 Q 2012?
25 A Not to my knowledge.

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Rowling - by Plaintiff - Recross/Correll

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1 Q In 2013?

2 A Not to my knowledge.

3 Q '14?

4 A Not to my knowledge.

5 Q '15?

6 A Not to my knowledge.

7 Q '16?

8 A Not to my knowledge.

9 Q And did you consider communications --

10 MR. CORRELL: Well, I'll leave it at that.

11 Thank you very much.

12 THE WITNESS: Thank you.

13 THE COURT: Anything further?

14 MS. COUTU: No further questions.

15 MR. FLEMING: Nothing from me. Thank you.

16 THE COURT: Anything further?

17 MR. THOMPSON: No, your Honor.

18 THE COURT: Okay.

19 Thank you very much. You're free to go.

20 (Witness excused.)

21 THE COURT: Okay. Is the State ready to call its
22 next witness?

23 MS. CONNELL: Yes, your Honor.

24 Can you hear me, Alan?

25 (The reporter nodded.)

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1 MS. CONNELL: Yes, your Honor. The State calls
2 Christopher Cox.

3 MS. ROGERS: Your Honor, a small housekeeping item
4 before Mr. Cox:

5 As an artifact of the disarray with the exhibits,
6 there were some that were designated at 8:00 p.m. last night
7 that we did not have a chance to hash out objections to, and
8 I don't know if it would be more efficient to do that with
9 the witness on the stand or not.

10 In sum and substance, there are confidential
11 arbitration materials and a confidential settlement
12 agreement that we produced in discovery, but we think the
13 relevance is so minimal that -- and the burden to keeping
14 those documents sealed, if they come into evidence, is so
15 high -- that we would object to their introduction, and we
16 don't see the relevance to any of the claims.

17 THE COURT: Well, if there's going to be an
18 extended -- I don't know how extensive the objection's going
19 to be, but it obviously will be without the jury present.
20 So, is it possible that those documents will not be
21 introduced until, say, around 11:00, when we have our break?

22 MS. CONNELL: I think we might get to some of them
23 before then, your Honor.

24 I would note, setting aside the characterizations,
25 that the issues of these documents have previously been

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1 brought before your Honor on two occasions: one in an
2 attempt to seal, in which the Court ruled we had the right
3 to get these documents; and another, I believe, if I'm not
4 incorrect, in motions in limine with regard to whether we
5 could use them. And I think your holding was, "Let's see;
6 let's lay the foundation; let's see if they come in."

7 Your Honor, these documents have been the subject
8 of motion practice before your Honor, they're known to be
9 associated with this witness, and -- and I just --

10 THE COURT: Yeah, I'm just --

11 MS. CONNELL: Yeah.

12 THE COURT: -- solving for a logistical thing,
13 which is: If we're going to have an objection and it's
14 going to take some time for us to at least talk about it,
15 I'd rather do it with the jury not here and not wasting
16 anyone's time.

17 MS. CONNELL: How --

18 THE COURT: So I assume you'll have some portion of
19 time --

20 How about, when we get to those documents, we'll
21 take our break, even if it's a little bit earlier than
22 usual? I just want to make sure we're being efficient with
23 the jury's time.

24 MS. CONNELL: Absolutely, your Honor.

25 So I think we can get a pretty good way there, and

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1 I will try and stop before we get to any documents relating
2 to the arbitration.

3 THE COURT: All right.

4 Let's get the witness, please.

5 MS. CONNELL: Thank you.

6 MR. THOMPSON: Your Honor, would you like us to
7 take any of the binders off your hands (indicating)?

8 THE COURT: Yes.

9 Well, we can do that at a break. I'm feeling a
10 little closed in back here (indicating).

11 (Whereupon, the prospective witness entered the
12 courtroom and assumed the witness stand.)

13 C H R I S [T O P H E R] C O X, called as a witness by the
14 plaintiff, having been first duly sworn/affirmed, was examined
15 and testified as follows:

16 THE CLERK: State your name.

17 THE WITNESS: Chris Cox.

18 THE CLERK: Spell your last name.

19 THE WITNESS: C-o-x.

20 THE CLERK: And business address?

21 THE WITNESS: Business address is 300 South
22 Washington Street, in Alexandria, Virginia 22314.

23 THE CLERK: Thank you.

24 THE COURT: Have a seat.

25 MS. CONNELL: Your Honor, may I give the witness a

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Cox - by Plaintiff - Direct/Connell

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1 bottle of water (indicating)?

2 I'm sorry. I should have put it up there before
3 (handing).

4 THE COURT: Sure.

5 MS. CONNELL: Thank you.

6 THE COURT: Have a seat.

7 (Witness seated.)

8 THE COURT: And if you can just try and be as close
9 to the mic as you can, please ...

10 THE WITNESS: Yes, sir.

11 THE COURT: It gets a little hard to hear
12 sometimes.

13 All right, you may continue --

14 MS. CONNELL: Thank you.

15 THE COURT: -- or start.

16 MS. CONNELL: Start.

17 Thank you, your Honor.

18 Can the jurors hear me?

19 MULTIPLE JURORS: Yes.

20 DIRECT EXAMINATION

21 BY MS. CONNELL:

22 Q Good morning, sir.

23 Can you please state your name, for the record?

24 A Chris Cox.

25 Q Mr. Cox, are you married?

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Cox - by Plaintiff - Direct/Connell

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1 A I am.

2 Q Do you have children?

3 A I do; two.

4 Q And you are appearing here pursuant to a subpoena;
5 correct?

6 A Correct.

7 Q Do you have any agreement with the State of New York,
8 whatsoever?

9 A No.

10 Q Okay.

11 Mr. Cox, are you familiar with the mission of the NRA?

12 A I am.

13 Q And do you believe in the mission of the NRA?

14 A I do, to my core.

15 Q Can you -- I'm sorry?

16 A To my core.

17 Q Can you briefly tell the jury about your educational
18 background?

19 A Yes.

20 I went to college preparatory school, in Chattanooga,
21 called the Baylor School, in Tennessee. After high school, I
22 went to Rhodes College, a small liberal arts school in Memphis.
23 I did some additional studies at the University of Innsbruck, in
24 Austria and, after graduating college, planned to go and get a
25 graduate degree but detoured and moved to Washington, D.C.

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Cox - by Plaintiff - Direct/Connell

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1 Q Mr. Cox, I'm just going to say, we have the world's
2 best court reporters, but I suspect they're going to ask you to
3 slow down a little bit.

4 A Understood.

5 Q So I'm going to preempt that.

6 Can you also briefly tell the jury about your
7 employment background?

8 A Yes.

9 I moved to Washington, D.C., in 1992. I worked for
10 Congressman John Tanner, from the area of West Tennessee, where
11 I grew up; did legislative work for Congressman Tanner for about
12 three years.

13 Q Okay. At some point, did you come to be hired by the
14 NRA?

15 A I did.

16 Q Can you tell us how that came about?

17 A I had worked on judiciary issues, issues related to the
18 Second Amendment, for the congressman on Capitol Hill. I'd
19 gotten to know and work with representatives of the National
20 Rifle Association. I was offered a position, in February of
21 1995, to be a federal lobbyist -- a Federal Liaison was the
22 title, but federal lobbyist -- on Capitol Hill for the National
23 Rifle Association, and in February of 1995, was promoted within
24 that division, became Deputy Director of the Federal Affairs
25 Division, around 2001, I believe; and then was eventually

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1 appointed and promoted to Executive Director of the Institute
2 for Legislative Action in April of 2002.

3 Q So, Mr. Cox, can you explain, briefly, what the
4 Institute for legislative action is within the NRA?

5 A So, anything that directly or indirectly impacts the
6 Second Amendment and the rights of gun owners in the United
7 States is covered by the Institute for Legislative Action. It
8 was set up to defend the Second Amendment, whether it's in the
9 legislative, political or legal arenas.

10 Q Does the Institute for Legislative Action -- is it,
11 like, a separate entity within the NRA?

12 A It is. It was -- the National Rifle Association was
13 formed, incorporated here in New York, in 1871. The Institute
14 for Legislative Action was formed in 1975 to focus on the
15 political, legislative and legal actions, based on the growing
16 threats to the Second Amendment. So it was set up, kind of, as
17 a wholly owned subsidiary of the National Rifle Association,
18 with its own fiscal officer and its own responsibilities.

19 Q When you say, it had its own fiscal officer and its own
20 responsibilities, does that mean that its finances were separate
21 from the NRA's, to any degree?

22 A The finances were separate from the NRA. The National
23 Rifle Association -- the dues from the members -- covered the
24 expenses of the Institute for Legislative Action's staff and
25 overhead. The additional resources that were needed to run ILA,

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1 I had to raise separately, and that was within the numerous
2 responsibilities that I had as Executive Director of ILA.

3 Q Can you tell us what your responsibilities as the
4 Executive Director of --

5 And when we say "ILA," that means the Institute for
6 Legislative Action. If I say "ILA," we'll understand what we're
7 talking about; correct?

8 A Yes.

9 Q Okay.

10 A So I had multiple responsibilities. I was -- I served
11 as the chief lobbyist, ultimately, for the National Rifle
12 Association, the primary point of contact with elected
13 officials, up to the President of the United States.

14 I served as the chairman of the political action
15 committee, called the NRA Political Victory Fund; I was
16 responsible for the election strategy and for raising and
17 deploying the resources to implement that election strategy.

18 I served as the president of the Freedom Action
19 Foundation, which was a -c(3) set up -- charity -- set up to
20 register gun owners across America.

21 And I also served as one of the two primary
22 spokespeople for the National Rifle Association, giving
23 speeches, doing interviews and those sorts of things.

24 And I ran a staff of, roughly, 80 people, including
25 full-time lobbyists for Capitol Hill, that covered all 50 state

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1 legislatures and local governments, and also managed and oversaw
2 the outside lobbyist and consultants and others that were part
3 of the outside consulting group.

4 Q So, as the Executive Director of ILA --

5 Well, let me stop for a second: Is the Executive
6 Director of ILA the highest position within ILA?

7 A Yes.

8 Q And as Executive Director of ILA, did you report to
9 Mr. LaPierre?

10 A I did.

11 Q Okay. As Executive Director of ILA, did you oversee
12 the finances of ILA?

13 A I did.

14 Q And did you try to track spending within ILA?

15 A I did.

16 We had a budget that was submitted for board approval
17 every year; it was part of the NRA's overall budget, but, yes,
18 we -- we had a budget to live under. I was responsible for
19 raising the money, ultimately responsible for deploying those
20 resources, and it was something that -- that we took very
21 seriously.

22 We had a fiscal officer who had been there, predated
23 my -- my employment with the National Rifle Association; had
24 been there for years, very respected; ultimately resigned or
25 retired and was replaced with another fiscal officer that I

ALAN F. BOWIN, CSR, RMR, CRR

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1 hired.

2 Q While you were heading up ILA, did you try and track,
3 in any way, sort of, the return on investment of monies spent by
4 ILA?

5 A Yes.

6 And ultimately, I was judged fairly, based on election
7 wins and losses and legislative wins and losses; and we had,
8 during my tenure of 18 and a half years, significant legislative
9 wins, election wins and legal victories, something I'm very
10 proud of.

11 Q Did you try, as Executive Director of ILA, to ensure
12 that ILA stayed within budget?

13 A We had to stay within budget, because we did not have a
14 line of credit; we did not have access to additional resources.
15 So we did not have the option of living outside of our budget.

16 Q In your observation in your time with the NRA, was that
17 true of the NRA?

18 A No.

19 Q Can you tell us what you observed of the NRA in terms
20 of management of its budget?

21 A Well, there was a constant need to raise additional
22 resources for the National Rifle Association because there was
23 not enough money coming in from member dues. So a lot of money
24 had to be raised.

25 I always believed that the National Rifle Association

ALAN F. BOWIN, CSR, RMR, CRR

1 never had a fund-raising problem, but I believed for a long
2 period of time that the National Rifle Association had a
3 spending problem; we spent more money than we had.

4 It became an issue year after year, where there was a
5 constant struggle to raise more money, to borrow more money, not
6 from an ILA standpoint but other parts of the building, and it
7 was a -- it was certainly something that I disagreed with.

8 (Continued on next page.)

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ALAN F. BOWIN, CSR, RMR, CRR

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1 Q And why did you disagree with that?

2 A Because our members sent in money, because they were
3 dedicated and passionate and believed that the money should be
4 spent on defense of the Second Amendment and the core mission of
5 The National Rifle Association. But ultimately you only have a
6 certain amount of resources you can spend, because the money is
7 not there. So, to constantly borrow, to constantly do those
8 things I was not comfortable with.

9 Q And were you ever aware of NRA expenses being passed
10 through or put into ILA?

11 A Yes.

12 Q Can you explain some of what you saw in that regard?

13 A It started back in 2002 when I was appointed to be
14 executive director of ILA. It was brought to my attention that
15 some of Wayne's expenses -- I don't know how Wayne did his
16 expenses. I don't know if he ran some through different parts
17 of the building, but I know that some of Wayne's expenses were
18 run through The Institute for Legislative Action.

19 Q And how did you find out that some of Mr. LaPierre's
20 expenses were run through The Institute for Legislative Action?

21 A I don't remember who told me or how I found out, but I
22 went and spoke to a lady who worked in the ILA fiscal department
23 and said, Does Wayne run his expenses through ILA. She said,
24 Yes. I said, Can I see them. Her response was, Nobody sees
25 those.

LAS

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1 My deputy executive director and general counsel asked
2 a similar question not long afterwards said, We're kind of
3 responsible for ILA resources. Can you share what's going on
4 here. Can we see these. And again she repeated, Not a chance.

5 Q Did you ever get to see Wayne LaPierre's expenses that
6 were being run through ILA?

7 A I was there for 18 and a half years and I never saw
8 them.

9 Q Are you aware of any other instances of NRA expenses
10 being run through ILA?

11 A I found out later that Gayle Stanford, who was the
12 outside travel agent that at some point, some of Gayle's --
13 Apparently I did not know she was being paid a retainer --
14 apparently some of those expenses were indeed run through ILA.

15 Q You knew who Gayle Stanford was, right?

16 A Yes.

17 Q And how did you know who Ms. Stanford was?

18 A When I was appointed executive director of ILA in April
19 of 2002, I was instructed by Wayne LaPierre to use Gayle
20 Stanford for travel. I didn't know Gayle. I knew she was a
21 travel agent. I found her to be a very effective travel agent.
22 So, if I had issues, my executive assistant would call Gayle.
23 Book tickets. Book hotel rooms. The only time I interacted
24 with Gayle was those times you're at an airport and your flight
25 gets canceled or your flight gets delayed and you need help and

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1 you've got to call somebody, I would call Gayle and she was
2 always able to quickly address and solve the problem.

3 Q So, how did you find out that Ms. Stanford or part of
4 her retainer was being run through ILA?

5 A I'm not sure I knew it while I was there. I didn't see
6 Gayle's bills. Those went directly to the fiscal office or
7 maybe they came to my office and they were signed off on by
8 someone else. I think it was during the bankruptcy trial that
9 that was revealed to me.

10 Q Mr. Cox, was Ms. Stanford used by all of the staff by
11 ILA for travel?

12 A That's not my understanding. Wayne instructed me to
13 use Gayle 18 years before. I believe that Wayne testified that
14 he had -- he had given me other people within ILA and other
15 executives and other employees the direction to use -- to use
16 Gayle Stanford. But I don't believe it was applied across the
17 board. I think it was just to people that Wayne directly
18 approved.

19 Q And were you aware that she was billing on a retainer
20 basis?

21 A No.

22 Q Okay. In your experience was that an usual arrangement
23 with travel agents you've used?

24 A I'm not an expert in travel agents. I always assume
25 travel agents book tickets and charge a booking fee. I never

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1 heard of a travel agent being charged a retainer. I don't know
2 if that's standard practice, but it's certainly not a practice
3 I'm familiar with.

4 Q Mr. Cox, are you familiar with an organization called
5 Youth for Tomorrow?

6 A I am.

7 Q What is that organization?

8 A Youth for Tomorrow is a Christian charity that was
9 started by a former Washington Redskin's coach named Joe Gibbs.
10 He's a current NASCAR team owner that's in the northern Virginia
11 area that serves, provides services for abused children.

12 Q Does Youth for Tomorrow have anything to do, to your
13 knowledge, with the Second Amendment?

14 A No.

15 Q Does it have anything to do with the mission of the NRA
16 or advancing the mission of the NRA?

17 A No.

18 Q Do you know whether NRA funds were ever directed for
19 Youth for Tomorrow?

20 A I believe the answer to that is yes.

21 Q And do you know why NRA funds were directed to Youth
22 for Tomorrow?

23 A I don't. I think that ultimately there is wonderful
24 charities all across the country that deserve to be supported.
25 I think Youth for Tomorrow is a wonderful charity. I think

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1 there were more appropriate charities for the The National Rifle
2 Association to support, maybe Youth Shooting, maybe the U.S.
3 Olympic team. I thought there were better places to send NRA's
4 member money and donations then to unaffiliated, outside
5 charity.

6 Q Do you know whether Susan LaPierre was involved with
7 Youth for Tomorrow?

8 A Susan LaPierre was involved with Youth for Tomorrow,
9 and I believe she ultimately might have served as -- on the
10 board or as president of the board.

11 Q And did Mrs. LaPierre ever discuss with you the use of
12 NRA funds for Youth for Tomorrow events?

13 A Yes. Susan LaPierre asked me for help in raising money
14 for Youth for Tomorrow, which I always tried to assist with
15 Susan's request and directives.

16 Q So I think, Mr. Cox, you said as the head of the ILA
17 you reported to Wayne LaPierre, correct?

18 A Correct. Both in practice and also according to the
19 bylaws of The National Rifle Association.

20 Q What was the nature of your relationship with Mr.
21 LaPierre?

22 A Well, it was a long relationship. I've known Wayne
23 LaPierre for over 30 years now. When I was a young guy hired by
24 The National Rifle Association to lobby Capitol Hill at age 24,
25 it was different than the 49 year old who left 18 and a half

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1 years later. Wayne and I had a -- it started off as a young guy
2 admiring and looking up to his boss. It became a partnership to
3 a large degree. We battled up. Went through a lot of battles
4 together. Didn't always agree, but always had the same end game
5 in mind with results with regards to winning elections and
6 winning legislative campaigns and issues.

7 Over time as I grew in the position of an officer, as I
8 started seeing more things, attending more board meetings --

9 MS. CONNELL: Your Honor, I'm sorry. Should we
10 pause for a second for the sirens?

11 THE COURT: I thought you were going to ask me to
12 stop the sirens.

13 MS. CONNELL: If you had that power, I would.

14 THE COURT: I was thinking about it.

15 Q I'm sorry, Mr. Cox. I think we're safe now. I think
16 you were saying, Mr. Cox --

17 MS. CONNELL: Can we read back where Mr. Cox left
18 off?

19 (Whereupon the above-requested testimony was read
20 back.)

21 Q Okay. I'm sorry, Mr. Cox. If you could pick it up
22 from there.

23 A As I grew as an officer, in a position of an officer as
24 I attended more board meetings, I started to learn more about
25 not just ILA but overall mechanism of the The National Rifle

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1 Association, the budget of the The National Rifle Association,
2 the expenditure of National Rifle Association, I didn't always
3 agree. Again that wasn't necessarily a bad thing. You know,
4 people can disagree, but I started to have questions and growing
5 concerns particularly over the final few years that ultimately
6 lead to my departure in 2019.

7 Q Can you talk about what some of those growing concerns
8 were?

9 A With regards to my departure? I'm sorry. With regard
10 to my departure or concerns about the organization?

11 Q Let's first talk about concerns of the organization
12 before your departure.

13 A Well I had battled internally with Ackerman McQueen,
14 the outside PR firm for a variety of different reasons. I had
15 serious concerns about, in my view, hiring and grossly
16 overpaying incompetent people. I had questions about other
17 strategies. The constant -- the constant need for money for
18 National Rifle Association. The borrowing of money, including
19 borrowing money at times from funds from The Institute for
20 Legislative Action. All of those things became more and more
21 concerning and became more and more of a problem.

22 Q So I --

23 A To the end -- to the end I still tried to help advance
24 the mission of The National Rifle Association. And there was a
25 time when I put the mission of National Rifle Association above

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1 the interests of individuals and that ultimately ended up
2 becoming a problem.

3 Q So let's break that down a little bit. You had
4 concerns about Ackerman McQueen, an NRA vendor, right?

5 A I did.

6 Q What was the nature of those concerns?

7 A I thought Ackerman McQueen -- Ackerman McQueen had a
8 long relationship with The National Rifle Association long
9 before my service with NRA. I think Ackerman McQueen should be
10 credited with some fantastic advertising campaigns. Some of the
11 work they did was very successful.

12 My problem with Ackerman McQueen is the person
13 responsible for dealing with a different audience, the
14 legislative audience, the donor audience. I thought Ackerman
15 McQueen was not strategic in their messaging. I thought their
16 messaging was politically tone deaf. I thought they were
17 arrogant. I believe that they overcharged for the product that
18 they delivered. I thought their advertising, purchasing was
19 flawed. All things that I was not quiet about and that I was
20 quite outspoken about at the time. I don't think anyone battled
21 with that agency inside The National Rifle Association more than
22 I did.

23 Q Did you discuss any of these concerns with Wayne
24 LaPierre?

25 A I did.

LAS

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1 Q And what response if anything -- if any did you
2 receive?

3 A I've only heard Wayne LaPierre use profanity twice in
4 the 30 plus years that I've known him. Both of those times were
5 when Ackerman McQueen was being questioned or pushed back
6 against. Wayne was the fiercest defender of Ackerman McQueen.
7 At times the only defender of Ackerman McQueen. But to go
8 against Ackerman McQueen it was very -- very well known to
9 go against Ackerman McQueen was to go against Wayne LaPierre.
10 He believed in them. He trusted them. He used them. And
11 ultimately that was his decision as executive vice president,
12 and I was not able to change his mind and eventually quit
13 trying.

14 Q Do you think it would be fair to say that Ackerman
15 McQueen's position as a vendor of the NRA was untouchable?

16 A I believe it was untouchable and unhealthy.

17 Q Who managed the NRA's relationship with Ackerman
18 McQueen from what you observed?

19 A Wayne LaPierre.

20 Q Okay. Did Mr. Phillips have any role in that
21 relationship from what you observed?

22 A As the treasurer and CFO and the person responsible for
23 ultimately making sure people were paid and the invoices got
24 paid, then yes, Woody would have been involved. I was never
25 involved nor party to any of the negotiations with Ackerman

LAS

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1 McQueen.

2 Q Did you use Ackerman McQueen at ILA?

3 A I did not. Ackerman McQueen provided minimal
4 assistance for our efforts at the annual meeting, particularly
5 with me as it related to giving speeches at the annual meeting.
6 The speech assistance, the audiovisual equipment, those sorts of
7 things, because they were put in charge of basically running --
8 running all of that at the annual meeting.

9 Q Did you observe Ackerman McQueen to have any role in
10 shaping Mr. LaPierre's image, public image?

11 A Yes.

12 Q Can you describe that?

13 A Wayne would speak to Angus McQueen, when Angus was
14 still alive regularly. I think it was reported that he spoke
15 sometimes many times a day. I think that Angus McQueen and
16 Ackerman McQueen effectively changed Wayne's image, no question.

17 Q Okay. I think you said, Mr. Cox, that Mr. LaPierre
18 managed the NRA's relationship with Ackerman. Are you familiar
19 with another NRA vendor MMP?

20 A Yes.

21 Q Do you know whether Mr. LaPierre managed the NRA's
22 relationship with MMP?

23 A Yes.

24 Q Okay. And did ILA use MMP's services?

25 A Yes.

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1 Q Did you choose to use MMP for ILA?

2 A No. Wayne negotiated and signed MMP to do fundraising
3 solicitation by mail for The National Rifle Association, for The
4 Institute for Legislative Action that I ran and also for the NRA
5 Political Victory Fund that I ran. I never saw an MMP contract.
6 Never asked my opinion on an MMP contract. But so yes, we -- we
7 used them or ILA used them and my understanding is continuing to
8 use them.

9 Q Did you ever ask to see an MMP contract?

10 A I wanted to understand better the MMP contract. We
11 sent out a lot of mail. It was a lot of members money that was
12 spent on it. It was critically important, the fundraising
13 benefit was critically important to The National Rifle
14 Association. But like everything else, when you're responsible
15 for raising those dollars and spending those dollars, you want
16 to make sure they are used effectively. I did want to know what
17 that looked like. And my understanding was it changed over
18 time. But I was not able to negotiate on ILA's behalf for that
19 or for the political action committee.

20 Q Were you aware, while you were at ILA, of a
21 relationship, if any, between Mr. LaPierre and the owners of
22 MMP?

23 A Yes.

24 Q And what was your knowledge about that?

25 A My understanding, I didn't understand the -- who

LAS

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1 actually owned, what personal people owned, but I understood
2 Brad O'Leary owned part of MMP was my impression. And I
3 understood that David McKenzie was the other primary owner. I
4 believe Gurney Sloane might have owned a piece. I don't know --
5 I don't know the ownership structure. Yes, I was aware that
6 there were individuals who owned the company and worked directly
7 with Wayne.

8 Q Were you aware of whether Mr. LaPierre had a friendly
9 relationship with Mr. McKenzie?

10 A I don't know the nature. I was never -- I think I
11 might have met David McKenzie one time with Wayne. He's a
12 distinct fellow, and so I would recognize him if he were in the
13 courtroom. I don't know him. I might have met him once or
14 twice. I do understand that Wayne had known the McKenzies, both
15 David and his wife, for a long period of time and had a personal
16 relationship.

17 Q Were you aware of whether Mr. LaPierre received any
18 gifts from Mr. or Mrs. McKenzie?

19 A Not until I left The National Rifle Association.

20 Q If you had known that they received gifts while you
21 were at The National Rifle Association, would that have caused
22 you to direct closer scrutiny to the MMP contract?

23 A Absolutely.

24 Q Why is that?

25 A Because it's inappropriate to accept things of value

LAS

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1 from vendors. There is a -- a policy against it.

2 Q Okay. Have you ever heard of an entity called
3 Associated Television International or ATI?

4 A I have heard of that, yes.

5 Q Do you understand that to be an entity controlled by
6 Mr. McKenzie?

7 A Yes.

8 Q Do you know whether it was a vendor of the NRA?

9 A Yes.

10 Q Okay. Do you know what work it did for the NRA?

11 A My understand -- I do not. My understanding was that
12 they produced some television programing I believe called Crime
13 Strike, but I'm not -- I'm not familiar with Crime Strike or how
14 it worked or if it worked.

15 Q Have you ever seen an episode of Crime Strike?

16 A I have not.

17 Q Mr. Cox, you're not saying that no show called Crime
18 Strike was ever produced, right?

19 A I'm not.

20 Q Did you ever discuss Crime Strike with Mr. LaPierre?

21 A I did. I asked Wayne at a finance committee meeting
22 when I saw on a financial document ATI or Crime Strike or
23 whatever the line item was with money attributed to it, I asked
24 Wayne, I said, What is this. He said, We're wrapping that up.
25 That's the Crime Strike TV show that we're wrapping up. That

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1 was the only conversation I had with him about it.

2 Q Did you ever indicate to Mr. LaPierre that you thought
3 the NRA should reconsider its contracts with Ackerman and MMP?

4 A Yes.

5 Q Can you describe those conversations?

6 A I believed that Ackerman McQueen was -- was way too
7 expensive. That we only had a limited amount of money to spend.
8 And that those dollars could be spent more targeted and more
9 effectively, even -- even if it was through Ackerman McQueen.
10 The programing that they did, in my opinion, was at times
11 embarrassing and unprofessional and politically tone deaf. I
12 certainly think there were better ways to spend those resources.
13 I thought their advertising strategy, how they purchased ads was
14 completely juvenile and not professional and geared more towards
15 raising money and less towards trying to influence the general
16 public in support of the mission of The National Rifle
17 Association.

18 Q Okay. What about MMP, did you ever discuss those
19 contracts?

20 A Wayne and I might have had one or two discussions where
21 I asked what's the deal with MMP. They do ILA and PBS
22 fundraising. And he said, I've already handled that. That's
23 good. You don't need to worry about that.

24 Because of the significance that MMP played with The
25 National Rifle Association as far as the resources that were

LAS

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1 raised through direct mail solicitations, which was an
2 overwhelming majority of the resources that came in to a large
3 degree, it was the lifeblood of the organization from a resource
4 standpoint. The members ultimately being the lifeblood. But
5 how those donations came in, that were primely through direct
6 mail solicitations.

7 Q So, you never considered stopping direct mail
8 solicitations, correct?

9 A Correct.

10 Q So, what kind of concerns did you raise with regard to
11 MMP?

12 A I just wanted to make sure that we were getting the
13 right return on our investment. It was a lot of money. We sent
14 out a lot of mail, hundreds of millions of pieces of mail most
15 likely a year. And it's a lot of money. I wanted to make sure
16 we were paying fair market rates. I wanted to make sure we were
17 maximizing our -- our return, but it was -- it was not -- I
18 don't know. I believe it was changed over time, but I was never
19 part of those negotiations.

20 Q I want to go back to Ackerman for one second. Have you
21 ever heard of a type of billing from Ackerman called
22 out-of-pocket expenses?

23 A Not until after I left The National Rifle Association.

24 Q Mr. Cox, do you believe that billing NRA travel and
25 entertainment expenses through a vendor was necessary for

LAS

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1 security purposes?

2 A No.

3 Q Can you explain why you say that?

4 A As the second, arguably the second most high profile
5 person within the organization who dealt with security issues,
6 who dealt with high net worth individuals, who traveled
7 frequently, who interacted and gave a lot of public speeches and
8 did a lot of media, I believe if that had been an issue,
9 certainly they would have come and spoken to me about it. They
10 never did. I think this was something that was -- that was
11 not -- was not necessary for -- for the betterment of the NRA
12 members and the mission of the NRA members.

13 Q So, no one spoke to you about putting your travel and
14 entertainment expenses through Ackerman McQueen's out-of-pocket
15 expense system?

16 A No.

17 Q Okay. Mr. Cox, would you say you were successful as
18 the head of ILA?

19 A Yes.

20 Q And what makes you say that?

21 A The mission of ILA was to protect and defend the
22 Constitution as it relates to the Second Amendment for
23 individual gun owners in this country. I was judged, as I
24 mentioned earlier and I think fairly, based on the legislative
25 success and the election success and the team that I built over

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1 a period of time. The successes that we had in passing good
2 legislation, defeating bad legislation, electing pro Second
3 Amendment candidates, defeating anti Second Amendment
4 candidates. The success we had in expansion of the Second
5 Amendment in the legal arena. All of those things pointed to
6 the success of ILA under my leadership with the support of NRA
7 members across this country. The short answer is yes, I believe
8 I was effective.

9 Q Did Mr. LaPierre give you positive feedback about your
10 performance as the head of ILA?

11 A Yes.

12 Q What kind of feedback did he give you?

13 A On a personal level it was, Thank God you're there.
14 I'm happy every day that you're there. You're doing a great
15 job. Which is always, hearing that from your boss, is always
16 reassuring. And I never, in the almost 25 years that I worked
17 for The National Rifle Association, I never asked for a raise.
18 I never asked for a bonus. But Wayne compensated me based on
19 his view of my effectiveness. And I was appreciative of that.

20 Q Actually, Mr. Cox, I'm sorry I skimmed over something
21 we were talking about earlier. I would like to go back. When
22 you were talking about some growing concerns that you had in the
23 NRA, I think you said that you were concerned with hiring and
24 overpaying incompetent people. Was that a concern that you had?

25 A Yes.

LAS

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1 Q And can you describe the basis of that concern?

2 A I thought we were overpaying a number of different -- I
3 thought NRA was overpaying a number of different vendors, and I
4 had growing concerns about individual people like Josh Powell,
5 who I thought was neither qualified nor competent but grossly
6 overpaid.

7 Q Who hired Mr. Powell, if you know?

8 A Wayne LaPierre.

9 Q Did you have concerns about -- Well, why did you
10 believe Mr. Powell was not competent for his position?

11 A Josh, like many other officers that Wayne hired, came
12 from the board of directors. He had direct ties to Ackerman
13 McQueen, which obviously caused concerns for people who had
14 concerns about Ackerman McQueen. Josh I don't believe was a
15 college graduate but yet was put in charge to a large degree to
16 a three to \$400 million a year organization supporting Wayne
17 directly. His background was, my understanding, littered with
18 failed businesses and bankruptcies and lawsuits. And I think a
19 board member said they wouldn't hire him to run a lemonade stand
20 let alone The National Rifle Association. And I shared that
21 view.

22 Q Was there any other hiring decisions made by Mr.
23 LaPierre that concerned you?

24 A Yes.

25 Q Can you describe the decisions that concerned you?

LAS

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1 A I was concerned with the hiring of the Brewer firm for
2 a variety of different reasons.

3 Q Can you describe those concerns?

4 A Yes. The legal community within and around the Second
5 Amendment is not a huge group of people. There are very well
6 known names among Second Amendment supporters. Probably not
7 well known names amongst most people. A lot of them had done a
8 lot of work for The National Rifle Association over a long
9 period of time.

10 When Wayne hired the Brewer firm, he told me it was to
11 fight against New York and fight against the attacks coming from
12 New York. I never heard of Bill Brewer. Didn't have an opinion
13 on him one way or the other. It came to my attention pretty
14 quickly that Bill Brewer was married to Angus McQueen's
15 daughter, the head of Ackerman McQueen, which I found to be
16 somewhat odd. Also a simple Google search that someone gave me
17 showed that Bill Brewer had contributed consistently, including
18 while in 2018, when he was hired, to candidates for political
19 office who were actively against the Second Amendment. So, I
20 didn't believe he was part of the Second Amendment community. I
21 didn't believe he believed in the Second Amendment. I had
22 concerns that grew over time significantly about the amount of
23 money that was being spent with the Brewer firm, not because
24 lawyers don't deserve to make a lot of money if they are good.
25 I get that. Because the amount of money was crippling to The

LAS

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1 National Rifle Association's budget.

2 Q Were there any other personnel hiring decisions made by
3 Mr. LaPierre that concerned you?

4 A Yes.

5 Q Can you tell us what those were?

6 A There were -- there were individuals, including
7 individuals who worked for The Institute for Legislative Action
8 that I lost confidence in. I didn't believe in their ability.
9 Ultimately told Wayne that I -- I know that you like these
10 people, but I'm not comfortable. I'm not confident that they
11 are able to do the job effectively the way I think it needs to
12 be done. He went on to hire them himself and promoted a number
13 of them to significant positions of power, including significant
14 salary and compensation.

15 Q Can you name any of those people if you're comfortable
16 doing so?

17 A Andrew Arulanandam is one of them who I believe is
18 still there and --

19 Q Anyone else?

20 A There are other people I was concerned. Tyler Schropp
21 I had concerns about the -- his background and qualifications to
22 be in charge of raising money for The National Rifle Association
23 and others.

24 Q Okay. Were you ever concerned about any determination
25 made by Mr. LaPierre to terminate an employee?

LAS

1 A Yes.

2 Q Can you describe that concern?

3 A Well, there were a number of people who I felt were
4 good, qualified, dedicated people who did a good job working on
5 behalf of the members of The National Rifle Association that
6 Wayne chose to get rid of, whether that was at the
7 recommendation of Ackerman McQueen or his own recommendation, I
8 don't know why. But yes, I had -- I had disagreements with some
9 of Wayne's hiring and termination decisions.

10 (Continue on the next page.)

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LAS

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1 Q Are you familiar with an NRA employee named Kyle
2 Weaver?

3 A Former NRA employee Kyle Weaver, yes.

4 Q Former NRA employee.

5 A Yes.

6 Q Okay. Do you know --

7 Did you have any concerns regarding Mr. Weaver's
8 termination?

9 A I did.

10 Q Can you describe those?

11 A Kyle Weaver started at the National Rifle Association
12 back in 1995, right around the same time I did. We grew up, as
13 young guys, together. He did a fantastic job building up the
14 Friends of NRA program; did a fantastic job, in my opinion, as
15 Executive Director of General Operations. He served as an
16 officer. I think he was well-respected by his staff; I think he
17 was well-respected by the board.

18 It became clear that there was some sort of
19 disagreement with Ackerman McQueen and that there was a -- a
20 problem there. And I remember Kyle calling me and saying,
21 "They're trying to get me fired, they're trying to get me
22 fired." And I -- it was not believable to me, because Kyle was
23 well-respected and doing a great job, in my opinion, in most
24 people's opinion; and our -- he was physically not well over the
25 stress that he was going through.

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1 And I actually went and met with Wayne. We went and
2 had lunch off-site, the way we often did, and we had a
3 conversation about Kyle Weaver and the security of Kyle Weaver's
4 job.

5 Q So you spoke to Mr. LaPierre about Kyle Weaver's job.

6 A I did.

7 Q And what did he tell you?

8 A He said -- I said: "Kyle's worried you're going to
9 fire him. What's going on?"

10 I mean, obviously, I had a relationship with Kyle; we
11 worked closely together as the executive director of the two --
12 the two sides, the General Operations side and the -- the ILA
13 side, and I was concerned, both personally and professionally.

14 And Wayne assured me that Kyle was not going to get
15 fired. He told me, "Just tell Kyle to work with me." Those
16 were Wayne's words: "Just tell him to work with me." And I
17 said: "Wayne, just call him. I have no doubt in my mind that
18 Kyle will do as directed. Just pick up the phone and call him."

19 So I felt better, after that conversation, that -- that
20 Kyle was not going to be forced out of the organization,
21 because, again, I thought he was doing a great job for the
22 members.

23 Q Did you have an understanding about what Mr. LaPierre
24 meant when he said, "Tell Kyle to work with me?"

25 A No --

ALAN F. BOWIN, CSR, RMR, CRR

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1 Q Okay.

2 A -- because I believed Kyle worked with anybody, and I
3 think most people would have said that Kyle was a -- a great
4 collaborator and a great person to work with.

5 Q You mentioned before, Friends of the NRA Dinners. Can
6 you tell us the import, if any, of those dinners?

7 A Can you repeat the question?

8 Q Can you tell us what those are?

9 A So there are -- they're called Friends of NRA Dinners,
10 and they have them all across the country, where NRA members
11 gather to raise money from the local communities to support a
12 number of different great charity programs that are directly
13 related to the Second Amendment. Some of that money is held in
14 the local communities for -- to be spent in those areas; some of
15 the money comes back to the National Rifle Association and to
16 the Foundation to support the Foundation's efforts. But
17 there -- I spoke at a lot of them; I did not have to organize a
18 lot of them, but I believe we were putting on -- Kyle was
19 putting on -- over a thousand dinners a year, which was a lot
20 of -- a lot of, not only work, but a lot of money that was
21 coming into the National Rifle Association. And he really
22 helped grow that program and turned it into something
23 significant -- a significant asset for the -- for the members.

24 Q So, after you had that conversation about Mr. Weaver
25 with Mr. LaPierre, what happened next with regard to Mr. Weaver?

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1 A A short time later, I got a call from Mr. Weaver,
2 saying that he had been escorted out of the -- the headquarters
3 by armed security and had been terminated, and they took his
4 phone. I think he had called me, maybe from his wife's phone,
5 that they had taken his phone. I think they took his car keys.
6 He had a -- a officer-leased vehicle terminated, paid for by the
7 National Rifle Association.

8 Q Did you ever speak to Mr. LaPierre about why Mr. Weaver
9 was escorted out of the building with security?

10 A I was -- yes.

11 Q And what did Mr. LaPierre say, if anything?

12 A I expressed my extreme disappointment. I didn't think
13 that Kyle deserved, one, to be fired, let alone to be escorted
14 out of the -- the headquarters, in front of all the employees
15 and all of his co-workers, by armed security. I thought it was
16 a -- petty and cheap and really insensitive; at the -- at the
17 basic level, an insensitive, unprofessional, unnecessary thing
18 to do.

19 And I asked Wayne, at the time: "What -- well, what
20 are you going to do now? Who's going to replace him?" And he
21 assured me that he was going to hire an outside executive search
22 firm and find the best person in the country to -- to do that
23 job.

24 Q Is that what happened?

25 A No.

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1 Q What happened? Who, if anyone, replaced Mr. Weaver?

2 A Josh Powell replaced Mr. Weaver.

3 Q I'd like to go back to your work at NRA ILA now.

4 Oh, I'm sorry: One more concern that I think you
5 mentioned, Mr. Cox, was the NRA's, you said, constant need for
6 borrowing, I think. Can you describe what you meant by that?

7 A It was a challenge to raise money at the National Rifle
8 Association. Whether that was Wayne raising money for Mother
9 Ship NRA or me raising money for ILA or me raising money for
10 PVF, it was -- it was a lot of money that had to be raised and
11 it took a lot of effort. But at the end of the day, there's
12 only -- there's only so much money you can spend and it's what
13 you -- it's what you have.

14 NRA had a line of credit with an outside banking
15 institution. ILA's assets were tied to that line of credit.
16 ILA had no line of credit. ILA's assets actually allowed for
17 them to borrow money as needed, and that grew over time. There
18 was money that was borrowed against the headquarters building,
19 again, that was used -- when there were shortfalls in -- in
20 money, they would go and borrow money against the building.

21 I found that to be inappropriate and unnecessary. If
22 you -- if you're spending too much money, stop spending so much
23 money. That was the way I viewed it.

24 And they also borrowed money, at times, directly from
25 the Institute for Legislative Action --

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1 Q So --

2 A -- and I found that to be -- I found that to be
3 problematic, but ...

4 Q So the NRA borrowed money from the financial department
5 that you oversaw, the --

6 A Yes.

7 Q -- division within --

8 Excuse me.

9 -- from the division within the NRA that you oversaw;
10 correct?

11 A Yes, correct.

12 Q And while you oversaw ILA, ILA did not borrow money, as
13 far as you recall.

14 A Correct.

15 Q But the NRA borrowed money from you.

16 A Correct.

17 Q Okay.

18 I just want to explain one thing: When you say, a
19 "line of credit," can you explain to the jury what that means?

20 A A line of credit's not unlike what individuals do, if
21 they have a condo or a house, where you borrow money against the
22 value of your home; and NRA would borrow money against the value
23 of the building, but also the value of the assets. NRA did have
24 significant assets in -- in financial holdings, significant
25 assets in -- in ILA's money that was -- that was properly

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1 managed and held. So there were -- there was borrowing
2 capacity, which was not inappropriate. I did not view having a
3 line of credit as inappropriate, but I viewed the use of that
4 line of credit often as inappropriate.

5 Q Mr. Cox, now let's go back to your work at ILA:

6 I think you said that you never asked for a raise or
7 bonus while you were at ILA; is that right?

8 A Correct.

9 Q Okay. But you did receive bonuses, at times; right?

10 A I did.

11 Q And raises at times, right?

12 A Yes.

13 Q In fact, in 2017, Mr. LaPierre, in April, gave you a
14 hundred-thousand-dollar bonus; is that right?

15 A That's correct.

16 Q And why did you understand him to be giving you that
17 bonus?

18 A As a merit bonus for a job well done.

19 The 2016 election cycle was one of the most successful
20 for the National Rifle Association in decades, if not longer. I
21 was responsible for managing -- I was responsible for raising
22 the money and deploying the resources and the campaign strategy
23 behind those elections. And then, also, there were some
24 significant legislative wins. And I think Wayne valued my
25 service, valued my level of expertise, valued that I was really

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1 good at my job and didn't want me to leave, and so, compensated
2 me based on what he decided.

3 Q While you worked at the I -- at ILA for many years, did
4 you have an employment contract for most of that time?

5 A I worked for the National Rifle Association for, I
6 believe, 20 years with no employment contract at all.

7 Q Did there come a time when you had an employment
8 contract?

9 A Yes.

10 Q And how did that come about?

11 A Wayne came to me and said, "I have a" -- Wayne saying
12 this himself; that: "I have an employment contract. You
13 deserve to have one, too, and I'm going to get one done for
14 you." And that was how the conversation started.

15 Which I was -- having worked there for 20 years with no
16 employment contract, I never asked for an employment contract,
17 but I viewed it as a good-faith effort to acknowledge a job well
18 done and my leadership and my effectiveness, and so, I was -- I
19 was appreciative of -- of the -- the overture.

20 Q When did those conversations about an employment
21 contract occur?

22 A Not long after the 2016 elections; I believe, at some
23 point around 2017. But that's been a while ago, so my dates
24 might be slightly off.

25 Q Did you ultimately sign an employment contract in or

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1 around January 2019?

2 A Yes.

3 Q Okay. And at that time, did you have concerns about
4 how the NRA was operating?

5 A I did; growing concerns.

6 Q And had you voiced them to Mr. LaPierre?

7 A Yes.

8 Q And yet, the conversations regarding the contract
9 continued; correct?

10 A Correct.

11 Q Why did you agree to sign an employment contract with
12 the NRA in January 2019?

13 A I'm sorry; can you repeat that?

14 Q Sure.

15 Why did you agree to sign an employment contract with
16 the NRA in January 2019?

17 A Because I loved the organization, I loved -- I built a
18 staff that I thought was world-class, certainly in -- in the
19 U.S. political landscape. I felt I was good at my job. I felt
20 that the members of the National Rifle Association deserved a
21 strong NRA. So I was -- I was torn. I had almost left a year
22 before. I was struggling on what I -- what the smart thing for
23 me to do was.

24 But Wayne encouraged me to stay; Ollie North, Richard
25 Childress, Carolyn Meadows, who were the three board officers at

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1 the time; perhaps, when the first conversation started, Pete
2 Brownell, who is the current president. But everyone encouraged
3 me to stay, very openly spoke about me, quote-unquote, being the
4 future of the organization.

5 And so I decided to -- to continue to move forward.

6 Q Mr. Cox, I'd like you to look at tab 7 of your binder.

7 MS. CONNELL: And this has been previously
8 marked -- oh, no. I'm sorry. Not tab 7. I strike that.
9 Tab 2. Excuse me.

10 Your Honor, tab 2 is an excerpt of tab 1. It is
11 a -- it's a document pulled out. Tab 1 implicates the
12 concerns we had talked about; tab 2 is the employment
13 agreement. So I'm hoping to --

14 THE COURT: Is there an objection to the employment
15 agreement?

16 MS. ROGERS: No objection.

17 THE COURT: All right.

18 MR. CORRELL: No objection.

19 THE COURT: Is it separately in as PX 154?

20 MS. CONNELL: No, your Honor. It's -- we would
21 like to relabel it as PX 154-A.

22 THE COURT: Okay. PX 1- -- 154-A is admitted.

23 MS. CONNELL: And just to be clear, that would be
24 PX-154, pages 9 through 16 of PX 154.

25 THE COURT: Okay.

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1 BY MS. CONNELL:

2 Q Mr. Cox, can you please take a look at tab 2 of your
3 binder, and specifically page 2?

4 (Image displayed.)

5 Q Do you see that?

6 A Yes.

7 Q It's also on the screen, but it's in your binder.

8 And can you turn and look at the last page of this,
9 which is page 16 of the document?

10 (Image scrolled.)

11 Q Do you recognize these signatures?

12 A I do.

13 Q And can you tell us whose signatures they are?

14 A The first signature is mine. The second signature is
15 that of Wayne LaPierre. The third signature is that of the
16 then-president of the NRA, Oliver North. Then it's Richard
17 Childress, who was the then-first vice president; and Carolyn
18 Meadows, who was the second vice president.

19 Q Is this the employment agreement you signed with the
20 NRA in January of 2019?

21 A Yes.

22 MS. CONNELL: Thank you. You can take that down.

23 Oh, I'm sorry. One second. If we could take a
24 look -- I'm sorry, Jesse. If we could pull up page 2 again
25 and look at the top ...

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1 (Image displayed.)

2 BY MS. CONNELL:

3 Q Did you have an understanding as to why this -- you
4 signed -- the NRA wanted to enter into this agreement with you?

5 A It was explained to me that I was a critical piece of
6 the NRA team, that my efforts were acknowledged and appreciated,
7 that my involvement in the future of the organization was going
8 to be critical to the success of the organization, and they
9 wanted to capture that in -- in a -- in an employment contract.

10 Q And, in fact, the agreement reads that the NRA desires
11 to retain you as "a valued leader in carrying out the NRA
12 mission"; right?

13 A Correct.

14 Q Okay.

15 MS. CONNELL: Thanks, Jesse. You can take that
16 down now.

17 (Image removed.)

18 Q You did --

19 I think you said, one of your duties as Executive
20 Director of ILA was fund-raising; right?

21 A Yes.

22 Q And would you consider yourself successful at
23 fund-raising?

24 A Yes.

25 Q And can you describe why you consider yourself

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1 successful at fund-raising?

2 A I think, by definition, the -- successful fund-raising
3 is people who raise a significant amount of -- of money, and so,
4 yes, I -- I believe that -- that I -- I succeeded in -- in the
5 efforts in and around fund-raising.

6 Q And what do you attribute your success in fund-raising
7 to?

8 A The millions of NRA members across this country who
9 believe passionately in the Second Amendment.

10 I was never under any -- you know, I thought that this
11 had to do with me -- I believed that I was good at my job; I
12 believed that I built credibility; I believed that I earned
13 trust. But it's the average NRA members across this country who
14 kick in five, ten, fifteen dollars at a time to support the
15 mission of the National Rifle Association that drives the
16 success of NRA's fund-raising.

17 Q And do you think it was --

18 Do you think that your brand or facial recognition
19 played an important role in that fund-raising?

20 A I believe that when you -- when you go on national TV
21 and NRA members see you out there fighting the good fight and
22 fighting on their behalf, or speaking at high-profile events
23 that they might be watching either on TV or online, there's a
24 sense of pride and there's a connection there. So I do believe
25 that that was a -- a part of it.

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1 But I never believed that -- I never believed that my
2 face or my name was responsible for the money. It was the
3 generosity of average people across this country who were
4 willing to send in a donation to support our work.

5 Q Do you believe there are certain things that led to
6 higher or increased donations?

7 A It was -- it was environmental, to be honest with you.

8 There were times when fund-raising was lower than we
9 hoped; there were times when fund-raising was better than
10 expected. A lot of those had to do with the attacks on the
11 Second Amendment. When NRA members view their rights being
12 under attack, whether that's in a legislative body, whether it's
13 in a courtroom or anywhere else, they -- they are more likely to
14 respond and support the efforts to push back.

15 Q So, would you say that consideration of issues facing
16 the NRA was a factor in fund-raising?

17 A Yes.

18 Q Okay.

19 Would you say that Wayne LaPierre was a successful
20 fund-raiser?

21 A Yes.

22 Q Okay. And would you say that the factor that --

23 MS. CONNELL: Strike -- strike that.

24 Q Would you say that the same considerations that applied
25 to your success in fund-raising applied to his success in

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1 fund-raising?

2 A I believe so, yes.

3 Q If you and Wayne LaPierre were to leave the NRA, do you
4 believe the NRA would be unable to raise funds?

5 A No.

6 Q And why not?

7 A NRA members, again, believe in the mission of the
8 National Rifle Association. As long as the National Rifle
9 Association stays true to that mission; as long as the National
10 Rifle Association is a trusted fiduciary and trusted person when
11 it comes to spending those resources; as long as the National
12 Rifle Association is out there fighting the good fight that NRA
13 members expect, then I think anyone who's credible -- if they
14 put someone up who wasn't credible or who was incompetent or a
15 crook, then, no, I don't think the NRA would have succeeded in
16 raising money. But I do believe --

17 And I -- I can say, if I can just --

18 Personally, I was worried about this when I took over
19 as a young, 24- -- or a young, 31-year-old guy at the Institute
20 for Legislative Action. My predecessor had gray hair; he had
21 been around; people knew him; people respected him. His name
22 was Jim Baker. He had been signing those fund-raising letters.
23 And I was worried at the time that: "I'm this new, young guy.
24 Nobody's going to know me. Nobody's going to support our
25 fund-raising efforts."

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1 And I was pleasantly surprised that people welcomed --
2 NRA members and ILA donors welcomed -- a new face, a new voice,
3 a young guy who was out there, willing to mix it up and fight
4 the good fight. And they responded in kind; we did extremely
5 well in fund-raising, really, from the beginning to the end.

6 Q And do you believe that the NRA helped develop
7 successful --

8 MS. CONNELL: Strike that.

9 Q Do you believe that, over time, the NRA helped develop
10 you and Mr. LaPierre as the face of fund-raising?

11 A Yes.

12 Q Okay. And that the NRA could develop others as the
13 face of fund-raising; correct?

14 A Correct.

15 Q Mr. Cox, the NRA has a board; correct?

16 A Yes.

17 Q And ultimately, the board runs the NRA; right?

18 A Ultimately, the board oversees the organization, yes.

19 Q Can you describe the board?

20 A The board is 76 board members from across the country.
21 They are voted on by the members of the -- the organization at a
22 certain level: a five-year -- a three-year or five-year level or
23 above. They're sent ballots in their NRA publications and they
24 vote according to who they -- who they think are in the best
25 position to represent them on the board of directors.

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1 Q In your experience, are all 76 board members equally
2 active within the NRA?

3 A No.

4 Q What have you observed?

5 A Well, not unlike the members of the National Rifle
6 Association, it's a very diverse board. You had celebrities to
7 farmers, doctors to lawyers, politicians to cops. So there was
8 a very diverse membership amongst the board of directors. Some
9 were industry leaders, "industry" being the Second
10 Amendment/firearms-type industry leaders that were certainly not
11 only competent but -- but brilliant in a lot of ways when it
12 came to marketing and other things. Some were very active.
13 Some rarely showed up.

14 So when you say "active," active participants on a --
15 from a board standpoint, showing up at board meetings, the
16 answer would be no, not -- not all of them were equal and not
17 all of them were active.

18 Q To your knowledge, to pass a board resolution, did the
19 vote have to be unanimous among all 76 members of the board?

20 A I don't -- I don't know the answer -- I don't remember
21 the answer to that. I don't believe that there had to be a
22 unanimous vote for board resolutions. I don't believe so, but I
23 could be -- I could be wrong.

24 Q In your experience, did Mr. LaPierre exert any control
25 over the board?

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1 A Yes.

2 Q Can you describe how he did that?

3 A Well, it shouldn't come as a real surprise that when
4 the board's responsible for hiring an EVP, that the EVP is going
5 to have an interest in the board. So that's kind of at the top
6 level. But at the -- at the bottom level, Wayne was active, not
7 only in recruiting board members, but working to make sure
8 that -- that his preferred -- his preferred board members were
9 re-elected and his preferred candidates were -- were put
10 forward.

11 Q What did he do to see that his preferred candidates
12 were elected?

13 A Well, the nominating committee Wayne worked closely
14 with would make the decision on which board members were
15 nominated as part of -- the "slate" is what it was referred
16 to -- the slate of preferred candidates.

17 And then there were also board members -- the
18 process -- the preferred process, by Wayne and his team, was to
19 have someone serve on a committee -- on a board committee but
20 not as a board member -- to get exposure and then build that
21 relationship and encourage them to run for the board of
22 directors, and they would -- they would actively work with them
23 to make sure that their campaigns were -- were running the right
24 way.

25 THE COURT: Counsel, we've been going for about an

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1 hour and a half. Why don't we give -- have our morning
2 break --

3 MS. CONNELL: Great.

4 THE COURT: -- and we can have our discussion in
5 the meantime.

6 All right, we'll take a short break.

7 COURT OFFICER: All rise. Jury exiting.

8 (The jury left the courtroom.)

9 (The witness stepped down.)

10 THE COURT: All right, let's talk about these
11 exhibits.

12 Actually, just give me one quick second. I'm just
13 going to check something. We'll take a one-minute break.

14 (Recess.)

15 THE COURT: Okay. So, what are the objections to
16 the exhibits?

17 MS. ROGERS: All right.

18 So Exhibit 1 is a confidential settlement agreement
19 that was entered into to dispose of a confidential
20 arbitration. Ms. Connell made the point earlier that in
21 discovery, plaintiff was able to get these documents, which
22 is certainly true, but the burden of her admitting them is
23 different. The discovery net is intentionally wide, the
24 admissibility net less so.

25 The settlement is not admissible, under Rule 4547

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1 or Rule 408, to cast aspersions or suggest inferences about
2 the merits of the claims or what was valuable and what
3 wasn't. So for what purpose -- what is the -- what is the
4 probative value, then, of the settlement that we weigh
5 against the prejudicial effect and that we weigh against the
6 public policy generally disfavoring the disclosure of
7 confidential arbitration and settlement documents?

8 THE COURT: 4547 is about using a settlement to
9 assume false --

10 Whatever the dispute was between those two parties,
11 that's not the dispute that's here; right?

12 MS. ROGERS: That's correct.

13 And so, given that the settlement is clearly not
14 admissible for that purpose, to show who was right and who
15 was wrong in the arbitration, then what is the purported
16 probative value of the settlement? Because given the --

17 THE COURT: All right, this isn't working. Why
18 don't you try it with the regular microphone.

19 MS. ROGERS: Okay.

20 (Ms. Rogers complied.)

21 MS. ROGERS: Given the presumption in favor of
22 public access, you know, to the evidentiary record of this
23 proceeding and the countervailing public policy that does
24 disfavor dumping arbitration and settlement documents, which
25 are created and entered into under presumptions of

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1 confidentiality, into the public domain, you know, we would
2 expect to see -- we would hope to see -- some significant
3 probative value of this document before we put it in the
4 record, and we just don't.

5 THE COURT: All right. So why don't we hear from
6 the State as to what this is being used for.

7 (Continued on next page.)

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1 MS. CONNELL: Thank you, your Honor. Mr. Cox, as
2 we've been hearing, was a loyal and well rewarded member of
3 the NRA. When he was perceived as disloyal, which the
4 evidence is going to show happened shortly after the 2019
5 contract was entered into, he was made an example of. The
6 arbitration settlement and the arbitration counterclaims,
7 which are another document attached herein, show that Mr.
8 Cox was subject to differential treatment to others within
9 the NRA who were not perceived as disloyal. It shows that
10 the punishment of those perceived as disloyal. And
11 ultimately it will show waste of NRA funds as part of that
12 punishment. It is not about whether the NRA or Mr. Cox was
13 right or wrong in their particular claims. It is about the
14 NRA's conduct in stifling dissent even among officers and
15 board members and making examples of those instances.

16 We're not dumping the arbitration record. Some of
17 the arbitration documents were admitted at the bankruptcy.
18 But these are probative and important documents in this case
19 to show what happens when Mr. LaPierre and his board members
20 who support him perceive someone as disloyal. And by the
21 way --

22 THE COURT: Were some of these exhibits also
23 exhibits in the bankruptcy case?

24 MS. ROGERS: Not the ones we're objecting to here.

25 THE COURT: Okay.

LAS

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1 MS. CONNELL: Yes, your Honor. I think the final
2 one, Exhibit 7, which was an expert report used in the
3 arbitration, was an exhibit in the bankruptcy case. I think
4 it was kept sealed there, but I'm not sure. It was entered
5 into evidence, and I believe there is testimony on that.
6 Your Honor, what we're talking about here is --

7 THE COURT: Look, I get --

8 MR. CORRELL: Your Honor, may I be heard?

9 THE COURT: Hang on a second. I get the point
10 about trying to show the process. At least your argument is
11 going to be intended to be some sort of retaliation. I
12 don't see how that opens the door to, you know, putting in
13 front of the jury an expert report, which, you know,
14 obviously is generally hearsay. I mean, I guess I'm having
15 trouble with the scope of what it is you're trying to
16 introduce here.

17 So, can you help me understand why you need more
18 than just the fact that there was a claim and, you know, why
19 there is all the detail required to, because I am concerned
20 that there is -- that there could be an imbalance. In other
21 words, the purpose for it is to show hey, he was attacked.
22 See, these claims. Why then do you need things like expert
23 reports and other things?

24 MS. CONNELL: So, your Honor, I would, for example,
25 direct your attention to tab four of the binder, which for

LAS

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1 the defendants is PX 155. In the arbitration the NRA
2 asserted counterclaims against Mr. Cox and amended those
3 counterclaims. The positions that the NRA takes in these
4 counterclaims are in direct conflict, we would suggest, with
5 how it has treated others within the NRA and are party
6 admissions that can be --

7 THE COURT: Right. But it's one document at a
8 time, right?

9 MS. CONNELL: Sure.

10 THE COURT: In other words, I mean you directed my
11 attention to the expert report. That seems like an odd
12 thing to put in front of this jury, 'cause it's going to --
13 you know, it is a -- you know, I want this jury to base
14 their decision on what's introduced as evidence in this case
15 and not sort of bring in another proceeding, except to the
16 extent that it has independent evidentiary significance.

17 So, I understand that the process of going into
18 bankruptcy is part of your claim. I get that. You can
19 prove that with what, you know -- with the basic fundamental
20 points about it. I don't think it opens the door more
21 broadly except on individual cases. In other words, if
22 somebody testifies in the bankruptcy proceeding and that is
23 admissible here because it's a defendant and it's relevant
24 to the issues here, that's fine. But it's -- it's going to
25 be a tree by tree, document by document decision, right.

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1 So let's start with the settlement agreement
2 itself. What's -- what are you using that for?

3 MS. CONNELL: Your Honor, we're going to use this
4 to show that the arbitration ended. It ended favorably to
5 Mr. Cox. It's evidence that in fact not -- not for right or
6 wrong, but that this arbitration ultimately paid him more
7 than what he was entitled to under his severance agreement
8 and cost the NRA a lot of money that didn't need to be spent
9 if they had not made an example of him. It's waste to make
10 an example of.

11 MR. CORRELL: Your Honor, if I may be heard. This
12 is a very serious due process issue here. Mr. LaPierre was
13 not a party to this arbitration. To throw in an arbitration
14 record where a finding of an arbitrator where he's never
15 been given the opportunity to be heard in a case like this
16 with individual defendants is just -- I've never heard of
17 such a thing.

18 THE COURT: Was there a finding by the arbitrator.

19 MS. ROGERS: Your Honor, there was no finding by
20 the arbitrator. If you listen to Ms. Connell, she wants to
21 argue that the settlement amount shows that the arbitration
22 was wasteful. This feels exactly like the kind of argument
23 who was right, who was wrong, which claims were meritorious.
24 What can we infer about merits from the settlement terms
25 that 4547 is designed to prohibit.

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1 I also would like to make a point. This whole
2 argument that there is probative value here because the
3 arbitration was intended to make an example of Mr. Cox,
4 collapses in the face of the arbitration confidentiality the
5 Attorney General is trying to puncture. This was a
6 confidential arbitration that the NRA still needs to keep
7 confidential. So, it could not have been undertaken for the
8 purpose of holding Mr. Cox up as an example to encourage the
9 others to be loyal.

10 THE COURT: I think that's -- that's too broad in
11 the other direction. I -- I -- I --

12 MS. CONNELL: Your Honor, if I may just quickly be
13 heard.

14 THE COURT: Yes.

15 MS. CONNELL: I know we have a short break. But
16 the CPLR 4547 allows for the admission of things like
17 settlement agreements exactly for the purposes of the type
18 of evidence we're trying to show. The fact is that this
19 arbitration agreement was, and you'll hear evidence, the
20 actions and -- that the NRA took against Mr. Cox were well
21 known. He and his staff were made examples of. He was
22 dragged out. He was subject to this prolonged proceeding
23 for nothing. That's really the end result. And the fact
24 that the NRA doesn't want to get into the arbitration
25 agreement I think -- I understand why they don't want to,

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1 but it is relevant and probative here as to (a) how he was
2 treated differentially from --

3 THE COURT: Are you using the fact that there was a
4 payment basically to -- to -- so that the jury should infer
5 therefore they would have lost.

6 MS. CONNELL: I'm using the fact that there was a
7 payment to show that they used this example -- they used
8 this arbitration proceeding to make an example out of him
9 and spent tens of millions of NRA dollars on this pointless
10 exercise. Mr. Cox was entitled to something like, I don't
11 know, I don't have the figure in front of me, \$2 million
12 under his employment agreement. They could have paid that
13 instead of that they spent in excess of \$10 million on this
14 boondoggle of a proceeding.

15 MS. ROGERS: Your Honor, may I respond? So, just
16 first of all, the fact that the NRA engaged in arbitration
17 with Mr. Cox, that can be established without introducing
18 the settlement agreement. If staff were allegedly paraded
19 out of the building, that could be established without using
20 the settlement agreement. This is also an arbitration, so
21 the record is clear, that Mr. Cox commenced and the NRA
22 defended and counterclaimed in. So, to the extent that the
23 probative value here stems from the allegation that the NRA
24 embarked on a scorched litigation in retaliation, that
25 doesn't make sense. Mr. Cox is not alleged to be a

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1 whistleblower. So, any retaliation against him is not
2 probative under the 715(b) claim. This could only be
3 improper administration.

4 And as we discussed on the motions in limine, when
5 parties are faulted for suing or sued for suing, if the
6 Attorney General is contending that asserting these
7 counterclaims in an arbitration someone else started
8 constituted improper administration, they should have to
9 show pursuant to the Noerr-Pennington principle that the
10 claims were meritless in some sense. They have to show that
11 coupled with the argument the Attorney General intends to
12 make that this was wasteful or the NRA was wrong is really
13 going to drag us into effectively a mini trial on the merits
14 of this arbitration, which seems like an unwarranted
15 diversion. If the process is what they are trying to show,
16 if what they are trying to show is the NRA counterclaimed
17 against this severance claimant and didn't against some
18 other, I guess, they can show that without putting the
19 settlement agreement in the record.

20 MS. CONNELL: Your Honor, this is not a mini trial
21 about whether -- there is no mini trial necessary as to
22 whether the arbitration, what would have happened in the
23 arbitration. What could have happened in the arbitration.
24 This is the facts of what happens to those within the NRA
25 who for years tried to call out and talk about and raise

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1 concerns. As soon as they raised concerns, what happens.
2 How did this organization have this level of problems for
3 this many years. This is how, your Honor. This is how.
4 When someone is perceived as disloyal to the NRA leadership,
5 they are subject to treatment. The arbitration --

6 THE COURT: We're missing each other a little in
7 that conceptually I think that's right. The question is how
8 big of an aperture is that to let documents in about the
9 details of the fight. And I'm a little concerned that it's
10 a bit too wide.

11 MS. CONNELL: Your Honor, I think I can allay one
12 of your concerns, because introducing the expert report was
13 something I didn't really even know I would have time to
14 today. We know time is a concern in the trial and we're
15 trying to make determinations of what's important and what's
16 the highest priority. So --

17 THE COURT: That one you have a low likelihood on.

18 MS. CONNELL: -- that one I can set aside. That's
19 right. That one, if that's the biggest concern
20 especially --

21 THE COURT: I wouldn't say it's the biggest. It's
22 the most obvious as I flipped through this for the first
23 time as we were talking.

24 MS. CONNELL: Right. Your Honor, in regard to the
25 other documents, they truly establish again the differential

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1 treatment. What's stunning is, for example, you'll hear Mr.
2 Cox talk about that he was asked to justify every meal that
3 he ate charged to the NRA while he was an employee, when he
4 was perceived as disloyal. And to establish that we can
5 have his own word to the jury, but to have a party admission
6 in terms of their counterclaims in front of the jury, that
7 that's the standard they are applying to one person but not
8 to other people, is important.

9 THE COURT: I think the claims asserted by both
10 sides seem to me to be more on the probative more than the
11 prejudicial. The expert report not, at least I don't really
12 understand it, why it would be yet. I'm now focused on the
13 settlement agreement and release.

14 MS. CONNELL: Your Honor --

15 THE COURT: I --

16 MS. CONNELL: Your Honor, if I may. You're going
17 to hear Mr. Cox testify. I'm sorry. I know time is short.
18 You're going to hear Mr. Cox testify that he was subject to
19 a long time preparing for this. A tremendous amount of
20 time, effort and stress and harassment in regard to
21 preparing for this arbitration. And that two days before
22 the arbitration began, the NRA told him we're not going
23 forward. That's it. We're done. Give us the wiring
24 information. We're going to wire your account. We're done.
25 Settlement agreement. And he believes, and I think the jury

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1 is entitled to draw an inference, that this was an example,
2 in making an example out of him.

3 MR. CORRELL: Your Honor, if I may be heard
4 briefly. The decision of whether to defend litigation or
5 pursue litigation is a classic business judgment that
6 corporations make all the time. And to suggest that this
7 arbitration or litigation can be dumped into this case and
8 can be a mini case within a case is troubling, particularly
9 when they are trying to do the same thing with the
10 bankruptcy proceeding. There are many other litigations
11 that are satellite litigations here. If they get to dump
12 that in, then others may come in too.

13 THE COURT: I share that concern in the sense that
14 although it's possible, if you're going to really get the
15 jury to try to get an understanding of the merits of the
16 case and whether it was frivolous or whether it was
17 retaliatory, whatever, you would almost need a lot more than
18 this to be able to have, the parties have a real ability to
19 argue to the jury as to the underlying merits of -- of the
20 arbitration. I don't think you can sort of pick and choose
21 a couple of things, because if I were to allow that, I think
22 I would have to allow the other side to bring in other
23 things from the arbitration to show, you know, the merit.
24 And that's exactly the kind of sideshow I don't want to
25 start.

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1 MS. CONNELL: Your Honor, I -- I don't think we
2 have to do a sideshow of the merits.

3 THE COURT: If you put in the settlement agreement
4 and say well, look, the inference you should draw is they
5 paid X. Therefore, this whole thing was a sham. I
6 absolutely think if the other side asked me to, and they
7 wanted to start having a mini trial about what the basis was
8 for all their claims, I would have to let them do it, right.

9 MS. CONNELL: Well, your Honor, they can certainly
10 ask Mr. Cox about the allegations against --

11 THE COURT: Not just asking him about the
12 allegations. I mean, I don't know what they would do. But
13 as a matter of principle, if you're putting at issue the
14 underlying merits of the arbitration, as opposed to just the
15 fact that it was brought and look at all of this, then if
16 I'm going to let the door swing open in one direction, I
17 have to let it swing open in the other direction. And the
18 point is not so much that I don't want to waste a lot of
19 time, although that is a point, because I think this is a
20 satellite part of a satellite issue, I think that it would
21 be confusing.

22 So, my inclination frankly is to give you some
23 latitude to explain that an action was brought by Cox. That
24 counterclaims were also brought. And, you know, if he wants
25 to talk about how much it cost him to, you know, defend it

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1 or whatever. But I -- I don't see getting into the -- I see
2 getting into the underlying merits, which is effectively
3 what this would be doing is -- is a bad path.

4 MS. CONNELL: Your Honor, can we elicit testimony
5 that Mr. Cox was ultimately paid under his contract, and in
6 fact did not pay anything under the counterclaims asserted
7 against him by the NRA?

8 MS. ROGERS: Your Honor, that's just a capsule
9 summary of the terms of the settlement agreement that they
10 want to put in. I mean, they could elicit who the contract
11 named listed in the fact that there was a settlement.

12 MS. CONNELL: Your Honor, I want to just point out
13 here that the NRA notified Mr. Cox that he was suspended by
14 attaching a copy of its complaint against Lieutenant Colonel
15 Oliver North that it filed in New York to an e-mail saying
16 read this and you'll understand why you're being suspended.
17 He's referred in one place in that complaint, in one
18 paragraph, I believe, as an errant fiduciary. And that was
19 the basis. That's what he was suppose to take away why he
20 was being suspended. Attached to that complaint are text
21 messages which allegedly form the basis for his alleged
22 disloyalty.

23 THE COURT: Well, Exhibit 3 I think is a little
24 different, because on its face there is an e-mail from Mr.
25 LaPierre or it's a message from Mr. LaPierre sent in an

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1 e-mail from Mr. Frazer saying, "For reasons made clear in
2 this pleading, I am immediately suspending your service".
3 That seems to me to be factually relevant as part, you know,
4 of the stated rationale for his termination. So I think
5 that's not bringing in the merits of a satellite dispute.
6 That is just part of the factual story of his termination.

7 MS. CONNELL: Thank you very much for the ruling.
8 But also the fact though that Mr. Cox was being investigated
9 for conduct that others within the NRA essentially have
10 admitted to or engaged in and only he was pursued by the NRA
11 is an important point that the jury should hear. So, if we
12 keep out the settlement agreement, that's fine. But I would
13 argue that tab four, which is their counterclaims, should
14 come in.

15 THE COURT: Well, I thought I had said that.

16 MS. CONNELL: I wasn't clear on that.

17 THE COURT: The claims made by him and by -- you
18 know -- I think the factual story you're going to tell
19 presumably as we're heading into this, this is how he ended
20 up being terminated or resigning or whatever. You can tell
21 that factual story. The next part of that story, which I
22 think is just factual, well then I sued them and they sued
23 me and then it was resolved. And the only question we're
24 talking about now is how much of the guts of it do we have
25 to get into or is it permissible to get into. And I -- I

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1 think my view at this point is very little. That -- that
2 the allegation -- If the point of all of this is to show
3 that an employment action was taken. And if you want to
4 characterize it as aggressive litigation, allegations made
5 against him and the other direction too, you can handle that
6 with the claims made. You know, that is a fact. You don't
7 have to litigate the merits of the claims and just say look,
8 you know. So it seems to me that's the right balance is
9 that you can get in that there was this nasty fight after --
10 afterward. And then, you know, the settlement and I think
11 now getting to what that is, the fact that the settlement
12 resulted in a payment to him as opposed to the other way
13 around without getting into the details I think is also
14 appropriate.

15 MS. CONNELL: Thank you, your Honor. Can he say
16 what he knows about the cost of the overall proceeding?

17 THE COURT: His own costs?

18 MS. CONNELL: Not to him. The costs --

19 THE COURT: His knowledge about what the NRA's
20 costs are not his personal knowledge.

21 MS. CONNELL: He has some personal knowledge, your
22 Honor.

23 THE COURT: How so?

24 MS. CONNELL: Just from under the agreement what
25 the NRA had to pay in terms of his fees, the arbitrator

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1 fees.

2 THE COURT: He read things that they wrote about
3 what their fees are?

4 MS. CONNELL: Well, things that were due under the
5 agreement and things that were submitted in the arbitration,
6 I believe.

7 THE COURT: Right. So hearsay from -- at least
8 from my perspective. He's not testifying as to his personal
9 knowledge. You know, whether you can in questioning an NRA
10 witness who was involved in that, bring in the costs of it
11 is a different question.

12 MS. CONNELL: Okay, your Honor. He can testify to
13 his personal knowledge about what they were obligated to pay
14 under his employment agreement, correct?

15 THE COURT: I'm not sure I understand.

16 MS. CONNELL: The employment agreement embodied
17 that they had to pay attorneys' fees and costs for this.
18 I'm not going to get into the amount.

19 THE COURT: No. That means you're going to make
20 the argument that they were the prevailing party and they
21 had to pay under the agreement which, you know, was there a
22 finding that they were -- that he was the prevailing party.

23 MS. ROGERS: No.

24 MS. CONNELL: No, your Honor. It was just the
25 agreement under the employment agreement.

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1 THE COURT: I get this is not a perfect result
2 because, you know, you could argue that we should just let
3 all the merits be hashed out here. I'm just not going to
4 allow that. I don't think it makes sense here. So, I'm
5 going to stick with where I was.

6 You know, the exhibit about communications to him
7 in connection with his suspension, including what was sent
8 to him as part of that I think is, you know, fine. That's
9 really not collateral. And the allegations made and the
10 fact that there was an arbitration and whatever his expenses
11 were, I suppose if he has personal knowledge of that.
12 That's probably the more relevant in terms of, you know --
13 (pause). But the underlying merits of the arbitration, I
14 just think it's a dangerous path. To put it in more formal
15 terms the -- the probative value of it in this sort of
16 retaliation theory is outweighed by the potential
17 prejudicial impact of the jury trying to sort of figure out
18 a play within a play about who was right and who was wrong
19 about all of these things. So, I think it's a discretionary
20 call, and I think it will not only confuse this case and
21 potentially lengthen it at the expense of evidence that's
22 actually about the dispute here, but I think it will also
23 confuse the jury.

24 So, the settlement agreement, no, based on at least
25 what I heard so far. If the doors are open later, I'll see

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1 about it. So, Exhibit 3 I will admit. Exhibit 4, which is
2 the counterclaim, I guess --

3 MS. CONNELL: Yes, your Honor.

4 MS. ROGERS: Yes.

5 THE COURT: -- that I will admit. And exhibit --

6 MS. ROGERS: We didn't object to five. Our
7 objections were to one, which was the settlement agreement
8 and the counterclaims that we talked about and then the
9 expert report.

10 THE COURT: The expert report.

11 MR. FARBER: Judge, I think you're referring to
12 tabs not exhibit numbers so the record is clear.

13 THE COURT: Tab seven. I haven't really heard
14 anything that convinces me to just let the jury see the
15 expert witness disclosure. Is that in the bankruptcy case
16 or in the arbitration?

17 MS. ROGERS: It was in the arbitration.

18 THE COURT: Yeah. So that's out. You all have the
19 corresponding -- PX 154, the settlement agreement, the
20 entirety of it at least at this point I'm not admitting.
21 Two, the subportion of it that was his employment agreement
22 I already admitted. Three, which is PX 5071, that's the
23 correspondence about his suspension, I will admit that. PX
24 155, which are the counterclaims, I will admit that. The
25 others are not objected to other than seven which -- other

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1 than PX 2899, which is at tab seven. I'm wrong about that
2 as well. Wait a minute. I'm not sure what the exhibit
3 number is on tab seven.

4 MS. CONNELL: It's DX 1-0063.

5 THE COURT: So, this was a defendants' exhibit?

6 MS. CONNELL: It's a defendants' exhibit, your
7 Honor.

8 MS. ROGERS: That was on the defendants' exhibit
9 list, but I think for practical purposes it's a whole expert
10 report. So, we didn't favor admitting it.

11 MS. CONNELL: Again, your Honor, it went in in the
12 bankruptcy case. It was on their exhibit list. It was
13 introduced and admitted at the bankruptcy case.

14 THE COURT: Yeah. Look, I think this is just a
15 road to getting into the merits of the underlying
16 arbitration. I'm not entirely sure why the defendants
17 proposed it and now don't want it in. Either way at this
18 point I'll take it as an objection.

19 MR. CORRELL: Your Honor, Mr. LaPierre didn't
20 propose it, and I respectfully object and take exception to
21 the rulings. I don't think any of this should be admitted
22 against Mr. LaPierre.

23 THE COURT: So one defendant or one or more
24 defendants proposed it but not all agreed. All right.

25 MR. CORRELL: I think that's right.

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1 THE COURT: My view is that it's not admissible.

2 MS. CONNELL: May we just instruct Mr. Cox? I
3 don't want him --

4 THE COURT: I was going to say you can just let him
5 know what -- that he should listen to the questions
6 carefully and that, you know, not go beyond them. And I
7 think it's fair to tell him that the settlement agreement
8 will not be coming in, so he should not be talking about the
9 terms of the settlement agreement. Do the defendants
10 disagree with that?

11 MS. ROGERS: We agree with that.

12 MR. CORRELL: Agreed.

13 MS. ROGERS: See we're all on the same page what I
14 think the instruction to Mr. Cox will be is he can say that
15 there were claims brought. Those will come in. And there
16 was a settlement with a payment made to him, but nothing
17 more about the terms of the settlement.

18 THE COURT: Yeah. You can say it's confidential,
19 you know, that's fine.

20 MS. CONNELL: Your Honor, I just want to make sure
21 that this is a goose and gander ruling. To the extent we
22 can't get into what was asserted against him, defendants
23 can't ask about that as well or they open the door.

24 THE COURT: No. I mean, what was -- You mean
25 probing as to whether yes, this is in fact something you did

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1 and getting into the merits of the arbitration. Well, let
 2 me ask. Are the defendants -- Do the defendants think that
 3 if the evidence comes in the way at least I'm intending,
 4 that they will in fact cross examine him on the merits of
 5 the arbitration?

6 MS. ROGERS: So, we didn't intend to examine on the
 7 on the merits of the arbitration per se. But if they intend
 8 to read them on the stand in the counterclaim, and there is
 9 an exception to the counterclaim and they accused you of,
 10 you know, causing ILA to pay your personal credit card bill,
 11 they accused you of that, I do wonder, it seems like fair
 12 cross to say well, did you do that. Is that true.
 13 Irrespective of whether that was established in the
 14 arbitration, you're on the stand now. Did you cause ILA to
 15 pay your personal AmEx.

16 (Continue on the next page.)

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1 MS. ROGERS: And given that the witness has
2 testified to criticisms he had of expense policies by other
3 executives, I think those topics would be within scope, even
4 if there was no arbitration.

5 THE COURT: Well, look, the fact that the
6 counterclaims are -- the document is coming in, I did not
7 envision testimony getting into the details of that, from
8 either side. I mean, if we're going to go down that path,
9 that's the problem I have with this. So I don't anticipate
10 there being testimony and if there is, it would be objected
11 to and my lean would be to sustain it. To start getting
12 past just admitting this as, you know, these are claims that
13 were -- that were asserted ...

14 MS. ROGERS: Your Honor, if they are not eliciting
15 testimony on the substance of the claims, then we don't
16 anticipate eliciting testimony on the same.

17 There are some topics, relating to Mr. Cox's work
18 at the NRA, relating to what was elicited even just before
19 the break, that I think coincidentally happened to be in the
20 arbitration; like, Mr. Cox said on the stand that it's wrong
21 to accept benefits from a vendor. So, even if these
22 documents never came in, I would be entitled to ask him,
23 "Did you accept benefits from a vendor?"

24 THE COURT: I agree.

25 MS. ROGERS: But so long as there's nothing

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1 elicited -- so long as we don't elicit detailed testimony on
2 the individual assertions in the counterclaim, I wouldn't
3 have to cross on those.

4 MS. CONNELL: Your Honor, I'm just trying to make
5 sure we're being fair across the board. If we're not going
6 to go into the allegations asserted in detail in the
7 arbitration, then neither should they. Certainly, what he's
8 testified to, they can cross-examine on.

9 THE COURT: Yeah, look, we'll have to see how this
10 goes, to some extent.

11 The point is, the process of the arbitration and
12 the litigation back and forth about it, I'm trying to keep a
13 pretty tight limit on that. And so, you know, the fact that
14 they asserted counterclaims and were --

15 Does it say in the counterclaims what they're
16 seeking in terms of dollars?

17 MS. ROGERS: I think it says, "Amount to be
18 established." I'll double-check.

19 (Pause.)

20 MS. CONNELL: Yeah, your Honor. I think it says,
21 to make the NRA whole and that kind of -- that kind of
22 language, if you look at pages 14 and 15.

23 MS. ROGERS: But I don't see a dollar amount.

24 THE COURT: Well, it asks to disgorge his salary,
25 benefits and other compensation.

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1 (Pause.)

2 THE COURT: Well, look, as I understand it, the
3 limited purpose of this is to -- for the plaintiff's case,
4 anyway -- is to show the time sequence of things that
5 happened that led to his separation from the organization
6 and then what happened after, which was claims by one side
7 seeking X, claims by the other side seeking Y. And as I
8 said, you know, he can ...

9 MS. CONNELL: I think we can thread that needle,
10 your Honor. It's a story we're telling about how he came to
11 leave the NRA.

12 THE COURT: Yeah.

13 What I'm trying to anticipate is a question that
14 says, "Well, did you consider this retaliation for what you
15 had done?" Right? Then the -- what is the
16 cross-examination to that, if it's not to the merits?

17 I'm just trying to see if this is going to unravel
18 my carefully laid plans to not have this dominate.

19 MS. CONNELL: Your Honor, we could not ask that
20 question. The jury can see that this is a man who, in
21 January, was given an employment contract; in June, was
22 told, "Here is your suitcase; get out." They can see those
23 facts.

24 THE COURT: Well, the simplest approach is just to
25 tell the chronological story --

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1 MS. CONNELL: Um-hmm.

2 THE COURT: -- you know, and what I'm going to be
3 alert for is things that are trying to get into the details;
4 and if I have to, at an appropriate time, I'm going to say:
5 "Look, this trial here is not to get to the merits of this
6 arbitration. That's not what you're going to be asked to
7 find."

8 And is it correct that he's not --

9 In your whistleblower claim, is there a specific
10 assertion that this is whistleblower retaliation under the
11 statute?

12 MS. CONNELL: No, your Honor. This is -- he's not
13 alleged to be a whistleblower. I don't think he was
14 identified by us as a whistleblower.

15 MS. ROGERS: He was not.

16 MS. CONNELL: And so, it's really about the idea of
17 suppression and what happens -- and how this kind of
18 corruption and override and violation of internal controls
19 continued, and what happened when someone was perceived not
20 as disloyal to the NRA but as disloyal to NRA leadership,
21 and the entrenchment of that leadership. And Mr. Cox is a
22 very important example of that, your Honor.

23 THE COURT: So that, I think, furthers the idea
24 that a light touch here is probably appropriate in that you
25 can have the chronological description of what happened but

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1 getting into the specifics of it, or asking him, does he
2 believe it's, you know, retaliation is really, I think, out
3 of scope, as opposed to you can make the argument to the
4 jury that, you know, "You heard his complaints that he made
5 and how public he was and this is what followed." And I
6 don't -- I think that's the right balance here.

7 And so I would -- I think it would make sense to
8 tell him that there's going to be relatively limited amounts
9 that are going to be permitted to get into about the
10 arbitration, other than just the fact that it happened and
11 who claimed what against who. But -- and the settlement is
12 going to be -- you know, the terms of the settlement are not
13 going to be permitted, and just so that there's no blurring
14 problem that I have to then correct.

15 MS. CONNELL: Your Honor, before, you said he could
16 say it was settled and that he was paid the money that he
17 sought. Can he say that?

18 THE COURT: I just said, he received -- he received
19 a confidential amount in settlement.

20 MS. CONNELL: Okay. How should we do this? Should
21 we call Mr. Cox down and I can instruct -- I'm just trying
22 to think of the mechanics of this.

23 THE COURT: Well, I suppose, maybe the most upright
24 thing for me is for me to explain it to him on the stand,
25 before the jury comes back, so there's no issue of side

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1 conversations.

2 MS. CONNELL: I think that makes the most sense,
3 your Honor.

4 MR. CORRELL: Your Honor, isn't a fairer result to
5 say, a settlement was reached, without disclosing who the
6 recipient was? Because you're asking -- they're going to
7 ask the jury to draw an inference from that and that's not a
8 fair inference, particularly from Mr. LaPierre's point of
9 view.

10 THE COURT: I think it's not uncommon, in cases in
11 which settlements are discussed, to just to have a
12 directional. So I think that's an appropriate balance,
13 because I think, otherwise, there's a potentially misleading
14 inference. So just saying it was an undisclosed payment,
15 you know, for a confidential amount.

16 So I understand the point, but that's the -- that's
17 the ruling.

18 All right, let's bring the witness in first.

19 MR. FARBER: Your Honor, could we take a short
20 break before we do that?

21 THE COURT: Well, why don't we bring the witness in
22 while it's fresh in my mind and we'll take a short break
23 before we bring the jury in.

24 I recognize, I haven't given you all a break. But
25 it's going to have to be quick, because the jury has been

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1 out for a while.

2 (Pause.)

3 THE COURT: I will say, counsel, if you are okay
4 just leaving your colleagues here and you want to take a
5 quick run, you won't miss anything you haven't heard.

6 MR. FARBER: Okay, thank you.

7 THE COURT: I won't take it -- I won't take offense
8 to your taking a restroom break while we do this. But I
9 would leave at least one of your colleagues here.

10 MR. FARBER: They're in good hands.

11 THE COURT: Okay.

12 (Whereupon, Ms. Coutu and Mr. Farber left the
13 courtroom, after which the witness re-entered the courtroom
14 and resumed the stand.)

15 THE COURT: Good afternoon, sir.

16 Welcome back, Mr. Cox.

17 I just wanted to chat with you, real briefly.

18 Sorry for the delay. You know, when you let
19 lawyers talk for a while, they tend to go on, and judges are
20 just former lawyers, so ...

21 We have discussed a few things about the
22 arbitration and its admissibility in this case, and so, to
23 avoid you being surprised by it or, you know, potentially
24 going beyond the scope of questions and getting into
25 territory that I've concluded is not admissible, I wanted to

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1 give you the general rules of the road:

2 Because of evidentiary rules, the admissibility of
3 the details of the arbitration is limited; and what I'm
4 going to permit is the fact that there was an arbitration,
5 the general nature of the claims by both sides, without
6 getting into the merits of them in terms of what happened
7 during the arbitration; and the settlement, solely to the
8 extent of saying it was a confidential settlement with a
9 payment made from -- to you, but not the amount.

10 And so, the idea here is that this case should not
11 turn into a satellite litigation about the case that you had
12 with the NRA. And so I would ask that you be cautious and
13 listen carefully to the questions from whoever is asking
14 them and limit your answers. I'll trust that they're going
15 to ask their questions in a way that are consistent with my
16 rulings. But, since I know, especially on direct, witnesses
17 have somewhat more leeway to just go on and talk about
18 things, I thought it would be helpful for me to let you know
19 that we are not going to get into the details of what
20 happened in the arbitration other than, as I said, just a
21 general description of the claims on both sides and that
22 they were settled in a confidential settlement with a
23 payment.

24 Understand?

25 THE WITNESS: Yes, sir.

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1 THE COURT: Did I cover --

2 Anything? Did I leave anything out?

3 (No audible response.)

4 THE COURT: All right, let's get the jury.

5 (Whereupon, Ms. Coutu and Mr. Farber re-entered the
6 courtroom.)

7 (Pause.)

8 COURT OFFICER: All rise. Jury entering.

9 (The jury entered the courtroom.)

10 THE COURT: All right, welcome back. Have a seat.
11 Counsel, you may continue.

12 MS. CONNELL: Thank you, your Honor.

13 DIRECT EXAMINATION CONTINUED

14 BY MS. CONNELL:

15 Q Mr. Cox, before we broke, I think we were talking about
16 the NRA Board, so I would like to ask you more about the
17 nominating committee.

18 The board had a nominating committee; correct?

19 A Correct.

20 Q And did Mr. LaPierre have any influence that you
21 observed over that nominating committee?

22 A Wayne was regularly involved with the -- in meeting
23 with the nominating committee, going to those meetings, having
24 those discussions on a regular basis.

25 Q Did you see --

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1 Did you ever observe Mr. LaPierre to have any control
2 over who the nominating committee put forward as a board
3 nominee?

4 A Yes.

5 Q And can you describe what you saw?

6 MR. CORRELL: Your Honor, objection; time frame.
7 We're talking about 30 years or 20 years.

8 THE COURT: Well, the question is broad.

9 But you can --

10 MS. CONNELL: Your Honor, if we can ask him -- and
11 I think we can start to narrow it, but I think what he saw
12 regarding exertion of control of the nominating committee is
13 important at any time. But I can start broadening --
14 narrowing it down a little bit.

15 THE COURT: All right.

16 Overruled.

17 MS. CONNELL: Thank you.

18 A I observed Wayne being hands-on in the nominating
19 process, working with the nominating committee, recruiting board
20 members, supporting board members, over a period of time.

21 Q And when you observed Mr. LaPierre recruiting and
22 nominating board members, did you see him looking for a
23 particular trait or characteristic in those board members?

24 A No --

25 MR. CORRELL: Objection, your Honor; calls for

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1 speculation.

2 THE COURT: Sus --

3 MR. CORRELL: I'll withdraw the objection, since he
4 went ahead and answered it.

5 THE COURT: Did he?

6 THE WITNESS: Can you repeat the question?

7 THE COURT: Yeah, he did answer. There's ...
8 Well, do you recall answering?

9 THE WITNESS: I answered "No" with regards to my
10 understanding of the question being that it -- were there
11 specific things?

12 The overall thing was who would be supportive of
13 Wayne and Wayne's --

14 MR. CORRELL: Objection; move to strike as
15 nonresponsive.

16 THE COURT: Yeah, the -- as I've told a lot of --

17 What we are looking for is personal observations,
18 as opposed to -- so, things that you saw and heard, you can
19 tell the jury about. Inferences you are making is not a
20 fact -- the role of a fact witness.

21 THE WITNESS: Okay.

22 THE COURT: So you can talk about specific things
23 that you saw and heard.

24 A Wayne supported a variety of different types of board
25 members, the one consistent theme being they were supportive of

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1 Wayne.

2 Q And did you --

3 How did you observe him to do that, to seek out board
4 members who were supportive of Mr. LaPierre?

5 A A lot of it happened -- Millie Hallow served as
6 Wayne's, kind of, in-between for board members, both probably
7 personally and professionally, with requests and whatnot.
8 Millie was often tasked with outreach to individuals to consider
9 running for the board, outreach on Wayne's behalf. She
10 discussed that with me and others on numerous occasions.

11 Q What kind of --

12 Can you give us an example of the kinds of discussions
13 you'd have with Ms. Hallow?

14 A "We need to find the right types of board members. We
15 need to find people to run for the board. Do you have any ideas
16 on who should run for the board?" Those sorts of questions.

17 Q And when she said, "find the right types of board
18 members," did you ever ask what she meant by that?

19 A No, because there was never a question that Millie
20 Hallow was interested in doing whatever was in Wayne's interest.

21 Q Did you ever see Mr. LaPierre reject a potential
22 nominee because he believed -- because that nominee didn't
23 appear to be loyal to Mr. LaPierre?

24 A No.

25 Q Did you ever see Mr. LaPierre ask or seek to have board

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1 members who had demonstrated loyalty nominated to the board
2 of -- the board of trustees -- I mean -- excuse me -- the board
3 of directors?

4 A Yes.

5 Q Can you give us some examples?

6 A Wayne was -- my observation was that Wayne was involved
7 on -- with the nominating committee, the committee members;
8 certainly, the president, vice president and second vice
9 president, referred to as the "board chairs," and who was going
10 to be selected, who was going to be a team player and who
11 wasn't.

12 Q And did you discuss that with Mr. LaPierre?

13 A I -- I was not involved in the nominating committee
14 discussions, so, no.

15 Q Did you discuss --

16 A I discussed -- I -- sorry.

17 Q Sorry.

18 A I apologize.

19 I did discuss, at various times throughout; certainly,
20 the 18 years that I served as an officer, board members -- board
21 members who were being helpful, board members who were being
22 unhelpful, from a -- concerns that I might have, but not -- not
23 on a regular basis with regards to the nominating committee.

24 Q In regards to Mr. LaPierre's efforts to put forward
25 board members -- board nominees -- who would support him, did

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1 you see that occur in the last five years that you worked at the
2 NRA?

3 A Yes.

4 Q And can you describe what you saw during that time
5 period?

6 A Well, the board members who were supportive of Wayne
7 LaPierre were a group; they were represented, usually, by the --
8 the leadership of the board: the president, first vice president
9 and second vice president. When Ollie North started asking
10 questions and asserting his fiduciary duty, I saw the opposite
11 of it, of -- what happens when a board member goes against the
12 interests of Wayne and his team. And the flip side is, I saw
13 the board members who were removed from committee assignments,
14 board members who were not renominated, for asking the wrong
15 questions, apparently.

16 Q When you say, "asking the wrong questions," what do you
17 mean?

18 A The same concerns that we talked about earlier: the --
19 the spending; certainly, the revelations that came out shortly
20 before the 2019 -- the revelations about the \$250,000 of money
21 being spent on suits at a boutique in Beverly Hills billed back
22 to the members of the National Rifle Association; the amount of
23 money that was going, in member support and member dues, out the
24 door for the legal bills; that Ollie North was not alone; that
25 there were a number of other board members and a number

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1 of -- a large number -- of individuals, myself included, that
2 had a great concern about it.

3 Q Okay. I think you said you saw it happen to people who
4 took the opposite view on some issues. What about people who
5 supported Mr. LaPierre; did you see how they were treated?

6 A Yes.

7 Q And can you describe that?

8 A Well, the -- the people who were not part of the "team"
9 were not given the good assignments; they were removed from
10 committee assignments and they ultimately, in many cases,
11 weren't renominated. Those who were on the team received a
12 number of different benefits.

13 Now, there were benefits associated with the president,
14 first vice president, second vice president, understandably, as
15 the -- the board officers, but there were others that would be
16 invited to events, provided with car services and -- and
17 first-class tickets and all those sorts of things.

18 Q I think -- did Mr. LaPierre --

19 Did you ever observe him to have any role in assigning
20 board members to particular committees?

21 A Yes.

22 Q Can you describe what you observed in that regard?

23 A Every year, there was a meeting outside of Wayne's
24 office on the 6th floor of NRA's headquarters. It was a fairly
25 large executive conference room. There were a number -- all the

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1 board -- the board officers were usually in attendance; the
2 president, first vice president, second vice president.

3 Sometimes there were other staff people there. Sometimes I
4 would come in and share thoughts on the Legislative Affairs
5 Committee and the work that they were doing.

6 But the purpose of that was to go through individuals
7 and decide whether or not they were going to be on a committee
8 or not recommended. Ultimately, it was the president of the
9 organization's decision; but the president was in the room with
10 Wayne, having these conversations about who would be on and who
11 would be off.

12 Q Did you ever see loyalty to Mr. LaPierre be a driving
13 concern in regard to committee assignments?

14 A Yes.

15 Q And can you describe what you observed in that regard?

16 A What I've described thus far, which is those -- those
17 board members who were -- who were not pushing back against --
18 whether it was Ackerman McQueen expenditures, whether it was
19 Josh Powell, whether it was Bill Brewer, those were -- those
20 were the -- the people on the good -- on the good side,
21 quote-unquote; and those who were asking questions were -- I
22 think, publicly have acknowledged that they were -- either not
23 renominated, kicked off committees or both.

24 Q Okay. Mr. Cox, are you familiar with an entity known,
25 or entities known, as the "California Members Councils," or the

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1 "Members Councils of California"?

2 A Yes.

3 Q And can you tell the jury what they are?

4 A My understanding is, the member councils were set up to
5 run the grass-roots membership and activation of NRA members
6 across the State of California.

7 That work fell underneath the job of the Institute for
8 Legislative Action that I ran. One of the nine divisions that I
9 ran at ILA was the Grassroots Division that was responsible for
10 activating members for legislative purposes, election purposes.
11 So 49 states were treated differently; they were run and managed
12 by the Institute for Legislative Action. One state, California,
13 was managed directly by Wayne and his team, separate from the
14 Institute for Legislative Action.

15 Q To your knowledge, did the members councils from
16 California play any role in NRA Board elections?

17 A Yes.

18 Q Can you describe what role they played?

19 A NRA board members are elected, traditionally, to
20 three-year terms. They're -- of the 76, 75 are elected to
21 three-year terms. It's staggered to where they're not all up
22 for re-election the same year; it staggers over time, so 25, 25,
23 25. Every year, there's a 76th board member that's elected from
24 the convention floor; basically, from the people who attend the
25 convention; they're allowed to vote at the convention for that

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1 76th spot. That's a one-year term. It's a shorter term than --
2 than the normal three-year term. And every year, Paul Payne,
3 who at one point was an ILA staffer who then became a Wayne
4 LaPierre staffer, but at those board meetings -- or at those
5 annual meetings -- Paul Payne, along with others from the --
6 from the NRA staff, were there with the explicit purpose of
7 working -- working the floor, handing out buttons, telling
8 people to vote for the preferred candidate of Wayne.

9 Q So who -- do you know who paid for the Members Council
10 of California and Mr. Payne to come to the annual meetings?

11 A My understanding is, Wayne LaPierre did.

12 Q And --

13 A Or the NRA did, under Wayne LaPierre's direction.

14 Q And to your knowledge, did Ms. Hallow help arrange
15 this?

16 A Yes. My understanding was that Ms. Hallow would
17 organize time for the California activists to meet with Wayne --
18 I don't know if it was a meal or just a meeting -- for Wayne to
19 thank them for the great work that they're doing and to get out
20 and be involved in that 76th board member.

21 (Continued on next page.)

22

23

24

25

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1 Q If the NRA board is so large there is 76 members, why
2 would this one 76th member be important?

3 A Every board member is important if there is concerns
4 about support or the flip side, asking the wrong questions.

5 Q And when you say that the -- the members' counsels
6 would get out there and the NRA staff would get out there to try
7 to support the preferred candidate, you mean the election year
8 for the preferred candidate, is that right?

9 A Correct.

10 Q They would try to get members on the floor to vote for
11 that candidate, is that right?

12 A Correct.

13 Q And is it -- Am I correct in understanding, Mr. Cox,
14 that that -- that election of the 76th member was sort of a wild
15 card? They didn't have to go through the normal process of
16 being nominated or being written in by petition to become a
17 board member, correct?

18 A Correct. It was limited to the NRA board members that
19 were there at any given convention that moved annually to a
20 different location.

21 Q Did you ever hear Mr. LaPierre while you were at the
22 NRA talk about getting together a certain number of board votes
23 on things, board members to vote on things?

24 A Can you ask that again?

25 Q Sure. Did you ever hear Mr. LaPierre discuss needing a

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1 certain number of votes or having to keep a certain number of
2 votes in his corner?

3 A I don't -- I don't recall, because the board pretty
4 much rubber stamped what Wayne wanted to do. There were times
5 certainly in disagreements and discussions, but I don't remember
6 close or contentious votes, even though there might have been
7 some.

8 Q Okay. You mentioned before \$250,000 suits. Can you
9 talk about what you were referring to? I think you said
10 \$250,000 in suits.

11 A Shortly before --

12 THE COURT: Concerning your personal knowledge.

13 THE WITNESS: Yes, sir.

14 A Shortly before the annual meeting in 2019 in
15 Indianapolis it became public, it was publically disclosed that
16 allegations and documents had leaked that suggested that Wayne
17 had used an Ackerman McQueen credit card or somehow billed the
18 NRA back for \$250,000 of suits from a luxury boutique in Beverly
19 Hills. It was one of the final straws for me. I was floored.
20 I was disgusted. I was extremely disappointed to learn that
21 that indeed had happened.

22 Q Did you speak to Mr. LaPierre about that allegation?

23 A I did.

24 Q And what did he tell you?

25 A He told me that -- I asked him point blank, Did you

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1 charge these suits and bill it back to NRA? Did you have an
2 Ackerman McQueen credit card? And he said, All of that has been
3 cleaned up. All of that has been fixed.

4 Q Okay. I would like to just go back to the board for a
5 second. You were talking about, when we were talking about the
6 board, in your experience does the board usually vote by voice
7 vote?

8 A No. My experience, every board meeting that I
9 attended, 50 some odd board meetings, they were in person.
10 Committee votes were beforehand. The full board would meet
11 after the days of committee votes.

12 Q But what I mean by that is did you ever observe the
13 board for something to be put up for a board vote, and a board
14 to vote by verbal acclimation, meaning they voted yay or nay?

15 A Yes.

16 Q Okay. Meaning they didn't put like pieces of papers in
17 a box?

18 A Correct. I apologize.

19 Q Okay. Mr. Cox, do you know a woman named Marion
20 Hammer?

21 A Yes.

22 Q Who is she?

23 A Mary Hammer is a board member, I believe still a board
24 member of The National Rifle Association, also a paid
25 consultant.

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1 Q Do you know whether the NRA ILA pays money to
2 Ms. Hammer?

3 A Yes.

4 Q And was that your decision for the NRA ILA to pay money
5 to Ms. Hammer?

6 A Marion Hammer was paid by my predecessor, continued to
7 be paid during my tenure at ILA, and I assume continues to be
8 paid to this day.

9 Q Did you -- Well, strike that. Did Ms. Hammer have an
10 organization that she headed up?

11 A Yes.

12 Q What was the name of that organization?

13 A Unified Sportsmen of Florida.

14 Q Did ILA fund or give money to the Unified Sportsmen of
15 Florida?

16 A We gave grants to -- to that entity as well as other
17 entities across the country.

18 Q To your knowledge did Unified Sportsmen of Florida have
19 employees?

20 A There might have been an employee on and off, but I
21 don't recall there ever being a consistent full-time employee.
22 But I don't -- I don't know. I never saw the office.

23 Q Besides Ms. Hammer?

24 A Correct, besides Ms. Hammer.

25 Q Did ILA also give money directly to Ms. Hammer?

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1 A Correct.

2 Q That was a decision you made?

3 A That was a decision that was made prior to me. I had
4 concerns with it, particularly as time went on, but it was very
5 clear that Wayne was an ally of Ms. Hammer, and Ms. Hammer was a
6 staunch defender of Wayne LaPierre.

7 Q What makes you say that?

8 A Her actions in defense of Wayne LaPierre, whenever
9 Wayne might be challenged on something is what lead me to that
10 decision -- that belief.

11 Q And when you say "her actions", can you give us an
12 example of what you're talking about?

13 A Well, the last one that I witnessed was prior to the
14 April 2019 convention in Indianapolis, that Mary Hammer called
15 my predecessor in the job, Jim Baker, and said, I want you to
16 come to the annual meeting. I'm going to do everything I can to
17 get Chris Cox fired, and I want you to replace him.

18 Q Did you speak to Ms. Hammer about that afterwards?

19 A No. I saw Ms. Hammer at that convention, smiled, asked
20 how she was doing and went about doing my job.

21 Q Mr. Cox, do you believe -- Strike that. Did Ms. Hammer
22 ever ask you to increase ILA's payments to her or to the Unified
23 Sportsmen of Florida?

24 A Ms. Hammer would regularly ask for increased financial
25 support to support her efforts in and around Florida. And some

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1 of those efforts were valid. Some of those efforts I disagreed
2 with and -- and did not agree to.

3 Q Do you have a belief as to the amount of money NRA ILA
4 pays to Ms. Hammer? I'm sorry. Do you have a concern about the
5 amount of money NRA ILA pays to Ms. Hammer?

6 A Yes. I expressed that concern to Wayne.

7 Q Can you explain the nature of that concern?

8 A Marion is a legendary figure within the Second
9 Amendment in Florida. She was the first female president of The
10 National Rifle Association, which was historic at the time for
11 an old organization. She was involved in a lot of legislative
12 battles over a long period of time in Florida. So there was a
13 time, like everybody else has their time, when it's time to move
14 on, that you're no longer as effective as you used to be, that
15 it's time to move on. I believed I later found out that Marion
16 was not even registered to lobby in Florida, which is what she
17 was suppose to be doing on behalf of NRA and ILA. She was not
18 registered to lobby. Ultimately like I was judged on
19 legislative election success and defeats, that was the same
20 application that I applied to outside consultants and outside
21 lobbyists and then th internal team of lobbyists that I was
22 responsible for managing. And Marion had a lot of successes and
23 taken on a high profile also. I thought it was time to start
24 rebuild NRA's effectiveness in Florida in hiring and bringing in
25 new people to run the business in Florida for our membership.

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1 Q Do you believe that Ms. Hammer was overcompensated?

2 A Yes.

3 Q Were you -- What, if anything, were you able to do in
4 regard to compensation paid to Marion Hammer?

5 A I asked Wayne, when I found out, I did not know that
6 Wayne was paying Marion on top of what ILA was paying Marion, on
7 top of what ILA was doing through state assistance grants for
8 her state organization, I asked him and he acted like he didn't
9 know. Apparently -- I told him somebody has got to stop paying
10 her. Either you should stop paying her or I should stop paying
11 her. He said, I know. I know. I'll look into it. What I was
12 told later is he instructed the fiscal officer, at the time
13 Craig Spray, to continue to pay Marion.

14 Q Did you ever ask Mr. Spray whether the NRA continued to
15 pay Marion Hammer?

16 A I don't remember. I don't remember ever asking
17 Mr. Spray. I might have, but I don't remember. I didn't have
18 that many conversations with Craig.

19 Q Do you know whether he ever told you that the NRA
20 continued to pay Ms. Hammer?

21 A Someone did. I don't know if it was Craig or someone
22 else, but someone certainly did.

23 Q Mr. Cox, do you know Lieutenant Colonel Oliver North?

24 A Yes.

25 Q And how do you know him?

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1 A I met Colonel North before I started working for The
2 National Rifle Association. I believe in and around 1994 I met
3 Colonel North for the first time when he was -- I believe that
4 was the year he ran for the United States Senate.

5 Q And at some point Colonel North was on the board of the
6 NRA, correct?

7 A Correct.

8 Q Do you recall a time when Colonel North became NRA
9 president?

10 A Yes.

11 Q Do you know when that was?

12 A I believe it was at the board meeting in and around --
13 the middle of 2018, I believe. I might be wrong on that. I
14 believe in the middle of 2018 it was announced and perhaps he
15 stepped in officially. There were some things, a process that
16 needed to happen with him and his former employer to make that
17 transition. Maybe late 2018, if my memory serves me correctly.

18 Q Well, do you know how Lieutenant Colonel North came to
19 run for NRA president?

20 A Yes.

21 Q And can you explain -- can you explain what you know
22 about that?

23 A Wayne LaPierre asked him to run. Pete Brownell, who
24 was serving as president at the time, had made the decision to
25 step down for a variety of different reasons was my

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1 understanding. It was somewhat unheard of for a president to
2 step down one year into a two year term. It was important that
3 the NRA replace Pete Brownell with someone of stature, of
4 standing. Someone who was trustworthy. The members would rally
5 around. Someone who the donors would be comfortable with. I
6 didn't know at the time, I asked Wayne who was going to replace
7 Pete, and he said, I've got Ollie North to do it. I was quite
8 frankly thrilled, thrilled to hear that news.

9 Q I want to take a break there for one second. You used
10 a term before, board chairs, correct?

11 A I'm sorry.

12 Q You used terminology before, board chairs, is that
13 right?

14 A I apologize. That's what we referred to as the
15 president, first vice president and second vice president. So,
16 the board leadership we referred to as the chairs or the board
17 chairs. I apologize.

18 Q And am I correct in understanding that in general the
19 president and vice president and second president -- and second
20 vice president tend to stay on for two one year terms each,
21 correct?

22 A That's correct. Traditionally someone would run for
23 the second vice president, serve for two years. Move up to the
24 first vice president. Serve for two years. Move up to
25 president. And serve for two years. On occasion Charlton

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1 Heston, for example, served longer. Didn't go through the
2 traditional process. Served for longer. I understand that
3 happened again more recently. That was traditionally what
4 happened.

5 Q So, when you learned that Lieutenant Colonel North was
6 going to be put forward as president of the NRA, you learned
7 that from Wayne LaPierre?

8 A I did.

9 Q And did Lieutenant Colonel North subsequently become
10 president of the NRA?

11 A Yes.

12 Q Did you ever observe Lieutenant Colonel North to have
13 to campaign for that or campaign for that position?

14 A No. Colonel North, I believe, was the highest
15 recipient of NRA member votes of every board member that ran.
16 He wasn't the highest. He was top two or three. He was beloved
17 by the board membership, certainly beloved by staff. He didn't
18 have to run much of a -- much, if any, of a campaign.

19 Q Just to be clear. At the time that he became president
20 his predecessor was Pete Brownell?

21 A Yes.

22 Q And Mr. Brownell didn't stand up for a second one year
23 term as president?

24 A Yes.

25 Q Okay. At the time that Lieutenant Colonel North was

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1 made NRA president or became NRA president, do you know what he
2 had been doing up until that point?

3 A Yes. Colonel North was the host of a program on Fox
4 News, I believe, called War Stories with Oliver North, where he
5 traveled the world and filmed stories about military and things
6 that were near and dear to him.

7 Q Do you know whether Lieutenant Colonel North ever
8 became employed by Ackerman McQueen?

9 A Yes.

10 Q And can you tell us what you know about that?

11 A What I knew was that Colonel North had and still has
12 apparently a very ill wife who was suffering from advanced
13 stages of Alzheimer's or dementia. I'm not exactly sure what
14 the medical diagnosis was. He had really good health insurance
15 when he was with Fox News, not surprisingly. When Wayne
16 negotiated Ollie North's transition from Fox News to NRA TV, it
17 was very important to Ollie North, which was not a surprise at
18 his age, with a sick wife, that he would want to make sure that
19 his healthcare was covered. So that was my understanding, is
20 the reason that he became an employee designated was because he
21 was not allowed to be an employee of The National Rifle
22 Association, because board members couldn't receive compensation
23 that way. So, Wayne structured for it to be run through
24 Ackerman McQueen.

25 Q Mr. Cox, I want to take a step back to make sure we're

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1 clear. So at the time Lieutenant Colonel North was approached
2 to be president of the NRA, he was working for Fox News, right?

3 A Correct.

4 Q And I think you said that Mr. LaPierre negotiated his
5 transition to NRA TV, correct?

6 A Correct.

7 Q Do you know how or why that came about?

8 A Ollie North was making a significant amount of money
9 working for Fox News. I don't think anyone was under the
10 impression that Colonel North was going to leave a high paying
11 job with no replacement for his income and no replacement for
12 his healthcare, particularly for his wife. I think it became
13 clear to Wayne, based on his words, that we're going to make
14 Ollie whole. He's going to do a TV program for NRA News, which
15 was an Ackerman McQueen run program, that was similar to the
16 storytelling that he was doing on Fox News, but to do it through
17 an Ackerman McQueen/NRA TV platform.

18 Q Based on your knowledge, did Mr. LaPierre have a role
19 in negotiating Colonel North's employment with Ackerman McQueen?

20 A Yes.

21 Q And can you describe your knowledge in that regard?

22 A Wayne told me that and Ollie North both told me that.

23 Q Okay. Did there come a time -- Strike that. Can you
24 describe what you observed of Colonel North's approach to being
25 NRA president?

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1 A Colonel North was -- was a dedicated supporter of the
2 Second Amendment. He was a proud member of The National Rifle
3 Association. A proud board member. And certainly a proud
4 president of The National Rifle Association. It had largely
5 been a ceremonial position to a large degree. The past
6 presidents for the most part had lived in other parts of the
7 country. There was an office of the president in NRA
8 headquarters, which was rarely used in the past. But I observed
9 Colonel North dedicated, wanting to make a difference. He had
10 some aggressive goals around growing membership of the
11 organization, raising money for the organization. He had the
12 energy of a young guy, despite his age, and he was very excited
13 to get to work.

14 Q Did you observe Colonel North to come to the NRA
15 headquarters?

16 A He did. That was the first in the 30 some odd years
17 that I had been there or close to 30, 25 years. I had never
18 seen a president spend that much time at headquarters. If they
19 had, I had never seen it.

20 Q Okay. Did there come a time when you observed
21 Lieutenant Colonel North start raising concerns about governance
22 within the NRA?

23 A Yes.

24 Q Can you describe what you observed?

25 A Shortly after he started coming to the office, talking

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1 to staff, he would walk the floors with his dog and go visit
2 with people and ask people how they were doing. He started to
3 hear concerns and learn of concerns, learn of concerns of the
4 Josh Powells, the growing concerns in and around the Brewer
5 firm, around the billings and the amount of money, not
6 necessarily billings, but the amount of money that was being
7 spent. And he started to exert his fiduciary responsibility and
8 ask the questions with regards to what are we doing here. Like
9 do we have the money. Can we afford this. How is this costing
10 so much. And asking -- asking questions that a fiduciary should
11 ask.

12 Q Did you ever hear or did Lieutenant Colonel North ever
13 raise these concerns directly with you?

14 A Yes.

15 Q Did he raise them with other board members?

16 A Yes.

17 Q Did you ever observe him to raise them with Mr.
18 LaPierre?

19 A Yes.

20 Q Did you ever observe him to raise them with other
21 members of NRA leadership?

22 A Yes.

23 Q Did you ever observe him to raise them with Mr. Frazer?

24 A I don't recall being in a room where that ever
25 happened. It could have happened, but I was not aware of that.

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1 Q Did others join Mr. Colonel North, excuse me, in his
2 concerns?

3 A Yes.

4 Q Can you name others who joined him in his concerns?

5 A Well, he lead the concern as president of The National
6 Rifle Association. Richard Childress, who at the time, he since
7 left the board, at the time he was the number two. He was
8 second vice president. He shared those concerns. There was a
9 time when the entire board leadership, including Carolyn
10 Meadows, shared that concern. There was concern from -- from
11 me. There was concerns from other board officers or other board
12 members, other staff. I was certainly not alone and Ollie North
13 was not alone in these concerns. It was becoming more and more
14 talked about among staff and among board members.

15 Q We're talking about concerns generally. But did you
16 hear or know Lieutenant Colonel North to complain about concerns
17 regarding legal spending?

18 MR. CORRELL: Objection. Compound, your Honor.
19 Hear or know.

20 THE COURT: Overruled. You can answer.

21 A Can you ask the question again, please?

22 THE COURT: While you're at it --

23 MS. CONNELL: I'll make it not compound. How about
24 that.

25 Q Mr. Cox --

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1 THE COURT: Sustained then.

2 MR. CORRELL: Thank you, your Honor.

3 Q Mr. Cox, did you ever hear Lieutenant Colonel North to
4 complain about the amount of legal expenditures within the NRA?

5 A Yes.

6 Q What was the nature of his concerns?

7 A That -- Twofold. One, that the amount of money was
8 staggering. And two, not gone through proper board approval and
9 channels.

10 Q Did you ever hear Lieutenant Colonel North to ask for
11 an audit?

12 A Yes.

13 Q And do you know whether any other NRA officers or
14 leaders joined him in that request?

15 A Yes.

16 Q Did you join him in that request?

17 A I supported the efforts of Colonel North and others to
18 have an independent review of NRA's spending, particularly in
19 and around the legal expenses, yes.

20 Q Did you ever see any -- any of these concerns put into
21 writing by Lieutenant Colonel North?

22 A Yes.

23 Q And to your knowledge were any of these writings
24 delivered to NRA leadership?

25 A When you say "NRA leadership", can you clarify which

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1 part of NRA leadership?

2 Q Sure. Do you know any of these writings to have been
3 delivered to Mr. LaPierre?

4 A Yes.

5 Q Do you know whether any were delivered to Mr. Cotton?

6 A I believe, yes.

7 Q Do you know whether any were delivered to Mr. Frazer?

8 A I didn't see a lot of the back and forth. I was
9 truthfully trying to block a lot of it out. It was a very busy
10 time for me professionally, with my work commitments in and
11 around that annual meeting. It got to a point where there were
12 a lot of letters being fired back and forth. It became more and
13 more ugly and personal, and so I was focused on doing my job.

14 THE COURT: Counsel, we're going to take our break.

15 MS. CONNELL: Okay.

16 THE COURT: Is this an okay time?

17 MS. CONNELL: Sure. It is. Thank you, your Honor.

18 THE COURT: Folks, we're going to take our lunch
19 break. We'll reconvene at 2:15. Same instructions. Don't
20 talk about the case. Don't talk about it amongst
21 yourselves. See you soon.

22 THE COURT OFFICER: All rise. Jury exiting.

23 (Whereupon the jury panel departed the courtroom.)

24 THE COURT: And, Mr. Cox, this is an instruction I
25 give to all witnesses. During the break you're essentially

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1 still on the stand. So, you shouldn't discuss your
2 testimony with anyone, including any counsel or anyone else.

3 THE WITNESS: Yes.

4 THE COURT: Thank you. See you at 2:15.

5 MS. CONNELL: Thank you, your Honor.

6 (Whereupon a luncheon recess was taken.)

7 (Continue on the next page.)

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1 A f t e r n o o n S e s s i o n:

2 THE COURT: Good afternoon, folks.

3 I have been going through the Spray deposition and
4 trial designations. I am finished with the deposition and I
5 think they're being e-mailed to you now.

6 I have a couple of things:

7 On the bankruptcy trial transcript, there's
8 basically one section that's the most substantive and
9 there's a single running objection, for a couple of pages,
10 based on hearsay; and I'm going to need you to break that
11 down more on a question-by-question basis, because just as
12 an example, it begins -- there's this long section as to
13 which there's an objection. The first question is just him
14 reading from a statement in the 990, which is an admitted
15 exhibit, so the hearsay objection to that doesn't really
16 work. But then there are some questions after it, some of
17 which, at least arguably, may be based on things that
18 someone else told him, although it's not entirely clear.
19 But then there is a bunch of questions as to which I think
20 the hearsay objection may be different.

21 So I need a little more granularity as to what the
22 arguments are on both sides.

23 I think, for that portion of the transcript, I
24 don't think I can just work with the stick-figure word
25 "hearsay" and know exactly what both sides' positions are.

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1 There's a little bit of a complication there, because he's
2 asked a series of questions about what he found out.

3 Now, if it was happening live, you could have an
4 interaction saying, "Well, does this mean somebody told you
5 that or does it mean that you looked at records and, if so,
6 which records?"

7 So I did think about that.

8 And then, later on, for example, they reference --
9 he references -- certain travel-agent records. I don't
10 know, as I sit here, and it's not referenced in the
11 transcript, what they are. Is that an NRA business record?
12 Is that a travel agency record? I don't know what it is.

13 So I'm trying to, you know, as realistically as
14 possible, imagine this testimony happening in front of me
15 and how I would deal with it.

16 So it's not as easy as some of the other ones.

17 At least, that part of it, there were some
18 questions where, maybe with a question or two to the
19 witness, you could clarify whether he's testifying based on
20 his personal knowledge or based on what someone on his
21 staff, who he refers to generally, told him. And even if it
22 was somebody on his staff, it seems, in part, that it may
23 have been based on reviewing records that I don't have and
24 that the jury won't have. So how does that affect the
25 admissibility of his trial testimony? Which,

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1 parenthetically, was not objected to at trial, although not
2 all the defendants were parties to that proceeding, so they
3 didn't have the ability to object.

4 So I'm a little troubled by it, as to what to do
5 with it, and so I need a little more help on what the
6 substantive arguments are. So it may just be a letter from
7 each side saying -- because I think, with that one, it's
8 really one block of testimony that has the main hearsay
9 objection and I'm going to need a little more granularity
10 out of you on that.

11 On the exhibits to the deposition, which I had this
12 forlorn hope that I wouldn't have to dig into before, I do
13 have a question: It looks like, from the plaintiff's
14 response, that some of the objections may have been met, or
15 neutralized, and I just want to make sure I understand.

16 So PX 2515, which is a transcript within the
17 transcript, I guess -- it's an excerpt from the
18 investigative exam -- there was an objection based on
19 hearsay and there was another objection based on the
20 wholesale admission of the transcript and the response was,
21 "No, we're just seeking to admit," essentially, "two or
22 three pages of it," which seemed to meet and eliminate the
23 objection. You can let me know if I'm wrong about that.

24 And then I think I'm not going to sustain the
25 objection to PX 2679, which was a relevance objection.

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1 Then there's a series of objections by Mr. Phillips
2 to which the answer from the Government is, "Well, these are
3 all after he was gone, so it shouldn't matter to him,
4 anyway," or something maybe more eloquently put. So I --
5 again, I'm not really sure I have a good understanding of
6 what this back-and-forth is or whether the Government saying
7 that is -- are they saying this is essentially not
8 admissible, not relevant to Mr. Phillips; therefore, his
9 objection, which is the only one that I have, really doesn't
10 matter?

11 Is Mr. Phillips --

12 What's your -- counsel's -- take on that?

13 MR. FARBER: Well, I took that response to mean,
14 basically, we shouldn't care because it's for a time period
15 after Mr. Phillips.

16 So I think my thought on that is: This
17 transcript's inadmissible against Mr. Phillips. It's a
18 transcript from a bankruptcy trial. He was not a party
19 there. It's hearsay. It may be admissible against the NRA
20 because Mr. Spray was their officer at the time and
21 therefore, you know, it can be considered a party admission,
22 but none of that's true as to Mr. Phillips, who had retired,
23 you know, four or five -- at that time -- four-some-odd
24 years earlier.

25 So, if it's going to come into evidence and their

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1 answer is, "Well, it's from a -- it concerns events that
2 don't relate to Mr. Phillips," I think there ought to be an
3 instruction given to the jury that can be to the effect of,
4 "This testimony is not admitted against Mr. Phillips and
5 doesn't relate to him."

6 THE COURT: All right. I hadn't fully appreciated,
7 then, that that little, one letter "H" in the margin was
8 intended, in part, to be an objection across the board by
9 Mr. Phillips, at least, to the entirety of the testimony
10 from the bankruptcy on the ground --

11 Regardless of what the questions are, you're saying
12 it's inadmissible.

13 MR. FARBER: As to Mr. Phillips, yes.

14 And -- and -- I mean, the AG's office put this
15 together. I've made it clear that that was the grounds of
16 our objection from the start.

17 THE COURT: All right. I'm going to --

18 Again, as I said, for the bankruptcy one, I need
19 more than I have; a little bit more text in explaining
20 exactly how I should deal with it, because with the
21 deposition transcripts, with that particular issue, it's not
22 relevant because you're all parties at that point.

23 So let's put a pin in the bankruptcy transcript and
24 just have some -- a submission by each side explaining to me
25 what, exactly, the basis is for the objection and I'll

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1 try -- I'll try to resolve it as soon as I can.

2 And as to the documents, that's a different
3 question, because that was -- it doesn't matter whether
4 you're a party or not. You were asserting regular hearsay
5 objections to the documents -- right? -- or regular
6 objections to the documents. I think. Right?

7 Those are deposition exhibits.

8 MR. FARBER: I -- I -- were you addressing that to
9 me, your Honor?

10 THE COURT: Yes.

11 MR. FARBER: Frankly, I don't recall whether I had
12 separate objections to the documents.

13 THE COURT: All right. Well, I don't want to
14 waste -- let's move on.

15 His stuff is not coming in this week, anyway, so we
16 have a couple of days. I just -- I thought I would cut
17 through it quickly over the lunch break and I didn't quite
18 get there, so ...

19 All right, let's get the jury.

20 (The witness entered the courtroom and resumed the
21 witness stand.)

22 THE COURT: Good afternoon.

23 THE WITNESS: Good afternoon.

24 (Pause.)

25 COURT OFFICER: The Court's ready for the jury?

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1 THE COURT: Yes.

2 COURT OFFICER: All rise. Jury entering.

3 (The jury entered the courtroom.)

4 THE COURT: Okay. Welcome back, everyone.

5 We were a couple of minutes late because we were
6 dealing with an evidence question that will, hopefully, save
7 us some time later.

8 So have a seat.

9 Okay. All set?

10 THE WITNESS: Yes, sir.

11 MS. CONNELL: May I resume, your Honor?

12 THE COURT: You may.

13 MS. CONNELL: Thank you.

14 Alan, can you hear me?

15 COURT REPORTER: Yes, thank you.

16 MS. CONNELL: Thank you.

17 DIRECT EXAMINATION CONTINUED

18 BY MS. CONNELL:

19 Q Mr. Cox, when we broke, I think we were talking about
20 the annual meeting in 2019. Do you recall issues with regard to
21 the concerns raised by Colonel North coming to a head at about
22 that time?

23 A Yes.

24 Q And can you describe what was going on at about that
25 time?

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1 A It was clear that Colonel North was in serious
2 disagreement with Bill Brewer in the billing issue; it was clear
3 that Wayne LaPierre was in strong disagreement with Colonel
4 North; it was clear that Wayne and -- and the Brewer team were
5 clearly at odds with Ackerman McQueen; and I, truthfully, was
6 trying to avoid the chaos and focus on the job that I had, which
7 was not only the busiest week for everybody of the year, but
8 about to be the busiest day of the year for me.

9 Q So I want to take a break here and ask: As Executive
10 Director of ILA, what would you do at the annual meetings,
11 typically?

12 A So, at the annual meetings, there were -- during the
13 week, before the weekend, there were board committee meetings.
14 I had responsibilities at a number of different committees, so I
15 would give presentations, answer questions, do the traditional
16 board type of work.

17 Then, on Friday, the convention itself, where tens of
18 thousands of NRA members from all over the country would come
19 and join and celebrate all the great things that were -- that
20 were happening in and around the Second Amendment, I had a -- an
21 event on Friday that I both started and grew and was responsible
22 for not only being the MC, but recruiting the speakers and
23 recruiting the entertainment. That year, it was particularly
24 both stressful and exciting because we had not only governors
25 and senators, but both the President of the United States and

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1 the Vice President of the United States.

2 After that event, I had a large auction -- dinner and
3 auction -- that was a critically important event for the
4 Institute for Legislative Action from a fund-raising standpoint
5 that, obviously, I was involved in.

6 Saturday, we had the members' meeting, which I had
7 to -- to give another speech, on top of the ones I gave
8 throughout the week and on Friday.

9 So it was a -- it was always a busy time, but that one
10 was particularly busy, with the attendees at the -- the
11 leadership forum and then with all of the -- the chaos
12 surrounding the event itself.

13 Q Would you say that was, maybe, one of your busiest
14 weeks of the year?

15 A Not "maybe"; it was -- it was absolutely the busiest --
16 busiest week of the year in my professional career.

17 Q And here I'd like to step out for a second: Mr. Cox,
18 did you travel a lot, as Executive Director of the ILA -- of
19 ILA?

20 A Yes.

21 Q And why would you travel so much?

22 A I was a "road warrior," as I described it, to a large
23 degree. There were a lot of work commitments. There were a lot
24 of political events that I attended on behalf of the NRA. There
25 were a lot of speeches that I attended. There were a lot of

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1 state associations where I would go and keynote the speech; I
2 was invited to give a keynote at the Republican National
3 Committee, one year -- for the convention, rather. And so, I
4 was constantly being asked to come and speak at events.

5 And then, layered into the speeches and the public
6 types of events, I was also responsible, as the chief lobbyist
7 for the organization, to interact with members, to attend events
8 that were in the benefit of the organization. And I did that,
9 oftentimes, more often than I would like, but I viewed it as
10 part of the job and I embraced the -- the travel, even if it was
11 difficult.

12 Q Can I ask whether you had a policy or procedure you
13 would follow with regard to payment of expenses that came up
14 while you traveled?

15 A Yes.

16 Q Can you describe that?

17 A It -- it changed over time.

18 When I was hired, in 1995, as a federal lobbyist --
19 Federal Liaison -- I was instructed by the Director of Federal
20 Affairs, "You can have an NRA credit card, you can get an
21 American Express and seek reimbursement, or you can do both;
22 it's kind of up to you."

23 So, for the 24 and a half years that I was there, I had
24 an American Express. My traditional practice was to just
25 highlight the things that were work-related, come up with

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1 expense reports, submit those; my staff worked on those, and
2 those would be submitted and I would -- I would seek re --
3 reimbursement.

4 Q Did the NRA ever pay for your American Express -- any
5 charge on your American Express Card, to your knowledge, that
6 was a personal expense?

7 A Yes.

8 Q And what would --

9 Do you have any procedure you'd follow if that
10 occurred?

11 A It happened -- I don't remember the year; I think it
12 was probably 2016 -- that between my work travel, between my --
13 I had a son who was battling cancer and going through intensive
14 chemotherapy treatments for three and a half years, so it was a
15 very stressful time with all of my work responsibilities, it was
16 a stressful time in my personal life, and I was on the road a
17 lot.

18 And so, the traditional practice would be, as I said, I
19 would go through and mark these things; NRA would reimburse me
20 for my -- for my personal -- or my professional -- expenses and
21 I would pay the -- the personal.

22 When I was on the road, I got a call from my executive
23 assistant, who said, "Your Amex bill" -- it was my American
24 Express bill because it was used almost entirely for work, but
25 my Amex bill was sent directly to my assistant at our

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1 headquarters. She got the bill, said: "Hey, I know you're on
2 the road; I know you don't have time to deal with this. Why
3 don't I just have the whole bill paid and then, when you get
4 back, you can reimburse -- basically do the opposite -- you can
5 reimburse NRA for the personal charges. And I said, "I'm not
6 comfortable with that unless you clear it with our fiscal
7 division," which she did; Mary Rose Adkins. She didn't see an
8 issue with that.

9 It didn't come up and wasn't an issue until long after
10 I left --

11 MS. ROGERS: Object to hearsay.

12 MS. CONNELL: Your Honor, the head of their fiscal
13 division would be an NRA officer or NRA employee.

14 THE COURT: Well, I --

15 You just testified that she cleared it, but
16 that's -- that's something that you heard, yourself?

17 THE WITNESS: It was in writing.

18 THE COURT: So it was the fact that -- it was the
19 fact of clearance. There's no -- we're not getting to the
20 truth of the -- of the matter.

21 So, overruled.

22 MS. CONNELL: Thank you, your Honor.

23 A I'm sorry; can you ask ...

24 Q I think we interrupted you in answering. But, sir, did
25 you --

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Cox - by Plaintiff - Direct/Connell

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1 Why don't we start clear: In 2016, to the extent the
2 NRA paid any of your personal charges, how did you address that?

3 A They were always reimbursed fully and promptly when I
4 returned from travel and was at our headquarters long enough to
5 sit down and go through expenses.

6 Q Okay. Thank you, sir.

7 I'd like to take you back now to the annual meeting in
8 2018. Do you remember where that occurred?

9 A In 2018 or 2019?

10 Q 2019. Excuse me.

11 A 2019 --

12 Q Do you remember where that -- where that occurred?

13 A Yes. It was in Indianapolis, Indiana.

14 Q Okay. Did you, at any point, become aware of things
15 between Lieutenant Colonel North and Wayne LaPierre getting
16 worse or coming to a head?

17 A It was clearly my observation that the disagreements
18 between Ollie North and Bill Brewer, and Ollie North's desire to
19 have an independent auditor look at the bills that were being
20 submitted, became a growing point of contention and ultimately,
21 for all intents and purposes, blew up at that meeting.

22 Q And was it only Colonel North raising these concerns at
23 that point, at the meeting?

24 A No.

25 Q Who else did you observe raising these concerns?

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1 A Richard Childress and other -- and other board members
2 and other staff members were aware of it, as well.

3 Q Were you involved in -- or: Were you involved in any
4 discussions of these concerns at the annual meeting in 2019?

5 A I had discussions with Wayne LaPierre at the annual
6 meeting about those. I had discussions with Colonel North at
7 that annual meeting, or those meetings, in Indianapolis. I
8 don't remember if there was a larger, group discussion.

9 There had been ongoing group discussions in the months
10 leading up to that annual meeting, in meetings including Wayne
11 LaPierre and other board members and the -- all the board
12 officers, myself included; the outside counsel, Steve Hart; and
13 others. So it was not -- it was not new at the annual meeting;
14 it had been going on for months but just was particularly
15 chaotic in and around that meeting, and ultimately led to
16 Colonel North's departure as president of the organization.

17 Q Were you --

18 Mr. Cox, I'd just ask: If you can pull that microphone
19 a little closer to you, that would be great. Thank you.

20 (The witness did so.)

21 Q Thank you.

22 Can you scribble the conversation you had with Wayne
23 LaPierre at the annual meeting regarding the concerns that were
24 being raised?

25 A Wayne and I had -- had multiple conversations at the

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1 annual meeting. I had not seen Wayne or met with Wayne since
2 the allegations became public of the Ackerman McQueen credit
3 card, the quarter of a million dollars in suits. We had not had
4 an opportunity to sit down and have that discussion, both from a
5 boss-employee standpoint or as guys who had worked together for
6 a really long period of time and had what I still felt like was
7 a -- a good core relationship.

8 And so, there was a conversation that we had; I believe
9 it was on Thursday, and then we met again in Wayne's room on
10 Sunday night, before the full board meeting, which was on
11 Monday.

12 (Continued on next page.)

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ALAN F. BOWIN, CSR, RMR, CRR

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1 Q And what was the nature of the conversation that
2 occurred on Sunday night before the full board meeting on
3 Monday?

4 A I heard rumors floating. Actually I heard direct
5 allegations that I was trying to take out Wayne. That I was
6 going to run against Wayne. That I was trying to kick out
7 Wayne. And it was -- I was so pissed off to be perfectly honest
8 with you. I was so tired of the nonsense. That's what it was.
9 It was nonsense. I told everyone who suggested that, that if
10 anyone puts my name up to be nominated to run against Wayne
11 LaPierre, I was going to immediately withdraw my name.

12 I never had any intention of running against Wayne
13 LaPierre. It was absurd. And I talked to Wayne about that. I
14 also talked to Wayne about the fact that his team, the Josh
15 Powells of the world and my belief Bill Brewer, because I was
16 supportive of Ollie in his desire to have an independent audit,
17 that they were coming after me. After all I had been through
18 for the organization for 25 years, after all my family had been
19 through, both personally and professionally, including a lot of
20 things that my wife got targeted with, it was totally over the
21 top and unnecessary, that I didn't deserve it. And that I would
22 rather just resign. I offered -- I had written a letter of
23 resignation multiple times. I offered to resign in Wayne's
24 presence to him the night before. And when I told him that
25 these guys are coming after me, he said, I swear to God, I will

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1 never let that happen. I swear to God. Actually only time I
2 heard him swear to God. He said it twice.

3 So I had clearly an uncomfortable feeling about
4 powerful people retaliating against me. But Wayne encouraged me
5 to stay. Encouraged me not to resign. That he was going to
6 wrap up all of the things that were going on in New York in a
7 matter of months. He was done. He didn't want to continue.

8 So the next day -- Actually, so that's the answer.

9 Q So those discussions culminated on Sunday night, the
10 night before the annual meeting on Monday?

11 A Correct.

12 Q Mr. Cox, during the course of the annual meeting in
13 Indianapolis, were you part of any coup attempt?

14 A No.

15 Q Did you hear that term used during the annual meeting?

16 A I heard the term used after -- after my departure, but
17 I heard -- I most likely heard some reference. I don't know if
18 it was the word coup or extortion or some other phrase. Yes, I
19 was familiar with the allegation during that meeting.

20 Q Were there conversations going on at the annual meeting
21 with regard to Wayne LaPierre and his relationship with Ackerman
22 to your knowledge?

23 A Yes.

24 Q Strike that. Let me ask that more specifically. Were
25 you aware of any conversations between Ms. Hallow and Colonel

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1 North regarding Ackerman McQueen at the annual meeting?

2 A Yes.

3 Q And what was the nature of those conversations?

4 A I received a text from a board member, former
5 congressman of Oklahoma, Dan Boren on Wednesday during a
6 legislative affairs committee meeting. He asked if I could call
7 him. Said he needed to speak. I assume he wanted me to tell me
8 he couldn't make it to the meeting because he wasn't there. So,
9 I finished my committee responsibilities, went to my room. I
10 called Congressman Boren back. And he relayed on a message to
11 me of concern with regards to the allegations against Wayne.
12 The -- Specifically the recent allegations that had come out
13 with regards to the \$250,000 of suits, the Ackerman credit card,
14 the billing, all of those sorts of things. He relayed on to me
15 because he did work for Ackerman McQueen for his other
16 professional life, representing one of the Indian tribes. So,
17 he knew the Ackerman McQueen people outside of NRA. And he
18 said, Look, you know, this is a mess. I view -- I view Dan as
19 just passing along, trying to be a good guy and help. He shared
20 with me that Ackerman McQueen intended to come after Wayne.
21 That there was more. That they were ready to file a lawsuit.
22 That this was going to be bad. And as long as these guys have
23 worked together, can't they -- can't they figure this out.

24 And I asked Dan Boren to do two things. I said
25 Wayne -- I said Dan, you're a board member. You need to call

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1 Ollie North. He's the president of the board. You need to call
2 Wayne LaPierre, because you've mentioned his name. I gave him
3 Ollie North's cell phone number. I had a practice of not
4 sharing Wayne's cell phone number out of privacy. So, I gave
5 him Millie Hallow's number and told him to call Wayne and to
6 call Ollie North. And I was -- My concern was this was two days
7 before the biggest day of my year, the biggest day of the NRA's
8 year. A day when tens of thousands of NRA members were going to
9 gather and celebrate an event that I organized and hosted and
10 put on. And I was worried that all of this stuff had come out
11 just days before, and if another round of this type of
12 information dropped, that we risk losing having the president of
13 the United States and vice president of the United States come
14 to our event. I thought they would cancel. And I was, I think
15 it was safe to describe, frantic not to -- not to let that
16 happen.

17 Q Okay. You mentioned Millie Hallow just now, right?

18 A Yes.

19 Q Do you have -- Do you consider Ms. Hallow reliable?

20 A Ms. Hallow is -- was always -- I don't know what her
21 status is now. Ms. Hallow was always reliably loyal to Wayne
22 LaPierre.

23 Q Do you consider Ms. Hallow trustworthy?

24 A I do not.

25 Q Why not?

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1 A After I left, I found out that Ms. Hallow had been in
2 her previous employment convicted of embezzling. Found out that
3 Ms. Hallow had taken money from The National Rifle Association
4 apparently to pay for her son's wedding. Everybody liked
5 Millie. But you can like somebody and also not trust them. So,
6 I liked Millie. I thought she was a fun, funny person, in fact,
7 lady. I thought she was a good balance for Wayne at times
8 because she was outgoing when he was not. But I liked her but
9 did not trust her. That's not -- I know that's different, but
10 that's the way I felt about it.

11 Q Before you left and learned that information, did you
12 have any reason to not trust Ms. Hallow?

13 A I believe that Ms. Hallow shared information with Wayne
14 and information with others with the goal of 100 percent and
15 always protecting Wayne. That was almost her reason of
16 existence was to be there to protect Wayne and to handle Wayne
17 and to look out for Wayne both personally and professionally.

18 Q Mr. Cox, as the executive director of ILA, are you
19 elected, in 2019, would you be elected or appointed to that
20 position?

21 A I was -- I was reappointed to that position on the
22 Monday of the full board meeting.

23 Q And who made the decision to reappoint you?

24 A Wayne LaPierre.

25 Q So as of Monday, that Monday of the meeting in 2019 you

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1 were reappointed to your position, correct?

2 A Correct.

3 Q Okay. You no longer work for the NRA, correct?

4 A Correct.

5 Q How did that come about?

6 A It was a combination of things. I'd almost resigned a
7 year before. I actually incorporated my new business in 2018.
8 Didn't depart until 2019. I was -- I was tired. I was tired of
9 the chaos. As I mentioned before, I was tired of incompetent
10 people being paid too much money. I was tired of the in
11 fighting. I was tired of just the overall chaos. I was tired
12 of what my family had been going through. And I made the
13 decision and talked to Wayne about stepping down. Maybe helping
14 him from the outside, but no longer being executive director of
15 ILA. That was in 2018. Obviously Wayne convinced me to stay.
16 Ollie North and others encouraged me to stay, so I did.

17 In 2019, a few days before the annual meeting in
18 Indianapolis, when the reports came out of Wayne's spending on
19 suits and the rest of it, I was floored. I was beyond
20 disappointed. I was disgusted. I sat up and wrote a letter of
21 resignation that morning before I even went to Indianapolis.
22 Gave it to Ollie North. He said, I'm not doing anything with
23 this. Like calm down. Please don't do this.

24 Eventually, shortly after the annual meeting, when it
25 was clear that the people on Wayne's team who viewed me as an

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1 ally of Ollie North and even worst to view me as a potential
2 replacement for Wayne LaPierre, should he decide to step down
3 voluntarily or otherwise, and they viewed me as a threat because
4 they were smart enough to know that had I taken over that
5 organization, the days of overpaying incompetent people were
6 going to end. The days of milking the organization with
7 exorbitant contracts with PR firms and law firms would end. And
8 so I viewed myself as a marked man, but I never imagined that I
9 would be put through what I was put through just a short number
10 of months later.

11 Q So, let's talk about what you were put through. Did
12 there come a time that you learned that you would be suspended?

13 A Yes.

14 Q And can you tell the jury how you learned about this.

15 A I was on a work trip in California. I received a call
16 at about 5 o'clock in the morning California time, because of
17 the time difference between California and Washington, D.C.,
18 from the director of NRA ILA's public affairs division who
19 handled the incoming media. There was an incoming call from a
20 New York Times reporter who wanted a comment from me about being
21 named as an errant fiduciary in a lawsuit that had nothing to do
22 with me, that had to do with Ollie North's reimbursement for
23 legal expenses or something with regards to Ollie North. And I
24 had no -- I was like, What are you talking about. I had no I'd
25 where this was coming from. I figured out pretty quickly where

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1 it was coming from.

2 So, I tried to call Wayne. He never called me back.
3 Still to this day has not called me back. Tried to call Susan
4 LaPierre. She didn't call me back. Tried to call his house.
5 He wouldn't answer. Called Millie Hallow. Said she didn't know
6 anything about it and cried. Whether that was crocodile tears
7 or not, I have no idea. But I was desperate to talk to my boss
8 to find out what was going on. And before that happened -- So,
9 that's what was going on. So, I found out about --

10 MR. CORRELL: Your Honor, sorry to interrupt the
11 witness, but this is a very long narrative response. If we
12 could have the direct a little more tailored so we could
13 object. A lot of hearsay is coming in, and I'm not having
14 the opportunity to object.

15 THE COURT: Well --

16 MR. CORRELL: The references to people telling him
17 things, we don't know who the people are. We don't know
18 what his personal knowledge is.

19 THE COURT: Well, that's a fair point. There has
20 been some of that going on. So, maybe we can take it in
21 pieces.

22 MS. CONNELL: Sure.

23 THE COURT: And we can deal with it as it comes up.

24 MS. CONNELL: Absolutely, your Honor. Thank you.

25 THE COURT: Again just for the witness' benefit,

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1 we're focused mainly on things you saw, you heard and you
2 did, you observed.

3 THE WITNESS: Yes, sir.

4 Q So, Mr. Cox, once you received that call from the
5 reporter and you tried to reach out to the NRA, to the people
6 you just identified and were unsuccessful, what happened next?

7 A I received a call.

8 Q Actually that's a broad question. Let me tailor that.
9 Did you hear officially from the NRA about any suspension?

10 A The first thing I heard was from my chief of staff, the
11 ILA chief of staff, long term, multi decade employee, Scott
12 Christman, who served as chief of staff for ILA. He called and
13 said he had just been escorted out of the building by armed
14 security. So I was -- I was floored. I told him how sorry I
15 was that that happened. How humiliating I'm sure that was for
16 somebody who didn't deserve to be escorted out of a building by
17 armed security. Certainly no threat to anyone.

18 So, I was not surprised when I got a call just a few
19 hours later from John Frazer along with Linda Crouch, who at the
20 time was head of human resources, I don't know if she's still
21 head of human resources, notifying me I was being put on paid
22 administrative leave.

23 Q So, how long was your conversation with Mr. Frazer and
24 Ms. Crouch?

25 A Not long. Two or three minutes as I recall.

LAS

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1 Q And to go back to Mr. Christman. Do you know of any --
2 at that time did you know of any wrongdoing by Mr. Christman
3 that would justify him being walked out?

4 A No.

5 Q Mr. Cox, I would like to direct your attention to tab
6 three of your binder.

7 MS. CONNELL: Counsel, this is PX 5071. I believe
8 your Honor already determined that this would be admissible.

9 THE COURT: I did.

10 MS. ROGERS: No objection.

11 MR. CORRELL: No objection.

12 THE COURT: PX 5071 is admitted.

13 Q Mr. Cox, did -- do you recognize this document?

14 A (Examining). I do.

15 Q And what is it?

16 A It's an e-mail to my personal e-mail account because my
17 business e-mail account had been shut off.

18 MS. CONNELL: I'm sorry, your Honor. We'll redact
19 that. I didn't realize that. We'll have it redacted in the
20 admitted version.

21 A Thank you. It's an e-mail from me to John Frazer with
22 Linda Crouch c.c.'d, I guess, putting in writing what they had
23 explained to me by phone.

24 Q Okay. And this message or this e-mail includes a
25 message from Mr. LaPierre, correct?

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1 A Correct.

2 Q Mr. LaPierre didn't send you a separate e-mail, right?

3 A I'm sorry?

4 Q Mr. LaPierre didn't send you a separate e-mail, right?

5 A If he did, it went to my work e-mail that had been shut
6 off. I never received an e-mail from Wayne that I recall.

7 Q While you worked at the NRA did Mr. LaPierre have a
8 habit of sending his own e-mails?

9 A No.

10 Q Okay. And to your knowledge was he a big user of
11 e-mails or text messages?

12 A No.

13 Q Okay. So, Mr. LaPierre informs you that the NRA had
14 filed the attached action in New York State Court, right?

15 A Yes.

16 Q And that he was making a determination to immediately
17 suspend your services, right?

18 A Correct.

19 Q And attached to this is the complaint from the New York
20 State lawsuit he references, correct?

21 A I believe that's correct. Yes. Yes.

22 Q And did you review this complaint when you received it?

23 A I might have skimmed it. I was not in the state of
24 mind to understand why this was happening to me. What was going
25 on. And particularly in a case against Ollie North that had

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1 nothing whatsoever to do with me.

2 Q I would like to draw your attention to paragraph 48 of
3 this complaint. It's -- it's at, if you use the PX numbers, I
4 believe it's page 15. Do you see this paragraph, sir?

5 A (Examining). I do.

6 Q The last sentence of this paragraph refers to you as an
7 errant NRA fiduciary, correct?

8 A Correct. That's what the New York Times reporter
9 called and asked me to comment on.

10 Q And it's -- it says that you participated in an
11 Ackerman, North, Boren conspiracy, right?

12 A That's what it says.

13 Q Did you ever participate in any conspiracy with Colonel
14 North, Mr. Boren or Ackerman McQueen?

15 A No. And it's an absurd suggestion.

16 Q Why is it absurd?

17 A Because no one fought with Ackerman McQueen more than I
18 did over a long period of time. I never had a discussion with
19 Ackerman McQueen, never would have had a discussion with
20 Ackerman McQueen about some attempt to -- for criminal
21 conspiracy or whatever the -- the terms that were used. I knew
22 that Ollie North was fighting with Bill Brewer. I knew that
23 Wayne was fighting with Ollie North. I knew that was becoming
24 more and more tense and more and more of a problem. Dan Boren I
25 viewed was passing along information, and I was just the

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1 unfortunate person that got stuck with telling him to pass that
2 information along to Wayne LaPierre and Ollie North.

3 Q This paragraph, this sentence, this highlights refers
4 to some text messages. Do you see that?

5 A (Examining). Yes.

6 Q Can you please turn in this same document to page -- it
7 would be page 23 using the PX numbers at the bottom. You can
8 also look on the screen.

9 MS. CONNELL: I apologize, your Honor. The text
10 messages are somewhat hard to read. This is the copy we
11 got. I don't have a cleaner copy. So we'll have to muddle
12 through.

13 Q Mr. Cox, do you recognize this document?

14 A (Examining). I do.

15 Q What is it?

16 A It's a text exchange between Congressman Dan Boren and
17 myself.

18 Q And are the bubbles on the right that are darker, am I
19 correct in understanding those are from Congressman Boren?

20 A That's correct.

21 Q And the ones on the left, a little lighter are from
22 you?

23 A That's correct.

24 Q This text exchange occurred on Wednesday, April 24th?

25 A During the legislative affairs committee meeting in

LAS

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1 Indianapolis, correct.

2 Q Okay. And does this -- So am I correct in
3 understanding that Congressman Borne was saying he needs to
4 speak to you, correct?

5 A Correct.

6 Q And you subsequently spoke to Congressman Borne?

7 A Correct.

8 Q And was the conversation that you had with him along
9 the lines of what you already testified to?

10 A Yes. It was a nonconfrontational, very -- Dan Boren is
11 a nice guy. He's not a confrontational guy. I felt like he was
12 trying to pass on information that he was concerned about and
13 thought needed to be addressed. So, I did what I thought was
14 the right thing for me to do, which was I told him, As a board
15 member you needed to call Ollie North. He's president of the
16 board. Since Wayne's name has been mentioned, you need to call
17 Wayne.

18 Q Okay. If you can turn to the next page, to page 24.
19 Is this the continuation or a part of the same text string to
20 your knowledge?

21 A (Examining). Yes. It appears to be the same -- the
22 same day.

23 Q Okay. Again, were you able to have lengthy
24 conversations with Congressman Boren?

25 A I had a couple of lengthy conversations. One lengthy

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1 conversation, one short conversation with Congressman Borne.

2 Q Did you at any point discuss trying to extort Wayne
3 LaPierre during those conversations?

4 A Never. No.

5 Q Okay. If you look further down on this text stream, it
6 seems to say Ollie calling you.

7 A Yes.

8 Q Then it references Millie. I assume that's Millie
9 Hallow?

10 A Yes.

11 Q Okay. Can you explain why you typed, "Millie didn't
12 give any details. Just the ultimatum. Not trustworthy"?

13 A Yes. I reached out to Ollie to let him know he was
14 going to be getting a call from Dan Boren. Obviously I was
15 extremely troubled and concerned by the conversation. What Dan
16 Boren had told me was can't this like be resolved. Can't
17 they -- You know, they worked together forever. If they did
18 something wrong, shouldn't these guys figure it out. That was
19 not my role. I was not involved in any of the litigation
20 aspects with Ackerman McQueen. My understanding of that
21 litigation was it was a request for documents. I saw no
22 problems with requesting documents if they were suppose to be
23 handed over. But none of that, what Ollie -- I told, given
24 Ollie a heads up. Apparently when I said just the ultimatum was
25 that they are going to drop a lawsuit hammering Wayne. That's

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1 what, basically what Dan Boren had told me. That's what I was
2 concerned about. I didn't know what, if anything, Ackerman
3 McQueen had. I never had a discussion with Ackerman McQueen.
4 Still have not had a discussion with Ackerman McQueen about any
5 of this. I didn't know, but it was enough to concern me to the
6 point where yes, I wanted to talk to Wayne about it, Ollie about
7 it. I wanted to make sure that this did not cause a major
8 problem for the members of the organization two days before the
9 biggest event, where the members get together to celebrate.

10 Q When you say "ultimatum", just to be clear, what
11 ultimatum are you talking about?

12 A That Ackerman McQueen was ready to provide or was ready
13 to drop a lawsuit or somehow slander Wayne if they didn't start
14 having conversations and start -- basically work this out is
15 what -- is how Dan described it.

16 Q At the time all of this was occurring Oliver North was
17 an employee of Ackerman McQueen, right?

18 A I don't know the exact time that Ollie -- Oliver North
19 became an employee of Ackerman McQueen. Quite possibly. I
20 never saw the details of that engagement or the timeline, the
21 dates, the date of him officially starting to work or not
22 starting to work.

23 Q Did you have any concerns that Lieutenant Colonel North
24 might be conflicted in any issues he was raising to Wayne
25 LaPierre?

LAS

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1 A I believe that Ollie North was doing his fiduciary duty
2 to try to get an independent audit. I encouraged Wayne to do
3 the same thing. Just have an independent auditor. You're
4 getting accused of all of this stuff. You're getting hammered
5 over it. Just have somebody else come in from the outside and
6 take a look at these bills and make sure they are all legit. If
7 they are legit, great. Move on.

8 I didn't want it to all blow up at the annual meeting.
9 I was just trying to protect and focus on my job, which was to
10 -- to run a very significant piece of that -- that members
11 meeting.

12 Q You -- I want to move on. You note here "not
13 trustworthy". What are you talking about, if you recall?

14 A As I -- as I testified earlier, Millie Hallow is very
15 likeable, very loyal to Wayne, at least she was at the time, but
16 not trustworthy with regards to having this conversation. I had
17 hoped that Wayne would call Dan Boren. I hoped that Ollie and
18 Wayne both would call Dan Boren. I didn't want to be in the
19 middle of their fight. It was not my fight. My fight was to
20 try to do my job and protect the organization and make sure the
21 members of the organization and the donors to the organization
22 were not adversely impacted by another round of horrible stories
23 coming out about Wayne LaPierre.

24 Q Okay. So, Mr. Cox, you received this notice of
25 suspension on June 20th, 2019, right? If we can turn back to

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1 page 1, you can see that.

2 A (Examining). That's correct.

3 Q Were any other members of your team within ILA subject
4 to any type of suspension or disciplinary action?

5 A Yes.

6 Q Can you describe that?

7 A I mentioned Scott Christman, the chief of staff for ILA
8 being escorted out of the building by security, the head of
9 ILA's public affairs division that handled the media
10 interactions and the media calls. Her name was Jennifer Baker.
11 Jennifer was a pro, really good at her job. Had a lot of
12 background, a lot of experience working in politics, campaigns.
13 Did a great job. She was in Tennessee dealing with a sick
14 mother and was asked to fly back to Fairfax for a meeting. When
15 she flew back for the meeting, she was escorted out of the
16 building by security.

17 Q Do you have an understanding as to why this was done?

18 A I have no idea other than pure vindictive retaliation
19 against people who were associated with me, because I had been
20 labeled a disloyal person for supporting Ollie North's efforts
21 to do his fiduciary duty and to put the goals and objectives of
22 The National Rifle Association members over the goals and
23 objectives of Wayne LaPierre.

24 Q When you learned you had been suspended, what did you
25 do?

LAS

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1 A I was -- I was devastated. Called my wife. I called
2 my mother and father because I knew that it would be -- it was
3 already out. They had leaked it to The New York Times. I knew
4 it would get picked up in the media. I had no opportunity to
5 talk to my staff. They cut off my e-mail access. They cut my
6 access to my calendar. So I was -- I was -- I was not
7 surprised, because I had gotten a call from Scott Christman
8 saying he had been escorted out with armed security. I was
9 angry and heartbroken at the same time.

10 Q Did you resign?

11 A Shortly after I resigned, yes.

12 Q Why did you resign?

13 A It became clear to me that this was a fraud. That
14 there was no -- there was no effort to have a conversation with
15 me. There was no effort to ask me any questions. There was no
16 effort to go through any of this in a meaningful way. It came
17 to my attention that they were already interviewing some -- that
18 board members had been inquiring about replacing me and taking
19 that -- that job. That other staff members were already being
20 talked to about replacing me. And so rather than sit around and
21 wait, I made the decision to just be done with it and resign.

22 Q Actually, Mr. Cox, I would like to take a step back.
23 Mr. Frazer is the one that sent you the e-mail with the formal
24 notice of your suspension, correct?

25 A Yes.

LAS

1 Q You had known John Frazer for some years?

2 A Yes. Probably at least actually 25 years since I
3 started at The National Rifle Association. Thirty years now,
4 but 25 years at the time.

5 (Continue on the next page.)

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LAS

Cox - by Plaintiff - Direct/Connell

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1 Q Mr. Frazer worked a number of years for ILA; is that
2 correct?

3 A That's correct.

4 Q And can you describe his work history with ILA?

5 A My understanding -- when I started as a Federal Liaison
6 on Capitol Hill for the National Rifle Association in 1995, I
7 believed John was working for the previous -- one of the
8 previous -- executive directors, named Tanya Metaxa, as some
9 sort of aide or assistant. At some point he served, for a brief
10 amount of time, as a federal lobbyist in the Federal Affairs
11 Division and then, ultimately, he went to -- he went to Fairfax
12 as a -- in the -- I believe -- in the Research and Information
13 Division.

14 When I took over, I promoted John to Director of
15 Research and Information. I -- he had said that he wanted to go
16 to law school. We had a policy in place at the NRA for
17 continuing education where a certain amount of your
18 post-graduate schooling could be reimbursed by the NRA. He said
19 that's what he wanted to do, I encouraged him to do it, and he
20 went on to get a law degree, left shortly thereafter and
21 practiced law on the outside, I understand, for a short amount
22 of time.

23 Q While he was with ILA, did Mr. Frazer serve in any
24 capacity as, like, a general counsel within ILA?

25 A No.

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Direct/Connell

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1 Q Okay. Do you have an opinion as to Mr. Frazer's
2 qualifications to be hired as general counsel for the NRA?

3 A I know that John went to law school. I know that John
4 practiced law on the outside, I assume, handling Second
5 Amendment cases, for a couple of years. Do I think that John
6 had any knowledge or expertise in New York not-for-profit laws,
7 any sort of regulatory issues? No. I like John, didn't think
8 he was a bad guy, but, no, I didn't think John was qualified
9 to -- to run the legal operations for a large organization like
10 NRA.

11 Q Mr. Cox, you commenced an arbitration proceeding
12 against the NRA; is that accurate?

13 A That's correct.

14 Q And why did you commence that arbitration proceeding?

15 A I had a post-employment severance agreement with the
16 National Rifle Association. When I left in -- I think my
17 effective date was in July, the first payment, I believe, was
18 either in August or September. It was a severance to be paid
19 out monthly, over a 24-month period. They paid me the first
20 month they owed me and then cut off my payments after one
21 payment of 24, said that it was pending an ongoing investigation
22 into -- I don't know what, because they never asked me any of
23 these questions and -- or -- ongoing investigation into the
24 supposed coup narrative.

25 So I sued in arbitration for -- for payments of the

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1 contractual obligation they had for my severance.

2 Q And the NRA asserted counterclaims against you;
3 correct?

4 A Correct.

5 Q Mr. Cox, can you please take a look at tab 4, which is
6 PX 155?

7 MS. CONNELL: Your Honor, I think you already ruled
8 on the admissibility of this document.

9 THE COURT: I did. It's admitted.

10 MS. CONNELL: Thank you.

11 Q And, Mr. Cox, it's being brought up on the screen.

12 (Image displayed.)

13 Q Are these the amended counterclaims that the NRA
14 brought against you in that arbitration proceeding?

15 A There were two counterclaims that were made. The first
16 counterclaim -- and I -- I'm assuming that's what this
17 (indicating) one was -- was the coup allegation.

18 Q Well, Mr. Cox, I'm going to interrupt you for a second.
19 I'm sorry to interrupt you. I'm just looking to see whether
20 these (indicating) are the amended counterclaims --

21 A Oh, I apologize.

22 Q -- if that looks familiar to you.

23 A Yes.

24 Q Okay. And these were part of the arbitration
25 proceeding with the NRA; correct?

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1 A That's correct.

2 Q Okay. Ultimately, this arbitration was settled; is
3 that right?

4 A Yes.

5 Q And that settlement resulted in the NRA paying you some
6 money; correct?

7 A That's correct.

8 Q Mr. Cox --

9 MS. CONNELL: Could I just have one moment, your
10 Honor -- I'd like to wrap it up -- and see if I'm missing
11 anything?

12 THE COURT: Okay.

13 (Pause.)

14 Q Mr. Cox, do you -- even though you were let go by the
15 NRA, as I asked you, do you still support the NRA's mission?

16 A Yes.

17 MS. CONNELL: Thank you very much, sir.

18 THE COURT: Cross-examination?

19 We would normally take a break in about a half --
20 15 or 20 minutes. Do you want to go 15 or 20 minutes and
21 then take a break?

22 MS. ROGERS: Yeah.

23 THE COURT: Okay.

24 MS. ROGERS: Can everyone hear me?

25 (Multiple jurors nodded.)

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1 MS. ROGERS: Okay.

2 CROSS-EXAMINATION

3 BY MS. ROGERS:

4 Q Good afternoon, Mr. Cox. I'm Sarah Rogers. I'm one of
5 the lawyers for the NRA. I think we've met a couple of times.

6 You testified that the tension between Colonel North,
7 on the one hand, and Wayne LaPierre, on the other, came to a
8 head at the 2019 Indianapolis annual meeting; right?

9 A Correct.

10 Q And during that annual meeting, you addressed the full
11 board in an executive session; right?

12 A Can you repeat the question?

13 Q You addressed the full board of directors in an
14 executive session, right?

15 A That's correct.

16 Q And when you addressed the board, you said that you
17 supported Ollie and you supported Wayne; right?

18 A That's correct.

19 Q You didn't raise concerns about Wayne hiring, promoting
20 and paying incompetent people; right?

21 A That's correct.

22 Q You didn't raise concerns about legal spends, right?

23 A Not at that meeting, no.

24 Q And, in fact, as the NRA's head lobbyist, as Executive
25 Director of ILA, you had addressed the full board dozens or

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1 hundreds of times; right?

2 A Correct.

3 Q During any of those meetings, did you ever raise any of
4 the concerns about NRA finances or governance that you testified
5 to with the attorney general a moment ago?

6 A Yes.

7 Q Describe those instances.

8 A At -- at the meeting that you mentioned, the
9 behind-closed-doors meeting, the full board meeting on Monday,
10 after Wayne reappointed me and I gave my speech, I spoke in
11 great detail about Ollie North having -- having been a
12 principled man and a good man, and that this idea that Ollie
13 North is trying to cause a problem -- that no one has done more
14 to support Wayne in his -- in his career than I had and that
15 I -- that I cared about both of 'em. So, yes, I -- I did
16 express concerns about how --

17 And what I said, Ms. Rogers, was that our members
18 deserved better, that we needed to get our act together, and
19 that this was the type of thing that would tear organizations
20 apart. That's what I said in that -- in that closed-door
21 meeting to the full board of directors, and I got a standing
22 ovation after I said it.

23 Q And you also expressed support for Wayne LaPierre,
24 right?

25 A I don't remember -- I remember praising Wayne and I

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1 remember praising Ollie. I don't remember the exact words I
2 used to -- to praise Wayne other than this was -- enough was
3 enough; we needed to stop this infighting and get back to the
4 work of the members of the National Rifle Association's mission,
5 because that's what they deserved.

6 Q And after that, Mr. LaPierre reappointed you; right?

7 A Wayne usually appointed me -- I don't know if Wayne
8 appointed me before or after.

9 Q At the same board meeting.

10 A At the same -- yes, the same -- the same day, the same
11 meeting.

12 Q Right. So, even --

13 And those tensions started coming to a head in the days
14 preceding that big board meeting, right?

15 A Oh. Well, it blew up. Ollie North was out as
16 president of the organization; so, at that board meeting where I
17 addressed that board, Ollie North was not there. It -- the
18 presidency was unfilled and he was -- he was out; he had not
19 been renominated.

20 So, yes, this was -- he was not in attendance when I
21 praised him, but I meant what I said.

22 Q Right.

23 Now, apart from praising Colonel North at that board
24 meeting, you did not raise concerns about the NRA purportedly
25 borrowing money from ILA when you addressed the board; right?

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1 A No. That was all covered in the Finance Committee.

2 Q Right. And you did not raise concerns that you thought
3 you were a marked man?

4 A I raised those concerns directly with Wayne LaPierre
5 and with other -- and with other board members.

6 Q Which board members?

7 A Richard Childress, who was second vice president -- or
8 first vice president -- and Ollie North.

9 Q What about in any of the prior instances where you
10 addressed the board as Executive Director of ILA; did you raise
11 any of those concerns?

12 A No.

13 Q Let's talk about the composition of the board:
14 Anyone can run for the board, right?

15 A That's correct.

16 Q You can run by petition, right?

17 A You can.

18 Q And the nominating committee, which selects directors
19 for a suggested slate, is not appointed by Wayne LaPierre;
20 right?

21 A Not officially, no.

22 Q The nominating committee is elected, by secret ballot,
23 by all 76 board members; right?

24 A That's correct.

25 Q And the bylaws of the NRA actually contain mechanisms

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1 to prevent the nominating committee from consisting only of
2 insiders, right?

3 A I'm not aware of a policy that would prevent the board
4 from having a nominating committee that only consisted of -- I
5 guess, it depends on what --

6 What's your definition of "insider"; Wayne's people?

7 Q Sure.

8 So how many members of the nominating committee are
9 there?

10 A I don't know.

11 Q Nine, right?

12 A I -- I accept that it's nine.

13 Q If I were to represent to you that the NRA bylaws
14 provide for a nominating committee of nine members elected by
15 secret ballots and that only six of those members are allowed to
16 be directors or executive council members, would that sound
17 right to you?

18 A I would not be surprised if that's what it said.
19 Whether or not that's what was -- the reality is a different --
20 is a different question.

21 Q Now, I've heard you draw a distinction, a few times,
22 between Wayne having official power and between what the bylaws
23 say and what actually goes on at the NRA. Is it fair to say,
24 that's what you're driving at; that there's a distinction there?

25 A No.

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1 Q Okay. So, when you say that Wayne didn't officially
2 control the nominating committee, do you think he unofficially
3 controlled it?

4 A Yes.

5 Q How?

6 A Wayne and his allies on the board, with the help of
7 Millie Hallow and others, were very active in who they told
8 other board members to support or not support.

9 Q But you never saw Mr. LaPierre attend a meeting of the
10 nominating committee, right?

11 A I did not. I did not go to nominating committee
12 meetings. I don't believe I ever attended a nominating
13 committee meeting.

14 Q And Mr. LaPierre was never on the nominating committee,
15 right?

16 A I don't believe, as EVP, Wayne would be allowed to
17 serve on --

18 Q Right.

19 A -- officially -- on the nominating committee.

20 Q And he had no power under the bylaws to appoint the
21 nominating committee, right?

22 A That's correct.

23 Q Would it be fair to say that Mr. LaPierre had no
24 official mechanism to control any of this but that board members
25 cared about his opinion because they respected his stature in

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1 this movement?

2 A That's one way to say it, yes.

3 Q And you respected his stature in this movement, too;
4 right?

5 A I -- can you repeat the question?

6 Q You respected Mr. LaPierre's stature in the gun-rights
7 movement, right?

8 A I respected Wayne's stature in the gun-rights movement
9 to an extent, yes.

10 Q Right. And you cared what he thought about things like
11 who -- like -- about issues such as who should be on the board,
12 right?

13 A No.

14 Q Do you think other board members cared what he thought?

15 A Yes.

16 Q Do you think that Mr. LaPierre --

17 MS. ROGERS: Well, strike that.

18 Q You testified that you never saw Mr. LaPierre oppose a
19 candidate for the board on the ground that that person was
20 disloyal, right?

21 A That's correct.

22 Q But you did see him support candidates for the board
23 who you might think of as dissidents, right?

24 A I didn't go to a nominating committee meeting; I wasn't
25 in the meetings where Wayne and his team sat down and discussed

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1 who their preferred candidates were. I focused on doing my job,
2 doing my job effectively, so I had no idea if Wayne picked the
3 winners and losers directly working with board members, or not.
4 So I was not in the room when they had their conversations about
5 the nominating committee. Others were but I was not.

6 Q Did you ever have an understanding as to whether
7 Mr. LaPierre supported the candidacy of Bob Brown?

8 A I don't know if Colonel Brown was nominated by the
9 nominating committee, or not. I -- honestly, I just don't -- I
10 don't remember.

11 MS. ROGERS: Let's put up Plaintiff's Exhibit 723.

12 THE COURT: Is that in evidence already?

13 MS. ROGERS: It is -- I'm not sure it's in
14 evidence, but it is in Mr. Cox's binder behind tab 5.

15 THE COURT: Any objection from the State, since
16 it's ...

17 MS. CONNELL: I'm sorry; which tab was it?

18 MS. ROGERS: I thought it was 5, but these things
19 get shuffled around. It's PX 723.

20 MS. CONNELL: No objection.

21 THE COURT: It's admitted.

22 (Image displayed.)

23 Q Mr. Cox, does this refresh your recollection as to
24 whether you or -- it looks like -- Jim Baker were surprised to
25 see Bob Brown on the nominating committee slate?

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1 A I do recognize this e-mail.

2 Q It's fair to say that Bob Brown is a vigorous critic of
3 some of the NRA leadership, right?

4 A Yes.

5 Q What about Phil Journey? Were you made aware of
6 whether Mr. LaPierre supported the candidacy of Phil Journey?

7 A I remember Phil Journey being on the board back before
8 I was a board officer. I don't remember the years that he
9 served. When he served more recently, those -- those were not
10 when I was employed by the National Rifle Association.

11 Q Now, you haven't been employed by the National Rifle
12 Association since the summer of 2019; right?

13 A That's correct.

14 Q So you have no current personal knowledge about whether
15 or how much the NRA pays Marion Hammer, right?

16 A I do not.

17 Q You have no current personal knowledge about the NRA's
18 legal spending, right?

19 A That's correct.

20 Q You have no personal knowledge as to whether -- what
21 percentage of -- the NRA's legal spending, which you criticized,
22 has in fact been reimbursed by insurers; right?

23 MS. CONNELL: Objection, your Honor, based on
24 previous motions filed before this Court regarding the
25 currency of information provided by the NRA to the plaintiff

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1 in discovery.

2 MS. ROGERS: Well, I'll rephrase that question.

3 Q You have no knowledge -- not just sitting here today,
4 but you have no personal knowledge since 2019 -- of the extent
5 to which those legal fees were reimbursed; right?

6 A Correct.

7 Q And you have no personal knowledge, since 2019, of the
8 NRA's investigation into, or firing of, Josh Powell; right?

9 A Only what I've read in -- in reports.

10 Q But not personal knowledge.

11 A No.

12 Q And you have no personal knowledge, since 2019, of the
13 NRA's relationship with Ackerman after the NRA stopped paying
14 Ackerman McQueen and sued Ackerman McQueen in 2019; right?

15 A That's correct.

16 Q And you have no personal knowledge of any changes that
17 have been made in ILA, including its finances, since you left;
18 right?

19 A No personal knowledge, no.

20 Q You testified that Mr. LaPierre's expenses were run
21 through ILA and that concerned you, right?

22 A That's what I testified to; that it --

23 Q Right.

24 A -- that was the pol -- the procedure was that Wayne
25 submitted some -- I'm not sure how much but some -- of his

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1 expenses through ILA. That's correct.

2 Q And I think you testified that you didn't understand
3 why his expenses would be processed through ILA; is that fair?

4 A That's fair.

5 Q Were you --

6 But you understood, though, that Mr. LaPierre worked in
7 ILA for many years before he moved to the sixth floor; right?

8 A Wayne was Executive Director of ILA prior to his
9 service as EVP, so, yes, I was well aware of Wayne's background.

10 Q And did you have an understanding of whether
11 Mr. LaPierre's expenses, in fact, continued to be processed in
12 the same way, by the same people, after he switched offices?

13 A I have no idea why Wayne's expenses were sent through a
14 different division.

15 Q You testified --

16 MS. CONNELL: Strike that.

17 Q Would it be fair to summarize your testimony on Marion
18 Hammer as, Ms. Hammer is a legendary figure in gun rights but
19 she was paid far too much for too long?

20 A That's a partial -- a partial recap of way -- the way
21 -- I explained Marion Hammer, in my opinion.

22 Q Okay. And I think you testified that at some point you
23 said to Wayne, "Either I've got to stop paying Marion or you've
24 got to stop paying Marion"; right?

25 A That's correct.

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1 Q You never stopped paying Marion, right?

2 A ILA did not stop paying Marion.

3 Q And you were Executive Director of ILA?

4 A That's correct.

5 Q And you could choose who ILA would pay?

6 A Absolutely not; not when it came to Marion Hammer.

7 Marion Hammer was Wayne's -- it was directed that
8 Marion Hammer was going to be involved. I did not have --
9 realistically, like, according to the bylaws, could I have fired
10 her? Yes. Would -- would that have been accepted by Wayne or
11 others? Absolutely not.

12 So, in theory, in writing, I had that authority. In
13 reality, Marion was a board member, was Wayne's -- was Wayne's
14 ally and the idea that I was going to fire Wayne's ally, who was
15 a board member, was neither practical nor realistic.

16 Q Did you ever tell Mr. LaPierre that the NRA should fire
17 Marion?

18 A I told Wayne LaPierre that we -- that I wanted to move
19 in a different direction, from a lobbying standpoint, in
20 Florida, yes.

21 Q And --

22 A You can't fire somebody from the board. Obviously,
23 that's up to the members, as it should be, to vote for -- for
24 their representation on the board of directors. But, yes, I
25 expressed concern with Marion's professional performance and

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1 overall approach and attitude with Wayne on multiple occasions.

2 Q What did you think would happen to you if ILA stopped
3 paying Marion Hammer?

4 A What would happen to me?

5 Q Right.

6 I mean, because you admit that under the bylaws, you're
7 the head of ILA, you're in charge of its finances, you choose
8 whom the NRA's lobbying division pays.

9 So you admit that, formally, you could have stopped
10 paying Marion Hammer whenever you wanted but you implied to the
11 jury that, informally, you couldn't. So I'm asking, what do you
12 think would happen if you, as the NRA's top lobbyist, made a
13 decision that this lobbyist was no longer worth the amount of
14 money your division was paying?

15 A Sure.

16 I think one of two things would happen. According to
17 the bylaws, the Executive Director of ILA ran ILA under the
18 direction of the executive vice president, so Wayne would have
19 the authority and would have done one of two things: He would
20 have said, "Hire her back; you're not firing her" or he would
21 have paid for her himself. I have no doubt that those would
22 have been the two options that he would have chosen. And he may
23 very well have said, "You're not firing her; I'm directing you
24 to keep her." That's what my assumption would have been.

25 Q Now, according to the bylaws, you were supposed to run

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1 ILA in accordance with the policies established by the board of
2 directors; right?

3 A That's correct.

4 Q Did you do that?

5 A Yes, to the best of my ability.

6 Q Did you ever raise a concern with the Audit Committee
7 that the NRA was paying Marion Hammer more than you thought she
8 was worth?

9 A I did not.

10 Q Did you ever raise that concern in any of the hundreds
11 of times you addressed the board at board meetings?

12 A She was a board member. It wouldn't have been very
13 well-received to get up and criticize a board member in front of
14 other board members that -- when you had concerns. I did what I
15 thought was the right approach, which was, I -- I raised those
16 concerns with my boss, with the head of the National Rifle
17 Association, the executive vice president, Wayne LaPierre.

18 Q Isn't it true that board members criticized each other
19 with some frequency?

20 A Yes.

21 Q So it wouldn't have been out of place to criticize one
22 of them, right?

23 A Yes, it would have been out of place.

24 Q But that happened often, right?

25 A It would -- it did not happen often, from a staff

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1 person standing up at a board meeting and criticizing a board
2 member. I'm not sure that that ever happened in my 25 years at
3 the National Rifle Association.

4 Q Did you ever go to the officers --

5 MS. ROGERS: Strike that.

6 Q Josh Powell was an officer of the NRA, right?

7 A For a time.

8 Q There is a committee of the board that sets officer
9 compensation, right?

10 A Correct.

11 Q Did you ever go to any committee of the board and share
12 your view that Josh Powell was overpaid?

13 A I went to Wayne LaPierre and shared my view that Josh
14 Powell was overpaid, among other -- among other -- a long litany
15 of concerns I had about Josh Powell.

16 Q You testified earlier that it would be wrong to accept
17 something of value from a vendor, right?

18 A By and large, yes.

19 Q Did you accept anything of value from any vendors
20 during your time as head of ILA?

21 A I did my best to not accept things of value from
22 vendor -- from vendors, and when -- on the rare occasion when
23 that might happen, I donated money to ILA to cover anything that
24 might be perceived as -- as something of value. But I did -- to
25 the best of my ability, I did not accept things of value from

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1 vendors.

2 Q What was Landini's?

3 A Landini Brothers is a restaurant in Alexandria,
4 Virginia.

5 Q Tony Makris had a tab there, right?

6 A Tony Makris was a frequent visitor there; Wayne was a
7 frequent visitor; I was a frequent visitor, at times. But, yes,
8 it's a restaurant in Alexandria, Virginia.

9 And my understanding was that there was a --

10 THE COURT: There is no other question pending.

11 THE WITNESS: Sorry.

12 Q Yeah, sorry.

13 You had a Landini's membership on Ackerman McQueen's
14 tab, right?

15 A Ackerman McQueen set up a number of different
16 memberships, including one in my name, that at some point I
17 switched out of Ackerman McQueen's name into ILA's name and had
18 the billing sent directly to ILA.

19 Q So, eventually, your tab at Landini's was not paid by
20 Ackerman; it was paid by ILA? That's your testimony?

21 A Correct.

22 Q Did you disclose that to the Audit Committee?

23 A No.

24 Q Under your leadership, did ILA give contracts to any of
25 your family members?

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1 A Did ILA give contracts --

2 Q Contracts to any of your family members.

3 A No.

4 Q What about Nick Reynolds?

5 A Nick Reynolds is my father-in-law and never did any
6 work for the National Rifle Association.

7 Q To your knowledge, ILA did not make any payments to
8 your father-in-law.

9 A No.

10 Q You testified that Wayne LaPierre had a role
11 negotiating Oliver North's employment with Ackerman McQueen?
12 That's your understanding?

13 A Correct.

14 Q To your understanding, did Charles Cotton have any role
15 in that?

16 A I don't know what the role of Charles Cotton was.

17 Q To your understanding, do you know of any role that
18 Herb Langford had negotiating that arrangement?

19 A I do not.

20 Q Do you know of any role that Curtis Jenkins had
21 negotiating that arrangement?

22 A I do not.

23 Q Do you know of any role that David Coy had negotiating
24 that arrangement?

25 A I do not.

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1 Q Do you know of any role that Bob Barr had negotiating
2 that arrangement?

3 A As I said, I was not involved in any of the
4 negotiations in and around Colonel North's contract with
5 Ackerman McQueen, any of the conversations that he had with
6 Wayne with regards to what his responsibilities would be.

7 Q But you testified, you have some personal knowledge,
8 some understanding, that Wayne was involved; right?

9 A I have direct knowledge that Wayne was involved,
10 directly from Wayne LaPierre, who told me he was doing it.

11 Q So you heard him say it.

12 A Repeatedly --

13 Q Right.

14 A -- more than one time.

15 Q But you have no knowledge, direct or hearsay, that any
16 member of the Audit Committee was involved in negotiating that;
17 right?

18 A That's correct.

19 Q And no knowledge of any kind that Sonya Rowling was
20 involved in negotiating that, right?

21 A None whatsoever.

22 Q And Craig Spray: You have no knowledge that would
23 suggest he was involved in, or knew anything about, a
24 million-dollar contract between President Oliver North and the
25 advertising agency Ackerman McQueen; right?

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1 A I assume so and I hope so. But it was not my role, as
2 Executive Director of ILA, to negotiate anything with Ackerman
3 McQueen, because I didn't work with Ackerman McQueen. But I
4 assumed that things were going through the proper channels and
5 it was going to be done the correct way.

6 Q Now, you testified that as the Indianapolis 2019 board
7 meeting approached and there was tension between Colonel North
8 and Wayne over legal fees, that you formed the view that Colonel
9 North was executing his fiduciary duty; right?

10 A Oh, I didn't form it then; I formed it long before
11 then.

12 Q But you testified also, a minute ago, that you didn't
13 know, at the time, that Colonel North was employed by Ackerman
14 McQueen?

15 A It didn't know what the status of Colonel North's --
16 that was -- that was part of what was floating around. That's
17 what was going on.

18 My understanding is that he was an employee of Ackerman
19 McQueen due to the need for healthcare benefits for his sick
20 wife. That was the depth of my understanding of his employment
21 status with Ackerman.

22 Q So you understood that he was receiving health benefits
23 through that contract, right?

24 A That was my understanding.

25 Q Did you have an understanding as to whether, in

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1 addition to health benefits, Colonel North was receiving seven
2 figures in cash per year from Ackerman McQueen?

3 A Yes.

4 THE COURT: Counsel, can we -- I --
5 We need to take a break.

6 MS. ROGERS: Yes, that's fine.

7 THE COURT: It's been a little more than an hour.

8 MS. ROGERS: This is a good spot.

9 THE COURT: Okay. We'll take a short break;
10 reconvene in, hopefully, five or ten minutes.

11 COURT OFFICER: All rise. Jury exiting.

12 (The jury left the courtroom.)

13 (The witness stepped down.)

14 (Recess.)

15 (Continued on next page.)
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1 THE COURT: Let's get the jury.

2 THE COURT OFFICER: All rise. Jury entering.

3 (Whereupon the jury panel entered the courtroom.)

4 THE COURT: All right. Have a seat, please.

5 Ms. Rogers, you may continued.

6 Q Welcome back, Mr. Cox. Before you left I was asking
7 you about your view that Colonel North was, I think in your
8 words, performing his fiduciary duty by demanding scrutiny of
9 the legal fees incurred going after Ackerman McQueen, right?

10 A No.

11 MS. CONNELL: Objection.

12 Q What did I just say that was inaccurate?

13 A The concern that Colonel North relayed to others
14 including me was the expenditure of legal fees in general, not
15 just related to the Ackerman McQueen. It was how much money was
16 going out the door. The rumor was that it was \$97,000 a day,
17 and how is that going to be sustainable. Again, I think the
18 fair point that Colonel North was trying to make and one that I
19 made to Wayne LaPierre was have an outside group come in. If
20 everything is fine, everything is fine. Clearly that did not
21 happen and that caused a major problem.

22 Q You said "clearly that did not happen". What do you
23 mean?

24 A Ollie North formed a special committee to look into the
25 billing practices after he was forced out as president. That

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1 committee was shut down. Then my understanding is that based on
2 all the reports that I read and all the filings that I've said,
3 that the Brewer firm continues to represent The National Rifle
4 Association and the fees associated with that. It's not my
5 opinion whether or not they are valid, but are a lot of money
6 that I think Colonel North was trying, others, not just Colonel
7 North, was trying to see are we paying too much. I think it was
8 a fair question.

9 Q Do you have any understanding as to whether an
10 independent review of that outside counsel engagement was
11 performed?

12 A No.

13 Q Do you have any understanding as to whether two
14 independent reviews of that outside counsel engagement were
15 performed?

16 A No.

17 Q Do you have any understanding as to whether as part of
18 the NRA's insurance reimbursement process, a third-party law
19 firm deemed the fees reasonable and recommended they be paid?

20 A No.

21 Q You testified that you formed the view that Colonel
22 North was acting properly as a fiduciary. But did you know or
23 did you not know at the time that in addition to receiving
24 healthcare from Ackerman, he was receiving a million dollars in
25 cash give or take?

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1 A I knew that Wayne had negotiated a -- a deal with Ollie
2 for him to step away from a high paying job at Fox News to
3 accept a lower paying job, but it's still a high paying job with
4 Ackerman McQueen. I didn't know what the exact amounts were.
5 It was my understanding that Colonel North reduced the amount
6 that was -- that the contract had been signed for. But I
7 don't -- Again, I never saw, you're correct, I never saw the
8 contract. Never negotiated the contract. My understanding was
9 Wayne was the one who -- who worked on that.

10 MR. ROGERS: Let's put up Plaintiff's Exhibit 476.

11 THE COURT: Is that already in evidence?

12 MS. ROGERS: I don't believe so.

13 THE COURT: So do you want to put it up?

14 MS. ROGERS: I would like to publish it to the
15 witness for now.

16 THE COURT: Okay.

17 A (Examining).

18 Q Mr. Cox, do you recognize this as an e-mail exchange
19 that you participated in?

20 A Yes.

21 Q Mary Corrigan and Scott Christman are both individuals
22 with whom you worked at the NRA, right?

23 A Mary Corrigan was Wayne LaPierre's chief of staff, and
24 Scott Christman worked with me, that's correct.

25 Q Did you agree with the assessment in this e-mail chain

LAS

Cross-Cox-Rogers

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1 that Ackerman --

2 THE COURT: Are you moving it into evidence?

3 MS. ROGERS: In that case I move to admit the
4 document in evidence.

5 THE COURT: Any objection?

6 MS. CONNELL: No objection, your Honor.

7 MR. CORRELL: No objection.

8 MR. FLEMING: No objection.

9 THE COURT: It's admitted.

10 THE WITNESS: Your Honor, this is an e-mail from,
11 it looks like, 12 years ago maybe. If I can just take a
12 minute and read it.

13 Q Of course. It's short. You can read it.

14 THE COURT: Do you have a hard copy anyone?

15 MS. ROGERS: I believe so. A copy for the Judge
16 and a copy for the witness.

17 THE COURT: Okay. Thank you.

18 A (Examining). Thank you.

19 Q Thank you, Mr. Cox. Did you share the assessment in
20 this e-mail chain with Ackerman McQueen were ass clowns who
21 wanted to control everything the NRA did?

22 A That was Scott Christman's words not mine.

23 Q Did you share that view?

24 A Did I share that view?

25 Q Yeah.

LAS

Cross-Cox-Rogers

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1 A I had disagreements with Ackerman McQueen as I noted
2 earlier. I think Ackerman McQueen at times were very effective
3 in their messaging. And at times I wouldn't use the word ass
4 clown, but at times I thought they were politically tone deaf.
5 I thought they were out of touch and certainly not -- there is a
6 difference between pushing the envelope and being stupid. At
7 times I thought they were stupid. But that's not a word that I
8 would -- I would have used.

9 Q Did you agree with the assessment that Ackerman McQueen
10 wanted more control over the NRA than an advertising agency
11 should have?

12 A I believe Ackerman McQueen had, even back in 2012, when
13 this e-mail exchange was sent and continued until 2018, whenever
14 it was the relationship ended, that they had an unhealthy amount
15 of control over Wayne. Unhealthy amount of control over the
16 NRA.

17 MR. ROGERS: All right. Let's put up Plaintiff's
18 Exhibit 1011. And I don't believe this is in evidence yet.
19 I would like to show it to the witness. I only want to show
20 the witness pages 3 and 4, because there is a cover e-mail
21 that doesn't involve him but three and four do.

22 MS. CONNELL: What number was that?

23 MS. ROGERS: 1011.

24 MS. CONNELL: Can we have a moment to pull it up,
25 your Honor. We weren't given these in advance obviously.

LAS

Cross-Cox-Rogers

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1 THE COURT: They are putting it up on their screen.

2 Q Mr. Cox, do you recognize this as a memorandum that you
3 received in 2019?

4 A (Examining). Yes.

5 MS. ROGERS: I move to admit this into evidence.

6 THE COURT: Just give folks a chance to --

7 MS. CONNELL: No objection, your Honor.

8 THE COURT: No objection from the State.

9 Q Mr. Cox --

10 THE COURT: Hang on a second.

11 MR. FLEMING: No objection.

12 MR. CORRELL: No objection.

13 THE COURT: It's admitted.

14 MS. CONNELL: Hold on, your Honor. Are we putting
15 the whole thing in?

16 MS. ROGERS: So, pages 3 and 4 are the memorandum
17 just of the witness. Pages one and two are a cover e-mail
18 transmitting among other parties. So, my thought was to put
19 the memorandum in through Mr. Cox, since he recognizes it.
20 I have no objection to the cover e-mail, but I don't know
21 that he has anything to say about it.

22 MS. CONNELL: I'm sorry to delay the Court. Can we
23 just have kind of a look to see whether it would be better
24 to put it all in once. I think it probably would.

25 MS. ROGERS: I have no objection to putting the

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1 whole thing in.

2 THE COURT: Do you have the rest of it?

3 MS. CONNELL: One second.

4 MS. ROGERS: I have the rest of it. So, I have
5 paper copies of the rest of it if the Court would like one.

6 MS. CONNELL: Thank you very much.

7 THE COURT: You might want to just scroll up to the
8 first two pages so the other lawyers can see it.

9 MS. ROGERS: I can hand them out to the other
10 lawyers too.

11 THE COURT: Okay.

12 MS. CONNELL: No objection, your Honor.

13 THE COURT: Any objection to putting the whole
14 thing in?

15 MR. CORRELL: No objection, your Honor.

16 MR. FLEMING: No objection.

17 THE COURT: Okay. Let's -- Just the whole exhibit
18 is admitted, but I take it you're just going to question
19 this witness on the part that he's familiar with.

20 MS. ROGERS: Correct, your Honor.

21 Q Mr. Cox, do you remember receiving this memorandum in
22 2019?

23 A (Examining). I do.

24 Q You testified earlier that you hired a fiscal officer
25 to oversee ILA's finances, right?

LAS

Cross-Cox-Rogers

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1 A That's correct.

2 Q Is Bob Owens the fiscal officer you hired?

3 A That's correct.

4 Q Did you ask him to prepare this memorandum?

5 A No.

6 Q But Mr. Owens prepared this memorandum and addressed it
7 to you pointing out deficiencies in accounting knowledge among
8 the ILA staff, right?

9 A Mr. Owens, who I hired after Mary Rose, who was there
10 predating me, he served as CFO for the republic national
11 committee. I had the utmost confidence in his ability as an
12 accountant. What this is is a request to hire additional staff.
13 The body of this e-mail pointing out concerns that he had was
14 the justification for hiring additional staff, to make sure that
15 this was taken care of. And the fact that my name, my signature
16 is next to it is that I approved of the additional staff to make
17 sure that all these concerns were addressed.

18 Q What if any -- Besides approving of Mr. Owens' staffing
19 request, what if anything did you do in response to the
20 information from your fiscal officer that there were errors and
21 irregularities in ILA's books?

22 A I was pushed out of the organization less than a month
23 later. I can't speak to things that happened in the following
24 months.

25 Q Before hiring Bob Owens, had you received any notice

LAS

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1 that there were material errors or irregularities in the books?

2 A No.

3 Q You testified that in 2016 there was an instance where
4 ILA paid your personal American Express bill, right?

5 A Correct.

6 Q But that practice continued after 2016, right?

7 A It did.

8 Q In fact, that became as a matter of course your
9 practice. ILA would pay your American Express bill, and
10 sometime later you would reimburse ILA for the personal portions
11 of that bill, right?

12 A Promptly, and every time I reimbursed ILA for any
13 personal charges that were on the credit card.

14 Q At the time you left the NRA there was an outstanding
15 balance of about \$30,000 that you owed ILA, right?

16 A That I don't recall owing money, but I do recall
17 writing a check to ILA for 30 some odd thousand to cover -- to
18 cover an expense not related -- not related to -- to anything
19 American Express related that I'm aware of. Again I had no
20 conversation with staff. I had no ability to look at my
21 calendar. I had no ability to do my expenses for the final
22 three weeks that I was there, because I literally had no access
23 to my office. No access to my records. So if there was -- if
24 there were charges that were there in June, when I was suspended
25 that I wasn't able to -- to submit, it's because I had no

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1 ability to submit anything. I had been shut out of the
2 building. My office had been -- the locks had been changed. My
3 e-mail had been shut off and I had no ability to do that.

4 All they had to do was call. If you had an issue and
5 said there are some outstanding expenses, you could have just
6 called and I would have sat down and said let's go through them.

7 THE COURT: During cross examination they are
8 allowed to ask close ended yes or no questions. While it is
9 sometimes awkward, if you can answer it narrowly, you can
10 have a chance to explain more when you're asked questions
11 later. But it will move along a little more swiftly if you
12 can. If you can't answer it yes or no, then you don't have
13 to. But generally speaking cross examination is the time
14 for shorter answers, narrower questions, if you can.

15 THE WITNESS: Yes, sir.

16 Q The NRA's outside auditor RSM did raise an issue with
17 that credit card receivable a couple of months before you were
18 suspended, right?

19 A I'm not aware of that.

20 Q Were you ever made aware of an inquiry by an RSM
21 auditor named Rob Kadane about ILA's negative accounts payable
22 balance to a vendor named Chris Cox?

23 A I don't recall ever hearing about any concern about my
24 expenses until after I left the organization and we were in a --
25 we were in an arbitration.

LAS

Cross-Cox-Rogers

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1 MS. ROGERS: So, I have a document that I would
2 like to show the witness. He's not on it, but I believe he
3 might have seen it before. It was produced in this
4 litigation. I have a paper copy. And we can put up a copy.

5 THE COURT: Has it been marked as an exhibit?

6 MS. ROGERS: It's not marked as an exhibit.

7 THE COURT: Do you want to mark it for
8 identification?

9 MS. ROGERS: So, let's mark it for identification
10 as -- I mean, I can give it a defendants' exhibit number.
11 It can be Defendants' Exhibit 1082.

12 THE COURT: You can hand it to the court reporter.

13 MS. ROGERS: If the Court would like one for the
14 Court. Counsel. Counsel.

15 (Whereupon the e-mail chain was marked for
16 identification as Defendants' Exhibit No. 1082 as of this
17 date.)

18 THE COURT: Do you have a question for the witness
19 as he's looking at this?

20 MS. ROGERS: Sure. My question to the witness is
21 whether reviewing this e-mail chain, particularly the one
22 that starts on the bottom of the first page and continues on
23 to the top of the second, refreshes his recollection about
24 inquiries from auditors in 2019.

25 MS. CONNELL: Your Honor, may I ask if this was

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1 produced in this case.

2 MS. ROGERS: It was. It was printed with the wrong
3 Bates scheme. It's a separate Bates number for this case,
4 which is --

5 MS. CONNELL: That's fine. I'll take your word for
6 it.

7 MS. ROGERS: Yeah. My question for the witness is
8 going to be whether this refreshes his recollection. Since
9 it is a business record, I would also move to admit it.

10 THE COURT: Any objection to admitting the e-mail
11 exchange?

12 MR. CORRELL: No objection, your Honor.

13 MS. CONNELL: No objection, your Honor.

14 THE COURT: All right. We can admit it. I'm not
15 sure. There is nothing to publish. You do have it on?

16 (Whereupon Defendants' Exhibit No. 1082 was deemed
17 marked received in evidence as of this date.)

18 MS. CONNELL: What's the number again?

19 MS. ROGERS: So the exhibit number is going to be
20 DX 1082. And I'm asking the witness about the e-mail that
21 begins at the bottom of the first page from Rob Kadane and
22 extends on to the top of the second, right above where it
23 says 562, I'm sorry, \$585,000 on the second page.

24 Q Does this refresh your recollection as to whether you
25 received questions in early 2019 from the auditors about that

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1 vendor balance to you?

2 A I was never questioned. I was never asked. I was
3 never asked to change anything. If I had been, I would be. I'm
4 not -- My e-mail is not anywhere on this. I was not aware that
5 there was any sort of issue. Had I been made aware, I certainly
6 would have followed the recommendation of the fiscal officer and
7 the outside audit.

8 MS. ROGERS: I want to put up one more document,
9 and this is going to be Plaintiff's Exhibit 477. It is not
10 in evidence yet. It is an e-mail from Mr. Cox's personal
11 e-mail to his work e-mail. I'm going to ask that his
12 personal e-mail be redacted when it appears on screen.

13 THE COURT: What was the exhibit again?

14 MS. ROGERS: PX 477.

15 MS. CONNELL: Do you have a paper copy, Ms. Rogers?

16 MS. ROGERS: I do. Somewhere.

17 THE COURT: If we turn -- Well, you're going to
18 check quickly if you have an objection.

19 MS. CONNELL: Yeah.

20 MS. ROGERS: It's their exhibit.

21 THE COURT: In the meantime you can turn the
22 screens off and you can publish it so that the other counsel
23 can see it.

24 MS. ROGERS: Here we go.

25 THE COURT: Give the court officer a copy for the

LAS

Cross-Cox-Rogers

1371

1 witness.

2 Q Mr. Cox, you testified that when things came to a head
3 in April of 2019 you had a conversation with Wayne about
4 resigning, right?

5 A Correct.

6 Q But that wasn't the first time you had offered or
7 threatened to resign, right?

8 A I never threatened anyone on anything. Considered
9 resigning on my own in 2018. I considered resigning in 2019
10 before the board meeting. In a speech that you referenced I
11 wrote as a resignation speech, which I thought would be a
12 thoughtful, driven leadership speech trying to put things
13 together. I changed the end to say I'm not leaving, that I'm
14 staying. So yet I never threatened anyone to resign, but I
15 almost resigned or changed my -- changed my position on more
16 than one occasion.

17 Q Do you recognize this e-mail that you sent to yourself?

18 A (Examining). I recognize the e-mail that I sent to
19 myself, yes.

20 MS. ROGERS: I move to admit the e-mail into
21 evidence.

22 THE COURT: Any objection?

23 MR. CORRELL: No objection, your Honor.

24 MR. FLEMING: No objection.

25 MS. CONNELL: No objection, your Honor.

LAS

Cross-Cox-Rogers

1372

1 THE COURT: Did you say no objection?

2 MS. CONNELL: I said no objection.

3 THE COURT: Okay. It's admitted. PX 477.

4 Q Mr. Cox, would it be fair to say in 2018 you wrote a
5 list of conditions under which you were willing to stay at the
6 NRA and conditions under which you were willing to leave?

7 A No.

8 Q So, under where it says "stay or go" -- Actually let's
9 start at the top of the e-mail. When you say expenses moving
10 forward including Shikar, what are you referring to?

11 A These are notes to myself in preparation for a
12 conversation I was going to have with Wayne LaPierre about me
13 leaving and transitioning into a different role. This was notes
14 to myself, things to discuss with Wayne. There were no
15 conditions. There were no terms. These are just things that I
16 wanted to talk to Wayne about and get his thoughts and get his
17 opinion on.

18 Q So, there is a section of this e-mail that says "stay
19 or go", right?

20 A Yes.

21 Q And then under "stay" you put, "When is the transition?
22 What will it look like?" Do you see that?

23 A Yes.

24 Q That would be your transition to Wayne's job, right?

25 A That's correct.

LAS

Cross-Cox-Rogers

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1 Q "Who will be protected by contracts", meaning who could
2 you fire, right?

3 A Absolutely. Yes.

4 Q You say "Staying and doing the job just like you will
5 produce the exact same life as you. You don't want that for my
6 family and I don't think you want that for anyone else's
7 family." Do you see that?

8 A Yes.

9 Q What did you mean by that?

10 A What I meant was the concerns with regards to
11 harassment and the rest of it, that I was not going to go out
12 and just constantly throw red meat underserved to the American
13 people in hopes of raising money for NRA members. That I
14 thought I could do it better. I thought I could do it
15 differently. I thought I could do it in a way that wasn't so
16 controversial and didn't cause so many security issues or
17 concerns. Again these were -- these were my notes to myself to
18 bring up and things that I had been thinking about, and I wanted
19 Wayne's opinion. He and I had ongoing conversations about, I'm
20 -- I'm -- I'm tired. I'm tired of doing this. I'm tired of the
21 drama. I can still continue to serve on the outside. He kept
22 saying, You're the future of the organization. You're going to
23 take over. Let me get through a few more months or whatever.

24 So, I wanted to ask him, like if you're going to leave,
25 because he convinced me that he was, what would that look like.

LAS

Cross-Cox-Rogers

1374

1 I was concerned, and it was one of the many concerns I had about
2 Wayne towards the end, that I told him, I said, Wayne, if you
3 sign Ackerman McQueen to a ten year contract or Marion Hammer to
4 a ten year contract that he did, then how am I suppose to come
5 in as the new guy and effectively run the organization other
6 than with no ability to change anything. So, yes, I was
7 concerned about long-term contracts. It's one of the things
8 that I mentioned in my earlier testimony. And this was an
9 example of me wanting to talk about that with Wayne. But they
10 weren't conditions. They weren't requirements. This was not a
11 legal document. It was not a contract. There were notes to
12 myself that I sent from my personal e-mail to remind me because
13 I was going to be meeting with Wayne.

14 Q You also wanted to talk to Wayne about your healthcare,
15 right?

16 A I did.

17 Q And you wanted to talk to him about expenses moving
18 forward, right?

19 A I did.

20 Q Those are expenses the NRA would pay for you, right?

21 A No, not necessarily. They were -- Depends on what my
22 -- what my relationship was going to be. If he wanted me to
23 help him with legislative issues and to go and continue to
24 attend political events, then I was not going to go and do that
25 on behalf of The National Rifle Association and pay for it

LAS

Cross-Cox-Rogers

1375

1 myself. That was going to be something that I was going to ask
2 for. But again this was -- this was my own personal thoughts.

3 Obviously I didn't move forward in 2018, because when
4 we discussed all these things, Wayne told me, I will work
5 through this with you. Just don't do it at the September board
6 meeting. Whatever you want, don't do it at the September board
7 meeting. Then we'll get through this. It will all be fine.
8 That didn't happen for various reasons. So, none of this became
9 relevant.

10 Q So, the Shikar that you referenced here, that is a high
11 end safari club, right?

12 A I'm a member of Shikar and continue to be a member of
13 Shikar today.

14 Q And would it be safe to say that you're referring to
15 some kind of travel expenses involving Don, Jr. and Eric Trump?

16 A No.

17 Q Who are Don and Eric?

18 A They're the president of the United States sons, who
19 are hunters, who attend these sorts of meetings. And I was
20 probably referencing the benefit to those sorts of engagements
21 of their attendance. I'm a member of Shikar to this day.

22 Q Wheels Up, you reference Wheels Up about half way down
23 the page. That is a private jet charter vendor run by a friend
24 of yours, right?

25 A No.

LAS

Cross-Cox-Rogers

1376

1 Q Well, what is Wheels Up then?

2 A Wheels Up is a private aviation service that focus just
3 primarily on prop planes rather than the large jets that others
4 prefer to use. It was not run by a friend of mine. A friend of
5 mine knew the guy who ran it. As the security concerns became
6 more and more real, I continued to fly overwhelmingly almost
7 always commercial. I flew commercial 95 percent plus of the
8 time, probably 99 percent of the time over the course of my
9 career at The National Rifle Association. But as the need and
10 as those issues became more and more apparent, I talked to Wayne
11 and asked for his advice, and he gave me, I think he testified
12 to this in their bankruptcy or failed bankruptcy case, that he
13 gave -- he gave me approval to fly private aviation. I didn't
14 want to go through Gayle Stanford, because unlike Wayne, I
15 didn't need to fly on a big jet. If I needed to go somewhere
16 and it was a security concern, I thought a prop plane might be
17 perfectly acceptable and probably more in line with the need and
18 the requirement.

19 So, I researched options. I went and talked to Wayne.
20 And he said -- he gave me verbal approval. Encouraged me to fly
21 private if I felt the need. And so yes, that was a conversation
22 about Wheels Up. But, no, Wheels Up is not simply a jet service
23 run by a friend. Those are both inaccurate statements.

24 Q It was a humble grassroots form of private aviation,
25 right?

LAS

Cross-Cox-Rogers

1377

1 A There is no such thing as humble grassroots definition
2 of travel, even though I know travel definitions have changed
3 quite a bit.

4 Q I agree. All right. So in this discussion with Wayne
5 about your healthcare and your expenses, you were also
6 discussing with him using the services of Wheels Up or your
7 preferred aviation source, right?

8 A At the time of my departure I was dealing with -- with
9 security concerns. Again I continued to fly commercial.

10 MS. ROGERS: Move to strike. Nonresponsive.

11 THE COURT: It's a narrow question.

12 Q I have a narrow question. In the discussion with Mr.
13 LaPierre about your future employment, stay or go, in
14 conjunction with discussing your healthcare and expenses you
15 discussed with him your desire to have use of Wheels Up, your
16 preferred private aviation serves, right?

17 A No. These were notes to myself. I did not present
18 this to Wayne. I did not go and list these as the conditions of
19 my future engagement with Wayne or with the organization. These
20 were notes to myself and things that I wanted to talk to him and
21 get his opinion on. There is a big difference between demanding
22 anything, which I didn't demand anything, and asking Wayne
23 LaPierre for his opinion and thoughts on what he wanted me to
24 do.

25 Q I want to look now at the section of your e-mail

LAS

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1 underneath where it says "stay or go". We talked about the
2 section that says "stay", and there is a section that says "go".
3 Under the section where it says "go", it says, "Consulting
4 advice, fundraising advice, et cetera from the outside. So I
5 can try to figure out how to make a living when it winds down."
6 Do you see that?

7 A Yes.

8 Q So, would it be fair to say that you, in your note to
9 yourself, were thinking of discussing with Wayne the idea of a
10 consulting contract for you after your departure?

11 A Correct.

12 (Continue on the next page.)
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LAS

Cox - by Plaintiff - Cross/Rogers

1379

1 Q And if that didn't happen -- in the last line of this
2 e-mail -- you were going to leave on bad terms, right?

3 A I don't remember the date of my first employment
4 contract but I believe, by 2018, I was already under -- you can
5 correct me if I'm wrong -- I already had an employment contract,
6 and so, if I left, there was -- NRA was obligated to a
7 contractual severance regardless of how I left.

8 What I was trying to do was have a conversation about
9 replacing a severance with actually working to -- to earn --
10 earn the money versus a -- a severance that gets paid out at the
11 end of your employment.

12 Clearly, what I was saying was, I wanted to continue to
13 help the organization, because I cared about the organization.
14 I still care about the organization; I care about the members; I
15 care about the mission. That's as strong today it was the day
16 that I started. I had a serious problem, as you can imagine,
17 with other things that were going on with the organization.

18 But this was never -- these were notes to myself. This
19 was never a demand, and --

20 But, yes, I offered, in 2018, to transition out of the
21 Executive Director of ILA position into a consulting role,
22 helping the organization from the outside.

23 Q During 2018 or 2019, did you ever approach Wayne
24 LaPierre and ask him to fire you to trigger your severance?

25 A No.

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Cross/Rogers

1380

1 Wayne --

2 THE COURT: It just was a yes-or-no question.

3 THE WITNESS: No.

4 MS. ROGERS: It was a yes-or-no question.

5 And I have no further questions, at this time.

6 Thank you.

7 THE COURT: All right, we have --

8 MR. CORRELL: Can I start, your Honor?

9 THE COURT: Yeah, give it a start.

10 CROSS-EXAMINATION

11 BY MR. CORRELL:

12 Q Good afternoon. I'm Kent Correll. I represent Wayne
13 LaPierre.

14 When you said, "... or I leave on bad terms," were you
15 thinking of threatening the NRA with some sort of disclosure
16 that might be embarrassing to the NRA?

17 A Can you tell me which document --

18 Are you referring to the same document that NRA counsel
19 just pulled up?

20 Q Yes, I am.

21 A Okay.

22 Q I'm referring to the document that's right in front of
23 you, sir; PX 477.

24 A I've never threatened Wayne LaPierre in my life; and,
25 no, I was not threatening Wayne. Wayne could have just said --

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Cross/Correll

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1 if I threatened Wayne, Wayne could have just fired me. At any
2 point. I worked in an at-will state for an organization in --
3 that was very clear who -- who could hire and fire the Executive
4 Director of ILA.

5 And so I never threatened, ever. The suggestion's
6 absurd.

7 Q Sir --

8 MR. CORRELL: Your Honor, move to strike as
9 nonresponsive.

10 THE COURT: Overruled.

11 Q My question wasn't whether you threatened Wayne. My
12 question was whether you were thinking about threatening to
13 leave on bad terms.

14 A No.

15 Q Thank you.

16 Isn't it true that the year before, you had tried to
17 persuade Wayne LaPierre to retire?

18 A No.

19 Q You've never had a conversation with Mr. Wayne --

20 A Oh, I've --

21 Q -- Mr. LaPierre?

22 A I've had multiple conversations with Wayne LaPierre
23 about his eventual transition out of the EVP role.

24 It was Wayne LaPierre who told me, repeatedly, and
25 started to tell others outside of just me, including other board

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1 members, that I was his guy, that I was the one that he wanted
2 to see take over when he left. But Wayne would tell me that he
3 was -- he wanted to -- he told me he wanted to resign or retire
4 years before, on multiple occasions.

5 So, no, I never suggested Wayne retire, never
6 threatened Wayne to get him to retire. Absolutely, that's not
7 true.

8 Q Sir, you wanted to be the executive vice president of
9 the NRA; correct?

10 A That's not correct. That's presumptuous on multiple
11 levels -- sorry.

12 No, that's -- that -- yes and no. It's hard to answer.

13 There were -- there were times when I wanted to be and
14 there was a time, clearly, when I was looking to leave the
15 organization and ready to resign from the organization but I
16 didn't. My wife certainly didn't want me to be. There was a
17 lot of pressure there not to do it. But I was conflicted. I --
18 I loved the organization; I loved the members. To be honest, I
19 felt I could do a better job, at the time, than the way it was
20 being run. And so, yes, there was a part of me that wanted to
21 do it and then there was a part of me that, when I got home, I
22 was going to be in a lot of trouble if I had that conversation.
23 So I was conflicted.

24 Q Mr. Cox, what do you do now for a living?

25 A I have -- I have two businesses. I'm the president of

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1 a consulting communications and lobbying firm called Capitol 6
2 Advisors and I'm the founder and president of a campaign firm
3 called Caliber Contact.

4 Q How many clients do you have in the -- for the first
5 firm?

6 MS. CONNELL: Objection, your Honor.

7 MR. CORRELL: Your Honor, there was testimony about
8 his broad expertise and his wanting to figure out what he
9 could do for a living if he left. I think this is well
10 within the scope of his direct.

11 MS. CONNELL: Your Honor, discussing his clients
12 and his current business, this is beyond the scope. It's
13 irrelevant.

14 THE COURT: He left four years ago; so, sustained.

15 Q You testified earlier that you attended Rhodes College;
16 true?

17 A I did.

18 Q Where is Rhodes College?

19 A It's in Memphis, Tennessee.

20 Q Did you go all four years?

21 A I did.

22 Q Did you graduate?

23 A I did.

24 Q What did you study?

25 A I studied -- I had a major in -- a bachelor of arts --

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1 in history and a minor in business administration.

2 Q Did you study political science?

3 A I did not.

4 Q Did you study for a master's degree?

5 A No.

6 My plan was, after working in Washington, D.C. for a
7 year, I was going to go back to Vanderbilt and get a master's
8 degree in business. I had no inclination to be involved in
9 politics at all. That was a -- that was a later affliction for
10 me.

11 Q But you testified that you are [sic] the chief
12 political strategist for the NRA; correct?

13 A By definition and role of the job, I was the chief
14 political strategist of the NRA, yes.

15 Q But did you have any training in politics before you
16 took that job?

17 A Yes.

18 Q What was the training?

19 A Worked for the National Rifle Association, was involved
20 in campaigns and elections for seven years; and Wayne trusted my
21 judgment enough in politics and elections that he, himself,
22 appointed me as -- or nominated me to be -- the executive
23 director and chief political strategist of the National Rifle
24 Association. And, if you look at my track record, I think
25 you'll see that I was a very effective one.

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1 Q So just like John Frazer, right?

2 You worked for the NRA; correct?

3 A I -- I did work for the NRA.

4 Q Wayne knew you through your work at the NRA; correct?

5 A That's correct.

6 Q Wayne LaPierre thought that you might make a -- might
7 be able to do a good job in the position that you were hired
8 for?

9 A Correct.

10 Q But you didn't have any background in political
11 science.

12 A I had years of on-the-ground training working for the
13 National Rifle Association. That was my background.

14 Q No formal education in political science; correct?

15 A I did not have a degree in political science, no.

16 Q Okay. And you'd never studied government.

17 A Not in a classroom.

18 Q So he took a chance on you.

19 A Sure, yes.

20 Q And you feel you grew into the job; is that fair to
21 say?

22 A I felt like the bet that he made paid off handsomely
23 for him and the organization, yes.

24 Q So you learned on the job some of the skills that you
25 later brought to bear for the NRA; correct?

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1 A The idea that one person runs the National Rifle
2 Association or the idea that one person runs the Institute for
3 Legislation -- Legislative Action is -- is silly. I had a staff
4 of over 80. I had competent people; I hired competent people.
5 The deputy I hired had been a chief of staff for multiple
6 members on Capitol Hill; he was a lawyer. We had great
7 lobbyists. I assembled a great team over time and we became
8 recognized as one of the most effective, if not the most
9 effective, lobbying operations in -- in Washington, D.C., or if
10 not in American politics.

11 Q You're not a lawyer, are you?

12 A I'm not.

13 Q Did you study any law at all?

14 A I did not.

15 Q You are not an accountant, are you?

16 A I am not.

17 Q Did you study any accounting at all?

18 A I did not.

19 Q Have you ever engaged with any outside auditors?

20 A I have not.

21 Q Let's talk about security for a moment:

22 Have you ever had security at your home?

23 A Yes.

24 Q Could you please tell the jury about that?

25 A NRA provided security, I believe, in 2013.

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1 I had turned down security at my home for an extended
2 period of time and the determination was made by the NRA that
3 they wanted me to have security at my house. I had daily threat
4 assessments that were provided.

5 But, yes, I had -- I had NRA-authorized and not
6 ILA-paid-for, NRA-paid-for, security at my residence.

7 Q Do you remember who authorized or who directed you to
8 get that security?

9 A Wayne LaPierre.

10 I -- I never -- I never reached out to NRA about
11 providing security. I didn't want it, but it was told by me --

12 THE COURT: He just asked who authorized it.

13 THE WITNESS: Wayne LaPierre.

14 Q Did the NRA have a security department?

15 A There was security staff, yes; I'm not sure it was --

16 Q Who was the top security staff?

17 A The top security person was a -- a gentleman named
18 Gordon Russell, who was a former Secret Service agent, a
19 wonderful human being and a serious professional security
20 expert. He passed away; I'm not sure of the year that Gordon
21 passed away. His -- his number two, his deputy that was also
22 former Secret Service, Linwood -- I forget Linwood's last
23 name -- he was a professional security agent. But I don't -- I
24 don't remember the -- the time. If you want to remind me,
25 perhaps it will jog my memory, but it was a long time ago when

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1 that started.

2 Q No, that's the right time frame.

3 And you understood, at the time, that the
4 responsibility -- responsibility for security -- rested in the
5 hands of those two people that you admired; correct?

6 A Correct.

7 Q All right. And one of them had the title of "Head of
8 Security"?

9 A Correct.

10 Q And that was the guy who went by the name of "Russ."
11 People called him "Russ." Russell Gordon.

12 A That's correct.

13 Q Or Gordon Russell.

14 A Russell Gordon.

15 Q How many times have you been in the Oval Office?

16 A More than six or seven, less than 20. Maybe -- close
17 to -- probably close to ten to a dozen times.

18 Q How much time did you spend with Monica Connell
19 rehearsing your testimony for today?

20 MS. CONNELL: Objection, your Honor, to the term
21 "rehearsing."

22 THE COURT: Overruled.

23 Q Did you rehearse your testimony today with
24 Ms. McConnell -- Ms. Connell?

25 A I didn't rehearse -- I didn't rehearse anything. I had

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1 two -- two meetings over the past few months. I've met with my
2 counsel, Thomas Buchanan. Once I was subpoenaed, I had one Zoom
3 call with Ms. McConnell [sic], maybe a month or so ago, and had
4 one conversation last night, or one meeting last night.

5 Q How long did the Zoom call last with Ms. Connell?

6 A Maybe an hour or so.

7 Q Did she tell you the questions that she was going to
8 ask you at trial?

9 A She did not.

10 Q Did she suggest any subject areas that she might
11 inquire into?

12 A She did not.

13 Q What did you say to her during that call?

14 A She asked me to explain a little bit about my
15 background at the National Rifle Association: what I did, what
16 my responsibilities were, how it ran, those sorts of things.

17 Q And what did you say to her?

18 A I answered her questions.

19 Q Was anyone else present on that call?

20 A Tom Buchanan, my attorney.

21 Q And who else?

22 A There was someone else from Ms. McConnell's [sic]
23 operation; I don't remember who it was.

24 Q And how much time did you spend speaking with --

25 I'm not going to ask you the substance of what you said

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1 to your attorney, but how much time did you spend speaking with
2 your attorney, Tom Buchanan, in preparation for this testimony?

3 A We had a handful of conversations. We had, I think,
4 two meetings to sit down and -- and discuss it.

5 Q And was it just the two of you?

6 A Yes.

7 Q And how long were those meetings; each meeting?

8 A Maybe an hour or two.

9 Q And that's all the time that you've spent preparing for
10 your testimony today?

11 A Correct.

12 Q Did you read any documents to prepare for this?

13 A I read the -- the arbitration -- some of the
14 arbitration documents to prepare myself for -- just to remind
15 myself, because it's been so long ago.

16 MR. CORRELL: Your Honor, I have more to cover, but
17 I think this would be a good place to break.

18 THE COURT: Okay.

19 We'll pick it back up tomorrow morning at 9:30.

20 Same instructions, folks.

21 MR. CORRELL: Thank you.

22 THE COURT: And same to the witness:

23 You're still on the stand, so you shouldn't discuss
24 your testimony with either your counsel or anybody else --

25 THE WITNESS: Yes.

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1 THE COURT: -- in the meantime.

2 All right, have a good night. Thank you.

3 COURT OFFICER: All rise. Jury exiting.

4 (The jury left the courtroom.)

5 THE COURT: See you all tomorrow.

6 MS. CONNELL: Your Honor, can we have an estimate
7 of time we have for tomorrow from defense counsel? I know
8 it's hard to predict these things, but we have Judge Phillip
9 Journey who also has to testify tomorrow. He is a judge
10 with a calendar; he cannot go over to Monday. So it would
11 be helpful -- I know you would identify with that -- it
12 would be helpful to have some sense of time here.

13 MR. CORRELL: Your Honor, I can't estimate at this
14 point. I'm going to have to review my notes and the
15 transcript. I'll try to keep it short.

16 THE COURT: Well, let me ask you to work backwards,
17 then: How long do you anticipates needing for -- at least
18 for -- the direct of the judge?

19 MS. CONNELL: Forty-five minutes.

20 THE COURT: Well, I mean, if he starts the first
21 thing in the afternoon, that might not be enough time to
22 finish all the cross and the redirect, all -- so you would
23 have to start -- I don't know how you can be sure when he's
24 going to start.

25 Do any of the other defendants have a feel for how

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1 long it's going to take?

2 MR. WERBNER: For this (indicating) witness?

3 THE COURT: Yes.

4 MR. WERBNER: It will be just a few minutes.

5 MR. FLEMING: Not much time for me.

6 THE COURT: Okay. So it's mostly, then --

7 If that's helpful.

8 So it would be Mr. Correll and any redirect.

9 Well, maybe --

10 MS. CONNELL: No, I'm just saying -- just a few
11 minutes is what I'm saying now, not knowing what Mr. Correll
12 has.

13 THE COURT: Anything further from the --

14 Well, look, I mean, I guess we can do the best we
15 can.

16 And I take it, Mr. Cox's schedule is also not wide
17 open, either.

18 MS. CONNELL: That's correct, your Honor.

19 THE COURT: So ...

20 MS. CONNELL: Your Honor, I'd just ask that we use,
21 like -- that we use time wisely, as wisely as possible,
22 which I know you are always aiming for. And I should have
23 said something before, when we were -- I was hopeful we
24 might end it today, but that didn't look likely.

25 THE COURT: No. Look, we may well be done,

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1 hopefully, with Mr. Cox in an hour and change and then you
2 can start right in on Judge Journey. I -- I just -- I can't
3 control exactly what you all do. I'd like to try to be as
4 accommodating to nonparty witnesses as we can.

5 So let's try to move it along.

6 And I would, as always, encourage the witness to
7 answer "yes" or "no" answers if they can -- if you can.
8 That's one way for things to move more quickly.

9 All right.

10 MS. CONNELL: Your Honor, I'm so sorry; one other
11 point:

12 We were told this afternoon that Mr. Cotton is not
13 available tomorrow but, I think, next week. So I think
14 we're covered through tomorrow, but if not, we may have to
15 shuffle things around. We have the Carolyn Meadows video, I
16 think, to play. But I don't want -- you know, I just wanted
17 to alert the Court to that.

18 THE COURT: Okay, thank you.

19 MS. CONNELL: Thank you.

20 MR. CORRELL: Your Honor, just quickly:

21 Sorry, but I just wanted to alert the Court to the
22 fact that Mr. LaPierre has a health issue that may affect
23 his ability to appear and we just may need -- I'm going to
24 request a reasonable accommodation for him. It may be --

25 THE COURT: To appear when?

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1 MR. CORRELL: Well, to appear when scheduled.

2 I'd like to -- I have information from doctors that
3 indicate that it would be better for him to testify in the
4 morning, because of fatigue from his symptoms that tend to
5 get worse in the afternoon; and so, I would just ask that in
6 scheduling witnesses, we schedule him for the morning.

7 THE COURT: I mean, we can certainly give that a
8 shot. It's just that the testimony is likely to last longer
9 than one morning.

10 MR. CORRELL: I understand, and I'm happy to submit
11 the letters in camera for your review if you'd like to --

12 THE COURT: Are you suggesting that the way we do
13 it is, he would testify for multiple mornings?

14 MR. CORRELL: What I'm suggesting is, the nature of
15 this disease, in the form it's manifested in Mr. LaPierre,
16 is such that the symptoms are unpredictable; they can either
17 be severe or mild, depending on the day, and it's absolutely
18 unpredictable, as documented by two doctors. And so, if we
19 happen to hit a day where it's a bad day, then I would
20 suggest -- or I would request -- an accomodation from the
21 Court.

22 We would hope to start and go straight through, but
23 if he begins to show signs of fatigue, then I would ask the
24 Court to -- the Government -- to have another witness ready
25 to substitute in until he's able to continue.

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1 MS. CONNELL: Your Honor, we ask for some
2 documentation or discovery with regard to this. You know,
3 this is the third NRA witness that we're hearing this about.

4 MS. ROGERS: He's not an NRA witness, your Honor.

5 MS. CONNELL: I'm sorry.

6 He's a current NRA EVP, your Honor, and I would ask
7 for some documentation on this.

8 The idea of trying to get Mr. LaPierre's testimony
9 in in the morning or in spotty patches is very serious to
10 the State's case; it prejudices the State's case, and we
11 would want some discovery and substantiation of that.

12 MR. CORRELL: Your Honor --

13 THE COURT: Mr. Correll --

14 MR. CORRELL: -- I'm happy to submit that to you
15 and you can give us your guidance as to how you think we
16 should proceed.

17 THE COURT: Well, do you have any issue with not
18 only giving --

19 Anything you give to me is a public record; so, if
20 you want to share it in the first instance with, you know,
21 counsel and then see what, if anything, needs to come to me,
22 that might be a somewhat more discreet way to do it.

23 MR. CORRELL: Your Honor, we're asking the --

24 The State is asking for an accomodation for their
25 witnesses. This is a witness with a serious health issue.

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1 I would think that they would reciprocate in terms of our
2 flexibility.

3 THE COURT: Well, that may be. Right now, we're
4 just talking about evidence of the --

5 MR. CORRELL: Happy to give you the letter.

6 THE COURT: I'm just telling you, what you give me
7 is presumptively public.

8 MR. CORRELL: Well, we would request that they be
9 filed under seal, then, to protect sensitive medical
10 information.

11 MS. CONNELL: But, your Honor, even then, we would
12 get them; we would want to see them.

13 MR. CORRELL: Of course. Of course.

14 THE COURT: All right.

15 Well, you can file them under seal. And,
16 obviously, things like health information is often
17 something -- is one of the rare exceptions to permit
18 sealing, but I can't guarantee how I'm going to rule on
19 that.

20 MR. CORRELL: I understand, your Honor.

21 THE COURT: All right, thank you.

22 MS. CONNELL: Thank you, your Honor.

23 (Whereupon, the matter was adjourned to Friday,
24 January 19, 2024 at 9:30 a.m.)

25

ALAN F. BOWIN, CSR, RMR, CRR

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

Plaintiff,

-against-

6 THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
 7 WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
 8 and JOSHUA POWELL,
 9 -----X
 10 Defendants.

11 Index No. 451625/20 TRIAL
 12 60 Centre Street
 13 New York, N.Y.
 14 January 19, 2024

B E F O R E:

15 HONORABLE JOEL M. COHEN,
 16 Justice; and a jury

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1 (Appearances continued:)

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LORI SACCO
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1 THE COURT: Good morning, everyone.

2 Just a couple of things:

3 One, just a reminder to be careful with the lapel
4 mics. If they're on and the stream is still on, it's not
5 going out to the public -- I don't know where it's going,
6 frankly. I don't know whether there's an overflow room, you
7 each have your own rooms. It's just, my law clerk mentioned
8 that during one break, it seemed like you shut it off but
9 the mics, if they're live, they're still going out. So just
10 be careful to turn them off.

11 Second, Juror No. 2 phoned in -- I didn't speak to
12 him, but with some unspecified family issue -- is not coming
13 today. There was no back-and-forth about it, so I don't
14 really know what's, exactly, going on. I'm certainly not
15 inclined to postpone the proceedings for that. We can --
16 you know, with consent, we can do all sorts of things, I
17 suppose. As to whether, if -- if that juror is able to come
18 back either later today or -- it sounded like not today but
19 next week -- whether to permit that or just to excuse the
20 juror is something I'll let you all think about.

21 But I mean, the bottom line is, the juror's not
22 going to be here today.

23 Any particular -- anybody have a different view as
24 to whether we should go forward today?

25 I see much shaking of heads.

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1 MR. CORRELL: No, your Honor.

2 MS. ROGERS: We can proceed today.

3 MS. CONNELL: Plaintiff believes we should proceed,
4 your Honor.

5 MR. FARBER: We agree.

6 MR. FLEMING: I agree too.

7 THE COURT: And we'll just reconsider what to do if
8 the juror is able to come back and it's just one day that
9 they missed, whether there is some way to catch them up or
10 whether we just excuse the juror. I haven't really looked
11 at the law on that, since I found out about it about 25
12 seconds ago. Okay.

13 I received a letter from Mr. Correll and I'll wait
14 and see what the AG wants to do. I mean, my inclination is
15 to be as flexible as we can and, you know -- but what I'm
16 not hearing is that he shouldn't be a witness at all. It's
17 just that we're going to have to be, potentially, flexible
18 around how long and when.

19 MR. CORRELL: Yes, your Honor. I hope that's the
20 scenario. It's an unpredictable condition, but I think so.
21 So far, so good.

22 THE COURT: Do we have a schedule, at the moment,
23 as to when Mr. LaPierre would be a witness? I know we're a
24 little behind.

25 MS. CONNELL: A little bit behind, your Honor.

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1 We had hoped to start Mr. LaPierre even this
2 afternoon, but that's -- no, no. That was pushed back by
3 how slow things have gone so far. So we're hoping to begin
4 him next week.

5 I will just ask that -- in general, accommodating a
6 witness who's suffering from some sort of acute medical
7 issue in the moment is, obviously, something courts are
8 prepared to do, but if it's a bigger accommodation, like
9 testifying in spurts, testifying stretched out over many
10 days; if it's something like that, that's more serious; that
11 impacts plaintiff's case; and I think that should be
12 supported by more than just an unsigned doctor's note and an
13 unsigned -- I don't think they were signed -- physician's
14 assistant letter. Usually, you have an affidavit,
15 specifying more -- more discretely, what the abilities are
16 and are not.

17 And so, if this becomes an issue where we're not
18 allowed to have a fair -- not permitted -- to have a fair
19 opportunity to question Mr. LaPierre in a meaningful and
20 clear way, we would ask for a clearer record.

21 THE COURT: Just so I understand --

22 I don't want to spend too much time on this now,
23 since it's not right in front of us, but if -- if -- the
24 result was that the testimony was not in one eight-hour
25 block but in -- you know -- broken up into smaller blocks,

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1 how does that get in the way of your case?

2 MS. CONNELL: Your Honor, we're trying to put on a
3 coherent, cogent case, and so, having the head of the NRA --
4 the current and long-term head of the NRA -- testify -- and
5 a key, apex witness -- testify in -- in one block or in --
6 you know, may have to be divided over two days, that's okay;
7 the jury can follow that; we can get a fair chance to
8 question him and set it out before the jury. If it's broken
9 up unpredictably and then we're peppering in other witnesses
10 and during that time Mr. LaPierre has the opportunity to,
11 perhaps, think, rehearse -- I'm not -- the word "rehearse"
12 was used yesterday, so I'm going to use it in that same
13 sense -- to -- to prepare his testimony and it's broken up
14 before the jury, I think that could unfairly prejudice the
15 plaintiff.

16 I'll note that those unsigned letters that were
17 filed last night were dated January 3rd; so, to be getting
18 them last night is a little unfair to us. We could have,
19 perhaps, played it a little differently. Mr. LaPierre's
20 been in court every day. Had we known that this was so
21 acute or that there was this necessity -- I think, one of
22 the letters noted that his last visit that that doctor had
23 seen him was December 11th.

24 Again, waiting two -- you know -- two weeks into
25 trial to give us these letters, we just don't think this is

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1 a record for more than minimal accommodations.

2 And we were trying to be reasonable, your Honor. I
3 just don't want to end up with an unworkable situation where
4 his testimony is stretched out over multiple days and we
5 have no ability to predict when he'll be on and off the
6 stand. That's just not fair to plaintiff, based on this
7 record.

8 THE COURT: All right.

9 Well, I'm going to hope that we can work out an
10 accomodation that works for everyone, because I also -- I
11 don't think it's helpful to have a witness who's not going
12 to be able to be responsive to questions, either.

13 So let's see what we can come up with.

14 I think there's a difference between it being
15 broken up over two days, for example, and it being broken up
16 over eight days. I mean, that gets to the point where
17 it's -- it does get in the way. But it sounded to me like
18 -- I don't know how long the testimony will be, but if it
19 can be, you know, not broken up into so many pieces that it
20 becomes incoherent but reasonable accommodations can be made
21 so as not to require, you know, six or seven hours in a row,
22 I think that is a reasonable compromise.

23 So, anyway, let's get the witness here and get the
24 witness -- get the jury -- going.

25 (Pause.)

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Cox - by Plaintiff - Cross/Correll

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1 MS. CONNELL: Your Honor, while we're waiting, I
2 think this (indicating) was the witness' binder. Can we put
3 that up there (indicating)?

4 THE COURT: Sure.

5 (Said binder placed on witness stand.)

6 (The witness entered the courtroom and resumed the
7 witness stand.)

8 C H R I S [T O P H E R] C O X, called as a witness by the
9 plaintiff, having been previously duly sworn/affirmed, was
10 examined and testified further as follows:

11 THE COURT: Good morning.

12 THE WITNESS: Good morning, your Honor.

13 COURT OFFICER: Is the Court ready to receive the
14 jury, your Honor?

15 THE COURT: Yes.

16 COURT OFFICER: All rise. Jury entering.

17 (The jury entered the courtroom.)

18 THE COURT: Okay. Good morning. Have a seat,
19 please.

20 Okay. We're ready to continue?

21 MR. CORRELL: Yes, your Honor.

22 THE WITNESS: Your Honor, could I ask a question?

23 THE COURT: Yes.

24 THE WITNESS: So, I was thinking, I'd like to
25 correct something that I said yesterday during the exchange

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Cross/Correll

1405

1 with Mr. LaPierre's lawyer; that --

2 THE COURT: Well, hang on a second.

3 THE WITNESS: Yes.

4 THE COURT: The typical way to --

5 Well, I'll ask Mr. Correll how he'd like to

6 proceed.

7 I'll let the witness, at some point, do it; but if

8 you --

9 MR. CORRELL: I have no objection, your Honor.

10 THE COURT: Okay.

11 THE WITNESS: Thank you, your Honor.

12 Wayne's lawyer asked me about if I had ever asked
13 Wayne to fire me. I hadn't thought about that. I went back
14 to the room last night -- it's been six or seven years --
15 and I remembered that during the negotiation over my
16 renegotiation of a contract, when papers were being passed
17 around, there was indeed a conversation with regards to
18 trying to get this thing back on track. It was chaotic. It
19 was a mess. So I apologize. I did -- I did answer the
20 question "No," and the answer should have been "Yes."

21 I'm happy to provide, during the questioning,
22 more -- more context to what was going on at the time.

23 THE COURT: Okay.

24 MR. CORRELL: Thank you for your truthfulness.

25 THE COURT: Is your mic on?

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Cross/Correll

1406

1 MR. CORRELL: No, it's not, actually.

2 (Pause.)

3 MR. CORRELL: I don't see a light on, your Honor.

4 THE COURT: Maybe somebody left it on all night.

5 (A court officer assisted Mr. Correll.)

6 THE COURT: It looks like the light's on now.

7 MR. CORRELL: Can you hear me now?

8 THE WITNESS: I can.

9 CROSS-EXAMINATION CONTINUED

10 BY MR. CORRELL:

11 Q So why don't we start there, Mr. Cox. Can you provide
12 the context for that conversation that you remembered overnight?

13 A Yes.

14 As I testified about the contract negotiations for me
15 to secure a contract that Wayne directed to get done, there came
16 a time when there was a conversation about renegotiating that
17 contract. Wayne called me and, of course, like everything --
18 like many other things -- that were going on, it was chaotic,
19 somewhat contentious. Wayne called me, said that he had a
20 contract for me, that he thought it was great, that he thought
21 that I was going to be excited, and to come up to his office and
22 have a conversation about it.

23 So I went up to Wayne's office on the sixth floor. It
24 was one floor above mine --

25 I'll try to slow down here.

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Cross/Correll

1407

1 -- and he presented me with a contract, said it was
2 great, thought I should sign it. I quickly glanced at it. It
3 didn't take much time for me to realize that this might be a
4 problem. I told him, I wanted to show it to my lawyer who was
5 working with me on the contract negotiations, which I did.

6 My lawyer said: "This is the worst thing I've seen.
7 There has -- there's no protections for you. This is a major
8 step in the -- in the wrong direction. You have more
9 protections under your current contract. You should not sign
10 this. What do you want to do?" And I said: "I want to
11 negotiate in good faith and get this resolved. I want to get
12 back to doing my work. This is a distraction." He said:
13 "Okay. Well, if you want to have a -- a good-faith negotiation,
14 given the absurdity of this contract, you should go back and
15 just say, 'Given that I have more protections being fired under
16 my current contract, why don't you just fire me?'"

17 It was never taken seriously by me; it was never taken
18 seriously by Wayne. This has not come up once, either at the
19 time or since then.

20 And luckily, the conversations did get more serious
21 around my contract. Other people were brought in, it was
22 negotiated in good faith, and it became a -- a nonissue, because
23 a contract was negotiated, which we all signed, including Wayne.

24 Q Thank you.

25 Let's change to another subject:

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Cross/Correll

1408

1 Yesterday, you testified -- you were asked the
2 following question:

3 "Does the Institute for Legislative Action -- is
4 it, like, a separate entity within the NRA?"

5 Do you remember that question?

6 A I do.

7 Q And do you remember your answer to that question?

8 A I believe I do.

9 Q And what was your answer?

10 A That, in some ways, it is set up as a -- originally, it
11 was set up, in 1975, with more separation. It was changed
12 shortly after I took over, but it was still a -- to a large
13 degree -- a wholly owned subsidiary, yet a separate fiscal
14 division and separate responsibilities and separate
15 responsibilities given directly to the executive director.

16 Q So let me refresh your recollection. Did you give this
17 answer: "It is."?

18 A Yes.

19 Q And then, did you go on to say:

20 "It was. The National Rifle Association was
21 formed, incorporated here in New York, in 1871. The
22 Institute for Legislative Action was formed in 1975 to focus
23 on the political, legislative and legal actions based on the
24 growing threats to the Second Amendment. So it was set up,
25 kind of, as a wholly owned subsidiary of the National Rifle

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Cox - by Plaintiff - Cross/Correll

1409

1 Association, with its own fiscal officer and its own
2 responsibilities."

3 Did I read that correctly?

4 A Yes. That was my understanding.

5 MS. CONNELL: Objection, your Honor, just to
6 reading back the testimony. The witness should be shown the
7 testimony. It shouldn't be a memory test and a repeat of
8 his prior testimony.

9 THE COURT: You can continue.

10 MR. CORRELL: Thank you, your Honor.

11 Q The fact is that the Institute for Legislative Action
12 was not a separate corporation; correct?

13 A That's correct.

14 Q It did not have a separate certificate of
15 incorporation; correct?

16 A That's not what I testified to.

17 Q It did not have a separate set of bylaws; correct?

18 A That's correct. There is one set of bylaws.

19 Q It did not have a separate board of directors; correct?

20 A The Political Action Committee had a separate set of
21 directors, but not the Institute for Legislative Action.

22 Q But the board of directors of the National Rifle
23 Association was the governing body for the entire association,
24 and that included the Institute for Legislative Action; correct?

25 A That's correct.

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Cross/Correll

1410

1 Q The fact is that you referred to it as the "mother
2 ship"; correct?

3 A I referred to the National Rifle Association as the
4 mother ship, correct.

5 Q Correct.

6 And the fact is that funds, typically, flowed from the
7 treasury of the mother ship to the pod, if you take the ILA as
8 the pod; correct?

9 A As I testified yesterday, the mother ship covered
10 certain expenses of the Institute for Legislative Action. I
11 don't know if that still is the case; I haven't been there for
12 five years. But during the time I was there and the years and
13 decades that precede me, the mother ship, quote-unquote -- I
14 apologize if that's somehow not an appropriate reference -- the
15 mother ship covered the salaries and the overhead costs with
16 regards to office space and those sorts of things. The rest of
17 the money that was -- that was raised by ILA and deployed by ILA
18 was raised by ILA and deployed by ILA.

19 Q Are you testifying that no other money came from the
20 mother ship to ILA?

21 A No.

22 Q Okay. What other money came from the mother ship to
23 ILA?

24 A I'm not familiar with other resources coming in. I
25 raised a lot of money, not only for ILA but for the mother ship

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1 and for other parts of the NRA. There were other people within
2 the Office of Advancement who, at times, raised money, whether
3 it was for the Political Action Committee, the Freedom Action
4 Foundation or ILA. So I'm not suggesting that I raised all of
5 it. There were other people who were helpful, but by and large,
6 that was my responsibility.

7 Q So this was really just a matter of allocation within
8 the same corporate entity; correct?

9 A Can you clarify your question?

10 Q Your testimony regarding the flow of funds was really
11 just a matter of allocating funds within the same corporate
12 entity; correct?

13 A Again, I'm -- I'm not sure I understand the question.
14 I apologize. Can you --

15 Q I'll try again.

16 A -- help me out?

17 Q It was one corporation; correct?

18 A Correct.

19 Q And ILA was viewed as a division of that corporation;
20 correct?

21 A Yes, but very different from the other divisions of the
22 National Rifle Association.

23 There were multiple divisions of the National Rifle
24 Association. ILA was the only one that was set up with its own
25 fiscal officer, and certainly, different by any basic reading of

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Cross/Correll

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1 the bylaws of the organization and how ILA was founded. It was
2 very different than other divisions of the organization.

3 Q But, contrary to what you testified yesterday, it was
4 not a wholly owned subsidiary of the National Rifle Association;
5 is that correct?

6 A It's not contrary -- it's not contrary to what I
7 testified yesterday.

8 It was a unique structure within the NRA; it was
9 different from other divisions, but certainly, according to the
10 bylaws, as I -- as I laid out and explained yesterday, it was
11 clearly under the direction of the executive vice president.
12 So, if it's under the direction of the executive vice president,
13 then the EVP is the boss; Wayne was the boss. And so, there was
14 not complete separation by any stretch, which is why I referred
15 to it as a "wholly owned subsidiary" of the organization.

16 Q The simple fact is, it was a single corporation; true?

17 A True.

18 Q The simple fact is, it was not a wholly owned
19 subsidiary of the National Rifle Association; true?

20 A I don't be -- I don't view it that way.

21 Q Isn't it true that the --

22 Well, yesterday, you talked about the corporation
23 borrowing money from the ILA. Do you remember talking about
24 that?

25 A Yes.

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1 Q Okay. Can a corporation borrow from itself?

2 A I don't know what the definitions are with regards to
3 borrowing within. I know that NRA borrowed money from the NRA
4 Foundation. All I know is that Wayne LaPierre called me and
5 said, "I need to borrow some money from ILA." ILA's money was
6 separate. We had our own fiscal officer. We had our own
7 political action committee that, legally, had to be set up
8 separately from the organization.

9 So there was clear separation when you're dealing with
10 a political action committee and FEC laws that do not allow for
11 the commingling of funds; you can't take campaign funds and
12 spend them on corporate operations. But that's a -- a legal --
13 a legal area that you might know more about than I do.

14 Q Sir, you referred to the "Foundation" in your answer;
15 correct?

16 A Correct.

17 Q And the Foundation is a separate corporation; correct?

18 A I believe the Foundation is a separate entity from --
19 is a -(c)(3) separate from -- the -(c)(4) that the National
20 Rifle Association -- or -(c)(6), however NRA's set up.

21 Q Correct. And so, the ILA is not a separate -(c)(3)
22 corporation; correct?

23 A That's correct.

24 Q Okay.

25 MR. CORRELL: I have no further questions.

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Cox - by Plaintiff - Cross/Werbner

1414

1 Thank you.

2 THE COURT: Okay.

3 Share the microphone.

4 (Pause.)

5 THE COURT: It seemed like it was going in and out
6 a bit, so let's see how we do.

7 CROSS-EXAMINATION

8 BY MR. WERBNER:

9 Q Good morning, Mr. Cox.

10 A Good morning.

11 THE COURT: Well, it's not going in and out; it's
12 just out.

13 MR. WERBNER: Is it --

14 THE COURT: No.

15 I wonder if maybe it was on all night and the
16 batteries are kaput? Can we ...

17 (Pause.)

18 MR. WERBNER: Is this working? Is this working
19 now?

20 MULTIPLE JURORS: Yes.

21 MR. WERBNER: I asked so few questions, I'm still a
22 novice with this (indicating).

23 Q Mr. Cox, I represent Woody Phillips. I'm Mark Werbner.
24 I just have a very few questions.

25 From your testimony with Ms. Connell, you said there

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Cox - by Plaintiff - Cross/Werbner

1415

1 were many instances when you had disagreements with
2 Mr. LaPierre; correct?

3 A Correct.

4 Q And in all those instances, were you able to have your
5 position overcome his?

6 A No.

7 Q But you made efforts to do that.

8 A Yes.

9 Q And why were you unable --

10 You seem like you have a strong personality. Why were
11 you unable to stand up to Mr. LaPierre?

12 A I don't believe I was unwilling to stand up to
13 Mr. LaPierre. There were times we agreed; there were times that
14 we disagreed. I don't think that that's necessarily unhealthy
15 or -- or problematic. I think it actually is healthy. But at
16 the end of the day, Wayne was my boss. At the end of the day, I
17 was under the direction, according to the bylaws of the National
18 Rifle Association, of the executive vice president. So it was
19 very clear, in that building and to everyone else, that Wayne
20 LaPierre was the boss, not Chris Cox.

21 Q Let me change the subject a minute:

22 You mentioned Ms. Meadows and Mr. Brownell. Do you
23 remember, in your testimony, mentioning them?

24 A I do.

25 Q And were one or both of them signers to your agreement?

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Cox - by Plaintiff - Cross/Werbner

1416

1 A Yes.

2 Q Which ones?

3 A I believe, both. Certainly, they would have to be
4 signers of -- both of them.

5 Q And Mr. Brownell and Ms. Carolyn Meadows, they were
6 very senior people at the NRA; weren't they?

7 A Mr. Brownell was the president of the National Rifle
8 Association, as we discussed yesterday, for a one-year period.
9 Before that one year, he had been first vice president and
10 second vice president. So I believe, if my memory serves me
11 right, that he was a board officer for a period of five years.
12 So, yes, he was -- he was well-known and involved.

13 Q With Mr. Brownell and Ms. Meadows signing your
14 agreements, did the NRA pay under your agreement [sic]?

15 A Well, there was a --
16 I'm -- I'm sorry. Can you --

17 Q Yeah.

18 A I had multiple agreements. Can you give me a time -- a
19 timeline? Because they were irrelevant while I was an employee.
20 It wasn't until after I was forced out that they -- that they --
21 that became an issue. So, if you could --

22 Q Yeah.

23 A -- help me understand --

24 Q Yes, sir.

25 My only point is that documents that you signed with

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1 the NRA that were signed by Mr. Brownell and Ms. Meadows, those
2 were -- those were allowed by the NRA; correct?

3 A They were approved by the board officers, signed by the
4 board officers, signed by Wayne and, to my understanding, never
5 questioned and were allowed to go into effect.

6 Q Because Brownell and Meadows were what you call the
7 "top board leaders"?

8 A Well, there were three -- yes. Yes. The three board
9 officers of the organization are: the president, first vice
10 president, and second vice president. At the time that Pete
11 Brownell was president, Richard Childress was first vice
12 president, I believe, and Carolyn Meadows was second vice
13 president.

14 When Pete Brownell stepped away, Ollie North became
15 president -- Carolyn Meadows, for a short amount of time --
16 Ollie North became president. Then Carolyn Meadows and then --
17 I don't remember right now, off the top of my head, who -- it
18 changed a lot at the time.

19 Q But when you had written agreements with the NRA, you
20 were comfortable relying on the signatures of Meadows and
21 Brownell?

22 A Yes.

23 MR. WERBNER: I'll pass the witness.

24 Thank you.

25 (Continued on next page.)

ALAN F. BOWIN, CSR, RMR, CRR

Cross-Cox-Fleming

1418

1 THE COURT: Thank you. Mr. Fleming.

2 CROSS EXAMINATION

3 BY MR. FLEMING:

4 Q Good morning, Mr. Cox. How are you?

5 A I'm well. Good morning.

6 Q So, you testified yesterday that you've known John
7 Frazer for 30 years, right?

8 A I believe that that's accurate. Yes. Roughly.

9 Q And just to recap. You guys started at ILA roughly
10 around the same time?

11 A I believe Mr. Frazer started before me, but I don't
12 know the exact -- the exact timing of John's hiring at NRA.

13 Q Okay. At the time as you testified he worked side by
14 side with Tanya Metaxa, right?

15 A John was -- I don't know what his title was. He was an
16 assistant to the executive director.

17 Q Right. You beat me to the punch. Tanya Metaxa was the
18 executive director of ILA?

19 A Correct.

20 Q That was your job eventually?

21 A That's correct.

22 Q Now, after working with Ms. Metaxa, Mr. Frazer moved on
23 to different areas, correct?

24 A That's correct.

25 Q All right. And then ultimately in 2002 a very young

LAS

Cross-Cox-Fleming

1419

1 man, congratulations, you became executive director, correct?

2 A That's correct.

3 Q Okay. And you promoted Mr. Frazer, right?

4 A I do remember promoting Mr. Frazer. I don't remember
5 to tell you the truth exactly when that was. If you could
6 remind me, I can certainly try to jog my memory. But at some
7 point yes, I did, promote John Frazer.

8 Q And you testified yesterday that you promoted him to a
9 director position, right?

10 A That's correct.

11 Q All right. And at the time you promoted him, he was
12 just about to enter law school, correct?

13 A I believe the timing of that is accurate, yes.

14 Q Would it surprise you that another executive director
15 of ILA, Mr. Baker, is the one who recommended that John go to
16 law school? Would that surprise you?

17 A I -- First I've every heard that. Maybe surprise, not
18 surprise. I don't really have an opinion. But I encouraged
19 John to go to the law school. I thought it was a great idea.

20 Q Well, not just what he wanted to do, but Mr. Baker
21 recommended that John go to law school based on his abilities.
22 Did you know that?

23 A I don't recall that.

24 Q Okay. And he was another executive director. That's
25 the second executive director, second predecessor, correct?

LAS

Cross-Cox-Fleming

1420

1 A Correct. There were musical chairs to a certain
2 degree. I think the average tenure before I assumed the role of
3 executive director was less than three years. I served in it
4 for 18 and a half. Yes, there were some changes. Multiple
5 times Jim Baker served as a executive director twice.

6 MR. PETERS: Move to strike this as nonresponsive
7 after the first word.

8 MR. FLEMING: That's fine.

9 THE COURT: Yeah.

10 Q I congratulate you on your longevity quite frankly.

11 A Thank you.

12 Q All right. So, were you aware that Mr. Frazer was
13 handling your promotion during the day while he went to law
14 school at night? You knew that, right?

15 A Can you explain what you mean by handling my promotion?

16 Q You promoted him to director, correct?

17 A Oh, I apologize. Yes, I'm aware that John that I
18 promoted John to Director of the Research and Information
19 Division, and I'm aware that in and around that time was when
20 John began his law -- his law school pursuit, yes.

21 Q So you felt comfortable enough with his abilities to
22 promote him to this position knowing that he would have
23 basically a second job at nighttime, correct?

24 A Yes. But the division was not John Frazer alone.
25 There were other employees that were competent. There were

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Cross-Cox-Fleming

1421

1 other employees. I believe he had a deputy, but there was --
2 Research and information division that John was director of was
3 a small but not a solo operation. So, I was confident that the
4 job that needed to be done on behalf of the members and the job
5 that needed to be done supporting ILA and the research and
6 information process or needs could be covered while John was
7 going I believe at night to law school.

8 Q There is always a but, isn't there?

9 A No. It's just not always as easy as yes and no, sir.

10 Q Well, you're more gifted talking than I am. So I'm
11 going to try to be slower and break it down. My question is,
12 you promoted John to director, correct?

13 A Correct.

14 Q Okay. And at the time you knew he was going to law
15 school at night, correct?

16 A Correct.

17 Q Okay. And you felt comfortable enough to promote him
18 to that position knowing that, isn't that right?

19 A Correct.

20 Q Thank you. Now, you testified that Mr. Frazer got out
21 of law school and left ILA, right? Do you recall that?

22 A Correct.

23 Q Would it surprise you to know that he stayed at ILA for
24 five more years after graduating from law school?

25 A I knew that at some point John Frazer left and went and

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Cross-Cox-Fleming

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1 practiced law. I don't remember saying at what point, because I
2 don't remember exactly when John was promoted. I don't exactly
3 remember when John graduated from law school. I don't honestly
4 remember when John left and came back exactly.

5 Q Well, he graduated from law school in 2008 and worked
6 in your organization until 2013, do you recall that? Does that
7 refresh your memory?

8 A That refreshes my memory. I know that John was there
9 for an extended period of time.

10 Q Excellent. But if you just answer my questions, it
11 would go a lot faster and smoother as well.

12 A Sure.

13 Q Now, during the time, after law school, for the five
14 years that he's at ILA working for you, you know, do you not,
15 that he's drafting legislation, analyzing laws for you? Do you
16 know that?

17 A Yes.

18 Q Okay. Now you also know that he, during this time of
19 five years, is a regular at NRA board meetings, right?

20 A Yes.

21 Q And you knew that he was a regular at committee
22 meetings, correct?

23 A Correct.

24 Q Okay. And you also knew that he was making
25 presentations to committees and the board about things he was

LAS

Cross-Cox-Fleming

1423

1 working on for you?

2 A I don't recall John presenting to the full board as an
3 employee of The Institute for Legislative Action. But could he
4 have made a presentation at a committee meeting, sure.

5 Q Presentations plural.

6 A Yes.

7 Q Okay.

8 A Possible.

9 Q Now, at the time in 2013 did there come a time when he
10 informed you, you, that he was leaving ILA?

11 A If 2013 -- At some point he informed me of his desire
12 to leave ILA, yes.

13 Q Okay. And at the time he told you this, you asked him
14 to stay, isn't that right?

15 A I don't remember asking John to stay, but I liked John.
16 I thought John did a great job as Director of Research and
17 Information. And it wasn't an easy job to replace. So, I would
18 not be surprised if I told John that I wanted him to stay, but I
19 don't remember having the conversation.

20 Q Not only did you ask him to stay, but you called him
21 into your office and sat him across the desk with your assistant
22 and you and you offered to promote him to a created position.
23 You don't recall that?

24 A I recall wanting John to stay. As I said I was -- I
25 promoted John. I thought John did a good job. I like John.

LAS

Cross-Cox-Fleming

1424

1 So, I'm not surprised at all that out of the 80 some odd people
2 who worked for ILA that John was a director and that I wanted
3 him to stay in that -- in that research and information space.

4 Q You told him, did you not, not only stay, I'll give you
5 more money and you'll be the Director of Legal Affairs, which is
6 a position that had not been created before, is that not true?

7 A I don't recall having a conversation with John about a
8 new position. I was not able to give raises without written
9 authorization from Wayne. So, that would have been a
10 conversation that I had to have with Wayne in order to get that
11 signed off on.

12 Q So you deny it?

13 A I don't recall. As I said, I didn't deny it. I don't
14 recall having that conversation.

15 Q Now, he decided to decline your kind offer and went
16 into private practice, right?

17 A Yes.

18 Q Okay. And while he was in private practice, you
19 referred him work, correct?

20 A Yes.

21 Q Okay. And you referred him clients, correct?

22 A I believe that's correct. Yes.

23 Q So, you referred people who you knew needed legal help
24 to a person that you yesterday said was not qualified to be the
25 general counsel of The National Rifle Association, correct?

LAS

Cross-Cox-Fleming

1425

1 A Those are two completely different things.

2 Q Maybe they are.

3 A It's incorrect.

4 Q I'm asking you a question. Is that correct?

5 A What I testified to --

6 THE WITNESS: Your Honor, if I can --

7 MR. FLEMING: No. I asked a question, your Honor.

8 A Can you repeat the question?

9 Q Yes. I'm saying you referred clients who you knew
10 needed legal help to a person who yesterday you said was not
11 qualified to be general counsel of The National Rifle
12 Association, is that correct?

13 A I did refer John Frazer legal clients, correct.

14 Q Yeah. Now, in late 2014 you became aware that the
15 president of The National Rifle Association, Jim Porter, reached
16 out to Mr. Frazer to ask him to stand for election as secretary
17 of the organization, is that correct?

18 A Can you repeat the time? 2014, ten years ago. You
19 might need to refresh my memory if you will.

20 Q I will refresh your memory. Late 2014 did you become
21 aware that Jim Porter had asked John Frazer to stand for
22 election as secretary of the NRA?

23 A Counsel, I do not remember the date of Jim Porter. I
24 remember Jim Porter being involved. I remember Wayne LaPierre
25 being involved. But I don't remember the specific date,

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Cross-Cox-Fleming

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1 approximately ten years ago.

2 Q Putting the date aside, do you recall it happening?

3 A I recall Jim Porter being involved in some capacity.

4 Again, this was not within ILA's purview or responsibility. It
5 was a board Wayne decision, not an ILA Chris decision.

6 Q And you became aware, did you not, at or about the same
7 time, that John was offered the general counsel position of the
8 NRA?

9 A Again, I was aware that the former secretary of The
10 National Rifle Association, Edward Land was retiring. And that
11 position was open. And that Jim Porter, Wayne LaPierre and
12 others were interested in talking to John about that position.
13 I don't know if John was hired first as secretary or first as
14 general counsel or vice versa. I don't recall. But I know that
15 he held both of those roles at some point.

16 Q Your words lost me again. Too many of them. The
17 question is really simple. Did you become aware at or about
18 that same time that Mr. Frazer had been offered the position of
19 general counsel of the NRA?

20 A Yes.

21 Q Okay. Now, at that time did you express to anyone that
22 you thought that he was not qualified for that position?

23 A No.

24 Q Anyone?

25 A Can I answer?

LAS

Cross-Cox-Fleming

1427

1 Q Yes.

2 A No.

3 Q In fact, you encouraged him to take the job, isn't that
4 right?

5 A I don't recall encouraging John to take the job. I
6 remember thinking it would be a good job for John. And I recall
7 vaguely having a conversation with John about the subject.

8 Q Well, beyond vaguely, you met with him, didn't you?

9 A I don't recall meeting with John Frazer.

10 Q You wrote to him about it?

11 A If you would like to show me -- I don't recall writing
12 to John. If you would like to show me the e-mails or letters,
13 I'm happy to take a look at them.

14 Q Now you had an obligation and duty to the NRA, didn't
15 you, in your position?

16 A I did.

17 Q Okay. And you had to act in the best interests of the
18 NRA, is that right?

19 A Yes.

20 Q Okay. So if you thought that John was not qualified,
21 you shouldn't be recommending him for the job, isn't that right?

22 A I thought John was qualified to be secretary of the
23 association. That's different from general counsel.

24 Q Not my question. Not my question. My question is, you
25 had a duty, and if you thought he wasn't qualified, you

LAS

Cross-Cox-Fleming

1428

1 shouldn't be recommending someone for a position you think they
2 are not qualified for?

3 A I don't recall recommending to The National Rifle
4 Association, to Wayne, to Jim Porter or anyone else making that
5 decision that they should hire John Frazer. I recall vaguely
6 having a conversation with John Frazer about his interest in the
7 job.

8 Q And you recommended to him that he take it, isn't that
9 right?

10 A I don't recall recommending to John to take that job,
11 but I very well may have.

12 Q If you did, did you violate your duty to the NRA?

13 A I did not.

14 Q And you don't usually recommend people who are
15 unqualified to take positions that they are not qualified for,
16 do you?

17 A That's correct. I don't usually recommend that people
18 hire people who aren't qualified either.

19 Q Let me ask you a question that I think you can agree
20 with me on, you tell me if you can. If the NRA decided to hire
21 your 11-year-old son as general counsel of the NRA, okay, that
22 would not be a basis for your 11-year-old son to be personally
23 liable, correct?

24 MS. CONNELL: Objection, your Honor.

25 A My son is 14. If you could ask the question with the

LAS

Cross-Cox-Fleming

1429

1 right age, that would be great.

2 Q Fourteen.

3 THE COURT: Sustained.

4 Q You would agree with me that being unqualified is
5 not -- Withdrawn. You would agree with me, would you not, that
6 a person's qualifications are not the issue. It's the
7 performance of their work, correct?

8 A I'm not sure I understand the question.

9 Q Well, being unqualified, whatever that means, is not a
10 basis to bring someone to court, correct? It's how they perform
11 their job, isn't that right? Wouldn't you agree with that?

12 MS. CONNELL: Objection, your Honor.

13 THE COURT: Sustained.

14 MR. FLEMING: Now I would like to introduce
15 Plaintiff's Exhibit 172, please for identification.
16 Although since it's a Plaintiff's Exhibit maybe they will
17 stipulate to its admission.

18 THE COURT: Give them a moment to find it.

19 MR. FLEMING: Can we turn to page 31 of whatever
20 the range is at the bottom. Thirty-one of --

21 Q Mr. Cox, do you see this e-mail? Can you tell me if
22 you recognize it?

23 A (Examining). I do.

24 Q Okay.

25 A It appears to be a response to --

LAS

Cross-Cox-Fleming

1430

1 MS. CONNELL: I'm sorry. Your Honor, one second.
2 I'm trying to pull up the exhibit. That's not what I have
3 as Plaintiff's Exhibit 172.

4 MR. FLEMING: That's page 31 of the exhibit.

5 MS. CONNELL: Your Honor, if we can have a moment
6 to look at it. The cross exhibits we were not given notice
7 of.

8 THE COURT: You're seeking to admit the entirety of
9 this exhibit or just this part?

10 MR. FLEMING: It's their exhibit, and this is an
11 e-mail within the exhibit. If you like me to carve it out,
12 I can do it.

13 THE COURT: I'm asking ultimately if you intend to
14 talk about the exhibit more broadly or just this part.

15 MR. FLEMING: No. Just this e-mail.

16 A Can you tell me where it would be in the exhibit book.

17 Q It's not in the exhibit book.

18 A Is it something I could look at in its entirety rather
19 than piecemeal to pull things out?

20 THE COURT: Do you have a hard copy anyone?

21 MR. FLEMING: It's an amalgamation of the documents
22 that the plaintiffs put together.

23 MS. CONNELL: We did not put this together. There
24 is a lot of representations being made here that are not
25 true. It's a long document.

LAS

Cross-Cox-Fleming

1431

1 THE COURT: It was produced to you in this form.

2 MS. CONNELL: It was produced this way. When we
3 produced these documents as an exhibit, it's because they
4 were produced that way to us.

5 THE COURT: I also don't know what the whole thing
6 looks like, because I don't have it in front of me. So --

7 MR. FLEMING: Your Honor, we made --

8 MS. CONNELL: It seems to be produced by
9 Mr. Frazer, your Honor, if I'm looking at the Bate stamp
10 correctly. Yeah.

11 MR. FLEMING: It's a production. It's not an
12 exhibit of ours. It's your exhibit.

13 MS. CONNELL: Right. It's an exhibit of a document
14 you produced. I don't think this is appropriate in front of
15 the jury.

16 THE COURT: What is this? Is this a series of
17 e-mails? It looked like there was a handwritten thing at
18 the beginning.

19 MR. FLEMING: There is a bunch of documents we
20 produced when requested, and they put them together in one
21 exhibit.

22 THE COURT: So since you produced it, were they
23 kept in the ordinary course as one clump of things or are
24 they all separate things that happened to be produced at the
25 same time?

LAS

Cross-Cox-Fleming

1432

1 MR. FLEMING: All separate things.

2 THE COURT: They are not one?

3 MR. FLEMING: No.

4 THE COURT: So, I think it would make more sense
5 to, if this is really unrelated to the other documents in
6 this, what's called an exhibit, and it's really a separate
7 and distinct e-mail conversation, then I would think you
8 should --

9 MR. FLEMING: Okay.

10 THE COURT: -- introduce it as a separate exhibit.

11 MR. FLEMING: One second.

12 MS. CONNELL: Your Honor, I'll note too as we're
13 pulling this up, I'm told there are personal e-mail
14 addresses and phone numbers in this that would need to be
15 redacted.

16 MR. FLEMING: You can pull down that exhibit.
17 We're going to carve it out. It will take a second.

18 THE COURT: Okay. And if you would make a separate
19 exhibit out of it, the whole e-mail exchange that it's part
20 of it would be part of the exhibits. In other words, it
21 shouldn't necessarily be part of unrelated e-mail exchanges
22 but, you know, don't chop it up.

23 MR. FLEMING: Yep.

24 MS. CONNELL: Which pages are you seeking?

25 MR. FLEMING: Hold on one second.

LAS

Cross-Cox-Fleming

1433

1 MS. STERN: Which page are you on?

2 MS. CONNELL: On the exhibit you're seeking to
3 introduce, can you tell me which pages you're seeking to
4 introduce, please?

5 THE COURT: Thirty-one I think he said.

6 MR. FLEMING: Thirty-one in PX 172. But we're
7 carving it out right now.

8 THE COURT: I think she wanted to know which pages
9 were being carved into a new exhibit.

10 MR. FLEMING: Okay. For identification can you
11 pull it up, not for the jury. Okay.

12 THE COURT: What would be the exhibit number that
13 we're identifying this as?

14 MR. FLEMING: JFX 117.

15 THE COURT: JFX 117 for identification. Got it.

16 MS. CONNELL: Your Honor, plaintiff would object to
17 hearsay, as to this is hearsay. It's not a party admission
18 as to Mr. Frazer. It's a statement of a party opponent and
19 there is a lack of foundation, which we've discussed.

20 THE COURT: I'm going to overrule that. This is
21 part of an exhibit that's on your list. And so you can --
22 you can use this.

23 MR. FLEMING: Thank you. Can you slowly, for Mr.
24 Cox's benefit, scroll through the whole document so he can
25 see it.

LAS

Cross-Cox-Fleming

1434

1 Q Mr. Cox, just direct them as you would like.

2 MS. CONNELL: Your Honor is the whole document --

3 THE WITNESS: If you could print it out, that would
4 be great.

5 MR. FLEMING: I can't print it out.

6 THE COURT: Is it a total of two pages.

7 MR. FLEMING: It's four pages, I believe.

8 A If I could start at the beginning --

9 Q Sure.

10 A -- that would be helpful. Is it appropriate for me
11 to --

12 Q Ask whatever you want.

13 A Whatever the next page is, that would be great.

14 THE WITNESS: Your Honor, I'm confused. The first
15 e-mail from me is in response to something John Frazer
16 wrote, but there is no reference to what John Frazer wrote
17 to me. There is no reference to anything earlier in that
18 exchange. So, it's kind of picking an e-mail that I sent
19 ten years ago out of the context of a longer exchange that
20 was clearly happening. And I'm trying to understand how I'm
21 suppose to answer something about one response in a clearly
22 chain of e-mails that I'm not familiar with from ten years
23 ago.

24 MR. PETERS: Move to strike. There wasn't a
25 question pending.

LAS

Cross-Cox-Fleming

1435

1 THE COURT: Yeah. Overruled. That's the question
2 I had earlier. Is there -- is this part of an e-mail
3 exchange or is this the entirety of it?

4 MR. FLEMING: The entirety of it.

5 THE WITNESS: It's not, your Honor. If you see
6 that 3:24 John Frazer wrote me something, and at 3:29 I
7 responded. What I would like to do is find out what John
8 Frazer asked me. If there was any earlier e-mail exchange.

9 THE COURT: Look, we're just dealing about whatever
10 the records were in people's files.

11 MR. FLEMING: Right.

12 THE COURT: This is the entirety of what's in these
13 files. Look, if there are things you can't answer in
14 specific, then you can say that. If you recall that there
15 was a prior e-mail, you can testify to that. This is --

16 THE WITNESS: Yes, sir.

17 THE COURT: -- what we're dealing with. This came
18 from somebody's files in this way. I'm taking that as a
19 representation that this is in Mr. Frazer's files.

20 MR. FLEMING: That's right.

21 THE COURT: Okay. It's introduced. So you can put
22 it up on the screen.

23 MR. FLEMING: Okay.

24 Q So, Mr. Cox, I've shown you and the jury now sees an
25 e-mail exchange in or about late October 2014 between you and

LAS

Cross-Cox-Fleming

1436

1 Mr. Frazer. Do you see that?

2 A (Examining). Yes.

3 Q Okay. Do you recall in or around that time discussing
4 with Mr. Frazer tips or at least a tip on how to staff his
5 Office of General Counsel at the NRA should he accept the
6 position?

7 A I do not. And according to this e-mail exchange it
8 appears to be that Mr. Frazer was applying for an assistant GC
9 job. I don't know if that's right. That's what's referenced in
10 the e-mail.

11 Q Well, actually the e-mail is talking about a resume of
12 someone who is applying.

13 A Okay. I understand. I apologize.

14 Q Okay. And in it you say, "You should hold onto the
15 resume. I", meaning you, "would mention in your conversation to
16 Hart" -- that's Steve Hart, isn't it?

17 A Yes.

18 Q Okay. And he was the lawyer outside lawyer for the
19 NRA?

20 A That's correct.

21 Q So, "I would mention in your conversation to Hart that
22 you want to be involved in any staff changes that might happen
23 in the near future should you accept." Do you recall writing
24 that first of all?

25 A It looks -- It's an e-mail. Yes, I do recall this

LAS

Cross-Cox-Fleming

1437

1 exchange. I don't recall exactly what was said. I do note that
2 it was sent from my personal account. And as I recall, this was
3 someone helping someone that had worked together for close to
4 20 -- 25 years and giving him advice not from my professional
5 account but from my personal account. Otherwise I would have
6 sent him an e-mail from my NRA account.

7 MR. FLEMING: Okay. We can take that down.

8 Q So, Mr. Cox, yesterday I believe you testified, and
9 correct me if I'm wrong, that you viewed the Ackerman McQueen
10 relationship as unhealthy?

11 A Correct.

12 Q Okay. And I think you said Ackerman McQueen has an
13 unhealthy control over Wayne LaPierre and the NRA. Right?

14 A I believe that to be the case, yes.

15 Q And I think you also said that Ackerman McQueen was
16 again unhealthy and untouchable. Do you remember that?

17 A Yes.

18 Q Okay. Now, you also described, did you not, your
19 perception that the Brewer firm -- which was representing the
20 NRA, correct?

21 A Correct.

22 Q All right -- - that they were -- the Brewer firm had
23 been engaged, had they not, by Mr. LaPierre and Mr. Frazer,
24 correct?

25 A I don't know what John Frazer's involvement was, but

LAS

Cross-Cox-Fleming

1438

1 Wayne LaPierre told me he had hired the Brewer firm. So, I knew
2 that Wayne was involved.

3 Q But you perceived that the Brewer firm was quote
4 "clearly at odds with Ackerman". Do you remember that?

5 A Yes.

6 Q All right. And you sensed a tension, correct?

7 A Absolutely. Yes.

8 Q So, is it fair to say that the untouchable was finally
9 being touched, was it not?

10 A No. That's completely out of context the way I
11 described it.

12 Q Forget context. I'm asking you a question. Is it fair
13 to say that the untouchable Ackerman McQueen was finally being
14 touched?

15 A Yes.

16 Q It was finally the beginning hopefully of the end of
17 that unhealthy relationship, right?

18 A I believed at the time that there was an unhealthy
19 relationship with Ackerman McQueen. I believe at the time that
20 that was not -- I didn't use them from an ILA standpoint. I had
21 opinions, but yes I understand your point and I think the answer
22 would be yes.

23 Q And this is a happy day, right, for you?

24 A No. There was nothing happy about this time.

25 Q What would be unhappy about getting rid of an unhealthy

LAS

Cross-Cox-Fleming

1439

1 relationship?

2 A As I testified to earlier, this was a stressful time
3 for a lot of people within the organization, me included,
4 particularly in and around that annual meeting in Indianapolis.
5 This was stressful because of the revelations of Wayne
6 LaPierre's spending, because of other things that were leaking
7 out and the concern. So, I would certainly not say that this
8 was a time of great joy and entertainment.

9 But with regards to Ackerman McQueen, as I testified,
10 my understanding, I never read any complaints against Ackerman
11 McQueen. I never saw any of Ackerman McQueen's contracts. My
12 understanding was NRA was suing for document production, which I
13 found to be completely appropriate, not being a lawyer, but
14 assuming that if you're required to turn over documents, you
15 ought to turn over documents.

16 Q You bemoaned the chaos, right? You were trying to get
17 things done and it was chaotic and you didn't like that,
18 correct?

19 A That's correct.

20 Q Okay. But change is chaotic, is it not?

21 A It can be. It doesn't necessarily have to be but it
22 can be.

23 Q And change here was proving very chaotic because
24 Ackerman McQueen was not going quietly, correct?

25 A Correct.

LAS

Cross-Cox-Fleming

1440

1 Q They required to be sued, right?

2 A I don't know. I was not involved in any of the
3 litigation discusses in or around Ackerman McQueen or others.

4 Q They were leaking stuff into the press that was
5 damaging to the NRA?

6 A Again, I'm not aware of how those things came out. I
7 just remember seeing them and being extremely concerned about
8 it.

9 Q But you don't deny, do you, that this change was being
10 lead in part by John Frazer, correct?

11 A I was not aware of any role whatsoever that John Frazer
12 was playing in and around Ackerman McQueen. If he was, then he
13 was. But I was not aware of any role that John Frazer played.

14 Q You were friendly with Oliver North, right?

15 A Yes.

16 Q You spoke to him a lot?

17 A Yes.

18 Q Okay. And you knew from Oliver North that John Frazer
19 was pursuing Oliver North's contract, right?

20 A I remember at the time being focused almost entirely on
21 an event that -- that I was putting on, where I was responsible
22 for securing the president and vice president and other elected
23 professionals.

24 MR. PETERS: Move to strike as nonresponsive.

25 MS. CONNELL: Your Honor, he should be able to

LAS

1441

1 finish his answer.

2 THE COURT: All right. We've gone through this a
3 few times. It's going to go faster if it's a very specific
4 question, you can give a specific answer.

5 THE WITNESS: Yes, sir.

6 THE COURT: I think we're working harder than we
7 need to is my point.

8 MR. FLEMING: Can you read back the question.

9 (Whereupon the above-requested testimony was read
10 back.)

11 A Yes.

12 (Continue on the next page.)

13

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LAS

Cox - by Plaintiff - Cross/Fleming

1442

1 Q And you knew also that Ackerman McQueen was opposing
2 that effort strenuously.

3 A I was not updated, involved whatsoever in Ackerman
4 McQueen. If it was sent around via e-mail, then I read it. But
5 I knew that there was a fight going on between Ackerman McQueen
6 and the organization.

7 Q You knew that Ackerman McQueen was not allowing John
8 (indicating) to see Oliver North's contract; yes or no.

9 A That's what I was told, yes.

10 Q Okay. And you were aware that the issue was whether
11 Oliver North had a conflict of interest; correct?

12 A That was my understanding of the concern, yes.

13 Q Okay. And if there was a conflict of interest, you
14 know that's a violation of New York not-for-profit law; correct?

15 A Correct.

16 Q So, pursuing this contract was necessary to comply with
17 the law; right?

18 MS. CONNELL: Objection, your Honor.

19 A I don't know --

20 THE COURT: Sustained.

21 THE WITNESS: Sorry.

22 Q Mr. Cox, a couple of quick points and then I'll be out
23 of your hair; promise:

24 You talked about the nominating committee yesterday.

25 Do you recall it?

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Cross/Fleming

1443

1 A Yes.

2 Q You recall talking about how Mr. LaPierre controlled
3 the nominating committee?

4 A No. I remember saying, Wayne was very involved in the
5 nominating committee.

6 Q Well, I think you said "controlled," and then the
7 question was: "Officially controlled or unofficially
8 controlled?" and you said, "Unofficially."

9 A Correct.

10 Q Okay. Now, were you aware that Mr. LaPierre, in the
11 last eight years, has attended all of one nominating committee
12 meeting?

13 A I'm -- didn't keep up with Wayne's schedule, so I don't
14 know what he attended or didn't.

15 Q Okay. And were you aware that in 2017, Marion Hammer
16 ran for a seat on the nominating committee? Did you know that?

17 A I don't recall that.

18 Q And did -- so you don't recall that she lost?

19 A I do not. I don't -- I didn't keep up with the
20 nominating committee. That wasn't in the purview of the
21 Executive Director of ILA.

22 MR. FLEMING: I have nothing further.

23 Thank you.

24 THE COURT: Thank you.

25 Anything further for the State?

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Redirect/Connell

1444

1 MS. CONNELL: Yes, your Honor.

2 Does someone have the mic?

3 THE COURT: We have a newly -- we have a newly
4 charged one.

5 (Same handed to Ms. Connell.)

6 MS. CONNELL: Thank you.

7 (Pause.)

8 REDIRECT EXAMINATION

9 BY MS. CONNELL:

10 Q Mr. Cox, good morning.

11 A Good morning.

12 Q Mr. Correll asked you about having a political science
13 degree yesterday, right?

14 A He did.

15 Q And do you have to have a political --

16 MR. CORRELL: Your Honor, I object. It's beyond
17 the scope of the cross.

18 MS. CONNELL: He asked on cross yesterday, your
19 Honor.

20 MR. CORRELL: I'm sorry. I withdraw that.

21 THE COURT: Okay.

22 MS. CONNELL: Thank you.

23 Q Mr. Cox, do you recall yesterday being asked by
24 Mr. Correll about whether or not you have a political science
25 degree?

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Redirect/Connell

1445

1 A Yes.

2 Q And your answer was "No," right?

3 A Correct.

4 Q Mr. Cox, do you need to have a political science degree
5 to engage in lobbying or a political activity in regard to the
6 United States Government?

7 A No.

8 Q And when you started working for ILA, did you have
9 experience in that field?

10 A I had a decade of experience prior to being appointed
11 to the executive director position of ILA.

12 Q And you had experience, on point, overseeing the type
13 of activities that ILA performed; correct?

14 A I was intimately involved in legislative strategy,
15 lobbying, election campaigning, all of those things, prior to
16 assuming the executive director role.

17 Q Mr. Cox, yesterday, Ms. Rogers showed you an exhibit
18 that is marked PX 477.

19 MS. CONNELL: Could we have that brought up,
20 please?

21 It was admitted into evidence, your Honor.

22 (Image displayed.)

23 Q Do you recall this exhibit?

24 A I do.

25 Q Is it fair to say that this was a note to yourself

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Redirect/Connell

1446

1 about thoughts you were having regarding your employment?

2 A Yes.

3 I clearly made note -- yes. Sorry. Yes.

4 MS. CONNELL: Can we look at page 2, please?

5 (Image scrolled.)

6 Q Mr. Cox, were these notes to yourself?

7 A Yes.

8 Q You're referring to --

9 You say: "We can't win with a CFO who lives in Texas."

10 Who were you referring to?

11 A Woody Phillips.

12 Q What was the problem with Mr. Phillips living in Texas
13 while CFO of the NRA?

14 A In my opinion, I believed that the chief financial
15 officer of an organization should work at the organization and
16 at headquarters.

17 Q And when you refer to the "ED of GO," who were you
18 referring to?

19 A The Executive Director of General Operations.

20 Q And at that time, was that Mr. Powell?

21 A That was Josh Powell.

22 Q And did you find him to be a problem within the NRA?

23 A I think I accurately described him as an
24 "unprofessional jerk."

25 MR. PETERS: I object to leading the witness.

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Redirect/Connell

1447

1 THE COURT: Sustained.

2 MS. CONNELL: Okay.

3 Q What other problems did you -- were you considering at
4 the time? And I'm sorry. If we turn to the first page of this,
5 this, this is dated 2018?

6 (Image scrolled.)

7 Q Do you see that?

8 A Yes.

9 Q Okay. What other problems were you considering --

10 MS. CONNELL: If we could turn back to page 2 ...

11 Q -- at that time?

12 (Image scrolled.)

13 A As I testified yesterday, there were a number of things
14 that were bothering me, or were troubling me: the harassment I
15 was going through, both personally and professionally, from the
16 outside; the frustrations I had with, again, people who I
17 considered to be incompetent and grossly overpaid. There
18 were -- as I've laid out in this e-mail to myself, there were
19 some things that I was reminding me of. Clearly, I had concerns
20 about the GO, both his location and his demeanor; the Public --
21 Manager of Public Affairs, I had serious concerns about his
22 judgment.

23 Q Well --

24 A The "PR firm in Texas and Oklahoma" was clearly
25 Ackerman McQueen.

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Cox - by Plaintiff - Redirect/Connell

1448

1 So I had numerous concerns on my mind at the time.

2 Q Regarding Public Affairs, do you know who you were
3 referring to?

4 A Andrew Arulanandam.

5 Q And what were your concerns about him?

6 A I thought his political judgment was terrible, and that
7 was based on him working for ILA for an extended amount of time.

8 Q And you were noting concerns with Marion. Can you
9 explain what those were?

10 A As I testified yesterday, I mentioned in this
11 e-mail that we need a reset in Florida with Marion, and that's
12 what I believed that was needed: a reset in Florida.

13 Q Okay.

14 MS. CONNELL: You can take that down. Thank you.
15 (Image removed.)

16 Q Mr. Cox, you were friendly with Mr. Frazer; is that
17 accurate?

18 A Yes. I considered John to be a good guy; I liked him.

19 Q And you thought he did a good --

20 MS. CONNELL: Strike that.

21 Q Can you describe what you thought of his performance as
22 the Director of Research and Information within ILA?

23 A I thought John did a great job when he was employed by
24 ILA.

25 Q Can you describe what you thought of Mr. Frazer's work

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Redirect/Connell

1449

1 in terms of legal work at ILA?

2 A Well, there was a general counsel of ILA; there was an
3 Office of Legislative Counsel for ILA, and John Frazer was not
4 part of either one of those divisions. John ran the Research
5 and Information Division and, as I've testified and as I believe
6 sitting here today, John did a good job. I liked him and
7 thought he did a good job as a researcher.

8 Q Why did you believe that John Frazer was not qualified
9 to be appointed GC of the NRA?

10 A I believed, based on my understanding -- or,
11 truthfully, lack of understanding -- of complicated New York
12 not-for-profit laws, that it probably made sense to hire
13 somebody with a background in understanding -- whether that's an
14 internal person or an external person -- who understood those
15 things.

16 A Around given John's lack of -- I did refer -- if I --
17 if I may:

18 I did refer John clients with regards to defense of
19 Second Amendment cases, as far as getting caught with a shotgun
20 traveling, or those sorts of things where it was a problem, but
21 not with -- not with big legal battles or challenges. They were
22 two different things. So I had -- I had concerns -- I just
23 wanted to make sure the job got done.

24 Q Do you recall Ms. Rogers asking you about
25 Mr. LaPierre's expenses being run through ILA?

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Cox - by Plaintiff - Redirect/Connell

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1 A Yes.

2 Q Because Mr. LaPierre had -- is it --

3 Is it accurate that Mr. LaPierre worked at ILA before
4 he became EVP of the NRA?

5 A Yes.

6 Q Do you recall when Mr. LaPierre was made EVP of ILA?

7 A To my recollection, he served as Executive Director of
8 ILA from 1986 to 1991, and in 1991 he was appointed to the
9 position of executive vice president.

10 MS. CONNELL: One second, your Honor.

11 (Pause.)

12 MS. CONNELL: That's it.

13 Thank you very much.

14 THE COURT: Okay.

15 Anything further?

16 MS. ROGERS: Just briefly.

17 RECROSS-EXAMINATION

18 BY MS. ROGERS:

19 Q Mr. Cox, you mentioned that you had differences with
20 Mr. Arulanandam as to political judgment. What do you mean?

21 A Andrew ran the -- the Public Affairs Division for the
22 Institute for Legislative Action when I was executive director.
23 I believed that Andrew's judgment was -- was poor as it related
24 to responding to issues that were critical and important to the
25 members, particularly as it relates to the Institute for

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Cox - by Plaintiff - Recross/Rogers

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1 Legislative Action. I found him to be lazy in some of the core
2 competencies that are needed to be an effective Public Affairs
3 person for Washington, D.C. and then Capitol Hill. And so, I
4 judged him as not being competent to do the job, which is why I
5 told Wayne that I no longer had faith in him and that if Wayne
6 wanted to hire him, he could, but I was not interested in having
7 him run Government -- or Public Affairs -- for ILA.

8 Q Do you know if the ILA fiscal officer ever found
9 material irregularities and errors in financial books that
10 Mr. Arulanandam maintained?

11 A No.

12 Q And do you know if Mr. Arulanandam ever caused ILA to
13 pay his personal credit card bill?

14 MS. CONNELL: Objection, your Honor.

15 THE COURT: Overruled.

16 A No.

17 MS. ROGERS: Nothing further.

18 (Pause.)

19 RECROSS-EXAMINATION

20 BY MR. CORRELL:

21 Q Mr. Cox --

22 A Yes?

23 MR. CORRELL: Upside down (indicating).

24 Is that better?

25 Q Mr. Cox?

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Recross/Correll

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1 A Yes.

2 Q Okay. Was anyone competent at the NRA, other than you?

3 A Yes.

4 Q Who?

5 A It's a silly question. There were hundreds of
6 employees at the National Rifle Association; there were hundreds
7 of competent people. I think the fact that there were a handful
8 of incompetent people didn't change the fact that it was a great
9 organization, consisting of great members.

10 But it's a -- it's a silly question. If you want to
11 list out all 500, 600 employees that were there when I was at
12 the time, I'm happy to go through and give you my opinion on who
13 was competent or not.

14 THE COURT: I would be less happy about that.

15 (Laughter.)

16 Q Let me narrow it down for you:

17 Was there anyone competent above you (simulating)?

18 A Yes.

19 Q Who?

20 A I thought Kyle Weaver was a great executive director,
21 as I testified to.

22 I thought Josh Powell was a terrible executive
23 director, as I -- as I testified to.

24 I think, at times, Wayne did a great job. I think, at
25 times, Wayne did a terrible job.

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Recross/Correll

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1 I think, at times, Woody did a great job. I think, at
2 times, Woody didn't do so good of a job.

3 So I didn't -- I never -- I never sold myself as,
4 somehow, I'm the best person in that organization, by any
5 stretch. Anybody who knows me would say the same.

6 Q Did you think you could do Wayne's job better than he
7 could?

8 A Yes.

9 Q And you were frustrated because, as you testified
10 before, most people spent only three years in your job and then
11 they would either move up or do something else; correct?

12 A No. They usually moved out.

13 Q Okay.

14 A There was only one that moved up.

15 Q Right. And that was Wayne LaPierre; correct?

16 A That's correct.

17 MR. CORRELL: I'll adjust this volume a little bit.

18 (Pause.)

19 MR. CORRELL: Not quite sure how I do that.

20 THE COURT: No, you -- it's okay now.

21 MR. CORRELL: Oh, okay.

22 Q So you testified that 2016, 2017 were the most
23 successful years, to date, at the NRA; correct?

24 A No.

25 Q When were they? When were those "success" years?

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Cox - by Plaintiff - Recross/Correll

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1 A Oh. I think the formation was in 1975, when I was five
2 years old, so I don't -- can't speak to that. I think the
3 formation of the organization in 1871 was historic. I think the
4 formation of ILA in 1975 was historic. I think the Supreme
5 Court ruling in the Heller decision was historic; the McDonald
6 decision was historic; more recently, the Bruin decision was
7 historic.

8 What I said was, it was among the most successful
9 elections that NRA had been involved in, that I was responsible
10 for the strategy and raising and deploying the money.

11 Q You mentioned three Supreme Court cases: Heller,
12 McDonald, Bruin; correct?

13 A Correct.

14 Q What was the seed of those cases? Where did that
15 argument start, the argument that ultimately prevailed in the
16 Supreme Court?

17 MS. CONNELL: Objection, your Honor.

18 MR. CORRELL: He just mentioned three
19 accomplishments and he's taking credit for those
20 accomplishments.

21 MS. CONNELL: I -- objection, your Honor.

22 THE COURT: I am -- regardless of what anyone said,
23 I don't see the relevance to this case; so, sustained.

24 MR. CORRELL: Let me see if I can approach it
25 another way.

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Cox - by Plaintiff - Recross/Correll

1455

1 Q In 1982, Wayne LaPierre got the Senate committee to
2 conduct an investigation of the Second Amendment; correct?

3 A I was 12 years old. I had no idea of what Wayne did in
4 1982.

5 Q And the Senate committee conducted the investigation;
6 correct?

7 MS. CONNELL: Objection, your Honor.

8 THE COURT: Sustained.

9 Q The Senate committee ultimately produced a report that
10 became the road map for the legal strategy in the courts that
11 you've testified earlier that you had responsibility over;
12 correct?

13 MS. CONNELL: Objection, your Honor.

14 THE COURT: Sustained.

15 Q Did you ever look back to see what work -- what spade
16 work -- Wayne LaPierre had done on the First Amendment -- or the
17 Second Amendment -- issue when you took over as head of ILA?

18 A I considered myself at the time, and still consider
19 myself, fairly well-read on the history of the Second Amendment,
20 so I'm very well aware of some of the past efforts of legendary
21 figures within the NRA and outside of the NRA.

22 Q Did you read the report of the Senate committee?

23 MS. CONNELL: Objection, your Honor.

24 THE COURT: Sustained.

25 MR. CORRELL: Your Honor, he's just testified that

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Recross/Correll

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1 he's well-read.

2 THE COURT: Him testifying does not make the topic
3 relevant to this lawsuit. It's not.

4 This case is not about the -- anything other than
5 what the allegations are about; not about success in the
6 job, generally.

7 MR. CORRELL: Respectfully disagree, your Honor.

8 The witness has testified about his competence, he
9 has accused many other people of being incompetent, and I
10 have a right to cross-examine him to determine whether he
11 (indicating) is competent.

12 MS. CONNELL: Your Honor, if we're diving into
13 legal areas on the Second Amendment and things that
14 happened --

15 THE COURT: Yeah.

16 MS. CONNELL: -- that he admits he has no
17 foundation for, that occurred when he was five, a
18 document -- and this is way outside the scope, your Honor.

19 THE COURT: Yeah.

20 No, I appreciate the comments. I'm not changing my
21 ruling.

22 MR. CORRELL: Understood.

23 BY MR. CORRELL:

24 Q Let's switch to another topic: Andrew Arulanandam.

25 You didn't like him; correct?

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Recross/Correll

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1 A No. I liked Andrew personally. I didn't find him to
2 be professionally up for the job.

3 Q And he's now the -- he's in line to take over as
4 executive vice president on February 1; correct?

5 A I'm not aware of the NRA's plans moving forward.

6 Q And have you given up any aspiration you might have had
7 to take the office of executive vice president?

8 A I have zero desire to take the office of executive vice
9 president, and certainly not under the circumstances surrounding
10 the organization.

11 MR. CORRELL: Thank you.

12 RECROSS-EXAMINATION

13 BY MR. WERBNER:

14 Q Both you and Mr. LaPierre knew that Woody Phillips was
15 residing in Texas; isn't that true?

16 A Correct.

17 Q Texas is a big place. Did you hide from -- did
18 Mr. Woody Phillips hide the fact that he was residing in Texas
19 from anyone, to your knowledge?

20 A I never had a conversation with Woody. He didn't
21 report to me; he reported to Wayne.

22 Q All right. But Wayne knew that he was residing in
23 Texas.

24 A That's my understanding, yes.

25 Q And he didn't hide that from you.

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Cox - by Plaintiff - Recross/Werbner

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1 A I don't remember it ever being a conversation, but I
2 don't -- I don't remember that being hidden from me, but I don't
3 remember it being brought up with me, either.

4 Q Do you know where in Texas Woody was residing?

5 A I do not.

6 Q It's a big place; isn't it?

7 A I just said, "I do not."

8 Q I'll represent to you, it was in Dallas, Texas. Isn't
9 that where Ackerman McQueen had a major office?

10 A That's correct.

11 Q And do you have personal knowledge as to how often
12 Woody was going back and forth between Dallas, where Ackerman
13 was, and Virginia?

14 A I do not.

15 Q You mentioned, just a moment ago, that Woody did some
16 great things. I want to focus on that. What were the great
17 things that Woody Phillips did for the NRA?

18 A I thought Woody was well-liked within the staff. It
19 was important -- that was a --

20 An important quality, to me, in judging people, were
21 how they treated other people, how they treated staff who were
22 below them in the hierarchy but not below them in the world we
23 live in, and I thought Wayne was -- not "Wayne." Sorry. I
24 thought Woody was a -- was a nice guy. I thought he treated
25 staff well. I thought that --

ALAN F. BOWIN, CSR, RMR, CRR

Cox - by Plaintiff - Recross/Werbner

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1 Q Any other ways that he did a great job?

2 A Yeah.

3 I think, when -- when Woody was responsible for
4 processing the financial changes, whether those were the hires,
5 whether those were signing off on bonuses that I would take to
6 Wayne to get signed off on, raises -- merit-based raises -- that
7 I would take to Wayne, Woody was always great about getting
8 those things done quickly and professionally.

9 So I think there were a number of things that -- that
10 Woody did well.

11 Q Any other things that he did well that you can think
12 of?

13 A I thought he did well at the board meetings in giving
14 board presentations to -- to the board of directors.

15 Q All right.

16 Thank you, sir.

17 THE COURT: Anything else?

18 MR. FLEMING: No further questions.

19 THE COURT: Anything from the State?

20 MS. CONNELL: No, your Honor. Thank you.

21 THE COURT: Okay.

22 Thank you, sir. You're free to go.

23 THE WITNESS: Thank you, your Honor.

24 (Witness excused.)

25 THE COURT: I think it probably makes sense to --

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1 You have your next witness available? We'll take
2 our short break and then we'll pick up with the next
3 witness?

4 MS. CONNELL: Yes, your Honor.

5 THE COURT: Okay.

6 MR. PETERS: Just to note something: We object
7 to --

8 THE COURT: Do you want to --

9 MS. ROGERS: While the jury's out on a short break,
10 there are some document issues it might be efficient to
11 raise before the next witness.

12 THE COURT: Okay. Let's let the jury go.

13 COURT OFFICER: All rise. Jury exiting.

14 (The jury left the courtroom.)

15 THE COURT: Okay. What can we -- how can I help
16 you?

17 MR. PETERS: Yes.

18 On tab 6 in their listed exhibits for Mr. Journey
19 is a 1997 report on "Monies Spent At Variance With Board
20 Policy to Top Vendors." This is a document that we had
21 moved in limine to exclude because of just how old it is.

22 I also note that this is not the complete document;
23 there's also a number of attachments to this document which
24 were intended to be viewed with the document. So it's not
25 complete.

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1 It's extremely old.

2 Judge Journey, in his questioning, didn't seem to
3 remember it in any particular depth.

4 There also isn't --

5 I don't think anybody, frankly, remembers this
6 document. Maybe Mr. Colman, when he comes and testifies
7 about it -- or when he comes -- might be able to testify
8 about it, because he's a co-author.

9 But we object to this. We don't think that stuff
10 from this far back is relevant.

11 The issues that the -- the issue that this is
12 describing, as far as a lack of written contract, is
13 actually different from the issues in this case. There were
14 written contracts with the vendors. There were issues with
15 the invoices, obviously, and a lack of transparency, but
16 there wasn't an issue with not having written contracts,
17 which is the focus of this memo.

18 And the budgeting process that this describes, with
19 the treasurer bringing a contract book to Finance Committee
20 meetings and the contract book not being complete, is just
21 totally not -- doesn't bear any resemblance to the process
22 that the NRA was doing during this period, in terms of
23 budgeting and board oversight.

24 So the document is old; nobody remembers it. It's
25 incomplete. It describes different -- very different --

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1 issues, and it's way outside the statute of limitations.

2 So we object.

3 But it also contains improper opinion testimony
4 about the way that the NRA was being run back then. We
5 haven't had discovery from the 1990s on these types of
6 documents.

7 And so, we object to this document and we want to
8 preview that for you right now.

9 THE COURT: Wasn't this already a motion in limine
10 that I denied?

11 MR. WANG: That's correct, your Honor.

12 MR. PETERS: It was denied without prejudice.

13 MR. WANG: Your Honor, may I be heard?

14 THE COURT: If you want to talk me out of my
15 decision, you can certainly give it a --

16 MR. WANG: Your Honor, I won't be arguing --

17 THE COURT: -- give it a strong swing.

18 Well, if there's anything that counsel raised now
19 that you think I should --

20 MR. WANG: Just a completeness issue, your Honor:

21 We have another PX number that is a complete
22 version of the document; it is 5018, and I have two hard
23 copies of it.

24 THE COURT: So what are you proposing; that you
25 want to change the exhibit?

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1 MR. WANG: I'll change the number from 3562 to
2 5018.

3 THE COURT: And that contains the referenced
4 attachments?

5 MR. WANG: It contains the attachments that
6 Mr. Peters was referring to.

7 THE COURT: Okay.

8 Well, I mean, that would -- that was going to be
9 one of my questions, was whether it was complete.

10 Look, I went through all this --

11 MS. COUTU: Your Honor?

12 THE COURT: Yes.

13 MS. COUTU: We have not spoken on this. This is as
14 to Mr. Phillips, specifically:

15 I know this was a motion that was raised by the NRA
16 previously in their motion in limine and you had reserved.
17 But when you talked about this at oral argument on December
18 17th, you were discussing how it would potentially relate to
19 the NRA, because the NRA is bringing up certain accusations,
20 or their position, which I understand, of the now-corrected
21 certain actions. Mr. Phillips is doing no such thing.
22 Mr. Phillips has not extended the scope. Mr. Phillips has
23 not brought in anything that relates to corrected actions,
24 and that was the basis that you said they might be relevant.

25 As to Mr. Phillips, there is minimal to no

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1 relevance, and it's unduly prejudicial, because while we
2 haven't gone over and had the charges to the jury yet on
3 what the statute of limitations is, whether it's three or
4 six years, we know for a fact, it is not 28 years. And what
5 this (indicating) document is purporting to say is that
6 Mr. Phillips did things wrong back in 1996, well outside the
7 statute of limitations. And if this was a trial -- as your
8 Honor had pointed out, we are doing four separate trials
9 right now, for four separate defendants, and as to
10 Mr. Phillips, this wouldn't come in. This has no relevance
11 to the actions that are alleged as to Mr. Phillips and it's
12 burdening him and prejudicing him unduly, stating that he
13 now has to account for something from 1996, when this board
14 member who's going to come on and testify then didn't rejoin
15 the board until 2020. He has no personal knowledge as to
16 anything done for 20 years as to Mr. Phillips.

17 THE COURT: Well, counsel for the State, what is --
18 You know, again, the purpose behind this, as I
19 recall it from the in limine hearings, was, look, if the --
20 certainly, if -- at the NRA level, if they're going to bring
21 in the larger historical perspective to go forward in time
22 to say that "you should judge us based on the whole story,"
23 I was persuaded that if -- if references to good-faith --
24 and this is really on all the defendants' parts -- are, you
25 know, "Look, we did the best we could with what we had and

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1 some of the stuff we didn't know about, and some of the
2 stuff, once we knew about it, we quickly fixed it," I think
3 it is reasonable to round out the story. If there are
4 earlier events which, at least arguably, cut against the
5 argu -- the positions that one or more of the defendants are
6 taking, then it makes sense to round out the historical
7 story.

8 It is not -- and I will, you know, at the
9 appropriate time, make it clear, I suppose, that some of
10 this stuff is background. And, frankly, that's probably
11 true with some of the subsequent events, is -- is
12 background, because, you know, if there was a violation in
13 2016, a completed violation, the fact that something was
14 changed in 2020 doesn't make the 2016 violation go away.

15 But nevertheless, there's a broader story being
16 told here, and that's fine.

17 So, look, I don't think this is -- in terms of --
18 You're not using this to assert a claim against
19 Mr. Phillips or anyone else as to the events in this
20 setting; right?

21 MR. WANG: That's correct, your Honor.

22 THE COURT: So is the plan to walk this witness, at
23 least, through the details of each of these scenarios, or
24 what -- what -- because I do think that it could get to the
25 point where it does get confusing to the jury if it looks

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1 like the State is making claims based on old events. It --
2 I -- I had understood, that was not your purpose and that's
3 not the way the testimony is going to be elicited.

4 (Continued on next page.)

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1 MR. WANG: I think the way the testimony will be
2 elicited, your Honor, is Judge Journey was on the board at
3 the time of this finance committee report. There were
4 concerns raised in the '90s that this report speaks to.
5 Those concerns are very similar to the concerns that are
6 raised in this period of time. Judge Journey -- The witness
7 is a judge. He will testify to the fact that those concerns
8 were raised in the '90s, and those similar, very similar
9 concerns were raised in his current term on the board
10 between 2020 and 2023.

11 THE COURT: So, my -- my -- I guess my question is,
12 maybe put indelicately, I'm assuming this is sort of a light
13 touch --

14 MR. WANG: Correct, your Honor.

15 THE COURT: -- on the details of the report. This
16 is really setting the table saying look, we looked at some
17 similar kind of things a long time ago. We're not going to
18 wallow in the details of these things.

19 MR. WANG: Correct.

20 THE COURT: And I think, you know, to Ms. Coutu's
21 point, this is -- I will entertain objections if this starts
22 to veer into anything that sounds like the State is seeking
23 to hold Mr. Phillips or anyone liable for things that are in
24 this document. The point of these is to round out the
25 historical picture broadly. So, I would get more concerned

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1 if I thought that you were going to start dredging up each
2 of these things as if they were live allegations.

3 MR. WANG: Completely understood, your Honor. We
4 hope this will be a quick witness.

5 MR. CORRELL: Your Honor, may I be heard briefly?
6 The State loves to throw the word corruption around, and I
7 think that's where they are going with this. It's really
8 kind of a suggestion of habit or character or corruption.
9 My concern is that by going this far back they are really
10 throwing mud around on events that are marginal relevance
11 and potentially highly prejudicial. That's my concern.

12 THE COURT: Look, I just disagree. I think that
13 the nature of the defense more broadly is asking the jury,
14 and you've done it in your arguments, to take a holistic
15 approach to, you know, don't look at each individual alleged
16 transaction, you know, look at what these people have done
17 for the organization and take a broader view. And I think
18 that's fine. But once you go down that path, I -- I don't
19 think it's out of bounds for the jury to also hear that some
20 of these things are at least topic wise not all that new.

21 MR. CORRELL: Your Honor, I'm fine if it's going to
22 go both ways. If it's a two way street.

23 THE COURT: It always has. I've allowed in, over
24 vigorous objection, corrective measure, evidence that easily
25 could have been excluded on the same kind of idea that if

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1 we're going to just focus on only things that are -- are
2 directly relevant to specific allegations, I was persuaded
3 by the defendants that letting the jury have a somewhat
4 broader view, including things that happened, some of the
5 events was reasonable subject to how the instructions are
6 going to tell them how to evaluate those things. And I
7 think, you know, I'll listen to suggestions, if anyone
8 thinks specific instructions are necessary. But I -- At the
9 end of the day it's going to be about them making decisions
10 on the claims. And the defendants are going to argue you
11 have to look at our performance as a whole and not as you've
12 said in the openings, you know, nobody is perfect. There
13 may be some violations here or there, but none of it should
14 rise to the level of a statutory violation in part because
15 you need to look at the person as a whole. Okay. So, we're
16 going to look at the people as a whole.

17 MR. CORRELL: Thank you, your Honor.

18 MS. COUTU: Very briefly if I may. Just two quick
19 points. You just said you were convinced by the defendants
20 about bringing in remedial actions after the fact. I just
21 want to emphasize Mr. Phillips is actually in both
22 directions. We did not want remedial efforts put in --

23 THE COURT: The time to have sort of asked for
24 severance and a separate trial was a long time ago. You
25 know, I am committed to having each defendant get a fair

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1 shake in this. But it doesn't mean excluding evidence
2 that's relevant because not every defendant is exactly
3 equally situated. We'll have to figure out ways in the
4 instructions to make it clearer. But, you know, I think --
5 I don't think that there is -- If there are any particular
6 areas where there is a prejudice to a particular defendant,
7 I will make note of it. And I will make note of it to the
8 jury if I think it makes sense. But, you know, here for a
9 very long time in my supervision of this case the defendants
10 were all kind of moving in one direction. And a lot of
11 decisions about trial management and everything else was
12 made with that in mind and I think correctly. Things have
13 changed somewhat. And, you know, and so I will adapt as
14 need be. But I'm comfortable with the prior rulings remain,
15 correct at least in my view.

16 So, if there is a need for any particular
17 instructions at the end about things, I mean, you know,
18 obviously you made a very -- did a good job of explaining
19 when Mr. Phillips was and wasn't there, which I think is the
20 main point. So, I don't think the jury is missing that.

21 MS. COUTU: Understood, your Honor. I wanted to
22 make it clean for the record, because it was defendants
23 plural.

24 One other thing I wanted to just raise is that I
25 hope your Honor hasn't already ruled as to the

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1 admissibility. I think a foundation needs to be laid here.
2 I don't think it's a business record. It was not produced,
3 from what I understand, by the NRA. So I just think a
4 foundation and authenticity would have to be raised as well
5 with the witness.

6 THE COURT: Well, that I -- I did not rule on any
7 foundation issues.

8 MS. COUTU: Thank you.

9 THE COURT: Is this witness able to lay a
10 foundation for this document?

11 MR. WANG: He was on the board. He received a copy
12 of this document while he served on the board in the '90s.
13 He recollects it. He remembers it. He could testify to it.

14 THE COURT: Didn't prepare it?

15 MR. WANG: He didn't prepare it. It's a business
16 record of the finance committee.

17 THE COURT: Is he on the finance committee?

18 MR. WANG: He wasn't on the finance committee. He
19 was on the board of directors. And the finance committee
20 report was presented to the entire board.

21 THE COURT: Is there any witness who is going to be
22 testifying --

23 MR. WANG: Mr. Coleman, who is the author of the
24 report, he is going to be coming at a later date. He will
25 also be able to lay a foundation, authenticate it as a

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1 document that he drafted, authored, and he'll be able to
2 speak to that.

3 THE COURT: So, it would be offered subject to it
4 being established as a business record?

5 MR. WANG: We think we can --

6 THE COURT: Anyway, this was presented to the board
7 of directors of the entity.

8 MR. WANG: Correct.

9 THE COURT: That is sort of the ultimate business
10 record of a corporation it seems to me. You know, it
11 doesn't mean you have to believe it. But it's certainly not
12 something that is slapped together and is of -- So, I think
13 if he's able to testify that he recalls this being presented
14 at a board of directors meeting --

15 MR. WANG: Yes.

16 THE COURT: -- I think that's sufficiently in
17 context and these other -- the drafters are other members of
18 the board?

19 MR. WANG: Yes.

20 THE COURT: All right. I think that's a sufficient
21 foundation of -- of it not being some -- that this is a
22 business record of the entity, if he testifies to that.
23 But, you know, let's start with that. All right. Do you
24 all need a few minutes?

25 MR. FLEMING: Please.

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1 THE COURT: All right. Let's try to -- And just
2 another thing. My preference would be not to refer to any
3 honorific titles of any witness. You know, one judge at a
4 time.

5 MR. WANG: So you would like me to call him
6 Mr. Journey?

7 THE COURT: Yes.

8 MR. WANG: Can I bring out testimony that he is a
9 judge?

10 MR. CORRELL: Is it necessary?

11 MR. FLEMING: Is it necessary, your Honor?

12 MR. CORRELL: Your Honor, I object to that. He did
13 his deposition from the bench in his courtroom, and he was
14 quite insistent on presenting himself as a judge.

15 MS. CONNELL: Your Honor, he's not doing his
16 testimony from his courtroom here. He does not have to be
17 called a judge. But defendants have time and time again
18 brought up the -- the experience, the background of their
19 board members. Judge Journey is a board member. We've had
20 many entrees of board members as court representatives or as
21 party representatives here saying they drove down from this
22 place. They are a fire chief, a wonderful person.

23 Witnesses are entitled to give a little snippet of their
24 background. It's not going to be more than that. I would
25 say the only other honorifics of witnesses upcoming, we have

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1 two lieutenant colonels.

2 MR. CORRELL: Your Honor, a judge is in a very
3 special position in the courtroom.

4 MS. CONNELL: No, we agree with that.

5 MS. COUTU: Very quickly as well. To the extent --

6 THE COURT: Look, I don't think I can prevent them
7 from asking what he does for a living, 'cause we've asked
8 virtually everybody else that. So, I'm not going to exclude
9 them from doing that.

10 MS. COUTU: Your Honor, I was actually going to
11 make a different point. As to Ms. Rowling, the other day
12 they played a video, impeachment evidence as to Ms. Rowling.
13 To the extent at any point they try to impeach Judge
14 Journey, we ask they not play the video that shows him at
15 the bench and they just show the transcript.

16 MS. CONNELL: We don't anticipate impeaching our
17 own witness but -- (pause).

18 MR. PETERS: We plan to use the written transcript,
19 which we have uploaded onto Trial Director. We're not going
20 to show this man behind a bench.

21 MR. WANG: Just to give you a little context, this
22 was a deposition taken by Zoom. Judge Journey didn't have
23 the audiovisual capabilities from where he was testifying
24 from to sit anywhere other than where he was, which was --

25 THE COURT: I'll make sure he sits over there.

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1 I'll see you in a few minutes.

2 (Whereupon a recess was taken.)

3 THE COURT: All right. Let's get the jury.

4 MS. CONNELL: The witness.

5 THE COURT OFFICER: All rise. Jury entering.

6 (Whereupon the jury panel entered the courtroom.)

7 THE COURT: Thank you. Have a seat. Okay.

8 Counsel, is the State ready to call its next witness?

9 MR. WANG: We are, your Honor.

10 THE COURT: Who is that?

11 MR. WANG: Phillip Journey.

12 THE COURT: Okay. Officer, can we have

13 Mr. Journey. Good morning.

14 THE WITNESS: Good morning, your Honor.

15 THE COURT CLERK: Please raise your right hand.

16 P H I L L I P J O U R N E Y, after having been duly sworn by
17 the court clerk, was examined and testified as follows:

18 THE COURT CLERK: State your name.

19 THE WITNESS: Phillip Journey.

20 THE COURT CLERK: Can you spell your last name.

21 THE WITNESS: J-O-U-R-N-E-Y, just like the word or
22 the group.

23 THE COURT CLERK: Business address, if not --

24 THE WITNESS: 535 North Main, Wichita, Kansas
25 67203.

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1 THE COURT CLERK: Thank you. You may be seated.

2 THE WITNESS: Thank you.

3 MR. WANG: May I proceed, your Honor?

4 THE COURT: Yes, you may.

5 DIRECT EXAMINATION

6 BY MR. WANG:

7 Q Good morning.

8 A Good morning.

9 Q What is your name, sir?

10 A Phillip Journey.

11 Q Mr. Journey, what state do you reside in?

12 A Kansas.

13 Q And Mr. Journey, what's your current occupation?

14 A I'm a District Court Judge for the State of Kansas in
15 the 18th Judicial District For Division One.

16 Q If I could just ask you to speak closer to the
17 microphone.

18 A Yeah. Okay.

19 Q How long have you been a judge?

20 A I'm in my fourth term. I'm up this cycle in November.

21 Q Mr. Journey, have you engaged in any other public
22 serves in your career?

23 A I previously, before that term of office, a judgeship,
24 I served in the Kansas Senate for five years.

25 Q Mr. Journey, are you a member of the NRA?

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1 A Yes.

2 Q When did you join the NRA?

3 A Oh, that's tough to remember. Probably '83 or '84.

4 Q Have you been involved in any NRA programs?

5 A Yes, I have.

6 Q What programs are those?

7 A I'm a certified handgun instructor. And I've been
8 involved politically before I was a judge with NRA as an
9 inflection volunteer coordinator. I was political activist of
10 the year in 1992.

11 Q Have you ever served on the NRA board?

12 A Yes. I served twice. My first term was from 1995 to
13 '98, and then my second term was from 2020 to April of last
14 year.

15 Q Have you ever served on any other nonprofit boards?

16 A Yes. Alliance Club, Kansas State Rifle Association,
17 things like that.

18 Q Mr. Journey, do you support the mission of the NRA?

19 A Yes.

20 Q Why are you here today?

21 A I'm here because you subpoenaed me.

22 Q And why did you decide to comply with that subpoena?

23 A Well, they usually have consequences as you know. But
24 no, I did want to be here. Thank you.

25 Q Do you recognize regularly attend NRA meetings?

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1 A Yes. The annual meetings for members.

2 Q And did there come a time where you attended an annual
3 meeting in 2019?

4 A Yes. That was in Indianapolis.

5 Q What do you recall from that annual meeting?

6 A I remember one, I really liked the legal seminar that
7 they had. That we attended a political meeting on Friday, and
8 then everything started to melt down. I attended a members
9 meeting on Saturday, and it was apparent that it still
10 continued. And then subsequent to the meetings closing, I
11 attended the board of directors following that meeting.

12 Q When you say "melt down", what are you referring?

13 A The apparent confrontation or controversy between Mr.
14 Oliver North and Mr. LaPierre.

15 Q What was your reaction to the events of the 2019 annual
16 meeting?

17 A Well, the members meeting was particularly difficult.
18 It was the first time I had seen a motion to adjourn that
19 meeting fail in quite a while. Then it degraded into
20 essentially a shouting match with about 5,000 people in the
21 room. And Oliver North had already left the meeting. Had left
22 the facility in Indianapolis over the issues between him and
23 Wayne.

24 Q Did there come a time where you decided to run for the
25 board?

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1 A It was readily apparent to me that NRA needed some
2 help, and I was more than willing to come back. I started
3 discussing the possibility with friends and acquaintances from
4 my first term on the board.

5 Q And did you in fact run for the board in 2020?

6 A Yes.

7 Q How did you get on the board?

8 A Well, the first time I ran was in 1994 I ran -- There
9 are two paths to be nominated to be on the ballot, by petition
10 of the members and by the nominating committee. The first time
11 I ran was in '94. I was nominated by 250 life members, voting
12 members of the association. The second time it was by the
13 nominating committee.

14 Q And 2020?

15 A No, that was in '95, when I started that first term.
16 And then in 2020 I was nominated by the nominating committee for
17 a three year term, which I won. And then this year I've been
18 nominated again by a petition of the membership with a little
19 over 700 life members signing it.

20 Q And in 2020 were you found to be qualified by the
21 nominating committee?

22 A Yes.

23 Q When did you -- How did you find out you had been
24 elected to the board?

25 A We received a letter from Mr. Frazer, the secretary of

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1 the general counsel.

2 Q Do you recall approximately when that happened?

3 A In 2020 it was around April. The meeting was coming
4 right up. And it's scheduled, but then that one was canceled
5 because of COVID.

6 Q Mr. Journey, did you read the -- are you aware of the
7 complaint in this action?

8 A Yes.

9 Q Do you recall when in 2020 it was filed?

10 A Yes. It was immediately after it was filed by your
11 office.

12 Q And did you read that complaint?

13 A Yes.

14 Q What did you do after reading the complaints?

15 A I became a little upset. Actually about half way
16 through I threw up a little.

17 Q And why was -- why did you have such a strong reaction
18 to reading the complaint?

19 A You have to understand the context the history that I
20 have with the association. My first term I was aware there were
21 financial issues. And then I continued to follow the
22 association both in news and in conversations with people that
23 are still involved -- were still involved, whether it was
24 employees or others on the board. And then in 2019, at that
25 point I was aware of your boss's campaign and some of the

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1 statements she made about that campaign. Knowing what I knew or
2 believed to be true from before, I knew they were in trouble.

3 Q Did the complaint raise any concerns for you about the
4 NRA?

5 A Absolutely. It connected so many dots for me that I
6 came to some difficult conclusions.

7 Q Did the complaint raise concerns for you about internal
8 controls of the NRA?

9 MR. PETERS: I'm going to object to the extent I
10 think it's fine for them to ask about his reaction to the
11 complaint, but about his evaluation of the complaint and its
12 merits I think we object to.

13 THE COURT: Well again, just for the jury, the
14 complaint is just allegations. This case is about the
15 evidence introduced here. But I think that the questioning
16 of a board member about their reaction and what they did
17 after seeing it is not asking you to accept the allegations
18 of the complaint but just evaluate board member reactions.
19 So, overruled.

20 Q Mr. Journey, you said the complaint helped you connect
21 a lot of dots?

22 A Yes.

23 Q Can you explain what you mean?

24 A Well, in the time since my first term on the board, we
25 attended most of the annual meetings except some that were like

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1 really far away and we couldn't drive to. And then I would
2 attend the board members that followed those annual meetings
3 when time allowed. I interacted with officers, with members of
4 the board that I've known for now decades. Followed issues in
5 the news. Tried to be aware of actions, for example, candidate
6 endorsements and where they were endorsing and where they
7 weren't and things like that. Then when I read the complaint, I
8 became concerned about internal operations and the duties that
9 all the officers and directors have were actually probably being
10 less than followed.

11 Q After you read the complaint, did you attend any board
12 meetings?

13 A Yes. I attended the board meeting where I was sworn in
14 as a director in October of '20 in Tucson, Arizona.

15 Q Do you recall anything noteworthy happening at that
16 board meeting?

17 A At that board meeting the first order of business after
18 the annual meeting is to swear in all the elected directors.
19 Then the first thing that happens after that is they elect the
20 officers, such as the secretary, treasurer and executive vice
21 president.

22 Q And that October 2020 board meeting, was that your
23 first board meeting?

24 A The first one for that term, yes.

25 Q For that term. Turning your attention to the

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1 January 7th, 2021 board meeting. Did you attend the
2 January 7th, 2021 board meeting?

3 A Yes.

4 Q What, if anything, do you recall about this meeting?

5 A We basically went through the normal routine that they
6 had established at that period of time, which was officers'
7 reports and things like that. And then they did two action
8 items of merit that were worth noting. One was the creation of
9 the special litigation committee. And then other one is Mr.
10 LaPierre's revised employment contract.

11 Q Let's take those one at a time. The first you
12 mentioned was the special litigation committee. What is that?

13 A It was a committee that was suggested by the officers,
14 presidents too who handle the day-to-day routine decisions that
15 clients need to make with attorneys. Because they had so many
16 different court cases out there floating around, it became
17 logistical problem to bring the legal affairs committee together
18 basically and get a quorum every day to start doing things. So,
19 they created a special litigation committee, which was made up
20 of the president and the two vice presidents.

21 Q And did you vote in favor of that?

22 A Yes, I did.

23 Q Why?

24 A I thought it made sense. I knew there are civil cases.
25 There are lots of decisions to be made. And most of them were

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1 routine. And that -- that was probably a more efficient way to
2 handle those routine answers.

3 Q Did you find the special litigation committee performed
4 as you believed it was intended?

5 A No.

6 Q How did it perform?

7 A They never issued a report to the board of directors of
8 what they were doing or what their activities were. There were
9 no minutes the board director could review. It was just
10 basically trust us.

11 Q The second item that you mentioned was an employment
12 agreement. Actually I'll ask you to open your binder up to tab
13 one. This is PX 572.

14 A Yes, I'm there.

15 MR. WANG: Are there any objections to this
16 document?

17 MR. PETERS: No.

18 THE COURT: Okay. This one is admitted, PX 572.

19 Q Does this document look familiar to you, Mr. Journey?

20 A (Examining). Yes, it does.

21 Q What is it?

22 A It was the employment agreement the board was asked to
23 ratify in that board meeting.

24 Q And did you have an opportunity to review this
25 contract?

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1 A Limited.

2 Q How did you review it?

3 A We were not provided a copy. And essentially they had
4 two copies in the room for the 60 or so directors that were
5 there. And you had to sit at a little table and sign a log
6 sheet, and then you had an opportunity to read it. You know,
7 there is like 15 to 20 people behind you that all want to read
8 it too. So, we weren't given a copy. We weren't allowed to
9 retain a copy.

10 Q Excuse me.

11 MR. PETERS: I object to the lawyer talking over
12 the witness.

13 THE COURT: I don't -- Were you finished with your
14 answer?

15 THE WITNESS: I think we should make the court
16 reporter's job as easy as possible.

17 THE COURT: We're in complete agreement. We've
18 been talking about that quite a bit.

19 Q Was an electronic copy provided to you before the
20 meeting?

21 A No. No. No. It was very different the second term.

22 Q Did -- did you have a chance too review this contract?

23 A Cursory. Just barely.

24 Q Did you ask any questions?

25 A Yes. I -- I asked to see the previous one, because

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1 they were saying from the podium that this was a much better
2 financial arrangement for the association, and I wanted to look
3 for the comparison.

4 Q And did they provide you with the previous employment
5 agreement?

6 A No. I guess they forgot it.

7 Q Who did you --

8 MR. PETERS: Move to strike as nonresponsive.

9 THE COURT: Overruled.

10 Q Who did you ask?

11 A I asked Mr. Frazer.

12 Q And a copy of the previous employment agreement was not
13 provided to you?

14 A No.

15 Q Directing your attention to paragraph 2(a) of the
16 employment agreement.

17 A Yes.

18 Q There is a sentence here that reads, "Employee shall be
19 empowered to" -- It's on the third line.

20 A Yes.

21 Q "Employee shall be empowered to exercise corporate
22 authority in furtherance of the mission and interests of the NRA
23 including, without limitation, to reorganize or restructure the
24 affairs of the association for purposes of cost minimization,
25 regulatory compliance or otherwise." Do you recall reviewing

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1 this portion of the employment agreement?

2 A Yes.

3 Q Did you think this portion of the employment agreement
4 provided Mr. LaPierre with the authority to put the NRA into
5 bankruptcy?

6 A No.

7 Q During this board meeting on January 7th, 2021, was the
8 word bankruptcy used by anyone at this meeting?

9 A No.

10 Q Were the words Chapter 11 used by anyone at this board
11 meeting?

12 A No.

13 Q Did you feel, when you left this board meeting, that
14 you had authorized Wayne LaPierre to put the NRA into
15 bankruptcy?

16 A Absolutely not.

17 Q When did you learn that the NRA filed for bankruptcy?

18 A My wife called me when I was driving home on the
19 15th --

20 Q And --

21 A -- of that month. Yeah. Sorry.

22 Q And how did you learn that the NRA had filed for
23 bankruptcy?

24 A I watched the 5 o'clock news she recorded for me.

25 Q Did you feel that you as a board director had

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1 authorized the NRA to enter into the bankruptcy?

2 A No. I was kind of beside myself at that point.

3 Q When you say "beside yourself", what do you mean?

4 A Upset. Distraught.

5 Q Did you feel misled about the bankruptcy?

6 A Absolutely.

7 Q Did you ever say that the bankruptcy is a symptom of
8 the disease?

9 A Yes.

10 Q Can you explain what you meant?

11 A That in my observations both as an individual and as a
12 member of the board, that from time to time concerns would be
13 raised regarding financial improprieties, controls, balance of
14 power, you know, separation of powers in the corporation, and
15 that was one symptom of the problems that have plagued the
16 organization.

17 Q After the NRA filed for bankruptcy, what actions, if,
18 any did you take?

19 MR. PETERS: I object to them leading the witness.
20 Maybe not for this question but in general.

21 THE WITNESS: Okay.

22 THE COURT: Then there is nothing to rule on.

23 A I did quite a bit. You know, it was funny the way that
24 things worked out in my life at that point in time. That
25 weekend I tried to find some information out that was very

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1 difficult. And the following Monday I had minor cancer surgery.
2 I had a carcinoma. And it turned out at the surgery it ended up
3 being a lot bigger than we thought it was going to be. So then
4 they had to do Mohs on my face. So, they had to lift the skin
5 off and shift it around and cover up the hole that they did.
6 And I looked like I had been hit in the head with a two by four.
7 As a judge, I'm doing, at that point I still am doing family
8 law. And so I knew I couldn't look like that and have a victim
9 of domestic violence in my courtroom, because they would
10 probably just meltdown right there. So, I got two weeks off to
11 heal. And in that two weeks I started contacting individuals,
12 like law school professor, a friend of mine that I had retired a
13 few months as the trustee for the bankruptcy court in the state
14 of Kansas, because bankruptcy law is like a creature onto
15 itself. I really don't get a lot of exposure in my practice of
16 25 years or --

17 Q Were you trying to learn about bankruptcy?

18 A Trying to learn about bankruptcy.

19 MR. PETERS: I object to the lawyer talking over
20 the witness.

21 A Yeah, I was trying to learn about bankruptcy.

22 Q And did you end up hiring bankruptcy counsel?

23 A Yes. I developed a plan, a strategy for the Court,
24 researched attorneys, raised the money and hired counsel. In
25 about two weeks after that we had our motion on file.

LAS

Journey - by Plaintiff - Direct/Wang

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1 Q You referred to a "motion." What motion are you
2 referring to?

3 A We filed the motion to appoint an examiner in the
4 bankruptcy.

5 Q And what is an "examiner"?

6 A An examiner is kind of like an auditor. You know, they
7 go in, they look at the books, they interview people, they try
8 to figure out what's going on in the corporate operation, and
9 then make recommendations to the court regarding those --
10 regarding what they've observed.

11 Q Did you agree with the NRA's filing for bankruptcy?

12 A No.

13 Q Were you seeking, through this motion for an examiner,
14 a different end result than the NRA was seeking?

15 A Well, they wanted to file bankruptcy and, you know, I
16 just wanted to find out what was going on and whether it was
17 really valid.

18 Q I'm going to direct your attention to tab 2 of the
19 document, which is PX 2254.

20 A Thank you.

21 Yes, I have it.

22 Q Does this look familiar to you?

23 A Yes.

24 Q What is it?

25 A It's our motion to appoint the examiner in the

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Journey - by Plaintiff - Direct/Wang

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1 bankruptcy case.

2 MS. WANG: Any objection to this exhibit?

3 MS. COUTU: Yes, your Honor.

4 MR. CORRELL: Yes, your Honor.

5 MR. PETERS: Yes.

6 This is a long -- this is a brief that his lawyer
7 prepared to be filed in the bankruptcy and it has no
8 independent factual allegations based on his own personal
9 knowledge. It's just his lawyer's arguments married to
10 citations to the complaint.

11 MR. WANG: This --

12 Your Honor, may I respond?

13 THE COURT: What's the evidentiary purpose of this?

14 MR. WANG: To show that Mr. Journey was raising
15 concerns. This is his act, of a whistleblower, calling for
16 an investigation into the affairs of the NRA. That is the
17 specific relief that he requests within the motion for
18 examiner and this is his -- this is his blowing the whistle.

19 MR. CORRELL: Your Honor, if I may respond --

20 THE COURT: So this --

21 In other words, it's not for the truth of --

22 This isn't evidence of the underlying -- of
23 anything, but this is just to show what assertions were
24 made.

25 MR. WANG: He took an action. He raised concerns.

ALAN F. BOWIN, CSR, RMR, CRR

Journey - by Plaintiff - Direct/Wang

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1 He asked for someone to conduct a further investigation
2 through this document (indicating).

3 MS. ROGERS: Your Honor, if I may:

4 If the fact that is sought to be established is
5 that the witness filed a motion or made certain allegations,
6 that fact could be established without admitting the content
7 of a legal pleading. There's also a separate legal issue as
8 to whether commencing litigation or actually in litigation
9 adverse to the NRA constitutes an act of whistleblowing.

10 MS. COUTU: Your Honor, I think there are
11 additional issues that might be raised. Would it be
12 possible to do so at sidebar?

13 THE COURT: I'm going to -- I don't know what the
14 issues can be. This is a publicly filed document. This is
15 simply being admitted to show that it happened. I've told
16 this to the jury before.

17 I mean, allegations that people make, that's not
18 evidence, in and of itself. This is being offered just to
19 show witness -- the statements the witness was advancing.
20 So it's really just being offered for the fact that it was
21 filed, not for the -- not to prove to you that the
22 allegations in it are true. That, you will have to decide
23 based on what you hear in this courtroom.

24 So it's plainly admissible, in my opinion.

25 So it's admitted; PX 2254.

ALAN F. BOWIN, CSR, RMR, CRR

Journey - by Plaintiff - Direct/Wang

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1 (Image displayed.)

2 BY MR. WANG:

3 Q Do you recognize this document, Mr. Journey?

4 A Yes.

5 Q What is it?

6 A That is the motion we filed for an examiner in the
7 bankruptcy filed by NRA in 2021.

8 Q And directing your attention to PX 2254, page 3 --

9 A Yes.

10 Q -- at the very top of the document, the very top of
11 this page --

12 A Yes.

13 Q -- where it -- it says here:

14 "Movant seeks the appointment of an examiner to
15 bring to light the veracity of the alleged fraud,
16 dishonesty, incompetence, and gross mismanagement that has
17 plagued the NRA's reputation, caused significant alienation
18 of the Association's members and supporters, and hampered
19 its ability to fulfill its core organizational purpose."

20 Was this the purpose of your filing of the motion for
21 examiner?

22 A Yes. I wanted some answers.

23 Q And did you believe this statement to be true when you
24 filed it?

25 A Yes.

ALAN F. BOWIN, CSR, RMR, CRR

Journey - by Plaintiff - Direct/Wang

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1 Q And did you review everything in this document before
2 your attorneys filed it on your behalf?

3 A I was the final editor.

4 Q Directing your attention to page 15 of PX 2254, the
5 conclusion paragraph, number 39 --

6 (Image scrolled.)

7 A Yes.

8 Q -- were you seeking an examiner to conduct an
9 investigation?

10 A Yes.

11 Q And why were you seeking an investigation?

12 A Well, I mean, just as everyone said a few moments ago,
13 all I knew was what I read in the press, my personal
14 conversations with others, my research and what was alleged in
15 the attorney general's original complaint, and I would like to
16 know whether those things and those allegations were true or
17 not.

18 Q Do you know if an examination -- an investigation --
19 was eventually conducted from this?

20 A No. You won your motion to dismiss.

21 Q What was the end result of the bankruptcy?

22 A It was dismissed for being filed in bad faith by --

23 MR. CORRELL: Objection, your Honor.

24 The record of the court's action speaks for itself,
25 and it's a public document. If we're going to get into the

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Journey - by Plaintiff - Direct/Wang

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1 question of what the court ruled, I think we should do it
2 completely.

3 THE COURT: I think that's fair.

4 I think there's actually different terms of art
5 than -- than what was just stated, so why don't we -- so,
6 sustained.

7 A I believe the judge's actual words were, "not filed in
8 good faith," so --

9 MR. CORRELL: Move to strike.

10 MR. FLEMING: Can we move to strike the answer if
11 the objection was sustained?

12 THE COURT: Yeah.

13 Are you going to be introducing that at some point?

14 MR. WANG: Yes.

15 THE COURT: All right.

16 Well, why don't we just -- we'll strike it for now,
17 we'll table it, and we'll see what the record says.

18 BY MR. WANG:

19 Q Did the NRA -- did the NRA eventually inform you that
20 the bankruptcy had occurred?

21 A I did receive an e-mail from Mr. Frazer, the secretary
22 and general counsel.

23 Q And was there a --

24 Did you attend an NRA Board meeting regarding the
25 bankruptcy?

ALAN F. BOWIN, CSR, RMR, CRR

Journey - by Plaintiff - Direct/Wang

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1 A Yes.

2 Q When did that take place?

3 A In March of that year.

4 Q And did you attend that meeting in person?

5 A Yes.

6 Q What was the purpose of that board meeting?

7 A The purpose of that board meeting, as announced, was
8 essentially to review the bankruptcy and seek the board's
9 approval for its filing subsequent to it being filed.

10 Q Was a vote taken at this meeting?

11 A Yes.

12 Q And how did you vote?

13 A I felt I had to abstain because of the circumstances
14 with me filing the motion.

15 Q What took place at this board meeting other than the
16 vote to ratify the bankruptcy?

17 A The board went into executive session, and we were told
18 we were going to be given the strategy and the reasoning --

19 MR. PETERS: I object, to the extent that he's
20 describing things in executive session that are
21 attorney-client privilege that he's been instructed
22 repeatedly not to reveal.

23 THE COURT: Was this -- the advice -- being given
24 by counsel at the executive session?

25 THE WITNESS: I'm sorry?

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Journey - by Plaintiff - Direct/Wang

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1 THE COURT: Was -- were you -- are you --

2 To the extent that counsel was giving advice at the
3 executive session, that is a privilege that belongs to the
4 organization, so I would -- I think it's a legitimate
5 objection.

6 MR. WANG: I'm not asking Mr. Journey about any
7 comments made during executive session from an attorney.

8 THE WITNESS: Other than ...

9 MR. WANG: I'm not asking him about comments from
10 an attorney.

11 THE COURT: Well, attorney representing the entity.

12 MR. PETERS: Correct.

13 THE COURT: I mean, there are some attorneys who
14 are probably board members, including this one.

15 MR. WANG: Correct.

16 THE COURT: Okay.

17 So, other than advice being provided by counsel,
18 you can answer.

19 Q Were there any remarks during the executive session
20 directed at you, Mr. Journey?

21 A Yes.

22 Q What was the nature of those remarks?

23 A The NRA's attorneys stood up in front of the board,
24 pointed at me and said I was their greatest enemy.

25 Q Did you think they were providing you legal advice when

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1 they said that?

2 A No.

3 Q Did you have an opportunity to speak at this board
4 meeting?

5 A I tried to exercise a point of personal privilege.

6 Q And what happened?

7 A After they impugned my character, said horrible things
8 about me, said I was a liar, said this, said that, we got out of
9 executive session and they were about to adjourn the meeting and
10 I got up and asked for a point of personal privilege because I
11 wanted to respond to those accusations on the record, and I
12 was -- eventually, as I tried to explain it -- first, I was
13 given an opportunity to explain. As I went through my reasoning
14 as to why I filed this motion, people started jumping up and
15 yelling at me and I was -- they were yelling, "Out of order" and
16 Mr. Willes Lee was on the podium at that time and he -- they all
17 shut me down. They didn't really want to know why.

18 Q I'm going to direct your attention to tab 3,
19 Mr. Journey, of your binder and a document that is PX 379.

20 A Yes, I'm familiar with it.

21 Q Does this document look familiar to you?

22 A Yes. It's a transcript of that meeting.

23 THE COURT: Is there any objection?

24 MR. WANG: Any ...

25 MR. PETERS: I'd just note that the parts of an

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1 executive session are redacted and there are very clear
2 instructions for board members not to reveal what is said in
3 executive session.

4 But we don't have an objection to this exhibit.

5 THE COURT: Well, in this proceeding, the only
6 instructions about what he can and cannot reveal are the
7 limits of attorney-client privilege. Okay?

8 MR. PETERS: Understood.

9 (Image displayed.)

10 BY MR. WANG:

11 Q What is this document?

12 A It's a -- it is a transcript of the board of directors
13 meeting.

14 Q I'm going to direct your attention to page 19 of PX
15 379.

16 A Yes.

17 (Image scrolled.)

18 Q You said that you had asked for a point of personal
19 privilege?

20 A Yes.

21 Q Is this the portion of the transcript where you are
22 asking to speak?

23 A Yes.

24 (Image modified.)

25 Q And directing your attention to page 20 -- page 22 --

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1 of the document, at the very top --

2 (Image modified.)

3 A Yes.

4 Q -- these are your words; correct?

5 A Yes.

6 Q And you say: "And, you know, -- and I hear Mr. Cotton
7 say it's all bogus, it's all a political smokescreen, and
8 there's nothing to it."

9 Did Mr. Cotton say that to you?

10 A He said that in the executive session.

11 Q And did you believe that to be true, Mr. Journey?

12 A Yes.

13 Q What Mr. Cotton said?

14 A Oh. No, I believe the statement I said was true.

15 Q What was the statement that you said?

16 A That Mr. Cotton, basically, foo-fooed it all off and
17 said, "There's nothing to see; move along, move along."

18 Q And at the bottom of this page, Mr. Lee calls you "out
19 of order." Do you see that?

20 A Yes, that's correct.

21 Q And did you finish what you were trying to say at this
22 board meeting?

23 A No.

24 Q Were you denied the opportunity to speak to the board?

25 A Yes.

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1501

1 Q Did you feel the board was responsive to the concerns
2 you were raising in the motion for examiner?

3 A No.

4 MR. PETERS: Objection.

5 The motion for examiner was directed to the court,
6 not to the board. What was the board going to do?

7 THE COURT: I -- maybe you can clarify the question
8 a bit. I'm --

9 You were talking about the concerns themselves,
10 right?

11 Q Did you feel like you were raising concerns?

12 A Yes.

13 Q And did you feel the board was responsive to those
14 concerns?

15 A I was actually trying to respond to board members'
16 questions as to why I filed the motion, and I was not allowed to
17 re -- answer that question fully.

18 Q I'm going to direct your attention to tab 5, PX 2235.

19 (Image removed.)

20 A Yes. I have it.

21 MR. WANG: Any objection to this document?

22 THE COURT: Any objections?

23 (Pause.)

24 MR. PETERS: No objection.

25 MR. FLEMING: No objection from me.

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1502

1 MR. CORRELL: No objection, your Honor.

2 THE COURT: It's admitted.

3 (Image displayed.)

4 Q Mr. Journey, does PX 2235 look familiar to you?

5 A Yes.

6 Q What is it?

7 A It is an e-mail from Mr. Frazer, the secretary.

8 Q And was Mr. Frazer passing along another message?

9 A Yes; from the president, at the time, of the NRA,
10 Ms. Carolyn Meadows.

11 Q And did you review this message?

12 A I -- I was provided a copy of it after it was sent by
13 another board member.

14 Q What is your understanding of to -- the audience to
15 whom this message was sent?

16 A It was to the fellow -- my fellow board members.

17 Q Even though the e-mail at the center of the page says,
18 "from: John Frazer" "to: John Frazer"; correct?

19 A Yes.

20 Q I'm going to direct your attention to the middle of the
21 second page --

22 (Image scrolled.)

23 A Yes.

24 Q -- starting with the sentence, "Beyond ...":

25 "Beyond other glaring errors and omissions, I am

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1 saddened to say the legal filing contains many outright
2 untruths."

3 Did you receive this message from Ms. Meadows?

4 A I had to get it from a third party. I don't think I
5 was on the original copy list.

6 Q Did you agree with her statement?

7 A Of course not.

8 Q Did you think she was calling you a liar?

9 A Absolutely.

10 (Image removed.)

11 Q I'm going to shift a little to a different topic:

12 You testified that you previously served on the board
13 between 1995 and 1998; is that correct?

14 A That's correct.

15 Q Did you attend board meetings during your first term?

16 A Yes.

17 Q Can you describe any differences, if any differences
18 existed, between how the board ran in the 1990s versus how it
19 runs today?

20 A In the 1990s, it was customary for the staff to send
21 out a board packet to the board members about a month before the
22 meeting -- usually, it was about an inch to two inches thick; it
23 had reports from the officers; it had committee agendas -- so
24 we'd be ready to go to work when we got to the board and we knew
25 what was going on and what we might want to go look into or

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1 follow up on from a previous meeting. And then, when we'd get
2 there, there would be a supplemental packet of things that had
3 occurred since the mailing, and then we would go to our
4 committee meetings.

5 Back then, there were two days of committee meetings,
6 which is about the same as today; but we had two days of board
7 meetings, where now they seldom have more than half a day.

8 And you don't get the packets until you get there, so
9 you don't have time to read it.

10 Q Could you --

11 A And then, when you get into the board meetings --

12 MR. PETERS: Objection to the lawyer talking over
13 the witness once again.

14 MR. WANG: I thought he was done.

15 A And then, when you'd get to the board meeting, there
16 would be another packet on the table as it started, so you'd be
17 trying to watch the meeting, read the packet at the same time.
18 It was not very workable.

19 Q Did you feel -- did you receive sufficient information
20 prior to board meetings in your more recent term of service?

21 A No.

22 Q We've heard the phrase "executive session." What is
23 executive session?

24 A Executive session was used in both terms of my service
25 on the board. Executive session is where confidential matters

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1 are discussed by board members and it would be a violation of
2 protocol to discuss that, outside that executive session, with
3 anyone other than someone that was in it with you.

4 Q Was executive session used frequently in the '90s, when
5 you served on the board?

6 A No. It was usually just referred -- reserved -- for
7 bad-personnel matters.

8 Q And was executive session used more frequently --
9 How frequently was executive session used when you were
10 on the board more recently?

11 A I would say, in those board meetings, they were in
12 executive session about -- certainly, more than half the time
13 and routine things would be discussed in executive session.

14 Q From your time in the '90s, do you recall concerns
15 being raised by fellow board members Mr. Carone and Mr. Colman
16 about NRA management?

17 A Yes. I -- being from Kansas, I tend to step into the
18 tornadoes too often.

19 Q Do you recall receiving a report authored by Mr. Carone
20 and Mr. Colman?

21 A Yes.

22 Q Do you remember reading that report?

23 A Yes.

24 Q Was that report presented to the entire board?

25 A Yes.

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1506

1 Q I'll ask you to turn to tab 6 of your binder.

2 MR. WANG: Tab 6 is PX 5018. This is the exhibit
3 that we previously discussed, your Honor.

4 THE COURT: Right.

5 So the one in your binder doesn't have the
6 attachments, but the attachments are part of this --

7 MR. WANG: May I approach the witness?

8 THE COURT: Yes.

9 (Mr. Wang did so.)

10 Q This has the attachments (handing).

11 A Thank you.

12 Q You're welcome.

13 (Mr. Wang returned to the podium.)

14 Q Does this document look familiar to you, Mr. Journey?

15 A Very much so, yes.

16 Q Was this the report presented by the Finance Committee
17 to the NRA Board in -- in -- during your service in the '90s?

18 A Yes.

19 MR. WANG: I move for the document's admission.

20 MR. PETERS: We understand -- we object but we
21 understand that the Judge has ruled a little differently.

22 THE COURT: Okay. It's admitted; PX 5018.

23 (Image displayed.)

24 Q Mr. Journey, are you familiar with this report?

25 A Yes; I have reviewed it recently.

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1 Q To your knowledge, what prompted Mr. Colman and
2 Mr. Carone to prepare this report?

3 A They completed this report at the direction of the
4 board.

5 THE COURT: I'm just going to give a -- just a
6 quick instruction to the jury:

7 The matters discussed in this report are not part
8 of this lawsuit itself. This is well before the
9 allegations. This is part of the background, I guess I
10 would say. So just take it with that in mind. But none of
11 these are part of the claims in this case.

12 Q Mr. Journey, I'm going to direct your attention to the
13 bottom of PX 5018, page number 3.

14 (Image scrolled.)

15 Q The last sentence, starting with "While there ...," it
16 reads:

17 "While there are a few more that have the required
18 signatures and the financial service folks are coming up
19 with an exact count, the general trend is clear, the Board
20 mandated financial control requiring the prior approval of
21 the President and Vice President for any agreement,
22 including verbal, in excess of \$100,000 was habitually
23 ignored by management. Please note that this only covers
24 the NRA proper. NRA/ILA has not been examined yet."

25 Was this an issue that was raised by Mr. Colman and

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1 Mr. Carone in the 1990s, during your service on the board?

2 A Well, honestly, the issue was raised by several other
3 board members and this was done in response to those concerns,
4 and that was the conclusions they reached after their
5 investigation.

6 Q And were those conclusions shared with the entire board
7 at that time?

8 A Yes, they were. That was customary then.

9 Q Would you agree that this report raised a number of
10 concerns regarding Mr. LaPierre's failure to comply with NRA
11 policy?

12 A Yes.

13 Q To your knowledge, were these concerns ever brought to
14 the attention of Mr. LaPierre?

15 A Yes.

16 Q Were they ever brought to the attention of
17 Mr. Phillips?

18 A Yes. They were all in the meeting with us.

19 Q Was Marion Hammer on the board at that time?

20 A Yes. She was president at that time.

21 Q Was Allan Cors on the board at that time?

22 A Yes, he was.

23 Q Was Herb Langford?

24 A Yes, he was.

25 Q Was Jim Porter?

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1 A Yes, he was.

2 Q Based on your service on the board, how would you
3 describe the effectiveness of board oversight at the NRA?

4 A Well, it was better back then than it is now.

5 Q And how would you describe the state of governance at
6 the NRA?

7 A How do I describe what?

8 Q The state of governance.

9 A It was better back then than it is now, too.

10 Q And how would you describe financial controls at the
11 NRA?

12 A Now they're nonexistent.

13 Q Do you believe that the NRA operates with different
14 levels of access, where some have access and some do not?

15 A Yes.

16 Q What do you mean by that?

17 A I just -- it's -- it seems to be how information and
18 decisions are made -- information's disseminated and decisions
19 are made. In one of the depositions, I described it kind of
20 like the solar system: There were some board members that were
21 on Mercury and some on Mars and I was, like, out there in the
22 Oort cloud somewhere.

23 Q What would you like to see happen with the NRA,
24 Mr. Journey?

25 A I would like to have the ship righted. I would like to

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1 have corporate governance reestablished, the financial controls,
2 proper fiduciary activity on the part of the officers and the
3 board. I would like to have the ship sailing in the right
4 direction.

5 MR. WANG: Nothing further, your Honor.

6 THE COURT: Thank you.

7 We have about 20 minutes before the break, so you
8 can get started.

9 MR. PETERS: Thank you.

10 Could we pull up PX 2224?

11 This is tab 1 of our binder.

12 THE COURT: Do you have a separate binder?

13 MR. PETERS: Yes.

14 THE COURT: Does the witness have it?

15 THE WITNESS: No.

16 THE COURT: Do you want him to have it?

17 MR. PETERS: Yes.

18 (Binder handed to witness.)

19 MR. PETERS: (To counsel) This is your Exhibit
20 PX 2224.

21 THE COURT: Do you have another one or just --

22 MS. CONNELL: I believe we have more, your Honor.

23 CROSS-EXAMINATION

24 BY MR. PETERS:

25 Q Okay. So, in 2020, you were nominated to the ballot by

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1 the nominating committee; weren't you?

2 A That's correct.

3 Q And you were approved by the nominating committee even
4 though you had been affiliated with Neal Knox and other
5 dissident directors?

6 THE COURT: Counsel, can I just -- if you can pin
7 that (indicating) a little bit lower ... It's getting a
8 little feedback because it's too close to your ...

9 (Microphone repositioned.)

10 THE COURT: Thank you.

11 Q Okay. And you were appointed to the nominating
12 committee -- or you were approved by the nominating committee --
13 even though you had been affiliated with Neal Knox and other
14 dissident directors in the 1990s; isn't that right?

15 A I don't know that the entire supposition you have in
16 your question was accurate, but I did -- I did receive --

17 Q Well, can you recall --

18 A -- I did receive a vote from the nominating committee
19 to put my name on the ballot. I can't tell you what they were
20 thinking at the time.

21 Q Okay. Why don't we go to PX 2224? Do you have it in
22 front of you?

23 MR. PETERS: And may we move this into evidence?

24 A What tab is that?

25 Q This is tab 1 of your "Cross" binder.

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1512

1 MR. PETERS: May we move this into evidence?

2 Any objection?

3 MR. WANG: No objection.

4 Q So --

5 THE COURT: Hang on.

6 MS. ROGERS: We do have an extra binder for the
7 Court (handing).

8 THE COURT: Yeah, I'd like to have it.

9 Any objection from anyone else?

10 MS. COUTU: Your Honor, we just would like to see
11 the other pages, please.

12 THE COURT: Are there more pages than the first
13 one?

14 MS. COUTU: It seems to be "1 of 9," your Honor.

15 THE COURT: Do you have another set for counsel
16 over there (indicating)?

17 MR. PETERS: Yeah. It will be on the screen.

18 Q So --

19 THE COURT: Wait. You still haven't gotten it
20 admitted yet, so just hang on a second.

21 MR. PETERS: Sorry.

22 (Pause.)

23 THE COURT: Are you all able to see the rest of it?
24 Are you -- you are?

25 MS. COUTU: Pardon?

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1 THE COURT: Are you able to see the rest of it now?

2 MS. COUTU: No, your Honor. We only see "page 1 of
3 9" (indicating).

4 THE COURT: Why don't you take mine, for now
5 (handing).

6 (Pause.)

7 MS. COUTU: No objection, your Honor.

8 MR. CORRELL: No objection.

9 THE COURT: Okay. It's admitted.

10 BY MR. PETERS:

11 Q Okay. So it says here -- if you look at it, it says --
12 This is an e-mail from Sandra Froman to Marion Hammer.
13 You see that?

14 A Yes.

15 (Image displayed.)

16 Q Okay. And Ms. Froman says:

17 "I found Phil's piece in AmmoLand a well-written
18 campaign statement for this year's NRA Board election, and
19 just because Jeff Knox endorses somebody doesn't mean
20 they're anti-NRA or anti-Wayne or even that the candidate
21 asked for that endorsement."

22 Do you see that?

23 A Yes.

24 Q So you were approved by the nominating committee even
25 though it was well known that you had been affiliated with Neal

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1514

1 Knox, his son Jeff Knox, and dissident directors from the 1990s;
2 isn't that right?

3 A Well, that's what this (indicating) says. This is the
4 first time I've seen this document.

5 Q Okay. Thank you.

6 And then do you see, below, where Marion Hammer writes
7 an e-mail opposing your nomination; on the next page, where it
8 says ...

9 (Image scrolled.)

10 A I'm looking for it. It's -- it's on the second page?

11 Q That's right, and it's highlighted on the screen.

12 THE COURT: It's on the screen in front of you.

13 Q It's on the screen in front of you.

14 A Okay.

15 (Continued on next page.)

16

17

18

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25

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1515

1 Q Right. So you -- so you were approved by the
2 nominating committee even though Marion Hammer opposed your
3 candidacy in 2020?

4 A She wasn't on the nominating committee.

5 Q That's right. Yeah. Okay. And then you were elected
6 by the NRA's members to the board in 2020, isn't that right?

7 A Yes.

8 Q Okay. And moving -- We've talked about how you voted
9 to approve Wayne LaPierre's employment contract in January of
10 2021. You read the contract before you voted to approve it,
11 isn't that right?

12 A As best I could, yes.

13 Q Okay. Was there -- was there any impediment to you --
14 to you reading it?

15 A Well, 15 people behind me wanted to read it too.
16 People wanted to go to lunch. People wanted to get this job
17 done, sure.

18 Q Right. When you asked Mr. Frazer to receive the copies
19 of the other employment contracts, he eventually sent them to
20 you, didn't he?

21 A No, not that I recall. No. He sent me some other
22 documents later, but not the original employment contract on a
23 different request as I recall.

24 MR. PETERS: Okay. Now, moving to the March 2028
25 board meeting, if we go to PX 379, which is tab three of

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1 their exhibit binder.

2 THE COURT: Is that in evidence already?

3 MR. PETERS: It's in evidence, yes.

4 THE COURT: That's the transcript?

5 MR. PETERS: That's right.

6 A The big binder?

7 Q Small binder.

8 THE COURT: It's the small binder, number three.

9 THE WITNESS: Number three, right.

10 Q Okay. On page 21 you say I -- "I came on this board
11 knowing the threat that Ms. James presents to us", isn't that
12 right?

13 A Probably that's correct.

14 Q And Ms. James, isn't that the New York Attorney
15 General?

16 A Yes. I was referring to the New York Attorney General
17 in that statement.

18 Q Why did you say that she posed a threat to the NRA?

19 A Because what she campaigned on. I read the article in
20 Ebony and there was another one in The New Yorker as I recall.

21 Q What did she say?

22 MR. WANG: Objection, your Honor. This is material
23 that you've already ruled on.

24 MR. CORRELL: Your Honor, it's highly relevant to
25 the question of good faith and also the decisionmaking

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1 process with respect to the bankruptcy.

2 THE COURT: Sustained. It's been asked and
3 answered.

4 Q Okay. I want to go to tab 15 of -- of our binder. And
5 I want to go to page 2 of that.

6 MR. PETERS: If we can get that up.

7 MS. CONNELL: Can we have the PX document.

8 MR. PETERS: It's not a PX document.

9 Q So, did you set up a fundraising initiative called
10 Restore NRA?

11 MR. WANG: We don't know what the exhibit is.

12 A Yes.

13 MS. CONNELL: Hold on.

14 THE COURT: Everybody, just one step at a time. If
15 you want to publish something to the jury, then you have to
16 let me know that you want it admitted. You don't want it
17 shown yet?

18 MR. PETERS: No, I don't want it shown.

19 THE COURT: You want to show it just for his screen
20 and the others for identification?

21 MR. PETERS: Yes. That's right.

22 THE COURT: So then just why don't you identify it
23 and say you're going to show it to the witness for
24 identification and that way they can turn the screens off.

25 MR. PETERS: Okay. Thank you. I'm going to show

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1 tab 15 to the witness for identification.

2 Q So, you set up a fundraising initiative called Restore
3 the NRA, didn't you?

4 A Actually I had someone help me with that but yes.

5 Q The purpose of this initiative, if we go to page 2 of
6 this, the next page, the purpose of this initiative was to
7 protect the NRA from the efforts of the New York Attorney
8 General to bury the NRA --

9 MR. WANG: Same objection, your Honor.

10 THE COURT: Hang on a second. Before you can sort
11 of read from it, we have to decide whether it's an
12 admissible exhibit or not.

13 MR. PETERS: I'm not going to move it into
14 evidence.

15 THE COURT: So is this to -- What are you using it
16 for? To refresh his recollection?

17 MR. PETERS: Refresh his recollection.

18 THE COURT: You have to ask him a question that he
19 doesn't remember the answer to and then you can try to
20 refresh it.

21 MR. PETERS: Okay.

22 THE COURT: So, you don't need to have this
23 document in front of you at this point. So why don't you
24 just ask the question.

25 MR. PETERS: Sorry.

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1 Q The purpose of this initiative was in your words, "to
2 protect the NRA from the efforts of the New York Attorney
3 General"?

4 MR. WANG: Objection, your Honor. Mr. Peters is
5 clearly reading from the document.

6 MR. PETERS: No. I'm reading from my own -- my own
7 statement. My own question.

8 THE COURT: So, let me just go back to what you're
9 asking him about.

10 MR. FLEMING: Surely the document can be the basis
11 for the question.

12 THE COURT: I who lost the thread a little bit
13 here. What was the original question?

14 Q The question is the purpose of your Restore the NRA
15 initiative was to protect the NRA from the efforts of the New
16 York Attorney General to bury the NRA, wasn't it?

17 A Well, that's one of the statements in there. There was
18 much more.

19 Q But you put that statement on your website, didn't you?

20 MR. WANG: We're objecting to this line of
21 questioning as being the line of questioning that you've
22 already ruled on.

23 THE COURT: Yeah. At this point it's in the
24 background. You know, we're not -- As I've said before,
25 this is -- this case is not about a war of words between the

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1 Attorney General and the NRA. This is about the allegations
2 in the case. In some cases this background may be relevant.
3 In some cases it might not. I don't know what you're using
4 it for right now. The scope of this witness' testimony on
5 direct anyway had nothing to do with this, right?

6 MR. PETERS: I think I'm going to go to the motion
7 that he filed with the bankruptcy.

8 THE COURT: Since that was covered on direct, why
9 don't you do that.

10 MR. PETERS: Okay.

11 Q So, this -- With respect to your motion to appoint an
12 examiner in February -- February 2021, that motion was based on
13 the allegations in the NYG's complaint, wasn't it?

14 A In part. In part, yes.

15 Q So, did you cite any other testimony or your personal
16 knowledge or was it based on what was in the complaint?

17 A I believe that it went through more than simply
18 expressing concern about what was alleged in the complaint, if
19 that was the heart of it, because that was the most detailed
20 roadmap I had at that point.

21 Q Right. So but -- so do you have personal knowledge of
22 the veracity of the allegations in the NYG's complaint?

23 A No.

24 Q No.

25 A I did know -- I did know that they were based on sworn

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1 testimony and documents produced as a result of the
2 investigation completed by the Attorney General's Office prior
3 to filing the complaint.

4 Q And how do you know that?

5 A Press reports.

6 Q Press reports, okay. So you know that by reading the
7 Attorney General's complaint and press reports that talked about
8 the Attorney General's complaint?

9 A Talked about the process getting there. For example,
10 when there was an inquiry by the Attorney General with Oliver
11 North and Mr. Brewer and counsel wanted to attend that, and the
12 Court denied that. They were denied that, I guess.

13 MR. PETERS: I move to strike. It was a yes or no
14 question.

15 Q Was there any other basis for your motion other than
16 the New York Attorney General's complaint and what you had read
17 about in the press?

18 A Yes.

19 Q What was that?

20 A My efforts to confirm those allegations in the
21 complaint. Conversations that I had with board members,
22 officers, employees of NRA, with others in the legal profession.
23 Quite a bit gave me concern as it developed.

24 Q Okay. And so moving to number four.

25 THE COURT: What number four?

LAS

Cross-Journey-Peters

1522

1 MR. PETERS: Tab four. This is their exhibit.

2 Q So just to back up a little bit.

3 THE COURT: Is this tab four of the plaintiff's
4 binder?

5 MR. PETERS: Yes. Excuse me, your Honor.

6 Q Just to back up, did any other NRA members join your
7 motion to appoint an examiner?

8 A Former and current board members were co parties with
9 me.

10 Q Which ones?

11 A The ones that were listed.

12 Q Where are they listed?

13 A I believe they are in the Court file. It was myself,
14 Rocky Marshall, Esther Schneider, Buzz Merit and one more.

15 Q Okay.

16 A I'm trying to think of the name, 'cause I know he died.

17 Q So, moving to PX 224 -- 2254, page 2.

18 THE COURT: Which -- which tab?

19 MR. PETERS: I'm sorry. Go back to two now.

20 Q To your motion. Where are they identified?

21 THE COURT: So it's PX 2254. Do you want to put
22 that up?

23 A I believe they are identified on the entry of
24 appearance by counsel.

25 Q Why -- But not in this document?

LAS

Cross-Journey-Peters

1523

1 A I don't know. I haven't read it in a while.

2 Q Okay. So if you go to page 2 of 16 it says --

3 A I know.

4 Q Please let me finish my question. It says "Phillip
5 Journey, movant", right?

6 A Yes.

7 Q Okay. And are there any other movants listed?

8 A Their experience --

9 Q It's a yes or no question.

10 A Their experiences are listed in the document.

11 Q But they didn't joint the motion?

12 A I was -- I was the managing party. I was the only one
13 in the group of directors that was allowed to watch the entire
14 bankruptcy trial because I was given that special setting by the
15 judge, because I was the movant I suppose.

16 Q Could other board members joined your pleading if they
17 had wanted to?

18 A With my permission, yes.

19 Q Okay. But you don't have any other board members
20 listed here as the movant, do you?

21 A This was early. They were in many other documents that
22 are contemporaneous to this one.

23 Q Understood. So do you understand that the NRA opposed
24 this motion?

25 A Yes, as did the Attorney General and Ackerman McQueen

LAS

Cross-Journey-Peters

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1 and several other parties.

2 Q Okay. You had an understanding that the -- that the
3 NRA opposed this motion that you had filed in court, right?

4 A I'm sorry. What?

5 Q You understood that the NRA had opposed the motion that
6 you filed in court, right?

7 A Well, we never really got to my motion. That's my
8 understanding from their briefs, yes.

9 Q We'll get to that. So, if you go to tab 18 on your
10 cross binder.

11 A Mm-hmm. I got it.

12 Q If you see page -- the preliminary statement.

13 THE COURT: Hang on a second. Can we just -- Do
14 you want the jury to see any of this?

15 MR. PETERS: No.

16 THE COURT: This is just for questioning.

17 MR. PETERS: Do you have any objection?

18 MR. WANG: What's the number?

19 MR. PETERS: This is tab 18 here.

20 MS. CONNELL: We don't have your binder.

21 MR. PETERS: It's this document.

22 MR. WANG: (Examining).

23 MS. CONNELL: Are you offering it into evidence?

24 MR. PETERS: Yes.

25 THE COURT: Do you have an exhibit number that you

LAS

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1 want to identify it by?

2 MS. CONNELL: I don't see an exhibit number on
3 here, your Honor.

4 THE COURT: DX?

5 MR. PETERS: 1083.

6 MS. ROGERS: 1083.

7 THE COURT: Why don't we do this. We're at
8 actually the time to break. We don't have time for the
9 questioning to start, counsel. Why don't we let the jury
10 go. I'll -- We'll rule on admissibility and we'll start
11 with your questioning after the break. We'll take our
12 break. We'll reconvene at 2:15.

13 THE COURT OFFICER: All rise. Jury exiting.

14 (Whereupon the jury panel departed the courtroom.)

15 THE COURT: All right. First of all, it would be
16 helpful to have all exhibits premarked so we can sort of
17 avoid the unnecessary delay of the logistics. And DX 1-1 or
18 whatever that was, is the one just to designate that it's
19 NRA's?

20 MS. EISENBERG: Correct.

21 THE COURT: So, it's Defendants 1 basically.

22 MS. EISENBERG: Correct.

23 THE COURT: Is that the way we've been numbering
24 all of them?

25 MS. EISENBERG: Yes, your Honor.

LAS

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1 THE COURT: I hadn't noticed that. So, is there
2 any objection to introducing the NRA's response to the
3 motion?

4 MS. CONNELL: I think probably not, your Honor. I
5 want to check out one thing. If I could just let them know.

6 THE COURT: I would think the same principle that
7 permitted the motion to come in, in that it's not for the
8 truth of the matter asserted, it's for the fact that it was
9 made, I would probably permit this as well. I'll let you
10 think about it.

11 MS. CONNELL: Your Honor, I'm just trying to see if
12 it's a memo of law or a pleading and that's it. I probably
13 will agree.

14 THE COURT: All right. So let's reconvene at 2:15.

15 MS. CONNELL: Thank you.

16 THE COURT: Judge, I'm sure you know this. While
17 you're off the stand, you're essentially on the stand. So
18 you shouldn't discuss your testimony with any of the counsel
19 or anyone else. Thank you.

20 THE WITNESS: Thank you.

21 (Whereupon a luncheon recess was taken.)

22

23 *****

24 A F T E R N O O N S E S S I O N

25 *****

LAS

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1 THE COURT: Good afternoon, folks. Look, I think
2 we're going to have to excuse that juror number two. I
3 mean, there is no making up for missing a day. I think our
4 choice, when somebody doesn't show up, is to either suspend
5 the entire day or excuse them. And so I'm going to
6 reinforce to the remaining folks how important it is for
7 folks to show up every day, absent something catastrophic
8 and also provide as much information as possible so we --
9 you know, if the person is out until 11 o'clock in the
10 morning, that may be a different decision for us than if
11 they are just gone without explaining what's happening. So,
12 I mean, I don't really know anything about what the
13 circumstances were. So, that's why we have extra jurors.
14 That's okay. We -- we are not in any danger, but I want to
15 just reinforce to the remaining jurors how important it is.

16 And so anyway, just on the document management
17 side. If -- I understand on cross sometimes the exhibits
18 aren't known in advance and, you know, ideally they can be
19 marked in advance and then introduced for identification
20 purposes with an exhibit number that's premarked. If that
21 hasn't happened and it can't be done real quickly, then we
22 have to just do it the old fashion way, of giving a hard
23 copy to the court reporter and asking the court reporter to
24 mark it. But we have to follow that protocol before showing
25 anything to the jury. And also it's important to just have

LAS

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1 an identification number, because if they want to go back
2 and look at something from the transcript, and we all want
3 to do the same, it's important to know what document we're
4 talking about. All right. Anything else before I get the
5 jury?

6 MS. CONNELL: Your Honor, no, but after this we
7 hope to play the video -- Yes, before the jury comes back
8 in. I apologize. After Mr. Journey is off the stand, we
9 want to go to the video of Ms. Meadows. I would ask if the
10 Court could give the very brief instruction, Ms. Meadows,
11 for medical reasons, was unavailable and is appearing by
12 deposition.

13 THE COURT: We'll see how much time we have.

14 MS. EISENBERG: Perhaps also the date of the
15 deposition.

16 THE COURT: I know you asked me that before. At
17 least the last time, the date is actually on the screen.
18 With Ms. Meadows it's three different days, I guess. But I
19 believe, and this was true with Mr. Tedrick as well, it was
20 right on the screen there, right?

21 MS. EISENBERG: Right.

22 MS. CONNELL: Yes.

23 THE COURT: I'm fine to make the point that it's on
24 the screen. I understand.

25 MS. EISENBERG: Thank you, your Honor. There were

LAS

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1 also several exhibits that we objected to on hearsay
2 grounds, and the Government agrees not to offer them for
3 their truth. So, if you would be so kind as to give a
4 limiting instruction to the jurors that some of those are
5 coming in, they are coming in for the limited purpose of
6 showing that statements were made.

7 THE COURT: Are there particular -- Right before we
8 do that, we'll probably have a short break. I mean, if you
9 can give me a list of the exhibits that applies to.

10 MS. EISENBERG: Certainly, your Honor.

11 THE COURT: All right. Let's get the jury.

12 THE COURT OFFICER: All rise. Jury entering.

13 (Whereupon the jury panel entered the courtroom.)

14 THE COURT: Have a seat everyone. So, folks, as
15 you know, one of your colleagues is not here today. We did
16 get a call explaining that the juror wasn't going to be
17 here. We didn't get a lot of information. I have no reason
18 to -- to doubt the legitimacy of the absence. But I do want
19 to just re-emphasize how important it is to attend except
20 for all but the real serious reasons. Our choice when this
21 happens is either to suspend the entire tire day for
22 everyone (gesturing), and everyone I'm panning this large
23 room, or to excuse the juror because you can't miss
24 substantive testimony and come back and catch up. That's
25 just not realistic.

LAS

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1 So, it is important that if something happens and
2 you can't make it on a day, when you communicate with the
3 staff to also include as much information as you're
4 comfortable giving, as much as you can really, including how
5 long you will be out. So, for example, if it's something
6 that comes up and you can't be here until 10:00 or something
7 for an hour or two, we might wait so as not to lose a juror.
8 If it's a full day or more than that, it's going to be more
9 difficult. But, you know, as you can imagine with the
10 amount of effort that's going on with this trial and all of
11 you are putting in, putting off an entire day would be an
12 inconvenience that's pretty significant. But look, this is
13 why we have alternates and why we chose more than six.

14 So, again I'm not imputing anyone's reasons for not
15 showing up. But it is extremely important that we have
16 everybody, absent really the direst of circumstances, given
17 how important it is and really how much resource has been
18 going into this.

19 So, anyway, I appreciate you all being here. I do
20 recognize that things come up, which is why we have
21 alternates. I just would again ask for as much information
22 as you can provide if that happens so that we can make a
23 reasoned decision as to how to proceed, okay.

24 All right. Counsel, you may continue.

25 MR. PETERS: Thank you. Good afternoon everyone.

LAS

Cross-Journey-Peters

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1 Thank you, your Honor.

2 Q Thank you, Mr. Journey. I believe that when we had
3 broke for lunch we had been talking about moving a document into
4 evidence, which was the NRA's response to your motion in the
5 bankruptcy. I do want to make sure that the logistics of that
6 are taken care of and that that document is in fact moved into
7 evidence.

8 MR. WANG: Plaintiff has no objection subject to
9 the same limitations applied to PX 2254, which was the
10 motion.

11 THE COURT: What is the number?

12 MR. PETERS: DX 1083.

13 THE COURT: So is it DX 1-1083?

14 MR. PETERS: Yes. Defendants' 1083.

15 THE COURT: One dash?

16 MR. PETERS: No. What I have is DX-1083, unless
17 I'm wrong.

18 MS. ROGERS: There should be a one dash in front of
19 it.

20 MR. PETERS: Sorry. I was wrong and you were
21 right. It is DX one dash.

22 THE COURT: People tell me that all the time. I
23 don't usually believe them. In this case I think you may be
24 right.

25 MR. PETERS: Okay.

LAS

Cross-Journey-Peters

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1 THE COURT: Occupational hazard. So, all right.
2 That's fine. Folks, what counsel means by the same
3 instruction is that these are being introduced to show you
4 that they were in fact submitted in court. These are
5 positions taken by various sides. It's not evidence of
6 either the -- what was stated in the motion or what's stated
7 in the response. But you saw one side and this is the other
8 side. So, with that Exhibit DX 1-108 --

9 MS. EISENBERG: Three.

10 THE COURT: -- three is admitted.

11 Q So, you were aware as of March 12th --

12 THE COURT: Do you want to put this on the screen?

13 MS. STERN: Excuse me. May I have a copy?

14 MR. PETERS: It is tab 18.

15 MS. STERN: We don't have it.

16 MR. WANG: Thank you.

17 Q Okay. So, as I was -- I'll ask it again. So as of
18 March 12th, 2021 you were aware that the NRA opposed your motion
19 for the examiner in the bankruptcy, isn't that right?

20 A It really wasn't a topic for us to address until after
21 the motion to dismiss was resolved. So, I really didn't pay
22 much attention to anything other than this motion to dismiss.

23 Q Okay. And so after that there was a meeting that was
24 held by the NRA -- Strike that. After that there was a meeting
25 that was held in March of 2021 of the NRA board of directors,

LAS

Cross-Journey-Peters

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1 wasn't there?

2 A Yes.

3 Q And that meeting was held to vote on whether to ratify
4 the bankruptcy, isn't that right?

5 A That's what its purpose was, yeah.

6 Q Okay. And at that meeting -- So, at that meeting the
7 NRA's -- the decision to file for bankruptcy was approved by the
8 board of directors, wasn't it?

9 A It was approved after filing, yes.

10 Q Okay. So, in the vote for that was overwhelmingly in
11 favor, wasn't it?

12 A That seems to be how the board works these days.

13 Q Okay. In fact, you didn't even vote against the
14 motion, did you?

15 A No.

16 Q And why was that again?

17 A Because I chose to abstain.

18 Q Why did you choose to abstain again?

19 A Because I felt that was the right thing to do given the
20 adverse relationship we had in the courtroom.

21 Q Okay. So then -- Okay. So then going to PX 379,
22 that's tab three in plaintiff's binder, do you remember?

23 A What tab?

24 Q The small binder.

25 THE COURT: In the small binder.

LAS

Cross-Journey-Peters

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1 THE WITNESS: Okay.

2 Q Do you remember being instructed by -- being instructed
3 at that meeting, "If you are adverse or potentially adverse to
4 the NRA and its legal positions, you must not participate in
5 this executive session and should leave the room now"? Do you
6 remember that?

7 A I thought that was arbitrary and capricious on the part
8 of the chair.

9 Q I didn't ask that. I asked, do you remember receiving
10 that instruction?

11 A Not exactly.

12 Q Okay. Do you have any reason to doubt that it was
13 given?

14 A No.

15 Q Okay. And did you leave the room?

16 A No.

17 Q Okay. So you stayed for executive session even though
18 you were adverse to the NRA and its legal positions, isn't that
19 right?

20 A Yes.

21 Q Okay. And then at that executive session the NRA's
22 bankruptcy lawyers addressed the board of directors as to the
23 bankruptcy, isn't that right?

24 A Yes.

25 Q Okay. And then after that you -- after the board had

LAS

Cross-Journey-Peters

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1 gone out of executive session, you spoke to the board, isn't
2 that right?

3 A Yes.

4 Q Okay. And as we see on page 19, you spoke for quite a
5 while to the board, didn't you?

6 A Well, I suppose that's a matter of opinion. It didn't
7 seem very long to me at the time.

8 Q Okay. And then you were ruled out of order, weren't
9 you, at some point?

10 A Yes.

11 Q Okay. And was that because you were raising matters
12 that had been raised in executive session?

13 A Well, concerning my character was the major part of the
14 executive session you could say that.

15 Q Okay. But in executive session the board was given the
16 opportunity to ask the NRA's bankruptcy lawyers about the
17 progress of the bankruptcy and matters like that, isn't that
18 right?

19 A There was conversation and a question and answer
20 period.

21 Q Then at some point the NRA's bankruptcy lawyers left
22 the room, right, at the end of executive session, isn't that
23 right?

24 A I believe so.

25 Q And then you began to --

LAS

Cross-Journey-Peters

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1 A I really wasn't watching them at the time.

2 Q Okay. And then you started raising matters having to
3 do with the bankruptcy after the NRA's bankruptcy lawyers had
4 left, isn't that right?

5 A What I was attempted to do was respond to several board
6 members questions about why I filed the motion.

7 Q Okay. If we go --

8 A I was not given an opportunity --

9 MR. WANG: Object to counsel interrupting the
10 witness.

11 THE COURT: Hang on a second.

12 A I didn't get the opportunity in executive session to
13 answer the other board members questions.

14 Q And if we go down to page 22 of that exhibit it says
15 here, you said, "I just got this (gesturing) today, 5 million
16 pages of discovery from the bankruptcy case." Do you remember
17 saying that?

18 A Yes.

19 Q Okay. So you were raising matters having to do with
20 the bankruptcy case, weren't you?

21 A If you call having 5 million pages of discovery that, I
22 suppose.

23 Q Okay. And then you were ruled out of order, weren't
24 you, because you were raising matters having to do with the
25 NRA's bankruptcy to which you were adverse to the NRA, right,

LAS

Cross-Journey-Peters

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1 outside of the presence of the NRA's counsel, isn't that right?

2 A No. Willes Lee never explained the basis for the
3 finding that I was out of order. It appeared to me that he
4 wanted to silence me and did not want my fellow board members to
5 know why I filed the motion.

6 Q Were you friends with Sandra Froman?

7 A With what?

8 Q Sandra Froman. Sandy Froman.

9 A Sandy Froman, sure.

10 Q And, in fact, she was very supportive of you coming on
11 the NRA board of directors, right?

12 A It appears so from the e-mail. I know she was chair of
13 the nominating committee. I had never seen that e-mail before
14 either.

15 Q Okay. And you remember she knew you had been
16 associated with the dissident directors, isn't that right, back
17 in the 1990s?

18 A I don't know that I would call them dissidents, because
19 we were a majority until just before the vote.

20 Q That's not what I asked. So, she was aware of your
21 affiliation with Jeff Knox and all those different directors
22 from back in the 1990s, right?

23 A She was familiar with was my stand, meaning we need to
24 follow the board policy. And I believe that Mr. Knox and the
25 other candidate for vice president offered a better opportunity

LAS

Cross-Journey-Peters

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1 for that.

2 Q Understood. And so she supported, knowing that she was
3 head of the nominating committee, and she supported your service
4 on the board of directors, isn't that right?

5 A That's my understanding of what happened, but all I
6 know is hearsay on that topic. An e-mail.

7 Q Okay. So if you look at page 25 of this transcript of
8 this meeting, you see that Ms. Froman addressed the board of
9 directors after you had been ruled out of order, right? Do you
10 see that?

11 A (Examining). Yes.

12 Q Okay. And do you recall her saying that, "I respect
13 Phil Journey's right to address this board, but I would rather
14 if he wants to talk about these things, I think they need to be
15 done in executive session, because they do raise a lot of issues
16 that we did discuss in executive session"? Do you recall
17 Ms. Froman saying that?

18 A Yes.

19 Q So, you were ruled out of order because you were
20 raising things that were discussed in executive session in a
21 matter at which you were adverse to the NRA outside of the
22 presence of the NRA's bankruptcy lawyers, is that correct?

23 A That may be what you want me to say. Reality is in
24 executive session I was not allowed to speak. That they were
25 all screaming at me and yelling at me, and I'm sitting there in

LAS

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1 the table -- at the table watching the lawyers point at me and
2 tell everybody on the board that I'm the NRA's greatest enemy
3 and I'm the one trying to save it.

4 Q Mr. Journey, I ask for a yes or no question. You were
5 ruled out of order because you were attempting to raise those
6 matters?

7 A You'll have to ask Willes Lee. I don't read his mind.

8 Q All right. Turning to PX 2281, that's tab four in the
9 skinny binder. Tab four in the little binder.

10 A The little binder, all right.

11 (Continue on the next page.)

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LAS

Journey - by Plaintiff - Cross/Peters

1540

1 Q Mr. Journey, I asked for a yes-or-no question. Was
2 that -- you were ruled out of order because you were attempting
3 to raise matters that had been discussed --

4 A You'll have to ask Willes Lee why he ruled me out of
5 order. I don't read his mind.

6 Q All right. Turning to page PX 2281 -- that's tab 4 in
7 the skinny binder --

8 A Tab what? The big one?

9 Q Tab 4 in the little binder.

10 A The little binder. All right.

11 THE COURT: This one hasn't been moved yet, or has
12 it?

13 MR. WANG: No objection.

14 MS. CONNELL: It had not been admitted, but no
15 objection from the plaintiff, your Honor.

16 THE COURT: Hang on a second, till you hear the
17 magic words.

18 Any objection?

19 I don't see any, so it's admitted.

20 Now you can put it up.

21 MR. PETERS: Okay.

22 (Image displayed.)

23 Q Now, Mr. -- if we could go to page 9, Mr. Journey, you
24 had testified before that your motion for the appointment of an
25 examiner was never ruled on by the bankruptcy court; isn't that

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Journey - by Plaintiff - Cross/Peters

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1 right?

2 A It was moot once the case was dismissed.

3 Q Okay. But do you see, on page 9, that the court
4 discusses your motion?

5 (Pause.)

6 A It does say that the motion was originally set for
7 March 9th, because we were the first to file a motion in that
8 case. But that date was moved -- I'm sorry. We were the first
9 to file a motion in the bankruptcy case, but that date was moved
10 because the New York Attorney General's motion was dispositive
11 of the case, where mine was not.

12 Q Okay. And if we go to page 35 of that exhibit --
13 (Image scrolled.)

14 Q -- we see that the court is discussing whether to
15 appoint an examiner; don't -- at the top of page 35.

16 Do you see that?

17 A I'm looking.

18 Q And I can represent to you that the beginning of that
19 first sentence is: "On the other hand, if a trustee or an ...

20 A On page 35, where?

21 Q 35, very top: " ... or an examiner ..."?

22 THE COURT: That's at the bottom --

23 You were starting at the bottom of 34, I think.

24 MR. PETERS: That's correct.

25 A Oh. Where the Court says: "If a trustee or an

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Journey - by Plaintiff - Cross/Peters

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1 examiner with expanded powers were appointed, the Court believes
2 the members and other donors who provide financial support to
3 NRA may not continue to support the organization."

4 Q Right.

5 So, does that refresh your recollection as to whether
6 the bankruptcy court found that your motion was not, in fact, in
7 the best interests of the NRA?

8 A Like I said, he never ruled on the motion, so I don't
9 know how you could say he found anything. He mentioned it in
10 passing, in dicta.

11 Q Okay. But the court made a finding, though, that a
12 trustee or an examiner with expanded powers would not be in the
13 best interests of the NRA; isn't that right?

14 A No. You're misleading the Court on what his sentence
15 says. I just read it in.

16 Q Okay. What do you think it says?

17 A I think it says that, "On the other hand, if a trustee
18 or an examiner with expanded powers were appointed, the Court
19 believes the members and other donors who provide financial
20 support to the NRA may not continue to support the
21 organization."

22 Q Right. Okay.

23 So let's go to -- let's turn now to PX 2475,
24 Plaintiff's 2475.

25 MR. PETERS: And I'd like to move this into

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Journey - by Plaintiff - Cross/Peters

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1 evidence, if it hasn't been done already.

2 THE COURT: Where --

3 Is that in any of these (indicating) binders, or
4 no?

5 MR. PETERS: This is not in the binders. This
6 isn't even in my binder.

7 THE COURT: So let's, I guess, turn the monitors
8 off and ...

9 MR. PETERS: Okay. So this is a resolution
10 creating a Special Litigation Committee.

11 Is there any objection to moving this into
12 evidence?

13 MS. CONNELL: One second.

14 MR. PETERS: I'm sorry.

15 MS. CONNELL: Let me just look at it.

16 MR. WANG: No objection.

17 THE COURT: Hearing none on the other side, it's
18 admitted.

19 MR. FLEMING: No objection.

20 (Image displayed.)

21 BY MR. PETERS:

22 Q So, on this --

23 You had testified before, hadn't you, that the Special
24 Litigation Committee was created for the efficient management of
25 all the litigation involving the NRA? Isn't that right?

ALAN F. BOWIN, CSR, RMR, CRR

Journey - by Plaintiff - Cross/Peters

1544

1 A That was Mr. Cotton's representation to the board, yes.

2 Q Okay. But do you understand that the Special
3 Litigation Committee also had a broader purpose than that?

4 A I can't speculate where you're going with that. I
5 don't know what you mean.

6 Q Okay. Well, wasn't one of the purposes of the Special
7 Litigation Committee to cover matters where there's an actual or
8 apparent conflict of interest?

9 A Point me to that. I'm --

10 Q So, if you look at the very last clause of the last
11 sentence (indicating) ...

12 (Pause.)

13 Q So it says --

14 A I see that.

15 Q Okay. So does that refresh your recollection as to
16 whether the Special Litigation Committee was created because
17 there were fears of an actual or apparent conflict of interest?

18 A That was not what I recall being the discussion --

19 Q Okay.

20 A -- or the purpose of it, but I see it in the document.

21 Q Okay. Did you, at any point --

22 So you weren't aware -- you weren't aware of this
23 additional basis for the Special Litigation Committee, were you?

24 A Aware of what?

25 Q This additional basis for the Special Litigation

ALAN F. BOWIN, CSR, RMR, CRR

Journey - by Plaintiff - Cross/Peters

1545

1 Committee, which is to deal with actual or perceived conflicts
2 of interest; right?

3 A I -- I see it now --

4 Q Okay.

5 A -- but like I said, it wasn't part of the discussion on
6 the resolution.

7 Q Okay. And indeed, you had an actual or potential
8 conflict of interest, given your involvement with the bankruptcy
9 litigation; didn't you?

10 A I don't think so. I think I was trying to fulfill my
11 fiduciary duties.

12 MR. WANG: Objection.

13 THE COURT: Overruled.

14 Q Okay. So, on your website, you --

15 So you've set up a website called "Restore the NRA";
16 isn't that right?

17 A I -- others set it up for me.

18 Q Okay. And on that website, you raised donations to
19 beat the attorney general and restore the NRA; isn't that right?

20 A That was the concern at the time, before the court
21 denied that remedy to the attorney general.

22 Q Okay. But the website's still up, right?

23 A Yeah.

24 Q Okay.

25 A Hasn't had any changes since the bankruptcy, although

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Journey - by Plaintiff - Cross/Peters

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1 we're getting ready to do quite a bit.

2 Q Okay. And you're still collecting donations from NRA
3 members and others on that website; aren't you?

4 A Haven't had a -- haven't had a significant donation in
5 two years.

6 Q Okay. But -- so the donations that you received were
7 actually directed to a 501(c)(3) that you borrowed from a friend
8 named Alan Gottlieb; isn't that right?

9 MR. WANG: Objection, your Honor; assumes facts not
10 in evidence --

11 THE COURT: Hang on a second.

12 (Siren heard in courtroom.)

13 THE COURT: You can ask the question. You were
14 saying -- I didn't hear what the objection was because there
15 were a lot of noises going around.

16 MR. WANG: The objection is that it assumes facts
17 not in evidence and it's also outside the scope of the
18 direct examination.

19 THE COURT: Overruled.

20 Q You can answer.

21 A I couldn't hear it with the siren.

22 Q But these donations are actually directed to a
23 501(c)(3) that you borrowed from a friend named Alan Gottlieb;
24 isn't that right?

25 A That's where we sent them at first, that's correct.

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Journey - by Plaintiff - Cross/Peters

1547

1 And then we've already set up our own 501(c)(3) now.

2 Q Okay. And Mr. Gottlieb was convicted of felony tax
3 fraud; wasn't he?

4 A I have no idea.

5 MR. WANG: Objection, your Honor.

6 (No audible ruling.)

7 A You'll have to testify on that yourself.

8 Q Well, did you investigate Mr. Gottlieb yourself before
9 directing NRA members to donate to his nonprofit?

10 A I've known Mr. Gottlieb as long as I've known
11 Mr. LaPierre, and he heads another organization that I
12 participated in to one degree or another.

13 Q Okay.

14 MR. WANG: Your Honor, I object to this line of
15 questioning and move for it to be stricken as irrelevant.

16 THE COURT: Overruled.

17 Q Okay. And what's the other organization that you know
18 Mr. Gottlieb from?

19 A The Second Amendment Foundation, in Bellevue,
20 Washington.

21 Q Okay. And your fund-raising materials don't tell NRA
22 members that their money is going to an organization managed by
23 Mr. Gottlieb, do they?

24 A It says it's going to the 501(c)(3).

25 Q Okay. Did you look at the organization of the Center

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Journey - by Plaintiff - Cross/Peters

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1 for the Defense of Free Enterprise before directing donors to
2 donate to it?

3 A I'm sorry; say that again?

4 Q So the 501(c)(3) that you borrowed from Mr. Gottlieb
5 was called the Center for the Defense of Free Enterprise; isn't
6 that right?

7 A Yes. He actually managed it.

8 I didn't borrow his corporation. I just sent the
9 checks there and he paid them out as I asked, as long as they
10 were in accord --

11 Q Okay.

12 A -- with that entity's bylaws.

13 Q Okay. And you're aware that the board of directors of
14 the Center for the Defense of Free Enterprise consists of
15 Mr. Gottlieb, his wife and his son?

16 A Could be. I didn't look at the founding document of
17 the corporation.

18 Q Would that have bothered you if that was true?

19 A No. I've known his wife and kid for as long as I've
20 known him.

21 Q Okay. Are you aware that the Second Amendment
22 Foundation is being investigated for a related-party transaction
23 involving Mr. Gottlieb?

24 A I think --

25 MR. WANG: Objection.

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Journey - by Plaintiff - Cross/Peters

1549

1 THE COURT: Yeah.

2 I think, now we're getting several steps past where
3 this is legitimate cross-examination of this witness on the
4 topics that are in front of us; so, sustained.

5 MR. PETERS: Okay. Understood.

6 Q Now, when you were -- when you were -- set up your
7 initiative to have -- to restore the NRA and protect it from the
8 attorney general, did you tell the members of the -- did you
9 tell the NRA members who were donating to that effort that you
10 were also speaking with the attorney general?

11 A Those did not happen contemporaneously.

12 Q Okay.

13 A There have been no donations for years.

14 Q Okay. If somebody were to donate now, would you tell
15 that person that you're actually speaking with the attorney
16 general --

17 A There's no joining; there's no application fee.
18 There's just a little GoFundMe page and if somebody wants to
19 send me \$10, they can send \$10 to help pay for lawyers like you.

20 Q Okay. So, if somebody donates to your website, which
21 is active now, to help protect the NRA from the attorney
22 general, do you think you would have any sort of obligation to
23 inform that person that, actually, you're speaking to the
24 attorney general and -- and -- on a regular basis?

25 A I think --

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Journey - by Plaintiff - Cross/Peters

1550

1 MR. WANG: Objection.

2 THE WITNESS: Thank you.

3 THE COURT: Overruled.

4 A I honestly think you're misrepresenting the purpose of
5 the organization that I founded. The purpose of the
6 organization is not to funnel money through that or hurt NRA but
7 try to restore NRA, just as its title is, to proper corporate
8 governance.

9 Q Well, how did -- how do you expect the jury to trust
10 you when you haven't disclosed to donors that your money is
11 going to a 501(c)(3) that's run by Mr. Gottlieb?

12 MR. WANG: Objection, your Honor.

13 THE COURT: Sustained.

14 Q Okay. So, when you -- when you run for the board of --
15 you --

16 You would be up for the board of directors in May of
17 2024; isn't that right?

18 A The election is in about three weeks -- six weeks.

19 Q Okay. In that election, the members will decide
20 whether you're re-elected to the NRA Board of Directors; isn't
21 that right?

22 A Yes, along with about 40 other candidates.

23 Q Okay.

24 MR. PETERS: No further questions, your Honor.

25

ALAN F. BOWIN, CSR, RMR, CRR

Journey - by Plaintiff - Cross/Correll

1551

1 CROSS-EXAMINATION

2 BY MR. CORRELL:

3 Q Good afternoon, Mr. Journey.

4 A Hi.

5 Q Hi. My name is Kent Correll. I represent Wayne

6 LaPierre.

7 A That's how you talk to every judge, too, huh?

8 Q Pardon me?

9 A I said, "That's how you talk to every judge, too, huh?"

10 Q No, sir. It's how I talk to a witness.

11 A Okay.

12 Q Would you please direct your attention to tab 1 of your
13 witness binder?

14 THE COURT: Which one, Mr. Correll?

15 MR. CORRELL: Tab 1.

16 THE COURT: The thin one or the thick one?

17 MR. CORRELL: Oh. The thin one.

18 THE WITNESS: Thank you.

19 Yes.

20 Q Exhibit PX 572.

21 MR. WANG: Mr. Journey, can you speak closer to the
22 microphone, please?

23 THE WITNESS: Thank you. I'm sorry. The books are
24 in the way.

25 Q You testified earlier that you had an opportunity to

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1552

1 review this contract; correct?

2 A A cursory one, yes.

3 Q How long did you spend reviewing the contract?

4 A A couple minutes. That's all they gave me.

5 Q Did someone come and move you off the -- the table

6 that -- where you were sitting?

7 A They were standing behind me, wanting me to move. They

8 wanted to read it, too.

9 Q Did you go to law school?

10 A Yep, just like you.

11 Q Did you take a course in contracts?

12 A Yes.

13 Q How many contracts would you say you've looked at in

14 your lifetime, so far?

15 A Hard to estimate.

16 Q How many pages was the contract that you wanted to look

17 at?

18 A How many pages -- what? This contract?

19 Q How many pages is this contract?

20 A Three, I think? Four.

21 Q Six.

22 A Oh, they're front and back. Okay.

23 (Image displayed.)

24 Q Could you take a look at the first paragraph and read

25 the heading?

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1553

1 A "The Association hereby employs the Employee and" --

2 Q No, just the heading, sir.

3 A Oh. The employment -- "This employment agreement ..."

4 Q Well, the heading is "Employment Agreement."

5 A Um-hmm.

6 Q And then, if you could go to paragraph 1 and read the
7 heading of that paragraph ...?

8 A "Employment."

9 Q Okay. And then the second paragraph ...?

10 A "Duties and Compensation."

11 Q And then, if you would please direct your attention to
12 the fifth paragraph?

13 (Image scrolled.)

14 A Is that in order or number of paragraphs?

15 Q It is on page 3.

16 A Okay.

17 Q It's paragraph 5. Just the heading, please.

18 A "Option to License Name and Likeness; Post-Employment
19 Services."

20 Q And then, lastly, would you take a look, please, at
21 paragraph 8(c) and just read the heading of 8(c)?

22 A 8(b)?

23 Q 8(c).

24 A C, as in cat?

25 Q Yes.

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Journey - by Plaintiff - Cross/Correll

1554

1 A "Entire Agreement."

2 Q When you reviewed the agreement, did you notice -- did
3 you read the headings, at least?

4 A Sure.

5 Q And did you go deeper than the headings?

6 A Tried to.

7 Q So you saw that in the first paragraph --

8 Would you just read that for the jury, if you don't
9 mind? Just the one sentence.

10 A Which one?

11 Q Paragraph 1. The heading is "Employment."

12 A At the front?

13 Q Yes, sir.

14 (Image modified.)

15 A "Employment. The Association hereby employs Employee,
16 and Employee hereby accepts employment with the Association,
17 upon the terms and conditions" herein set forth -- "hereinafter
18 set forth. Terms used herein that are also used in the Bylaws
19 of the Association shall have the same meaning ascribed to them
20 in the Bylaws of the Association."

21 Q Okay. And then --

22 Have you ever read an employment agreement before;
23 before this?

24 A Not too many. I mainly did criminal, as a lawyer and
25 as a judge.

ALAN F. BOWIN, CSR, RMR, CRR

Journey - by Plaintiff - Cross/Correll

1555

1 Q Please take a look -- please direct your attention to
2 paragraph 2, the paragraph with the heading "Duties and
3 Compensation," and would you please read, again, the line that
4 you -- that was read before, that begins with --

5 Well, please read the first two sentences, if you
6 would.

7 A On 2(b)?

8 Q Yes.

9 A "Employee shall be compensated by the Association for
10 all services to be" --

11 Q No, I'm sorry. I -- forgive me. 2(a), the first --

12 A Oh, 2(a).

13 Q 2(a), the first sentence.

14 A "Employee shall serve as the Executive Vice President
15 of the Association and shall direct all the affairs of the
16 Association in accordance with the programs and policies
17 established by the Board of Directors."

18 Q Do you recognize that language?

19 A Sounds like boilerplate to me.

20 Q Well, it's actually language that appear --

21 Well, are you familiar with the NRA Bylaws?

22 A Somewhat.

23 Q Would it refresh your recollection if I told you that
24 that is the language that's taken from the NRA Bylaws with
25 respect to the duties of the Executive Vice President?

ALAN F. BOWIN, CSR, RMR, CRR

Journey - by Plaintiff - Cross/Correll

1556

1 A Wouldn't refresh my recollection, but that makes sense.

2 Q Okay.

3 MR. CORRELL: Could we bring up the Bylaws, please?

4 A Which version?

5 MR. CORRELL: Current version, please.

6 A Those weren't the ones that were in effect at the time
7 of the adoption of the contract. I would suggest we look at the
8 ones at the time of the adoption of the contract.

9 Q Sir, I'm conducting an examination --

10 A Yes, you are.

11 Q -- and the fact --

12 Do you have knowledge that the -- that language of the
13 Bylaws changed between the time you read this contract and now?

14 Are you representing to the jury that the language
15 changed?

16 A You know, you can misconstrue what I -- can misconstrue
17 what I say all you want, but the reality is that I think, if I'm
18 going to interpret this (indicating) contract based on the
19 Bylaws, then I need the set of Bylaws that were in effect at the
20 time of the contract --

21 Q Would you please --

22 A -- and not some other set.

23 Q Excuse me, sir.

24 MR. CORRELL: Ali, would you please bring up --

25 MR. WANG: Your Honor, I'm not sure this document

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1557

1 is in evidence.

2 MR. CORRELL: I think it is.

3 THE COURT: I can't recall, actually.

4 MR. CORRELL: Let's bring it up, not on the screen;
5 Bylaws as of the date January 2021.

6 THE COURT: Hang on a second.

7 MR. CORRELL: I believe it is on the plaintiff's
8 exhibit list.

9 Is that correct?

10 THE TECHNICIAN: This is defense -- this is John
11 Frazer's exhibit.

12 MR. CORRELL: So it's on John Frazer's exhibit
13 list?

14 THE TECHNICIAN: It is.

15 THE COURT: The one that's on the screen is still
16 the 2023 one, right?

17 MS. ROGERS: I think they switched it to the
18 October 2020, which should be the right one.

19 THE COURT: I didn't see the switch.

20 MR. CORRELL: Your Honor, I'd like to do it both
21 ways; I'd like to show the current and then the prior, if
22 that's all right with the witness.

23 THE COURT: Okay.

24 BY MR. CORRELL:

25 Q So let's start with the current Bylaws, the most recent

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1558

1 amendment.

2 MR. CORRELL: Or, if it's easier, Ali, let's go to
3 the one that was in effect in January 2021.

4 MR. WANG: We just don't have an exhibit number on
5 our side.

6 THE COURT: The one that's on the --
7 All right, let's just take stock a second.

8 MR. CORRELL: Excuse me for a second.

9 THE COURT: The one that's on the screen is the
10 date -- the correct date -- for what you're looking for.
11 The only point is --

12 MR. CORRELL: Yes, this (indicating) is it.

13 THE COURT: Do you want to mark it as an exhibit
14 and introduce it or --

15 MR. CORRELL: Yes, I'd like to have it marked as an
16 exhibit and I'd offer it into evidence as the Bylaws of the
17 NRA; a business record.

18 THE COURT: Did we have a number that you want to
19 attach to it?

20 THE TECHNICIAN: JFX 96.

21 THE COURT: So it's already been premarked as
22 JF 96 --

23 MR. FLEMING: JFX.

24 MR. CORRELL: Thank you.

25 THE COURT: -- JFX-96 for identification.

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Journey - by Plaintiff - Cross/Correll

1559

1 Any objections?

2 MR. CORRELL: Any objections?

3 MR. WANG: No objections.

4 THE COURT: All right. That was a long -- that was
5 a long trip to get here --

6 MR. CORRELL: Yes.

7 THE COURT: -- but it's admitted.

8 MR. CORRELL: Please, Ali, direct -- could you show
9 the full cover page of the Bylaws?

10 (Image displayed.)

11 MR. CORRELL: And would you now show the table of
12 contents?

13 (Image scrolled.)

14 BY MR. CORRELL:

15 Q Do you recognize this document?

16 A Yes. Yes.

17 Q And would you direct your attention to Article V, with
18 the heading "Officers"?

19 A In section 2, I see that.

20 Q Yes.

21 And then would you --

22 MR. CORRELL: I'm sorry. To section V, "Officers."

23 (Image scrolled.)

24 MR. CORRELL: If you go back to the table of
25 contents and I'll direct you ...

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Journey - by Plaintiff - Cross/Correll

1560

1 THE TECHNICIAN: Give me one moment. I will.

2 (Image scrolled.)

3 MR. CORRELL: Section 2, "Duties of Officers." So
4 it's Article V, section 2, "Duties of Officers."

5 And if you would scroll down to where you see

6 "Executive Vice President" ...

7 "Executive Vice President." It's below --

8 (Image scrolled.)

9 MR. CORRELL: There it is.

10 (Image modified.)

11 BY MR. CORRELL:

12 Q Mr. Journey, would you please read the language that
13 appears after the words "Executive Vice President" in the
14 heading?

15 A "The Executive Vice President" -- "The Executive Vice
16 President shall direct all the affairs of the Association in
17 accordance with the programs and policies established by the
18 Board of Directors."

19 Q Is that the same language --

20 A "Among his authorities, the" --

21 Q Excuse me, sir. Just the first sentence is fine.

22 A Okay.

23 Q Would you direct your attention back to the employment
24 agreement and to the language you read originally and tell me
25 whether that is, in substance, the same language?

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Journey - by Plaintiff - Cross/Correll

1561

1 A "In" --

2 Q -- in substance, the same language?

3 (Pause.)

4 Q Would you please read the language in section 2(a), the
5 first sentence of the employment agreement, sir, again --

6 A The first sentence --

7 Q -- so the jury can compare it to what's on the screen?

8 A The first sentence:

9 "Employee shall serve as Executive Vice President
10 of the Association and shall direct all the affairs of the
11 Association in accordance with the programs and policies
12 established by the Board of Directors."

13 Q Okay. Would you agree that that's essentially the same
14 language?

15 A There are -- there are some parallels, sure.

16 Q Would you point out the differences?

17 A They're parallel.

18 Q Okay, thank you.

19 Do you have a recollection of the language of the
20 Bylaws being any different back in -- well, during any time
21 during which you were serving on the board of directors of the
22 NRA?

23 Have you ever known this language to be different in
24 the Bylaws?

25 A I don't know what other versions have, off -- from

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Journey - by Plaintiff - Cross/Correll

1562

1 memory, because they go over 30 years ago.

2 Q Would you please read the next sentence, starting with
3 "Among his authorities ..."?

4 MR. CORRELL: And, Ali, would you please bring that
5 up on the screen?

6 (Image displayed.)

7 A "Among his authorities, Employee shall be empowered to
8 exercise corporate authority in furtherance of the mission and
9 interests of the NRA, including, without limitation, to
10 reorganize or restructure the affairs of the Association for the
11 purpose of cost minimization, regulatory compliance or
12 otherwise."

13 Q Okay. And when you read this, did you see that
14 language?

15 A Yes.

16 Q Okay. When you read this, did you see the language
17 that appeared below that, in paragraph 2(b)?

18 A "Employee shall be compensated by the Association for
19 all services to be rendered pursuant to this agreement as
20 follows:"

21 Q And read the first -- B(1), please?

22 A "The Association shall pay Employee a Base Salary at
23 the rate of \$1,300,000 per year (the 'Base Salary')."

24 Q And did you see that when you reviewed this contract?

25 A Yes.

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Journey - by Plaintiff - Cross/Correll

1563

1 Q Did you make any comment to anyone about that?

2 A Well, I remembered, when I was on the board the first
3 time, his salary was about 120,000. I think I said that to my
4 seat mate.

5 Q Did you vote against this agreement?

6 A No.

7 Q You voted for the agreement; correct?

8 A Yes.

9 Q So did you --

10 Well, you must have viewed that figure as a reasonable
11 figure for compensation; correct?

12 A I was told that it was a significantly smaller figure
13 than the previous contract.

14 Q Who told you that?

15 A The chair. Mr. Cotton, I believe, was in the chair
16 [sic] at that time.

17 Q Could you direct your attention to page 4 of this
18 agreement, please?

19 (Image scrolled.)

20 MR. CORRELL: And, Ali, would you please highlight
21 paragraph 8(c)?

22 (Image modified.)

23 Q Could you please read the heading and --

24 A "Entire Agreement"?

25 Q Yes. And then the language that follows?

ALAN F. BOWIN, CSR, RMR, CRR

Journey - by Plaintiff - Cross/Correll

1564

1 A "This agreement contains the entire understanding
2 between the parties hereto and supersedes any prior
3 understanding, memoranda, or other written or oral agreements
4 between" the respecting -- "between them respecting the within
5 subject matter. There are" --

6 Q "The within subject matter" was employment agreement;
7 correct? That was the subject of this --

8 A That is my understanding of what it refers to, the four
9 corners of the contract.

10 Q Right.

11 And that if you direct your attention to paragraph 5,
12 would you read the caption again of paragraph 5?

13 A "Option to License Name and Likeness; Post-Employment
14 Services."

15 Q So this contract covered the subject of employment and
16 also post-employment services; correct?

17 A It appears to.

18 Q So, under the Entire Agreement clause, this agreement
19 superseded all prior agreements relating to either of those
20 subjects; correct?

21 A That's my understanding.

22 Q And given that fact, did you still feel the need to
23 demand a copy of all prior agreements, knowing that they were
24 superseded?

25 A I still wanted to see what they were; yes.

ALAN F. BOWIN, CSR, RMR, CRR

Journey - by Plaintiff - Cross/Correll

1565

1 Q Did you pursue that request with anyone?

2 A Yes; with Mr. Frazer.

3 Q And for how long did you pursue that?

4 A In the meeting.

5 Q And after that, did you ask anyone else?

6 A He said I had to go to Virginia to go look at it. He
7 didn't bring it to the meeting.

8 Q Isn't that a basic corporate policy, to require people
9 to come to headquarters to -- or corporate offices -- to review
10 documents?

11 A No.

12 Q And --

13 A What is -- what is standard corporate procedure is to
14 bring the books to the meeting so that any board member can
15 review those documents, such as board policies, during the
16 meeting.

17 Q And, sir, what's the basis of that statement, that it
18 is policy to do that? What's the basis of your statement?

19 A My experience on the board of directors the first term.
20 That's how we did it then, in '95 to '98.

21 Q And --

22 A It was Mr. Land's job to bring those basis documents,
23 and he brought those documents to the meetings; every board
24 meeting.

25 Q Did you understand that this contract, on its face,

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1 provided for an option for the NRA to use the name and likeness
2 of Wayne LaPierre after he left its employ?

3 A Yes.

4 Q Did you understand what was reflected in this agreement
5 in that respect?

6 A I believe I understood it at the time, yes.

7 (Continued on next page.)

8

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ALAN F. BOWIN, CSR, RMR, CRR

Cross-Journey-Correll

1567

1 Q Did you believe there was value to the corporation to
2 have Wayne LaPierre use -- allow the corporation to use his name
3 and likeness in raising money in the future if he were to depart
4 from the NRA?

5 A I think that it was probably more feasible at that time
6 than it is now but yes.

7 Q So there was a benefit to the corporation that you saw
8 at the time?

9 A Potential. Potential.

10 Q So, cutting to the chase, after reviewing the contract,
11 for however much time you had to review it with your legal
12 background, you made an assessment that this contract was in the
13 best interest of the corporation, correct?

14 A Yes. I believe so.

15 Q And that's why you voted to approve it, correct?

16 A Yes.

17 Q And was it approved unanimously?

18 A No.

19 Q How many people voted against it?

20 A It said on -- I believe you must have had Mr. Frazer's
21 copy, because I recognize his handwriting on it. And it said
22 that Sandy Froman had abstain. The real topic of discussion was
23 which state's laws would apply in the contract. Whether it was
24 New York, Virginia. They hadn't put that in the contract. So
25 they needed to change it.

LAS

Cross-Journey-Correll

1568

1 Q Sir, could you direct your attention to tab three of
2 the small binder, please. This would be the minutes of the --

3 A Certainly.

4 Q -- proceedings that you were questioned about earlier.

5 A Yes.

6 Q Please direct your attention to page 10 of that
7 Exhibit, 10 of 32, on the bottom.

8 A Yes. (Examining).

9 Q Would you please read the language, read what it says
10 at the top after the words "Mr. Cotton".

11 A "At this time if there is anyone who is adverse or
12 potentially adverse to the NRA and its interest as described by
13 board counsel, the chair would ask you to exit the hall at this
14 point."

15 Q And had board counsel informed you that he viewed your
16 interest as adverse or potentially adverse to the NRA?

17 A No, Net Witt never called me to talk to me about this.

18 Q And --

19 A Witt Davis.

20 Q And as a lawyer did you come to any conclusion as to --
21 did you have any view as to whether this language might apply to
22 you?

23 A On advice of counsel, I attended the meeting.

24 Q I'm not sure what that answer means, sir. Did you know
25 that you had an adverse or potentially that you were adverse or

LAS

Cross-Journey-Correll

1569

1 potentially adverse to the NRA because you had filed a motion to
2 seek an examiner in the bankruptcy proceeding?

3 A I don't believe the supposition in your question is
4 accurate. I believe if I'm fulfilling my duty as a director,
5 that I'm not adverse to the association. Only the individual
6 defendants in this suit or in the bankruptcy.

7 Q Sir, would you read the next line. It says "No
8 response", correct?

9 A That's what it says.

10 Q So, you made no response to this statement, correct?

11 A I didn't need to, because on advice of counsel, I had a
12 legal authority to attend the meeting.

13 Q Would you please read what Mr. Cotton said next?

14 A "Since no one has exited, the Chair presumes that you
15 understood the instructions from board counsel and that you will
16 keep all this information confidential."

17 Q Did you understand that it was presumed that you
18 understood the instructions of board counsel and you would keep
19 all of this information confidential?

20 A Yes.

21 Q And did you?

22 A Yes.

23 Q Please take a look at the next entry. It says, "a
24 voice from the board". It said -- Could you please read that
25 language?

LAS

Cross-Journey-Correll

1570

1 A (Examining). "Voice from the board. Did we move to go
2 into executive session."

3 Q Read the next one, please.

4 A "Not yet."

5 Q And then the next one.

6 A "Without objection we're going in executive session."

7 Q All right. Good. Now let's flip over to page 15. Now
8 after executive session did Mr. LaPierre make a statement to the
9 assembled directors as to the --

10 A I'm sorry. What page?

11 Q Fifteen of 32. That's right after 14 of 32.

12 A Okay. There we go.

13 Q Do you recall that Mr. LaPierre made a statement to the
14 directors at that point after you came out of executive session?

15 A (Examining). I remember that.

16 Q Would you please read the language that appears at the
17 top before Mr. LaPierre starts to speak.

18 MR. WANG: Objection, your Honor. This material
19 goes to an objection we raised previously that was
20 sustained.

21 MR. CORRELL: Your Honor, I disagree. This is his
22 recollection as what -- as to what was said at this meeting
23 and it goes to his state of mind in deciding to stay in the
24 meeting and also to vote the way he did in response to the
25 matters before the board.

LAS

Cross-Journey-Correll

1571

1 MR. WANG: He just asked him to read it.

2 THE COURT: The objection as it relates to a claim
3 that's no longer in the litigation.

4 MR. WANG: Correct.

5 MR. CORRELL: Your Honor, he's speaking to the
6 board about this very vote that is before the board that has
7 been the subject of examination for quite a while now. I
8 don't know how we can keep this from the jury.

9 THE COURT: Well, look, this is an exhibit that's
10 been introduced by the Attorney General. I think I can
11 explain this, if there is any confusion about it. So, I'll
12 overrule it.

13 MR. CORRELL: Thank you, your Honor.

14 Q Mr. Journey, will you please read the first two
15 sentences?

16 A See what?

17 Q Read the first two sentences, please.

18 A Now, we can provide some information later. Like I
19 say, the lawyers in here, and this is going to give you a lot of
20 information. First I would ask Wayne if you would please give
21 us a few words."

22 Q Now, Mr. Journey would you please read us what Mr.
23 LaPierre said to you and the other directors as you were
24 standing up?

25 A "Thank you, Mr. President."

LAS

Cross-Journey-Correll

1572

1 MR. WANG: I'm making another objection here for
2 the record. The transcript speaks for itself.

3 THE COURT: Look, this is part of the factual
4 story. So, all parties have had witnesses read into the
5 record things that are in the exhibits. It may not be the
6 most efficient use of our time, but I don't see an objection
7 to it. Go ahead.

8 Q Please read the words that Mr. LaPierre spoke to you
9 and others on that day.

10 A "Thank you, Mr. President. I'll be really short,
11 because you'll hear from me later as we go on. This is a fight
12 that we're in for the life of The National Rifle Association.
13 The New York Attorney General wants to dissolve the NRA and
14 dissolve the Second Amendment", that's absolutely no doubt about
15 that -- "there is absolutely no doubt about that. We're in a
16 fight to the death with the New York AG, the Washington AG, the
17 Biden Administration Justice Department. So, we need all of you
18 today in this room to help save The National Rifle Association
19 and save the Second Amendment. I mean, so many of you, most of
20 you on this board have been with us all along on this journey to
21 fight the fight, save the Second Amendment, save our freedoms.
22 We really need you today.

23 It's more important than ever, therefore going to save
24 our freedoms, and we need to be united as we go forward today.
25 There has never been a time when we need more to be united.

LAS

Cross-Journey-Correll

1573

1 Thank you, Mr. President, and let's go forward."

2 Q Thank you, Mr. Journey.

3 MR. CORRELL: You can take this one down.

4 Q Mr. Journey would you please -- Actually, would you
5 please direct your attention to --

6 MR. CORRELL: You can take it down.

7 Q Mr. Journey, do you recall testifying earlier that you
8 were not told why you were out of order?

9 A I remember being asked to speculate what the purpose or
10 what the reason or justification was for being called out of
11 order. I don't remember hearing one.

12 Q Is that your testimony, that you were not told why you
13 were ruled out of order?

14 A I said, I don't remember hearing one.

15 Q Please direct your attention to page 23 of 32. And
16 would you please read your words and then the words of Mr. Lee
17 that followed your words?

18 A What page?

19 Q Page 23 of 32.

20 A Twenty-three, okay.

21 MR. CORRELL: Can we please highlight that
22 language.

23 Q Would you please read the words starting at, "This is
24 my point of personal privilege".

25 MR. CORRELL: Can you find that? There we go.

LAS

Cross-Journey-Correll

1574

1 Q Would you start after "Mr. Lee. Mr. Journey." So,
2 you're recognized at that point, correct?

3 A What page is that on?

4 Q Twenty-three of 32, sir.

5 A Twenty-three. (Examining).

6 Q Line 12.

7 A Thank you.

8 Q Okay. Actually start with line 11. Would you please
9 read what occurred on that date?

10 A "Mr. Lee, line 11. Mr. Journey, line 12. Mr. Journey.
11 This is my point of personal privilege. Mr. Lee." You don't
12 have counsel in the room -- Oh, "We don't have counsel in the
13 room. You're out of order. "

14 Q Does that refresh your recollection as to whether you
15 were informed why, for the reason why you were ruled out of
16 order?

17 A It still doesn't make any sense to me today either.

18 Q Sir, are you a parliamentarian?

19 A I do have a copy of Roberts Rules of Order. I have --
20 I have been a parliamentarian at several meetings in the past.

21 Q A parliamentarian was present at this meeting, correct?

22 A Yes.

23 Q Did the parliamentarian intervene?

24 A No.

25 Q Do you believe the parliamentarian had something

LAS

Cross-Journey-Correll

1575

1 against you that would cause that parliamentarian to apply the
2 rules unfairly to you?

3 A Considering that his employee probably wanted to make
4 officers happy. I don't sign his checks.

5 MR. CORRELL: No further questions. Thank you.

6 MR. WANG: Your Honor, just to clean up an exhibit
7 issue. JFX 96, we have no objection to that exhibit being
8 admitted for the October 2020 bylaws, but that document
9 itself contains all the bylaws from 1953. We only had no
10 objection to the bylaws from October 2020. I know because
11 of the microphone you had difficulty hearing that. So,
12 would you like me to repeat it?

13 THE COURT: I think what I got was that the exhibit
14 has multiple sets of bylaws in it.

15 MR. WANG: Yes. We were not aware that JFX 96 had
16 multiple decades worth of bylaws in it. We weren't -- So
17 we're --

18 THE COURT: Your objection, I assume, is the other
19 ones are not relevant?

20 MR. WANG: Correct.

21 MS. CONNELL: We just -- Excuse me, your Honor. We
22 just want the record to be clear. It appeared that only the
23 bylaws from 2020 were admitted. If the Court wants the
24 massive bylaws of 1953 to the present admitted, we don't
25 have an objection to that. But to be clear that's JFX --

LAS

Cross-Journey-Coutu

1576

1 THE COURT: I have no horses in that race. I don't
2 see a need to have an exhibit that's hundreds of pages long,
3 if all we're really getting at was to get the October 2020
4 version.

5 MR. CORRELL: This one is -- this one is easy, your
6 Honor. We would stipulate the exhibit will be limited to
7 that particular set of bylaws.

8 MS. CONNELL: Thank you, your Honor. We want the
9 record to be clear. We know later it can be confusing.

10 THE COURT: Yeah. You folks are the ones who have
11 to keep track of this. If the jury, for whatever reason,
12 decides during deliberations that they simply must see the
13 2020 bylaws, I'm going to be asking you to provide that. So
14 just remember that that exhibit is limited to that set of
15 bylaws.

16 MR. CORRELL: Thank you, your Honor.

17 THE COURT: Okay. Ms. Coutu.

18 CROSS EXAMINATION

19 BY MS. COUTU:

20 Q Just a few questions. First off, good afternoon
21 Mr. Journey. My name is Lisa Coutu, and I represent Wilson
22 Phillips in this action. So, earlier with Mr. Wang you had
23 testified to -- that you served on the board of directors from
24 1995 to 1999, right?

25 A No. 1995 to '98.

LAS

Cross-Journey-Coutu

1577

1 Q '98, excuse me. And then you also were asked some
2 questions regarding the differences from when you were on the
3 board from 1995 to 1998 versus 2000 to 2002, is that correct?

4 A From -- No, from 2020 to 2023.

5 Q 2020 to 2022, thank you. And you talked about certain
6 differences where it was better in the 90s than it was in 2020
7 to 2022, do you remember that?

8 A Yes.

9 Q And you talked about some of those differences were
10 effectiveness of oversight?

11 A I think more about the mechanics of the board meeting
12 and the access to information while it was constrained from time
13 to time, it was more forthcoming in the '90s.

14 Q Okay. And in the '90s Mr. Phillips was the CFO and
15 treasurer, right?

16 A Yes.

17 Q Okay. And then you were re-elected in 2020?

18 A Yes.

19 Q And Mr. Craig Spray was the CFO and treasurer at that
20 time?

21 A Yes.

22 Q And Mr. Phillips retired in 2018, right?

23 A I don't know. I wasn't there then.

24 Q He was retired by the time you came back in 2020?

25 A He wasn't there in '19, that's for sure.

LAS

Cross-Journey-Coutu

1578

1 Q Okay. So from 1999 through 2019 you were not on the
2 NRA board of directors, right?

3 A From 20 -- I rolled off the board in 1998 after -- You
4 read the bylaws, the term is from members meeting to members
5 meeting. Three members meetings. So, it's not like three
6 years. This last term was like two years and four months
7 because of the way they moved the members meetings around with
8 COVID. But there are differences, yeah.

9 Q Okay. So my question, Mr. Journey, was you were not on
10 the NRA board of directors from the years 1999 through 2019,
11 correct?

12 A That's correct.

13 Q Okay. And you were not on the audit committee for the
14 NRA from 1999 in 2020?

15 A No. I was never on the audit committee.

16 Q And then you were also not on the finance committee
17 from 1999 through 2019, correct?

18 A That's correct.

19 Q Okay. You were not an officer of the NRA from 1999
20 through 2019, correct?

21 A No, but I attended the meetings.

22 Q Okay. But you were not actually an officer when you
23 attended those meetings?

24 A No, just a member.

25 Q Okay. And you were not also on the staff of the NRA in

LAS

Cross-Journey-Coutu

1579

1 the finance department from 1999 through 2019, correct?

2 A No, I've never been on the finance staff.

3 Q Okay. Not the treasurer's office either?

4 A No. Never been an employee. Almost got a job once,
5 but that was a long time ago.

6 Q During those span of years you were not an officer, you
7 were not on the board of directors and you were not on those
8 committees, correct?

9 A That's obvious. Yes.

10 Q Okay. No further questions. Thank you.

11 MR. FLEMING: No questions, your Honor.

12 THE COURT: Anything further, Mr. Wang?

13 MR. WANG: Brief redirect.

14 THE COURT: Sure.

15 MR. WANG: May I proceed, your Honor?

16 THE COURT: Sure.

17 REDIRECT EXAMINATION

18 BY MR. WANG:

19 Q Mr. Journey, counsel for the NRA, Mr. Peters, asked you
20 some questions about monies donated to help pay for the examiner
21 motion. Do you recall that testimony?

22 A Yes.

23 Q Did you ensure that the monies donated for the examiner
24 motion went to the actual costs of that motion?

25 A Yes.

LAS

Redirect-Journey-Wang

1580

1 Q Mr. Peters also asked you about the bankruptcy court's
2 decision. Do you recall that testimony?

3 A Yes.

4 Q I'll ask you to open up tab four, which is PX 2281 in
5 your small, white binder.

6 A Yes.

7 Q Can you turn to page 37.

8 A Okay.

9 (Whereupon the witness complied with the above
10 request of counsel.)

11 A Got it.

12 Q Right towards the bottom of the page there are some
13 bolded language. "It is therefore. It is therefore. It is
14 further ordered." Do you see that language?

15 A Yes.

16 Q The second bolded paragraph begins, "It is further
17 ordered that the examiner motion is denied as moot." Do you see
18 that language?

19 A Yes.

20 Q Is that your recollection of what the end result of
21 your examiner motion was?

22 A That's what I said earlier too.

23 Q Directing your attention to the top of the page, the
24 second paragraph where -- I'll ask you to read the second
25 paragraph of this decision.

LAS

Redirect-Journey-Wang

1581

1 A "The Court finds that the NRA did not file the
2 bankruptcy petition in good faith, because this filing was not
3 for a purpose intended or sanctioned by the bankruptcy code.
4 Therefore, cause exists under Section 1112(b) to dismiss this
5 case, which the Court finds is in the best interest of the
6 creditors and the state."

7 Q I'll ask you to read the last sentence of the first
8 paragraph as well.

9 A Last sentence of what?

10 Q Yes. The last sentence of the first paragraph.

11 A The last sentence of the first paragraph?

12 Q Yes.

13 A "The Court agrees with the New York AG that the NRA is
14 using this bankruptcy case to address a regulatory enforcement
15 problem not a financial one."

16 Q Did you agree with the judge on this, on this
17 determination?

18 A At that moment in time I believe that was true, but I
19 didn't think that was how it was going to go in the future.

20 Q I'll ask you to turn to tab one.

21 A In the little book?

22 Q In the little book. PX 572. Was it your understanding
23 that this employment agreement had more favorable terms than
24 earlier agreements?

25 A Yes.

LAS

Redirect-Journey-Wang

1582

1 Q And how did you come to that understanding?

2 A That was -- I relied on the representation of the
3 officer.

4 Q Which officer?

5 A I believe it was Mr. Cotton, who was in the chair at
6 that time.

7 Q And do you still believe today that it was in the NRA's
8 best interest?

9 A Yes.

10 Q You believe today that this employment agreement was in
11 the best interest of the NRA?

12 A That's why I voted for it.

13 Q I'll ask you to turn to tab three.

14 A Yes.

15 Q You were asked questions about Ms. Froman saying that
16 you had a right to speak. Do you recall that?

17 A Ms. Froman what?

18 Q Ms. Froman making a statement that she believed you had
19 a right to speak. Do you recall being asked that?

20 A Yes. Yes. Yes.

21 Q I'll ask you to turn to page 26.

22 A Thank you. Yes.

23 Q After Ms. -- after Ms. Froman spoke, right at the top
24 of line six, what did Mr. Lee do?

25 A Mr. Lee said, "Thank you, Ms. Froman. Thank you."

LAS

Redirect-Journey-Wang

1583

1 Q And did he ask for a closing prayer?

2 A Oh "And that Lieutenant Governor, could we please have
3 a closing" -- "could we please have a closing prayer."

4 Q Did Lieutenant Colonel Lee return the session, the
5 meeting to executive session so that you could finish your point
6 of privilege?

7 A No.

8 Q You were asked some questions about your motion for
9 examiner. Do you recall those questions?

10 A Yes.

11 Q At the time you filed the motion for examiner, how
12 many -- how many people were with your group for that motion?

13 A Let's see. Rocky, Buzz.

14 Q At the time of the motion.

15 A At the time of the motion. Oh, someone joined after
16 that.

17 Q Who joined after you filed the motion?

18 A Oh, I would have to guess on that one. I'm not really
19 sure where that falls in the timeline. I know I was trying to
20 recruit them.

21 Q Not when. Who.

22 A Who, okay. So the ones that joined the motion were
23 Rocky and Buzz and Esther and one that passed away. I think it
24 might have been --

25 Q Mr. Skeleton? Mr. Skeleton?

LAS

Redirect-Journey-Wang

1584

1 A Yes. Thank you. Yes. Bart.

2 Q Did those individuals join after you had initially
3 filed that motion?

4 A I believe that's so, because we had that motion on file
5 pretty quick.

6 Q One moment.

7 A Sure.

8 Q The employment agreement, which is tab one, PX 572, did
9 you believe that this employment agreement gave Mr. LaPierre the
10 authority to file for bankruptcy?

11 A No.

12 Q At the March 28th, 2021 meeting, the board had not yet
13 approved the bankruptcy, is that right?

14 A That's correct.

15 Q If you were aware that the employment agreement was
16 going to be used to give Mr. LaPierre the authority to
17 unilaterally place the NRA into Chapter 11, would you have
18 viewed it as in the best interest of the NRA?

19 A That's speculative. I -- I really don't know. Really
20 the problem was the process the board was not apprised of.
21 Treasurer wasn't apprised of. The general counsel wasn't
22 apprised of it. It was a hair brain scheme that didn't work out
23 real well.

24 MR. WANG: Nothing further, your Honor.

25 THE COURT: Anything further?

LAS

PROCEEDINGS

1585

1 MR. CORRELL: Just something short.

2 MR. PETERS: Mr. Peters for the NRA. We have
3 nothing further, your Honor.

4 THE COURT: Okay. Mr. Correll.

5 MR. CORRELL: Your Honor, I would like to have
6 marked for identification WLX, I think it was 222, which is
7 electronic, but I have a paper copy. It is a copy of a
8 transcript from -- of the status conference before the
9 Honorable Harlin DeWayne Hale of the United States
10 Bankruptcy Court Chief Judge. It's part of the record of
11 the case that's already in with its opinion. I would ask
12 the Court to take judicial notice of it.

13 THE COURT: Does it go to an issue that was raised
14 on --

15 MR. CORRELL: Yes, it does. Precisely to the
16 issue.

17 THE COURT: Does counsel have a copy of it?

18 MR. CORRELL: I think they are familiar with it.
19 It's been quoted many times in papers.

20 MR. PETERS: We don't have any objection to it.

21 THE COURT: You have to turn the mike on.

22 MR. PETERS: My apologies. We don't have any
23 objection to this being in evidence.

24 MS. CONNELL: Your Honor, we do have an objection.
25 This is -- this is a partial -- I assume counsel is going to

LAS

PROCEEDINGS

1586

1 do a partial reading of the transcript in this case. A
2 decision has been admitted. It speaks for the judge's
3 decision. But having what parties said at a prior
4 proceeding I think is misleading. It's outside the scope,
5 and it's going very far afield of the bankruptcy, which then
6 we'll have to go far afield.

7 MR. CORRELL: Your Honor, she's misrepresenting the
8 document. It's the judge speaking, not the parties. May I
9 approach?

10 THE COURT: Thank you. (Examining).

11 MS. CONNELL: Mr. Correll, did that have an exhibit
12 number?

13 MR. CORRELL: Yes. It's WLX 222.

14 THE COURT: So it's just this section that you want
15 to read?

16 MR. CORRELL: Yes, unless anyone wants the whole
17 document for context. This is the judge speaking to the
18 issue that was raised in his opinion, where counsel tried to
19 mischaracterize it as a bad faith finding.

20 MS. CONNELL: Your Honor, I don't think this was on
21 their exhibit list. It's not impeachment. I don't
22 understand.

23 THE COURT: I get it. I'll allow it.

24 MR. CORRELL: Thank you, your Honor. So I would
25 like to move it into evidence. Is it in?

LAS

PROCEEDINGS

1587

1 MS. CONNELL: The whole transcript is going to be
2 moved into evidence?

3 MR. CORRELL: I think for completeness.

4 THE COURT: I think in part -- Are you asking --
5 There was some testimony from the witness about this issue
6 of faith. And there has already been some back and forth on
7 it. Are you going to show it to him to refresh his
8 recollection about what the judge found?

9 MR. CORRELL: No. I would like to, because the AG
10 put in Judge Hale's opinion, this is clarifying his opinion
11 to dispel the notion that the phrase lack of good faith in a
12 bankruptcy context means bad faith.

13 MS. CONNELL: Your Honor, the NRA put in Judge
14 Hale's decision. Judge Hale's decision speaks for itself
15 and says specifically about the lack of good faith talking
16 about the filing of the bankruptcy. That's it. So if we're
17 going to open that door, that door is pretty wide.

18 THE COURT: Look, I think in the end of the day
19 this is sort of an odd distinction to be fighting about.
20 And the witness, actually I think it got on the record, this
21 is about the difference between lack of good faith and bad
22 faith.

23 MR. CORRELL: Lack of good faith under the
24 bankruptcy code within the meaning of the bankruptcy code
25 and then lack of good faith under any statute or bad faith,

LAS

1588

1 which is a distinction.

2 THE COURT: Right. I don't think this is going to
3 lead to a long, drawn out affair. But if you want to put
4 something in, and I think the witness has already said it,
5 to make the point that in the wonderful and strange world of
6 bankruptcy, a finding of lack of good faith is not the same
7 thing as a finding of bad faith. Is that your point?

8 MR. CORRELL: Yes.

9 THE COURT: Which they have now heard from me.

10 MR. CORRELL: Well, your Honor, we can limit it to
11 line 16 through 21 if that would be more palatable.

12 (Continue on the next page.)

13

14

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LAS

Journey - by Plaintiff - Recross/Correll

1589

1 MS. CONNELL: Your Honor --

2 THE COURT: Look, I -- it's, I think, of really
3 little relevance, but at this point, now, the jury has heard
4 a little bit about this, so I would --

5 I'll just tell you, the judge made a distinction
6 between, you know --

7 Can I have that?

8 MR. CORRELL: Sure (handing).

9 THE COURT: So what this is about, and I don't
10 think there's any need to have it be a question-and-answer
11 session: The judge says in the transcript, in part:

12 "The words 'bad faith' were used this morning in
13 our discussions. I am not certain, but I don't think that
14 term actually appears in the opinion. It certainly is not
15 the reason that the case was dismissed. This case was
16 dismissed for a lack of a bankruptcy purpose and lack of
17 good faith."

18 Right?

19 MR. CORRELL: Yes.

20 THE COURT: So --

21 MR. CORRELL: And there's, I think, one more
22 sentence that clarifies the --

23 THE COURT: And then he says he wants everyone to
24 know that "we spent a substantial amount of time on
25 distinguishing the reasons for dismissing the bankruptcy

ALAN F. BOWIN, CSR, RMR, CRR

Journey - by Plaintiff - Recross/Correll

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1 case. The reasons for dismissal of this case were
2 painstakingly made."

3 So --

4 MR. CORRELL: That's it, your Honor.

5 THE COURT: -- to the extent it matters, in the
6 bankruptcy world, at least, there is a difference. A judge
7 can dismiss a bankruptcy, and this judge did, after a
8 finding that it was not -- the bankruptcy filing was not --
9 made in good faith. That is different than a finding that
10 it was made in bad faith.

11 I don't know that I can explain it any more than
12 just saying that that's what the bankruptcy rules are -- how
13 they are construed. Okay?

14 So I think the judge was making the point that "You
15 shouldn't use 'bad faith' to describe what I found; I found
16 a lack of good faith."

17 MR. CORRELL: Thank you, your Honor.

18 In the bankruptcy context.

19 THE COURT: In the bankruptcy context. In that
20 bankruptcy context.

21 So, with that --

22 MR. CORRELL: That's it, your Honor.

23 THE COURT: -- any further questions?

24 MS. COUTU: No, your Honor.

25 MR. WANG: Nothing further.

ALAN F. BOWIN, CSR, RMR, CRR

Proceedings

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1 THE COURT: Okay.

2 Sir, you're free to go.

3 THE WITNESS: Thank you.

4 THE COURT: Thank you.

5 I'm going to give the jury a break now, while we
6 set up for the next witness.

7 COURT OFFICER: All rise. Jury exiting.

8 (The jury left the courtroom.)

9 THE COURT: Just one logistical thing:

10 I got -- my law clerk sent me the e-mail about the
11 Meadows exhibits and the list of exhibits as to which I
12 should tell the jury that they are not being offered for the
13 truth; and that, as I'm reading this e-mail, is PX 2649,
14 which is an e-mail to Mr. Frazer. "It is not being offered
15 for the truth of its contents but for a nonhearsay purpose."
16 This is plaintiff's response to the objection.

17 PX 705, similarly, the article is not being offered
18 for the truth of its contents.

19 Same for PX 3231.

20 Same for PX 2263.

21 Same for PX 2988.

22 So I will -- what? -- before we start the playback,
23 just make that point? Is that the best time to do it?

24 MS. CONNELL: I think that makes the most sense,
25 rather than stopping the playback.

ALAN F. BOWIN, CSR, RMR, CRR

Proceedings

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1 Your Honor, can I just put one thing on the
2 record --

3 THE COURT: You can.

4 MS. CONNELL: -- my objection to the reading from
5 the bankruptcy transcript, that last reading, and the
6 instruction to the jury.

7 My concern is, what Judge Hale was saying -- why I
8 was objecting to that was that he didn't believe there was a
9 construct, in the bankruptcy rules for dismissal, of "bad
10 faith." Not that he'd made a finding that there was no bad
11 faith but the question for a motion to dismiss is whether a
12 bankruptcy is commenced in good faith.

13 THE COURT: No, I -- that was certainly what I was
14 intending to convey, is that the opinion couldn't be
15 construed as a finding of bad faith, because that's not what
16 the question was.

17 MS. CONNELL: Right.

18 I'm just --

19 THE COURT: I also didn't say, very carefully, that
20 he found that it wasn't in bad faith.

21 I mean, this whole, you know, riddle wrapped in an
22 enigma about the difference between those two things is not
23 something that this jury should spend a lot of time being
24 vexed about.

25 MS. CONNELL: I agree completely, your Honor.

ALAN F. BOWIN, CSR, RMR, CRR

Proceedings

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1 THE COURT: Which was my intention, to basically
2 say, "Don't worry about this wordplay between the two
3 things; it doesn't matter."

4 MS. CONNELL: I'm just concerned.

5 And the reason I'm noting my objection is -- I'm
6 not asking for anything curative to be done, but I am
7 concerned, once I look back at the transcript, that they
8 were left with the impression that the jury -- that the NRA
9 -- could have been fined -- could have been found to have
10 filed in bad faith. That wasn't something that was on the
11 menu. What it was is that they didn't file in good faith.
12 And I don't want them left with that impression.

13 The order is very clear. It was a finding of no --
14 not filed in good faith under the Bankruptcy Code. That's
15 why I was urging the Court to stick to that.

16 But that's fine. I just wanted my objection for
17 the record.

18 THE COURT: My view was, at that point, so much had
19 been said in front of the jury that they were going to be --
20 there was the potential for them to be -- super-confused and
21 think that maybe there was something that they needed to
22 know about, and my goal was to say that -- that, frankly,
23 the use of "bad faith" is probably imprecise, but it's also
24 not something that is, sort of, an outrage. It's just kind
25 of a quirky thing in the Bankruptcy Code, and I think they

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1 got it.

2 Look, if you look through the transcript and you
3 think that, somehow, I conveyed that bad faith was on the
4 menu, I'll -- I'll think about doing it. I -- I suspect
5 that it would be elevating the issue to an importance that
6 it doesn't really deserve, because I -- I don't really --
7 I've never understood why anyone thought this issue cut in
8 their favor or against them, in any way. It's just
9 complete -- you know, I think -- outside the bankruptcy
10 world, I don't think anybody really takes much thought about
11 what "lack of good faith" and "bad faith" mean.

12 Anyway, I'll stop because I don't want to get down
13 the road in bankruptcy law.

14 If you -- if anybody looks at the transcript and
15 thinks that I didn't -- that I created more problems than I
16 solved, then I'll try to address that.

17 MS. CONNELL: Thank you, your Honor.

18 MR. CORRELL: Thank you, your Honor.

19 MS. ROGERS: Thank you.

20 (Recess.)

21 THE COURT: Okay. Is there anything we need to do
22 before we get the jury, or should we just get 'em back?

23 All right, let's get the jury.

24 MS. CONNELL: Your Honor, we're just going to go
25 with the instruction and the video, right?

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1 THE COURT: The instruction about the exhibits.

2 MS. CONNELL: Yeah, and that she -- her health
3 condition.

4 THE COURT: Oh, yeah, yeah, yeah.

5 (Pause.)

6 THE COURT: When I identify these exhibit numbers,
7 are those the exhibit numbers that are going to appear on
8 the screen? So, if I tell them -- if I cite "PX 70," is
9 that what's going to appear?

10 Okay.

11 COURT OFFICER: All rise. Jury entering.

12 (The jury entered the courtroom.)

13 THE COURT: Okay. Welcome back, folks. Have a
14 seat.

15 So, the --

16 MR. FARBER: Your Honor, to your question, I don't
17 believe, but maybe the State can correct me, that the
18 exhibit numbers in that e-mail are the ones that are
19 referenced in the deposition.

20 THE COURT: No, but I think they have it set up so
21 that it -- when they show it on the screen, it will have the
22 exhibit number on it.

23 Okay. What we're next going to do is, we have
24 another witness who, because of health reasons, is unable to
25 come to court, like with Mr. Tedrick. That's Ms. Meadows,

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1 who -- you may have heard her name before. So --

2 And I believe this is video, not just audio; right?

3 So it's going to be a video, but there will again
4 be the transcript running underneath it.

5 Again, it's under oath and you can take it as if it
6 is testimony live in court.

7 It will be one video but it's over three days, and
8 so, each of the dates is on the screen. So, again, as with
9 Mr. Tedrick, sometimes they'll say things in the present
10 tense, so it's -- you should just be aware of the date as of
11 which she's talking, to the extent that that's relevant.

12 And one other -- a couple of things:

13 There are a few documents that are going to come up
14 as exhibits where they're being offered for a limited
15 purpose, and we talked about this at one of the early days.
16 There is -- some documents are offered not for the truth of
17 the content but just the fact that they were said, for
18 various reasons.

19 And so, I'll just -- I'll state it on the record,
20 so if you ever are going back through it and you want to go
21 through it, here are the exhibits that you'll see and the
22 exhibit numbers will pop up on the screen.

23 One quirky thing is that they were probably marked
24 and have, maybe, a different exhibit number from the
25 deposition; but, to be helpful, the video will use the PX

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1 numbers that we're using in court.

2 So the exhibits are: PX 2649, PX 705, PX 3231,
3 PX 2263, and PX 2988.

4 So, again, they are not -- these are not being
5 offered by the plaintiff for the truth of the contents but
6 either to show that somebody signed a letter or that -- or
7 something like that. That's in two of them. You know, to
8 show that the reader received something, that kind of thing.
9 You'll see it in context. But for those exhibits, it's --
10 they're just admitted for that purpose.

11 So, anyway, with that exciting introduction, roll
12 'em.

13 (Video deposition of Carolyn Meadows played in open
14 court.)

15 (Continued on next page.)
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1 THE COURT: We're going to break for the day and
2 we'll pick this back up in the morning -- Sorry -- or Monday
3 morning I should say. I'm sure you don't want to be here
4 tomorrow. I suspect it could wait until Monday. Monday
5 morning at 9:30. See you then.

6 THE COURT OFFICER: All rise. Jury exiting.
7 (Whereupon the jury panel departed the courtroom.)

8 THE COURT: Two weeks down. See you Monday.

9 MS. CONNELL: Thank you, your Honor. Have a good
10 weekend.

11 (Whereupon the trial was adjourned to January 22,
12 2024 at 9:30 a.m.)

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

-----X
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against- Index No. 451625/20

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

Defendants.

-----X

CONTINUED JURY TRIAL

60 Centre Street
New York, New York
January 22, 2024

B E F O R E: HONORABLE JOEL M. COHEN,
Supreme Court Justice

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A P P E A R A N C E S: (Continued)

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THE COURT: Good morning everyone. A couple of jurors are running a few minutes late. So I have taken a look at the letters relating to the Spray prior testimony. And folks on the bankruptcy testimony, I do think the defendants have, individual defendants have a point that, you know, obviously a deposition testimony in this case where everybody is represented and has the opportunity to question is one thing. The bankruptcy, I think it's a trickier argument for the State as to why that would be admissible against the individual defendants.

I saw the authorities cited in the letter. I don't think 4517, CPLR 4517 does it, because it has to be a prior action involving the same parties, which the bankruptcy is not. The reference to the unofficial evidence guide about parties in privity seems to me doesn't really work because Mr. Spray wasn't in privity at the time of his testimony probably with anyone, but certainly not with the individuals. And you layer in at least the representation that the individual defendants' counsel weren't there. And layered on top of all of that is my assumption correct that Mr. Spray's deposition was after the bankruptcy?

MS. CONNELL: Your Honor, he was deposed in the bankruptcy and then his deposition in this litigation was after that. The parties had all been provided with the transcript of his bankruptcy deposition.

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THE COURT: Right. My recollection is, is when I was going through the deposition transcript in this case there were bits and pieces of the bankruptcy testimony that were brought up, and Mr. Spray was asked to say well, you know, is that true. So, at least somebody thought about the idea that it might make sense in the deposition in this case, if you're going to rely on the bankruptcy testimony to bring it into this case and have it be repeated at the deposition where people could ask him about that testimony. So, I think that going back to just introducing the bankruptcy testimony in mass or at least the portion that was proposed does present, I think, some problems under both the statutory bases at least what were cited to me and just basic fairness.

So, maybe the State can help me understand. You make some sort of privity like arguments that because Mr. LaPierre and Mr. Frazer are senior officers, somehow their interests were covered in the bankruptcy testimony. But I don't know that I fully follow that.

MS. CONNELL: Your Honor, Mr. Spray was in negotiations at the time of the bankruptcy. He had been relieved as CFO. He technically was still treasurer, I believe, when he was deposed in the bankruptcy. If not, he was suspended. So, it's a little bit of a question mark for us as to whether he was actually still a party

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representative of the NRA, but he agreed to appear voluntarily on behalf of the NRA.

THE COURT: I could see him in privity with the NRA.

MS. CONNELL: Right.

THE COURT: And the NRA was also a party. So they had full ability to -- you know, to that extent, it's the same party that's involved here. But how would he be in privity with the parties against whom the evidence is offered if we, for present discussion purposes, assume that that party is Mr. LaPierre or Mr. Frazer?

MS. CONNELL: Well, your Honor, at the time of the bankruptcy Mr. LaPierre, Mr. Frazer were both officers of the NRA. They both appeared. Mr. Frazer and Mr. LaPierre appeared, I believe, as corporate represents of the NRA.

THE COURT: Is there some sort of a transitivity principle?

MS. CONNELL: That's where I'm headed, your Honor.

THE COURT: That's what I was looking for. In the legal argument I didn't see it. I don't know that either. I don't know entirely if that makes sense. I understand the point that it does seem a little odd for -- at some level the head of the company to be distancing himself from the company in Mr. LaPierre's case. But for evidentiary purposes they're different entities and, in fact, some of

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the interested, divergent in spots. But it really is, it's partly a technical question. Partly a feeling of fundamental fairness that everybody had the ability to bring Mr. Spray's testimony in to the deposition. That was the most obvious place to have it out in an open forum, where everybody would understand that in certain circumstances the testimony might be played at trial. And in that context I think it adds a little more of a burden to the State to explain to me why we should go back to a prior proceeding, which was about something else with different parties.

MS. CONNELL: Your Honor, I would say from a fundamental fairness perspective, when we took these depositions, if you look at the transcripts as a whole, there was often a struggle for time to allowing questioning by all seven parties, excuse me not seven parties, by all of the parties in the action. So, we provided all of the deposition parties -- the deposition testimony previously taken to all of the parties. All of the parties were free to address any portions they felt were necessary. But to simply repeat exactly the bankruptcy deposition and the litigation deposition didn't seem like a prudent use of time. If there was something troubling to one of the defendants in the bankruptcy testimony, then they could raise it with Mr. Spray and question him on it. To me that seems to be --

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THE COURT: That presupposes that they should have understood that the bankruptcy testimony would be admissible. So, unless they didn't bring it up. I mean, frankly if it were me, I probably would make the tactical choice not to get into harmful stuff that I would be bringing into this litigation if I was going to preserve the argument that I wasn't a party to the bankruptcy, I would probably leave well enough alone.

MS. CONNELL: Your Honor, so far I think Mr. -- Mr. Frazer is pointed to, I believe, one item that he was concerned about. So, general objection to the bankruptcy testimony I think is overbroad. At times we're using the bankruptcy testimony I believe --

THE COURT: It's hearsay across the board to anybody unless you have an exception, right. In other words, the whole prior testimony starts out as inadmissible unless you can have some hearsay exception. So that -- that's really what we're talking about.

MS. CONNELL: Well, your Honor, it is admissible against the NRA if I understood you correctly.

THE COURT: Right, because there is a statute --

MS. CONNELL: Sure.

THE COURT: -- that makes it admissible because it's a prior sworn testimony in an action between the same parties.

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MS. CONNELL: Right. And I believe Mr. LaPierre has asserted that certain -- he can use certain portions of that testimony if he so desires without designating those portions. So, perhaps we can cure this with a curative instruction saying portions of his testimony played for the bankruptcy are admissible against the NRA only.

THE COURT: That is the -- where I was coming from is that it's, you know, it's always a little awkward to explain something like that to a jury that this is admissible only against the party that was there who could question. But I think that's the way this usually plays out. I mean, and like I said, I referenced this earlier, if there is some case law or something persuasive to explain why the senior officers of a party should be essentially considered the party for purposes of the hearsay analysis, I'd be interested in seeing it. I didn't see it in what was cited.

So for now my view is that the bankruptcy excerpts, which I think I was still waiting for more specificity as to what was alleged to be hearsay within hearsay, because the portion of the Spray bankruptcy transcript that is marked I think was, I now understood was marked globally for this broad concern, that really was specific to Mr. Frazer and Mr. LaPierre and Mr. Phillips. But there is also actual regular hearsay in it potentially too. I was -- I was --

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When I read it anyway, there were parts of it where I believe he says something like well, I found out later that this was still going on or something like that. And I think one might infer from what came later that it was perhaps based on his own review of records, although it could also be read as somebody telling him based on their review of records what they found. So, I was left a little unsure about that. And I thought I had asked for a more specific question-by-question objections. So, I'm still a little up in the air on that.

MR. CORRELL: Your Honor, may I be heard?

THE COURT: Okay.

MR. CORRELL: Just briefly. First of all, I wanted to correct a point of fact. I was counsel for Mr. LaPierre personally in the bankruptcy. I was not allowed in the room with him during his testimony. I was not allowed to object or to cross examine. The only objection I could make was personal privilege, spousal privilege or attorney/client. I was not allowed to address the Judge. It was a little bit like a star chamber proceeding as far as he was concerned.

Second of all, the Attorney General has taken the position that Mr. LaPierre is adverse to the NRA in that, according to the Attorney General, he has taken money from the NRA that he shouldn't have taken. So he's always, under their theory, always adverse. I would remind the Court that

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the AG took the position on a motion that for collateral estoppel that it was a different action, different parties, different issues, and the Judge ruled on that based on their arguments.

Lastly, I think that I have a problem with a curative instruction. I would be curious to know how you think that would work, because I just can't imagine the jury trying to sort out in their own mind that testimony.

THE COURT: Well, look, like I said the other day to someone else, nobody sought separate trials here. And there may be some evidence that is unique to one party or another, and we'll just have to sort it out. I -- I don't know that what you're suggesting is, even though it would otherwise be fully admissible against the NRA, I should still not let it in at all.

MR. CORRELL: I'm struggling with that issue myself, your Honor. I know this. I know that curative instructions don't always work, and sometimes they actually emphasize the point that the Judge is trying to instruct on, and that is my concern.

THE COURT: Mr. Fleming.

MR. FLEMING: Judge, I just wanted to make two points. One is Ms. Connell talked about the struggles for time in this deposition. I just wanted to --

THE COURT: Are you arguing -- I'm coming at your

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way.

MR. FLEMING: I understand.

THE COURT: I'm happy to reconsider as always.

MR. FLEMING: I recognize. I was really speaking to Mr. Correll's point about the curative instruction.

THE COURT: Okay.

MR. FLEMING: The point I wanted to make was the Attorney General had seven hours under the rules in this case to depose Mr. Spray.

THE COURT: Unless you asked for more which, you know, I probably would have allowed if somebody said look, there are six different parties. We need to have more time. Go ahead.

MR. FLEMING: They did not ask for that. They took their seven hours. The defendants late into the night struggled to cram in the 20, 25 minutes they could possibly grasp to cross examine.

The point I wanted to make was the Attorney General had the opportunity to raise the issues of importance to them in the deposition. And so, to permit a bankruptcy testimony in against the NRA, I do think there is inevitable, I don't want to say prejudice, but there is a danger of prejudice to the individual defendants notwithstanding any curative instruction. And given the circumstances that they had the opportunity to raise the

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important points they wanted to raise or to ask for more time, I think that bears on the analysis.

THE COURT: Yeah. Look, I understand that point. I would -- I could say the same that -- that you all could have, if you wanted more time to ask questions, you could have certainly asked me for that as well. Look, I'll think about it. But it would be an awfully big curve ball to flow at the plaintiff to say well now, having -- nobody having sought severance, we're now going to hinder your case against one of the parties because of the potential carryover of some of the evidence against the others. It seems awfully late in the day to make that argument.

MS. CONNELL: Your Honor, could I just address one thing?

MR. CORRELL: Your Honor --

MS. CONNELL: I'm sorry.

MR. CORRELL: Just to be clear, I'm not making that argument. I'm asking for some guidance perhaps on what the curative instruction might look like and whether there would be any balancing between probative and prejudicial on certain things that are particularly --

THE COURT: Well, they are only seeking to, my recollection is it's one passage of the deposition really -- of the bankruptcy testimony that's substantive, right? It's like a page and a half or two?

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MR. CORRELL: Yes.

MR. FLEMING: Four pages.

MR. CORRELL: I just don't want the nose, the camel's nose under the tent on that. Anyway, your Honor, I'm happy with your ruling.

THE COURT: What I would make the point to them if I go this way is look, the deposition testimony everybody was here for. You'll hear that. The bankruptcy testimony, only the NRA was a party to that proceeding. Only the NRA's counsel was permitted to question the witness. So, in fairness that testimony can only be used against the NRA and not against parties who were not separately represented as they are here.

MR. CORRELL: That would be acceptable to Mr. LaPierre.

MS. CONNELL: Your Honor, I want to correct one thing. While we certainly --

THE COURT: Just one?

MS. CONNELL: I understand. Well, I'll focus on one, your Honor. While we certainly allege that Mr. LaPierre has engaged in misconduct, diversion, loss, waste of assets of the NRA, I want to be clear that Mr. -- you'll hear Mr. LaPierre testify that he made the decision to put the NRA into bankruptcy. It was his choice. He was the EVP of the NRA at that time and remains the EVP at that time.

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The NRA has consistently throughout this litigation, until about two weeks ago, stood firmly behind him in lockstep acted together with him, you know, asserted joint objections. Your Honor, to say that they are suddenly adverse parties is a switch up from the position.

THE COURT: I understand that, you know, the defendants, the individual defendants are going to make some arguments like that and that there is adversity between them. That's one position. And I understand fully that the other side is that they were the decisionmakers for the entity, and therefore there is an argument in the other direction saying that they are altogether. And that their actions bind the NRA and the NRA's actions bind them. I'm not basing my ruling on a -- accepting that the notion that their adversity is sort of binding or a finding by me at this point. But it's -- in this situation, where the specific statute that permits the use of prior testimony talks about it being the same parties, I think it's different to say that they may be aligned in one case is different than saying that they were in privity with Mr. Spray, right. I mean, I think if it was an NRA witness, you know, it would be a closer question. I think by that time, at least the understanding I have, was that it's a little less clear whether Mr. Spray was still sort of part of the NRA and testifying in his capacity as CFO. Anyway,

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that's my current view on that. I don't know that we're getting to the Spray testimony today or tomorrow, right?

MS. CONNELL: Your Honor, we have the Spray testimony ready to go this afternoon in the event Mr. Cotton finishes. This morning is going to be the Meadows, the completion of the Meadows video, then it's going to be Mr. Cotton. If we can get through Mr. Cotton today, we can start with Mr. Spray, not the bankruptcy portion.

THE COURT: Okay. Let's do that. The most important thing is to get going.

MR. FARBER: One quick point on the question of remedy here, because your Honor has alluded a couple of times to the fact that no one ever asked for a severance. I don't think that's sort of the only alternative here. Under, you know, under the evidence guide under 406, you can exclude otherwise relevant evidence, which this plainly is as to the NRA, if introducing it is going to confuse the issues and potentially mislead the jury. Mr. Correll's point I think is that one thing that needs to be considered is whether giving an instruction like that is going to mislead the jury. And given the limited additional probative value of this evidence and the fact that they have the deposition from this case, it's appropriate to do that and whether one is outweighed by the other.

THE COURT: Well, I'll say a couple of things.

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First of all, the fact that you didn't ask for severance does not mean I'm ignoring your client's individual rights here. I still have it firmly in mind to make sure there is nothing unfair to the individuals. Just because they didn't seek severance, that doesn't mean I abdicate my vigilance for that. So, you know, no fears there.

And I do understand that I have at least the discretion in certain situations. I don't -- I think what I'm concerned about mostly with this testimony is making sure I understand whether it's itself another layer of hearsay that I can't get through. In other words, if he is just testifying about what somebody told him, that may be more problematic for me. As I read through it, I couldn't tell whether the substance of his testimony that was being offered was him basically repeating what somebody told him or in fact whether it was something that he had seen the actual data and was reporting on his review of business records. It's a little unclear to me from the questioning and answering what the basis was of his testimony. So, I still have a hearsay concern that I have to get alleviated before I let any of it in against anyone.

MR. FARBER: They haven't established foundation of that through the transcript. It's not like Mr. Spray is going to be here for follow-up questions.

THE COURT: I didn't read the other hundred pages

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of the transcript. And I did think that maybe somewhere in the four pages he does talk about records. I'm -- I'm going to give the AG a chance to explain to me why it's not just him telling us what Sonya Rowling told him or somebody else told him, but I don't want to do that right now, because I have 11 folks downstairs who are probably itching to get started. Can I ask how much is left on the Meadows?

MS. CONNELL: Unfortunately, your Honor, it's quite a bit. We have been trying to cut these videos down drastically, and it's been an involved process. I think we are just over two hours.

THE COURT: Okay. You guys use your time however you see fit. Is there a -- What's the scorecard right now in terms of who has used how much time as between the plaintiff and defendant?

MS. CONNELL: Your Honor, we were calculating that last night. If I could take a look and inform you at the next break. I want to be adequate.

THE COURT: Okay. I do want to encourage you, now that it's been two weeks, I want us to increase our efficiency in some of the mechanics. You know, we should be spending less time on introducing exhibits. We should have things premarked, if we can. I feel like we're -- we're -- we should be a more finally well oiled machine at this point. You know, people should think about, you know, there

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has been a lot of multiple rounds of recrosses and redirects, a lot of which struck me as being potentially a little duplicative. All I'll say is again, this is your show. All the time you use asking the third round of questions to a witness may come at the expense of your first round of questions of a witness you might really care more about. So just bear all of that in mind. Time marches on, right.

MS. EISENBERG: Your Honor, to answer your question by our calculations, the NYAG is slightly over 20 hours. The NRA is slightly over four. Mr. LaPierre is close to three. Mr. Phillips is two hours and 16 minutes. And Mr. Frazer is slightly over three hours.

THE COURT: All right. Well, I would hope we can end up with the same numbers. Again the defendants as a group that's roughly 12. So, it's 20 to 12 is where you say we are at this point?

MS. EISENBERG: That's right, your Honor.

THE COURT: All right. We'll see. I mean and are you counting the cross designation time as evenly split or what are you doing with that?

MS. EISENBERG: We did not, to the extent our counters were played under the rule of completeness, we did not debit it against us.

THE COURT: Well, I won't weigh into that part yet.

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It's probably not material anyway. Well let's -- We'll hear what you have to say about those numbers in a bit. Let's get the jury.

MS. CONNELL: Your Honor, I'll address it by letter to the Court, the counter designations are an issue for us. They are quite lengthy.

THE COURT: So working in time for a break, Meadows is probably going to be most of the morning, if not the whole morning.

MS. CONNELL: Your Honor --

THE COURT: And then Mr. Cotton is the next witness?

MS. CONNELL: Mr. Cotton is the next witness. And then, your Honor, tomorrow if needed we'll play some of Spray this afternoon, not the bankruptcy portion. Then tomorrow morning we'll go into Lieutenant Colonel North, who has to be completed tomorrow due to a family situation, which I can explain to the Court if you need me to.

THE COURT: If I don't need it to be explained, that's fine. We'll accommodate if we can.

I should note, by the way, there was a case between Lieutenant Colonel North and the NRA that was also in front of me about indemnification and the like. It's not a conflict to -- of any kind. I just thought I would mention it.

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1 (Video paused.)

2 THE COURT: I just want to check in with the jury:
3 Do you want to keep plowing through this until we finish in
4 about 40 minutes or do you want to take a break now?

5 JUROR NO. 3: Plow. Can we plow?

6 THE COURT: I'm not sure. Everyone's shaking their
7 heads. I'm not sure what they're shaking their heads to.

8 JUROR NO. 4: Can we take a break?

9 THE COURT: Yeah. There are a couple for breaks.
10 So why don't we do that, and then we'll continue
11 for the rest of the morning.

12 COURT OFFICER: All rise. Jury exiting.

13 (The jury left the courtroom.)

14 THE COURT: Okay. I thought it was worth doing
15 that. It's interesting: Cutting a deposition the way you
16 do, which is what I want, it actually makes it harder to
17 focus on for long periods of time, because there's no normal
18 breaks in the conversation; it's just one question after
19 another. So I thought it would be good, for attention
20 spans, to not have a full two-hour movie all at once, and so
21 I thought a short break would be good.

22 All right, see you soon.

23 MS. CONNELL: Thank you.

24 THE COURT: I'm going to try to call them back as
25 soon as they're ready.

ALAN F. BOWIN, CSR, RMR, CRR

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1 (Recess.)

2 COURT OFFICER: All rise. Jury entering.

3 (The jury entered the courtroom.)

4 THE COURT: All right, have a seat. Thanks.

5 Just before we get started: It does look like the
6 screen is a little wobbly. If it gets too distracting, we
7 may have to get someone to come up and do something. But
8 for now, let's see if we can -- if it, at least -- the audio
9 and the video -- is good enough for you to be able to
10 follow. But if it starts to get in the way, we'll see what
11 we can do to fix it.

12 And am I correct that somebody has put a call into
13 IT to tell them what's going on?

14 (A technician nodded in the affirmative.)

15 THE COURT: Okay.

16 They are very good, so if it can be fixed, they
17 will deal with it.

18 All right, let's go back to where we picked up --
19 stopped off.

20 (Video of Carolyn Meadows further played in open
21 court.)

22 (Continued on next page.)

23

24

25

ALAN F. BOWIN, CSR, RMR, CRR

PROCEEDINGS

1620

1 (Whereupon the video is being played.)

2 THE COURT: Just a heads up to the jury that the
3 date is now a second day of the testimony. So, it says
4 September 1, 2022. Just alerting you that there is a new
5 date.

6 A JUROR: Different clothing.

7 THE COURT: Didn't change in the middle of the day.
8 Okay. Back to it.

9 (Whereupon the video is being played.)

10 MS. CONNELL: Your Honor, I'm sorry. I just
11 learned from the tech people that this is caused by the
12 video feed to the breakout room. If this is interrupting
13 it, then we would have to ask you to direct that the video
14 feed to the breakout room cease.

15 THE COURT: I heard from IT they could come in and
16 reset it or something down here. Is this getting in the
17 way? The jurors are shaking their heads no. It's a
18 flicker. So, if it's a serious problem, my understanding
19 is that they can turn it off for a couple of minutes and
20 turn it back on and it may work. I didn't want to break it
21 up. So, let's keep rolling.

22 MS. CONNELL: Thank you, your Honor.

23 THE COURT: All right.

24 (Whereupon the video is being played.)

25 THE COURT: We're switching to the final day. So,

LAS

1621

1 this is now September 7th. This is the last day and the
2 last portion.

3 (Whereupon the video is being played.)

4 THE COURT: Okay. That's the end of the testimony
5 for this part of the case. Do you want to just start the
6 witness after lunch or do you want to start for ten minutes?

7 MS. CONNELL: Your Honor, just to make sure we're
8 not wasting time, if we can even get ten minutes in.

9 THE COURT: We can introduce the witness for ten
10 minutes and get him under oath and get things going. So, do
11 you want to call your next witness.

12 MS. CONNELL: The People call Charles Cotton, your
13 Honor.

14 THE COURT: If you would get the witness, please.

15 THE COURT OFFICER: He's in route.

16 THE COURT: Meaning out there?

17 THE COURT OFFICER: Yes.

18 (Continue on the next page.)
19
20
21
22
23
24
25

LAS

Cotton - by Plaintiff - Direct/Shiffman

1622

1 (The prospective witness entered the courtroom and
2 assumed the witness stand.)

3 THE COURT: Good afternoon.

4 MR. COTTON: Good afternoon, sir.

5 THE COURT: Good afternoon.

6 THE CLERK: Raise your right hand.

7 C H A R L E S C O T T O N, called as a witness by the
8 plaintiff, having been first duly sworn/affirmed, was examined
9 and testified as follows:

10 THE CLERK: State your name.

11 Remain standing.

12 State your name.

13 THE WITNESS: Oh, I'm sorry.

14 Charles Cotton.

15 THE CLERK: Spell your last name.

16 Spell your last name.

17 THE WITNESS: C-o-t-t-o-n.

18 THE CLERK: Business address, if you have one. If
19 not, then I need your address.

20 THE WITNESS: Don't have a business address.

21 THE CLERK: Then I'm going to need your address.

22 THE WITNESS: Home address?

23 THE CLERK: Yes.

24 THE WITNESS: 110 Eagle Lakes Drive, Friendswood --
25 that's all one word; Friendswood -- Texas 77546.

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1623

1 THE COURT: Thank you.

2 You may be seated.

3 (Witness seated.)

4 THE COURT: Just try to keep yourself close to the
5 mic., if you can, so the jury can hear.

6 Thank you very much.

7 All right, counsel, you may get started.

8 MR. SHIFFMAN: Okay. Thank you, your Honor.

9 DIRECT EXAMINATION

10 BY MR. SHIFFMAN:

11 Q Good afternoon, Mr. Cotton. My name is Steven
12 Shiffman. I'm an attorney general from the New York State
13 Attorney General's Office. How are you today, sir?

14 A Good afternoon, sir.

15 Q Mr. Cotton, you're a lawyer; correct?

16 A I am.

17 Q Okay. And you also have experience as an accountant,
18 right?

19 A Many decades ago, but yes, sir.

20 Q You're trained as a CPA?

21 A I was a CPA but I haven't -- haven't practiced in
22 years.

23 Q Okay. And you're also currently a member of the NRA's
24 board of directors; isn't that right?

25 A Yes, sir.

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1624

1 Q Okay. And you've served on the board since twenty --
2 since 2001; is --

3 A 2001, yes.

4 Q Okay. And you're currently president of the NRA;
5 correct?

6 A Yes, sir.

7 Q Okay. When were you elected president of the NRA?

8 A Let's see ... I was first vice president -- I guess it
9 was '21.

10 Q In 2021.

11 A Yes, sir.

12 Q Okay. And are you serving a third straight term as
13 president?

14 A Yes, sir.

15 Q Okay. And did the NRA have a provision in its bylaws
16 that limited the number of consecutive terms that the president
17 could serve to two terms?

18 A Yes, sir. People tend to think that we have two-year
19 terms. We really don't. They're back-to-back one-year terms --

20 Q Um-hmm.

21 A -- and we're limited to -- it's kind of an awkward way
22 to word it, but we're limited to succeeding ourselves only once
23 unless you amend the bylaws.

24 Q Okay. And so, the bylaws were in fact amended so you
25 could serve a third term; that is right?

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1625

1 A Yes, sir.

2 Q Okay. And that was done early last year?

3 A It would have been done at our annual meeting last
4 year, yes, sir.

5 Q And you mentioned, before you were NRA president, you
6 were vice president; that's correct?

7 A Yes, sir; first vice president.

8 Q And before you became first vice president, did members
9 of the NRA's board recruit you for that position?

10 A Yes, sir. That was -- I had a number of people that --
11 that asked if I would consider that.

12 Q Okay. And was Sandy Froman one of those people?

13 A Yes. I talked to Sandy -- yes, I believe she did
14 encourage me to do it.

15 Q Okay. And was Wayne LaPierre one of the people who
16 encouraged you to run?

17 A I don't recall talking to Mr. LaPierre about an officer
18 position.

19 Q You don't recall him encouraging you to run for first
20 vice president?

21 A I was trying to remember back. He and I talked about
22 it. I can't say that he -- I don't recall now if he encouraged
23 me to do it or not, but I -- I did tell him that I was being
24 asked by some board members.

25 Q Okay. And you don't recall him saying that you'd be a

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1626

1 perfect fit for the position?

2 A I certainly don't remember that exact statement, no,
3 sir. He may have commented about me being an attorney, because,
4 candidly, most people that were asking me to do it, that was the
5 main thing they wanted to point to. I was retired, I'm an
6 attorney, and that's -- that's really what they focused on.

7 Q Do you recall that you gave a deposition in this matter
8 in June of 2022?

9 A I remember I gave one; I couldn't confirm the date, no.

10 Q In approximately --

11 A Sure.

12 Q -- about a year and a half ago?

13 A Yes, sir.

14 Q Okay. And you took an oath to tell the truth when you
15 gave that deposition?

16 A Yes, sir.

17 Q Okay.

18 MR. SHIFFMAN: Jesse, can we play, from the June
19 17th, 2022 transcript, lines 24/3 to 24/18, please?

20 (Video played.)

21 Q Mr. Cotton, the NRA has a corporate ethics policy;
22 doesn't it?

23 A Yes, sir, we do.

24 Q Okay. Can you please go to tab 8 in that big binder in
25 front of you, right there (indicating)?

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1627

1 MR. SHIFFMAN: I believe this is -- this is PX 534.
2 I don't think there are any objections to this exhibit, so I
3 would move that be admitted.

4 THE COURT: Any objections?

5 MS. EISENBERG: None, your Honor.

6 MR. CORRELL: No.

7 MR. FARBER: No, your Honor.

8 MR. FLEMING: I thought it was in evidence already.
9 Is that a different version?

10 THE COURT: There is a -- I thought there was a
11 version of this, but there are so many of them, I can't keep
12 track. But, anyway, it's PX -- if PX 534 is not in
13 evidence, I'm admitting it now. If it ends up being a
14 duplicate, we can fix that later.

15 MR. SHIFFMAN: That's fine. Thank you, your Honor.

16 (Image displayed.)

17 BY MR. SHIFFMAN:

18 Q Mr. Cotton, this is tab 8 in your binder. Do you
19 recognize this document, sir?

20 A Well, I recognize the title page.

21 Q Okay.

22 A I'd have to read it to tell you what it --

23 Q I'm not going to ask you to read the whole thing now,
24 sir. I just want you to see if you recognize this as being --
25 the whole binder as being -- the whole packet as being the

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1628

1 policy manual from June 5th, 2019.

2 And the date's on the first page, sir.

3 A Okay. Based on the first page, yes, sir.

4 Q Okay. And can you please turn to page 278 of this
5 large exhibit?

6 (Image scrolled.)

7 Q It's also on this -- on the screen in front of you,
8 sir.

9 A Sorry. I can't begin to read it from here.

10 Q You can use either one. Feel free to use -- the screen
11 that's in front of you on the table should have it.

12 A I got it.

13 Q Okay. Do you recognize what begins on page 278 and
14 continues for about four pages, sir?

15 If you take a look at the top, it says: "Statement of
16 Corporate Ethics." Does that refresh your recollection that
17 this is a Statement of Corporate Ethics from the NRA?

18 A Yes, sir. That's what it says on the top.

19 I was going to read it if you're going to ask me
20 questions.

21 Q You can -- you take as much time as you need to look at
22 it, but I'll direct you to particular sections, so we can speed
23 it up. But I don't want to inhibit your review.

24 A Okay.

25 Q Sir, do you recognize this as the corporate ethics

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1629

1 policy of the NRA from January of 2015?

2 A Yes, sir. That's the date on the exhibit and that
3 appears to be our ethics policy.

4 Q Okay. Can you take a look at the second paragraph on
5 page 278, sir?

6 And there it requires that all employees comply with
7 applicable bylaws and policies of the NRA, as well as all
8 relevant laws and regulations; right?

9 A Yes, sir, that's correct.

10 Q And it also provides that no violations will be
11 tolerated; correct?

12 A That's correct.

13 Q And it's not just the letter of the law and the letter
14 of the policies that are addressed, it's also the spirit and
15 intent of the bylaws; correct?

16 A That's correct.

17 Q Okay. And the statement of ethics, if you look at
18 paragraph number 1 under this, also addresses a number of
19 conflict-of-interest situations; isn't that right?

20 (Image modified.)

21 A I'm sorry. Let me -- let me read that. Are you
22 talking about Subpart 1 on the document or the first paragraph?

23 Q Yeah. It's the part that's highlighted on the screen,
24 but it's that paragraph number 1, as well.

25 (Pause.)

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1630

1 A Yes, sir, I see it.

2 Q Right. And that paragraph expressly prohibits
3 employees of the NRA from being involved in conflict-of-interest
4 situations; correct?

5 A Well, it describes certain things that you can't do,
6 and under our policy, that would -- that would create the
7 conflict of interest.

8 Q Right. And you see, the last line says: "Employees
9 shall not become involved in conflict of interest situations"?

10 A Yes, sir, but the rest of the paragraph has specific
11 things.

12 Q Right. I'm just asking you whether the -- it provides
13 that they shall not become involved in conflict-of-interest
14 situations.

15 A Okay.

16 THE COURT: All right, counsel, although you've
17 only just begun, we've, unfortunately, hit our lunch break,
18 so we're going to continue up -- I'm sorry -- at 2:15.

19 During the break, sir, you're still on the stand,
20 so you shouldn't discuss the substance of your testimony
21 with anyone, including counsel.

22 THE WITNESS: Yes, sir.

23 THE COURT: Understand?

24 Thank you.

25 We'll see you all in an hour and a half.

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1631

1 COURT OFFICER: All rise. Jury exiting.

2 (The jury left the courtroom.)

3 (The witness stepped down.)

4 THE COURT: All right, we'll see you all at 2:15.

5 MR. SHIFFMAN: Thank you, your Honor.

6 (Luncheon recess.)

7 A f t e r n o o n S e s s i o n :

8 THE COURT: Okay. Are we all set for the witness
9 and the jury? Okay.

10 MR. SHIFFMAN: I believe so.

11 THE COURT: Let's get the witness.

12 (Pause.)

13 THE COURT: Before we start:

14 I don't know what the breakdown is, but the total
15 number of hours that Ms. Eisenberg gave me is about right.
16 We've had, I think, eight trial days, counting half-days as
17 well, and I think my average is about four hours a day. We
18 have five-and-change actual hours during the day, 9:30 to
19 12:30, 2:30 to 4:30, and when you add in breaks and
20 everything else, four hours of actual on-your-feet time is
21 about what I've seen.

22 So that should give you all a pretty good way to
23 map out the number of days between now and February 15th,
24 when we're going to start with closing arguments no later
25 than the morning of.

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1632

1 So --

2 Yes, sir?

3 MR. BREWER: That's just, like, the average, your
4 Honor; about four hours.

5 THE COURT: Yeah.

6 All right.

7 (The witness resumed the stand.)

8 (Pause.)

9 COURT OFFICER: Ready to receive the jury, your
10 Honor?

11 (The Court nodded.)

12 COURT OFFICER: All rise. Jury entering.

13 (The jury entered the courtroom.)

14 THE COURT: Okay. Welcome back, and have a seat.

15 All right, counsel, you may continue.

16 MR. SHIFFMAN: Thank you, your Honor.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. SHIFFMAN:

19 Q Mr. Cotton, can you please turn back to tab 8, page
20 278? And we were looking at that first numbered paragraph on
21 the page.

22 A Page 278?

23 Q 278, yes, at tab 8.

24 (Pause.)

25 A Okay.

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1633

1 Q Okay. Thank you, sir.

2 (Image displayed.)

3 Q Mr. Cotton, the conflict-of-interest situations that
4 the code of ethics addresses include any activities that might
5 influence someone's business judgment; correct?

6 A When you say, "any activities," that's a little broad.
7 But, yeah, there's a whole category of things that -- that are
8 prohibited and then there's, I would call, a catchall phrase,
9 that if something gives the appearance ...

10 Q Okay. If you look at the portion of the exhibit that's
11 on the screen in front of you, there it says: "Association
12 employees shall not become involved in any activity which might
13 influence, be reasonably expected to influence, or give the
14 appearance of influencing their objective business judgment in
15 dealing with others." Correct?

16 A I'm trying to find that in -- on page seventy -- 278
17 that you referred me to and I don't -- I don't see that.

18 Q Do you see the numbered paragraph there that has number
19 "1"?

20 A I see it on 2 -- on page 278.

21 Q I'm sorry, sir. It might be a little confusing for
22 you. There's two sets of numbers. We're using the numbers at
23 the very bottom of the page.

24 A Oh, okay.

25 Q I apologize.

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1634

1 A Ah. No problem.

2 Q I think it's my fault, sir. Yeah.

3 A Okay. Yes, sir. Now I've got it.

4 Q Okay. And do you see that language (indicating) that I
5 just read in paragraph 1 -- number 1?

6 A Yes, sir.

7 Q Okay. And can you take a look at the very bottom of
8 that page, to the last paragraph there?

9 A The "failure to comply" language?

10 Q Yes. That -- that -- there the policy provides that
11 the failure to comply with the NRA's policies may result in
12 dismissal or -- from employment or other disciplinary action;
13 correct?

14 A That's what it says, yes, sir.

15 Q Okay. And that was the NRA's policy, right?

16 A Yes, sir.

17 Q Okay. Can we go to page 279?

18 MR. SHIFFMAN: Number 3, Jesse.

19 (Image scrolled.)

20 A Okay.

21 Q Okay. There it provides that the statement of ethics
22 expressly prohibits employees from accepting gifts worth more
23 than \$250 -- right? -- from any supplier or potential supplier
24 to the NRA without advance approval; correct?

25 A Yes, sir. It goes on to say, "unless approved by the

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1635

1 executive director of that employee's division."

2 Q Right. And that approval has to be in advance;
3 correct?

4 A It should be, yes, sir.

5 Q And the policy provides for advance approval; doesn't
6 it?

7 A It does, but the policy also provides for -- I'll call
8 it retroactive approval under certain circumstances.

9 Q Okay. Can you show me where you're referring to, where
10 it says "retroactive approval" there?

11 A Oh, sir, I've read -- I've read so many documents
12 trying to get ready, I couldn't.

13 Q Well, you would agree with me, wouldn't you, sir, that
14 in paragraph 3 that we're looking at here, there's no mention of
15 "retroactive approval"? Right?

16 A In -- I'm sorry. In this paragraph, yes, sir.

17 Q Right.

18 And in fact, if you look at the part that's not
19 highlighted, it says, prior to accepting or receiving such
20 personal favor or gratuity, you must disclose it; right?

21 A Yes, sir. That's absolutely the way we want this:
22 up-front.

23 Q And that's the way you want a conflict-of-interest
24 policy to work. You want advance approval, not retroactive
25 approval; right, sir?

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1636

1 A Yes, sir, that's what we want.

2 Q Okay, great.

3 And if you do get that advance approval, that
4 approval's supposed to be submitted in writing to the NRA's
5 Human Resources Department; correct?

6 A It's supposed to come to us -- I'm sorry. When I say
7 "us," I mean the Audit Committee. It's supposed to come to the
8 Audit Committee to make that decision.

9 Q Okay. But it's also supposed to be filed with the
10 Human Resources Division? Isn't that what the policy provides
11 there (indicating)?

12 A To be honest with you, I'm not sure what all divisions
13 that it goes to, because that's operational things. The -- the
14 board and the Audit Committee are -- are oversight, so I know
15 we're supposed to get it. I can't tell you where all it's
16 supposed to go internally, as well.

17 Q Okay, fair enough.

18 Mr. Cotton, you've served on the Audit Committee of the
19 board, as you were just referring to; right?

20 A I -- I --

21 Q Do you want -- maybe I was going a little fast.

22 You've served on the Audit Committee of the NRA's
23 board?

24 A Yes, sir.

25 Q And that's an important committee within the NRA?

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1637

1 A It is.

2 Q It reviews conflict-of-interest transactions, like you
3 were just referring to?

4 A Yes, sir.

5 Q Okay. And related-party transactions, as well?

6 A Yes, sir.

7 Q Okay. And whistleblower complaints?

8 A Yes. One of -- one of many that can handle
9 whistleblower complaints, yes, sir.

10 Q And what years have you served on the Audit Committee,
11 sir?

12 A I think I first went on in 2009. I'm pretty sure
13 that's right.

14 Q Okay. And have you served on it continuously since
15 2009?

16 A I've served on it continuously, if I'm correct, about
17 2009, and, yes, sir, that's -- there have been -- there have
18 been no time that I was off the committee.

19 Q Okay. And you've also served as chair of the Audit
20 Committee; haven't you?

21 A Yes, sir, I have.

22 Q Okay. And during what years have you served as Audit
23 Committee chair?

24 A I was afraid you were going to ask me that.

25 Q To the best of your recollection, sir.

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1638

1 A I believe it's 2015.

2 Q Okay. And are you still on the Audit Committee?

3 A Yes, sir.

4 Q Okay. And there's a charter that sets forth the
5 responsibilities of the Audit Committee; isn't there?

6 A Yes, sir, there is.

7 Q Okay. I'd like to go to tab 26, which is PX 5073.

8 MR. SHIFFMAN: I don't believe there are any
9 objections to this.

10 A You say, "26"?

11 Q Yes, sir, tab 26.

12 THE COURT: Any objections to this exhibit?

13 MR. BREWER: No objection.

14 MR. CORRELL: No objection.

15 MR. SHIFFMAN: I move that the --

16 MR. FLEMING: No objection.

17 MR. FARBER: No objection.

18 MR. SHIFFMAN: I move that PX 5073 be admitted.

19 THE COURT: It's admitted.

20 (Image displayed.)

21 Q Mr. Cotton, do you recognize the e-mail that's on the
22 first page of this document?

23 A Yes, sir, I recognize it.

24 Q Okay. And that's an e-mail that was sent to you by
25 Mr. Frazer?

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1639

1 A Yes -- well, the -- the bottom -- the bottom part of it
2 was an e-mail I had sent to Mr. Frazer. The top part is his
3 response to me.

4 Q Right.

5 You asked Mr. Frazer to send you a copy of the Audit
6 Committee charter and he sent it to you; correct?

7 A Yes, sir. I couldn't find mine and --

8 Q Right.

9 A -- it was easier for him to send it.

10 Q Understood.

11 And the document that's attached to the e-mail, the
12 next few pages in the exhibit, those are the -- that's the
13 document that is the Audit Committee charter; correct?

14 A Yes, sir.

15 Q Okay. Can you please go to page 3 of that exhibit?

16 And again, we're using the numbers at the very bottom
17 that say -- have the exhibit number -- "PX 5073, page 3 of 4."

18 A Page 3 of 4. Yes, sir, I've got it.

19 Q And you see that the Audit Committee has responsibility
20 for oversight of the NRA's compliance with laws and regulations?

21 A I see that.

22 Q Okay. And it's -- another one of its responsibilities
23 is to ensure that the organization has internal controls in
24 place, right?

25 A Well, let's ...

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1640

1 Yes, sir.

2 Q Okay, thank you.

3 And the Audit Committee's also responsible for ensuring
4 that the NRA has programs and policies in place to prevent and
5 identify fraud; isn't that correct?

6 A I'm trying to see how, exactly, we worded it here
7 (indicating). Can you help me out here?

8 Q Well, sir, from your knowledge, doesn't the Audit
9 Committee have responsibility for ensuring that the NRA has
10 policies and programs in place to present -- prevent -- fraud?

11 A The best way I can answer that is to say that the --
12 the charter is -- is -- is very specific, because we're
13 volunteers. We don't have a staff or anything. None of us get
14 paid. We're not at headquarters. We make sure that the -- that
15 the policy -- I'm -- I'm sorry -- that the charter specifies
16 things like monitor and, you know, interview people and stuff
17 like that. I -- I'm a little concerned about -- when you say a
18 broad statement like "responsibility," like we're supposed to
19 step in and do it, because we can't do it. We have to rely on
20 others.

21 Q Well, you have responsibility, wouldn't you, for
22 overseeing the NRA's programs and policies with respect to --

23 A Overseeing, yes, sir. I can agree with that.

24 Q And if you take a look, sir, at the bottom of page 3,
25 the first bullet point in the last section there, you'd agree --

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1641

1 A Page 3? Yes, sir.

2 Q -- you'd agree that the Audit Committee is responsible
3 for reviewing the effectiveness of management's investigation on
4 fraudulent acts and accounting irregularities; correct?

5 A Are you talking about the first bullet point?

6 Q Yes, sir; the first bullet point, under "Compliance
7 With Laws and Regulations."

8 A It says: "Review the effectiveness of the system for
9 monitoring compliance with laws and regulations and the results
10 of management's investigation and follow-up ..."

11 That -- that's what -- I mean, that's what I was
12 talking about. We're supposed to review the work of others. We
13 don't do the investigation ourselves.

14 Q Right. I'm not suggesting that you do, sir. I was
15 just asking you whether you had responsibility for reviewing --

16 A Yes, sir.

17 Q -- management systems in place. Right?

18 A Yes, sir. Yes. We're -- we're supposed to review
19 those results.

20 Q Okay, good. Thank you, sir.

21 And the Audit Committee is also responsible for
22 reviewing how management responds when it finds and conducts
23 those -- finds fraud -- and conducts those investigations;
24 correct?

25 A If they find fraud, yes, sir.

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1642

1 Q Okay.

2 A But we're supposed to review the results. I'm -- I'm
3 sorry -- management's response to any results that they've got.
4 An example would be the management letter from the auditors.

5 Q And, sir, if you take a look at the same page, under
6 "Internal Controls," isn't it one of the Audit Committee's
7 responsibilities to ensure that management is setting the
8 appropriate tone by communicating the importance of internal
9 controls?

10 A Yes, sir, that's correct.

11 Q Okay, thank you.

12 And it's the Audit Committee, along with the Office of
13 General Counsel, that's tasked with overseeing the NRA's
14 whistleblower policy; correct?

15 A Well, certainly, the Audit Committee is a -- is a cog
16 in that system, but it depends on the type of whistleblower. It
17 could be an HR matter that goes to the head of HR or -- or
18 general counsel, as you mentioned; but we're certainly one of
19 them, yes, sir.

20 Q Okay. Thank you, sir.

21 And another responsibility of the Audit Committee is to
22 review potential conflict-of-interest and related-party
23 transactions, right?

24 A Yes, sir.

25 Q Can you turn back to page -- to tab -- 8, which is

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1 Exhibit PX 534? It's already been admitted and we were just
2 looking at that document, but I'm going to direct you to page 23
3 of this exhibit, please, sir.

4 (Image displayed.)

5 MR. FLEMING: I'm sorry; what tab?

6 MR. SHIFFMAN: Tab 8. It's the exhibit we were
7 just looking at.

8 A Page "23" at the bottom.

9 Q Yes, sir.

10 A "17" at the top.

11 Q Yes --

12 A Okay.

13 Q -- or slightly above that.

14 So, Mr. Cotton, pages 23 to 27 of this exhibit contain
15 the NRA's conflict-of-interest and related-party-transaction
16 policy; correct?

17 A This -- this appears to be it, yes, sir.

18 Q Okay. And if you look on page 27 of this exhibit --

19 A Okay.

20 Q -- that indicates that this is the policy that went
21 into effect in January of 2016; correct?

22 (Image scrolled.)

23 A Yes, sir.

24 Q Okay. And this policy is one of the policies that
25 implements the code of ethics that we were just looking at,

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

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1 right?

2 A I want to say that we had a code of ethics before this.
3 I'm maybe -- well, I know -- I know we had an ethics policy.
4 Did we have a code of ethics prior to this one? I can't say.
5 But this (indicating), definitely, was one that incorporated a
6 code of ethics, yes, sir.

7 Q Okay. I think the Code of Ethics we looked at a little
8 while ago was from 2015 and this document's from 2016.

9 A Okay.

10 Q Okay. Does that refresh your recollection that this is
11 one of the policies that implements the Code of Ethics?

12 MR. FLEMING: Objection.

13 THE COURT: Overruled.

14 A It certainly implemented, yes, sir. What I can't tell
15 you from memory is that this was the first one, ever. I just
16 can't say that.

17 Q Okay. I was not asking you that, sir, just to be
18 clear.

19 A Okay.

20 Q I was just asking if this was one that implements that.
21 If you turn to page 25 of this exhibit and take a look
22 at IV ...

23 (Image scrolled.)

24 A Okay.

25 Q So there, the policy provides that transactions that

ALAN F. BOWIN, CSR, RMR, CRR

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1 could potentially benefit an officer, director or key person are
2 considered to be conflict-of-interest transactions; right?

3 A Yes, sir.

4 (Continued on next page.)

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ALAN F. BOWIN, CSR, RMR, CRR

Direct-Cotton-Shiffman

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1 Q Okay. And in order to ensure that the audit committee
2 properly reviews potential conflict of interest transactions,
3 the NRA requires its officers, directors and key employees to
4 fill out an annual disclosure form, right?

5 A Yes, sir. Well, not an annual form. There is a
6 disclosure form that we -- we fill out whenever it's
7 appropriate.

8 Q Okay. And isn't it appropriate to fill it out at least
9 annually but sometimes more than that?

10 A Yes, sir. That's our policy, is that we do it once a
11 year, kind of the official time if you will. But if there is
12 another transaction coming up or something you're thinking about
13 doing, if it -- if it would be triggered by this policy, we
14 expect it to be reported then not wait until the next annual.

15 Q When the audit committee does review transactions that
16 potentially would involve a conflict of interest or related
17 party it looks at those forms, isn't that right?

18 A Yes, sir.

19 Q Okay. And on pages 23 to 24 of this exhibit the policy
20 sets forth the people that it applies to, right?

21 A (Examining).

22 Q That's under the Roman heading II for "Applicability"?

23 A Yes, sir. Under the definition of a related party.

24 Q Okay. And it defines covered people or covered
25 person -- Do you want to --

LAS

Direct-Cotton-Shiffman

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1 THE WITNESS: Your Honor, is this mine

2 (indicating)?

3 Q Yes. I believe, yes.

4 A Excuse me.

5 Q That's fine. So, then the policy defines covered
6 people as NRA officers, directors and key employees, correct?

7 A Yes, sir.

8 Q And it also includes relatives of those people, right?

9 A Yes, sir.

10 Q Okay. And it would include members of the board too,
11 right?

12 A Absolutely.

13 Q Wayne LaPierre?

14 A Yes.

15 Q And Woody Phillips?

16 A Yes.

17 Q And all the members of the board?

18 A Yes, sir.

19 Q And their relatives too?

20 A Yes, sir.

21 Q Okay. If you take a look at page 24, Roman numeral
22 III, there the policy sets forth a number of things that
23 constitute conflicts of interest, correct?

24 A Yes, sir.

25 Q Okay. And there again it goes through different types

LAS

Direct-Cotton-Shiffman

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1 of things that constitute conflicts of interest, but it also
2 talks about also needing to disclose any gifts that a person
3 receives that are valued over \$250 from a potential vendor or
4 somebody who might influence the person, right?

5 A I was going to say that we have a -- it says nominal
6 gifts up to \$250 gifts, yes, sir.

7 Q Okay. And it also provides that -- the covered people
8 are suppose to air on the side of disclosure -- air on the side
9 of caution when making their disclosures, correct?

10 A Yes, sir.

11 Q And so even if they don't think a conflict exists but
12 it might exist, they should disclose that, right?

13 A Yes. So long as they recognize it. I mean, obviously
14 you want people to air on the side of letting us know, let the
15 audit committee make that decision.

16 Q Okay. And if you take a look at Roman numeral IV,
17 thereto, "The NRA policy requires disclosure of all material
18 facts relating to any of these transactions", right?

19 A Yes, sir.

20 Q And is it Mr. Frazer's responsibility to collect those
21 forms and deliver them to the audit committee whenever it may
22 consider a transaction that could potentially pose a conflict of
23 interest?

24 A It goes -- All those forms are going to be collected by
25 the secretary's office. Mr. Frazer actually wears two hats.

LAS

Direct-Cotton-Shiffman

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1 He's our general counsel and he's also our elected secretary.

2 So, it goes to his office yes, sir.

3 Q And the secretary is actually responsible for
4 collecting those but also giving those to the audit committee,
5 correct?

6 A Yes, sir. They collect them and then I think it comes
7 to us via an audit committee meeting.

8 Q Okay. And so if there is a conflict of interest
9 transaction that's presented to the audit committee, the audit
10 committee needs to look at whether or not the transaction is
11 fair, reasonable and in the best interests of the NRA, right?

12 A That's correct.

13 Q Okay. Could you take a look at the top of page 26.
14 And there it provides, in the very first number, that the audit
15 committee also is suppose to consider alternative transactions
16 to the extent that they are available, right?

17 A To the extent they are available, yes, sir.

18 Q Correct. And the audit committee, in reviewing those
19 transactions, is also suppose to take into account whether or
20 not they comply with the NRA's mission, right?

21 A Yes, sir.

22 Q Okay. And conflict of interest transactions must be
23 approved by a majority of the audit committee, excluding anyone
24 who has a potential conflict, right?

25 A Yes, sir. It's got -- it's got to be a majority vote

LAS

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1 of the committee. If by some chance a committee member is the
2 person at issue, then they have to excuse themselves, so they
3 neither deliberate nor vote.

4 Q Okay. Thank you. And whenever the audit committee
5 reviews a conflict of interest transaction, it must keep records
6 that document contemporaneously the consideration of that
7 transaction as well as all the information that was considered,
8 right?

9 A Yes, sir.

10 Q Okay. And not only requires that, but it specifically
11 requires documentation of all the documents that were reviewed
12 and any alternatives that were considered, isn't that correct?

13 A If -- I'm not certain of your question. If you're
14 asking me do we have -- or does the committee secretary have to
15 list like one, two, three, four, every single document, that may
16 not be the case. It may be that it is a collection of documents
17 that could be described by category.

18 MR. SHIFFMAN: Jesse, could you highlight the first
19 sentence there.

20 Q So, it says, "The deliberations of the" -- Keep going.
21 "The minutes of the NRA audit committee meeting during which a
22 potential or actual conflict of interest is disclosed or
23 discussed shall be documented contemporaneously with the meeting
24 and reflect the name of the covered person, the nature of the
25 conflict and the details of the deliberations of the

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1 disinterested directors (such as documents reviewed, any
2 alternatives considered, comparative costs or bids, market value
3 valuation and other factors considered in deliberations)." Is
4 that correct, sir?

5 A That's correct. And where it says "documents", that's
6 what I was talking about earlier. We don't have to list them,
7 don't necessarily have to list them one through X, whatever that
8 may be. We may refer to a category of documents that -- that
9 were submitted at the meeting.

10 Q Okay. But you don't dispute that the policy requires
11 documentation of what was reviewed?

12 A As I just described it. No, sir, I don't dispute that.

13 Q Okay. And the policy also provides that if the audit
14 committee finds that somebody failed to comply with the policy,
15 that it may investigate and take action against those persons,
16 right? That's under six. I'm sorry. Under Roman numeral VII?

17 A Seven.

18 Q Yeah. And it's also highlighted on the screen there.
19 This is on page 27.

20 A Yes, sir, it says it may make such -- such further
21 investigation as may be warranted under the circumstances.

22 Q Okay. Mr. Cotton, does the audit committee regularly
23 issue reports to the full board of directors?

24 A At every single board meeting.

25 Q Okay. So it has a meeting and it will issue a report

LAS

Direct-Cotton-Shiffman

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1 to the full board after the audit committee's meeting, right?

2 A Yes, sir. When it's presented to the board. We have
3 typically three board meetings a year. One of them is in
4 conjunction with our annual, what I call, convention week, the
5 annual meeting of the members. We have one audit committee, I'm
6 sorry, board meeting then. We have two others during the year.
7 This is all per our bylaws. It's at those meetings that all of
8 the audit committee reports are distributed.

9 Q Okay. Thank you. And if the audit committee makes --
10 passes a resolution when it's in session, it will report the
11 results of that resolution in its report to the full board,
12 correct?

13 A Yes, sir. Now there was a change in our policy as to
14 how -- how we recorded it, but yes, sir, that's correct.

15 Q Okay. Mr. Cotton, you're aware that the Attorney
16 General filed its complaint here in August 2020, right?

17 A Yes, sir.

18 Q Okay. And you reviewed the complaint after it was
19 filed?

20 A I did.

21 Q Okay. And you reviewed the amended complaint as well.
22 There has been two amendments. You reviewed all three, but the
23 first and last cover to cover, right?

24 A Cover to cover quite some time ago. I got to admit, I
25 focused on what you were talking about with the audit committee.

LAS

Direct-Cotton-Shiffman

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1 Q Yeah. I'm not going to test you on it today, sir.

2 A I'm glad to hear it. It's 600 paragraphs.

3 Q Yes. You do recall that the complaint had some
4 allegations concerning Mr. LaPierre obtaining private benefits
5 at the NRA, right?

6 A Do I remember? Yes, sir. In general terms. Again, I
7 couldn't give you all the specifics.

8 Q But you do recall that one of the allegations focused
9 on Mr. LaPierre's use of a luxury yacht in the Bahamas?

10 A I do.

11 Q And another allegation against Mr. LaPierre focused on
12 his use of private airplanes?

13 A I recall that, yes, sir.

14 Q Okay. And you would agree with me, wouldn't you, sir,
15 that the audit committee had responsibility for overseeing the
16 NRA's investigations into those allegations concerning Mr.
17 LaPierre?

18 A Are you talking about before it was disclosed to us?

19 Q I'm talking just generally, sir. That you would agree
20 with me, wouldn't you, that the audit committee had
21 responsibility for overseeing the NRA's investigations into the
22 allegations which I was talking about from the complaint of Mr.
23 LaPierre obtaining private benefits?

24 A Okay. Now I understand what you're saying. Yes, sir,
25 the audit committee did look into those allegations.

LAS

Direct-Cotton-Shiffman

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1 Q Okay. So that made -- The audit committee had
2 responsibility for making sure the -- the allegations were
3 investigated, right?

4 A Yes, sir.

5 Q Okay. And one of the audit committee's
6 responsibilities was also to make sure that the results of the
7 investigations were reported back to it, right?

8 A To the audit committee.

9 Q Yes. That's correct?

10 A Yes, sir.

11 Q Okay. And part of its responsibilities was to make
12 sure that the investigation and whatever came of it was
13 appropriately resolved, right?

14 A Either appropriately resolved or if it wasn't, then the
15 audit committee would have to take some action or would take
16 some action.

17 Q Okay. The audit committee didn't investigate the
18 allegations itself though, right?

19 A The audit -- Again, I got to make a distinction here.
20 The audit committee itself are all volunteers. We don't have a
21 staff. We're literally scattered all over the country. We
22 can't do that kind of stuff. We have to rely upon others.

23 Q My question was simply whether the audit committee did
24 the investigation itself or not, not why.

25 A Itself, no, sir. We can't.

LAS

Direct-Cotton-Shiffman

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1 Q Right. And that's because the audit committee relied
2 on the NRA's executives from its financial services division to
3 do the investigation, right, as well as its general counsel?

4 A Okay. I guess this is where being a lawyer and an ex-
5 police officer, the word "investigation" to me is kind of a term
6 of art. The audit committee talked to the executives. We
7 talked to financial services folks and our treasurer. We talked
8 to our trial counsel. We talked to a lot of people. I
9 personally don't consider that an investigation. I consider the
10 people who actually, you know, lift the fingerprints or, you
11 know, check the DNA as doing the investigation. We followed all
12 of that, yes, sir.

13 Q So my question was a simple one. It was whether the
14 audit committee relied on the executives from the financial
15 services division and other general counsel to do the
16 investigation?

17 A Not exclusively, no, sir. They were one -- That's one
18 group of folks.

19 MR. SHIFFMAN: Okay. I would like to play
20 Mr. Cotton's testimony from the June 17th, 2022 deposition
21 at page 37, lines 14 to 38, line ten.

22 (Whereupon the video is being played.)

23 MR. SHIFFMAN: Can you also play from the same
24 transcript, pages 59, line four through 13.

25 (Whereupon the video is being played.)

LAS

Direct-Cotton-Shiffman

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1 Q Mr. Cotton, the executives in the financial services
2 division are subordinate to Mr. LaPierre, right?

3 A Yes, sir. In terms of the corporate chart, yes, sir.

4 Q Okay. And Mr. Frazer also reports to Mr. LaPierre,
5 right?

6 A Yes, sir.

7 Q Okay. And the NRA hired a tax lawyer Don Lan to assess
8 possible tax concerns from Mr. LaPierre's alleged use of the
9 yacht and other private benefits, isn't that correct?

10 A Mr. Lan is a tax lawyer. He was hired -- he was hired
11 to look at a number of issues. It would include what you just
12 said, but we didn't hire him exclusively just for that -- for
13 that topic.

14 Q But you agree he was hired for that topic, to look into
15 the tax consequences of the allegations --

16 A I --

17 Q -- with regard to the yacht?

18 A I'm sorry. I didn't mean to cut you off.

19 Q That's okay, sir.

20 A Too easy for me to get into a conversation. I'm sorry.
21 We hired the tax lawyer to look into tax issues for the NRA.
22 Mr. LaPierre hired his own tax experts.

23 Q Yeah. I'm asking about what the NRA did, not about
24 what Mr. LaPierre did.

25 A Understand, but I got the impression you were asking me

LAS

Direct-Cotton-Shiffman

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1 if we hired a tax lawyer for Mr. LaPierre. We did not. We
2 hired a tax lawyer for the NRA.

3 Q That is what my question was, sir. The NRA hired Mr.
4 Lan to do an assessment of any potential tax consequences that
5 the NRA would have to deal with concerning Mr. LaPierre's
6 alleged private benefits, correct?

7 A Yes, sir. Such as reporting on the 990 and all of that
8 stuff.

9 Q Exactly, sir. Mr. Lan reported to the NRA's financial
10 services division, right?

11 A Yes, sir.

12 Q Okay. Mr. Lan did not look into Mr. LaPierre's use of
13 the yacht and private aircraft, whether that violated New York
14 not-for-profit corporation law, did he?

15 A You'd have to ask him that, sir. I don't know.

16 Q As far as you know he did not look into that?

17 A I don't know what he did other than what was reported
18 to me by the financial services folks.

19 Q And Mr. Lan never made a report to the audit committee
20 directly, did he?

21 A No, sir.

22 Q Okay.

23 MS. ROGERS: I'll remind the witness, sorry, since
24 we're getting into what counsel did and what counsel looked
25 at. It's fine for the witness to testify which council was

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1 hired and the general purview. But please do not divulge
2 legal advice received or requested by Mr. Lan.

3 THE WITNESS: Yes, ma'am.

4 Q And Mr. Lan did not analyze whether Mr. LaPierre should
5 have disclosed his use of the yacht or private aircraft on his
6 conflict of interest forms within the NRA, did he?

7 A I'm sorry. Missed the first part of that question.

8 Q Mr. Lan did not analyze whether or not Mr. LaPierre
9 should have disclosed his use of the yacht and private aircraft
10 on his NRA financial disclosure forms, did he?

11 A Again, counsel, I don't -- I'm not sure what Mr. Lan
12 did.

13 Q Okay. Isn't it true, Mr. Cotton, that at least as of
14 the time that you were deposed in June 2022, that the NRA had
15 not hired an independent forensic investigator to analyze Mr.
16 LaPierre's use of NRA funds for potential private benefit?

17 A That's correct.

18 Q Okay. It could have?

19 A To my recollection, that's correct.

20 Q And it could have done that, right?

21 A I guess we could have, yes, sir.

22 Q But it didn't?

23 A We had a lot going on, investigations already. Yes, we
24 could have added another.

25 Q So, it's true, isn't it that as of the date you were

LAS

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1 deposed, the only analysis that you were aware of of Mr.
2 LaPierre's use of the yacht and other private benefits was Mr.
3 Lan's analysis of the use of the potential tax repercussions
4 from that use, right?

5 A I don't -- I mean, the last few years are like drinking
6 from a water hose -- I mean, a fire hose. I'm trying to
7 remember what it was a year and a half ago. Ask me again.

8 Q Sure. You're not aware, sir, of, as of the time that
9 you were deposed in June 2022, about a year and a half ago, of
10 any other analysis of Mr. LaPierre's use of the yacht and other
11 private benefits other than Mr. Lan's consideration of the tax
12 benefits -- of the tax repercussions from that private use?

13 A Again, we're talking about an investigation. I talked
14 to Mr. LaPierre myself about that independent person hired, like
15 Mr. Lan. I don't recall anybody else. I certainly talked to
16 him myself.

17 Q Okay. And Mr. Lan also did not analyze whether there
18 were any internal control failures at the NRA in connection with
19 Mr. LaPierre's use of the yachts and private aircraft, did he?

20 A Again, I don't know what Mr. Lan did.

21 Q Okay. That's because the audit committee didn't
22 oversee Mr. Lan directly, right?

23 A That's correct.

24 Q And you don't even know how Mr. Lan was chosen, right?

25 A No, sir, I don't.

LAS

Direct-Cotton-Shiffman

1660

1 Q Okay. And you don't know what information Mr. Lan was
2 given in order to perform his work, right?

3 A That's -- that's not true. As I understand, he had all
4 of -- he had all -- Wait a minute. Let me back up. Are you
5 talking about in connection with the yacht?

6 Q In connection with the yacht and other private benefits
7 that Mr. LaPierre allegedly received.

8 A If you don't tell me which one, I don't know which one
9 the tax lawyer would be involved with.

10 Q Do you know what information Mr. Lan was given at all
11 in connection with the work that he did?

12 A Specifically, no, sir. You would have to ask financial
13 services.

14 Q Right. I was asking -- I'm not asking what he was
15 given. I'm requesting whether you knew what he was given.

16 A Specifically, no, sir.

17 Q Okay. Thank you. And you're not aware of any written
18 documents setting forth the scope of the work that Mr. Lan did
19 either, right?

20 A There could very well be, but again that was all
21 handled with financial services. So, I don't know.

22 Q Sir, my question was really just whether you know. So,
23 not whether financial services knew. So, the answer is yes, you
24 did not know, right?

25 A I personally did not know.

LAS

Direct-Cotton-Shiffman

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1 Q Okay. Thank you. And you don't know what Mr. Lan did
2 in order to perform his analysis, right?

3 A What he did? No, sir.

4 Q Okay. And you don't know what materials he relied on
5 in his analysis, correct?

6 A I'm not a tax expert. I have no idea what they would
7 do, sir.

8 Q Okay. And you don't know if Mr. Lan spoke to Mr.
9 LaPierre as part of his work, right?

10 A I can't imagine he didn't, but I don't know.

11 Q Okay. And the audit committee did not get any notes
12 and did not maintain any notes relating to Mr. Lan's
13 investigation, correct?

14 A That's not correct.

15 Q The audit committee did keep notes of Mr. Lan's
16 investigation or get notes of that investigation?

17 A Well that's -- I didn't think that's exactly what you
18 asked me. Our treasurer, Ms. Sonya Rowling made a report to the
19 audit committee about some expense, I mean, some reimbursements
20 from Mr. LaPierre. Where she got that information, I can't tell
21 you, but she did mention Mr. Lan.

22 Q Sir, I didn't ask you about Ms. Rowling's report. I
23 asked you whether the audit committee kept notes of his
24 investigation.

25 MR. FARBER: Objection. Misstates testimony.

LAS

Direct-Cotton-Shiffman

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1 THE COURT: He was just restating his question, I
2 think. So overruled.

3 Q Do you need the question again, sir? I can ask. Did
4 the -- The audit committee did not keep any notes or records of
5 Mr. Lan's tax analysis, did it?

6 A No. He did not -- I'm sorry. The audit committee did
7 not do that.

8 Q Okay. And you've never spoken to Mr. Lan directly,
9 have you?

10 A I have not.

11 Q Okay. But you do know that Mr. Lan did conclude that
12 Mr. LaPierre did receive excess benefits, right?

13 A As reported.

14 MS. ROGERS: I'm going to object to any questions
15 calling for the content of the lawyer's conclusions or
16 advice.

17 MR. SHIFFMAN: I'm not asking for advice. I'm
18 talking about the conclusions reported in the organization's
19 990s, I can turn to if you want.

20 THE COURT: Well, the way you phrased the question
21 was this lawyer's specific conclusions as opposed to what
22 the organization did as a result of the analysis. So, I
23 think they're objecting to the question would strictly be
24 asking for his conclusion as a human being lawyer.

25 MR. SHIFFMAN: Right. I think the -- My

LAS

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1 understanding and my colleague's was that the NRA had said
2 that they used Mr. Lan's conclusion to report that in their
3 990s. If that's incorrect, I can move on and just ask about
4 the 990s.

5 THE COURT: If you want to elicit evidence of that,
6 you certainly can try.

7 MR. SHIFFMAN: Why don't we look at the 990s
8 itself.

9 Q So, let's go to tab two, which is PX 159. I believe
10 that at least a form of this has been admitted already. I'm not
11 sure if it was the same version which has the Char500 in it. I
12 know the rest of the 990s we're going to look at were admitted.

13 MS. ROGERS: We have no objection.

14 THE COURT: Just general comment. It would be
15 helpful if we had a consistent use so that the jury, if they
16 want to go back and find something, have specific numbers
17 that they can look for.

18 MR. SHIFFMAN: I understand. We printed his
19 binders before the documents were admitted the other day by
20 stipulation. So, just to keep it consistent, we've kept it
21 that way. But yes, I'm endeavoring to do that as much as
22 possible. I think this is the only 990 we have a different
23 version than was previously admitted.

24 THE COURT: Somebody can probably tell us, is PX
25 159 on the list of admitted exhibits? PX 159.

LAS

Direct-Cotton-Shiffman

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1 MS. STERN: I can do it but it may take a while.

2 THE COURT: If nobody has an objection to using
3 this one, that's fine. I rather not have multiple identical
4 exhibits with different exhibit numbers. It just gets
5 confusing.

6 MR. CORRELL: No objection, your Honor.

7 MR. FARBER: No objection.

8 MS. ROGERS: We're happy to work on it. We have no
9 objection to this one.

10 THE COURT: Everybody is in violent agreement. So
11 am I.

12 MR. SHIFFMAN: I don't want to interfere with
13 something we agree on. I wasn't sure whether this one has
14 the Char500. I wasn't sure the other one did.

15 Q Mr. Cotton, can you turn to page 99 of this exhibit.

16 (Whereupon the witness complied with the above
17 request of counsel.)

18 Q Take a look at the very top box there. Do you see that
19 this filing identifies a number of excess benefit transactions
20 that the NRA entered into with Mr. LaPierre?

21 A (Examining). Okay. I've just read it. I'm sorry.
22 Your question.

23 Q Do you see -- Do you recognize this document to be the
24 NRA's filing with the IRS and New York State for 2019?

25 A Yes, sir.

LAS

Direct-Cotton-Shiffman

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1 Q Okay. And you see that on this filing on page 99 it
2 discloses some excess benefit transactions that the NRA entered
3 into with Mr. LaPierre?

4 A Yes, sir.

5 Q Okay. And on this page it lists several excess benefit
6 transactions for Mr. LaPierre that related to his travel
7 expenses, correct? You could also look at the screen too, sir,
8 if that's helpful.

9 A On page -- page 99 here the text with that dollar
10 amount you just read 299,078.78 I don't -- I'm sorry. I'm
11 mistaken. It does say travel. Yes, sir.

12 Q Here the NRA was disclosing that it had paid for about
13 \$300,000 of travel expenses for Mr. LaPierre, right?

14 A Yes, sir.

15 Q And in this document it also discloses that Mr.
16 LaPierre had to pay excise taxes before \$75,000. That's on the
17 next to last line in this section, right?

18 A Yes, sir, in addition to the interest he paid to us
19 when he reimbursed it.

20 Q Okay. After the -- after it was discovered that Mr.
21 LaPierre had incurred almost \$300,000 in excess benefits for his
22 travel expenses, did the NRA's board take any action to
23 discipline Mr. LaPierre?

24 A At that time I can't -- I can't speak for the whole
25 board. All I can do is actually speak for myself as a board

LAS

Direct-Cotton-Shiffman

1666

1 member. We didn't take any additional action. At that time the
2 thought was, number one, you know, he came clean. He admitted
3 it. He paid it back. And paying, as you pointed out, \$75,000
4 in penalty to the IRS and quite a bit of interest to us, that's
5 pretty good penalty right there.

6 Q Was there any penalty to -- any penalty imposed on Mr.
7 LaPierre by the NRA when it learned that he had used
8 approximately \$300,000 of NRA assets for his personal benefit?

9 A At that point in addition to the interest he had to pay
10 us on that debt, on that amount, no, sir.

11 Q It -- Did he even hold a vote whether or not he should
12 be sanctioned for that use?

13 A A vote where?

14 Q A vote at the NRA board or at the NRA's audit
15 committee.

16 A A vote at that point, no, sir.

17 Q Okay. At any point did the NRA vote to sanction or
18 terminate Mr. LaPierre for his using NRA assets for his private
19 benefit?

20 A At this point, no, sir.

21 Q Okay. And the \$300,000 in excess benefit transactions
22 that are identified in this document are not the total of all
23 the excess benefits that Mr. LaPierre has been determined by the
24 NRA to have received, right?

25 A That's correct.

LAS

Direct-Cotton-Shiffman

1667

1 Q Okay. In fact, in the next year there is tens of
2 thousands of dollars more in excess benefit transactions
3 identified, correct?

4 A We would have to look at that report for me to be able
5 to say that under oath.

6 Q You're a little bit ahead of me. We're going to go
7 right there, sir.

8 MR. SHIFFMAN: We'll go to tab 17, PX 2374. And
9 this document has been admitted. This is the 2020 Char500
10 and 990.

11 Q Do you see that document, sir?

12 A (Examining). Yes, sir.

13 Q Do you recognize that as the NRA's filing for the year
14 2020?

15 A The Char500 for the 2020 yes, sir.

16 Q The Char500 includes the NRA's 990, which is the filing
17 with the IRS?

18 A Yes, sir. It's an attachment to it.

19 Q Yes. If you take a look at page 51 of the exhibit,
20 sir. And the second box on that page discloses some additional
21 excess benefits that Mr. LaPierre received for -- for traveling,
22 correct?

23 A Give me just a moment.

24 Q Take a second.

25 A Okay. Yes, sir. I've got it.

LAS

Direct-Cotton-Shiffman

1668

1 Q Okay. And there discloses an additional \$43,000 in
2 benefits?

3 A Yes, sir.

4 Q Okay. And an additional \$10,000 in ex -- excise taxes?

5 A Yes, sir.

6 Q And you know, sir, that Mr. LaPierre has in fact --
7 Strike that. You understand that the NRA has in fact identified
8 even more personal benefits that Mr. LaPierre received in
9 addition to the ones disclosed in the 2020 and 2019 tax returns
10 that we just looked at, right?

11 A Unless I'm having some other thought, yes, I think
12 there were some in '20 as well.

13 Q It's true, isn't it, that by the time you were deposed
14 in around June of '22 that it identified about half a million
15 dollars in personal benefits that he received?

16 A I know generally what the total is now. I couldn't
17 tell you. I don't remember what it was.

18 Q What's generally the total now?

19 A I think it's around a million dollars.

20 Q Right. Okay. So after the NRA discovers that Mr.
21 LaPierre used approximately a million dollars of its assets for
22 his personal benefit, the NRA didn't vote to sanction him or
23 terminate him, right?

24 A Well, as of this point, no, sir.

25 Q Okay. Mr. Cotton, there was no written policy passed

LAS

Direct-Cotton-Shiffman

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1 by the NRA at any time prior to August 1st, 2020 that expressly
2 mentioned travel by charter planes, isn't that correct?

3 A As you worded it, you're correct. It didn't
4 specifically mention that.

5 Q Okay. And there was no written resolution passed by
6 the NRA board at any time prior to August 1st, 2020 that
7 required Mr. LaPierre to fly exclusively by charter travel
8 either, right?

9 A He was required -- he was required to travel privately
10 for security reasons. I'm trying to remember if I can recall a
11 specific -- a specific board action. I know our old policy had
12 kind of admitted general statement about how you get there,
13 okay.

14 THE WITNESS: Oh, I'm sorry, your Honor. My wife
15 is a Type One diabetic, and this is an alarm that I get
16 whenever she's in trouble.

17 MR. SHIFFMAN: Do you want to take a break?

18 THE COURT: Do you want to take a short break?

19 THE WITNESS: Let me see if she's in trouble.

20 MR. SHIFFMAN: It's around --

21 THE WITNESS: No data point.

22 THE COURT: All right. This is about the time when
23 we would take a break normally. Why don't we take a short
24 break.

25 MR. SHIFFMAN: Thank you, your Honor.

LAS

1 THE COURT OFFICER: All rise. Jury exiting.

2 (Whereupon the jury panel departed the courtroom.)

3 THE COURT: I'm going to let the witness go
4 somewhere private where he can talk.

5 THE WITNESS: I'm sorry.

6 THE COURT: You should keep that on. So the
7 officer will take you somewhere private.

8 THE COURT OFFICER: You can take him into the back.

9 (Whereupon a recess was taken.)

10 (Continue on the next page.)

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LAS

Cotton - by Plaintiff - Direct/Shiffman

1671

1 (The witness resumed the stand.)

2 (Pause.)

3 COURT OFFICER: Is the Court ready for the jury?

4 THE COURT: Yes, sir.

5 COURT OFFICER: All rise. Jury entering.

6 Hang on, your Honor. We had one late addition, had
7 to go to the men's room.

8 THE COURT: Okay.

9 (Pause.)

10 COURT OFFICER: All rise. Jury entering.

11 (The jury entered the courtroom.)

12 THE COURT: Okay. Have a seat, please.

13 And just to remind folks, our off day this week is
14 Thursday.

15 JUROR NO. 3: Right, the 25th.

16 THE COURT: The 25th.

17 MR. SHIFFMAN: May I proceed?

18 THE COURT: (To witness) All is well?

19 THE WITNESS: Yes, sir. Thank you.

20 THE COURT: All right, counsel, you may continue.

21 MR. SHIFFMAN: Thank you, your Honor.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. SHIFFMAN:

24 Q Mr. Cotton, before we broke, you testi -- when I asked
25 you whether the NRA had ever voted to sanction or otherwise

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Cotton - by Plaintiff - Direct/Shiffman

1672

1 discipline Mr. LaPierre, you said, "Not at this point." You
2 mean, not as of today; correct?

3 A Yes, sir.

4 Q Okay, thank you.

5 I want to return to the allegations that we discussed
6 about Mr. LaPierre's use of a yacht. The yacht that
7 Mr. LaPierre stayed on in the Bahamas was owned by David
8 McKenzie, right?

9 A Either David McKenzie or one of the companies he owns,
10 yes, sir.

11 Q Okay. And the companies that Mr. McKenzie owns are:
12 Membership Marketing Partners?

13 A Yes, sir.

14 Q Okay. And there's some other ones, as well.

15 A Well, two others that I know of. One of them -- one of
16 them is Allegiance and one is -- I'm drawing a blank.

17 Q Concord Social?

18 A Con -- yes.

19 Q And Associated Television as well?

20 A Yes, sir.

21 Q Okay. And those are some of the NRA's largest vendors,
22 right?

23 A They were, yes, sir.

24 Q Okay. And the first time that you, personally, took a
25 look at the MMP contract was after some whistleblowers raised

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1673

1 concerns in 2018; isn't that right?

2 A I certainly took a look at it then. I can't tell you
3 that's the first time, ever. I just -- I just don't remember.

4 Q Okay. Well, is it true that the NRA's Audit Committee
5 never reviewed the MMP contract before 2018?

6 A Well, that's correct. Those -- those-type contracts
7 don't come to us.

8 Q Okay. Did the Audit Committee ever review the MMP
9 contract and the contract with MMP's affiliates?

10 A You mean, prior to doing so after the -- July of 2018?

11 Not that I can recall. Those are
12 ordinary-course-of-business-type contracts.

13 Q When was the first time that the Audit Committee as a
14 whole reviewed those contracts?

15 A Well, it would have been -- the first time -- first
16 time we considered -- I'm sorry -- first time the Audit
17 Committee considered it would have been after the Financial
18 Services folks came to us and said, "We have some concerns."

19 Q Okay. And the reason that the Audit Committee would
20 not have reviewed the contracts with MMP and its related
21 entities prior to 2018 was because it doesn't review contracts
22 unless there's a conflict of interest or some other
23 related-party transaction, right?

24 A Yes, sir. There has to be a trigger under the -- under
25 the policy that would bring that contract to us, and contracts,

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1674

1 you know -- ordinary-course-of-business-type contracts, don't
2 come to us.

3 Q Okay. You would agree, wouldn't you, that when
4 Mr. LaPierre stayed on Mr. McKenzie's yacht in the Bahamas, that
5 created a potential conflict of interest under the NRA's
6 policies and procedures?

7 A Potential, yes, sir.

8 Q Okay. And so, a potential conflict of interest such as
9 that is one that should have been disclosed to the Audit
10 Committee; right?

11 A Yes, sir.

12 Q Okay. And he should have disclosed that to you prior
13 to actually staying and using the yachts, right?

14 A That -- that's certainly what the policy anticipated.

15 Q Okay.

16 A But as I mentioned earlier, there is a provision to be
17 able to retroactively look at -- I mean, you look at them as
18 soon as you know about them.

19 Q But I asked you what he was required to do, not whether
20 it could be retroactively approved.

21 A Yes, sir.

22 Q And he was required to --

23 A Yes, sir.

24 Q We both have to stop talking over each other.

25 He was required to approve it in advance; correct?

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Cotton - by Plaintiff - Direct/Shiffman

1675

1 A Yes, sir.

2 Q Okay. And he didn't do so, right?

3 A Correct.

4 Q Let's take a look at tab 11, which is PX 639.

5 MR. SHIFFMAN: I don't believe there's any
6 objection to this.

7 THE COURT: Any objection?

8 MS. ROGERS: No objection.

9 MR. CORRELL: No objection.

10 MR. FLEMING: No objection.

11 MR. FARBER: No objection.

12 THE COURT: PX 639 is admitted.

13 MR. SHIFFMAN: Thank you, your Honor.

14 (Image displayed.)

15 Q Mr. Cotton, do you recognize this -- this exhibit?

16 A Yes, sir. That's our standard financial disclosure
17 questionnaire.

18 Q Okay. And this is one for Mr. LaPierre; correct?

19 A It is.

20 Q All right. And it's from 2021, right?

21 A Yes, sir.

22 Q Okay. If you take a look at page 5 of 6 --

23 A 5 of 6?

24 Q Yes, sir.

25 A Yes, sir.

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Cotton - by Plaintiff - Direct/Shiffman

1676

1 Q -- do you see that he signed this on April 7th, 2021?

2 A Yes, sir.

3 Q And do you recall that that was during the bankruptcy
4 hearing in Texas?

5 A The -- I'm not sure of the exact date, no, sir.

6 Q Okay. Can you take a look at page 2 of 6 and question
7 number 4?

8 A Okay.

9 Q Okay. And you see there, it -- that question, on the
10 financial disclosure form, asks about receiving gifts in excess
11 of \$250 from any person or entity that is -- has or is seeking
12 to have a business relationship with the NRA; right?

13 A Yes, sir.

14 Q That question has been on the NRA's financial
15 disclosure form for years, right?

16 A For a long time, yes, sir.

17 Q Okay. You see, Mr. LaPierre answered "No" to that
18 question on this form; right?

19 A That's what the form shows, yes, sir.

20 Q Right. But if you take a look at --

21 He did provide an addendum to this form and that's at
22 the very last page of the document.

23 (Image scrolled.)

24 Q And there, if you take a look at the second paragraph,
25 which relates to question number 4, he disclosed that, although

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Cotton - by Plaintiff - Direct/Shiffman

1677

1 he didn't stay on Mr. McKenzie's yacht in the 2020 period, in
2 the past he had stayed on the yacht; right?

3 A That -- that's what it says, yes, sir.

4 Q On several occasions, right?

5 A Yes, sir.

6 Q Was this disclosure form given to the Audit Committee
7 in or about April of 2021?

8 A It would have come to the Audit Committee at our first
9 Audit Committee meeting, after it was received in the
10 secretary's office.

11 Q Okay.

12 A That looks like about annual meeting week;
13 "convention," as I call it, so I think it would have been pretty
14 close to that, but I can't tell you exactly when.

15 Q Okay. Did the Audit Committee investigate
16 Mr. LaPierre's failure to make this disclosure anytime prior to
17 the time he did it in April 2021?

18 A Based on our discussion of what's an investigation and
19 who has to do it, yes, sir. We had talked to -- I talked to
20 Mr. LaPierre; I had talked to other folks, as well. I'm trying
21 to remember some people within Financial Services. Probably
22 would have been Sonya Rowling, our -- our treasurer. I would
23 have -- would have talked to our -- our trial counsel as well.

24 Q But when you talked to him, at least as of the time you
25 were deposed in 2022, you hadn't asked him how many times he

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Cotton - by Plaintiff - Direct/Shiffman

1678

1 stayed on the yacht --

2 A No, sir.

3 Q -- isn't that correct?

4 A That's correct.

5 Q Okay. And you never asked him how many times he

6 traveled to the Bahamas with Mr. McKenzie, did you?

7 A How many times? I don't recall doing it, no, sir.

8 Q Okay. And you don't know if anyone else on the Audit
9 Committee ever asked Mr. LaPierre whether he -- how many times
10 he traveled to the Bahamas with Mr. McKenzie?

11 A To my knowledge, I -- I -- I don't know. I mean, no,
12 sir, I don't know.

13 Q Do you know if the Audit Committee considered whether
14 or not the prior contracts with MMP and its affiliates were
15 fair, reasonable and in the best interests of the NRA at any
16 time prior to April 2021?

17 A I'm trying to remember when we renegotiated all of
18 that, and it was after 2021.

19 Q Okay.

20 A So, no, sir, I didn't.

21 Q Do you know if it was --

22 So it didn't do it later in 2021, either; is that
23 correct?

24 A No. No, sir.

25 Q Okay. So, even after Mr. LaPierre disclosed this

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1679

1 conflict and disclosed that, and you knew that MMP had been a
2 large vendor, you didn't go back and look at that in 2021;
3 right?

4 A We were already looking into the MMP contract
5 extensively, so it wasn't -- it wasn't triggered by this
6 disclosure. We were already looking into a lot of material.

7 Q Okay. But -- so you were looking into the MMP
8 contracts going forward, right?

9 A Not sure I understand that.

10 Q When you say you were looking at the MMP contracts, you
11 weren't looking retrospectively: whether, at the time that they
12 were first entered into, they were fair, reasonable and in the
13 best interests of the NRA; correct?

14 A We were -- well, we had people looking into all of
15 those entities that you just listed earlier by 2021, yes, sir,
16 but it wasn't triggered by Mr. LaPierre's use of the yacht.

17 Q All right. Did the Audit Committee, at any time prior
18 to 2022, consider whether or not the prior contracts with the
19 MMP entities that had been entered into during the time that
20 Mr. LaPierre had a conflict or potential conflict were fair,
21 reasonable and in the best interests of the NRA?

22 A We didn't, because the information we needed to make
23 that evaluation wasn't complete.

24 Q Did you ever ask Mr. LaPierre who paid for his flights
25 down to the Bahamas?

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1680

1 A Well, I -- I would have known -- I would have known who
2 paid for it before I ever talked to him about that, so I
3 probably didn't ask him that specific -- specific question,
4 because I would have known.

5 Q Okay. How would you have known?

6 A Any flights that -- any private flights that he took
7 would have been booked through the NRA, so we would have wound
8 up paying for it.

9 Q Sir, it's true that Mr. LaPierre made the decision to
10 hire Mr. Frazer; right? As general counsel.

11 A He's our CEO, so, yes, sir, he -- that ultimately would
12 have been his decision, to hire -- I'm sorry.

13 Let me clarify it, if I may: That would have been a
14 decision as to general counsel. Secretary -- the secretary
15 has -- has to be elected by the board.

16 Q Okay. And was the board consulted with respect to
17 hiring Mr. Frazer as general counsel?

18 A Wow. That was what, 2015? I -- I can't recall as I
19 sit here now, no, sir.

20 Q You don't recall the board being consulted, though, do
21 you?

22 A I don't recall it.

23 Q Okay. Mr. Frazer reports directly to Mr. LaPierre?

24 A I -- I -- I'm not there on a daily basis but I presume
25 so, since he's -- well, I take it back. On a daily basis?

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1681

1 Probably not, because Mr. LaPierre, until fairly recently,
2 traveled around the country a lot. But he was -- Mr. LaPierre
3 would have been his -- his immediate -- his immediate
4 supervisor. How often he reported to him, I can't say.

5 Q Yes. And as far as you're aware, Mr. LaPierre does not
6 create a -- or prepare -- a written evaluation of Mr. Frazer;
7 correct?

8 A That -- that's my understanding. That's not the way he
9 evaluates employees.

10 Q Okay. But there's an Officers Compensation Committee
11 at the NRA, right?

12 A Yes, sir, there is one.

13 Q And you sit on that committee, right? Or did sit on
14 that committee?

15 A Well, the -- the officers -- I'm -- I'm sorry. I'm --
16 we use the term too broadly. The president, first and second
17 vice presidents are on the -- the Officer Compensation
18 Committee, but it handles only the elect -- elected paid
19 officers.

20 Q Right. So that Officers Compensation Committee that
21 you just mentioned would handle the compensation of somebody
22 like Mr. Frazer, who is an elected paid officer.

23 A I'm --

24 Q Do you want me to --

25 A I missed the last part.

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1682

1 Q Let me rephrase it:

2 The Officers Compensation Committee is responsible for
3 setting Mr. Frazer's salary; correct?

4 A Not quite. The Officer Compensation Committee meets,
5 evaluates material that we get and then we make a recommendation
6 to the board for the salary of the EVP, for the treasurer and
7 for the secretary, and then the board votes on that.

8 Q Okay. And Mr. Frazer is the secretary, right?

9 A He's the secretary and the general counsel. So
10 that's ...

11 Q And when the Officers Compensation Committee meets to
12 discuss Mr. Frazer's salary, it does so without the benefit of a
13 written evaluation; right?

14 A Written evaluation, yes, sir.

15 Q Okay.

16 In 2018, you learned that Mr. Frazer failed to report a
17 number of related-party transactions to the Audit Committee that
18 should have been reported; correct?

19 A The -- I'm trying to remember now. I remember -- I can
20 remember one. I may be mistaken.

21 Q Right.

22 MR. SHIFFMAN: Well, could we pull up --

23 This is from the investigative transcript of

24 Mr. Frazer. It's just a transcript, not a -- not a video.

25 THE COURT: Of Mr. Frazer or of Mr. Cotton?

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1683

1 MR. SHIFFMAN: I'm sorry. Of Mr. Cotton. I might
2 have said, "Mr. Frazer." It's for Mr. Cotton.

3 It's for June 2nd, 2020 and I'd like to pull up
4 245, line 7, to 247, line 4. But then we're going to turn
5 to page 246, line 11, in that excerpt.

6 MR. FLEMING: Your Honor, I'm sorry. This is an
7 investigative transcript or a deposition?

8 MR. SHIFFMAN: An investigative transcript. It's
9 been provided, and this is used for impeachment.

10 (Image displayed.)

11 MR. SHIFFMAN: I think it's also a party admission
12 of the NRA.

13 MR. CORRELL: Your Honor, this raises the same
14 problem that we discussed this morning.

15 THE COURT: Well, no. I'm not admitting it as
16 evidence. For impeachment, it's a prior sworn statement.

17 So, overruled.

18 Q Yeah. Mr. Cotton, do you recall being examined by the
19 Attorney General's office in June 2020?

20 A Yes, sir, I remember that.

21 Q Okay. And you took an oath to give truthful testimony
22 then?

23 A Yes, sir.

24 Q And you did so?

25 A Yes, sir.

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1684

1 Q Okay. I'd like to read from 246, line 11:

2 "Question: So you said a moment ago that you were
3 surprised, you were not happy with the number of
4 transactions that you were reviewing in this meeting.

5 "Answer: Yeah. I probably overstated that.

6 "If any of these were -- if they were the first
7 time, yeah. I wouldn't be happy about it.

8 "And I testified earlier, I do know that we found
9 out in our top-down review that there were some that should
10 have been given to us" disclosure -- I'm sorry -- "some that
11 should have been given to us, should have been captured into
12 forms, the disclosure forms, should have been presented to
13 us by Frazer and they weren't. That's the reason we did
14 [sic] to do them after the fact. So that's what I'm talking
15 about when I say I wasn't happy. But I can't say that every
16 one of them -- well, the first one is a good example, Oliver
17 North. That was the first time it was brought to us."

18 So, Mr. Cotton, do you recall that in September 2018,
19 the Audit Committee was presented with multiple related-party
20 transactions for it to consider ratifying retroactively?

21 A Okay. Now -- I'm sorry. I apolo -- I understood your
22 prior questioning to be asking me if there were a bunch of
23 related-party transactions from Mr. Frazer himself. I didn't
24 realize you were talking about -- he was the deliveryman, let's
25 say, for other stuff.

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1685

1 Q Right. And so you now recall that you were upset that
2 Mr. Frazer hadn't disclosed a number of transactions to you?

3 A I -- I was upset that there were a number of disclo --
4 late disclosures. I wasn't upset with Mr. Frazer bringing them
5 to me. He brought them to me -- I'm sorry -- to us when he got
6 them.

7 Q And you weren't happy because there were a bunch of
8 transactions that were being presented -- related-party
9 transactions and conflict-of-interest transactions -- that were
10 being presented to you for retroactive approval, right?

11 A Exactly right. That's what we were upset about.

12 Q Okay. When you were asked at your deposition whether
13 you thought Mr. Frazer was a good general counsel, you didn't
14 respond with a "yes," did you?

15 A I don't remember what I said.

16 Q Okay.

17 MR. SHIFFMAN: Why don't we play, from Mr. Cotton's
18 deposition, page 153, line 23, to page 54 [sic], line 17.

19 (Video played.)

20 MR. SHIFFMAN: You can also play the next clip,
21 155/12 to 156/4.

22 (Video played.)

23 Q Okay. Mr. Cotton, can you please turn to tab 14 --

24 MR. SHIFFMAN: Don't put this up on the screen yet.

25 Q -- marked for ID, tab 14, PX 1685?

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1686

1 A 1665?

2 Q I'm sorry. For you, it's tab 14, Mr. Cotton. And I'm
3 just -- and the exhibit is PX 1685.

4 A -85, okay.

5 Q Yeah.

6 A I've got it.

7 Q Okay. Mr. Cotton, you recall that in April 2019, the
8 NRA's president, Oliver North and vice president, Richard
9 Childress sent a letter to you and Mr. Frazer, requesting an
10 independent examination of the bills of the Brewer firm?

11 A I remember it well, yes, sir.

12 Q Okay. And you received a copy of the letter, right?

13 A I did.

14 Q And that's what's been marked as Exhibit 1685?

15 Well, the -- the cover page is an e-mail forwarding it
16 to you and then the letter is attached to that; right?

17 A Yes, sir.

18 Q Okay. And you received that in your capacity as -- the
19 letter, at least -- in your capacity as the Audit Committee
20 chair; right? That's what it's addressed to you as on page 2.

21 A Yes, sir.

22 Q Okay. And it was sent to you by Mr. North and
23 Mr. Childress, who were the president and, I think, first -- and
24 vice president at the time?

25 A Yes, sir.

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1687

1 Q Okay.

2 MR. SHIFFMAN: We move for the admission of this
3 exhibit.

4 MS. ROGERS: I don't think there's a foundation as
5 to the cover e-mail, but no objection as to the memo.

6 MR. CORRELL: The same position.

7 THE COURT: I'm sorry; the objection is to the
8 cover e-mail?

9 MS. ROGERS: Well, this witness didn't receive it,
10 isn't on it. I don't -- I'm not sure if they intend to
11 question him about it. But the attached memorandum is
12 addressed to the witness.

13 MR. SHIFFMAN: Yeah. I don't have any -- if
14 we're -- we're not going to ask any questions about the
15 cover e-mail. It is an e-mail from Mr. Frazer to
16 Mr. LaPierre, but our questions are related solely to the
17 attachment -- to the --

18 THE COURT: I'll admit the exhibit; PX 1685.

19 MR. SHIFFMAN: Yes. Okay.

20 (Image displayed.)

21 Q Mr. Cotton, can you take a look at the first paragraph
22 on page 2?

23 A On page 2?

24 Q Yes, sir.

25 A Yes, sir.

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1688

1 Q Which is the first paragraph of the letter itself.

2 A Yes, sir.

3 Q Okay. And there, Mr. North and Mr. Childress were
4 writing to you to tell you that they were deeply concerned about
5 the size of the Brewer firm's bills; right?

6 A Well, the -- hate to play lawyer -- the document says
7 what it says, but I know what it was about.

8 Q Well, the document says: "We and others continue to be
9 deeply concerned about the extraordinary legal fees the NRA has
10 incurred with Brewer Attorneys & Counselors. The amount appears
11 to be approximately 24 million over a 13-month period." Right?

12 A That's what it says, yes, sir.

13 Q And take a look at page 3. There's a chart there, and
14 there they were informing you that, in the second half of 2018
15 and early 2019, Brewer's billing the NRA over a hundred -- over
16 \$1.8 million per month; right?

17 A That's what the letter says.

18 Q Right.

19 It also says, in the paragraph -- two paragraphs --
20 below that, that they were billing at the rate of about \$97,000
21 a day; right?

22 A That's what the letter says.

23 Q Right.

24 And the letter says that Mr. Childress and Mr. North
25 thought that these amounts were excessive on their face, right?

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

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1 A Again, that's what the letter says, yes, sir.

2 Q Okay. And they told you that they were particularly
3 concerned about the bills because the NRA had been lax in the
4 past in overseeing its vendors, right?

5 That's on page 2, in the next-to-last paragraph. The
6 previous page.

7 A That's what it -- that's what the letter says.

8 Q That's what they were telling you, right?

9 A It's what the letter says.

10 Q All right.

11 A They were telling me other things in person.

12 Q Okay. And --

13 Well, they also told you, and they wrote in this
14 letter, that they thought, in order to fulfill their fiduciary
15 duties to ensure that the NRA operated in accordance with the
16 law, that they wanted a lawyer to conduct an independent
17 examination of the bills; right?

18 A That's what it says on the letter, yes, sir.

19 Q Okay. And they were also concerned about the secrecy
20 concerning the bills, right? That's on page 4?

21 A Again, that's what the letter says.

22 Q Okay. And they said that the secrecy was alarming
23 because they made repeated requests to view the invoices and had
24 been denied that.

25 A That's -- that's what the letter says. That's not

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

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1 true, but that's what the letter says.

2 Q Well, they told you that in writing; right?

3 A That's what the letter -- that's what the letter
4 claims, yes, sir.

5 Q Okay. And they actually said that they had sought an
6 independent review and had been denied that review by
7 Mr. LaPierre, right?

8 A Is that in the letter?

9 Q Yeah. It's on -- it's on the fourth paragraph, sir,
10 below the bold that says "Second."

11 A What page are we on?

12 Q Page 4 of the exhibit.

13 A Okay. Okay, what's --

14 Q Take a look at the very first paragraph there. It
15 says: "We and others have made multiple requests and
16 recommendations for an outside independent review of the Brewer
17 firm's invoices. All these requests have been denied. The
18 secrecy surrounding these large invoices causes suspicion and
19 raises questions." Okay?

20 And if you turn to page 6 of the letter --

21 (Image scrolled.)

22 Q -- under "Fourth," there they write that they were
23 concerned with the bills because they believed that the NRA was
24 failing to oversee the Brewer firm in multiple ways; correct?

25 A That's what the letter claims, yes, sir.

ALAN F. BOWIN, CSR, RMR, CRR

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1 Q Okay. And if you turn to page 8 --

2 (Image scrolled.)

3 Q -- there they also told you that they were concerned
4 because Mr. Brewer, himself, was trying to stop a review of the
5 invoices; right?

6 A That's what the letter claims.

7 Q Okay. And the NRA failed to conduct the review of the
8 bills that Mr. North and Mr. Childress requested, right?

9 A No.

10 THE COURT: Well, I just want to make sure that --
11 some of these questions that end with -- have a negative in
12 the question and then, "isn't that right?" And then this
13 one, I'm not sure what the answer was supposed to be.

14 Q The NRA did not perform the investigation that
15 Mr. Childress and Mr. North requested.

16 A That's incorrect.

17 Q Okay.

18 MR. SHIFFMAN: Let's play the transcript from June
19 17th, 2022, please, Jesse; page 308, line 20, to 309, line
20 8, please.

21 (Video played.)

22 (Continued on next page.)

23

24

25

ALAN F. BOWIN, CSR, RMR, CRR

Direct-Cotton-Shiffman

1692

1 A Counsel that's not what you just asked me. You asked
2 if we investigated. We did.

3 Q Your lawyer can ask you to clean up.

4 Mr. Cotton, the NRA filed for bankruptcy on
5 January 15th, 2021, right?

6 A I don't remember the exact date. Yes we filed
7 bankruptcy.

8 Q Okay. It was in or about January of 2021?

9 A I believe that's about right.

10 Q Okay. And one of the reasons that lead the NRA to file
11 bankruptcy was the fact that this litigation was pending here,
12 right?

13 A That was -- that was one of the reasons. We wanted to
14 get into a venue that we felt was less hostile to the NRA.

15 Q It's true, isn't it, in addition to the NRA, Mr.
16 LaPierre and Mr. John Frazer are named in this action, right?

17 A This current action?

18 Q Yes.

19 A Yes, sir.

20 Q And it's also true, isn't it, that because Mr. LaPierre
21 and Mr. Frazer were named here, that the NRA board formed a
22 special litigation committee to oversee the litigation on its
23 behalf?

24 A That's correct.

25 Q And the special litigation committee has three board

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Direct-Cotton-Shiffman

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1 members on it, at least when it was formed, it was you,
2 Ms. Meadows and Mr. Lee?

3 A Yes, sir.

4 Q Okay. And one of the reasons that the NRA formed the
5 special litigation committee was that Mr. LaPierre and
6 Mr. Frazer had actual or potential conflicts of interest, right,
7 in acting on behalf of the NRA where they were named as
8 defendants, right?

9 A Yes, sir.

10 Q Okay. And the formation of the special litigation
11 committee, it was formed in September or so of 2020, is that
12 right?

13 A It was -- it was formed according to the bylaws by
14 the -- by the president creating the committee and populating
15 it. But then under New York law, because the SLC, as we call
16 it, would have corporate authority. It had to be approved by
17 the board of directors. I can't tell you the exact date either
18 of those two events occurred.

19 Q Thanks. I'm not going to test you on that. I'll give
20 you a little help here. We'll go to tab 21.

21 MR. SHIFFMAN: I don't believe there is any
22 objection to this exhibit, which is PX 2479.

23 MS. ROGERS: No objection.

24 MR. SHIFFMAN: Okay.

25 THE COURT: It's admitted.

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1694

1 Q Mr. Cotton, if you take a look at the front page of the
2 exhibit, you'll see it's the minutes from the meeting of the NRA
3 from January 7th, 2021?

4 A (Examining). That's correct.

5 Q If you take a look at pages seven to eight of this
6 exhibit, of the exhibit, not the document itself.

7 A The bottom numbers, right?

8 Q The bottom numbers. We're on the same page here.
9 There it has the resolution where the NRA's full board approved
10 the special litigation committee that Ms. Meadows had put
11 together, right?

12 A Yes, sir. That's correct.

13 Q Okay. And take a look, now go to tab 15, which is PX
14 2142.

15 MR. SHIFFMAN: I don't believe there is any
16 objection to this either.

17 MS. ROGERS: No objection.

18 MR. CORRELL: No objection.

19 THE COURT: It's admitted.

20 MR. FARBER: No objection.

21 MR. SHIFFMAN: Thank you.

22 Q Mr. Cotton, do you recognize this exhibit to be the
23 resolution that actually forms the special litigation committee?

24 A (Examining). I was trying to find a date. I mean,
25 obviously this resolution deals with that, but I'm not sure at

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1 all, in fact, I'm kind of the opposite. I'm pretty sure that
2 President Meadows created the SLC before this, but then we were
3 advised that we had to have the board approval for the reason I
4 said earlier, because we were going to have corporate authority.

5 Q Right. I think you've got it correct. I think the
6 documents reflect that. If you look at the first paragraph of
7 Exhibit PX 2142 it says that, "Whereas on September 10th, 2020
8 Ms. Meadows created the committee".

9 A Yes, sir.

10 Q And if you look back to the exhibit we had just looked
11 at, which is tab 21, PX 2479, there on pages seven to eight, the
12 full board in January of 2021 adopts the resolution that is set
13 forth in PX 2142. Does that help out?

14 A Pretty much so, yeah. It shows we did it in two steps
15 if you will.

16 Q Exactly. So first she sets it up in September of 2020
17 and then the full board adopts the resolution in January of
18 2021, right?

19 A Well, I can't say that, because Exhibit 15 that we're
20 looking at, your number PX 2142, it says in here that on the
21 resolve -- I'm sorry -- the second resolve paragraph it says,
22 "The special litigation committee shall exercise corporate
23 authority on behalf of the NRA." So I'm -- (pause).

24 Q You don't think -- Is it your testimony, sir, you don't
25 think the resolution that's marked at PX 2412 is the right

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1 resolution?

2 A No, sir. What I'm saying is I interpreted your
3 question to indicate it was created and then later given -- I'm
4 sorry -- created in Exhibit 15 and later given corporate
5 authority in Exhibit 21. Reading the document that's not what
6 it indicates.

7 Q Okay. I think we might be talking past each other.

8 A Okay.

9 Q The resolution that's been marked as PX 2412 is the
10 resolution that appoints the special litigation committee,
11 correct?

12 A It does that. As I sit here today, I can't remember
13 the full content, but this does create the -- the, at least
14 gives the SLC as we call it corporate authority.

15 Q Okay. And one of the things it gave corporate
16 authority to do was to act on behalf of the NRA in this
17 litigation, right, that we're --

18 A And one of the things, yes, sir.

19 Q Right. And it also gave it -- There is two other
20 litigations that are also identified, right?

21 A Two others that were specifically identified, yes, sir.

22 Q Right. And then it also says, "any additional legal
23 proceedings arising out of the same facts and circumstances as
24 any of the foregoing three litigations", right?

25 A Yes, sir.

LAS

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1 Q Okay. And you would agree that the special litigation
2 committee was set up so Mr. Frazer and Mr. LaPierre wouldn't be
3 involved in those three litigations and any litigations arising
4 out of those litigations, right?

5 A That's correct.

6 Q Okay. And that was so their conflicts wouldn't
7 interfere with the handling of those litigations, right?

8 A That is correct.

9 Q And you would also agree that the bankruptcy that was
10 filed by the NRA in Texas was one of the matters covered by the
11 SLC resolution, right?

12 A Not initially, no, sir.

13 Q Okay.

14 A Because when we filed bankruptcy this case would have
15 gone on in New York. It wouldn't stop this one.

16 Q Okay.

17 A But when you folks intervened in the bankruptcy case,
18 that's what brought this case under the SLC.

19 Q Mr. Cotton, do you recall being deposed in the
20 bankruptcy proceeding before the actual hearing then?

21 A Yes, sir.

22 Q Okay. And you were -- gave testimony under oath there?

23 A Yes, sir.

24 Q And you told the truth?

25 A Yes, sir.

LAS

Direct-Cotton-Shiffman

1698

1 MR. SHIFFMAN: Let's play from that transcript,
2 this is from the March 27th, 2021 deposition, pages 46, 14
3 to -- 46, line 14 to 47, line 12.

4 (Whereupon the video is being played.)

5 MR. SHIFFMAN: Can you also play from line 16 --

6 (Whereupon the video is being played.)

7 MR. SHIFFMAN: Can you also play page 60, line 21
8 to 61, line nine, please, Jesse.

9 (Whereupon the video is being played.)

10 Q Mr. Cotton, one of the things that the SLC was set up
11 to do was to get briefings and discuss strategy with counsel,
12 right? Reviewing the bills and making decisions, right?

13 A Yes, sir.

14 Q Okay. But it's true, isn't it, that Mr. LaPierre was
15 the one who made the decision to place the NRA into bankruptcy
16 in January 2021?

17 A Again, this case did not go into bankruptcy. We didn't
18 bring this case in. You folks decided to join that case.
19 That's when it came under the SLC.

20 Q Mr. Cotton, that wasn't my question. My question was,
21 didn't Mr. LaPierre make the decision to place the NRA in
22 bankruptcy in January 2021?

23 A He was the only one with the authority to do so because
24 bankruptcy was not under the authority of the SLC until you
25 folks joined the case. That was your choice not ours.

LAS

Direct-Cotton-Shiffman

1699

1 Q Mr. Cotton, my question is simple. My question was not
2 why. Was Mr. LaPierre the one to make the decision to place the
3 NRA into bankruptcy in January 2021?

4 A He was the only person with the authority to do so,
5 yes, sir.

6 Q That's a yes?

7 A Yes.

8 Q Okay. The SLC was formed at that time, and it was
9 informed that the bankruptcy was being filed, right?

10 A Kind of remember when we were told. Yes, sir. We were
11 told.

12 Q Okay. No one on the SLC objected to the filing, right?

13 A We didn't. No, sir, we didn't object.

14 Q But the rest of the NRA's board was not informed before
15 the bankruptcy filing that the NRA was even considering filing
16 bankruptcy, right?

17 A You're talking about before the resolution where they
18 approved it?

19 Q I'm talking about before the bankruptcy was filed in
20 January 2021, was the rest of the board of the NRA, other than
21 the SLC, informed that the -- that bankruptcy was potentially
22 going to be filed?

23 A That's correct.

24 Q They were not informed, right?

25 A You're correct.

LAS

Direct-Cotton-Shiffman

1700

1 Q Okay. But there is a board meeting about a week or
2 eight days before the bankruptcy was actually filed, correct?

3 A That's the January 7th meeting.

4 Q Right. The one we were just looking at the minutes of.

5 A Yes, sir.

6 Q You presided over that meeting, right?

7 A As president, yes, sir.

8 Q And there was no mention of bankruptcy at all during
9 that meeting, right?

10 A I'm trying to remember the executive session. I don't
11 think so. Well, I may be getting two meetings mixed up, because
12 I know our bankruptcy counsel gave an extensive presentation in
13 executive session. I don't think it was at that meeting though.

14 Q Okay.

15 MR. SHIFFMAN: Let's play the June 17th, 2022
16 transcript please at page 102, line four through line 15,
17 please.

18 (Whereupon the video is being played.)

19 Q And at the time you presided over that meeting you knew
20 that putting the NRA into bankruptcy was being considered,
21 right?

22 A Being considered, no, sir. I know it was being
23 evaluated as a possible way to get the other litigation into
24 bankruptcy and prevent dissolution in this court, leave the case
25 here, but couldn't be dissolved. But no decision had been made

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1701

1 to say okay, let's go file.

2 Q I didn't ask you a final decision was made. I asked
3 you whether it was considered. So, is the answer to that
4 question yes, that it was being considered but was not
5 ultimately determined to file it?

6 A It was being evaluated is the best I can tell you.

7 Q Okay.

8 MR. SHIFFMAN: Can we pull up the April 5th, '21 --

9 Q Let me ask you first. Mr. Cotton, do you recall
10 testifying at the bankruptcy hearing in April of 2021?

11 A Oh, yes.

12 Q You took an oath then to tell the truth?

13 A Yes.

14 Q Okay. You did tell the truth, right?

15 A Yes.

16 MR. SHIFFMAN: Can we show on the screen the
17 April 5th transcript. This is just an excerpt from page 86,
18 line 15 to line 2022 -- I'm sorry, line 22.

19 (Whereupon the video is being played.)

20 MR. CORRELL: Your Honor, may we approach? Same
21 topic as this morning.

22 THE COURT: Again this is not -- You're not seeking
23 to admit this. This is simply for impeachment?

24 MR. SHIFFMAN: Yes.

25 MR. CORRELL: It looks like he's about to read it

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1 into the record.

2 THE COURT: Well, I mean, it's pretty typical just
3 to ask in impeachment were you asked this question, did you
4 give this answer, yes.

5 MR. CORRELL: Yes, your Honor. Assuming that it's
6 not going to be used against a party that was not given an
7 opportunity to cross examine.

8 THE COURT: It's not being admitted for substantive
9 evidence anyway. It's simply to impeach a live witness,
10 which is different than just putting it into evidence now.

11 MR. CORRELL: Subject to an instruction to that
12 effect, your Honor, I would withdraw my objection.

13 THE COURT: Okay. Go ahead.

14 MR. SHIFFMAN: Do you have it, Jesse? I don't
15 think that's -- (pause). It's 86. It's just the
16 transcript. That's it.

17 Q The testimony that we'll read is:

18 "QUESTION: Mr. Cotton, as you sat there presiding
19 over the January 7th meeting, you knew bankruptcy was at
20 least being considered as a potential strategy, isn't that
21 right?

22 "ANSWER: I knew that it was. It was a
23 contingency. We'd been looking into that since, like I'd
24 say, the fourth quarter of the prior year. You know, is
25 there -- What's the best ways to protect this association.

LAS

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1703

1 So, yes, it did consider, but no decision had been made to
2 file it on the 7th."

3 Mr. Cotton, the final decision to file the
4 bankruptcy was in fact made a few days before the actual
5 filing, right?

6 A That's when I found out about it, so I have to presume
7 so. Yes, sir.

8 Q Is it your testimony you didn't find out about the
9 filing of the bankruptcy until it was actually filed?

10 A Oh, no, sir. I found out a few days before.

11 Q Okay. But even after the decision to make the
12 bankruptcy filing was made, the full board was not informed that
13 that decision had been made, was it?

14 A At that time, no, sir.

15 Q Okay. And the full board was not asked to vote on
16 approving the bankruptcy before it was filed, isn't that
17 correct?

18 A No, sir.

19 Q Was the full board -- The full board was asked to
20 approve it, but after it was already filed then, isn't that
21 correct?

22 A Correct.

23 Q But not before it was filed, right?

24 A Correct.

25 Q Maybe about two months later?

LAS

Direct-Cotton-Shiffman

1704

1 A I don't remember when. We had a special meeting. I
2 can't tell you exactly when. I think it was March, but I may be
3 wrong.

4 Q Okay. Okay. The NRA board does have a legal affairs
5 committee, right?

6 A It does.

7 Q And isn't it true that even the legal affairs committee
8 wasn't informed of the NRA's plans to file bankruptcy?

9 A I believe that's correct.

10 Q Okay. And it's true that Mr. Frazer wasn't informed of
11 the NRA's plans to file bankruptcy before the actual filing?

12 A I'm afraid you would have to ask Mr. Frazer that. I
13 don't know who all was told.

14 Q You didn't tell Mr. Frazer, right?

15 A I didn't tell him.

16 Q You didn't tell Mr. Spray, the NRA's CFO and treasurer,
17 right?

18 A Mr. Spray did know.

19 Q I'm sorry?

20 A Mr. Spray did know. I didn't tell him, but Mr. Spray
21 told me some information that made it clear he knew.

22 MR. SHIFFMAN: I move to strike, your Honor. I
23 asked him whether he was -- told Mr. Spray, I believe.

24 THE COURT: I don't think -- Overruled.

25 Q Mr. Cotton, you though decided that you personally were

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Direct-Cotton-Shiffman

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1 not going to tell Mr. Spray about the bankruptcy, right?

2 A I made no such decision. It wasn't necessary. He was
3 talking to me about it.

4 Q Okay.

5 MR. SHIFFMAN: Can we play from Mr. Cotton's March
6 27th, 2021 transcript, line 182 to -- 182, 18 and let's just
7 stop it at line 24.

8 (Whereupon the video is being played.)

9 MR. SHIFFMAN: Thank you.

10 Q It's true, isn't it, that Mr. LaPierre's decision to
11 file bankruptcy cost the NRA millions of dollars?

12 A It was -- it was several million in attorney fees yes,
13 sir. I don't remember the exact number.

14 Q You don't remember it was about ten to \$12 million?

15 A That sounds about right.

16 Q And it's true, isn't it, that the bankruptcy court
17 dismissed the case?

18 A That's correct.

19 Q Okay. And you read the Court's decision dismissing the
20 bankruptcy?

21 A Yes, sir, I did.

22 Q Okay. That was issued in about May of 2021, about nine
23 months after this case was filed?

24 A Timeframe, that sounds about right. Yes, sir.

25 Q Do you recall that in its decision dismissing the

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1 bankruptcy the Court discussed the manner and secrecy in which
2 the bankruptcy was filed as something that concerned it?

3 A I don't remember, but that's contained in the order,
4 yes, sir.

5 Q Let's take a look at that order, which is tab 16, PX
6 2281.

7 MR. SHIFFMAN: This document has been admitted
8 already.

9 Q Let's take a look at page 34 of this order. Okay. You
10 see there that the Court listed some of the conduct that was
11 ongoing at the time that still concerned it?

12 A (Examining).

13 Q Do you see that, Mr. Cotton?

14 A You're talking about first paragraph, right?

15 Q Yes.

16 A I'm trying to read it.

17 Q Okay.

18 A (Examining). Yes, sir, I see it.

19 Q So the Court noted that it was concerned with approval
20 procedures for contracts in excess of \$100,000, right?

21 A Yes, sir.

22 Q And it was also concerned that Mr. LaPierre was still
23 making additional financial disclosures at that time?

24 A That's what the order says.

25 Q Right. And the Court was also concerned that there are

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Direct-Cotton-Shiffman

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1 lingering issues of secrecy and a lack of transparency?

2 A That's what the order says.

3 Q Right. And the Court, in fact, if you go to the next
4 paragraph, the Court noted that it found that the process of
5 filing for bankruptcy was nothing less than shocking because of
6 how it was done, right?

7 A I'm sorry. Which paragraph?

8 Q The second paragraph on that page, I believe and the
9 second sentence of that paragraph. "Excluding so many people
10 from the process of deciding to file for bankruptcy, including
11 the vast majority of the board of directors, the chief financial
12 officer and the general counsel is nothing less than shocking."
13 Do you see that?

14 A I see that.

15 Q You read that in about May of 2021?

16 A I read it. I can't tell you when it was. I'm sure it
17 was right after it was issued.

18 Q Right. And after that, the Court issued that decision,
19 the NRA board did not do anything to investigate how its
20 policies and procedures permitted the bankruptcy to be filed in
21 secrete, right?

22 A The board you say?

23 Q Yes.

24 A I know of no action by the full board, no, sir.

25 Q How about the NRA generally?

LAS

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1708

1 A The who?

2 Q The NRA generally.

3 A We discussed -- I mean, we had discussions about the
4 bankruptcy, the ruling, quite frankly do we appeal it and all of
5 that. So, I can't say there was never any discussions, no, sir.

6 Q I wasn't asking whether you discussed the decision. I
7 was asking whether the NRA investigated how the bankruptcy was
8 filed in a manner that the Court determined was shocking and in
9 secrete.

10 A Yes. Without sparring over the term investigation, it
11 was discussed extensively in a board meeting with counsel in
12 executive session, yes, sir.

13 Q That's not what I asked you, sir. I asked you whether
14 the NRA investigated it. Not whether discussed it. Whether it
15 investigated it.

16 A We discussed how it happened. I'm leery about giving
17 you any details, because it was with counsel present and it was
18 a briefing to the board.

19 Q Okay.

20 MR. SHIFFMAN: Let's play the June 17th, 2022
21 transcript, page 130, line eight to 15, please.

22 (Whereupon the video is being played.)

23 Q Mr. Cotton, we talked about Mr. Spray a few minutes
24 ago. He was the CFO and treasurer of the NRA in January of
25 2021, right?

LAS

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1709

1 A Yes, sir.

2 Q Okay. And he was appointed as CFO in 2018?

3 A Yes, sir.

4 Q And he was appointed as treasurer of the NRA in about
5 September of 2018, right?

6 A Well, he had to be elected by the board. That's the
7 reason I was hesitating. CFO can be hired without the board
8 electing him. The treasurer must be elected by the board.

9 Q Right. So he was first hired as CFO and then later was
10 appointed by the board as treasurer, right?

11 A Elected by the board, yes, sir.

12 Q Okay. And you were on the board of directors at the
13 time he was appointed, correct?

14 A Correct.

15 Q Okay. And Mr. Spray replaced Mr. Phillips as CFO and
16 treasurer, right?

17 A Correct.

18 Q Okay. And you would interact with Mr. Spray at
19 meetings of the audit committee, correct?

20 A The meetings that he came to, yes, sir.

21 Q Sometimes speak with him on the phone?

22 A Yes, sir.

23 Q And so going back to early 2021 you thought that
24 Mr. Spray was doing a pretty good job of CFO and treasurer?

25 A Yes, sir.

LAS

Direct-Cotton-Shiffman

1710

1 Q You thought he was really on top of his
2 responsibilities?

3 A Seemed to be, yes, sir.

4 Q On the other hand, Mr. Spray's predecessor,
5 Mr. Phillips, was not on top of things as CFO and treasurer in
6 your view, right?

7 A I agree with that.

8 Q In fact, you characterize Mr. Phillips, his management
9 style as laissez-faire or hands off, right?

10 A Yes, sir.

11 Q And you thought his performance as CFO was, in fact,
12 was deficient too, right?

13 A I'm trying to remember exactly how I worded it.
14 Towards the end -- towards the end I believe is what I said.

15 Q Well, do you recall testifying that you, when asked do
16 you believe that there may -- may have been deficiencies in
17 Mr. Phillips' performance as CFO and treasurer, you answered
18 yes?

19 A That sounds right. Some deficiencies, yes.

20 Q In particular you thought Mr. Phillips did not
21 adequately oversee the NRA's payments to Ackerman McQueen, one
22 of the NRA's largest vendors, isn't that right?

23 A I believe that was correct. Yes, sir.

24 Q Okay. Mr. Phillips was the NRA's CFO and treasurer
25 when you joined the board, correct?

LAS

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1711

1 A Yes, sir.

2 Q That was more than 20 years ago?

3 A 2001.

4 Q Okay. And Mr. Phillips retired from the NRA about
5 2018, is that right?

6 A Retired from, yes, sir about that time.

7 Q He wasn't fired or sanctioned, was he?

8 A Not to my knowledge.

9 Q But Mr. Spray was fired by Mr. LaPierre, wasn't he?

10 A I was initially under the impression he retired for
11 health reasons. I've since learned that it looks like he wanted
12 to work from home in Michigan. Mr. LaPierre wanted the CFO and
13 treasurer in the building. So, he wound up being released yes,
14 sir.

15 Q Mr. LaPierre released him, right?

16 A As CFO, yes, sir.

17 Q And the full board had to relieve him of his duties as
18 treasurer, right?

19 A Yes, sir, not quite in that method. We elect a new
20 treasurer because our bylaws say these elected officer serve
21 until a replacement takes office. So, you don't technically
22 release somebody. You just elect a new one.

23 Q When Mr. LaPierre released Mr. Spray from his duties,
24 as you put it, he didn't consult with the board first, right,
25 even though that would impact his position as treasurer

LAS

1 ultimately?

2 A To my knowledge he didn't.

3 Q Okay. And you had originally thought that Mr. Spray
4 retired for health reasons, right?

5 A Yes, sir.

6 Q That's because that's what Mr. LaPierre told you, isn't
7 that correct?

8 A That's -- that's because that's what he and Mr. Spray
9 agreed to.

10 (Continue on the next page.)

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LAS

Cotton - by Plaintiff - Direct/Shiffman

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1 Q But that's not what actually happened, right?

2 A That's what Mr. Spray testified to in his deposition.

3 Q Mr. -- are you telling --

4 Mr. Spray also testified that he was called up, told
5 that he was being removed from his duties and his e-mail was cut
6 off. Are you aware of that, sir?

7 A I'm trying to remember. The deposition transcript --
8 that segment that I read, he said that he had -- I'm sorry --
9 Mr. Spray had asked Mr. LaPierre if he would just say it's for
10 health reasons, and that's --

11 THE COURT: Why don't we have the questioning and
12 answering being about personal knowledge and not trying to
13 remember transcripts?

14 Q Mr. Cotton, have you ever seen Mr. Spray's severance
15 agreement?

16 A His what?

17 Q His severance agreement.

18 A Yes, sir. Yes, sir, I have seen it.

19 Q Okay. Well, why don't we take a look at that?

20 MR. SHIFFMAN: It's tab 13, Exhibit PX 1525.

21 THE COURT: Counsel, just heads up: We have about
22 seven minutes.

23 MR. SHIFFMAN: Yeah.

24 Q Okay. And if you take a look at the second page of
25 that exhibit, that's where the severance agreement begins. Do

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Cotton - by Plaintiff - Direct/Shiffman

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1 you recognize that as Mr. Spray's severance agreement?

2 A It appears to be, yes, sir. I haven't read the whole
3 thing, but yes, sir.

4 Q Okay. You don't need to. I'm just going to ask one
5 question about it.

6 Do you see --

7 THE COURT: Has this one been admitted?

8 MR. SHIFFMAN: I'm sorry.

9 Is there any objection?

10 MS. ROGERS: No objection.

11 MR. SHIFFMAN: Okay. I move to admit it.

12 MR. FARBER: No objection.

13 THE COURT: It's admitted.

14 (Image displayed.)

15 Q Mr. Cotton, do you see, in the fourth -- I guess it's
16 the third "whereas" clause of the severance agreement --

17 A Yes, sir.

18 Q -- it says: "Whereas, SPRAY was notified orally on
19 January 28, 2021, that the NRA wished to make management
20 changes, and SPRAY was relieved on that day of his duties as
21 Chief Financial Officer of NRA;"

22 You see that?

23 A That -- that's what it says.

24 Q Yeah. And that's different from what you first
25 understood, right?

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Cotton - by Plaintiff - Direct/Shiffman

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1 A You mean, versus health reasons?

2 Q Yes.

3 A Yes, sir.

4 Q Okay, thank you.

5 MR. SHIFFMAN: You could put that down.

6 (Image removed.)

7 Q Mr. Cotton, you were disappointed that Mr. Spray was
8 leaving in January of 2021; weren't you?

9 A I hated -- I hated to see him leave, because I think he
10 was a major cog in our top-to-bottom review.

11 Q Okay. Mr. Cotton, one function that the Audit
12 Committee serves under its policies, as we discussed, is to
13 review conflict-of-interest and related-party transactions;
14 right?

15 A Yes, sir.

16 Q Okay. And in September 2018, the Audit Committee
17 reviewed a number of conflict-of-interest and related-party
18 transactions; isn't that right?

19 A Could you point me to the report? I'd have to see the
20 report to know the date and the number.

21 Q Sure. Why don't we take a look at tab 24, PX 2983?

22 MR. SHIFFMAN: I don't believe there are any
23 objections to this.

24 MS. ROGERS: No objection.

25 THE COURT: Without objection, it's admitted;

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1 PX 2983.

2 MR. FLEMING: I'm sorry; which tab?

3 THE COURT: 24.

4 MR. SHIFFMAN: 24.

5 MR. FARBER: No objection.

6 MR. CORRELL: No objection.

7 (Image displayed.)

8 BY MR. SHIFFMAN:

9 Q Okay. And so, you'll see, Mr. Cotton, that this is the
10 report from September 8th to 9th, 2018, but it deals with a few
11 different meetings; right?

12 A Yes, sir. The top date is as you say, but it covered
13 several meetings, yes, sir.

14 Q All right. And one of the meetings it covered is the
15 September 6th, 2018 meeting of the Audit Committee; right?

16 That's on the bottom of this page.

17 A Yes, sir.

18 Q And if you look at the following pages there, does that
19 refresh your recollection that the Audit Committee reviewed a
20 number of related-party transactions at the September 2018
21 meeting?

22 (Images scrolled.)

23 A Oh, yes, sir. I remember these.

24 Q Okay, great. And one of the transactions that was
25 reviewed was a -- one with Mr. Phillips, right?

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Cotton - by Plaintiff - Direct/Shiffman

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1 A Yes, sir.

2 Q Okay. And there is one of those -- there are two
3 different transactions with Mr. Phillips that were reviewed at
4 that meeting, right? Two different related-party or
5 conflict-of-interest transactions?

6 A Yes, sir.

7 Q Okay. And one of them involved a company called
8 HomeTelos --

9 A Yes, sir.

10 Q -- isn't that right?

11 A Yes, sir.

12 Q Do you recall what HomeTelos was?

13 A They provided some kind of software to our IS group,
14 but I couldn't tell you beyond that.

15 Q Right.

16 And as you put it, I think Mr. -- HomeTelos had a
17 relationship with one of Mr. Phillips' -- Mr. Phillips'
18 significant other; is that right?

19 A There was some relationship there, yes, sir.

20 Q All right. And that's why the Audit Committee was
21 considering the transaction, right?

22 A Yes, sir.

23 Q But this transaction was one that had been entered into
24 in the past, right?

25 It was reviewing this transaction retroactively, right?

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Cotton - by Plaintiff - Direct/Shiffman

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1 A We -- I'm sorry. The NRA IS group had been --
2 No. I'm sorry. I'm mix -- I'm thinking of another
3 situation.

4 Yes, sir, this was done retroactively.

5 Q Okay.

6 THE COURT: Counsel, we're --

7 MR. SHIFFMAN: Yeah, we can --

8 THE COURT: We've hit our time limit.

9 So we're going to pick this back up at 9:30
10 tomorrow morning?

11 MR. SHIFFMAN: Yes, your Honor.

12 Your Honor, I think Ms. Connell raised an issue
13 before that Mr. North has.

14 THE COURT: Right.

15 So, is everyone's understanding that we're going
16 to --

17 MR. SHIFFMAN: I think we'd like to shift to him so
18 we can make sure that everybody -- he can be cross-examined
19 before he leaves; during the time.

20 THE COURT: Well, as long as Mr. Cotton's aware of
21 that, as well.

22 Mr. North, I guess, is going to testify in the
23 morning.

24 MR. SHIFFMAN: We'd like him to start and then pick
25 up with Mr. Cotton after he finishes, because he -- he's a

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Cotton - by Plaintiff - Direct/Shiffman

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1 nonparty who's got a scheduling conflict.

2 THE COURT: All right. Well, that's the plan. I
3 assume you will all work it out among your witnesses to see
4 if that works for Mr. Cotton. For me, whoever you all show
5 up with, the jury and I will listen.

6 MR. SHIFFMAN: Understood, your Honor. Thank you.

7 THE COURT: Okay?

8 All right, see you all tomorrow.

9 COURT OFFICER: All rise. Jury exiting.

10 (The jury left the courtroom.)

11 THE COURT: And the same instruction, Mr. Cotton,
12 about overnight: You're still on the stand and you
13 shouldn't discuss the substance of your testimony with
14 counsel or anyone else.

15 MR. SHIFFMAN: Mr. Cotton, I'll take that
16 (indicating) off your hands.

17 (Binder handed to Mr. Shiffman.)

18 THE WITNESS: I would prefer to go home, but, your
19 Honor, I'm not going to mess up the whole trial. I'll do
20 whatever you guys want.

21 THE COURT: I'll let you talk to the various folks
22 out here (indicating) about the schedule. I don't run that
23 part of this. We'll see what happens.

24 All right? Thank you.

25 THE WITNESS: Thank you, Judge.

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COURT OFFICER: Sir, you can step down.
(The witness stepped down.)
(Whereupon, the matter was adjourned to Tuesday,
January 23, 2024, at 9:30 a.m.)

ALAN F. BOWIN, CSR, RMR, CRR

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

Plaintiff,

-against-

6 THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
 7 WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
 8 and JOSHUA POWELL,
 9 -----X
 10 Defendants.

11 Index No. 451625/20 TRIAL
 12 60 Centre Street
 13 New York, N.Y.
 14 January 23, 2024

B E F O R E:

15 HONORABLE JOEL M. COHEN,
 16 Justice; and a jury

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 18 OFFICE OF THE ATTORNEY GENERAL
 19 LETITIA JAMES
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1 (Appearances continued:)

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3

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LORI SACCO
Official Court Reporters

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1 THE COURT: Good morning, everyone.

2 I've received the various letters about
3 Mr. LaPierre's testimony. I'm not really sure exactly what
4 is in front of me to do about this at the moment, since we
5 don't really know the extent to which this might inhibit the
6 testimony or the timing of it.

7 I will say that I'm not totally impressed by the
8 timing of when this issue was brought to our attention; it
9 could have been much earlier, based on the evidence that
10 I've seen; the fact that none of the doctors' notes are
11 signed, let alone verified, which is the typical way that
12 this kind of thing is brought to a court's attention, and
13 the doctors' notes aren't even addressed to the Court;
14 they're addressed to his employer, which is a different
15 analysis of whether somebody can be a full-time employee
16 versus the ability to be a witness in, obviously, an
17 extremely important case.

18 On the other hand, the State's suggestion that it's
19 torpedoing their case to not have the testimony essentially
20 all be one time, I think, is a little overblown, frankly.
21 Like I said the other day, there's a difference in my mind
22 between if it has to be, you know, sort of split in two
23 pieces as opposed to eight pieces, where it really does
24 torpedo the case.

25 I understand, though, you know, that there is a

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1 desire to have your witnesses go in the order you wanted
2 them to go. Sometimes things happen. And regardless of
3 what the evidence is, ultimately, if I have a witness who is
4 struggling to -- for health reasons, I'm going to
5 accommodate that, one way or the other. It's sort of
6 obvious to me.

7 So, putting aside my initial, sort of, whining
8 about all of this, I just want you all to make the best of
9 it. I'm -- like I said, I -- my principal concern is the
10 jury's time and that nothing that we do in connection with
11 this testimony is going to extend their service. So we need
12 to work it out.

13 And, you know, I trust that Mr. LaPierre will give
14 his very best efforts and will let me know, either himself
15 or through counsel, whether we need breaks during the
16 testimony, and we'll go from there.

17 You know, I -- I -- it's a difficult thing for a
18 judge to try to evaluate these medical letters, which are
19 written for a different purpose. I'm just going to have to
20 see how it goes, you know, and whether, if it -- if it
21 somehow wastes time, you know, how that's divided, and how
22 that excess time is divided is something I'll have to think
23 about. But I don't envision it making this jury stay
24 longer.

25 MR. CORRELL: Your Honor, if I may address the

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1 issue, briefly ...?

2 First of all, I apologize for not raising the issue
3 earlier. Obviously, it's a sensitive matter, and personal
4 health is -- particularly for a high-profile person -- is
5 something that you don't necessarily have -- want to get
6 into unless you have to.

7 The fact is that Mr. LaPierre started an intensive
8 regimen of ten medications at the end of the year, and as is
9 often the case where a patient undergoes intensive
10 medication, it had profound effects and to such an extent
11 that the doctors expressed concern.

12 I'd be happy to ask the doctors to turn their
13 letters into an affidavit or to a letter to you; happy to do
14 that. If the Court wants to ask Mr. LaPierre to take the
15 stand and -- under oath -- and describe the symptoms he's
16 experiencing, he's happy to do that. If the State wants to
17 conduct a remote deposition with doctors to satisfy
18 themselves that there is sufficient basis for a reasonable
19 accommodation, we're happy to do that.

20 There a couple things that are quite troubling to
21 me. At ten o'clock last night, they sent a -- this letter
22 and then, at one o'clock, they sent an exhibit list with 127
23 exhibits, telling us that they want him to testify tomorrow
24 morning. That makes it physically impossible for any
25 person, much less a man in the medical condition he's in, to

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1 review 127 documents and prepare for testimony.

2 I would say, that was -- I would suggest that we
3 schedule him for Friday morning in hopes that he can go as
4 long as he can. Typically, he's able to go through lunch.
5 We might be able to make it through the afternoon break.
6 And I think that would be -- give us the optimal chance of
7 having uninterrupted testimony from him, and we could resume
8 with him on Monday, and I think that would be enough to
9 finish his testimony.

10 MS. CONNELL: Your Honor, what the State requested
11 here was nothing extraordinary.

12 To have last-minute notice that Mr. LaPierre may
13 have significant limitations on his testimony, we just asked
14 for the kind of showing that is normally required by a court
15 to substantiate the same.

16 Of course, we agreed; we agreed, on the record,
17 when it was first raised last Thursday; and notably, your
18 Honor, last Thursday, we had hoped to get to Mr. LaPierre
19 maybe even that Friday afternoon. He has been on the list,
20 coming up for some time and, in fact, has been on the list
21 as being behind Mr. Cotton for some time, so that shouldn't
22 have been a surprise. We knew the trial had slowed down and
23 he had been pushed back some, but all we did was ask for the
24 type of substantiation that is normally required.

25 We have absolutely no objection to taking

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1 reasonable breaks, as the witness needs, or regular
2 accommodations.

3 But what we did say is, if it does, as your Honor
4 said, turn into something where we're being stretched out
5 for a long period of time, there should be some
6 substantiation of that. I don't think there's anything
7 unfair or unreasonable, particularly given, as you pointed
8 out, that these notes were from January 3rd and we weren't
9 told then, and they reflected, I think, a last doctor's
10 appointment of December 11th. If at any time we had been
11 given a heads-up, we could have perhaps broken it up or
12 brought him in sooner or something like that.

13 So, your Honor, that's -- that's that.

14 THE COURT: Well, your reference to him as an "apex
15 witness" -- oftentimes, I take that to mean he was going to
16 be the last one. Is that not your plan?

17 MS. CONNELL: No, your Honor. We were not planning
18 on taking him as the last witness. The last witness, we
19 believe, will be Eric Hines, plaintiff's expert.

20 But an apex witness, for us, means one of the
21 parties; it's an important witness and we're building up to
22 him.

23 So we had been planning to take him this week, no
24 questions asked.

25 THE COURT: So how -- just logistics, right? Today

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1 is going to be Lieutenant Colonel North.

2 MS. CONNELL: Yeah.

3 THE COURT: We're going to start with that.

4 MS. CONNELL: Yes.

5 THE COURT: And is that going to be most of the
6 day?

7 MS. CONNELL: I hope not, your Honor. I really
8 endeavored to keep his direct quite, quite short. I'm going
9 to try to keep it moving. I can't speak to how long the
10 crosses are going to be.

11 We're then going to return and, hopefully, finish
12 Mr. Cotton. We then have a nonparty witness, Mr. Winkler,
13 who is going to appear. And then we hope to move on to
14 either -- we could move to Mr. Spray's deposition or --
15 designations -- or we could move to Mr. LaPierre.

16 THE COURT: All right.

17 Well, look, I agreed to a 24-hour notice period and
18 whatever you gave them last night would be consistent with
19 that, so I'm not going to call a foul on that.

20 So we'll assume -- you know, I think Friday is
21 still -- you know, if that's the day you're talking about or
22 is it tomorrow?

23 MS. CONNELL: No, I think we could get to
24 Mr. LaPierre tomorrow afternoon.

25 MR. CORRELL: Your Honor, the afternoons are the

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1 problem for Mr. LaPierre. He gets very fatigued in the
2 afternoons. His eyes will not stay open. He has difficulty
3 reading. He has a neurological disconnect which keeps him
4 from understanding documents that he's viewing. And that
5 is -- if the Government is trying to take advantage of a
6 witness' medical condition, that's not the Government that I
7 know.

8 THE COURT: Yeah, I am not going to assume that.

9 Look, I do think there should be affidavits; that's
10 just normal process, and it also can be directed to things
11 that are not in the current letters, as you just said, in
12 terms of time of day or whatever, and at least I'll be able
13 to evaluate it. I don't want to spend court time on this,
14 but I do want to be fair to both sides, and so I think you
15 should get that in as quickly as you can.

16 And, look, the Government's going to have to make
17 its call here. I mean, we won't really know, until you call
18 him, whether there's an ongoing issue. You know, again, I'm
19 not going to make an evaluation -- that's not my expertise,
20 frankly -- as to whether a particular time of day is going
21 to be the issue. But that's what I'm hearing.

22 MS. CONNELL: Your Honor, if Mr. LaPierre is only
23 able to testify in the mornings, if that's what I'm hearing,
24 and again, we don't really have substantiation for that,
25 then we think we should start with him after we conclude

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1 Mr. Winkler, if he goes over into the morning, tomorrow
2 morning; and then --

3 THE COURT: Mister ...?

4 MS. CONNELL: Winkler, from Ackerman McQueen;
5 William Winkler.

6 THE COURT: Okay.

7 MS. CONNELL: And then he could finish in the
8 morning and we could move to the next witness and then take
9 him Friday morning, as well.

10 THE COURT: All right.

11 Well, look, you guys can talk during the day. If
12 there's a way to -- that Mr. LaPierre can go in the morning
13 tomorrow or the morning Friday, that sounds like it will
14 maximize the chances of success. But, you know, perhaps you
15 guys can talk during a break to work out exactly how
16 that's -- how that's going to play out.

17 MS. CONNELL: Your Honor, may I raise two issues
18 regarding the witness this morning? I know we --

19 THE COURT: If we can do it quickly, because I'd
20 like to --

21 Well, actually, they're all here?

22 All right. So let's move on -- move it quickly.

23 MS. CONNELL: When we had Phil Journey here, who is
24 a judge, your Honor directed not to use honorifics, which is
25 completely understandable. We have a couple in this case, I

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1 think, on both sides; a couple of witnesses who are retired
2 military. Can we refer to them as "Colonel" or whatever, or
3 not?

4 THE COURT: I have less concern about that than the
5 "judge" part.

6 MR. CORRELL: Your Honor, the proper address for a
7 lieutenant colonel is "Lieutenant Colonel," not "Colonel,"
8 and I'm happy to use that honorarium, having been a colonel.

9 MS. CONNELL: I understand Colonel North is
10 "Colonel North," but he can correct me if I'm wrong. I'll
11 ask him that, actually.

12 THE COURT: I think, in the prior case I had, they
13 were very specific about "Lieutenant Colonel."

14 MS. CONNELL: Okay.

15 THE COURT: But you can use whatever term the -- is
16 appropriate. That's -- I think, in the courtroom, calling
17 somebody "judge" is a slightly different --

18 MS. CONNELL: I agree.

19 THE COURT: -- different thing. I don't --

20 MS. CONNELL: And the other issue, your Honor, is:
21 Just to the extent that when he takes the oath, he needs to
22 give an address, can Lieutenant Colonel North not give his
23 home address, for security reasons? Can he use -- he has
24 counsel (indicating). Can we use the counsel's address or
25 something else like that?

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1 MR. CORRELL: Your Honor, if you give that
2 instruction, I would ask that the Court instruct the jury
3 that it's being done for security reasons.

4 THE COURT: Well, that I'm not going to do.

5 But I think he can say, you know, "care of my
6 attorney." I'm not going to get into any substance on this,
7 but you can let him know that he can say, care of his
8 attorney at X address. That's okay.

9 MS. CONNELL: Thank you.

10 THE COURT: And if any -- you know, if others need
11 to do that -- I've never really fully understood the need
12 for the address as part of the oath, anyway, but that's just
13 the way it's always been, so I haven't rocked that
14 particular boat. But I'm fine with it.

15 All right, let's get the jury.

16 (Pause.)

17 COURT OFFICER: Court ready to receive the jury,
18 your Honor?

19 (The Court nodded.)

20 COURT OFFICER: All rise. Jury entering.

21 (The jury entered the courtroom.)

22 THE COURT: Good morning, everyone. Have a seat.

23 Okay. Counsel for the State, do we have a witness
24 rescheduling that we're going to do?

25 MS. CONNELL: Yes, your Honor.

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North - by Plaintiff - Direct/Connell

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1 To accommodate a family situation with a nonparty
2 witness, we're calling Lieutenant Colonel Oliver North out
3 of order. We'll begin with his testimony this morning and
4 then resume with Mr. Cotton, with the Court's permission.

5 THE COURT: Okay.

6 Let's have the witness come in, please.

7 (Pause.)

8 (The prospective witness entered the courtroom.)

9 MS. CONNELL: Good morning.

10 LT. COL. NORTH: Good morning.

11 MS. CONNELL: Just follow the officer (indicating).

12 (The prospective witness assumed the witness
13 stand.)

14 THE COURT: Good morning.

15 LT. COL. NORTH: Good morning, your Honor.

16 L T. C O L. O L I V E R L. N O R T H, called as a
17 witness by the plaintiff, having been first duly sworn/affirmed,
18 was examined and testified as follows:

19 THE CLERK: State your name.

20 THE WITNESS: Oliver North.

21 THE CLERK: Spell your last name.

22 THE WITNESS: N-o-r-t-h.

23 THE CLERK: Thank you.

24 You may be seated.

25 THE WITNESS: Thank you, ma'am.

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North - by Plaintiff - Direct/Connell

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1 (Witness seated.)

2 DIRECT EXAMINATION

3 BY MS. CONNELL:

4 Q Good morning, Lieutenant Colonel North.

5 A How are you?

6 Q Good, thank you.

7 It's "Lieutenant Colonel" rather than "Colonel";
8 correct?

9 A Yes, ma'am.

10 Q Thank you.

11 THE COURT: Can you just bring the microphone a
12 little closer to you?

13 THE WITNESS: Yes, sir.

14 (The witness did so.)

15 MS. CONNELL: Alan, can you hear me okay?

16 COURT REPORTER: I can.

17 Q Colonel North [sic], can you again state your name for
18 the record?

19 A Oliver, O-l-i-v-e-r; middle initial, L.; last name,
20 North, N-o-r-t-h.

21 Q Lieutenant Colonel North, are you married?

22 A Yes.

23 Q And how long have you been married?

24 A Fifty-five years and three months.

25 Q Do you have children?

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1 A Yes, we do.

2 Q Grandchildren?

3 A Eighteen of them.

4 Q And where do you live? Not the street address, please.

5 A We live in Clarke County, Virginia.

6 Q And you're retired from the military?

7 A Yes, ma'am.

8 Q How long did you serve in the military?

9 A A total of 25 years, counting my time at the Naval
10 Academy.

11 Q Okay. Lieutenant Colonel North, are you an NRA member?

12 A Yes.

13 Q How long have you been an NRA member?

14 A Well, as a youngster, I was an NRA member as a kid; my
15 brothers and I all were, I think. And then I brought -- I came
16 back in the NRA in 1988 because a famous Marine Medal of Honor
17 recipient, president of the NRA, recruited me, and I think he
18 paid for my Life Membership in 1990.

19 Q So is it your understanding, you have two Lifetime
20 Memberships?

21 A I do. I have two Life Membership cards, with different
22 numbers on them.

23 (Continued on next page.)

24

25

ALAN F. BOWIN, CSR, RMR, CRR

Direct-North-Connell

1736

1 Q Colonel North, do you know Wayne LaPierre?

2 A I do.

3 Q How long have you known him for?

4 A Exact number of years, I don't know, but I do know that
5 I was in his wedding back when that took place in Virginia.

6 Q What was the nature of your relationship with Colonel
7 North until recently -- I mean, excuse me, with Mr. LaPierre
8 until recently?

9 A We're friends. Close friends. We saw each other a
10 good bit. I would see him at events that he was attending or I
11 was attending. Did a whole bunch of things for the NRA unpaid
12 when I was working for a news network, and was glad to do so
13 cause we were close friends.

14 Q Great.

15 MS. CONNELL: Can the jury hear Lieutenant Colonel
16 North?

17 THE JUROR: Barely.

18 Q Could you get closer to the microphone.

19 A Go like that to me and I'll speak up.

20 Q Lieutenant Colonel North, at some point did you become
21 an NRA board member?

22 A Yes, I did.

23 Q How did you become a board member?

24 A My recollection is that when LaPierre encouraged me to
25 become a board member. I think it was at his admonition I do

LAS

Direct-North-Connell

1737

1 so. I was -- I was already a life member and the nominating
2 committee, I think the nominate committee for the post.

3 Q And were you elected by the members of the NRA?

4 A Yes.

5 Q And re-elected?

6 A Each time the term expired, yes.

7 Q At some point did you become NRA president?

8 A I did.

9 Q Can you describe for the jury how that came about?

10 A I was asked by one of Wayne's aides if I would consider
11 it. And I said I -- I'm really not looking for that kind of
12 assignment. But I knew that the then president of the NRA was
13 not going to serve for a second term. Wayne came to me and
14 said, I've got to have you as the next president of the NRA, and
15 I can make that happen. And so after several days of discussing
16 it with my friends, my employer, I said okay. I'll do it. And
17 at the end of that Wayne said, I'll take care of it.

18 It also included several other things. That I could
19 not be without a job. And I knew that I was not going to be
20 able to work as a combat correspondent or as a documentary
21 filmmaker or as a historian or has a host of a show while I was
22 president of the NRA. Effectively meaning I would have to leave
23 my employment.

24 Q So, let me break that down a little. You said I think
25 that you knew the then president of the NRA was not going to run

LAS

Direct-North-Connell

1738

1 for another term, is that accurate?

2 A Correct.

3 Q Who was the president at that time?

4 A Pete Brownell. The Brownell family has been big
5 supporters of the NRA for as long as I have been alive, I think.
6 So, I talked to Pete and said -- he said, I just can't run.
7 There were issues being presented that said that the NRA was
8 somehow complicit in helping a Russian spy, those kind of
9 things. So Wayne was making the point to me consistently, only
10 you can do this job for us. You're an American patriot. You're
11 well known. We need somebody like you, and there is nobody else
12 like you.

13 So, after a period of time and I talked to the folks at
14 Fox and they reassured me if you're going to be the president of
15 the NRA you cannot be at Fox.

16 Q When he said "We need somebody like you", what did you
17 understand him to mean?

18 A Well, actually I think they put that in one of the
19 resolutions validating my employment, but they wanted someone
20 with high visibility. A record of being a patriot. A person
21 who was comfortable in the media. And they wanted me to make
22 sure that I could fulfill those kinds of, if you will, roles as
23 the president of the NRA.

24 Q At the time that Mr. LaPierre approached you, were you
25 employed?

LAS

Direct-North-Connell

1739

1 A Yes.

2 Q And what were you doing at that time?

3 A I was employed by Fox News. I had been employed by Fox
4 News since 1980 or thereabouts. And I was the host of a TV show
5 called Wars Stories. I was a combat correspondent for them for
6 -- I did 60 some embeds with U.S. military and allied military
7 and war on terror. In fact, 9/11/01 kind of changed my role
8 with Fox. I've been hired early in the year and they came to me
9 and said can you go embed with various units that are fighting
10 this war in terror. In October of that year my role at Fox was
11 added to do the war correspondent aspect of it.

12 Q Lieutenant Colonel North, at the time Mr. LaPierre
13 approached you to potentially become NRA president, you had a
14 career at Fox News, is that right?

15 A I did. Fox paid me a lot more to get shot at than the
16 Marine Corps. did. I was grateful for it. They made it
17 possible for me to publish books with the Fox logo on it. I
18 paid royalties to Fox for the books we sold. We did, without
19 any hubris did very, very well.

20 Q What was your initial response to Mr. LaPierre's
21 request?

22 A I'm sure that I said at some point something like, Make
23 me an offer I can't refuse, but knowing that I was going to have
24 to leave my job at Fox. And that Fox job not only came with
25 very lucrative income and other residual effects of that, like

LAS

Direct-North-Connell

1740

1 the books and speeches and those kinds of things, but it also
2 meant that I was not going to have insurance unless I was an
3 employee.

4 Q Why was insurance important to you at that point?

5 A Because my wife had already been diagnosed initially
6 with a very serious terminal illness, and eventually over the
7 course of the next year plus I took her to Mayo Clinic, who
8 confirmed it wasn't what a lot of other people thought, but it
9 was a terminal illness. I was going to have enormous expenses,
10 medical expenses, which turned out to be true.

11 Q And given that, did you tell Mr. LaPierre you couldn't
12 take on the role of president?

13 A I told him I couldn't take on the role unless I was an
14 employee who would receive the benefits. Over the course of
15 several weeks of negotiations back and forth with Fox, they
16 allowed me to retire not resign, which was very important to be
17 able to retain the benefits that I had gotten from Fox,
18 particularly the medical care, medical insurance. And so
19 eventually that was worked out in discussions with my attorneys
20 who represent me for my media contracts and the like. A
21 contract was drafted up. I think it was somewhere around May,
22 mid May, the initial conversations with Wayne had been and with
23 several others had been in April. And once that was ironed out,
24 I said I can do that.

25 Q When you say "April", what year were you talking about?

LAS

Direct-North-Connell

1741

1 A I think we're talking 2018.

2 Q Okay. And you said you had conversations with Wayne
3 and several others. Do you remember who you were having
4 conversations with besides Mr. LaPierre?

5 A Well, I mean initial negotiations were Wayne and I just
6 talking to each other. At some point in that process I
7 presented to Wayne a term sheet that had been offered to me by
8 Melanie Montgomery at Ackerman McQueen. No one told me about
9 becoming president of the NRA. 2016 Melanie sent me a draft of
10 what a term sheet would be that included pay and it included the
11 insurance for my wife or my family. My dependents I guess is
12 the best way to put it.

13 Q Lieutenant Colonel North, if you retired from Fox News
14 were you able to retain your health benefits through Fox News,
15 your health insurance?

16 A No.

17 Q So when you were discussing potentially becoming the
18 president with Mr. LaPierre, were you -- did you indicate to him
19 you needed to be able to get health insurance through some other
20 means?

21 A I made it very clear, yes.

22 Q And in regard to employment -- Strike that. When you
23 told Mr. LaPierre you would need employment and health
24 insurance, what was his response, if any?

25 A Well, broadly, obviously, lots of issues in a contract.

LAS

Direct-North-Connell

1742

1 We're talking about the contract I had with Ackerman McQueen.
2 Separate from becoming the position of president of the NRA is,
3 as everybody I think knew, is not a compensated position. So, I
4 was -- I needed an employer who would help me with one, a
5 paycheck and number two, the insurance, which was very important
6 to me.

7 Q So, the position of the NRA under the bylaws is a
8 volunteer position, right?

9 A Correct.

10 Q It's unpaid, correct?

11 A Yes.

12 Q And did you make it clear to Mr. LaPierre you could not
13 take that position unpaid and volunteer?

14 A Well, I made it clear to him that I had to be employed
15 by someone who was going to give me the insurance I needed for
16 my wife and myself, but mostly my wife, because it is a terminal
17 illness.

18 Q Right. And what happened next?

19 A At some point I -- I sent the term sheet to either -- I
20 think I handed Wayne a copy of it. In any event, the term sheet
21 included the fact that I needed the insurance. That I needed to
22 be employed. I couldn't get it as a consultant. I couldn't get
23 it as an outside contractor. I had to have that. Wayne's words
24 were to me, I'll take care of that as long as you'll agree to
25 become president of the NRA, and I did.

LAS

Direct-North-Connell

1743

1 Q Okay. So, did you run for the position of president of
2 the NRA?

3 A No. I never ran for a board position. I never ran for
4 any of that.

5 Q Did you submit -- Did you campaign to become president
6 of the NRA in 2018?

7 A No. No.

8 Q Did you meet with the nominating committee to get the
9 nomination for president of the NRA in 2018?

10 A No. Wayne told me he would take care of that.

11 Q Did you in fact become president of the NRA in 2018?

12 A I did.

13 Q And did you come to have employment in 2018 not with
14 Fox News?

15 A Correct. I -- I -- Again, I think it was May 15th or
16 thereabouts that the contract, we agreed that this was the
17 effective date, I think it was May 15th.

18 Q And who were you employed by under that contract?

19 A Ackerman McQueen.

20 Q And what role, if any, did Mr. LaPierre play in
21 securing that employment for you with Ackerman McQueen?

22 A Well, I do know at one point he had a friend of mine
23 that talked to every member of the audit committee to validate
24 and confirm that what we were doing was the right thing. I
25 think the word was used, You, Richard, go in there and you tell

LAS

Direct-North-Connell

1744

1 every member of the audit committee that Oliver North is worth
2 every penny.

3 Q When you say "Richard", to whom are you referring?

4 A Richard Childress who at the time was the first vice
5 president. In the normal process of the NRA, it's in the
6 bylaws, you -- the presidential term is a year. And the
7 nominating committee would reaffirm that they want you to stay
8 another year. And there is provisions for that in the bylaws.

9 Q So in the normal course of events of the NRA is it
10 correct to say that the second vice president would be elected
11 for a one year term and then re-elected for a second year term,
12 right?

13 A Correct.

14 Q That would be true of the first vice president?

15 A Yes.

16 Q And the president?

17 A Yes.

18 Q So when Mr. Brownell stepped down after one year that
19 was unusual?

20 A I -- I don't know it's all that unusual. I know that
21 some people like Charlton Heston served for multiple terms. So,
22 waivers were given to those provisions of the bylaws that said
23 you could only do one year. Your term is only going to be one
24 year at a time. You would have to be renominated each time.
25 And then I don't if other people campaigned for the job or not.

LAS

Direct-North-Connell

1745

1 I don't recall. But I didn't. I didn't have to, 'cause Wayne
2 had said, I'll take care of it, and he did.

3 Q Did you and Mr. LaPierre discuss Charlton Heston at
4 that time?

5 A I don't think it was then. I think I had a question or
6 two about how Charlton Heston had been compensated not by the
7 NRA directly but by others and serve multiple terms. I mean,
8 and he -- I don't remember the specifics of the conversation.
9 In fact, I still don't know how Mr. Heston was compensated.

10 Q So, Lieutenant Colonel North, I would like to direct
11 your attention to tab 22 in the binder that's next to you.

12 MS. CONNELL: This is PX 2569. Your Honor, I have
13 not received any objections to this exhibit.

14 A Which tab am I looking at?

15 Q Twenty-two, please.

16 MS. ROGERS: No objection.

17 THE COURT: It's admitted.

18 A Employment agreement, right?

19 Q Yes, sir. Lieutenant Colonel North, have you seen this
20 document before?

21 A (Examining). Oh, yes.

22 Q What is it?

23 A This is the employment contract I had with Ackerman
24 McQueen.

25 Q And directing your attention to page 10, is that your

LAS

Direct-North-Connell

1746

1 signature on the contract?

2 A (Examining). Yes. It is.

3 Q And who else signed this agreement?

4 A I'm sorry. Who else signed it?

5 Q Yes.

6 A That is the signature of Revan McQueen, who was the
7 chief executive officer of Ackerman McQueen at the time.

8 Q And so under this agreement you became an Ackerman
9 employee, is that right?

10 A Yes.

11 Q Why did you become an Ackerman employee?

12 A So that I would have most importantly the insurance and
13 income that I needed for my wife's healthcare.

14 Q Did you ever discuss with anyone potentially serving as
15 an independent contractor?

16 A Someone at some point raised that as an option, and my
17 response to that option was I can't do that, because I -- I have
18 to be employed by someone who would provide as part of my
19 benefits the medical insurance.

20 Q Did you take any steps to confirm that with Ackerman
21 McQueen, that you would have to be an employee?

22 A Oh, yes. I know that my agent, my counsel, who was
23 serving as my agent for all of my media contracts, had put that
24 in there.

25 Q Okay. To your knowledge was this contract shared with

LAS

Direct-North-Connell

1747

1 Wayne LaPierre?

2 A Oh, yes. Before it was approved.

3 Q Okay. And, sir, if we turn back to page 1 of this
4 contract, what was the effective date?

5 A Effective date is May 15th, 2021. I'm sorry.

6 Q 2018 I think you're looking at there.

7 A Page 1?

8 Q Yes, page 1, the effective date.

9 THE COURT: It's also highlighting on the screen in
10 front of you.

11 Q That may help you.

12 A Oh, yes. Good. There it is. I was looking too far
13 down the page. Yes. This agreement, effective as of May 15th,
14 2018.

15 Q And if we can turn to page 2, please, and look at
16 bullet point four, "compensation".

17 A Yes.

18 Q Under this agreement you were suppose to receive
19 compensation in each of three years, right?

20 A Correct.

21 Q So you were to receive how much in each year?

22 A The first year would be 2.1 million. Second year,
23 2.3 million. And 2.5 million in year three.

24 Q Okay. Lieutenant Colonel North, just to be clear, why
25 did you enter into this employment agreement with Ackerman

LAS

Direct-North-Connell

1748

1 McQueen?

2 A Because it contains the provisions necessary for me to
3 be compensated and most importantly my wife would be covered by
4 health insurance.

5 Q Is it your understanding that under this agreement you
6 had to perform work?

7 A Yes.

8 Q And what work did you understand you would be
9 performing?

10 A I would be doing TV type work for NRA TV. It included
11 similar duties to what I had at Fox. Fox had not, in the way
12 they handled all of this very graciously, instead of saying I
13 resigned from Fox, Fox said I was retiring from Fox. And,
14 therefore, I was not barred from taking other media assignments,
15 which are very commonplace in this business. And noncompete is
16 the term that's used. And they didn't do that to me. They let
17 me retire. They let me collect my 401(k). They let me, until I
18 actually went to work for Ackerman McQueen, they continued to
19 pay -- provide for the health insurance.

20 Q And so to your knowledge Mr. LaPierre was fully aware
21 of this agreement when you executed it?

22 A I'm absolutely certain he was fully aware. He had a
23 copy of it at the big pow wow we had down in Texas where this
24 was discussed in a room full of people.

25 Q When you say "big pow wow" in Texas, what are you

LAS

Direct-North-Connell

1749

1 referring to?

2 A I'm referring to one of the annual meetings held in
3 Dallas. We actually went to the office of either Revan McQueen
4 or his father who was the CEO. Revan was COO at that point.

5 Q Do you recall who else was present at that time?

6 A I know Ms. Montgomery was there. I know Wayne was
7 there. Millie Hallow was there. Revan McQueen was there. I
8 think Mr. Winkler, who was their HR person with whom the
9 negotiations had taken place over many weeks. Obviously, I was
10 there. I think several other people came and went from that
11 meeting.

12 Q Did you amend this contract at any time?

13 A Yes.

14 Q Why did you amend the contract?

15 A Well, because at the time, this is well after I became
16 president of the NRA, we were going through all kinds of
17 sessions of meetings within the leadership, within the board
18 meetings about the fact the NRA was in serious financial
19 trouble. We were -- I was, as the president of the NRA,
20 encouraging people at the NRA headquarters and folks who I
21 worked with out in the field on Friends of the NRA events, I was
22 encouraging them to tighten their belts. And my experience as a
23 leader, and I thought I was a leader in the NRA, as the
24 president was you don't ask your troops to do something that you
25 as the leader can't or won't do. So, I went into conversations

LAS

Direct-North-Connell

1750

1 with Ackerman McQueen and my agent to reduce my pay from 2.1
2 million and then 2.3 and 2.5. Over the three year period just
3 give me a flat rate of 1.75, which is roughly a 30 percent
4 reduction in pay. But I got to keep the insurance, okay,
5 because my wife by then was increasingly ill.

6 Q In this same exhibit could you turn to page 11.
7 Page 11. The numbers are at the bottom center of the page.

8 A Yes, ma'am. This is the amendment.

9 Q This is the amendment. Do you know what date you
10 signed this amendment on?

11 A Normal habit is to date my signature. I did. 24
12 December 2018.

13 Q To your knowledge was Wayne LaPierre aware of this
14 amendment?

15 A Well, I don't know if he's aware of the amendment. He
16 was aware of my decision that I was going to cut my pay one, to
17 set the example and number two, to actually help the NRA, which
18 was broke. And so he objected to it vehemently. Came into my
19 office at the NRA headquarters and said, You can't do this.
20 Now --

21 Q When you say, I'm sorry, Lieutenant Colonel North, you
22 mean you can't cut your own pay?

23 A Right.

24 Q Did he say anything else about it at the time?

25 A It was not a friendly meeting. In fact, it probably

LAS

Direct-North-Connell

1751

1 was the first time he and I had really crosswords with each
2 other. He sent me several notes over time when I started asking
3 questions that were appearing in the media and the like which
4 were not helpful to the NRA. And when my goal was one, I have a
5 fiduciary duty. Number two, I'm a big supporter of the NRA. I
6 know what Article 2 of the NRA bylaws are. Here's what our job
7 is. And we're being hounded about trying to do our job the
8 right way. The press was all over us. It was hurting
9 membership. And Wayne reassured me, Look, your job as the
10 president of the NRA is to help us raise money and members. I
11 spent most of my time doing that. I also knew that I was not
12 spending as many hours as I originally intended on NRA TV. I
13 was still doing a lot of it, but there was a feature length show
14 on Fox was 48 minutes long. I didn't think we needed to do
15 that, social media being what it is and that's how NRA TV was
16 seen most of the time. Half hour is -- is a lot. A lot of time
17 for people to sit and watch a podcast kind of thing.

18 Q Am I correct in understanding in December of 2018 you
19 had been working for NRA TV? You had been doing some work?

20 A Oh, yeah. I did some 90 appearances on NRA TV over the
21 years without being paid a penny by Ackerman McQueen. News-
22 casts, commercials that would be run on NRA TV. That kind of
23 thing. I done a lot of that.

24 Q Under the contract had you produced any of the shows
25 that you were obligated to produce?

LAS

1752

1 A Yes. Several of them were already done and broadcast,
2 and unfortunately I didn't have the time to go back. I'll give
3 you an example. At the annual meetings we had a feature at the
4 annual meetings of the law officer, the American Law Officer of
5 the Year. Okay. And I loved putting those together. I love
6 keeping company with heroes. I would go personally on those
7 interviews, and I would help participate in the editing of them,
8 which you have to do. Two hours worth of interviews with
9 somebody. And I know this from war stories. You got to cut
10 that down, in our case 48 minutes, in this case cut it down a
11 lot. So, I would actually participate hours at a time with the
12 editing that was being done in the offices of Mercury Group in
13 Alexandria, Virginia which, is a subsidiary of Ackerman McQueen.

14 (Continue on the next page.)
15
16
17
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22
23
24
25

LAS

North - by Plaintiff - Direct/Connell

1753

1 Q You also did some other work for NRATV, besides the
2 show?

3 A Oh, yeah, a lot of other work.

4 Q Lieutenant Colonel North, can I direct your attention,
5 please, to tab 13, which is PX 1222?

6 MS. CONNELL: Your Honor, I have not received an
7 objection to this.

8 MS. ROGERS: No objection.

9 MR. CORRELL: No objection.

10 MR. FLEMING: No.

11 THE COURT: Okay, it's admitted.

12 (Image displayed.)

13 Q Lieutenant Colonel North, you can look in your binder
14 or you can look on the screen.

15 A I see it.

16 Q Okay. Have you seen this document before?

17 A Yes. It's from me. And it's to Wayne LaPierre, Revan
18 McQueen, Brandon Winkler, from me. It's the modification to my
19 employment contract, and this is a conversation I'd had with
20 Wayne:

21 "Brandon, in [accord] with our conversation this
22 morning, please amend my employment contract to reflect my
23 annual compensation to 1.7 million, effective on 1 January,
24 2019, through the expiration of said contract, which is a
25 three-year contract."

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Direct/Connell

1754

1 So I cut my pay, not just for one year, but for all
2 three years.

3 Q Colonel North [sic], did you have any concerns about
4 being employed by an NRA vendor while you were an NRA officer?

5 A No.

6 One, what I was assured -- Wayne's words -- when all
7 this began, and reiterated many times thereafter, was, "I will
8 make this happen." And so, one of the requirements you have if
9 you're employed by a vendor like Ackerman McQueen -- and you
10 have to reveal that in your financial disclosures, which I did.
11 There was a question, at one point, about the financial
12 disclosure for the year 2018 that was actually filed about what
13 we were doing in 2017. And so I fully disclosed, at the
14 appropriate times, this (indicating) information.

15 And, of course, we had a contract drawn up to actually
16 amend the terms of my employment.

17 Q And --

18 A Which, by the way, if I may, were also submitted, but
19 late -- it was after I'd done it -- it was submitted to the
20 Audit Committee.

21 Q So your employment contract with Ackerman McQueen was
22 submitted to the Audit Committee; is that correct?

23 A Yes.

24 Q When you say, "but late," what do you mean?

25 A Well, you know, I was supposed to send -- I was

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Direct/Connell

1755

1 supposed to send in a -- any modifications or amendments to my
2 contract. Should have been part of going to them first and
3 saying, "This is what I want to do and this is -- we either
4 approve it or disapprove it." I couldn't imagine anybody was
5 going to disapprove of my cutting my pay by 30 percent, not just
6 for one year but for all three, and yet, I got objections from
7 Wayne: "You can't cut your pay. I -- only I can do that."

8 Q But, Colonel North, going back to your original
9 contract, the original employment agreement effective as of May
10 15th, 2018, was that agreement submitted to the Audit Committee,
11 to your knowledge?

12 A Yes.

13 Q And was that committee --

14 Was that agreement submitted to the Audit Committee in
15 advance for approval, to your knowledge?

16 A I believe so.

17 Q It was submitted before you signed it?

18 A I think so. I -- again, I think I signed it at -- at
19 or near the meeting that we had down in Dallas, Texas --

20 Q Okay.

21 A -- in -- in May of 2018.

22 Q Sir, I'd like to direct your attention to tab 4, which
23 is PX 2983.

24 MS. CONNELL: Your Honor, I have received no
25 objections in regard to this exhibit.

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Direct/Connell

1756

1 MS. ROGERS: No objection.

2 MR. CORRELL: No objection.

3 THE COURT: All right. Hearing none, it's
4 admitted.

5 (Image displayed.)

6 Q Colonel North, I'm showing you what has -- the
7 September 8th to 9th 2018 report of the Audit Committee of the
8 NRA.

9 A Yes.

10 Q Do you see this?

11 A I do.

12 Q Okay. And to move down, I'd like to direct your
13 attention to the bottom of that page, in regard to the Audit
14 Committee meeting on September 6, 2018. Do you see that?

15 A I do.

16 (Image scrolled.)

17 Q So the Audit Committee met on September 6, 2018; right?

18 A Right.

19 Q And if we turn to page 2 of this document --

20 (Image scrolled.)

21 Q -- it will reflect that the Audit Committee considered
22 your agreement; correct?

23 A Yes.

24 Q On September 6th, 2018.

25 A Correct.

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Direct/Connell

1757

1 Q So does that refresh your recollection as to whether
2 the Audit Committee considered your contract before you signed
3 it?

4 A Yes.

5 Q And did the Audit Committee approve your contract
6 before you signed it?

7 A I believe -- yes.

8 Q If we can look back -- I'm sorry to do this to you,
9 Lieutenant Colonel North: If we can look back at your contract,
10 which was PX -- I mean it's tab 22.

11 (Image displayed.)

12 A Yes.

13 Q And the effective date of that contract was May 15th,
14 2018; right?

15 A Yes.

16 Q And if you look at page 10 of that contract -- oh, you
17 don't -- it doesn't have a signature date, but this contract was
18 entered into on or about May 15th, 2018; right?

19 A Yes.

20 Q Okay. The Audit Committee considered this contract for
21 the first time in September 2018; correct?

22 A Right.

23 Q So, does this refresh your recollection as to whether
24 the Audit Committee considered and approved your contract before
25 or after you executed it?

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Direct/Connell

1758

1 A It -- it was approved afterwards.

2 Q That's right.

3 Do you understand, or do you currently have an
4 understanding, as to whether that contract was required to be
5 approved in advance by the Audit Committee?

6 A I do now.

7 Q And what is your understanding?

8 A That this -- obviously, that this was not submitted
9 before it was, quote, taken care of by Mr. LaPierre.

10 Q And do you understand now whether it should have been?

11 A It should have been, yeah.

12 Q Okay.

13 A I mean, clearly, that's -- that's the rules.

14 Q Lieutenant Colonel North, did you take part in -- or
15 any part -- in this September 6th meeting of the Audit
16 Committee?

17 MS. CONNELL: If we can turn back to PX 2983 ...

18 A Which is tab 4, right?

19 Q Yes.

20 A No.

21 (Image displayed.)

22 Q That's at the fall board meeting; correct?

23 A Yes.

24 Q And did the Audit Committee reach out to you to ask for
25 any information about your agreement?

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North - by Plaintiff - Direct/Connell

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1 A Not that I recall at this point.

2 Q Did you make your agreement with Ackerman McQueen
3 available to people within the NRA prior to this meeting?

4 A Yes.

5 Q And to whom did you make it available?

6 A Well, I know it was made available to Mr. LaPierre,
7 because he had one -- one of the original copies of it. Okay?
8 That's number one. Number two, the general counsel and
9 secretary, right down the hall from me at NRA headquarters, and
10 I showed copies of that to -- to John and -- and got no blowback
11 whatsoever.

12 Q You're talking about John Frazer?

13 A Yes.

14 Q Okay. And did you ever refuse to show anyone at the
15 NRA who asked a copy of your employment contract before this
16 meeting?

17 A Well, there is a confidentiality clause in the contract
18 and before I violated that, I -- I wanted to confirm, does my
19 employer agree with me making this public?

20 Q Um-hmm.

21 A And so, at various points along the line -- and they --
22 they generally said yes, but I could never get a piece of paper
23 from Mr. Brewer that his side had agreed that -- because he was
24 one of the people asking for it. I know that the board lawyer,
25 Steve Hart, had -- had seen it and took to this -- this

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North - by Plaintiff - Direct/Connell

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1 (indicating) meeting we're talking about right here and made a
2 presentation, but I have no idea what it was.

3 The bottom line of it is, they retroactively approved
4 my contract.

5 Q Right. So you had provided --

6 You knew that the contract -- that Wayne LaPierre had a
7 copy, right?

8 A He had -- he -- I don't know what he did with it, but I
9 know he had a copy of it in that meeting that took place at the
10 Ackerman McQueen headquarters in Dallas, Texas.

11 Q And you had made the contract available to John Frazer
12 and to Board Counsel Steve Hart?

13 A Yes.

14 Q And, again, were you called to testify or speak to the
15 Audit Committee about this contract?

16 A No.

17 Q Did they ask you any questions about the contract?

18 A No.

19 Q And they ratified the contract.

20 A They did indeed. And their -- and their resolution
21 says that (indicating).

22 Q That's right.

23 And, Colonel North, I'd like to direct your attention
24 to the actual ratification, on page 2 --

25 A Yep.

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North - by Plaintiff - Direct/Connell

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1 Q -- of the Audit Committee meeting report.

2 (Image displayed.)

3 Q Do you understand what factors were considered by the
4 Audit Committee?

5 A Well --

6 Q Well, I direct your attention to the third "whereas"
7 clause.

8 A "Factors considered by the Committee in its analysis
9 included: 1. Lieutenant Colonel North's unique leadership
10 qualities, proven fund-raising record, and experience in the
11 field of television reporting and production; and 2. In light
12 of the foregoing, the absence of alternative candidates for
13 Lieutenant Colonel North's role," and it goes on from there.

14 Q Okay. So the Audit Committee ratified your agreement
15 with the NR -- with Ackerman but it imposed some conditions,
16 right?

17 A Correct.

18 Q And what were those conditions?

19 A My recollection is, there were two of them: One is
20 that Lieutenant Colonel North shall abstain from participating
21 in any deliberations or votes regarding Ackerman McQueen, and
22 any material change in the terms of the AMC contract for duties
23 under the AMC contract be disclosed to the committee.

24 Now, I -- I never communicated with Ackerman McQueen
25 about anything to do with contracts that they had, things that

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1 they were doing. I only conferred with them about: "Here's the
2 law officer of the year that we have identified and I'm going to
3 do a documentary about him to put up at the annual meeting."
4 That kind of thing. I would confer to them -- they would pick
5 up the phone and call me and say, "Can you do an ad that will
6 appear on our website, suggesting that a certain nominee to the
7 Supreme Court is going to be a supporter for the Second
8 Amendment?" and I would do those ads and they would run them
9 wherever they -- they could and did. I would make appearances
10 on TV, talking about issues -- on regular TV and NRATV -- about
11 things that were important to the future of the NRA.

12 I -- I -- I think it's important -- I did not want to
13 harm the NRA. In fact, what I was doing throughout this period
14 of time was trying to protect the NRA and Wayne LaPierre and
15 exercise my fiduciary responsibilities.

16 Q So let's talk about that now. Let's shift from the
17 contract to your service as president:

18 In May of 2018, you were elected NRA president;
19 correct?

20 A Yes.

21 Q And can you describe for the jury how you approached
22 being NRA president?

23 A Well, I -- I went to work there every day that I wasn't
24 traveling somewhere for NRA.

25 Q Okay.

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North - by Plaintiff - Direct/Connell

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1 A I mean, if I -- if I was in town, I would go there.

2 Apparently, that did not happen often and -- and I was
3 told that by several of the people who had supported previous
4 presidents. I would go in -- my place of work became the NRA
5 headquarters. I would drive there every morning.

6 Q I'm sorry, Lieutenant Colonel North.

7 So you would show up to the NRA headquarters when you
8 weren't traveling; is that right?

9 A Correct.

10 Q Could I just take one step back to the Ackerman
11 contract? You knew that the NRA was paying Ackerman for your
12 contract; correct?

13 A Oh, yes. Yes.

14 Q And, to your knowledge, Mr. LaPierre knew that as well;
15 right?

16 A It was his idea, going all the way back to Genesis on
17 this thing. Look, at various meetings, Wayne would assure me,
18 "I will take care of that." That included going to the
19 Nominating Committee, it included going to the Audit Committee,
20 and it included going to Ackerman McQueen saying, "You need to
21 hire this guy."

22 Q Okay.

23 So, going now -- switching back -- I'm sorry for the
24 interruption -- to your term in the presidency, you -- would you
25 say, it's fair to say that you were a hands-on president?

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North - by Plaintiff - Direct/Connell

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1 A Very much so.

2 Q Okay.

3 A Apparently too much so.

4 Q Did there come a time when you became concerned about
5 conditions within the NRA itself?

6 A Yes.

7 Q And can you describe what concerns you had?

8 A Well, when I -- I spent a lot of time on the road; I
9 spent a lot of time at the headquarters. People would come by
10 to say to me: "How could we be hurting this much in our budget?
11 How come we're not raising the kinds of members and -- and money
12 that we really need to do our mission, which is stated right
13 there in the bylaws, Article II?" We were cutting back on all
14 kinds of things. And, of course, part of that cutback was what
15 I responded to by cutting my pay, to set the example.
16 Leadership never asks those who follow him to do that which the
17 leader would not or could not do.

18 Q And when you heard these concerns about cutbacks, what,
19 if anything, did you do?

20 A Well, I went out and assured everybody that the
21 expenses we were having were pretty much the consequence of
22 outside interference. There were all kinds of newspaper
23 articles and -- and, you know, this whole accusation about the
24 NRA participated, somehow illegally, with a Russian spy; that
25 kind of stuff. And so, I wanted to reassure those people with

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1 whom I was speaking out on the circuit, if you will, that what
2 we were doing was, one, the right -- the right kind of thing;
3 thinking, A, we're doing the right thing by the NRA charter, by
4 our fiduciary duties, which I had inherited by becoming a board
5 member; and to help my friend Wayne LaPierre.

6 Q What did you do within the NRA to make sure you were
7 comfortable making those representations?

8 A Well, I -- I would do things like -- I'd get there
9 early in the morning -- right? -- because my -- Marines do that,
10 and I'd go down and have breakfast and I'd walk out with my
11 trays -- I paid for my meals, by the way -- and sometimes buy
12 some of them meals, and I'd sit down and talk to 'em. I'd say:
13 "John, how's your day? What do you do? How do you do it?
14 Where do you do it? Are you having fun? Are you working? Are
15 you happy with what you're doing?" Those kinds of things like I
16 would do with my troops when I was a platoon commander or a
17 company, all the way up the line. And it's what I knew to do as
18 a leader. And so I wanted to set the example.

19 And I had no idea that my taking a pay cut was going to
20 be so offensive to people that I didn't get it approved by the
21 man who said, "I can take care of it."

22 Q Did you ever ask for financial information -- ask or
23 obtain financial information -- about the NRA once you began to
24 have concerns?

25 A Yes, I did.

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1 Q And --

2 A I asked, specifically, about what was -- why the legal
3 expenses would show up on our budget -- I think it's "legal
4 expenses"; I might have the title wrong -- but in the budget had
5 grown dramatically over the course of time since Wayne and I
6 started to talk about this back -- earlier in the year; that
7 previous year by '19.

8 Q And what response did you get in regard to your
9 concerns about the legal spending?

10 A Well, I had noticed that the numbers had grown
11 dramatically, some of which could be explained by the number of
12 lawsuits that were already being pursued.

13 At one point, and I don't recall the time frame for it,
14 Chuck Cooper, who had represented the NRA for years -- in fact,
15 Chuck Cooper and I were both at Mr. LaPierre's wedding, and he's
16 a friend; I've known him since the Reagan Administration. And
17 so, at some point along the line, that -- the particular court
18 case he was working on for the NRA was taken away from him and
19 given to Mr. Brewer. But the -- the numbers I was seeing --
20 gross numbers -- I was not allowed to do an audit.

21 I didn't want to do an audit. I wanted an outside,
22 independent party to come in and do a full audit on everything.
23 Mr. Brewer claimed many times that he was doing that for the NRA
24 and yet, when I asked to see the numbers for Mr. Brewer, I -- I
25 specifically remember a time when -- when it was recommended, I

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1 think, by Steve Hart, "You ought to look at the numbers, because
2 I'm the lawyer for the board." Right?

3 And so, I went and asked John Frazer: "Can I have the
4 numbers? I'm on my way on a trip out of town. When I get back,
5 can I -- can I see the actual numbers?" And -- and I think
6 Mr. Spray is the one who gave me the gross numbers that show a
7 dramatic increase in cost. But by the time I got back from my
8 trip and I went to see John Frazer, a regular day at the office,
9 I was told, Wayne's changed his mind; you can't see the details
10 of what those expenses are."

11 Q So you had asked to see the details of legal spending;
12 you'd ask Mr. Frazer for that?

13 A Yes.

14 Q And you were refused.

15 A Yes.

16 Q And you were told it was at Mr. LaPierre's direction.

17 A Yes.

18 Q Lieutenant Colonel North, I'd like to show you tab 3,
19 which is PX 334.

20 MS. CONNELL: Your Honor, I've received no
21 objection to this document.

22 MS. ROGERS: No objection.

23 MR. CORRELL: No objection.

24 THE COURT: Okay, it's admitted.

25 MS. CONNELL: Thank you, your Honor.

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North - by Plaintiff - Direct/Connell

1768

1 (Image displayed.)

2 Q Lieutenant Colonel North, I'm showing you a March 31st,
3 2019, letter that you wrote to Mr. LaPierre. Do you see this?

4 A Yes.

5 Q This letter sets out steps that you had already taken
6 in regard to digging down into legal spending; correct?

7 A Yes.

8 Q I specifically direct your attention to the second and
9 third paragraphs.

10 (Image modified.)

11 Q So what steps had you taken, specifically?

12 A Well, it -- I have them right here (indicating):

13 "On February 5th, 2019, I requested, both oral and in
14 writing, that John Frazer provide me," as president of the NRA,
15 "with copies of the Brewer firm's voices, which I understand to
16 make up the bulk of the legal fees paid by the NRA, and I was
17 told that you were instructed by Mr. Frazer not to let me see
18 the Brewer bills."

19 That's what I just referred to a moment ago.

20 Q Okay. And if we go to the next paragraph --

21 (Image scrolled.)

22 Q -- you weren't the only one raising these concerns,
23 right?

24 A Correct.

25 Q Who else was raising these concerns within the NRA?

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North - by Plaintiff - Direct/Connell

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1 A "On February 26th, 2019, I, along with the First and
2 Second Vice President of the NRA, wrote to you regarding the
3 contract with the Brewer firm, which had not been 'properly'
4 executed in accord with the board's policy, which requires the
5 approval of the President and either the First or Second Vice
6 President. We indicated in that letter that 'we have fiduciary
7 obligations that need to be urgently addressed.'"

8 Q So who was the first vice president and second vice
9 president of the NRA at that time?

10 A First vice president was Richard Childress, of NASCAR
11 fame and a dear friend; and the Second was Carolyn Meadows, who
12 was a very influential person from Georgia.

13 Q And you hadn't received a response from Mr. LaPierre;
14 correct?

15 A Well ...

16 Q If you look further down in this paragraph, it
17 indicated that you received a letter from Mr. LaPierre; right?

18 A Yes: "You responded with a letter that same day
19 refusing to make the Brewer bills available, and requesting
20 again that I kindly cease and desist" -- a phrase that
21 Mr. LaPierre came to use a lot with me -- "you cease and desist
22 from any further involvement or communications relating to these
23 matters."

24 Q Did Mr. LaPierre verbally tell you anything about --
25 Did you ever verbally discuss your concerns about legal

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1 spending?

2 A Yes.

3 Q And what did he say to you?

4 A At one point -- again, I don't know the exact date, but
5 multiple times over the course of the time, probably after this
6 (indicating), I would say something like: "The Brewer bills are
7 astronomical. I know a little something about legal bills and
8 this is extraordinary," and Wayne would say things like, "Brewer
9 is the only person who's going to be able to keep me out of
10 jail."

11 Number two, he would say things like, "Brewer's the
12 reason why I'm not going to spend the rest of my life in an
13 orange jumpsuit."

14 This is my friend, okay? I took those words to mean,
15 "How can we help you?" And Richard Childress and I -- and I
16 think Carolyn initially did -- would say to him, "We're trying
17 to throw you a lifeline by bringing in outside, independent
18 review of not just the Brewer bills, but all of this stuff that
19 we're being accused of -- of not being right about, not doing
20 the right things." And we wanted to bring in a -- a reputable,
21 outside, independent audit of not just Brewer bills, but the
22 whole mess. We just were trying to help the NRA survive,
23 because there were people saying and writing at the time, the
24 NRA could and should, in the minds of some, lose its tax-exempt
25 status.

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Direct/Connell

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1 Q Lieutenant Colonel North, I'd like to direct your
2 attention to page 2 of this exhibit, PX 334, which is tab 3 in
3 your book and it's on the screen as well.

4 A Yes.

5 (Image displayed.)

6 Q Why, in particular, were you concerned about legal
7 billing?

8 A Well, because, as I traveled around the country raising
9 money for the NRA, people would say to me, "What the hell's
10 going on" -- forgive me -- "What the Dickens is going on with
11 the legal bills for the NRA?"

12 And this is why they were looking at things like this.
13 Some of them took active steps to find out more. I was the,
14 quote, lead person, and this (indicating) was all I could get.
15 So here's \$19,260,452.28, total, raised over the course of the
16 previous 11 months. Stunning.

17 Q And your attempt to dig down into the basis for this
18 spending was frustrated, right?

19 A Totally.

20 Q Okay.

21 A It was forbidden.

22 Q Lieutenant Colonel North, I'd like to direct your
23 attention to page 5 of this letter --

24 A Yes, ma'am.

25 Q -- and, in particular, the last two paragraphs --

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North - by Plaintiff - Direct/Connell

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1 A Um-hmm.

2 Q -- and ask you, again, what was your intention? Were
3 you -- were you trying to unseat Wayne LaPierre as executive
4 vice president?

5 A No, I -- what we were trying to do was to throw him a
6 lifeline. That -- that comment: "Wayne" -- this is a very
7 personal letter to Wayne; I understand that it got wider
8 distribution -- "I'm urging you. I'm pleading with you, based
9 on our long friendship and our shared strong belief in the
10 mission of the NRA. Please agree that the Audit Committee
11 should conduct an outside, independent review."

12 And that's -- that's a friend talking to a friend.

13 I mean, the last paragraph sums it all up, too.

14 Q You were not asking to have personal approval or review
15 over the bills, per se; right?

16 A No. I -- I wanted someone who was smarter than me,
17 more educated, more -- more familiar with it, someone who's a
18 professional who could do this, and they're a dime a dozen in
19 Washington.

20 Q Lieutenant Colonel North, I'd like to direct your
21 attention to tab 8.

22 MS. CONNELL: Your Honor, I have received no
23 objection to this document. It is PX 4942.

24 MS. ROGERS: No objection.

25 MR. CORRELL: No objection.

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North - by Plaintiff - Direct/Connell

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1 THE COURT: Hearing none, it's admitted.

2 (Image displayed.)

3 Q Lieutenant Colonel North, may I direct your attention
4 to this March 22nd, 2019, memo to the Audit Committee?

5 Do you see this?

6 A Yes, I do.

7 Q And who signed this agreement?

8 A It's signed by me, as the president; by First Vice
9 President Richard Childress; and by Carolyn Meadows, the NRA's
10 second vice president.

11 Q And did you have permission to --

12 MS. CONNELL: Strike that.

13 Q Do you know whether this is Ms. Meadows' original
14 signature or electronic signature?

15 A I -- I'm guessing. That's probably an autopen. But I
16 can assure you of this: The person who held the key to that
17 autopen was the special assistant, Nick Perrine, who sat right
18 outside my office on the sixth floor of the NRA building, and
19 Richard -- and there is absolutely no way that Mr. Perrine would
20 ever have put an autopen on a piece of paper without permission.

21 Q And to your knowledge, you always had permission to put
22 Carolyn Meadows' signature on any document submitted with her
23 signature by you; right?

24 A I never asked that anybody, not just Carolyn Meadows --
25 I asked that no one have the autopen used without their

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1 permission. It didn't matter about my permission.

2 Q Okay. And you were asking the Audit Committee --

3 What were you asking the Audit Committee to do?

4 A Well, "Given the need to fulfill our" --

5 It's all the way at the bottom of that first page:

6 "Given the need to fulfill our fiduciary
7 obligations, we are simultaneously notifying Mr. Brewer that
8 the NRA intends to conduct an outside, independent review of
9 Brewer Attorneys & Counselors fees and expenses and we
10 appreciate his cooperation. We are also informing
11 Mr. Brewer that the NRA needs to enhance the documentation
12 of the scope of his work for the NRA through separate
13 engagement letters," which are required in the normal
14 process of doing all these kinds of things. "This
15 documentation is required to comply with existing NRA
16 policies, procedures, and any engagement that was going to
17 cost more than a hundred thousand dollars."

18 Q Okay. Thank you.

19 MS. CONNELL: You can take that down, Jesse.

20 (Image removed.)

21 Q Lieutenant Colonel North, while this was going on, were
22 you performing work for the NRA? What were you doing as NRA
23 president, besides engaging in -- in this --

24 A I was making public appearances; I was traveling all
25 over the country, trying to raise money and members. I was

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North - by Plaintiff - Direct/Connell

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1 doing little commercial stuff that needed to be done to present
2 not just on NRATV, but on other networks, as well.

3 Q Okay. I would like to direct your attention now to tab
4 18, which is PX 1683.

5 MS. CONNELL: Your Honor, I believe, um ...

6 No, I have no objection to this.

7 THE COURT: I assumed you didn't have any objection
8 to it, but any --

9 MS. CONNELL: I'm sorry. I've received no
10 objection to this. I, personally, have no objection, but I
11 also have not received any.

12 MS. ROGERS: We have no objection.

13 THE COURT: All right. In the absence of other
14 objections, it's admitted.

15 (Laughter.)

16 (Image displayed.)

17 Q Lieutenant Colonel North, is this a letter that you
18 prepared and sent to Mr. LaPierre?

19 A Yes, I did.

20 Q Okay. And what's its date?

21 A The date is March 31st, 2019.

22 Q And you, again, were trying to get his help in regard
23 to looking at legal fees; right?

24 A Correct.

25 Q Mr. LaPierre had told you that you should not involve

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North - by Plaintiff - Direct/Connell

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1 yourself in this; is this accurate?

2 A Oh, yeah: "Stay in your own lane, stop doing this,
3 stop asking these questions."

4 Q Did he tell you to stay in your lane?

5 A Oh, yeah. It was an expression he used a couple of
6 times.

7 Q I'd like to draw your attention to the final paragraph
8 on page 2.

9 A This one begins with: "You and Mr." --

10 Q Oh, I'm sorry. Page 3. Excuse me. Page 3.

11 Had Mr. LaPierre given you any reason for why he
12 believed you shouldn't be raising these concerns?

13 A Well, I want to make sure we're all on the same sheet.

14 Q It's actually on the screen, the paragraph I'm
15 directing your attention to. That may be easier.

16 A "You and Mr. Brewer have indicated that I should stay
17 out of this because I have a 'conflict.' That is nonsense. I
18 don't have to be a lawyer to know that my employment by Ackerman
19 McQueen for work on NRATV and my work as President of the NRA,
20 which you originated and I accepted, does not prevent me from
21 seeing the Brewer firm's bills. Nor does it eliminate my
22 fiduciary responsibility as an officer and director of this
23 non-profit organization. As President of the NRA, I have
24 fiduciary duties I cannot ignore."

25 And those fiduciary duties were explained to -- very

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1777

1 carefully -- to me and to Richard Childress and to Carolyn
2 Meadows by Steve Hart, who was the attorney for the board.

3 Q Okay. Colonel North, did you believe that your
4 contract with Ackerman prevented -- presented a conflict that
5 prevented you from looking at legal billing in this case?

6 A Absolutely not, because I had already pledged that I
7 was not going to interfere with any Ackerman McQueen business in
8 any way, except for what I was doing to fulfill my contract; in
9 other words, make those commercials, do those -- those short,
10 you know, blivets that we were putting together and, hopefully,
11 some, if you will, larger -- larger pieces that we would put up
12 on NRATV.

13 Some -- by the way, some of -- I know that
14 everybody's -- well, some of what we did with my small team of
15 NRA and Ackerman McQueen cameramen -- camera -- yeah,
16 cameramen -- and producers took many hours to make sure that
17 they all came ought right. I mean, I can read from a
18 TelePrompTer, but I sometimes muffle it up and we have to four
19 takes.

20 But the bottom line of it is, that's all I talked to
21 anybody at Ackerman McQueen about. I never talked to Ackerman
22 McQueen about billing, about issues with Brewer family members
23 or any of that kind of stuff. The bottom line of it was, I'd
24 complied with all the terms of my contract.

25 (Continued on next page.)

ALAN F. BOWIN, CSR, RMR, CRR

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1 Q So, I would like to draw your attention to page 4 of
2 this and specifically the second full paragraph.

3 THE COURT: You're referring to the page numbers at
4 the bottom again?

5 MS. CONNELL: I am. I am referring to the page
6 numbers next to the exhibit number just for ease of
7 reference, because they are uniform throughout, your Honor.

8 Q Lieutenant Colonel North, was it your understanding
9 that in response to concerns that had been raised the audit
10 committee consulted a firm with regard to the retention of the
11 Brewer firm?

12 A Yes. Morgan Lewis as I recall.

13 Q Was it your understanding that the audit committee ever
14 audited the Brewer firm billing?

15 A No.

16 Q Or legal spending at all?

17 A No.

18 Q Okay. And, in fact, did you raise concerns about the
19 remaining need for an independent audit with Mr. LaPierre?

20 A And anybody else who would listen, yes.

21 Q And did you have an understanding of whether Morgan
22 Lewis had said that might be a good thing for the NRA to do?

23 A Well, Morgan Lewis read a multipage document, and in it
24 they agreed that the Brewer bills were high. I used the word
25 astronomical. They said, and I'm quoting now, that "The Brewer

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1 firm rates fall within a reasonable range", but Morgan Lewis
2 never said Brewer rates were reasonable. Instead Morgan Lewis
3 wrote quote "While high, they are not unheard of in the context
4 of high stakes corporate litigation. It may well be in the
5 association's interest to obtain a full accounting of the Brewer
6 firm's time charges to date." In other words, they never looked
7 at those charges. They didn't audit them. They agreed with
8 what I was trying to do. And that's an outside, independent
9 audit so that Wayne LaPierre could keep his job. The NRA would
10 go on and continue to do good things for the American people.
11 And thwarted at every turn even by people like Morgan Lewis.
12 They even acknowledged that the bills were high. I used the
13 word astronomical. They also agreed that an outside audit might
14 be a really good idea, and we still didn't do it.

15 Q Did you have an understanding as to whether Morgan
16 Lewis found your concerns about the retention of the firm
17 were -- were -- had a foundation?

18 A Well, they did say it may well be in the association's
19 interest to obtain a full accounting of the Brewer firm's time
20 charges to date.

21 Q So, Lieutenant Colonel North, did this answer your
22 concerns with regard to legal spending at the NRA?

23 A No. No. It didn't stop. It kept on going. I mean,
24 the charts that are in that letter just show the totals from
25 March 18 to February 2019. Okay. March 18 is when Brewer got

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1 hired. Okay. And total is 19,260,452. Stunning.

2 Q Lieutenant Colonel North, I would like to have you look
3 at tab 15 as amended.

4 MS. CONNELL: Your Honor, I will note that I did
5 receive an objection to page 1 of tab 15, and we have
6 amended it in compliance with a request by the NRA to admit
7 page 1.

8 MS. ROGERS: Page 1 was hearsay, but the rest is
9 fine.

10 MR. CORRELL: Same position.

11 THE COURT: Okay. So, the actual exhibit you're
12 using starts with page 2?

13 MS. CONNELL: Yes. And it will appear in our
14 admitted exhibit list as PX 1313A to show that it was
15 amended.

16 THE COURT: Okay. So, with that PX 1313A is
17 admitted.

18 MS. CONNELL: Thank you, your Honor.

19 Q Actually I would like to start on what is page 3 of
20 this, according to the numbers on the bottom. Colonel North,
21 did you write this document?

22 A (Examining). No.

23 Q I'm sorry. You didn't write this -- this?

24 A I'm sorry. The document on the following page. Yes.
25 Yes, I did.

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1 Q Yes. Actually you can see it on the screen as well.

2 A Right.

3 Q Did you seek as president of the NRA to form a crisis
4 management committee?

5 A Yes.

6 Q Why did you seek that?

7 A This is -- I knew, by the time I wrote this late that
8 night and gave it to Richard to read to the board, I knew that I
9 was finished, okay. Wayne had acknowledged in a meeting the day
10 before that he had called every member -- well, Richard said at
11 this meeting, Richard said to Wayne, You've called every member
12 of the nomination committee. North and I are not going to be
13 renominated. Wayne lied and said, I don't know what they are
14 going to do. Richard responded, That's B.S. He didn't pull any
15 punches. That's B.S. I know because you've talked to every
16 single member and told them not to renominate. In other words,
17 we're fired.

18 Q So, am I correct in saying that at the time that you
19 wrote this communication it was about the time of the NRA's
20 annual members meeting in the spring of 2019?

21 A Correct. In Indianapolis.

22 Q And you were now knowing that Wayne LaPierre would not
23 support your nomination for a second term as president of the
24 NRA, correct?

25 A Not just not support. Wayne actively intervened with

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1 the nominating committee. If the nominating committee doesn't
2 nominate you at the NRA, it doesn't matter what you're saying.
3 It doesn't matter what you're doing. You will not be nominated,
4 okay. And so Wayne had already, before this meeting, the day
5 before I wrote this, probably the morning of, Wayne had already
6 told the audit committee, Childress and North are not going to
7 be renominated. That's it. That's firing. Okay.

8 Q You said he had told the audit committee?

9 A I'm sorry. The nominating committee. Excuse me.

10 Q So at the time you wrote this communication you knew
11 that your term as president of the NRA was over functionally?

12 A Absolutely right. Yes.

13 Q All right. So you were forwarding to Mr. Frazer and
14 Witt Davis a document you wanted to be circulated, a
15 confidential document you wanted to be circulated to the
16 executive committee, is that accurate?

17 A Yes.

18 Q And Witt Davis, who is Witt Davis at that time?

19 A He replaced Mr. Hart, who had already been fired.

20 MS. SACCO: I'm sorry. I didn't hear you.

21 A If you can repeat the question.

22 Q Who is Witt Davis?

23 A Mr. Davis was appointed to replace Mr. Heart, who had
24 been fired just maybe a day or two before this.

25 Q Steve Hart who was the previous counsel for the board?

LAS

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1 A The previous counsel for the board.

2 Q Do you know why Mr. Hart was fired?

3 A You would have to ask the man who fired him. What I
4 understood was he was being fired for having sent to the board
5 letters from Ackerman McQueen, which I had not seen before.
6 Knew nothing about them. Was stunned to read them, because
7 these are not just about financial issues with legal. These are
8 about personal issues, the man who had been my friend.

9 Q When you say the man who fired board counsel, to whom
10 are you referring?

11 A Wayne LaPierre.

12 Q So Mr. LaPierre fired the counsel to the board?

13 A Yes.

14 Q Okay. And Mr. Davis was his replacement?

15 A Yes.

16 Q Did you know Mr. Davis?

17 A No, I did not.

18 Q Did you have any role in hiring Mr. Davis?

19 A No. I don't know who on the board, if any, were
20 actually contacted.

21 Q Okay. If we can turn to what is page 5 of this
22 exhibit, using the numbers at the center and the bottom. Is
23 this a memorandum that you wrote?

24 A (Examining). Yes. This is shortly before the one that
25 we had up there a few moments ago. Yes.

LAS

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1 Q And you were, even as you left the presidency, asking
2 for a formation of a crisis management committee?

3 A Yes. This is my Hail Mary pass. I knew I was gone.

4 Q Mm-hmm.

5 A And I suggested this is a way of even after I'm gone,
6 please do these things to protect the NRA as an institution.

7 Q Okay.

8 A That's what this is really all about. That's our
9 fiduciary duty. Not to lose tax exempt status. Not to be
10 pillorated every turn by various people. Remember every state,
11 it's my understanding, every state has rules about nonprofits.
12 And some are different than others. And it's the job of the
13 person preparing the 990 form, the federal tax form, to make
14 sure they are all up and running the right way. I'm familiar
15 with that process.

16 This was a way of saving the NRA as I'm on the way out
17 the door. 'Cause I know I'm done, okay. So one of the things
18 that the president of the NRA can do, there are a lot of things
19 he can't do, but one of the things the president of the NRA can
20 do, they can create special committees. It's right there in the
21 bylaws. So this is -- it's my last act going out the door.
22 That's what it was.

23 Q Thank you, Colonel North. Can you stay a little closer
24 to the microphone to make sure we can hear you.

25 A I'm sorry. Thanks.

LAS

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1 Q Thank you very much. Directing your attention to the
2 first page of this memo, which is page 5, using the numbers on
3 the bottom. Were you only concerned at this point with legal
4 spending?

5 A No. No. There is a whole array of issues raised by
6 various periodicals and by responses that we were receiving from
7 Ackerman McQueen to charges. Remember Ackerman McQueen was
8 getting fired at the same time, right. So, this -- this
9 mentions the lawsuits, the New Yorker magazine. The lawsuits
10 filed in Virginia against Ackerman McQueen alleging that
11 Ackerman failed to provide financial information.

12 On the 22nd of April Ackerman responds to the lawsuit
13 requirements with a series of letters making allegations against
14 Wayne. I knew nothing about these charges. I was stunned by
15 it.

16 Q So, if I can direct your attention to the -- the bottom
17 of page 2, which is page 6 of the exhibit. "The crisis
18 management committee will do the following."

19 A Correct.

20 Q What did you want the crisis management committee to
21 look at?

22 A Well, at that point the very recent New Yorker article,
23 "Supervise a confidential, privileged internal investigation to
24 determine whether there is substance or validity to the
25 allegations set forth in the New Yorker article and other

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1 publications, The New York Times, the Wall Street Journal,
2 particularly to remediate any issues with NRA's compliance with
3 rules, regulations and law applicable to nonprofit
4 organizations", because remember there were people writing in
5 various periodicals that the NRA was perhaps violating its
6 nonprofit status.

7 Q You weren't saying that all of the allegations in these
8 articles were true, right?

9 A No. I did not say that.

10 Q What were you suggesting be done?

11 A I was suggesting that -- I'm creating a committee.
12 Here's what the committee should be doing to protect the NRA.
13 Okay. And there is what, five, six -- seven items that would
14 obtain to what this committee should do once it's formed. I
15 make a note. I'm working to appoint members to this committee,
16 because that's within the power of the now outgoing president.

17 Q And directing your -- your attention to points two or
18 paragraph 2, you wanted an investigation into letters from
19 Ackerman McQueen, is that right?

20 A Yes.

21 Q What letters are you referring to?

22 A These are the letters that were sent to Mr. Hart by
23 Ackerman McQueen responding to some of the charges made when the
24 NRA was taking a lawsuit against Ackerman McQueen and here's
25 their responses. Two different issues, some of which were -- I

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1 was absolutely stunned. It had to do with clothing. Had to do
2 with hundreds of thousands of dollars in travel. In other
3 words, it's called corruption.

4 Q So, you believed letters from Ackerman McQueen set out
5 allegations of corruption within the NRA?

6 A Yes. By the way, didn't make any judgment as to
7 whether they were true or not. I'm just saying oh, my goodness,
8 this is going to be awful, and it turned out to be.

9 Q And so were you asking to have any involvement in that?

10 A No. I knew I was on my way out the door.

11 Q What were you asking for?

12 A Supervise, confidential, privilege, internal
13 investigation about what's in the letters. Examine the process
14 that lead to the NRA's filing a lawsuit against Ackerman,
15 including who authorized the filing of that lawsuit, 'cause it
16 didn't come to the committee. It didn't come to the board.
17 Didn't come to me. And were there any directors advised or
18 consulted prior to filing the lawsuit. I had already recused
19 myself from any of these kinds of discussions. Richard
20 Childress hadn't. Carolyn Meadows hadn't. And I called various
21 members of the board and said, Did you know these guys were
22 going to file a lawsuit, because that's something that has to be
23 approved by the board. It wasn't.

24 Q Colonel North, you were an employee of Ackerman at this
25 time, right?

LAS

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1 A Correct.

2 Q So, doesn't this present a conflict for you to ask for
3 an investigation in your mind into the commencement of
4 litigation against Ackerman and whether there is a way to
5 resolve disputes?

6 A Well, if I was still employed at that point by Ackerman
7 McQueen or I was still NRA president, it would certainly be a
8 conflict. But I was out the door as president and Ackerman
9 McQueen had already been fired. They filed -- filed a lawsuit
10 against them. All this I thought a lot about. I was still
11 conflicted. I behaved as if I were, but I knew I wasn't. So,
12 that's why the committee was going to do this. I wasn't going
13 to be the chairman of this committee.

14 Q Was your intention to stop any lawsuit between Ackerman
15 and the NRA?

16 A No. No. My concern was the overall latitude that was
17 given. There were all kinds of things that Ackerman McQueen had
18 nothing to do with that were being done by Mr. Brewer's law
19 firm. I mean, we're talking money that is astronomical in all
20 of what he was doing, okay. It goes way beyond Ackerman
21 McQueen. Ackerman McQueen was the only one that I had recused
22 myself from getting engaged in. But a committee certainly could
23 look into those kinds of things. So this is, as I said, it's my
24 -- my Hail Mary pass at the end of my tenure. The clock is
25 running out on the scoreboard.

LAS

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1 Q So, did you have any concerns about the NRA having a
2 public dispute with Ackerman McQueen?

3 A Of course. I mean, none of that was helpful. I mean,
4 the NRA bringing lawsuits is nothing new. NRA bringing lawsuits
5 against a company that's been a vendor for the NRA for decades
6 is certainly new. It was generating a lot of press, which by
7 the way, they accused me of doing. I never said a word to
8 anybody in the press. That was part of their -- their eventual
9 retribution against me.

10 Q You attached to this letter, to this memorandum the
11 letters from Ackerman McQueen to Mr. Hart, correct?

12 A Yes. He had also circulated to other board members.

13 Q Okay. And those letters alleged that it had paid for
14 Mr. LaPierre's personal expenses, correct?

15 A Yes.

16 Q Okay. And what was your reaction to those allegations?

17 A I was stunned. I said, This smacks of corruption,
18 okay. I didn't know anything about it. I was still trying up,
19 until this kind of stuff was coming up, I was still trying to
20 save Wayne LaPierre, my friend's job. That's why we used,
21 Richard and I, often used, We're throwing you a lifeline. This
22 outside, independent audit is what you desperately need. Didn't
23 happen.

24 Q At the time you wrote this memo, the annual meeting was
25 taking place, is that accurate?

LAS

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1 A Yes. Yes.

2 Q Was there anything going on in regard to the letters
3 Ackerman delivered to Steve Hart at the annual meeting?

4 A I don't -- I don't -- I left before the annual meeting
5 of members. Not out of hubris but out of -- I believe humility
6 was important. What I was about to be was humiliated. That's
7 different. That's why I left the meeting before the annual
8 meeting with members of the subsequent board meeting. This is
9 action for the board to do after I'm gone.

10 Q Right.

11 A That's why the cover memo refers to it as it does.

12 Q You also asked for a governance expert, right?

13 A Yes.

14 Q And you asked for other relief in regard -- that the
15 committee undertake other steps?

16 A Yes. Yes. They are all listed right there.

17 Q Are you aware of allegations that you engaged in a coup
18 attempt to overthrow Wayne LaPierre at the NRA?

19 A I've certainly seen documents to that effect. It never
20 happened. It's a bald-face lie. I, at one point, on the day
21 before I was leaving, knew that I had not been renominated in
22 that meeting. Wayne lied to Richard about it. And the question
23 became one of -- I'm trying to respond to your question the
24 right way here -- was I -- was I looking out for anything other
25 than the NRA, no.

LAS

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1 Q Did you deliver an ultimatum demanding that Mr.
2 LaPierre step down as executive vice president of the NRA?

3 A No. I know there is pieces of paper that have been
4 circulated since. What actually happened is I received a phone
5 call from a fellow board member named Dan Boren. Boren knew
6 information apparently about what was in -- was coming from
7 Ackerman McQueen about Mr. -- Mr. -- call it what it is, Mr.
8 LaPierre's corruption about personal benefits to him and had
9 been done through Ackerman McQueen. So, I was trying to relay
10 that to Wayne.

11 What I had been told by Mr. Born was there is --
12 Ackerman is going to respond to them firing you. They are going
13 to be terribly embarrassing to you personally. Okay. And they
14 want you to leave. And they -- they want to make sure that
15 everybody sees these letters. Okay.

16 I had not received them yet at that point. Mr. Boren
17 is on the phone with me from wherever he was. I tried then to
18 relay this threat to Millie Hallow and to Carolyn Meadows,
19 whoever else was in that room. So, they took that to mean I was
20 making a threat. These letters are going to come in because of
21 North that you're going to be accused of, and they want you to
22 step down. So, I relayed that as accurately as I could
23 subsequently.

24 I think he also had a conversation with Mr. Cox. And
25 he and I didn't collude on any of this stuff. I just said, You

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1 need to call Dan Boren back as soon as you can. I'm in the
2 middle of a pretty important meeting.

3 Q Was your purpose to -- to help convince Mr. LaPierre to
4 step down?

5 A No. In fact I, at one point in this conversation, I
6 had with his deputies, I kept calling him to tell him myself
7 what I just heard. Now I'm relaying what I heard from Mr. Boren
8 through others, okay. I didn't want it to be misinterpreted and
9 it clearly was. I was not trying to pull a coup. I was doing
10 nothing to get Mr. LaPierre fired. Didn't expect him to retire.
11 All of those were things that were raised on that phone call. I
12 tried to relay to Wayne. I'll volunteer, I'll give up meeting
13 with the president of the United States tomorrow, get on an
14 airplane and get down to Dallas and see if I could stop this
15 circular firing squad. I mean, it's terribly damaging to us.

16 Q When you say "circling firing squad", what do you mean?

17 A You got people -- There is board members, you know,
18 from Ackerman McQueen. There is employees from Ackerman McQueen
19 who were working -- in fact, putting together a lot of the
20 visual stuff that goes on in these annual meetings. I mean,
21 this is devastating to us. Cease fire. If you tell me to go
22 down, I'll see if I can get Ackerman to delay stop doing this
23 while we're in our annual meeting with hundreds of thousands of
24 people coming to visit the site at the convention center in
25 Dallas.

LAS

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1 Q Okay.

2 A I'm sorry. In Indianapolis.

3 Q Indianapolis. So, Lieutenant Colonel North, you did
4 not stay for the members meeting I think you said?

5 A I did not. I asked Richard to read into the record why
6 I was not there.

7 Q And if we look at page 2 of tab 15, which is PX 1313.
8 Is this the statement you asked Mr. Childress to read into the
9 record?

10 A (Examining). Yes.

11 Q And Mr. Childress did read it into the record?

12 A Yes.

13 Q Okay. So after the annual members meeting in
14 Indianapolis in 2019 you returned home, is that right?

15 A I did.

16 Q Were you still a board member at that point?

17 A Oh, yes. Yeah.

18 Q And did things return to normal in regard to your
19 service as an NRA board member?

20 A Oh, certainly not. What had started at the NRA
21 headquarters, all of this -- this -- I don't know the proper
22 word for it, but all this are theory, because I was experiencing
23 -- first of all, you're not getting renominated. All of that
24 continued on well after I came back to -- back home and knew I
25 had been fired, right. They then went after every -- every

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1 possible way they could affect retribution against me they did,
2 okay. They got me fired. They created a review of my original
3 contract. They reconvened the original contract and found what
4 they already agreed to was no longer valid, because I really
5 was -- I guess wasn't abiding by the terms of my contract. They
6 went after me ethically. Demanded an internal investigation,
7 because New York law says the NRA can deny indemnification. You
8 know, I've got serious lawyer bills already 'cause I have gotten
9 my advice from my counsel about was I doing the right thing,
10 okay. And so they denied that. And the judge found that the
11 NRA, I did not know this at the time, but the NRA doesn't have
12 to provide indemnification. Doesn't have to pay the lawyer
13 bills of people who are being falsely accused of things, okay.

14 So, you got this -- various steps that are occurring
15 after I come home. I'm no longer on the board. Nick Perrine
16 and I packed up my belongings from the president's office, and I
17 left the NRA and never came back again.

18 THE COURT: Are we at a point for a morning break?

19 MS. CONNELL: I think this is a good point.

20 THE COURT: All right. We're going to take our
21 morning break. Be back in a few minutes.

22 THE COURT OFFICER: All rise. Jury exiting.

23 (Whereupon the jury panel departed the courtroom.)

24 MS. CONNELL: You can leave that there.

25 THE COURT OFFICER: If I can have the witness step

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1 out.

2 MS. CONNELL: You can come step down.

3 MR. FARBER: Do you want to remind the witness.

4 THE COURT: During the break you're essentially
5 still on the stand, so you shouldn't discuss your testimony
6 with anybody including counsel.

7 THE WITNESS: Aye aye, sir.

8 THE COURT: Thank you.

9 (Whereupon a recess was taken.)

10 THE COURT OFFICER: All rise. Jury entering.

11 (Whereupon the jury panel entered the courtroom.)

12 THE COURT: Welcome back. Have a seat. Okay.

13 Ms. Connell, you may continue.

14 MS. CONNELL: Thank you, your Honor.

15 Q Lieutenant Colonel North, we were talking about your
16 return to Virginia after the annual meeting and steps you
17 mentioned that the NRA had taken against you. You indicated
18 that they reviewed your original contract, is that correct?

19 A Yes. The re-reviewed.

20 Q Re-reviewed. Can you please look at tab one, which is
21 PX 517.

22 MS. CONNELL: Your Honor, I have not received any
23 objections to the admission of this exhibit.

24 MS. ROGERS: No objection.

25 MR. CORRELL: No objection.

LAS

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1 THE COURT: All right. Hearing none, it's
2 admitted.

3 Q Lieutenant Colonel North, I'm showing you the May 30th,
4 2019 report of the NRA's audit committee.

5 A Right.

6 Q Do you see that in front of you?

7 A (Examining). Yes, I do.

8 Q I would like to draw your attention to the bottom where
9 it says "Oliver North Ackerman Contract". Do you see that?

10 A I do.

11 Q Is it your understanding that on May 30th, 2019 the
12 audit committee revisited the same contract or the same
13 agreement it had reviewed in September of 2018?

14 A Yes.

15 Q Okay. And do you know what the outcome of that review
16 was this time?

17 A Well, this is -- Yeah. The outcome was that they said
18 that what they originally agreed to.

19 Q So what was the outcome of this, if you know?

20 A They rescinded their original approval and found that I
21 was -- I think I'm looking for the wherefore and therefore.

22 Q I can direct your attention to page 3 --

23 A Right.

24 Q -- from the exhibit.

25 A Yep.

LAS

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1 Q The final whereas clause before "Now therefore be it".

2 A "Now therefore be it resolved that the audit committee
3 September 6th's resolution approving Lieutenant Colonel North's
4 continuing participation in the Ackerman contract during the
5 services of the NRA director and officer is hereby rescinded in
6 full."

7 Q And if you look at the paragraph above, does that
8 inform why or do you understand that to state why the audit
9 committee was -- was making this new determination?

10 A "The audit committee determined that Lieutenant Colonel
11 North's relationship with Ackerman creates an irreconcilable
12 conflict of interest with respect to Lieutenant Colonel North's
13 services as fiduciary of the NRA, which conflict cannot be
14 resolved by recusal or other such procedural safeguards."

15 Q Lieutenant Colonel North, it indicates on page 2 of
16 this document, in the third paragraph from the bottom, that
17 Ackerman had delivered only three episodes of American Heros.
18 Do you see that?

19 A (Examining). I do.

20 Q To your knowledge had you failed to deliver services
21 under your contract with Ackerman?

22 A I had not done as many full length episodes as I
23 originally intended.

24 Q Mm-hmm.

25 A I simply had not had the time to do it. It's not like

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1 I was sitting at home or going to the beach. I was working hard
2 and acknowledged that at the time when I had cut my pay. I
3 simply did not want people to think I wasn't working hard. And
4 that I was going to help solve some of the financial problems by
5 cutting my pay by a significant amount.

6 Q And did you do other work for Ackerman besides work on
7 American Heros?

8 A Sure. I did, even before I became president of the
9 NRA, way before I had been doing numerous things for Ackerman
10 McQueen, the Mercury Group, which is where I reported for duty
11 as a TV person, okay. So, I did a lot of that stuff. I even
12 took a couple of their cameramen with me on Fox deployments as a
13 combat war correspondent.

14 Q So, you were familiar with Ackerman McQueen before you
15 entered into the contract with them in 2018?

16 A Oh, yes. Absolutely.

17 Q But why did you enter into a contract with them in
18 2018?

19 A Because I needed to be employed in order to get the
20 kind of insurance coverage, for health insurance weren't
21 available to contractors. It was only by being an employee. I
22 made that very, very clear to everybody.

23 Q Had you been employed by Ackerman McQueen prior to that
24 2018 contract?

25 A Not employed, no.

LAS

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1 Q Okay.

2 A I mean, I did a lot of stuff pro bono. And I think at
3 some point along the line, almost a hundred episodes of various
4 things for them without any -- they didn't even cover my
5 traveling. Didn't ask them to.

6 Q Focusing your attention on your performance under the
7 2018 contract, did you do work that was not full episodes of
8 American Heros?

9 A Oh, yes. Lots of it.

10 Q Can you describe that for the jury?

11 A I think I may have already mentioned the fact that we
12 did, every year we would do a law officer of the year. So, I
13 would go down to interview the officer that had been selected by
14 one of our committees and interview him. The other eyewitness
15 accounts of those engaged in whatever heroic activity it was,
16 and we would make that a show that we would put on after the
17 annual meeting. It would air on NRA TV on a regular basis and
18 it did.

19 Q Before you began raising concerns about the operation
20 of the NRA, had you received any complaint about the amount of
21 work you were doing under the contract?

22 A I have never had anybody complain about me not doing my
23 duty, working very, very hard. I mean, I spent my career in the
24 military. Every job I had since. You know, I formed several
25 corporations that went out and made things like body armor for

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1 law enforcement in the military. I would be the first person,
2 unless we were doing three shifts a night, sometimes we did, but
3 unless I was working three shifts, I would be the first one in
4 the office in the morning and the last one to leave at night.

5 Q Colonel North, before you read this May 30th, 2019
6 audit committee report, had the NRA or Ackerman communicated to
7 you that it believed you were not performing under the
8 agreement?

9 A Absolutely not.

10 Q I think you also mentioned that there was an ethical
11 complaint made against you within the NRA, is that accurate?

12 A They concocted -- In order to ensure that I was not
13 eligible under the rules for protection under the whistleblower
14 rules of New York, where the NRA is incorporated, that I had
15 committed ethical violations, one of which was that I
16 participated in an attempted coup against Mr. LaPierre. There
17 were several other ludicrous charges made by this thing. But
18 that was done by them to make sure that I could not be
19 appropriately indemnified. I couldn't have my legal bills paid
20 if they accused me of an ethical violation. This whole thing
21 was concocted along the lines of being a coup participant and
22 spreading ugly rumors about Mr. LaPierre, which is the last
23 thing in the world I wanted.

24 Q What steps did you take within the NRA once that
25 ethical complaint had been filed?

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1801

1 A Well, my counsel went back and said this is untrue. I
2 mean, all these were accumulating legal bills for me, right.
3 It's not because of something I've done. It's because something
4 that the NRA wanted to stick it to me one way or the other.
5 This is really -- It's wrong.

6 Q So did you have to fight that internal ethical
7 complaint?

8 A Yes.

9 Q Okay.

10 A We were never invited to attend the session on which
11 the audit committee reversed their earlier agreement on my
12 contract. I was not given any opportunity to respond to that.
13 We did respond internally to the NRA, the false charges being
14 made by this so-called ethical complaint.

15 Q And do you consider yourself a whistleblower?

16 A I certainly became one. I did not start this process,
17 which we have now gone over extensively. I did not start this
18 with the intention of becoming a whistleblower. There were
19 already whistleblower complaints, not just about Wayne LaPierre,
20 but about other things going on, okay. I started out thinking I
21 can do everything possible to comply with the law, comply with
22 our rules and regulations and save my friend. And turns out I
23 was right.

24 He's now in a situation I never wanted him to see him
25 in before I learned about the corruption and all of that. I'm

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1 just saying that my goal was to exercise my fiduciary
2 responsibilities. Number two, save the NRA enormous costs.
3 Number three, help my friend. Didn't turn out that way.

4 Q You mentioned indemnification. Did you incur
5 attorneys' fees as part of your work as an NRA board officer?

6 A Oh, yes.

7 Q And board member?

8 A Yes.

9 Q And --

10 A And president.

11 Q And did you ever actually ask the NRA to pay for your
12 attorneys' fees?

13 A No. And that's -- Not to go beyond your question.
14 This law firm has represented me since the 1980s.

15 Q You're referring to Williams and Connolly?

16 A Williams and Connolly Law Firm. They have got lawyers
17 there, they did all my media contracts, all had that same kind
18 of confidentiality clause that they talked about. And every
19 time I had an issue, a legal issue within the NRA, I conferred
20 with them. Am I doing the right thing. Is this what I -- Steve
21 Hart would give me that advice. My personal counsel would give
22 me that advice. Am I doing what's right to save the NRA. To
23 comply with the law. Exercise my fiduciary responsibilities.
24 And help my friend.

25 Q And after you were no longer NRA president but you were

LAS

1 still a board member, did you incur legal fees in connection
2 with your work as an NRA board member?

3 A Certainly. In fact, they continued four and a half
4 years later. They continued to this very day. I mean, there is
5 still a stay on one of their lawsuits against me to decide
6 whether or not I'm truly a whistleblower. To decide whether I'm
7 truly entitled to indemnification of the NRA like all other
8 corporations. You know, provide for the board. Provide for the
9 directors. Provide for their officers. To be indemnified. D&O
10 insurance, directors and officers insurance.

11 (Continue on the next page.)

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North - by Plaintiff - Direct/Connell

1804

1 Q Just to break that down a little bit: You're -- am I
2 correct in understanding that your attorneys sent the NRA
3 communications indicating that they reserved the right to seek
4 indemnification?

5 A I -- I don't know. I -- I don't think that they ever
6 sent a bill to anybody -- I know that they didn't give me a
7 bill, and that's how it normally would happen. I do know what
8 the accumulated cost has been, however.

9 Q Right. But did your attorneys seek -- communicate to
10 the NRA, in any way, that they reserved the right to seek
11 indemnification?

12 A Oh, absolutely, and that's part of one of the lawsuits
13 against me that still has been stayed.

14 Q So, Colonel North, the NRA commenced a lawsuit against
15 you relating to indemnification; right?

16 A Yes.

17 Q And what was the outcome of that lawsuit?

18 A It's been stayed.

19 Q The indemnification lawsuit.

20 A Correct.

21 Oh, no. They -- they decided the NRA -- the court
22 decided that the NRA has at its discretion whether to pay legal
23 expenses or not.

24 Q Okay. And the NRA could exercise that discretion not
25 to pay yours?

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Direct/Connell

1805

1 A And they did.

2 Q Okay. I think you mentioned another lawsuit. Did the
3 NRA commence a lawsuit with regard to your membership in the
4 NRA?

5 A Yeah. The -- one of the other things they did was:
6 "Resign from the NRA"; in total. Not just as president, not
7 just as a board member, but resign from the NRA, and we said,
8 "No." You know, I'm -- I haven't done anything wrong.

9 Q So the NRA wanted to oust you as an NRA member.

10 A Correct.

11 Q Okay. And what is the status of that lawsuit, if you
12 know?

13 A That has been stayed, waiting -- pending the outcome
14 of --

15 I'm not trying to tell your Honor something.

16 But I -- as I understand it, it's pending the outcome
17 of this case.

18 Q Lieutenant Colonel North, are you still an NRA member?

19 A Yes.

20 Q And do you still believe in the mission of the NRA?

21 A Absolutely, Article II of the bylaws.

22 MS. CONNELL: Thank you, sir.

23 I pass the witness.

24 MS. ROGERS: I'm sorry, your Honor (indicating).

25 THE COURT: It's out of batteries again?

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Rogers

1806

1 MS. ROGERS: One second.

2 Is this working? I think it's working now.

3 THE COURT: No.

4 MS. ROGERS: Wait.

5 Is it working? Here we go.

6 THE COURT: Yes.

7 MS. ROGERS: All right.

8 CROSS-EXAMINATION

9 BY MS. ROGERS:

10 Q Lieutenant Colonel, good morning.

11 A Good morning.

12 No, it's afternoon now.

13 It's still morning.

14 A It's still morning. You're right.

15 Q It's -- it's -- I'm getting to the age where this is
16 starting to be afternoon for me.

17 (Laughter.)

18 Q And when you've been sitting in court, it can feel that
19 way, too.

20 A That's true. Felt like afternoon to me, too.

21 Q Lieutenant Colonel North, earlier this morning, with
22 Ms. Connell, you testified that the Audit Committee had approved
23 your Ackerman contract before you entered into it; and then we
24 looked at the dates on those two documents, the contract and the
25 approval, and we realized that testimony was false.

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Rogers

1807

1 Do you recall that?

2 A Well, I -- I do remember correcting that it was
3 approved retroactively, but it had been approved.

4 Q Right.

5 Before we start cross-examination, is there any other
6 testimony you gave this morning that might be false which you'd
7 like to correct for the jury (indicating)?

8 A Not that I know of.

9 Q All right, let's get started.

10 You testified that you weren't elected to your
11 position, but that Mr. LaPierre "took care of it." Do you
12 remember that?

13 A Yeah.

14 Q But, in fact, you were elected to the -- to a vice
15 president -- a vice presidential position at the NRA, at its May
16 2018 board meeting, by acclamation; right?

17 A Well, I'm not familiar with the date that you're giving
18 me, but the bottom line is, I was -- I -- I became president
19 because Wayne LaPierre had said, "I'll make it happen."

20 Q But you became president because you were vice
21 president and the president stepped down, right?

22 A Well, I -- it was described, by everybody/everything
23 that I saw that I recall, as "president-elect," because I still
24 did not have my contract arrangements finished with Ackerman
25 McQueen and my previous employer.

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Rogers

1808

1 Q And so, if the NRA's board minutes were to indicate
2 that you were elected to that position, you'd agree with me that
3 that's probably true and any testimony to the contrary is
4 probably false; right?

5 A Well, I'm not -- I'm not acknowledging anything I said
6 is false, but what I'm suggesting to you is that Wayne LaPierre
7 said he would take care of it. Those were the words that were
8 used: He would take care of the contract with Ackerman McQueen
9 and he would take care of me being the -- the president of the
10 NRA.

11 Q During your time as president of the NRA, you spent a
12 considerable amount of time working at NRA headquarters; right?

13 A Oh, yes.

14 Q You would bring your dog. You'd come in a few days a
15 week, right?

16 A I'd bring my dog in every time I could. She's a great
17 hunting dog.

18 Q And during that time, you made sure you were familiar
19 with the NRA's bylaws; right?

20 A Oh, yeah.

21 Q And its rules, right?

22 A Certainly.

23 Q Did you take any of the board compliance seminars?

24 A Did I take the board compliance seminar? I do recall
25 a -- a session or two, maybe -- maybe three, with Steve Hart,

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North - by Plaintiff - Cross/Rogers

1809

1 who was the board counsel, on what the responsibilities were,
2 what -- what constituted fiduciary duty; those kinds of things.
3 If that's what you're referring to, yes, I did.

4 Q You referred to this person named Steve Hart a few
5 times as "board counsel." On what are you basing your testimony
6 that Steve Hart was board counsel?

7 A I think that's what he was. That's why I referred to
8 it that way.

9 Q Were you aware that in the summer of 2018,
10 whistleblowers who came forward against Ackerman McQueen alleged
11 that Steve Hart had tried to intimidate and retaliate against
12 them?

13 A I'm not.

14 Q So -- all right. So we're talking about the NRA's
15 rules and its compliance environment, and you knew that under
16 the NRA's conflict disclosure policy, potential conflicts
17 should -- potential conflicts had to be -- disclosed in advance
18 of any transaction being entered into; right?

19 A Yes.

20 Q Okay. And on May 15th, 2018, you entered into a
21 seven-figure employment contract with Ackerman McQueen; right?

22 A That was the effective date of that contract.

23 Q Right.

24 And --

25 A That was agreed to by Mr. LaPierre.

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Rogers

1810

1 Q Right.

2 And let's look at that contract. Let's bring it back
3 up. That was PX 2569.

4 A And what tab is that in this (indicating)?

5 Q It should be ...

6 (Pause.)

7 Q Tab 22 in your Attorney General binder.

8 A Okay. "Employment Agreement."

9 (Image displayed.)

10 Q Okay. All right. So, Colonel North, you testified
11 earlier -- I know you're not a lawyer, but you testified about a
12 legal concept called "fiduciary duty." Do you remember that?

13 A Oh, yes.

14 Q You're a fiduciary --

15 You were, on the board, a fiduciary to the NRA; right?

16 A Yes.

17 Q And that meant, you had a duty to put the NRA's
18 interests first; right?

19 A Correct, above my own.

20 Q But under this contract, you're actually a fiduciary of
21 Ackerman McQueen (indicating); right?

22 A No.

23 Q Well, let's look at the language the jury is viewing,
24 which is at the top of the second page of your contract.

25 Did you read this language before you signed it?

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Rogers

1811

1 A I sure did.

2 Q Do you see that under "(ii)," you're only permitted to
3 participate in charitable or civic activities or personal
4 activities to the extent that they don't violate your fiduciary
5 duty to Ackerman McQueen (indicating)?

6 A I -- I see that, yes.

7 Q Okay. Now, under the NRA's conflict policy, you had a
8 clear duty to disclose this to the Audit Committee before you
9 signed; right?

10 A Well, it turns out that -- yes, but hearing Wayne
11 LaPierre saying, "I'll take care of it" at the meeting down in
12 Dallas is clearly not sufficient to satisfy that (indicating),
13 yes.

14 Q I agree; it was not sufficient.

15 And if we look at section 3-B of your contract, it's
16 true -- right? -- that you contracted to make 12 episodes, over
17 the course of 12 months, of an NRATV show called "American
18 Heroes"?

19 A Right.

20 Q Okay. When did you first notify the NRA that you had
21 not delivered the 12 episodes?

22 A I'm -- I'm entirely uncertain as to whether that
23 actually happened. I -- I do know that at some point when I
24 decided to cut my pay, I did not notify them in advance that I
25 was doing that, but that one of the reasons I was cutting my pay

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Rogers

1812

1 is because -- because of all the other things I was doing at the
2 direction of Mr. LaPierre: go out there and raise members and
3 money. I was doing more of that than I was my TV business, yes.

4 Q If I were to represent to you that in April 2019,
5 almost a year into this contract, you disclosed, for the first
6 time, that you had made three out of 12, would you have a
7 recollection inconsistent with that?

8 A I'm not going to dispute that. I don't recollect it.

9 Q All right.

10 So you talked about how you needed this contract
11 because you needed insurance for your wife and your family,
12 right?

13 A Yes.

14 Q But in addition to health insurance for your wife, this
15 contract also entitles you to \$2.1 million in your first year,
16 cash to you; right?

17 A Yes.

18 Q And then, in the second year, it was going to go to up
19 2.3 million; right?

20 A Right.

21 Q And then, in the third year, 2.5 million; right?

22 A Yes.

23 Q Were you aware that that made you, indirectly, the
24 NRA's highest-paid officer in the history of the NRA?

25 A No. No one ever told me that.

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Rogers

1813

1 MS. CONNELL: Objection, your Honor; no foundation
2 in evidence.

3 MS. ROGERS: Well, I'm asking if he has an
4 understanding. If he doesn't --

5 A I do not.

6 MS. ROGERS: -- then I'll withdraw it.

7 Q And isn't it true that you started negotiating this
8 contract in April 2018?

9 A Yes.

10 Q And isn't it true that the total expected cost to the
11 NRA of this contract was approximately \$5 million a year?

12 A No.

13 Q Do you recall having budget discussions with Ackerman
14 about the number of staff that would be hired for this TV show
15 that you promised to make?

16 A Oh, yes. Yeah, we -- we had -- I was going to be
17 assigned a camera crew and a production crew and all -- all
18 kinds of people who make television. That's what I've been
19 doing for, at that point, nearly 20 years.

20 MS. ROGERS: Let's put up DX1-005.

21 And I'm going to show this -- it's not in evidence
22 yet but I only want to publish it for the witness and
23 counsel, for the time being.

24 THE COURT: Wait a second. We have to turn that
25 (indicating) off.

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Rogers

1814

1 MS. CONNELL: Which number was that?

2 MS. ROGERS: DX1-005.

3 THE WITNESS: Can somebody give me a tab number?

4 MS. ROGERS: You don't have a tab number, but it
5 will come up on your screen.

6 THE WITNESS: Okay.

7 THE COURT: Okay. Can you put it up?

8 MS. ROGERS: Here we go.

9 BY MS. ROGERS:

10 Q Colonel North, do you recall --

11 MS. ROGERS: And is there any way we can switch the
12 orientation so he doesn't have to lean ...? Can we make the
13 document right side up? Great.

14 THE WITNESS: Thank you.

15 Q Colonel North, do you recall this budget that Ackerman
16 prepared for your show?

17 Do you recall seeing this in your deposition?

18 A I do not -- I not recall seeing this document.

19 Q Does looking at this document refresh your recollection
20 about the total cost to the NRA of your Ackerman contract?

21 A No.

22 Q Okay. But you would agree with me -- right? -- that
23 having experience in television as you do, that with a \$2
24 million cash salary to you and the hiring of eight to ten people
25 to work on the show, the annual cost of the show was going to

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North - by Plaintiff - Cross/Rogers

1815

1 run at least three or four million dollars; right?

2 A I -- I did not know that at the time, no.

3 Q And did you know whether Ackerman was charging a 55
4 percent overhead and a 16 percent profit surcharge on your show?

5 A No.

6 Q Charges borne by the NRA?

7 A No, because I had agreed that I was not going to
8 intervene with Ackerman McQueen on any other issue, other than
9 what I'm doing out there, shooting a show in Kansas or whatever.

10 Q All right.

11 And then, in August 2018, you filled out your mandatory
12 Conflict Disclosure Form and you indicated no financial
13 relationships with any NRA vendors; right?

14 A Yes, because that -- that form applied only to what I'd
15 spent or what I'd -- disclosing for 2017.

16 MS. ROGERS: So I'd like to put this form into
17 evidence, and I have copies for everyone, but I don't think
18 it's on the screen.

19 MS. CONNELL: Your Honor, can we take this exhibit
20 down if it's not being admitted?

21 MS. ROGERS: Yeah, we can take this (indicating)
22 down.

23 (Document handed to Ms. Connell.)

24 MS. CONNELL: Thank you.

25 MS. ROGERS: A copy for the Court and for the

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Rogers

1816

1 witness (handing).

2 THE COURT: Are you marking this?

3 You want the court reporter to mark it?

4 MS. ROGERS: Yeah. We'd like to mark this as DX --

5 THE COURT: Before you give it to the witness,

6 let's give it to the court reporter.

7 You want to mark it as what?

8 MS. ROGERS: DX1-1086.

9 (Exhibit so marked for identification, then handed
10 to witness.)

11 BY MS. ROGERS:

12 Q Lieutenant Colonel, do you recognize this as your
13 Conflict Disclosure Questionnaire for 2018?

14 A I -- I don't know this is 2018. It says: "Unless a
15 quotation states otherwise, have you ever ... you only need to
16 answer with respect to calendar year 2017." It says that right
17 at the top.

18 THE COURT: Let's not read from the document just
19 yet.

20 You want to --

21 Is there any objection to this exhibit?

22 MS. ROGERS: Any objection to this?

23 MS. CONNELL: No objection, your Honor.

24 MS. ROGERS: Okay.

25 THE COURT: This can be --

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North - by Plaintiff - Cross/Rogers

1817

1 You want to move it into evidence?

2 MS. ROGERS: Yes, let's move it into evidence.

3 THE COURT: All right. DX1-1086 is admitted.

4 We can turn the screens back on.

5 (Exhibit so marked, then handed to witness.)

6 (Image displayed.)

7 BY MS. ROGERS:

8 Q And let's turn to the final page of the document.

9 Do you recognize your signature?

10 A I do.

11 Q Dated August 22, 2018?

12 A Yes.

13 Q And you certify there that you've read, understood and
14 complied with the NRA's conflict policy; right?

15 A Yes.

16 Q And at the time you filled out this questionnaire and
17 signed it, you were already getting paid about \$400,000 a month
18 by Ackerman McQueen; right?

19 A Not in 2017, I wasn't.

20 Q But at the time you signed this, on August 22nd, 2018
21 (indicating), at the time you certified that you were complying
22 with the NRA's conflict policy, you were getting about \$400,000
23 cash a month from Ackerman; right?

24 A No.

25 Q No?

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Rogers

1818

1 A Again, I did learn to read, counsel. It says: "Unless
2 a question states otherwise; e.g., 'have you ever,' you need
3 only answer with respect to calendar year 2017." It's right at
4 the top of the form.

5 Q So -- we're on a clock here, so I'm going to ask
6 narrow, yes-or-no questions and ask for narrow, yes-or-no
7 answers; and you'll have time to talk more with the attorney
8 general, if you'd like, since you're here testifying for them.
9 But my question isn't what the questionnaire says on the first
10 page. My question is about your signature on the last page, and
11 my question to you is this:

12 On August 22nd, 2018, were you or were you not getting
13 paid about \$400,000 a month by Ackerman McQueen?

14 A I was being paid by Ackerman McQueen. I -- I don't
15 want to debate over how much it works out to every month with
16 taxes taken out, etcetera.

17 Q But you were getting paid in that original \$2 million
18 salary scheme, right?

19 A 2.1.

20 Q 2.1.

21 All right. Now, you testified with the attorney
22 general that you didn't talk to the Audit Committee yourself
23 about this contract but you were certain that your friend
24 Richard had talked to each member of the Audit Committee? Is
25 that your testimony?

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Rogers

1819

1 A What -- what I was told was that Wayne had instructed
2 him to call the Audit Committee, every member of it, and tell
3 them that North is worth every penny of what he's about to be
4 paid.

5 Q Did you have any understanding that your friend Richard
6 had conveyed a copy of your contract to any member of the Audit
7 Committee?

8 A I don't know.

9 Q But, in fact, later that summer, when the NRA's lawyers
10 first asked for a copy of your contract, you said, "Sure"; you
11 consented.

12 A Yes.

13 Q And you testified earlier that no one reached out to
14 you from the NRA and asked for that contract; but, in fact, on
15 September 1st, 2018, you received a letter from the Brewer firm
16 requesting that contract on behalf of the NRA.

17 Do you recall that?

18 A I don't recall it.

19 Q All right, let's look at the letter.

20 (Document's handed by Ms. Rogers to counsel.)

21 THE COURT: Does this need to be marked by the
22 court reporter?

23 MS. ROGERS: I'm going to refresh his recollection
24 with it and then --

25 Does the Court need a copy?

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Rogers

1820

1 THE COURT: Okay. So you don't need it marked yet.

2 MS. ROGERS: Not yet.

3 BY MS. ROGERS:

4 Q Colonel North, do you recall that --

5 MS. CONNELL: I'm sorry.

6 THE COURT: Yes?

7 MS. CONNELL: I object to this (indicating).

8 There's not even a Bates number on it. This was
9 never produced in discovery. I don't believe it should be
10 used now.

11 MS. ROGERS: I'm not sure if it was produced in
12 discovery, but it's being used for impeachment. It wasn't
13 an exhibit. It's an exhibit now because we didn't expect
14 contrary testimony from Colonel North.

15 MS. CONNELL: It's not a matter of whether it was
16 an exhibit, your Honor. It's something that should have
17 been produced and it was withheld.

18 THE COURT: May I have a copy of it?

19 (Document handed to Court.)

20 MS. ROGERS: The attorney general subpoenaed both
21 the NRA and Ackerman; it also subpoenaed Colonel North, and
22 if none of those subpoenas returned a copy of this document,
23 it's probably because it evaded electronic search protocol
24 in each instance. But the document is clearly relevant for
25 impeachment.

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Rogers

1821

1 MS. CONNELL: Your Honor, you know that Lieutenant
2 Colonel North is identified as "Dissenter No. 1
3 Whistleblower" in the complaint. We asked for information
4 regarding this, squarely, in multiple of our document
5 demands. It was never produced. There's no Bates number.

6 This is an improper use of a document that should
7 have been produced years ago.

8 THE COURT: Well, for now, all you're doing is
9 showing it to the witness --

10 MS. ROGERS: Right. That's correct.

11 THE COURT: -- and seeing if it refreshes his
12 recollection? That's okay.

13 MS. ROGERS: Okay.

14 BY MS. ROGERS:

15 Q Lieutenant Colonel, do you have a copy in front of you?

16 A No.

17 Q Okay. He can have my copy (handing).

18 (Document handed to witness.)

19 Q Lieutenant Colonel, do you recall receiving this
20 letter?

21 A May I read it first?

22 Q Of course.

23 A Thank you.

24 (Pause.)

25 A Well, I do not recall this specific piece of

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North - by Plaintiff - Cross/Rogers

1822

1 correspondence, but it does make note that the NRA wishes to
2 review the North contract. "For the avoidance of any concern
3 regarding confidentiality," which was the concern, "the NRA has
4 communicated directly with Lieutenant Colonel North and obtained
5 his consent to review the contract."

6 What it does not say is, Lieutenant Colonel North wants
7 assurances that he's not violating the confidentially --
8 confidential clause -- of the contract. Okay?

9 Q Right.

10 A And that's what we kept waiting for.

11 Q All right.

12 A All right?

13 Q So I want the jury to understand that. So your
14 Ackerman contract had, basically, a nondisclosure clause in it;
15 correct?

16 A Correct.

17 Q And you were afraid that if you let the NRA see the
18 multimillion-dollar contract you had signed with its largest
19 vendor, under which the NRA would be paying you, you were afraid
20 that you'd be breaching an obligation to Ackerman; right?

21 A No. I was -- I was not afraid of anything, counsel.

22 Second, I did not want to violate the confidentiality
23 clause of my contract with Ackerman, just like I've had with
24 every other media contract. Okay? Those are mostly imposed by
25 the employer, not the employee. And so, I went out and I -- I

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North - by Plaintiff - Cross/Rogers

1823

1 suggested that what we do is, we get counsel to -- to collect up
2 the agreements, that this revelation that North's about to make
3 of the entire contract is not a violation of the confidentiality
4 clause.

5 It's -- that's very simple. And it didn't happen
6 until -- until very late in the game. I know that copies of
7 that document were provided to the Audit Committee and to other
8 people who were asking for it.

9 Q Very late in the game.

10 But we are talking now about September 2018 --

11 A Okay, but I --

12 Q -- and I'm going to try to keep my questions narrow and
13 I'm going to ask you to keep your answers narrow.

14 A I do not recall ever seeing this document.

15 Q Okay. But you do recall consenting, on or about
16 September 1st, 2018, to the NRA's review of your contract;
17 right?

18 A And I think the NRA had already done so. I know that
19 Mr. LaPierre had a copy of it the day that it was executed --

20 Q But you --

21 A -- in Dallas, Texas.

22 Q Right. You testified to that earlier. But you
23 testified that -- well, let's clarify: Your friend Richard
24 didn't hand out copies to the Audit Committee, right?

25 A I -- it's my understanding, he gave a copy, yes.

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Rogers

1824

1 Q Oh, so -- so -- I didn't get that from your earlier
2 testimony. So who do you think that Richard delivered a copy
3 to?

4 A I would guess it was Mr. Cotton. I don't know.

5 Q Yeah? Well, what do you -- what's that guess based on?

6 A Just the way things worked around the NRA headquarters.

7 Q If Mr. Cotton testifies later that that is a complete,
8 whole-cloth fabrication and he never received a copy of this
9 contract from Richard Childress, should the jury credit that
10 testimony?

11 A Look it: I don't -- I don't know what you're trying to
12 prove here. All I know is that I sought to get confirmation
13 from Ackerman McQueen that I could reveal this -- this
14 solicitation for the contract --

15 Okay?

16 Q Now -- right.

17 A -- and an agreement from those who would receive it
18 that they would respect the confidentiality clause. Very
19 simple.

20 Q But, in fact, while you were trying to get consent from
21 Ackerman McQueen to reveal the contract, Ackerman McQueen was
22 claiming it couldn't reveal the contract because it needed
23 consent from you; right?

24 A I don't -- I don't recall that.

25 Q Well, let's look at another document.

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Rogers

1825

1 MS. ROGERS: (To counsel) This one is a deposition
2 exhibit; you've seen it before (handing).

3 Copies for the witness and the Court (handing).

4 MS. CONNELL: This was the deposition in --

5 MS. ROGERS: That's why it's got --

6 THE COURT: All right, you need to --

7 Counsel, you need to have this marked by the court
8 reporter for identification?

9 MS. ROGERS: Right now, I'm refreshing his
10 recollection with it, and then -- unless you'd like me to
11 mark it first.

12 THE COURT: Okay.

13 MS. CONNELL: Your Honor, this, again, has no Bates
14 number. This, to my knowledge, was not produced in this
15 action. Again, we object to pulling out this document at
16 this point.

17 MS. ROGERS: I think all the deposition exhibits
18 were produced, but we can check that on a break.

19 Q Colonel North, you remember being deposed about this
20 e-mail; right?

21 A Do I recall being which?

22 Q Deposed.

23 You took a deposition in the NRA's Ackerman litigation,
24 right?

25 A Yes.

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Rogers

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1 Q Okay. And you were shown this e-mail in that
2 deposition. Do you recall that?

3 A I don't know. I haven't seen the e-mail yet.

4 MS. ROGERS: Did we not hand a copy to the witness?

5 (Document handed to witness.)

6 THE WITNESS: Thank you.

7 (Pause.)

8 A I do not recall this document.

9 Q Well, do you -- does looking at the document refresh
10 your recollection that after you told the NRA's lawyers you
11 consented that the NRA could see your contract and the NRA
12 contacted Ackerman and said so, that Ackerman replied,
13 "Actually, we talked to Colonel North's lawyers and it turns
14 out, you can't"?

15 MS. CONNELL: Objection, your Honor.

16 Q Does that refresh your recollection about any of this?

17 A No.

18 THE COURT: Hang on a second.

19 Objection is based ...?

20 MS. CONNELL: Your Honor, this is a largely hearsay
21 document. I haven't had the time to review it all, but it
22 all appears to be hearsay. The witness has said he has
23 never seen it or he doesn't recall seeing it, so how it
24 could be used to refresh his recollection, I don't know.

25 MS. ROGERS: Well, we have sworn deposition

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1 testimony from the witness about documents, so we can play
2 some of that later.

3 MS. CONNELL: Then use the deposition testimony.

4 THE COURT: Yeah. This is not in evidence, and I
5 agree with the objection.

6 BY MS. ROGERS:

7 Q So, Colonel North, your testimony is that during
8 September 2018, you had no knowledge that at the same time that
9 you were conditioning your disclosure on -- of the contract --
10 on Ackerman's approval, saying, "Ackerman needs to consent,"
11 that Ackerman was pointing the finger back at you and saying,
12 "We want to give you the contract but Colonel North needs to
13 consent." You have no recollection of that?

14 A What -- what I recall, counsel, is, I solicited
15 confirmation from those who would see the contract that they
16 would hold it to be confidential, as is required in the
17 contract.

18 Q Um-hmm.

19 A That's what I sought.

20 Q Okay. And you were never, ever made aware that
21 Ackerman was refusing to produce the contract because you hadn't
22 consented to share it?

23 A Because I what?

24 Q Because you hadn't consented to share it.

25 A No, I consented.

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Rogers

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1 Q Well, I thought you consented.

2 And you were never made aware that Ackerman was
3 representing otherwise.

4 A I -- no, I'm not sure I understand what you're saying.

5 When I was asked by someone in this process, and I
6 think it was Brewer, himself --

7 Q Himself, yeah.

8 A Okay?

9 -- I said, "I -- I would consent to anything you wanted
10 to do, as long as all the parties who had access to the -- the
11 document would profess their commitment to maintain the
12 confidentiality of it." That's -- that's all. It wasn't just
13 Ackerman; it wasn't just Brewer; it wasn't just my law firm. It
14 was anybody. Okay? And I don't think it's unfair to have the
15 person who's -- the contract is with have that kind of
16 protection.

17 Q Okay. And so, it's your testimony that neither Brewer
18 nor the NRA nor the Audit Committee would agree to keep your
19 contract confidential?

20 A I didn't say that.

21 MS. CONNELL: Objection.

22 (No audible ruling.)

23 A I said that I wanted to make sure that all parties who
24 had an interest in this matter would give me a -- a firm
25 agreement to maintain the confidentiality, as is called for in

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Rogers

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1 the document -- in the agreement.

2 Q Now, when the NRA's general counsel, John Frazer, asked
3 for a copy of this contract, you also invoked your
4 confidentiality obligation to Ackerman and wouldn't give it to
5 him; right?

6 A No, I -- it's my recollection that John Frazer was
7 allowed to read the whole darn thing and made notes on it in.

8 Q In February 2019, right?

9 A I don't know. I --

10 Q Late in the game, you said; right?

11 That's when that happened?

12 A I don't know when it was.

13 Q Do you recall being deposed under oath in the NRA's
14 lawsuit against Ackerman McQueen on September 15th, 2021?

15 A I recall that I did testify under those circumstances,
16 yes.

17 Q Do you recall being asked about your refusal to share
18 this contract with John Frazer earlier on, when it was first
19 sought?

20 A I don't recall that, no.

21 Q Okay.

22 MR. ROGERS: Let's play the excerpt of Colonel --
23 of Lieutenant Colonel -- North's deposition testimony, dated
24 September 15th, 2021, at page 126, lines 6 through 15.

25 A This is where in the tabs?

ALAN F. BOWIN, CSR, RMR, CRR

1 Q It won't be on a tab; it will be on your screen.

2 THE COURT: Move the paper out of the way.

3 (The witness did so.)

4 (Video played.)

5 (Continued on next page.)

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1 Q Okay. In fact, you did not pick up the phone and call
2 Ackerman and communicate your consent to sharing the contract or
3 ask Ackerman to share the contract correct?

4 MS. CONNELL: Objecting, your Honor.

5 THE COURT: Overruled. You can answer.

6 A Would you please repeat the question.

7 Q Sure. During the September timeframe all the
8 squirmishing is going on with the NRA, trying to get a copy of
9 the contract, you never picked up the phone and called Ackerman
10 and communicated to them your consent that it be shared, right?

11 A I did not. You're right.

12 Q Eventually the audit committee reviewed your contract
13 without seeing it, right?

14 A Who?

15 Q Well let's look at Plaintiff's Exhibit 2983. This is
16 already in evidence. It is the report of the audit committee
17 dated September 6th.

18 A Tab number please. There it is.

19 MS. ROGERS: All right. Now let's turn to the
20 portion dealing with Colonel North's contract.

21 Q All right. Now it's true that when the audit committee
22 met in September, it approved your relationship with Ackerman
23 subject to conditions, right?

24 A Correct.

25 Q And one of those conditions communicated to you by

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1 Charles Cotton was that the NRA had to finally get its hands on
2 a copy of this contract, right?

3 A That's what it says.

4 Q Okay. And it also says that a condition of this
5 approval is that you keep your hands off of matters involving
6 Ackerman McQueen, right?

7 A I don't see that in this part.

8 Q So under the resolved clause, there is two clauses,
9 number one and two.

10 A Right.

11 Q And number one says that you have to abstain from
12 deliberations or voting or participating in any votes regarding
13 Ackerman. Do you see that?

14 A Deliberations or votes, yes.

15 Q And that's good because you were a fiduciary and you
16 didn't want to be conflicted, right?

17 A Well, that's -- the goal was to make sure everybody
18 understood I knew my fiduciary duties as a consequence of this
19 contract. I also new my fiduciary duties to the NRA as the
20 president.

21 Q Right. That meant that you would not be involved in
22 matters at the NRA pertaining to the NRA's relationship with
23 Ackerman, right?

24 A Which is point number two.

25 Q Right. And point number two is that if any of the

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1 material terms of the contract change, the audit committee gets
2 notified, right?

3 A Yes.

4 Q Okay. All right. Ackerman did not, at any time in
5 September or October or November of 2018, provide a copy of that
6 contract to the NRA, to your knowledge, right?

7 A I don't know.

8 Q And you did not, in September or October or
9 November 2018, provide a copy of that contract to the NRA,
10 right?

11 A Not that I recall. No.

12 Q Okay. Did you recall becoming aware in September 2018,
13 in response to whistleblower complaints made to the audit
14 committee, the NRA conducted an audit of Ackerman's books and
15 records? You're not aware of that?

16 A No.

17 Q Okay. And were you not aware that in December the NRA
18 hired a third party forensic accounting firm to do a second
19 audit of Ackerman's books and records?

20 MS. CONNELL: Objection, your Honor. Not in
21 evidence.

22 MS. ROGERS: I'm asking if the witness is aware.

23 Q Did you have any understanding that the NRA hired a
24 firm, not a law firm but a forensic accounting firm, in
25 December 2018 to do a second audit of Ackerman's books and

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1 records?

2 THE COURT: Hang on. Hang on. Hang on.

3 MS. CONNELL: Objection, your Honor. I think
4 that's a misstatement of what occurred and a misstatement of
5 the review that was done.

6 THE COURT: Is this evidence that's going to come
7 in at some point that hasn't come in yet?

8 MS. ROGERS: It hasn't come in yet. I'm not trying
9 to introduce it unless the witness knows about it.

10 THE COURT: Are you asking it in a question? The
11 assumption is that you have an evidentiary basis for it.

12 MS. ROGERS: I do. Yes.

13 THE COURT: Okay.

14 MS. ROGERS: The witness might not know but other
15 witnesses will.

16 Q Colonel North, did you have any understanding in 2018
17 that in late 2018, in December the NRA hired forensic
18 accountants from a firm called Forensic Risk Alliance to do
19 another review of Ackerman's records?

20 A No.

21 Q But between the time that Ackerman refused to provide
22 your contract in September and the time the forensic accountants
23 went in in December, you changed the contract to cut your pay,
24 right?

25 A I had.

LAS

Cross-North-Rogers

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1 Q When you cut your pay, did you ask Ackerman to give
2 back any of the money the NRA had already paid for episodes of
3 American Heroes that were not delivered?

4 A The terms of that amendment are very clearly stated in
5 the record.

6 Q All right. Now later in the game you say, I think you
7 said later in the game, in February of 2019, the NRA's general
8 counsel was finally allowed to review your Ackerman contract,
9 right?

10 MS. CONNELL: Objection, your Honor. Misstates
11 evidence.

12 MS. ROGERS: I thought I said "later in the game".
13 You can correct me if I misstated that.

14 THE COURT: I think the objection is probably to
15 the word "finally", because he had testified that some other
16 parts of the NRA received it earlier than that. That's a
17 question for him.

18 MS. ROGER: Okay. I'll ask it differently.

19 Q Lieutenant Colonel North, you understand in February of
20 2019 John Frazer, the general counsel, was given access to a
21 copy of your contract, but he couldn't take it with him, right?
22 He was only allowed to look at it and take notes, did you
23 understand that?

24 A I don't -- I don't necessarily agree to the date in
25 which all of this transpired. Yes, it came to my attention that

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1 he had been allowed to go in, look at and make notes on the
2 contract. But the copy of it could not be taken out of the room
3 or whatever.

4 Q Right.

5 A I don't even know where this took place though. I was
6 informed about it afterwards.

7 Q Right. And you also testified I think this morning
8 that no one ever gave you the numbers or gave you access to the
9 invoices for the Brewer firm. Do you recall that testimony?

10 A The actual invoices that showed hour-by-hour
11 breakdowns, no. No recollection of ever being able to see any
12 of that.

13 Q Isn't it true that John Frazer told you explicitly in
14 February of 2019 that you could have all of the Brewer invoices?
15 You could have them. You could look at them except for three
16 invoices pertaining to legal matters that involve you?

17 A I -- I don't recall that conversation whatsoever.

18 Q All right. Let's refresh your recollection.

19 MS. ROGERS: I need a copy for the AG.

20 THE COURT: Are you --

21 MS. ROGERS: I'm showing it to him to refresh his
22 recollection now.

23 THE COURT: Okay.

24 Q Colonel North, do you recall receiving this e-mail on
25 February 26th, 2019?

LAS

Cross-North-Rogers

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1 A Let me read it first, if I may.

2 Q Sure.

3 A (Examining).

4 Q Lieutenant Colonel, do you recall receiving this
5 e-mail?

6 A I don't specifically recall it, but clearly I did
7 because I answered it.

8 Q Okay. And this is your e-mail address. I'm not going
9 to read it into the record. That's your e-mail address, right?

10 A Yes.

11 MS. ROGERS: I move to admit this document into
12 evidence.

13 THE WITNESS: Pardon?

14 MS. ROGERS: I move to admit this document into
15 evidence.

16 THE COURT: She's talking to me. Any objection?

17 MS. CONNELL: We would ask that personal e-mail
18 addresses be redacted. Other than that, no.

19 MS. ROGERS: No objection to redacting it.

20 MS. CONNELL: What's the number?

21 MS. ROGERS: It's going to be DX 1-1087.

22 THE COURT: So we need to --

23 MS. ROGERS: I'm happy to help mark it if that
24 helps.

25 THE COURT: Hand it back to the court reporter to

LAS

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1 mark.

2 (Whereupon the e-mail chain was marked received in
3 evidence as Defendant's Exhibit 1-1087 as of this date.)

4 Q All right. Lieutenant Colonel North, looking at this
5 e-mail chain, we see at the top that John Frazer offers you
6 access to --

7 THE COURT: Wait. Are you intending to have this
8 be on the screen?

9 MS. ROGERS: Do we have an electronic copy?

10 THE COURT: Okay.

11 MS. ROGERS: Let's redact his personal e-mail from
12 the screen. Thank you.

13 Q Lieutenant Colonel North, you would agree with me that
14 on February 26th, 2019 John Frazer, the general counsel, said
15 you can look at all of the Brewer invoices except the three
16 where you have a conflict. Do you recall that now looking at
17 this e-mail?

18 A I don't recall it, but I can see it's in the e-mail.

19 Q Okay. This is an e-mail chain, and John Frazer's
20 replying to an e-mail you sent on February 25th asking for
21 copies of the invoices, right?

22 A It appears to be, yes.

23 THE COURT: Counsel, so you know, it's still not up
24 on the screen.

25 MS. ROGERS: I thought it was.

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Cross-North-Rogers

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1 THE COURT: They were doing the redaction.

2 MS. ROGERS: Okay. Well, I don't want his personal
3 information shared, so this is good. Let's scroll down.

4 Q And we'll see John Frazer is replying to a request that
5 you made Lieutenant Colonel, right, for copies of these
6 invoices?

7 MR. FARBER: There are other redactions that need
8 to be made.

9 MS. ROGERS: Yes, of his e-mail address as well.

10 Q I'll just ask this. Lieutenant Colonel, do you recall
11 the date on which your Ackerman contract was first made
12 available to John Frazer at the NRA?

13 A I do not.

14 Q If I represent to you that it was on or about
15 February 25th, 2019, would you have a recollection inconsistent
16 with that?

17 A I don't have one that's consistent or inconsistent. I
18 don't know.

19 Q Isn't it true that you never demanded copies of outside
20 counsel's invoices until the NRA got its hands on a copy of your
21 contract and you thought that was fair?

22 A No.

23 Q Okay. All right. Now, you were at NRA headquarters
24 often, right?

25 A Very.

LAS

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1 Q And your office as president was on the 6th floor,
2 right?

3 A Yes.

4 Q And that's right across from John Frazer's general
5 counsel's office, right?

6 A A few feet a way.

7 Q A few feet a way?

8 A Yeah.

9 Q You never walked a few feet to look at all these legal
10 invoices that you thought posed a threat to the NRA, that you
11 had demanded to see? You didn't walk a few feet and take a look
12 at them, right?

13 A No. I spent a good bit of time in and out of John
14 Frazer's office, don't get me wrong.

15 Q Right.

16 A I do not recall specifically asking for the Brewer
17 invoices, because I pledged in my contract to avoid all contact
18 with Ackerman McQueen on anything except the productions of what
19 I was suppose to be doing.

20 Q So your testimony is that you don't recall asking for
21 copies of the Brewer invoices?

22 A I do not recall asking. That's why I kept asking for
23 an outside, independent audit being done. That's what I was
24 asking for.

25 Q So in your e-mail --

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1 A I'm not asking to show them who invoices to me. I'm
2 asking them to appoint an outside, independent counsel who would
3 review all of what we're doing.

4 Q All right. Let's read your e-mail. "So, further I
5 made an oral requests to you for all invoices submitted by
6 Brewer attorneys and counselors", right? And your verbal reply
7 was, "I could examine those invoices in the office of Mr.
8 Spray", right? Do you see that? And then you say where you
9 want the invoices sent. You say, let's scroll to the next page,
10 "I expect those records to be delivered to my office." And we
11 can black out the office address, but that is your office, sir,
12 that's not the address of an outside, independent auditor with
13 no connection to Ackerman McQueen, right?

14 A Correct.

15 Q Okay. All right. We looked later at a memorandum from
16 you that itemized fees by the Brewer firm which you thought were
17 astronomical, right?

18 A It did not itemize it. It listed the monthly payments
19 being made to Brewer.

20 Q And you testified that the outside, independent review
21 you proposed of the legal fees was never performed. That was
22 your testimony, right?

23 A I proposed what now?

24 Q You testified that you proposed an outside, independent
25 audit of the Brewer fees, right?

LAS

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1 A Correct.

2 Q And you testified to the Attorney General that that
3 never happened, is that right?

4 A That I knew of never happened.

5 Q Right.

6 A I still don't know what happened.

7 Q When you wrote that memo, did you inquire whether there
8 had been an outside, independent review by any other law firm?

9 A I -- I've never been told that one had been done.

10 Q You knew that a portion of those fees was being
11 reimbursed by the insurance company though, right?

12 MS. CONNELL: Objection, your Honor. No
13 foundation.

14 A Yes. That was --

15 MS. ROGERS: It's talked about in his memo and he
16 says --

17 A That was announced at a board meeting.

18 Q Right.

19 A Because the issue, as I recall it, the issue was, did
20 the NRA recover enough of what Mr. Brewer said he was going to
21 do, which my recollection today is it was over \$60 million from
22 Lockton, the insurance company, that had backed away from their
23 contract with us.

24 Q Right.

25 A And I was a participant in that conversation, because

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1 it occurred right in the middle of a board meeting.

2 Q Right. In formulating your view that the NRA's outside
3 counsel were charging too much and needed to be audited, did you
4 inquire or learn whether the insurance company reimbursing the
5 bills was already auditing them?

6 A I don't know if I knew about it at the time, but I
7 certainly learned about it later on.

8 Q In forming your view that outside counsel's fees were
9 excessive and needed to be audited, did you inquire or learn
10 whether the fee amounts you listed had been discounted at all?

11 A One of my memos going forward actually puts those items
12 in one of my letters to the management.

13 Q So, did you -- did you inquire or learn the amount of
14 the discount that was being applied?

15 A I think it's listed right there in the document.

16 Q Let's look at it.

17 A There were several of those documents. I mean, there
18 was one letter on the 18th.

19 Q Yes.

20 A Another one on the 25th.

21 Q Right. Let's look at tab five. Tab five is one of
22 these. It encloses a memorandum. Actually hold on. Maybe tab
23 five is not the best. That's -- (pause). Okay. Sorry. Let's
24 look at tab 18 of the Attorney General's binder, which is PX
25 1683.

LAS

Cross-North-Rogers

1844

1 THE COURT: Is that in evidence yet?

2 MS. CONNELL: Yes, your Honor.

3 THE COURT: Okay. It is.

4 Q All right. Colonel North, when you get there, confirm
5 for me that this is one of the memos you're talking about.

6 Right?

7 A (Examining). Yes. There is another one, which is
8 based on more information. It actually shows the tabulation of
9 what Lockton reimbursed the NRA for versus what Brewer just
10 billed for.

11 Q Right. I'm not asking about the Lockton reimbursement
12 now. I'm asking something different. You've dealt with
13 Williams and Connolly you said for decades, right?

14 A Oh, gosh, yeah.

15 Q Would you say they are an expensive law firm?

16 A I don't know.

17 Q You don't know?

18 A No.

19 Q Do you think they are more expensive than most law
20 firms?

21 A I really don't know. I've never asked them, okay. I
22 know what I paid --

23 Q Right.

24 A -- okay, over the course of five years of litigation.

25 Q Understand.

LAS

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1 A And it was a lot less than what Mr. Brewer was
2 charging.

3 Q Right. But does Williams and Connolly ever apply a
4 discount to your bill, ten percent off or something like that?

5 A Absolutely.

6 Q They do. Did you ever inquire or learn in the course
7 of disputing my law firm's bills whether my law firm was
8 discounting these amounts at all?

9 A Well, there was nothing in the record that I was
10 provided that indicated that.

11 Q And you didn't ask, right?

12 A Well, actually we did. We suggested, for example, that
13 there ought to be an issue exploring whether the NRA was getting
14 a nonprofit discount, which is commonplace within, you know, law
15 firms representing charities. A 501(c)(3) is a public charity.

16 Q In the course of disputing these law firm bills, did
17 you ever inquire or learn what portion of these fees were
18 recoverable when the NRA prevailed in court?

19 MS. CONNELL: Objection, your Honor.

20 THE COURT: Overruled.

21 A I never -- Ask me the question again.

22 Q I'll break it down. So, you know that a couple of
23 these cases are cases against the government, right?

24 A A couple of these cases. I don't have cases listed.
25 I've got monthly amounts spent on page 2. Monthly money owed by

LAS

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1 the NRA or already paid to Mr. Brewer.

2 Q You knew that one of the cases Brewer was working on
3 was a First Amendment lawsuit against the State of New York,
4 right?

5 A A case that originally had been worked on by Chuck
6 Cooper.

7 Q What is that testimony based on, sir?

8 A Pardon?

9 Q What is that testimony based on, that that case was
10 originally worked on by Chuck Cooper?

11 A Well, at the time Chuck Cooper was exploring whether to
12 be retained on that, that's why.

13 Q If I represented to you that I wrote that complaint,
14 that that lawsuit was brought by me, and that Chuck Cooper
15 joined as co-counsel, would that refresh your recollection as to
16 who brought that lawsuit?

17 A Yes.

18 Q Okay.

19 A Thank you.

20 Q Thank you. It's nice to get credit where credit is
21 due.

22 A There you go.

23 Q It's a good lawsuit. Are you aware that the lawsuit I
24 worked on with Chuck Cooper is going to be heard by the United
25 States Supreme Court on March 18th of this year?

LAS

Cross-North-Rogers

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1 MS. CONNELL: Objection, your Honor.

2 THE COURT: Sustained.

3 Q Did you form a view as to whether, if the NRA prevailed
4 at the Supreme Court, these fees would become recoverable,
5 reimbursed to the NRA pursuant to federal law?

6 A No. I had nothing to do with that case.

7 MS. CONNELL: Objection, your Honor.

8 THE COURT: Overruled.

9 Q All right. Throughout 2018 and early 2019, when you
10 were demanding an audit and an investigation of the NRA's
11 outside lawyers, did you ever demand or suggest an audit or
12 investigation of Ackerman McQueen?

13 A No.

14 Q What about an audit or investigation of any other NRA
15 vendor?

16 A No. What I was suggesting was --

17 THE COURT: It was just a yes or no.

18 Q Just a yes or no, sir.

19 A No.

20 Q Okay. Now, when the audit committee re-reviewed
21 your -- Strike that. Would you agree with me that the NRA's
22 relationship with Ackerman changed between September 2018 and
23 May 2019?

24 A Well, I have no doubt that it changed.

25 Q Right. In fact, it would be fair to say metaphorically

LAS

Cross-North-Rogers

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1 by May 2019 the NRA and Ackerman were in a shooting war, right?

2 A I described it as a circular fire squad.

3 Q Right, exactly, a firing squad. Firing at each other.

4 And, in fact, I think you testified earlier that the NRA

5 demanded you resign not only from the board but resign as a

6 member of the NRA, is that -- is that your intended testimony?

7 A That is my recollection.

8 Q But in fact what the audit committee did, right, was

9 they gave you a choice, team NRA or team Ackerman. They asked
10 you to resign from Ackerman, right?

11 A I think they said either or.

12 Q Right. And you refused?

13 A I did.

14 Q Okay. You testified that there was no -- no coup
15 ultimatum at the April 2019 annual meeting, right?

16 A What I testified to is that I never initiated a coup or
17 a replacement for Mr. LaPierre or early retirement or any of
18 that garbage, okay. That is a story concocted over my effort to
19 alert Wayne to what I had been told by Mr. Boren.

20 Q You would agree with me that there was an ultimatum at
21 least relayed, right?

22 A I will not agree with you that I gave an ultimatum. I
23 agreed that I did try to tell Wayne that he was -- that there is
24 going to be a lot of bad stuff coming out as a consequence of
25 what Steve Hart is receiving. I hadn't gotten it yet. It's not

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1 going to be helpful. I'll be glad to go from Texas, excuse me,
2 from Indianapolis to Texas to meet with and stop the gunfight.
3 That's what I was willing to do.

4 Q Right. But you would agree with me that even if you, I
5 think the words you used on direct were, that you didn't make
6 the threat, right?

7 A I did not make the threat. I tried to forward what Mr.
8 Boren told me, I tried to get it to Wayne and ask him to please
9 call me back.

10 Q So you didn't make the threat. You relayed, you
11 conveyed Ackerman's message that if Wayne didn't step down at
12 EVP and drop the lawsuit against Ackerman, that they were going
13 to publically and personally embarrass him, right?

14 A Yes. I want to make sure, I was told that by Mr.
15 Boren. I don't know what the conversation was with -- between
16 Boren and the audit committee, Ackerman McQueen's leadership. I
17 don't know. He articulated it as such. They are going to try
18 to embarrass the dickens out of you, Wayne. I don't know if I
19 said dickens.

20 Q You also testified that they, they commenced an ethics
21 proceeding against you within the NRA. Do you recall that?

22 A Who? Say that again.

23 Q Well, who was going to be my question. So, I think
24 that you testified on direct, you said they. That they had
25 brought an ethics complaint against you in the NRA to try to

LAS

Cross-North-Rogers

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1 kick you out of the NRA, right?

2 A Oh, yeah.

3 Q Who is they?

4 A Well, I don't know who initiated it. There was an
5 ethics complaint filed as a means of assuring that I had
6 committed some wrong. They quoted again this false story about
7 a coup, a conspiracy to shove Wayne aside and that. I had
8 actually taken that phrase out of one of the drafts that I was
9 preparing for the audit committee.

10 Q Which -- Sorry. Which phrase did you take out?

11 A I took out the fact of trying to get rid of Wayne
12 LaPierre. I didn't want to get rid of Wayne LaPierre.

13 Q Who prepared the draft that you edited that had a
14 clause in it about getting rid of Wayne LaPierre?

15 A I received that from counsel.

16 Q Which?

17 A A draft. I mean, there were several drafts of this
18 initiative.

19 Q Which counsel?

20 A Williams and Connolly.

21 Q And, in fact, these documents were being drafted and
22 passed around in the week leading up to the annual meeting?

23 A I don't know.

24 Q Okay. On a separate topic. Sorry. Sorry. One more
25 thing.

LAS

Cross-North-Rogers

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1 THE COURT: We're closing in on our break. Do you
2 want to --

3 MS. ROGERS: Let me -- I have less than two minutes
4 of additional questions on this topic and then another tiny
5 one. And if I can't finish, I'll let the jury go to lunch.

6 Q Lieutenant Colonel North, you said that they brought an
7 ethics complaint. But actually in the NRA bylaws any NRA member
8 has a right to bring that kind of complaint, right?

9 A Say that again.

10 Q Sure.

11 MS. ROGERS: Let's put up PX 606 that's already in
12 evidence.

13 Q These are the NRA bylaws which you testified you
14 reviewed and knew as NRA president.

15 THE COURT: It's not in the binder. They are going
16 to put it on the screen.

17 MS. ROGERS: It will be on the screen.

18 Q And it is a familiar document to you.

19 MR. ROGERS: All right. Let's turn to exhibit
20 page 13 of the bylaws. Okay. All right. So at the bottom,
21 which is bylaw page 9, exhibit page 13, we see a section
22 titled "Involuntary Termination of Membership and
23 Disciplinary Proceedings". Let's scroll to the next page.
24 Okay. Okay. All right. Let's stop. So keep scrolling to
25 section D, "Procedure". Let's stop there for a minute.

LAS

Cross-North-Rogers

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1 Q So, you would agree with me, Lieutenant Colonel, that
2 under the bylaws any member, any of the NRA's millions of
3 members has the right to file a complaint if he thinks another
4 member of the association has done something unethical, right?

5 A Yes.

6 Q And is it your understanding that you said you don't
7 know who filed a complaint against you?

8 A I know who filed the complaint.

9 Q It was another director of the NRA, right?

10 A Yes.

11 Q It wasn't Wayne LaPierre?

12 A No.

13 Q It wasn't Charles Cotton?

14 A No.

15 Q Wasn't any member of the audit committee?

16 A I have no idea who saw it before I got it.

17 Q It was another member of the NRA who had the right to
18 file that complaint. And once the complaint is filed, the
19 ethics committee --

20 MS. ROGER: Let's scroll. All right. Let's stop
21 here. Let's look at number four.

22 Q You would agree with me, Lieutenant Colonel, that once
23 an NRA member decides to file one of these complaints, the audit
24 committee shall, it's not may, it doesn't have the option, it's
25 an obligation, the ethics committee must determine whether,

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Cross-North-Rogers

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1 assuming everything in there is true, you don't know if it's
2 true, but assuming it's true, if proved would warrant a penalty.
3 You agree with me that's what the bylaws require, right?

4 A I understand completely what section 4 says, yes.

5 Q You would agree with me once this complaint is filed,
6 assuming everything in there is true, the NRA has no choice but
7 to commence the ethics hearing process?

8 A The word "shall" is operative.

9 Q Right. And in fact the NRA, in assuming those
10 allegations were true and referring you to the hearing process,
11 was just doing what the bylaws required, right?

12 A Sure.

13 Q Okay. All right.

14 MS. ROGERS: I can finish before lunch. I'm going
15 to try to do it.

16 Q You were also on the board of an organization, a
17 charity called Youth for Tomorrow, right?

18 A Yes.

19 Q You're on that with Susan LaPierre, right?

20 A Well, I was there before Susan was.

21 Q But you were both there together for quite a while,
22 right?

23 A Yes.

24 Q Do you think there is anything improper about the NRA's
25 occasional support for Youth for Tomorrow?

LAS

Cross-North-Rogers

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1 MS. CONNELL: Objection, your Honor.

2 THE COURT: Overruled.

3 A No.

4 Q And, in fact, you thought supporting Youth for Tomorrow
5 benefited the NRA, right?

6 A I did.

7 Q And you didn't think -- You're not paid to be on the
8 board of Youth for Tomorrow?

9 A Right.

10 Q As far as you're aware, Susan LaPierre does not get a
11 cent to be on board of Youth for Tomorrow, right?

12 A I don't believe she does.

13 Q And you never thought that created any conflict of
14 interest, right?

15 A I never what?

16 Q You never thought that being on the board of Youth for
17 Tomorrow and the board of the NRA created a conflict of
18 interest, right?

19 A For me?

20 Q For you.

21 A No. I've been on the board of Youth for Tomorrow since
22 it was formed.

23 Q I agree with you, sir, on that. So, nothing further.

24 A Great cause.

25 THE COURT: We're going to take our break now.

LAS

1 We'll reconvene at 2:15. Again, no conversations about your
2 testimony during the break. Jury, we'll see you at 2:15.

3 THE COURT OFFICER: All rise. Jury exiting.

4 (Whereupon the jury panel departed the courtroom.)

5 (Whereupon a luncheon recess was taken.)

6 (Continue on the next page.)

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LAS

Proceedings

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1 A f t e r n o o n S e s s i o n :

2 THE COURT: All right. Yeah, let's bring the
3 witness in.

4 While they're getting everybody together:

5 I'm hopeful not to see any more obviously
6 responsive documents show up that haven't been shared in
7 discovery. I am not sure what the reason for that is, but,
8 you know, at the moment, it hasn't been too much of an
9 issue. But even if something slipped through the screen of
10 word searching, if people found it, in fact, it should have
11 been produced. So I'll leave open for now, what to do if it
12 comes up again.

13 (The witness resumed the stand.)

14 MS. CONNELL: Your Honor, there's one other issue,
15 if I may raise it.

16 THE COURT: Do you want the --

17 MS. CONNELL: Not with the jury.

18 THE COURT: No, do you want the witness to be here?
19 All right, go ahead.

20 MS. CONNELL: It has to do with representations
21 about audits or -- and what was done, and I think it --
22 there's not going to be evidentiary support; evidentiary
23 support was not given to us; and these representations, even
24 though the jury will ultimately be instructed that questions
25 of counsel are not evidence, are damaging, and I'm concerned

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1 about that.

2 THE COURT: Well, some would say that that's a gift
3 from the other side. If they make representations and
4 there's no evidence, that's a good thing to say in closing,
5 if it happens. Now, again, I'm relying on, maybe, people's
6 definition of what "audit" means, and that will be a fight.

7 But, you know, I have a representation from counsel
8 that they're going to put in evidence of whatever it is
9 they're referring to.

10 MS. ROGERS: And that's correct, your Honor; we
11 will.

12 MS. CONNELL: Your Honor, I -- again, I'm -- with
13 the witness present, I'm a little hesitant to say this, but
14 it -- there's not going to be admissible evidence. There
15 wasn't admissible -- there wasn't evidence produced to us
16 about it.

17 MS. ROGERS: There's been testimony about it, and
18 we just discussed this. But I think the Court -- I agree
19 with the Court that -- let us prove up what we've said we're
20 going to prove up and if we can't, that's a matter for the
21 jury. We will.

22 MS. CONNELL: Obviously, your Honor, having -- you
23 know, it can undercut counsel's credibility with the jury if
24 they don't prove up what they say they're going to prove up.
25 But this is a very fact-intensive case. I'm assuming no

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1 party wants to do seven-hour closings and pointing out every
2 in -- every failure to support something is not accurate --
3 is not a good use of time.

4 And the fact is that some of this stuff that
5 counsel's been embedding in questioning is not going to be
6 admissible in this case and was not the subject of
7 disclosure to us.

8 THE COURT: Well, I can't really evaluate all that.

9 This happens a lot in cross-examination, where
10 people make reference to things that they are going to prove
11 up in their case; and, you know, at some point, I have to
12 have some trust in -- in counsel when they tell me that
13 there's going to be evidence of something.

14 So I mean, otherwise, I'd just be taking your word
15 for it that there isn't anything.

16 So we'll see.

17 MS. CONNELL: Right, your Honor.

18 But I --

19 THE COURT: I think it's best not to --

20 MS. CONNELL: Sure.

21 THE COURT: -- talk in too much detail about it.

22 I understand your point and -- but I -- I suspect,
23 if -- if you conclude that they made a representation in
24 front of everybody and that they -- they didn't come
25 through, then you'll make use of that.

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1 MS. CONNELL: Absolutely, your Honor.

2 I'm raising it for a failure to disclose and/or, in
3 some cases, assertions of privilege; the sword-and-shield
4 matters we've raised before you a number of times.

5 THE COURT: Oh.

6 Well, again, I assume, Ms. Rogers, if -- if the
7 audit that you're talking about is -- is not something that
8 is privileged, then you're not going to be able to put
9 evidence in about it.

10 MS. ROGERS: Right.

11 We, obviously, aren't making representations in
12 questions that allude to privileged information that we've
13 withheld. The fact that the insurance company reviewed the
14 invoices or their lawyers reviewed the invoices is the
15 subject of testimony in open court in the bankruptcy that
16 they have had notice of for more than two years.

17 THE COURT: Well, is that what you're considering
18 an audit?

19 MS. ROGERS: Well, it's a -- it's a review.

20 So he used the words "outside, independent review";
21 "outside independent audit." I guess, different people use
22 the term "audit" differently. It's a -- it's a review for
23 reasonableness of fees.

24 MS. CONNELL: In one action, your Honor; in one
25 case, some invoices. Come on. And we only have --

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North - by Plaintiff - Cross/Fleming

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1 THE COURT: No, no. No. Look, I -- you know,
2 insurance review is a different thing; but you have plenty
3 to ask about when it's your turn.

4 So I'm not throwing a penalty flag at this point.
5 Let's put it that way.

6 MS. CONNELL: Okay.

7 THE COURT: We'll see.

8 All right, let's get the jury.

9 (Pause.)

10 COURT OFFICER: Ready to receive the jury, your
11 Honor?

12 (The Court nodded.)

13 COURT OFFICER: All rise. Jury entering.

14 (The jury entered the courtroom.)

15 THE COURT: All right. Welcome back, everyone.
16 Have a seat.

17 Okay. Counsel, are we prepared to continue with
18 the cross-exam?

19 MR. CORRELL: No cross.

20 MS. COUTU: No cross, your Honor.

21 MR. FLEMING: Yes.

22 CROSS-EXAMINATION

23 BY MR. FLEMING:

24 Q Good afternoon. How are you?

25 A Fine, thank you.

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North - by Plaintiff - Cross/Fleming

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1 Q I want to recap some of your testimony from this
2 morning:

3 You signed a contract with Ackerman McQueen on May
4 15th, 2018; correct?

5 A I think those are the dates, yes.

6 Q I didn't hear you; I'm sorry.

7 A I believe those are the dates, yes.

8 Q Okay. Now, were you aware that as early as July of
9 2018, the NRA and John Frazer were seeking that contract?

10 A I -- I -- I'm, at this point, not sure what was taking
11 place on a particular day, on a particular issue.

12 Q So you --

13 Just to get your testimony clear --

14 A Sure.

15 Q -- because I want to be very clear for the jury:

16 You're not aware, one way or the other, whether the NRA
17 and/or John Frazer were looking for -- to see your contract.

18 A I -- I do know that they -- there was a point in time
19 when that happened; I just can't say which happened first
20 (simulating).

21 Q Now, were you aware that in July -- late July -- of
22 2018, whistleblowers from the NRA's Financial Services Division
23 came forward?

24 A I don't recall whether I knew it at the time. I
25 certainly knew, in -- in the course of this long travail, that

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North - by Plaintiff - Cross/Fleming

1862

1 that had happened.

2 Q Now, whether you know the date of the whistleblowers
3 coming forward, you know the fact of them coming forward; is
4 that fair?

5 A Well, I -- yes.

6 Q And were you aware that one of their concerns was not
7 having contracts available to them to ensure that what they were
8 paying was appropriate?

9 A I don't know that -- I don't recall the specifics of
10 what they knew or alleged.

11 Q Now, that was July of 2018. I'd like to now go forward
12 to February of 2019. So it's about seven months; would you
13 agree?

14 A Yes.

15 Q Okay. In February 2019, were you aware that John
16 Frazer was still looking to see your contract?

17 A I don't recall being aware of that at the time, but I
18 do know that that -- that's been referred to, yes.

19 Q Now, on your direct testimony, I believe you said that
20 you walked into John's office and handed him a copy of the
21 contract. Do you recall the testimony?

22 A My recollection today is that I, at some point, showed
23 John a copy in my office or his office, because they were right
24 next to each other on the same floor.

25 Q Okay. But you -- so you would agree with me that if he

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North - by Plaintiff - Cross/Fleming

1863

1 was looking for the contract in February 2019, he had not seen
2 it before then.

3 A I -- I can't tell you what was going on in his mind.

4 Q Well, do you --

5 You know John, right?

6 A Yeah.

7 Q Do you know him to be the type of person who would have
8 a copy of your contract and still be looking for a copy of your
9 contract?

10 A Well, I -- I -- I can't put myself in someone else's
11 head, so I can't tell you the answer to that.

12 Q Of course you can -- you cannot.

13 Of course you cannot, but does it stand to reason that
14 a human being would be looking for a contract if they already
15 had it (simulating)?

16 A Well, sir, there's a lot of very unreasonable things
17 that occurred in all of -- this entire discourse, so ...

18 Q Do you -- do you view John Frazer to be unreasonable?

19 A Um, I -- my concern was that John Frazer was not doing
20 his job as it needed to be done.

21 Q That wasn't my question. My question was: Do you --
22 You know him, right?

23 A Well, I -- I thought I did.

24 Q All right. Well, you know who he is.

25 A Certainly.

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Fleming

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1 Q Okay. And you spent time with him, right?

2 A Oh, yeah.

3 Q All right. Do you have a conclusion about whether he
4 is unreasonable, in your view?

5 A I'm -- I'm trying to think of some specifics, but there
6 were many, many unreasonable things done in the course of this
7 entire process.

8 Q I'm asking about John Frazer.

9 A Well, John Frazer, as the general counsel for the NRA,
10 had to be somehow supporting the inquisition into me and my --
11 what I did or failed to do about things like: Was there a
12 threat being made by North to have Mr. LaPierre removed?

13 Q So you viewed John to be unreasonable; is that fair?

14 A That's fair.

15 Q Okay.

16 Now, you're aware --

17 Because you worked right down the hall from him, right?

18 A Yes.

19 Q You're aware that he came into your office on numerous
20 occasions --

21 A Oh, yes.

22 Q -- and said, "I need to see your contract." Right?

23 A I don't -- I don't believe it was numerous occasions.

24 I -- my recollection was that there was a point in time when

25 John Frazer was granted access -- not necessarily in my office;

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North - by Plaintiff - Cross/Fleming

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1 it could have been -- to take notes about the contract, to
2 satisfy the -- the desires of others that I really did have a
3 contract that said the following things.

4 Q Well, we'll get to the reasons why in a second.

5 But your testimony is that at some point, he saw the
6 contract; right?

7 A Correct.

8 Q And I'm asking you: Before that point, whenever it
9 was, do you dispute that he came into your office and said he
10 needed to see your contract?

11 A No, I don't dispute that, sir.

12 Q That's it. Okay?

13 A I just said, I don't recall that.

14 Q I just want to be clear for the jury. Thank you.

15 Now, did he ever explain to you that the reason he
16 wanted to see your contract was because the NRA had obligations
17 with respect to disclosures on the Form 990?

18 Did he ever say that to you?

19 A I do not recall that conversation.

20 Q Did you ever know that to be true, of your own mind?

21 A Well, I -- I -- I know what's true is that there are
22 certain things that have to be disclosed and complied with on
23 990s in order to satisfy the local law of the state in which
24 you're operating, the county law in some cases, to all the
25 things that go on a 990. So I know that from other experience.

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North - by Plaintiff - Cross/Fleming

1866

1 Q Okay. And did you understand that your contract fell
2 into the realm of what needed to be reported, possibly, on the
3 Form 990?

4 MS. CONNELL: Objection, your Honor.

5 MR. FLEMING: I'm asking his understanding.

6 THE COURT: Well --

7 MS. CONNELL: A legal conclusion, your Honor. It's
8 a contract between Colonel North and Ackerman.

9 THE COURT: Yeah.

10 If you're asking for this witness' legal conclusion
11 about it, that's one thing. If you're asking if he was ever
12 advised or told about that, that's a different question;
13 that's a fact question.

14 MR. FLEMING: That's what I'm asking: if he was
15 either advised, told or had -- knew about it on his own.
16 Those three things.

17 THE COURT: Well, "knew about it on his own" means
18 applying what he understands the law to be.

19 MR. FLEMING: I think it's less of a legal
20 question, your Honor, than a factual question. At least
21 it's how I intended it.

22 THE COURT: That some things are required to be
23 included on a government form?

24 MR. FLEMING: Whether he understood that his
25 contract was potentially irrelevant to a Form 990 reporting

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North - by Plaintiff - Cross/Fleming

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1 need.

2 THE COURT: Well, why don't you start by asking if
3 he had an understanding, from any source, as to whether
4 that's the case.

5 BY MR. FLEMING:

6 Q Did you have any understanding, from any source, as to
7 whether the Form 990 might require reporting with respect to
8 contracts between directors of the NRA and vendors of the NRA?

9 A Not per se on the NRA. I do know, because I founded
10 and headed a 501(c)(3) organization. It still exist to this
11 day; it still does great things for wounded American veterans
12 and Gold Star families and their kids. Okay? I know what Form
13 990s are; I make sure that -- when I was in charge of that
14 organization, having founded it and served as its chairman and
15 then turned those responsibilities over, I know what 990s do.

16 So there's no reason for me to suspect that the NRA was
17 exempt from all those kinds of things. Had someone raised that
18 issue, I'd have said, "Certainly." But I don't recall anyone
19 raising that specific issue with me in regards to my contract.

20 Q Okay, thank you.

21 Now, did Mr. Frazer or anyone explain that seeing your
22 contract was important from an Audit Committee disclosure
23 perspective?

24 A Forgive me. It sounds like a yes-or-no answer. Ask me
25 that question again, please?

ALAN F. BOWIN, CSR, RMR, CRR

North - by Plaintiff - Cross/Fleming

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1 Q Sure.

2 Did you understand that your contract might be
3 important to disclose to the Audit Committee?

4 A If the Audit Committee wanted to see my contract, I
5 agreed that the Audit Committee should see my contract.

6 Q Well, I'm not asking -- I'm not asking that question.
7 I'm asking whether you understood that disclosure of your
8 contract was an important thing to do for the Audit Committee.

9 The Audit Committee needed to see your contract, right?

10 A That's what -- that's the claim, yes.

11 Q Okay. Now, do you recall, on or about February 20th --
12 between February 20th and February 26th -- of 2019, learning
13 that John Frazer was finally going to see your contract?

14 A I don't recall.

15 MS. CONNELL: Objection, your Honor.

16 THE COURT: Overruled.

17 Did you answer?

18 A I -- I do not recall anyone telling me that.

19 Q Okay.

20 MR. FLEMING: I'd like to --

21 Can I post JFX 118 for identification, not for the
22 jury?

23 THE COURT: Hang on a second.

24 MR. FLEMING: Unless ...

25 MS. CONNELL: We object to the hearsay portions of

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North - by Plaintiff - Cross/Fleming

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1 this, your Honor.

2 Would you like to see a copy? We just got it.

3 THE COURT: It would probably be easier for me to
4 assess the objection if I knew what it was.

5 MS. CONNELL: I think so.

6 (Document handed to Court.)

7 MR. FLEMING: Well, your Honor, it's going to come
8 up on-screen; and, at a minimum, it's to refresh his
9 recollection.

10 MS. CONNELL: Your Honor, he's not cc'd on it.

11 MR. FLEMING: Huh?

12 MS. CONNELL: He hasn't indicated --

13 He's not cc'd on this (indicating). This --
14 there's no evidence that he's seen this document.

15 BY MR. FLEMING:

16 Q Lieutenant Colonel North, do you know who Steven Ryan
17 is?

18 A I do not.

19 Q Do you know the law firm McDermott Will & Emery?

20 A Well, I know of it. I don't know anybody in it, I
21 don't think, unless he is.

22 Q Did you have any understanding about whether they
23 represented Ackerman McQueen?

24 A I do not. My -- my dealings with Ackerman McQueen had
25 never brought that to my attention. Let's put it that way.

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North - by Plaintiff - Cross/Fleming

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1 Q Do you recall having any discussions with Ackerman
2 McQueen representatives, in or around February 20th to February
3 26th, about John Frazer seeing your contract?

4 A I do not. I don't -- I don't recall ever having seen
5 this (indicating) particular document before.

6 Q Regardless of whether you saw the document, are you
7 familiar with its contents, which talk about Mr. Frazer seeing
8 your contract on February 26th?

9 MS. CONNELL: Objection, your Honor.

10 THE COURT: Sustained, at this point.

11 I mean, I don't really ... If he's he never seen
12 this document, he's not on it, how can it --

13 MR. FLEMING: The question was independent of the
14 document.

15 THE COURT: All right. Well, then take it down.

16 MR. FLEMING: Yeah, you could take it down.

17 (Pause.)

18 Q Do you recall ever talking to Ackerman or its
19 representatives about Mr. Frazer finally seeing your contract
20 between -- on February 26th -- being told that on February 26th,
21 he was going to see your contract?

22 A I do not recall that.

23 MR. FLEMING: If I could call up the Brewer counsel
24 tab 8 from this morning ...? Which is in evidence, I
25 believe.

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1871

1 MS. CONNELL: PX 4942?

2 (Discussion outside the hearing of the reporter.)

3 MR. FLEMING: Can we pull it up? It's the one from
4 this morning.

5 MS. STERN: What's the exhibit number?

6 MR. FLEMING: I think it's DX 1-1087, if I'm not
7 mistaken.

8 THE TECHNICIAN: I have it. One moment, please.

9 THE COURT: Oh, that was -- that was during the
10 cross.

11 MR. FLEMING: Right.

12 THE COURT: That was the second one, I think;
13 right? Okay.

14 MR. FLEMING: And this is in evidence, I believe.

15 MS. CONNELL: I'm not sure. I don't actually know.

16 THE COURT: I think it was for --

17 I can't recall whether it was just for --

18 I thought -1086 was admitted and -1087 was for
19 refreshing recollection, but I'm not a hundred percent sure.

20 MR. FLEMING: Do you have an objection to it?

21 MS. CONNELL: I'm sorry, your Honor. Our records
22 were not clear. Let me take a look at it. I think we
23 objected before.

24 I don't have it as being admitted in our notes,
25 your Honor, but no objection.

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1 THE COURT: No objection to its admittance now?

2 MS. CONNELL: Yes; no objection to its admittance.

3 THE COURT: Admission, I should say.

4 Okay, it's admitted.

5 And that's DX 1-1087?

6 MS. ROGERS: That's right.

7 COURT REPORTER: Is that something we need to
8 physically mark, your Honor, or no?

9 THE COURT: I'm going to ask the counsel to make
10 sure this thing is properly marked, because we've already
11 used it, so you can -- you don't have to worry about marking
12 it now, Alan, but the lawyers are going to do that for us.

13 MR. FLEMING: Thank you. Thank you.

14 (Continued on next page.)

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ALAN F. BOWIN, CSR, RMR, CRR

Cross-North-Fleming

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1 Q So, Lieutenant Colonel North, do you recall seeing this
2 document today?

3 A (Examining). Vaguely, yes.

4 Q And you recall being asked questions about Mr. Frazer
5 communicating to you that he was making available to you all the
6 Brewer invoices with the exception of two as to what you had a
7 conflict?

8 A Well, that's what this says, yes.

9 Q And do you recall questions about that today?

10 A It came up, yeah.

11 Q Okay. Now, subsequent to February 26th, and we went
12 through a lot of documents today, there were memos written by
13 you about the Brewer invoices. Do you recall those memos?

14 A Yes.

15 Q They were written through March and April, correct?

16 A Yes.

17 Q Of 2019?

18 A Yes.

19 Q Okay. Now during that time that you're writing these
20 memos, did you ever have occasion to walk down the hall to Mr.
21 Frazer's office and say, You know, I'm writing this memo about
22 Brewer invoices. Can I please see them?

23 A I don't -- I recall conversations similar to that, I
24 would like to see the Brewer invoices, because we had the gross
25 numbers. I did not have any of the detail. And I referred to

LAS

Cross-North-Fleming

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1 those gross numbers in the memorandum that we discussed this
2 morning.

3 Q But you would agree with me that while you were writing
4 these memos in March and April, you did not go to Mr. Frazer's
5 office and ask to see them, right?

6 A I don't recall one way or the other.

7 Q 'Cause he had them in his desk, right?

8 A Well, I don't recall him ever walking into my office
9 and saying, You need to read these things.

10 Q Well, he wrote you an e-mail. And my question to you
11 is, you never went to his office to go see them, did you?

12 A I don't remember.

13 Q You chose instead to write memo after memo after memo
14 about the Brewer invoices, correct?

15 A Yes. And in those memos I asked for, as I've done so
16 repeatedly, for an outside, independent audit about what those
17 invoices were about, because none of that shows in the gross
18 numbers that I got from the finance office.

19 Q Now, on February 26th, the very day that Mr. Frazer
20 looked at your contract and the very day he told you, Here are
21 the Brewer invoices except for two matters, that on that day you
22 wrote a memo raising an issue about violation of the procurement
23 policy. Do you recall that?

24 A I don't -- I don't recall that being a subject of it.
25 I think did we properly institute, did we properly carry out the

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Cross-North-Fleming

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1 procedures that should be done to authorize the expenditure of
2 more than \$100,000 for anything.

3 MR. FLEMING: Can we cull up PX 2263. It's at tab
4 21 of your book from this morning. I believe this is in
5 evidence too. Do you guys know?

6 MS. CONNELL: What are we talking about?

7 MR. FLEMING: 2263.

8 MS. CONNELL: I don't think this is in evidence,
9 but we have no objection.

10 MR. FLEMING: May I publish it to the jury?

11 THE COURT: It's admitted.

12 Q Lieutenant Colonel North, if you could turn to page 2
13 of this exhibit.

14 A Yes.

15 Q Is that your signature there?

16 A (Examining). Yes, it is.

17 Q Okay. And the date, can you tell the jury the date?

18 A I signed it on the 26th, as did Mr. Childress, the
19 first vice president and Carolyn Meadows, the second vice
20 president.

21 Q Okay.

22 A The 26th.

23 Q Okay. And if you scroll back down. In the second
24 paragraph it says, "We have determined that the retainer
25 agreement dated 7 March 2018 with Brewer attorneys and

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Cross-North-Fleming

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1 counselors is not properly executed and is therefore not valid."

2 Do you see that?

3 A (Examining). I did.

4 Q Okay. This is the first time you raised this issue,
5 correct?

6 A It was the first time for me raising a lot of issues.
7 I may have raised that earlier.

8 Q Well --

9 A Clearly I did so on the 26th.

10 Q You raised issues about the Brewer invoices and their
11 size, correct, before this?

12 A Yes.

13 Q Okay. But on February 26th is the first time you
14 raised the issue of the retainer agreement not being properly
15 executed, correct?

16 A Very likely I had just discovered that or we had just
17 discovered that.

18 Q Whether it's very likely, this is the first time you've
19 mentioned it, correct?

20 MS. CONNELL: Objection.

21 A I have --

22 THE COURT: Overruled.

23 A It's the first time I've ever mentioned it, I can't
24 believe that.

25 Q Were you aware that Mr. Frazer immediately reached out

LAS

Cross-North-Fleming

1877

1 to look into this issue? Are you aware of that?

2 A No.

3 Q Have you ever heard the law firm Morgan Lewis?

4 A Oh, yes.

5 Q All right. And were they contacted by the NRA to look
6 into this very issue about whether the retainer agreement had
7 been properly executed?

8 A I do not know who retained them for that purpose, nor
9 do I know how much was paid to them to do it.

10 Q You don't know whether Mr. Frazer did that?

11 A I don't.

12 Q You were aware, were you not, that Morgan Lewis issued
13 an opinion on this issue within three weeks?

14 A I don't know what it was within, but I do know that
15 they issued an opinion in which they acknowledged that they had
16 not done a full audit, and the bills were very high, and that
17 the recommendations that I had made for an outside, independent
18 audit might be a pretty good idea. I do remember that part of
19 it.

20 MR. FLEMING: Can we cull up from tab 28 this
21 morning PX 658 for identification, I believe.

22 MS. CONNELL: We have no objection to its
23 admission.

24 MR. FLEMING: Can I publish it to the jury, your
25 Honor?

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1 THE COURT: This is not the same one we saw this
2 morning. Okay. Any objection?

3 MR. CORRELL: No objection.

4 MS. ROGERS: No objection.

5 THE COURT: All right. PX 658 is admitted.

6 Q So first, Lieutenant Colonel North, do you recall
7 seeing this document before?

8 A (Examining). I saw it this morning.

9 Q Okay. And it's dated March 21st, 2019?

10 A Yes.

11 Q A few weeks after your February 26th raising of the
12 issue?

13 A Three days later, yes.

14 Q Okay. Now, if I could direct your attention to the
15 second to last paragraph on the first page. It says, "In the
16 event that the board officers believe it is in the best
17 interests of the association to terminate the existing
18 engagement with the Brewer firm, they should obtain an
19 authorizing resolution of the board of directors or the
20 executive committee withdrawing management's authority to engage
21 the Brewer firm." Do you see that?

22 A (Examining). Yes.

23 Q And you're a member, are you not, of the board of
24 directors at this time?

25 A Yes.

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Cross-North-Fleming

1879

1 Q Okay. Did you ever go to the executive committee to
2 raise this issue?

3 A I think we sent them a memo to that effect.

4 Q You sent a memo to the audit committee, is that right?

5 A I don't know. Let's go back and look at it again.

6 Where is that?

7 Q I don't have that. Did you try or did you not try to
8 obtain an authorizing resolution from the executive committee
9 terminating management's authority to hire the Brewer firm? Did
10 you do that?

11 A I don't recall doing that. No. Specifically, no.

12 MR. FLEMING: I have nothing further. Thank you.

13 THE COURT: Okay. Anything on redirect?

14 MS. CONNELL: Yes, your Honor.

15 REDIRECT EXAMINATION

16 BY MS. CONNELL:

17 Q Lieutenant Colonel North, you were just asked whether
18 you had ever submitted a memorandum to the executive committee,
19 right --

20 A Yes.

21 Q -- by Mr. Fleming?

22 MR. FLEMING: Objection.

23 MS. CONNELL: I think he was asked regarding the
24 executive committee.

25 MR. FLEMING: I didn't ask about a memorandum, your

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Redirect-North-Connell

1880

1 Honor.

2 THE COURT: I'm sorry.

3 Q You were just asked whether you submitted your
4 complaints about the Brewer firm to the executive committee, is
5 that correct?

6 MR. FLEMING: Objection.

7 THE COURT: Whatever he was asked about, you can
8 ask the question anew.

9 Q Did you submit -- Did you ever raise concerns about the
10 retention of the Brewer firm to the NRA's executive committee,
11 sir?

12 A I believe I did.

13 Q Can I direct your attention, please, to tab six, which
14 is in evidence as PX 4945. And if you can look at page 2,
15 please, sir.

16 (Whereupon the witness complied with the above
17 request of counsel.)

18 A The question is management committee.

19 Q Lieutenant Colonel North, does this refresh your
20 recollection as to whether you ever raised concerns regarding
21 the Brewer firm --

22 A Yes.

23 Q -- with the executive committee?

24 A Yes.

25 Q Is this a memo you prepared and submitted to the

LAS

Redirect-North-Connell

1881

1 executive committee?

2 A This is the last memo I did as an officer of the NRA.

3 Q If we draw your attention back to the bottom of page 3
4 of this exhibit.

5 MS. CONNELL: I'm sorry. Oh, I'm sorry, your
6 Honor. If we could wait one second.

7 THE COURT: Screens aren't working or that screen
8 is not working? Hang on a second. What's -- what's -- Are
9 you having trouble with the jurors screens? Yes.

10 MS. STERN: Yes.

11 THE COURT: Do we need to call our IT folks? Okay.
12 Let's give them a call. All right. We called the calvary,
13 but we have to wait a minute or so.

14 MS. CONNELL: I don't have a lot of questioning.
15 It does require showing the jury some documents. There we
16 go. We're in business.

17 THE COURT: It's the happiest I've seen this room
18 all day.

19 Q Lieutenant Colonel North, we were just looking at PX
20 4945. This is a memo you wrote to the executive committee,
21 right?

22 A Yes.

23 Q And if we turn to page, what's PX 4945, page 3 at the
24 bottom.

25 A Yes.

LAS

Redirect-North-Connell

1882

1 Q We went over this earlier. These are things that you
2 asked that the crisis management committee do?

3 A That's four of them, but there are three more.

4 Q On the next page isn't it true that you asked that they
5 supervise an independent assessment of the Brewer firm's
6 billing, correct?

7 A Yes. Correct.

8 Q Okay. Earlier today Mr. Fleming and Ms. Rogers showed
9 you a document that has been marked DX --

10 MS. CONNELL: You can take this down. Thank you,
11 Jesse.

12 Q -- DX-1087. Do you recall that?

13 MS. CONNELL: Can we bring that up?

14 THE COURT: I think it's actually DX 1-1087.

15 MS. CONNELL: I'm sorry, your Honor. DX 1-1087.

16 Q Just one second. It should be up for you to review.

17 THE COURT: DX 1 is just a reference to the NRA as
18 a defendant. The other ones are using initials. The
19 company that it actually has initials is using one.

20 Q Colonel North, if you look at the e-mail that's on the
21 bottom of this first page, that's an e-mail from you, correct?

22 A Yes.

23 Q To Mr. Frazer, correct?

24 A Yes and others.

25 Q And others. Indicating you made an oral request for

LAS

Redirect-North-Connell

1883

1 all invoices, right?

2 A Yes.

3 Q On what date?

4 A This is sent on Monday, February 25th.

5 Q And right above that Mr. Fleming and Ms. Rogers drew
6 your attention to Mr. Frazer's offer to give you those invoices
7 or let you see them, right?

8 A They did make reference to that.

9 Q And they said you could just walk across the hall and
10 view them, right?

11 A Well, that's what they said but I -- I -- I do not
12 recall the specific circumstances, even if I was in the
13 building, because I did e-mails from all over the country as I
14 was traveling.

15 Q So, Lieutenant Colonel North, I would like you to look
16 at tab three in your notebook, which has been admitted as PX
17 334, please, of our notebook.

18 A It's marked 31st.

19 Q Do you recognize this document, sir? It's also on the
20 screen if that makes it easier.

21 A (Examining). Yes.

22 Q I would direct your attention to the bottom of page --
23 of paragraph 2 and the top of paragraph 3. Do you see that?

24 A (Examining). Yes.

25 Q And you indicated there that on February 25th you

LAS

Redirect-North-Connell

1884

1 requested both orally and in writing that John Frazer give you
2 copies of the invoices, right?

3 A Yes.

4 Q And what was the response that you got to your request?

5 A Well, my recollection today is that I was told, after I
6 returned from a trip, that Mr. Frazer said Wayne had changed his
7 mind and I would not be allowed to see the details of the Brewer
8 bills.

9 Q Thank you.

10 MS. CONNELL: You can take that down.

11 Q I would like to call your attention to tab 20, which is
12 PX 2262, which is not yet in evidence.

13 MS. CONNELL: I received an objection to this
14 because -- to this exhibit, because of a redaction. And we
15 agree to the admission of the unredacted version, which I
16 believe is PX --

17 MS. ROGERS: 390, I think.

18 MS. CONNELL: -- 390. So I don't have a paper
19 version that's not redacted, but I can bring that up.

20 THE COURT: So without the redaction there is no
21 objection?

22 MS. ROGERS: Without the redaction, no objection.

23 THE COURT: Okay. PX 390, which is not in your
24 book, is admitted.

25 MS. CONNELL: Thank you, your Honor.

LAS

Redirect-North-Connell

1885

1 Q Lieutenant Colonel North, have you seen this document
2 before?

3 A (Examining). I've certainly seen it here, yes.

4 Q This is a letter to you from Wayne LaPierre, correct?

5 A Yes. Yes.

6 Q And was it your understanding that in this letter Mr.
7 LaPierre was asking you to cease and desist from the conduct you
8 had been engaged in, like asking for invoices?

9 A Yes.

10 Q Okay. Thank you.

11 MS. CONNELL: You can take that down, Jesse.

12 Q I'm sorry. What's the date of that invoice, I mean,
13 that letter?

14 A 26th of February 2019.

15 Q Earlier today you were shown, and just for the point of
16 being clear on this, you were shown a document marked DX 1-1086,
17 correct?

18 MS. CONNELL: Can we bring that up.

19 THE COURT: You can take her word for it. I didn't
20 get the sense that he remembered the digits quite.

21 Q You don't have them memorized?

22 THE WITNESS: Thank you, your Honor.

23 MS. CONNELL: If we can bring that up.

24 THE COURT: Welcome to my world.

25 THE WITNESS: My heart goes out to you, sir.

LAS

Redirect-North-Connell

1886

1 Q If we can look at page 4 of this, please.

2 A (Examining).

3 Q Colonel North, this is your financial disclosure form
4 which you signed on August 22nd, 2018, correct?

5 A Yes.

6 Q But if we look back at the first page, it was your
7 financial disclosure form for 2017, correct?

8 A Yes.

9 Q Okay. Thank you. You can take that down. Colonel
10 North, Lieutenant Colonel North, earlier today Ms. Rogers
11 questions implied that there had been an audit of the Brewer
12 firm's legal invoices. Do you recall those questions?

13 A I do.

14 Q Were you, as president of the NRA, ever told of any
15 alleged audit of the Brewer firm's invoices?

16 A No.

17 Q Okay. Ms. Rogers also implied that there had been a
18 forensic review of Ackerman McQueen invoices. Do you recall
19 that?

20 A I recall that.

21 Q Were you, as president of the NRA, ever informed of
22 this review?

23 A No.

24 Q Do you know whether the board, during the term you were
25 president, was ever informed of this review?

LAS

Redirect-North-Connell

1887

1 A I do not believe they were.

2 Q Do you know what the results of that review were?

3 A No.

4 Q Okay. Earlier today Ms. Rogers' questions implied that
5 as a condition of the board's ratification or the audit
6 committee ratification of your contract, it was dependent upon
7 the audit committee obtaining a copy of your contract. I'm
8 talking about the ratification in 2018. Do you recall those
9 questions?

10 A I do.

11 Q I would like to draw your attention to tab four, which
12 is PX 2983.

13 MS. CONNELL: If we can go to page 2, please,
14 addressing Lieutenant Colonel North.

15 Q Lieutenant Colonel North, are you aware of any
16 limitation in this ratification that made it contingent upon
17 your producing a contract at some future event? At some future
18 time? Excuse me.

19 A I do remember being admonished not to do things like
20 cut my pay without getting audit committee approval first.

21 Q Right. But the only conditions put on this
22 ratification are the two identified at the bottom, is that
23 accurate?

24 A Yes.

25 Q Okay. And Ms. Rogers implied that you had hid your

LAS

Redirect-North-Connell

1888

1 contract from the NRA, right?

2 A Right.

3 Q Counsel questioned you as to whether you hid your
4 contract from the NRA, is that right?

5 A I hope I said no.

6 Q Do you believe that you hid your contract from the NRA?

7 A No.

8 Q And why do you believe that you did not hide your
9 contract from the NRA?

10 A Because I went very carefully back to everybody who was
11 demanding these kinds of things and saying, I'm asking anybody
12 who can interfere with the confidentiality clause to tell me
13 why, I'm summarizing many different conversations, but I want
14 anybody who has any kind of authority over it to stop relying on
15 the confidentiality clause and let me give copies. I have
16 nothing to hide.

17 Q And to your knowledge Wayne LaPierre had a copy of that
18 contract, right?

19 A Yes.

20 Q And --

21 A Let me come back to that very clearly so I didn't
22 misspeak. Wayne LaPierre helped draft that agreement. Wayne
23 LaPierre was the person who told me in the presence of others,
24 I'll take care of it. "It" being getting a nomination to be the
25 next president of the NRA and authorizing, granting relief to my

LAS

Redirect-North-Connell

1889

1 contract with Ackerman -- Mc --

2 Q McQueen, right?

3 A McQueen, thank you. So that I could have a job and we
4 could get the insurance I need for my wife.

5 Q Lieutenant Colonel North, you were not on the audit
6 committee, right?

7 A No, I was not.

8 Q You did not make a determination to ratify your own
9 contract, right?

10 A No, I did not. I did not appear before the audit
11 committee, even though I volunteered to do so.

12 Q And the audit committee in September 2018 did ratify
13 your contract, right?

14 A Yes, they did.

15 Q I would like to draw your attention to page 1 of this
16 document, PX 2893, at the bottom. Your contract was ratified at
17 a September 6th, 2018 meeting, correct?

18 A That's what it says.

19 Q And the members of the audit committee were present at
20 that meeting, right?

21 A Yes, they were.

22 Q Including Charles Cotton?

23 A Apparently.

24 Q David Coy?

25 A Again, I was not there.

LAS

Redirect-North-Connell

1890

1 Q Okay.

2 A So, I'm believing all those names there were actually
3 there as reported.

4 Q And the other members of the committee, right?

5 A Yes.

6 Q Okay. And if we look at the bottom line, Mr. Hart was
7 there, right?

8 A Yes.

9 Q To your knowledge had Mr. Hart seen your contract?

10 A I don't know that he did or didn't.

11 Q Okay. And Ms. Rogers was present at that meeting of
12 the audit committee, right?

13 A Apparently so.

14 Q Okay. And yet the audit committee voted to ratify your
15 contract, correct?

16 A Yes, they did.

17 MS. CONNELL: Thank you very much, Colonel North.

18 THE COURT: Anything further?

19 MS. ROGERS: Just a bit.

20 RECROSS EXAMINATION

21 BY MS. ROGERS:

22 Q Now it's the afternoon. So, good afternoon.

23 A It is afternoon. You and I will agree on that.

24 Q So a moment ago you were shown tab three in your
25 binder, which is PX 334.

LAS

Recross-North-Rogers

1891

1 MS. ROGERS: Let's pull that back up.

2 Q All right. And this is a letter where you recount that
3 on February 25th you asked to see the legal invoices, and that
4 request was rebuffed. And you write in this letter that Wayne
5 LaPierre told Mr. Frazer not to let you see the Brewer bills.
6 Do you recall that?

7 A That's what -- what Mr. Frazer told me.

8 Q Right. When I questioned you earlier, I'm not sure you
9 could remember Mr. Frazer telling you that. Now you do have a
10 current specific recollection that you did walk into his office
11 and he did say, Nope, can't see them?

12 MS. CONNELL: Objection, your Honor.

13 A I'm not agreeing it was in his office or mine or the
14 hallway or the boys room. I'm saying Wayne LaPierre -- Excuse
15 me. Mr. Frazer told me before this that I could see them. When
16 I came back from a trip, and I don't remember the dates, I then
17 asked to see them, and he said, Wayne has changed his mind. You
18 cannot have them.

19 Q And you write in your letter that this happened on
20 February 25th, 2019, right?

21 A Right.

22 Q Okay. So let's look back at PX 390.

23 MS. ROGERS: What tab number is that for him? It
24 will be on the screen.

25 MS. CONNELL: Tab 20.

LAS

Recross-North-Rogers

1892

1 MS. ROGERS: Thank you very much.

2 Q So, this is February 26th. And there was a portion of
3 this that was redacted in the copy you were shown. I want to
4 make sure we talk about the copy the jury is seeing, which is a
5 complete version of this letter.

6 Now in the third paragraph, which the Attorney General
7 highlighted for you, Mr. LaPierre tells you to "Cease and desist
8 from any further involvement relating to these matters." Do you
9 see that?

10 A (Examining). Yes.

11 Q Okay. And in the paragraph above we see what matters
12 he's talking about, right? We see a reference to the Brewer
13 firm tasked with investigating vendor concerns including
14 Ackerman. Do you see that?

15 A Yes.

16 Q And the same day, February 26th, the same day you
17 received this letter, you receive an e-mail that's been marked
18 as DX 1-1087.

19 MS. ROGERS: Let's pull that back up.

20 Q All right. And in this e-mail which you received the
21 same day, the same day that Wayne LaPierre says back off of the
22 Ackerman matters, you receive an offer from John Frazer to come
23 see the invoices that relate to the other matters, right?

24 A I don't know that it was the same day. As we all know,
25 you can send an e-mail out I might not see for days or hours or

LAS

Recross-North-Rogers

1893

1 weeks. That's the date it was sent to me.

2 Q You would agree that the date on this e-mail and the
3 date on the letter we just looked at are the same, right?

4 A Those are the dates.

5 Q Okay. Ms. Connell asked you when you were president if
6 you were ever informed about an outside review of the Brewer
7 invoices. You knew there was an insurance reimbursement process
8 taking place, right?

9 A You're talking about Lockton?

10 MS. CONNELL: Objection, your Honor.

11 Q What did you say?

12 A Refresh my recollection.

13 Q Sure. I'm sorry. So, Ms. Connell asked you a moment
14 ago, she said that I implied that there was an outside review or
15 an audit of the law firm invoices, right? She said Ms. Rogers
16 implied. And she asked you if as president you were ever
17 informed about one. Do you recall that?

18 A Well, I -- I think I said yes to the document that she
19 had on the screen in front of me.

20 Q Right.

21 A But that's not what -- that's not a real audit.

22 Q Right.

23 A That doesn't go through the kind of forensic things
24 that I've been through as the head of a corporation when there
25 were conflicts of any kind. So, it's not the kind of full

LAS

Recross-North-Rogers

1894

1 fledged outside independent audit that I had been asking for for
2 weeks or months at this point.

3 Q And when you said the document on the screen wasn't a
4 real audit, you were talking about the Morgan Lewis analysis of
5 the retention letter, right?

6 A Yes.

7 Q But you knew that, entirely separate from Morgan Lewis,
8 you knew there was a Lockton insurance reimbursement process
9 going on, right?

10 A Oh, yeah.

11 Q Did you ever ask or try to inform yourself as president
12 about what kind of analysis was being done to ensure those fees
13 were reimbursable?

14 A Well, I know that in this enormous stack of documents
15 there is one of my documents that I sent forward as -- pursuing
16 this idea of an outside, independent review that does show the
17 Lockton reimbursements that are made.

18 Q It shows the amount that's reimbursed, right?

19 A Yes.

20 Q But not how that amount is determined?

21 A Exactly.

22 Q Okay. All right. Now, Ms. Connell also said that I
23 implied that there was a forensic review of Ackerman's expenses.
24 Do you recall that questioning?

25 A Yeah.

LAS

1 Q Okay. And she asked you whether as president you ever
2 heard of such a thing, right?

3 A I don't know exactly what she asked me. Referring
4 specifically to this issue?

5 Q Yes.

6 A Morgan Lewis did not do a forensic analysis of an
7 audit, like an outside, independent auditor would do nor to my
8 knowledge was one done on any other issue.

9 (Continue on the next page.)

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LAS

North - by Plaintiff - Recross/Rogers

1896

1 Q So I understand. So we're talking about three
2 different things here: So we're talking about -- we talked
3 about the Morgan Lewis review of the Brewer engagement; that's
4 number one. Number two, I asked you about an insurance-related
5 review of the Brewer bills; that's a second thing. And now I'm
6 asking about a third thing, which is, I'm asking about a
7 forensic review of the Ackerman McQueen expenses.

8 Ms. Connell said that I implied one was conducted and
9 she asked you if you'd ever heard of one being conducted.

10 Do you recall that questioning, just a minute ago?

11 A Yes.

12 Q As president, you knew that the NRA was engaged in an
13 ongoing dispute with Ackerman; right?

14 A Well, I certainly knew it after the NRA sued Ackerman
15 McQueen, yes.

16 Q Did you -- before the NRA sued Ackerman McQueen, did
17 you have an understanding as to whether there were ongoing
18 efforts to obtain a review of Ackerman's documents?

19 A Yes, and I recused myself from all those discussions,
20 even when they were held in the midst of a board meeting; not --
21 not a big public meeting but a board meeting. I would get up
22 and leave the room.

23 Q So, because you were recused, you might not know if
24 there was a forensic audit of those records; right?

25 A I think somebody would have told me, but they -- they

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North - by Plaintiff - Recross/Rogers

1897

1 didn't.

2 Q Okay.

3 MS. ROGERS: No further questions.

4 Thank you.

5 RECROSS-EXAMINATION

6 BY MR. CORRELL:

7 Q Good afternoon, Lieutenant Colonel North. I'm Kent
8 Correll. I represent Wayne LaPierre.

9 A Yes, sir.

10 Q You testified a few moments ago that Wayne LaPierre had
11 a copy of the contract, but then you seemed to say, "Well, let
12 me clarify: He helped draft that agreement."

13 Do you remember that testimony?

14 MS. CONNELL: Objection.

15 Q Did I get that right?

16 A What -- what I ...

17 THE COURT: You can answer.

18 A What I want -- what I want everybody to know is: Wayne
19 LaPierre helped draft the document; he was handed a copy of the
20 document that I eventually -- I signed -- I think it was later
21 that day -- and he had a copy, walking out of that meeting that
22 we had in Dallas.

23 Q So let's talk about how he helped draft that agreement.
24 What did he actually do?

25 A Well, he made it happen. I mean, I -- I was not

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North - by Plaintiff - Recross/Correll

1898

1 looking for a job at Ackerman. Ackerman had offered me a job
2 back in 2016, I --

3 Q Sir, I'm asking you what he actually did with respect
4 to the drafting. Did he sit down at a desk and write out the
5 terms of the agreement?

6 A I -- I don't know exactly what --
7 I made very clear to him --

8 Q Sir, did -- that was a yes or no: Did he sit down at a
9 desk and write out --

10 A I don't know. How I would know? I wasn't at his desk.

11 Q So you didn't see him write anything down; correct?

12 A No. The things that he and I had discussed in the
13 drafting of that were incorporated in that document.

14 Q Sir, let me ask you a couple simple questions:

15 A Sure.

16 Q Have you ever seen Wayne LaPierre use a computer?

17 A No.

18 Q Have you ever seen him sit down and write out any
19 document?

20 A I've seen Wayne LaPierre sit in his office, in the
21 midst of meetings, writing madly on yellow tablets just like
22 that (indicating).

23 Q On yellow tablets?

24 A Yes.

25 Q Did he hand you a yellow sheet with the terms of your

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North - by Plaintiff - Recross/Correll

1899

1 contract on it?

2 A No, but it came back -- from the multiple times that it
3 was submitted and reviewed, various things were changed each
4 time and Wayne LaPierre knew what those things were.

5 Q Sir, you don't know whether he knew what those things
6 were, or not, because you weren't there when they were written
7 down; correct?

8 A No, but --

9 MS. CONNELL: Objection, your Honor.

10 THE COURT: You can answer.

11 A The fact of the matter is, he was there the day that
12 was discussed in Angus McQueen's office in Dallas and agreed to
13 it.

14 Q So you're assuming that he knew what someone else wrote
15 down on a piece of paper; correct?

16 A I -- I certainly read the contract. He read the
17 contract. Everybody in the room read the contract.

18 Q And you didn't give him the contract when they asked
19 for it; correct?

20 A Wayne LaPierre did not walk into my office or call me
21 on the phone or see me anywhere and say, "I need a copy of that
22 damned contract right now."

23 Q That's right. John Frazer did; correct?

24 A No, that's not what John -- John certainly didn't put
25 it that way, because he wouldn't do that. Wayne would do that.

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North - by Plaintiff - Recross/Correll

1900

1 Q Did you hand Wayne LaPierre a copy of that contract?

2 A I, personally, may or may not have done it, but it was
3 done in that meeting in Angus McQueen's office in Dallas, Texas,
4 and everybody in that room had a copy of that contract.

5 Q Who did it? Who handed him the contract?

6 A I don't -- I -- all I know --

7 Q You don't recall; is that it? Is that the fair answer?

8 A That -- that's fair.

9 Q You don't recall.

10 MS. CONNELL: Objection, your Honor.

11 He should be allowed to answer.

12 THE COURT: Did you finish your answer?

13 Q Is that your answer? You don't recall?

14 A I -- the actual person who made the copies? No, I
15 don't know.

16 THE COURT: Okay.

17 MR. CORRELL: Thank you, your Honor.

18 MR. FLEMING: Thank your Honor. One question.

19 THE COURT: Did you say, "one"?

20 MR. FLEMING: Maybe a couple.

21 THE COURT: I was going to hold you to it if you
22 were as specific as "one."

23 RECROSS-EXAMINATION

24 BY MR. FLEMING:

25 Q Lieutenant Colonel North, you were the president of the

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North - by Plaintiff - Recross/Fleming

1901

1 NRA; right?

2 A Yes.

3 Q The president of the NRA had the power, did it not,
4 under the bylaws to convene a meeting of the executive committee
5 on reasonable notice; isn't that true?

6 A Yes.

7 Q And "reasonable notice" is interpreted as 48 hours;
8 isn't that right?

9 A I'll take your word for it.

10 MR. FLEMING: Nothing further.

11 THE COURT: Anything else?

12 MS. CONNELL: No, your Honor.

13 THE COURT: All right.

14 Sir, you're free to go.

15 THE WITNESS: Thank you, sir.

16 THE COURT: Thank you.

17 (Witness excused.)

18 THE WITNESS: Thank you.

19 THE COURT: So, have we had Mr. Cotton cooling his
20 heels in some soundproof room somewhere?

21 MS. ROGERS: Yes. He's nearby.

22 THE COURT: Okay. Can we ... Wait. Should we --

23 MS. CONNELL: You want to take the break now and
24 then resume with Mr. Cotton?

25 THE COURT: Yeah. This is around when we would

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Proceedings

1902

1 normally do it. Let's try to be up and running again as
2 close -- before 3:30, if we can.

3 MS. CONNELL: Thank you, your Honor.

4 COURT OFFICER: All rise. Jury exiting.

5 (The jury left the courtroom.)

6 (Recess.)

7 THE COURT: We're going to bring the jury down now.

8 Thanks.

9 (Pause.)

10 THE COURT: Oh. Is Mr. Cotton out there?

11 COURT OFFICER: On the way.

12 MS. ROGERS: The court officer has him. I think
13 he's en route. They have him sequestered in some location.

14 MR. SHIFFMAN: Your Honor, do you have the binder
15 for Mr. Cotton or --

16 THE COURT: I do.

17 MR. SHIFFMAN: Thank you.

18 (Pause.)

19 (The previously sworn witness re-entered the
20 courtroom.)

21 THE COURT: Welcome back, sir.

22 THE WITNESS: Good afternoon, sir.

23 (The witness resumed the stand.)

24 THE COURT: All right, let's get the jury.

25 Thank you.

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1903

1 COURT OFFICER: All rise. Jury entering.

2 (The jury entered the courtroom.)

3 THE COURT: All right. Have a seat, everyone.

4 Thank you.

5 All right. Mr. Cotton, you -- can you acknowledge

6 that you're still under oath?

7 THE WITNESS: Yes, sir.

8 THE COURT: Okay.

9 MR. SHIFFMAN: May I proceed, your Honor?

10 THE COURT: You may.

11 C H A R L E S C O T T O N, called as a witness by the
12 plaintiff, having been previously duly sworn/affirmed, was
13 examined and testified further as follows:

14 DIRECT EXAMINATION CONTINUED

15 BY MR. SHIFFMAN:

16 Q Good afternoon, Mr. Cotton.

17 A Good afternoon.

18 Q Welcome back.

19 MR. SHIFFMAN: Jesse, can you pull up tab 24,
20 -2983; PX 2983?

21 (Image displayed.)

22 Q And, Mr. Cotton, in your binder, it's tab 24. Okay?

23 A You say "24"?

24 Q 24, yes. And we were on pages 4 to 5 of that exhibit.

25

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Cotton - by Plaintiff - Direct/Shiffman

1904

1 (Pause.)

2 A You said, the Roman numeral four?

3 Q We're at tab 24. It's actually pages 4 to 5, which
4 is -- there's a --

5 THE COURT: The page numbers are at the bottom.

6 Q The bottom.

7 A Got it. Thank you.

8 Q Okay. Mr. Cotton, before we broke yesterday, we were
9 discussing a transaction -- a conflict transaction -- that
10 involved HomeTelos. Do you recall that?

11 A Yes, sir, I do.

12 Q Okay. And the reason that that transaction had not
13 been reviewed before was because Mr. Phillips failed to disclose
14 that to the Audit Committee; correct?

15 A Well, we -- we didn't have it, so I presume that's the
16 case.

17 Q Right. And you did believe, though, that it should
18 have been disclosed before the transaction was entered into;
19 right?

20 A Yes, sir. Our policy requires you do it beforehand.

21 Q Right. And the Audit Committee did retroactively
22 approve the HomeTelos transaction --

23 A Yes, sir.

24 Q -- correct?

25 A Yes, sir.

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Cotton - by Plaintiff - Direct/Shiffman

1905

1 Q You don't recall, though, do you, whether or not the
2 Audit Committee reviewed the actual contract between the NRA and
3 HomeTelos when it ratified the transaction in September 2018?
4 Do you?

5 A I don't believe we did. I talked to Tony Hayes, our
6 head of IS, and I don't think he showed it to me, either.

7 Q Right. And that's not the --

8 The fact that the Audit Committee did or did not review
9 the contract's not reflected in the minutes or the report that
10 you have in front of you, right?

11 I can rephrase that: There's no reference to the
12 contract being reviewed in the report of the Audit Committee
13 that you have in front of you, right?

14 A You're correct, yes, sir.

15 Q Okay. And at this meeting, the Audit Committee also
16 addressed another conflict-of-interest situation with
17 Mr. Phillips; isn't that correct?

18 A Yes, sir.

19 Q Okay. And that involved the trip that Mr. Phillips had
20 taken on Mr. McKenzie's yacht? Do you recall that?

21 A Yes, sir. That's correct.

22 Q Okay. And that was a yacht -- that was a
23 conflict-of-interest transaction, or situation, because the
24 yacht was owned by Mr. McKenzie and his entities, which
25 controlled a large vendor for the NRA; right?

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Cotton - by Plaintiff - Direct/Shiffman

1906

1 A That's correct.

2 Q Okay. And Mr. Phillips failed to seek advance approval
3 of taking that trip, right?

4 A I presume so, because we didn't have it prior to this
5 date.

6 Q Right. And the Audit Committee also approved that
7 situation, as well; right?

8 A Yes, sir, we did.

9 Q Okay. And it did so even though -- it approved the
10 transactions with Mr. Phillips -- even though he had failed to
11 disclose both of them in advance; right?

12 A Yes, sir.

13 Q Okay. Were there any consequences to Mr. Phillips for
14 failing to disclose those transactions in advance?

15 A Other than being chastised about it and saying, "Don't
16 let it happen again," no, sir.

17 Q Okay. So was he chastised?

18 A Well, if you look at the -- look at the final paragraph
19 in that -- in that report that you're looking at, that -- that
20 went to the entire board and, if I remember correctly, I think I
21 even read that paragraph in that board meeting.

22 Q Okay. So, then, let's take a look at that paragraph.
23 On page 7? Is that what you're referring to?

24 A Yes, sir.

25 Q Okay.

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Cotton - by Plaintiff - Direct/Shiffman

1907

1 (Image scrolled.)

2 Q And that's, I think, where --

3 You're talking about the first sentence or so of that
4 last paragraph?

5 A I'm talking about -- I'm talking about the
6 next-to-the-last paragraph, the entire paragraph.

7 Q Yeah. I apologize. You had it right. I was -- it's
8 the large paragraph.

9 (Image modified.)

10 MR. SHIFFMAN: Oh, the one below that, to
11 "Resolved," Jesse.

12 (Image modified.)

13 Q There it says: "The Audit Committee noted several
14 instances in which transactions that posed potential conflicts
15 of interest, and thus should have been disclosed and approved in
16 advance, were disclosed after the fact." And then it lists a
17 few of the transactions that were disclosed after the fact,
18 rather than prospectively, and those include ones with
19 Mr. North, Ackerman McQueen, Ms. Hammer, and Mr. Phillips, as
20 well as Josh Powell; right?

21 A Yes, sir.

22 Q Okay. And you were not happy that all these
23 transactions had not been presented to the Audit Committee in
24 advance, right?

25 A That's -- that's putting it mildly. The entire

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Cotton - by Plaintiff - Direct/Shiffman

1908

1 committee was upset that we were having to do them -- having to
2 evaluate them -- after the fact.

3 Q Okay, thank you.

4 Do you recall that Mr. Phillips was going to retire in
5 2018?

6 A I mean, he did.

7 Q Um-hmm.

8 A I don't know that I had advance notice. I just --
9 or -- or when I found out. I guess, that would be a more
10 accurate way to say it.

11 Q Okay, fair enough.

12 Let's turn to tab 23, please, PX 2493.

13 MR. SHIFFMAN: This, I believe, has already been
14 admitted.

15 (Image displayed.)

16 Q Mr. Cotton, do you recognize this exhibit?

17 A Yes, sir, I recognize it.

18 Q Okay. And this is a post-employment consulting
19 agreement between the NRA and Mr. Phillips, right?

20 A That's correct.

21 Q Right. And pursuant to this agreement, Mr. Phillips
22 was going to be paid \$30,000 a month for his post-employment
23 consulting services?

24 A That's what he was going to be paid, yes, sir.

25 Q All right. And this contract, though, had never been

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Cotton - by Plaintiff - Direct/Shiffman

1909

1 presented to the Audit Committee before it had been signed; is
2 that correct?

3 A Correct. It was after -- after the fact, and we
4 rejected it.

5 Q Right. And you actually, I think, testified that if it
6 had been presented to the Audit Committee in advance, you would
7 not have approved it; right?

8 A That's correct.

9 Q Right. And --

10 A That's --

11 Q I'm sorry?

12 A I'm sorry.

13 Q No, go ahead. I didn't mean to cut you off.

14 A No, I ...

15 Q Okay. And the reason you didn't think you would have
16 approved it was because it called for a flat fee without any
17 clear deliverables; isn't that right?

18 A Because it called for a flat fee, yes, sir. That
19 was -- that was something we didn't think was appropriate.

20 Q Okay. Let's return to the September 28th meeting,
21 which is -- September 2018 meeting. Excuse me. At that
22 meeting, you also -- the Audit Committee -- also addressed a
23 number of other related-party transactions; right? We just
24 referred to some of those. Do you recall that? With
25 Mr. Powell, Ms. Hammer?

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Cotton - by Plaintiff - Direct/Shiffman

1910

1 A Are we back --

2 Q Back to 24 again, yes.

3 A Back to 24? Yes, sir.

4 (Image displayed.)

5 Q Do you recall that the Audit Committee approved two
6 transactions retroactively with respect to Mr. Powell; two
7 conflict-of-interest transactions with respect to him?

8 A Yes, sir. One of -- yes, sir. There were two.

9 Q Okay. And one involved McKenna?

10 A Yes, sir.

11 Q Okay. And the other one involved Mr. Powell's father;
12 his photography company?

13 A That's correct.

14 Q Okay. And both of those had been presented to the
15 Audit Committee for approval retroactively, right?

16 A Yes, sir.

17 Q And for both of those, again, the Audit Committee did
18 not review any contracts in connection with its review; right?

19 A That's correct.

20 Q And with respect to the McKenna contract -- I'm sorry.
21 With respect to the McKenna arrangement, did the Audit
22 Committee inquire into, you know, how that arrangement came to
23 be?

24 A Yes, sir, we did.

25 Q Okay. Did it inquire how Mr. Powell's wife came to

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Cotton - by Plaintiff - Direct/Shiffman

1911

1 work for McKenna?

2 A Yes, sir, we did.

3 Q And when did it do so?

4 A During this Audit Committee meeting.

5 Q Okay. Did it -- did the Audit Committee -- obtain any
6 information about whether McKenna was passing on Ms. Powell --
7 Mr. Powell's wife's salary and the cost of that salary to the
8 NRA?

9 A It was our understanding that they were not. She
10 worked in a different area.

11 Q Do you recall testifying that you didn't ask about that
12 information, when you were deposed in this matter?

13 A That could be. It may be something I've learned after
14 my deposition. I'm not sure.

15 Q Okay. So, if you learned it after your deposition,
16 that would also mean -- have meant -- that you learned it after
17 the September 2018 meeting. Wouldn't that be true?

18 A That would be true, yes, sir.

19 Q Okay. And at this meeting, the Audit Committee also
20 considered a retroactive transaction with respect to Ms. Hammer;
21 isn't that right?

22 You can take a look there (indicating) -- that's on
23 page 3 of 7 in the agreement.

24 (Image scrolled, then modified.)

25 A Yes, sir, that's correct.

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1912

1 Q Okay. And the contract -- excuse me.

2 Excuse me.

3 The contract with Ms. Hammer was a consulting contract;
4 isn't that right?

5 A Yes, sir.

6 Q Okay. And, in particular, the fees that Ms. Hammer was
7 receiving under her consulting contract were being increased by
8 more than \$50,000 a year; right?

9 A Yes, sir.

10 Q Okay. I don't want to make you do too much math, but
11 it went up from 168 to 220; right?

12 A Yes, sir.

13 Q Okay. And that transaction -- that increase -- had not
14 been brought to the Audit Committee in advance; right?

15 A That's corr -- excuse me. That's correct.

16 Q And the Audit Committee, at this meeting when it
17 approved that contract, did not ask to see the actual contract,
18 did it?

19 A That's correct.

20 Q Okay. And there's no reference in the Audit Committee
21 report to what information the Audit Committee reviewed when it
22 approved this contract, is there?

23 A I'm sorry; would you ask that again?

24 Q There's no information in this report about the
25 specific materials that the Audit Committee reviewed when it

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Cotton - by Plaintiff - Direct/Shiffman

1913

1 approved Ms. Hammer's contract, is there?

2 A Make sure I'm correct here: You're asking for the
3 specific materials, not the information; is that correct?

4 Q The specific materials that the Audit Committee
5 reviewed.

6 A You're correct.

7 Q Okay. Do you know how long the consulting contract was
8 for?

9 A If I remember correctly, I think it was the -- the --
10 the specified term was ten years, but it had a 30-day
11 cancellation period, so ...

12 Q Okay. Do you know how old Ms. Hammer was at the time
13 of this contract?

14 A No, sir. In the late seventies; eighty, maybe?

15 Q Yeah. And there's no indication in the Audit Committee
16 report about the length of the contract, is there?

17 A No, sir.

18 Q Okay. When the Audit Committee considered the
19 consulting fee increase to \$220,000, did it consider how much
20 time Ms. Hammer would be working for -- to earn that fee?

21 A Well, the specific hours, no, sir.

22 Q Did you have any --

23 Did you have any view as to whether it would be a
24 full-time consulting job or whether it would just be for
25 specific tasks? Did the Audit Committee consider anything like

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Cotton - by Plaintiff - Direct/Shiffman

1914

1 that when it approved this increase?

2 A I'm trying -- trying to remember that meeting.

3 I had information but I can't tell you, at that
4 meeting, so, again --

5 Q There's nothing -- I'm sorry.

6 And there was no -- there's no indication in the report
7 about the amount -- what would be the deliverables that would be
8 required of Ms. Hammer for that fee; right?

9 A You mean, beyond being available as a consultant?

10 Q Right. Well, it --

11 Beyond being available as a consultant, yes.

12 A That's correct.

13 Q And was there any requirement about how much [sic]
14 hours or what specific deliverables she would need to do as a
15 consultant?

16 A Not set forth in -- in this (indicating) report, no,
17 sir.

18 Q Okay. And so, it was just a flat-fee agreement?

19 A Yes, sir.

20 Q Okay. Were you aware that Ms. Hammer also had another
21 full-time job, in addition to this consulting arrangement?

22 A She had a -- I'm sorry?

23 Q Were you aware that Ms. Hammer had a full-time job for
24 which she was paid in addition to the consulting arrangement
25 that's covered by the -- that's referred to in Exhibit 2983?

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1915

1 A Well, I'm -- we knew that she runs the Unified
2 Sportsmen of Florida --

3 Q Um-hmm.

4 A -- the state affiliate of the NRA. I -- I -- if that's
5 the one you're talking about, then, yes, sir. If there's
6 something else, I -- I don't know.

7 Q Then, sir, did the Audit Committee consider how much
8 time she would devote to that work in connection with approving
9 the consulting fee here?

10 A As a comparison between the two? No, sir.

11 Q Do you know how much she was paid by the Unified
12 Sportsmen of Florida?

13 A I do not.

14 Q Okay. Would that have been relevant to your analysis
15 of approving her consulting fee?

16 A She was -- whether she was paid by the -- we call it
17 the "USF." Whatever she was paid by the USF, I don't see why
18 that would be relevant, as I sit here now. They're two --
19 they're two different functions.

20 Q Well, this exhibit also refers to the contract between
21 Mr. North and Ackerman McQueen; right?

22 Do you see that on pages -- on page 2?

23 (Image scrolled.)

24 A Yes, sir.

25 Q Okay. And Mr. North and Ackerman McQueen had entered

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Cotton - by Plaintiff - Direct/Shiffman

1916

1 into a contract in May of 2018; is that right?

2 A Yes, sir.

3 Q Okay. And the Audit Committee approved Mr. North's
4 participation in that contract at this meeting; isn't that
5 correct?

6 A We did, provisionally, yes, sir.

7 Q When you say "provisionally," what do you mean by that?

8 A Well, it's stated in the approval itself.

9 Q Okay. And there's two conditions there; correct?

10 Two --

11 (Simultaneous speaking.)

12 Q I'm sorry. I didn't mean to speak over you.

13 A I'm sorry. I'm as guilty as you are. I'm sorry.

14 Q There are two provisions, underneath the word --
15 underneath the paragraph -- that says "Resolved," that has the
16 conditions upon which the approval was based; isn't that
17 correct?

18 A Those are the two written provisions, yes, sir.

19 Q Okay. And those two written provisions reflect
20 Mr. North not participating in deliberations or votes regarding
21 Ackerman McQueen, right?

22 A Yes, sir.

23 Q One of them.

24 And the other was that if there are material changes in
25 the contract, it -- they needed to be disclosed to the Audit

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Cotton - by Plaintiff - Direct/Shiffman

1917

1 Committee; correct?

2 A Yes, sir.

3 Q Okay. And the Audit Committee did not actually review
4 Mr. North's contract -- the actual document -- when it approved
5 this relationship at the September 2018 meeting; correct?

6 A We didn't review the actual contract because he refused
7 to give it to us.

8 Q That wasn't my question.

9 You didn't review the contract, did you?

10 A That's correct.

11 Q Right. And you didn't mention anything in this
12 (indicating) report about the approval being conditioned on the
13 review of the contract, did you?

14 A That's the reason I said earlier, the only written
15 provisions are in the document.

16 Q Okay. So the written --

17 The Audit Committee, by its charter and by the rules
18 of the policy manual that we looked at yesterday, requires the
19 Audit Committee to write and document anything that was
20 important to its decision in its report; isn't that correct?

21 A Looking back on it now, I wish we had put that in
22 there; yes, sir.

23 Q That's not what I asked you, sir.

24 I said, it's required to document anything that's
25 important to its consideration; correct?

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1918

1 A That should have been documented, yes, sir.

2 Q It was not, though.

3 A Correct.

4 Q Okay.

5 Let's go to tab 9, please, PX 592.

6 MR. SHIFFMAN: I don't believe there are any
7 objections to this document.

8 MS. ROGERS: No objection.

9 MR. CORRELL: No objection.

10 MR. FARBER: May I have one moment just to look at
11 it?

12 MR. SHIFFMAN: Sure.

13 (Pause.)

14 MR. FLEMING: No objection from me.

15 MR. FARBER: No objection.

16 THE COURT: PX 592 is admitted.

17 MR. SHIFFMAN: Thank you, your Honor.

18 (Image displayed.)

19 Q This document refers to an April 29th, 2019 report of
20 the Audit Committee; right?

21 A Yes, sir.

22 Q And one of the related-party --

23 Do you recall that at this -- this refers to a couple
24 of different meetings. The first one is from February 6th,
25 2019? Do you see that on the very top of the document?

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1919

1 A That's correct.

2 Q Okay. And at that February 6th, 2019 meeting, the
3 Audit Committee approved a related-party transaction with David
4 Butz; isn't that right?

5 A That's correct.

6 Q Okay. And prior to that April 2019 meeting, the NRA
7 had been paying Mr. Butz a flat fee of \$150,000 a year; isn't
8 that right?

9 A That's -- prior to that meeting, yes, sir. I don't
10 know -- I don't know at what point it changed, but, yes, sir,
11 prior to that meeting.

12 Q Okay. And the agreement to pay Mr. Butz that flat fee
13 of \$150,000 a year had not been approved by the Audit Committee
14 in advance, right?

15 A I don't think that -- I don't think that arrangement
16 had been brought to us, but as I sit here now, I can't -- I
17 can't say "yes" under oath. I just don't remember.

18 MR. SHIFFMAN: Let's play the June 17th, 2022
19 transcript, please, at page 406, line 5, to line 16, please,
20 Jesse.

21 (Video played.)

22 Q And, Mr. Cotton, with respect to the contract with
23 Mr. Butz, you didn't know how many hours of his time he was
24 supposed to work for the NRA in order to earn that \$150,000 a
25 year, did you?

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1920

1 A There was no specific number of hours. It was a --
2 what -- several -- whenever events would come up, he would
3 appear.

4 Q And there was no specific number of events that he was
5 required to work in order for him to earn that fee, either, was
6 there?

7 A That's correct.

8 Q Okay. And then, in April 2019, the Audit Committee did
9 approve an arrangement for a fee with Mr. Butz; isn't that
10 right?

11 A Yes, sir.

12 Q Okay. But it didn't approve a \$150,000-a-year flat
13 fee. It approved a \$7,000-per-event fee; isn't that correct?

14 A That's correct.

15 Q Please turn to page 6 of this exhibit; again, the --
16 we're using the exhibit pages at the very bottom.

17 (Image scrolled.)

18 A Okay.

19 Q And on page 6, you'll see, if you look towards the top,
20 that it's a report from a different meeting that's included in
21 here, and that's from the April 28th, 2019 meeting?

22 At the very top on the screen there (indicating), you
23 can see that.

24 A Yes.

25 Q Do you recall, at that meeting, that the Audit

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Cotton - by Plaintiff - Direct/Shiffman

1921

1 Committee again considered a transaction with respect to Marion
2 Hammer? And this is on page 9 of the exhibit.

3 (Pause.)

4 A Yes, sir.

5 Q Okay. So you see, on page 9, that the report reflects
6 the committee's ratification of a series of annual grants to the
7 United [sic] Sportsmen of Florida?

8 A Yes, sir.

9 Q Okay. United Sportsmen of Florida is also referred to
10 as "USF" in this exhibit; is that correct?

11 A That's correct.

12 Q And so, here, the committee was both ratifying past
13 grants as well as approving future grants; right?

14 A Yes, sir.

15 Q Okay. And so, the NRA had begun making grants, at
16 least according to this exhibit, in 2000 to United Sportsmen of
17 Florida; right?

18 A That's correct.

19 Q Okay. And the grants were \$120,000 a year in 2000;
20 they rose, over the years, to 216,000 in 2010 and then stayed
21 steady at that rate; isn't that correct?

22 A Steady until 2019, where it dropped to 36,000.

23 Q Well, actually, in 2016, it -- if you look at the next
24 paragraph, it's still an annual grant.

25 But I think, if you -- you can correct me if this is

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1922

1 not what it states, but I think that 39,000 refers to the fact
2 that 30,000 had already been paid in 2019, at the time of this
3 meeting, but that the grant, going forward, was going to be
4 216,000; or the annual grant was going to be 216,000.

5 Does that refresh your recollection, sir?

6 MR. CORRELL: Objection, your Honor.

7 The counsel is testifying.

8 THE COURT: True.

9 Why don't you just ask him if he has a ...

10 MR. SHIFFMAN: Well, I'm just trying to refresh his
11 recollection by the document. He said that --

12 THE COURT: Well, you can refresh it with the
13 document but not the explanation.

14 MR. SHIFFMAN: Okay.

15 Q Well, in the next paragraph, on -- which has now been
16 highlighted, the first line under the where -- I'm sorry -- next
17 to the "whereas" clause, says: "NRA provides USF an annual
18 grant of 216,000."

19 Do you see that?

20 A I see that.

21 Q And does that refresh your recollection that the grant
22 for 2019 was going to be 216,000?

23 A No, sir, it doesn't, because if it was going to be 216,
24 I don't know why we would have put "36,000" for 2019.

25 Q Okay. Do you see, in the very last paragraph there, it

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Direct/Shiffman

1923

1 says: "Resolved that the support extended to USF is fair,
2 reasonable and in the best interests of the NRA, that it be
3 approved and ratified accordingly, and that the future support
4 at substantially the same levels is also approved, subject to
5 any material change that would compel this Committee to
6 reevaluate such a report?"

7 Does that refresh your recollection that the grant,
8 going forward, was going to be \$216,000?

9 A It refreshes my recollection that we would approve
10 future grants in that same range, but, again, all I can do is
11 look back to the --

12 Q Okay.

13 A -- document that said "36,000."

14 Q And at this meeting, the Audit Committee did ratify
15 both the past grants and the future grants.

16 A Yes, sir.

17 Q Okay. But yet, you didn't -- you didn't know how much
18 Ms. Hammer was paid by USF, did you?

19 A No, sir.

20 Q Did you know whether or not the NRA paid all or
21 substantially all of the revenue for USF; United Sports --
22 Unified Sportsmen of Florida?

23 A I'm sorry?

24 Q Did you know whether or not the NRA paid all or
25 substantially all of the -- of the revenue for Unified Sportsmen

ALAN F. BOWIN, CSR, RMR, CRR

1924

1 of Florida at the time that the Audit Committee approved this
2 grant?

3 A I don't know what revenue that -- that member
4 organization generated; no, sir.

5 (Continued on next page.)
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ALAN F. BOWIN, CSR, RMR, CRR

Direct-Cotton-Shiffman

1925

1 Q The Unified Sportsmen of Florida is a not-for-profit
2 organization, right?

3 A I believe that's correct.

4 Q If you look at the very last line of the first
5 paragraph there it refers to that fact.

6 A Yes, sir, you're correct.

7 Q Okay. And did the audit committee look at Unified
8 Sportsmen of Florida's 990 when it considered the approval of
9 these grants?

10 A No, sir.

11 Q Okay. You can put that down, sir. Mr. Cotton, the
12 audit committee held a meeting on July 30th or so of 2018, where
13 several members of the NRA's financial services division came
14 forward and were invited to present their concerns about some
15 issues that arose in the management and with respect to internal
16 controls at the NRA, do you recall that?

17 A Yes, sir.

18 Q Okay. And you considered the members of the financial
19 services department that came forward then to be whistleblowers,
20 right?

21 A We didn't talk -- we didn't -- we didn't label them
22 that way at that time. They didn't label themselves that way
23 either. They were providing information that would, if it
24 was -- if you look at our whistleblower policy, that would
25 constitute that type of information, questioning. We just

LAS

Direct-Cotton-Shiffman

1926

1 didn't use that term.

2 Q Today do you consider them to be whistleblowers that
3 came forward with their complaints?

4 A Yes, sir.

5 Q It was the audit committee's responsibility to review
6 the whistleblowers' complaints, correct?

7 A Yes, sir.

8 Q Okay. And it did so in accordance with its
9 whistleblower policy which it had and it was also required to
10 have, right?

11 A Well, we considered their complaints, yes, sir.

12 Q Okay. And you knew in advance of the July 30th meeting
13 that the whistleblowers would be making their presentation at
14 that meeting, right?

15 A Yes, sir. I had already talked about the material that
16 they were going to present.

17 Q Okay. And you are the chair of the audit committee at
18 that time?

19 A I'm sorry?

20 Q You were the chair of the audit committee at that time?

21 A Yes, sir.

22 Q Okay. But you weren't present at the meeting when the
23 whistleblowers made their presentation, were you?

24 A When they made that presentation, correct.

25 Q Ms. Meadows was also on the audit committee then,

LAS

Direct-Cotton-Shiffman

1927

1 wasn't she?

2 A Yes, sir.

3 Q What was her position at the NRA at that time?

4 A That's embarrassing. 2018 she would have been second
5 VP.

6 Q Okay. One of the officer positions at the NRA?

7 A Yes, sir.

8 Q Okay. She also was not at the meeting at the time the
9 whistleblowers made their presentation, isn't that correct?

10 A Yes, sir. We both had to leave to catch flights.

11 Q Okay. You didn't change the agenda for the meeting in
12 order to enable the whistleblowers to make their presentation
13 when you and Ms. Meadows were there, did you?

14 A We didn't expect the meeting to go as near as long as
15 it did. We didn't see a need to change it. We never
16 anticipated it was going to run as long as it did.

17 Q Okay. When you knew that you wouldn't be there, you
18 didn't reschedule the whistleblowers' presentation, did you?

19 A Didn't reschedule it, no, sir. I'm sure they would
20 have been offended had we done so.

21 Q Did you later learn that the whistleblowers presented a
22 list of their top concerns to the audit committee after you left
23 the meeting?

24 A Yes, sir.

25 Q Okay. And you later received a copy of that document,

LAS

Direct-Cotton-Shiffman

1928

1 correct?

2 A Yes, sir.

3 Q I'm going to just show you that document. This is one
4 that was at tab 12. I want to use the admitted version of it,
5 which is PX 2605.

6 MR. SHIFFMAN: Your Honor, if I can approach, I can
7 give you a copy, although the only difference is the cover
8 page.

9 THE COURT: Yeah. That's fine.

10 MR. SHIFFMAN: Okay.

11 Q And, Mr. Cotton, I put a copy of the admitted version
12 in the front pocket of your binder. There you go. So if you
13 take a look at this document, it's actually the second and third
14 pages which are the top concerns memo. Do you recall that being
15 the document that you were given?

16 A (Examining). Yes, sir. This is it.

17 Q Okay. And it's true that many of the related-party
18 transactions that we just discussed that were considered at the
19 September 2018 meeting were raised by the whistleblowers in July
20 of 2018, isn't that right?

21 A I'm trying to remember what we just went over. I don't
22 recall those specifically. They're not in this document, you
23 know, as we discussed them. Perhaps by category.

24 Q Well, you see the number -- the very first category is
25 financial conflicts of interest at the senior management and

LAS

Direct-Cotton-Shiffman

1929

1 board of directors level?

2 A Well that's -- that's the -- that's the label for the
3 subparts A through D.

4 Q Right. So that was one -- one concern that was raised
5 at that meeting -- at that meeting and in this memo, correct?

6 A The specific items A through D were raised, yes, sir.

7 Q If you look at A, we see, "Woody Phillips, payments
8 made to significant other"?

9 A Yes, sir.

10 Q And do you understand that to be a reference to the
11 HomeTelos transaction?

12 A Yes, sir.

13 Q Okay. And "Josh Powell, wife recently hired at top
14 vendor. Father paid by a top vendor with fees." Do you see
15 that?

16 A Yes.

17 Q That's a reference to Josh Powell's wife's arrangement
18 with McKenna that we just discussed and his father's photography
19 arrangement?

20 A Yes.

21 Q So does that refresh your recollection that a number of
22 the issues that were raised in this memo were ones that were
23 also discussed at the September 2018 meeting?

24 A I knew that initially. All I was saying was they're
25 not listed there by name the way we discussed it.

LAS

Direct-Cotton-Shiffman

1930

1 Q Okay. Fair enough, sir. Do you recall that -- Strike
2 that. You considered the issues that the whistleblowers raised
3 in this memo to be important concerns, right?

4 A Yes, sir.

5 Q All right. And -- But you never provided a copy of
6 this document to the NRA's auditors, did you?

7 A The document itself?

8 Q Yes, the document.

9 A I don't recall doing that. No, sir.

10 Q Okay. And you were not aware of anyone else on the
11 audit committee providing a copy of that document to the NRA's
12 auditors either, right?

13 A You're talking about the document versus the
14 information?

15 Q I'm talking about the document, the list of concerns.

16 A To my knowledge, no, sir.

17 Q Okay. And the audit committee did not investigate the
18 whistleblowers' concerns itself, did it?

19 A You mean the members of the audit committee?

20 Q Yes.

21 A The members of the audit committee I can't say
22 investigated. I talked to a lot of people about each one of
23 these.

24 Q Okay.

25 MR. SHIFFMAN: Can I just have a moment. Pass the

LAS

Cross-Cotton-Rogers

1931

1 witness, your Honor.

2 THE COURT: Okay. Thank you, Mr. Cotton.

3 THE WITNESS: Thank you, sir.

4 MR. SHIFFMAN: I appreciate it.

5 THE COURT: Bear in mind those mikes stay on when
6 you are over there.

7 MR. SHIFFMAN: Thank you, your Honor.

8 THE COURT: And it's still on by the way.

9 CROSS EXAMINATION

10 BY MS. ROGERS:

11 Q Good afternoon, Mr. Cotton. Is mine on? I think it
12 is. Okay. Did the NRA change its approach to flat fee
13 contracts sometime during 2018?

14 A We did.

15 Q Can you describe for the jury what that change was and
16 why you made it?

17 A We had some -- Can I set this aside (gesturing)?

18 Q Yes, please.

19 A We had -- we had some of the concerns that counsel and
20 I talked about earlier. We wanted something more definitive so
21 we could have a better handle on frankly what we were getting
22 for our money.

23 Q You mentioned earlier that there were certain written
24 provisions or written conditions on which the audit committee
25 approved Colonel North's Ackerman relationship. Do you recall

LAS

Cross-Cotton-Rogers

1932

1 that testimony?

2 A Yes, ma'am, I do.

3 Q Were there unwritten conditions?

4 A Yes, ma'am. I've spoken to Colonel North and told him
5 I said, Look, we've got to have a copy of that contract. We had
6 relied upon information that was provided by then board counsel
7 Steve Hart as to the terms of the contract. I said, We've got
8 to see the contract.

9 Q Why wouldn't you write down something like that? Why
10 are we hearing that there are these documents considered and
11 information considered that weren't written up in detail in the
12 audit committee report?

13 A I guess the most candid answer I could give you is
14 frankly we trusted the lawyer that we hired. We trusted Colonel
15 North. And frankly I didn't anticipate sitting in this witness
16 chair. If I had, if we had known any of the problems that
17 subsequently came about, we would have documented everything.

18 Q I'm going to ask you not to testify about any advice
19 any lawyer gave you. I am going to ask which lawyer you're
20 referring to.

21 A Steve Hart.

22 Q What do you think of Mr. Hart sitting here today?

23 A He did not have the best interests of his client at
24 heart. No pun intended.

25 Q We learned that the audit committee ratified a couple

LAS

Cross-Cotton-Rogers

1933

1 of contracts without seeing copies of them, like the HT
2 Solutions contract, right?

3 A I recall that, yes.

4 Q Why treat the North contract differently?

5 A I'm sorry. Say it again.

6 Q Why would the NRA treat the HT Solutions contract
7 differently from the Oliver North, Ackerman contract when it
8 comes to seeing a copy of a condition of approving it?

9 A There was -- with the -- with the -- You're talking
10 about the Ollie North contract with Ackerman?

11 Q Right. Why would you want to see a copy of one and not
12 put an emphasis on seeing a copy of the other?

13 A There was a concern, number one, we needed to know how
14 much money we were talking about. There was also a concern, we
15 wanted to make sure that he was in fact a 1099 subcontractor
16 rather than an employee because of the potential divided loyalty
17 that would have -- frankly would have violated New York law as
18 well as our -- our policies.

19 Q Can you describe the NRA's approach to giving grants to
20 state level gun lobbying organizations?

21 A Yes, ma'am. Our state affiliates, and they are not --
22 they are not subsidiaries of the NRA, they are standalone
23 organizations, they are a major element in the NRA getting its
24 training programs out. People tend to think of the NRA as just
25 legislation, elections and litigation. We have I think it's a

LAS

Cross-Cotton-Rogers

1934

1 170 programs that have nothing to do with any of that. Our
2 state affiliates are important in getting that to the members in
3 their respective states. So, we look to see how active they
4 are. We look to see what is the situation in the state
5 legislatures there, because we expect them to -- to help promote
6 our -- our legislative agendas as well.

7 Q Are most of the state level -- Strike that. Do most of
8 the state level affiliates that receive grants employ any of the
9 directors of the NRA?

10 A Most of them do not.

11 Q You mentioned that the NRA changed its approach to flat
12 fee contracts and shifted to an hourly or a per event or per
13 work basis. But we just saw evidence from the Government that
14 the audit committee did continue to approve one flat fee
15 contract to Marion Hammer. Do you recall that?

16 A Yes, ma'am.

17 Q Why is that contract different?

18 A Marion Hammer is -- is unique to say the least. What
19 she accomplished in terms of promoting the NRA legislative
20 agenda in Florida was kind of a beacon to the other states.
21 They -- If we had something we wanted to get going, like conceal
22 carry was -- was -- Florida was the first state to do it in
23 1987. Marion -- Marion -- Marion had no peer. She had no
24 equal. She was a phenomenal lobbyist. That's the reason. She
25 garnered that kind of respect in the Second Amendment community

LAS

Cross-Cotton-Rogers

1935

1 and within the NRA.

2 Q You testified earlier that you don't remember
3 forwarding a copy of the whistleblower concerns list to the
4 NRA's outside auditors. Do you recall that?

5 A Yes, ma'am.

6 Q Can you describe the communications you did have with
7 the auditors regarding the whistleblower issues?

8 A Part of the audit planning process is typically the
9 partner in charge, but it could be the audit manager, someone
10 with that group, typically the partner as I said, is going to
11 contact the chair of the audit committee and the vice chair of
12 the audit committee and that's -- we talk about things. We talk
13 about concerns that may be coming up. So, it's my
14 information -- it's my belief, my understanding I should say
15 that Vice Chairman Coy talked with the auditors. I've talked --

16 MR. SHIFFMAN: Objection, your Honor. Hearsay.

17 MS. ROGERS: I'll ask the witness to testify to his
18 understanding.

19 Q You can testify to your understanding. And the jury
20 will know this is what you understood.

21 A It's my understanding that Vice Chairman Coy spoke
22 to -- again, I'm not sure if it was the partner in charge or
23 not, I suspect it was. Talked to him about the items that the
24 financial services group were concerned about.

25 MR. SHIFFMAN: Objection. He's telling about what

LAS

Cross-Cotton-Rogers

1936

1 Mr. Coy -- he's testifying about Mr. Coy's conversations
2 with the auditors.

3 THE COURT: Yeah. I mean, is the only basis for
4 you knowing that is he told you that he met with them?

5 THE WITNESS: Yes, your Honor.

6 THE COURT: So that would be hearsay. So,
7 sustained.

8 Q Mr. Cotton, when you were determining what information
9 to communicate to the auditors, was there any other -- was there
10 anything else you had in mind that informed your decision not to
11 forward them a copy of that list?

12 A Sorry, Ms. Rogers. You lost me.

13 Q Sorry. I'm convoluting myself to get around the
14 hearsay issue. You would agree with me that when you were
15 communicating with the auditors, you had in the back of your
16 mind things that you thought or heard that others had told them,
17 right?

18 A Yes, ma'am.

19 Q Was there any, apart from Mr. Coy's conversation that
20 you heard him say he told the auditors, was there anything else
21 you had in mind when you communicated with the auditors about
22 these concerns?

23 A I -- I can't recall the specific conversations. It's
24 been too long ago.

25 Q Okay.

LAS

Cross-Cotton-Rogers

1937

1 A I would have told -- I would have told Al Weber what we
2 knew at that point.

3 MR. SHIFFMAN: Objection. Speculation. He's not
4 testifying to what he did or what he actually --

5 MS. ROGERS: Just asking about the witness'
6 recollection.

7 THE COURT: Sustained. He said he didn't recall.

8 Q I do only want you to testify if you have a current
9 recollection and not guess.

10 A I'm sorry.

11 Q So tell me what you have a current recollection of and
12 don't guess.

13 A I have a current recollection of talking to Al Weber
14 periodically during the audit process. I can't tell you
15 specifically what I said about those, the concern list.

16 Q Okay. Yesterday the Attorney General asked you
17 questions about a bankruptcy proceeding that the NRA commenced
18 in 2021 in Texas. Do you recall that?

19 A Yes, ma'am.

20 Q And you were on the special litigation committee that
21 was consulted before that bankruptcy was filed, right?

22 A Yes, ma'am.

23 Q Did you support the decision to file?

24 A I did.

25 Q Why?

LAS

Cross-Cotton-Rogers

1938

1 A As I said earlier, we were really concerned. At that
2 time in this particular case the State was trying to dissolve
3 the NRA which, you know, is legal --

4 MR. SHIFFMAN: Objection, your Honor.

5 THE COURT: You can continue.

6 Q You can continue.

7 A -- is legal parlance for put us out of business, shut
8 down the NRA. That was a big concern. We had already filed
9 suit against the former Governor Cuomo who had instructed --

10 MR. SHIFFMAN: Objection. It's irrelevant.

11 MS. ROGERS: The witness is testifying why he
12 supported the decision.

13 THE COURT: Overruled.

14 A We had already had to file a First Amendment case
15 against former Governor Cuomo as well as the former
16 superintendent of the New York Department of Financial Services
17 for what we called the black list campaign, the letters that
18 were sent to all financial institutions and insurance companies
19 doing business in New York that caused us a great deal of
20 concern. So, we were -- we were concerned about a hostile
21 environment. And because of that, and it was our understanding
22 that if we filed bankruptcy in Texas that the bankruptcy court
23 judge had the authority to let us reincorporate or transfer the
24 -- I'm not sure of the proper terminology. I never did
25 bankruptcy court. We could actually become a Texas corporation.

LAS

Cross-Cotton-Rogers

1939

1 It would not stop this case. That was not our goal. We were
2 trying to -- we were trying to keep from getting dissolved and
3 we wanted to incorporate in Texas.

4 Q You would agree with me though that for a financially
5 healthy organization to file bankruptcy is a drastic decision,
6 right?

7 MR. SHIFFMAN: Objection. Leading.

8 MS. ROGERS: It's just a setup question.

9 THE COURT: Okay.

10 MS. ROGERS: All right. Well then I'll withdraw
11 that question.

12 THE COURT: That's why it's leading.

13 MS. ROGERS: Well, it wasn't the meat of the
14 testimony that I was trying to get at.

15 Q Mr. Cotton, can you describe any communications the NRA
16 had with the government of Texas about this choice?

17 A Yes, ma'am. The Attorney General came out in favor of
18 it several --

19 MR. SHIFFMAN: Objection. Again this is hearsay
20 and it's also irrelevant.

21 THE COURT: Overruled.

22 Q You can answer.

23 A Several --

24 THE COURT: It's not hearsay.

25 A Several congressmen and senators even made a video. We

LAS

Cross-Cotton-Rogers

1940

1 had nothing to do with the video, but they made a video, Welcome
2 to Texas. I mean, the whole -- the governor wanted us there.
3 It was perceived to be a very friendly environment in addition
4 to being a very good economic environment, because we have over
5 400,000 members in Texas.

6 Q Can you describe your recollection of the board meeting
7 during which the board approved the bankruptcy after it was
8 filed?

9 A Oh, yes, ma'am. We went into -- we went into executive
10 session, and we had bankruptcy court counsel there to describe
11 the process, answer any questions that board members had. And
12 they had, you know, quite a few. And I think the -- the
13 resolution was voted on.

14 Q Did you witness any retaliation against anybody at that
15 meeting?

16 A No, ma'am.

17 Q Did you witness Judge Journey, Phil Journey speak at
18 that meeting?

19 A I'm pretty sure -- I'm pretty sure Mr. Journey spoke,
20 but I believe -- I don't remember if he abstained from voting,
21 because he had filed -- he intervened in the bankruptcy and was
22 seeking, again I'm short on bankruptcy court terminology, I
23 think it was not an investigator, but something like that. He
24 had sought that, which put him squarely adverse to the
25 association.

LAS

Cross-Cotton-Rogers

1941

1 Q And for the members of the jury who aren't lawyers --

2 MR. SHIFFMAN: Objection, your Honor. This is
3 beyond the scope.

4 MS. ROGERS: I thought this was within the scope.

5 MR. SHIFFMAN: I didn't ask him about Mr. Journey I
6 don't believe.

7 MS. ROGERS: All right. We don't have to talk
8 about this now.

9 THE COURT: Okay.

10 Q Mr. Cotton, do you recall then board member Lieutenant
11 Colonel North approaching you with concerns about outside
12 counsels' invoices?

13 A You don't mean at that meeting?

14 Q Not at that meeting. Let's say in 2019.

15 A He did. He did contact me about that. He sent a
16 letter and he called me -- he called me twice asking about his
17 contract.

18 Q When you say "his contract", you don't mean outside
19 counsels' contract, right?

20 A I'm sorry. I'm sorry if I misled you. Asking about
21 his -- the audit committee approving his contract with Ackerman
22 McQueen.

23 Q Okay.

24 MS. ROGERS: Nothing further. Thanks.

25 THE COURT: Any other questions from the defense?

LAS

Cross-Cotton-Farber

1942

1 MR. CORRELL: Pass the witness.

2 MR. FARBER: May I proceed, your Honor?

3 THE COURT: Yes.

4 CROSS EXAMINATION

5 BY MR. FARBER:

6 Q Good afternoon, Mr. Cotton. My name is Seth Farber,
7 and I represent Mr. Phillips.

8 A Good afternoon.

9 Q You've known Mr. Phillips for a long time I take it?

10 A I've known Woody, I'm sorry, Mr. Phillips for 22 years.

11 Q And just to start with. Are you from Texas, sir?

12 A Yes, sir.

13 Q And you were asked some questions by Mr. Shiffman
14 about, a few moments ago, about the NRA's bankruptcy, excuse me,
15 by Ms. Rogers I believe about the NRA's bankruptcy filing. Do
16 you recall those questions?

17 A Yes, sir.

18 Q And where exactly did you file for bankruptcy court?

19 A Bankruptcy court in the northern district of Texas.

20 Q In what city?

21 A Dallas.

22 Q Dallas?

23 A Yes, sir.

24 Q Do you know why you chose Dallas?

25 A Well, we hoped to have our new headquarters in north

LAS

Cross-Cotton-Farber

1943

1 Texas, in the Dallas, Fort Worth area. It's kind of where we
2 were focusing everything.

3 Q You were asked some questions by Mr. Shiffman about
4 some of the transactions that the audit committee reviewed that
5 involved Mr. Phillips. Do you recall those questions?

6 A Yes, sir.

7 Q And I believe he showed you some of the audit committee
8 reports relating to those transactions. Do you recall that?

9 A Yes, sir.

10 Q And I would like to go back and look a little more
11 closely at a couple of those. Do you still have that huge
12 binder in front of you?

13 A Yes, sir. You're talking about tab 24?

14 Q Well, let's start -- Give me one second, sir. Yeah.
15 Let's start with tab 24, which is PX 2983.

16 MR. FARBER: If we could bring that up on the
17 screen, please.

18 Q So, this is the September 8th through 9th, 2018 report
19 of the audit committee, is that right?

20 A (Examining). That's the date of the entire report,
21 yes, sir, but it covers other meetings.

22 Q And I think if you go down to the bottom paragraph on
23 this page, it says --

24 MR. FARBER: We could stop there.

25 Q -- that the audit committee met at the Westin,

LAS

Cross-Cotton-Farber

1944

1 Arlington Gateway, Arlington, Virginia, September 6th, 2018, is
2 that right?

3 A Yes, sir.

4 Q And it talks about the committee members who were
5 there. And you're there, "Charles L. Cotton, Chairman", right?

6 A Yes, sir. I'm there.

7 Q Okay. And -- and it also notes that Mr. Spray was
8 there, chief financial officer, do you see down further?

9 A Yes, sir.

10 Q And a number of others. Mr. Brownell was there.
11 Ms. Meadows. Mr. Coy. A number of people, correct --

12 A Yes.

13 Q -- from the NRA. Now, if you'll -- let's look at the
14 specific transactions that Mr. Shiffman went over with you. Why
15 don't we start with on page -- it's three of seven in your book.
16 And it's Roman numeral IV under the heading "Woody Phillips"?

17 A Yes, sir.

18 Q Okay. And that says, "July 2018 sailing trip". And
19 Mr. Shiffman referred to this as a conflict of interest
20 transaction. Do you recall him using those terms?

21 A Yes, sir.

22 Q And the first thing it says at the end of that
23 paragraph, in that paragraph it says, "Upon review of material
24 facts regarding the participation by the NRA's treasurer, Wilson
25 Phillips, in a July 2018 sailing trip", and then it describes

LAS

Cross-Cotton-Farber

1945

1 it. And then it says, "The audit committee determines that it's
2 fair, reasonable and in the best interests of the NRA to approve
3 and ratify Mr. Phillips' participation in the trip." That was
4 the determination that your committee made, correct?

5 A Yes, sir.

6 Q Okay. Then if we turn that page there is some items
7 listed that were the conversations that the audit committee had
8 in reaching that determination, am I correct?

9 A That's correct.

10 Q And I'm not going to go through all of them. One of
11 them, item two, is that "The trip imposed no cost on the NRA",
12 is that correct?

13 A That's correct.

14 Q Item four is that "Mr. Phillips paid for his
15 participation in the trip by making a 25,000 donation to Raise
16 to Erase MS", multiple sclerosis. That was another
17 consideration?

18 A Yes, sir, it was.

19 Q The audit committee also found that "Mr. Phillips
20 disclosed the trip to outside counsel before embarking upon it",
21 correct?

22 A That's correct.

23 Q Okay. And then it says, "And formally disclosed the
24 trip to the audit committee shortly upon his return". Do you
25 see that, Mr. Cotton?

LAS

Cross-Cotton-Farber

1946

1 A That is correct.

2 Q And finally it says, "The circumstances surrounding the
3 trip do not otherwise give rise to an appearance of improper
4 influence." Isn't that right?

5 A That's correct.

6 Q And so the result of this was that your committee
7 resolved that "Mr. Phillips' participation in the July 2018
8 sailing trip disclosed pursuant to a September 2018 conflict
9 questionnaire was ratified and approved." That was the
10 resolution you all made and approved, correct?

11 A That's correct.

12 Q And you personally were in favor of that?

13 A I'm chairman, so I don't get to vote unless there is a
14 tie.

15 Q You didn't disapprove of it?

16 A I did not.

17 Q And you believe that was correct?

18 A Yes, sir.

19 Q Okay. And then the next item there is HomeTelos. Do
20 you see that, sir?

21 A (Examining).

22 Q B. It's right beneath what we were just --

23 A Oh, yes, sir.

24 Q And that was another item that Mr. Shiffman referred to
25 as a conflict of interest transaction, isn't that right?

LAS

Cross-Cotton-Farber

1947

1 A That's correct.

2 Q Okay. And here too, if you look at the bottom of the
3 first paragraph there it says, "The audit committee has
4 determined that the engagement was fair, reasonable and in the
5 best interest of the NRA when undertaken." Is that correct?

6 A That's correct.

7 Q Okay. And the first factor that your committee
8 considered in determining this, can you read number one to the
9 members of the jury, sir, please?

10 A "That although Mr. Phillips maintains a longstanding
11 personal relationship with a HomeTelos executive, that person is
12 not a relative of Mr. Phillips as defined by the NRA's conflict
13 of interest and related-party transaction policy. Thus, this
14 transaction was disclosed to the audit committee out of an
15 abundance of caution."

16 Q And what does an "out of an abundance of caution" mean?

17 A I guess it means different things to a lot of folks.
18 He felt he disclosed it to us, even though he didn't think it
19 was technically necessary.

20 Q Well, in fact, your committee concluded that it wasn't
21 covered, the person wasn't covered by the NRA's conflict of
22 interest and related-party transaction policy, that's what the
23 committee resolved, isn't that right, sir?

24 A Our resolution is -- is -- doesn't say that. The
25 resolution itself simply says that it -- that it is hereby

LAS

Cross-Cotton-Farber

1948

1 ratified and approved. The items you're talking about there are
2 the information that was provided to us. It certainly was
3 considered in the deliberation.

4 Q That was a factor that you considered, correct?

5 A Yes, sir.

6 Q And, in fact, the NRA's conflict of interest and
7 related-party transaction does not include significant others,
8 isn't that correct, sir?

9 A You're talking about the definition of relative,
10 correct?

11 Q Under the NRA's related transaction policy, sir.

12 A I don't believe the term significant others is in the
13 policy, no, sir.

14 Q Okay.

15 A I'm sorry. In the definition of a related party.

16 Q And if you go down, you'll see the other factors that
17 the NRA considered was in item three that "The NRA's managing
18 director of information services, Tony Hayes, had advised
19 counsel that he interviewed HomeTelos before engaging it", is
20 that correct, sir?

21 A That's correct.

22 Q And Mr. Hayes determined that HomeTelos' proposal was
23 satisfactory, and that its pricing was reasonable relative to
24 the pricing of similar services, is that correct, sir?

25 A That's correct.

LAS

Cross-Cotton-Farber

1949

1 Q And, in fact, Mr. Hayes wasn't influenced by the fact
2 that Mr. Phillips had a relationship with -- Excuse me -- that
3 Mr. Phillips had had a longstanding personal relationship with a
4 HomeTelos executive in entering into this arrangement?

5 MR. SHIFFMAN: Objection. Foundation.

6 THE COURT: Sustained. You asked him a fact
7 question as opposed to what the committee concluded.

8 MR. FARBER: Your Honor, I believe I can ask him
9 what's his consideration.

10 THE COURT: That's not the way you asked it.

11 MR. FARBER: I'll ask a different question.

12 Q So, in item four, okay, the -- your committee noted
13 that "Mr. Hayes was unaware when he agreed to engage HomeTelos
14 of the relationship between Mr. Phillips' friend and HomeTelos",
15 is that correct?

16 A That's correct.

17 Q So -- And that was true of you too as a member of that
18 committee, is that correct?

19 A Yes, sir.

20 Q Okay. So your understanding in ratifying this
21 transaction was that Mr. Hayes was unaware of the relationship
22 between Mr. Phillips' friends and HomeTelos at the time that Mr.
23 Hayes agreed to engage HomeTelos, is that correct?

24 A That was a fact that was known to us, and it really
25 impacted more when it was disclosed rather than what would have

LAS

Cross-Cotton-Farber

1950

1 been the result. That's a terrible way for me to word that. We
2 would not approve or disapprove this transaction based on that
3 knowledge alone, but it was relevant to when we received it.

4 Q Right. It's one of a number of factors upon which you
5 based your decision to approve the transaction, correct?

6 A Yes, sir.

7 Q It's one of six factors, right?

8 A Yes, sir.

9 Q Okay. And in addition, you also noted that "Mr. Hayes
10 reported that HomeTelos satisfactorily performed the serves for
11 which it was engaged", isn't that correct?

12 A That's correct.

13 Q Okay. And can we turn to the last page of this
14 document, page 7 of 7.

15 A Yes, sir.

16 Q So, if you go down, around the middle of the paragraph
17 you see the audit committee -- it states here that "The audit
18 committee's review of circumstances surrounding these
19 transactions suggest while there had been no intentional
20 wrongdoing in these issues, there had been a misperception
21 shared by several directors and officers. Conflict
22 questionnaires need only be submitted annually." Is that what
23 your committee determined?

24 A Yes, sir. That's precisely what we determined.

25 Q So, is it fair to say then that you concluded that Mr.

LAS

Cross-Cotton-Farber

1951

1 Phillips didn't engage in any intentional wrongdoing?

2 A That's correct about all of these, that we evaluated.
3 And to be candid, we knew this was going to be presented to the
4 entire board. As I testified earlier, even read that paragraph,
5 because we wanted it to be a warning to everybody. Hey, start
6 getting these things done prospectively rather than
7 retrospectively.

8 Q Let's -- let's look for a moment now at -- there was
9 another audit committee report I would like to go over with you,
10 sir, that I'm not sure that Mr. Shiffman discussed.

11 MR. FARBER: And if we could pull up for
12 identification DX 1258, please. Your Honor, may I approach?

13 THE COURT: You're not going to put it up on the
14 screen?

15 MR. FARBER: We can put it up on the screen.

16 THE COURT: He has to turn off the screen.

17 THE WITNESS: What tab is it?

18 THE COURT: It's not in the book. Do you need to
19 have it marked for identification?

20 MR. FARBER: It's -- it's been premarked as DX
21 1-258.

22 THE COURT: Premarked is good. Thanks.

23 MR. FARBER: Do you want a hard copy?

24 THE COURT: Sure.

25 MR. FARBER: May I give one to the witness, your

LAS

Cross-Cotton-Farber

1952

1 Honor?

2 THE COURT: Yes.

3 Q Mr. Cotton.

4 A Thank you, sir.

5 MR. SHIFFMAN: No objection.

6 THE COURT: Who was that from?

7 MR. SHIFFMAN: No objection I said.

8 MS. ROGERS: No objection.

9 THE COURT: Any objection?

10 MR. CORRELL: No objection.

11 THE COURT: Do you want to have this admitted?

12 MR. FARBER: I'll offer it.

13 THE COURT: It's admitted, DX 1-258.

14 Q So, Mr. Cotton, can you take a look at what you have as
15 DX 1-258. And do you recognize this document?

16 A (Examining). It appears to be an audit committee
17 report probably covering multiple -- yes, sir, covering multiple
18 meetings. Yes, sir.

19 Q Okay. And this -- At the time of this report you were
20 still chairman of the audit committee, is that correct?

21 A Yes, sir.

22 Q Okay. And if you turn to the last page. Is that your
23 signature on it as chairman?

24 A (Examining). Yes, sir.

25 Q Okay. And one of the items that you discussed in

LAS

Cross-Cotton-Farber

1953

1 your -- excuse me -- the audit committee considered was the
2 consulting contract that Mr. Phillips entered into. Do you
3 recall that, sir? Turn to page 6 at the bottom.

4 (Whereupon the witness complied with the above
5 request of counsel.)

6 Q It's item Roman numeral IV.

7 A Yes, sir. I'm looking to make sure it's the same one
8 we were talking about before. (Examining). Okay. This is a
9 different contract than we talked about before. Did you want to
10 talk about this one?

11 Q Well, which contract is this referring to, sir?

12 A I'm sorry?

13 Q Well, let's just take a look at what you -- the audit
14 committee approved here.

15 A Okay.

16 Q So, this is referring to a consulting contract with
17 Mr. Phillips?

18 A Yes, sir.

19 Q Okay. And in the first whereas clause you say,
20 "Whereas Wilson H. Phillips served as chief financial officer
21 and treasurer of NRA until his retirement in 2018", is that
22 correct?

23 A Yes, sir.

24 Q Okay. And then there are a couple of other whereas
25 clauses that -- that follow this. And in the next one you

LAS

Cross-Cotton-Farber

1954

1 recite that "Whereas in the course of his serves Mr. Phillips
2 developed valuable relationships and expertise as well as
3 knowledge useful to the NRA in connection with its prosecution
4 and defense of anticipated litigation matters." Do you see
5 that, sir?

6 A Yes, sir.

7 Q And was that correct?

8 A Yes, sir. To my knowledge.

9 Q But that's what your committee believed, correct?

10 A Correct.

11 Q Okay. And you too?

12 A I'm sorry?

13 Q And did you believe that as well?

14 A Yes.

15 Q Okay. And then in the next clause it says, "Whereas
16 since retiring Mr. Phillips has accordingly continued to serve
17 the NRA including by dedicating substantial time to meet with
18 NRA's counsel, inform the NRA about facts and assist the NRA in
19 locating documents, which further the NRA's objectives in
20 connection with its legal matters." Do you see that, sir?

21 A Yes, sir.

22 Q Okay. And did you -- Is that what the committee
23 concluded?

24 A Based on the information we were provided, yes, sir.

25 Q Okay. And you too, isn't that right?

LAS

Cross-Cotton-Farber

1955

1 A Correct.

2 Q Okay. Now, in the next whereas clause it begins,
3 "Whereas prior to Mr. Phillips' retirement, a consulting
4 contract was drafted which allowed the NRA to avail itself of
5 Mr. Phillips' expertise and services. However, the contract
6 departed from NRA guidelines with respect to such consulting
7 arrangements and was never approved by the treasurer, executive
8 vice president or the audit committee." Do you see that, sir?

9 A That's correct.

10 Q Okay. And that was referring to the consulting
11 contract that Mr. Shiffman asked you about, isn't that true,
12 sir?

13 A Yes. The one that had -- the flat fee contract for
14 \$30,000 a month, that's the one it referred to.

15 Q Let's go back for a moment and look at that contract.
16 I believe it's tab 23 in that large book that you have, sir.

17 THE COURT: Heads up, that we're running into the
18 end. If you have a few more questions, otherwise we'll have
19 to bring Mr. Cotton back for the morning.

20 MR. FARBER: I think I can get this done in a few
21 minutes, your Honor.

22 THE COURT: Okay.

23 MR. FARBER: Thank you.

24 Q This is the contract that's referred to in that clause,
25 isn't that right?

LAS

Cross-Cotton-Farber

1956

1 A (Examining). Yes, sir. That's it.

2 Q Okay. And can we turn to page 5 of 6 of that contract,
3 please. At the bottom.

4 A Yes, sir.

5 Q Just the bottom. That was signed by Pete Brownell,
6 isn't that correct?

7 A That's correct.

8 Q Mr. Brownell was the -- was he the president at the
9 time of the NRA?

10 A Let me check the date on this one. Yes, sir. He
11 was -- Wait a Minute.

12 Q In 2018. You can go to the last page, please.

13 A I'm trying to get my people lined up. December of
14 2018.

15 Q I believe the date is May of 2018, if you look at the
16 signature lines on the top of page 6.

17 A I'm looking. Are we on the same document then? I'm
18 looking at December 31st, 2018 is on the top of tab 23.

19 Q Made as of December 31, 2018.

20 A Yes, sir.

21 Q If you look at the signature lines on the last page and
22 see when it was signed.

23 A (Examining). I'm not seeing a date.

24 Q Do you see on the last page under there is a sign and a
25 signature and then there are two dates underneath there. Do you

LAS

Cross-Cotton-Farber

1957

1 see that, sir?

2 A Oh, I'm sorry. It's on the back page.

3 Q The last page. I'm sorry.

4 A Okay. I was looking at the signatures.

5 Q My apologies.

6 A Yes, sir, May 5th, 2018.

7 Q Mr. Brownell was president then?

8 A Yes.

9 Q Carolyn Meadows signed as well?

10 A That's correct.

11 Q Okay. And if you go back to DX 1258 for one minute,
12 please.

13 A Is that this one (indicating)?

14 Q Yes. The piece of paper.

15 A Yes, sir.

16 Q And in that -- at the end of that the committee
17 resolved that "Subject to the satisfaction of signature
18 requirements and if applicable business case requirements, as
19 set forth in the NRA policy manual, the proposed consulting
20 agreement with Wilson H. Phillips presented to the audit
21 committee at the January 9, 2020 meeting is hereby approved",
22 isn't that right?

23 A That's what it says, yes, sir.

24 Q Okay. Mr. Cotton, you worked with Mr. Phillips for a
25 number of years, isn't that right?

LAS

Cross-Cotton-Farber

1958

1 A From 2001 until he retired in 2018.

2 Q And when you were chair of the audit committee, part of
3 your job was -- was supervising him, isn't that correct?

4 A Well, not supervising him in the -- in the sense we
5 normally think of supervisors. We're not on site all the time.
6 I worked with Woody, I'm sorry, Mr. Phillips. I'd see him at
7 finance committee meetings three times a year, some but not all
8 of the audit committee meetings. It depended on whether or not
9 there was an issue that he was going to address. So that's --
10 that's when I would see him and work with him.

11 MR. FARBER: Judge, I have about five more minutes.
12 Should I finish?

13 THE COURT: Are any of the other counsel going to
14 be asking questions? So, there is going to be some other
15 questions anyway. We'll have to unfortunately ask you back
16 for tomorrow. We'll reconvene tomorrow at 9:30.

17 Same instructions about not discussing your
18 testimony with any counsel. Folks, we'll see you tomorrow
19 at 9:30.

20 THE COURT OFFICER: All rise. Jury exiting.

21 (Whereupon the jury panel departed the courtroom.)

22 THE COURT: So, counsel just a quick update on
23 tomorrow. So we're going to finish with Mr. Cotton and then
24 have you concluded who the next witness is?

25 MS. CONNELL: Your Honor, we have Mr. Winkler,

LAS

PROCEEDINGS

1959

1 William Winkler, which should be a very, very quick witness
2 in the morning. Pretty short. Then we wanted to go on to
3 Mr. LaPierre.

4 THE COURT: Okay. That's fine.

5 MR. CORRELL: Your Honor, that doesn't work for us.
6 I have contacted the physicians. We have signed letters
7 coming. We have affidavits coming. And they are available
8 by phone.

9 THE COURT: Your point was that?

10 MR. CORRELL: Afternoons are not good.

11 THE COURT: If I was hearing it right it would be
12 still in the morning.

13 MS. CONNELL: Yeah. We'd hope to get him started
14 in the morning if the cross is short. Your Honor, we would
15 like to get him started in the morning and see how it goes.
16 That's where I thought we left off.

17 THE COURT: Yeah. I think that is correct. I'll
18 certainly review that and, you know, while -- you know,
19 presumably there is -- maybe they are going to have some
20 kind of very specific precision as to certain hours of the
21 day that will or will not work, but I thought the idea would
22 be to, you know, start in the morning. See how things go
23 and see how he's feeling.

24 MR. CORRELL: Your Honor, the late dumping at
25 1:00 a.m. this morning of 127 exhibits on us makes it

LAS

PROCEEDINGS

1960

1 virtually impossible for Mr. LaPierre to review the
2 documents. He can barely read at this time of day. His
3 eyesight gets bad. There is no way he can look at those
4 documents before tomorrow morning.

5 THE COURT: Look, my assumption, all these
6 documents have been in this case for four years.

7 MS. CONNELL: Absolutely, your Honor. They are all
8 NRA documents, almost all of them. They have all been
9 produced more than a year to two years ago.

10 THE COURT: I would proceed on the assumption if
11 we're up to Mr. LaPierre, that it's, you know, maybe time to
12 call the next witness and, you know, if there is some
13 specific reason why we can't go forward, you know, we'll
14 figure it out. I'm not going to in advance say because it
15 might be late morning and he might need to review some of
16 these documents, you know, prior to then, which I would be
17 shocked if they are not documents he's seen many times
18 before, I have not sort of just agreed to a wholesale
19 excusal of testimony based on time of day. I'll look at
20 what you send me. And if I change my mind, I will take that
21 into account.

22 MR. CORRELL: Your Honor, if I may address a couple
23 of points. First of all, the Government has indicated they
24 wanted to play Craig Spray, which they could do, and we
25 accommodated Mr. North today. And if 127 documents that the

LAS

PROCEEDINGS

1961

1 Government want to commit to questioning on the first five
2 or ten, that might be a reasonable compromise so that Mr.
3 LaPierre will actually have an opportunity to --

4 THE COURT: I would encourage the Government to, if
5 they can, give the first set so that it's some subset of the
6 120, if that will make life easier. So it's clear, I have
7 not yet made any ruling to -- for either side to deviate
8 from their preferred order of calling witnesses. And I'm
9 just going to see how this one plays out. I haven't seen
10 the medical information yet. And like I said, I intend to
11 be reasonable and make sure that nobody is put in a position
12 where they can't be, you know, able to -- to provide
13 truthful testimony. So, like I said, we'll see how things
14 go tomorrow and proceed from there.

15 MS. CONNELL: Your Honor, one thing. I never let
16 you get off that bench that quick. I want to flag the
17 business certification issue. We submitted a letter on
18 January 20th. I just wanted to raise that, because we may
19 raise that at some point tomorrow, okay.

20 THE COURT: That was to reply to objections that
21 had been made to prior certifications.

22 MS. CONNELL: Yes. That's right, your Honor. We
23 had done business record certification sometime ago.
24 Defendants objected. We submitted --

25 THE COURT: Have there been subsequent objections?

LAS

1962

1 MS. ROGERS: Your Honor, there is a letter that we
2 intend to submit either tonight or tomorrow replying. They
3 changed some of the certifications and we have replies to
4 some of their arguments.

5 THE COURT: I'll look at all of it in my copious
6 time.

7 MS. CONNELL: Sorry. Thank you, your Honor.

8 THE COURT: Thanks.

9 MS. ROGERS: Thank you, your Honor.

10 (Whereupon the proceedings were adjourned to
11 January 24, 2024 at 9:30 a.m.)

12

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LAS

1963

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

-----X
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against- Index No. 451625/20

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

Defendants.

-----X

CONTINUED JURY TRIAL

60 Centre Street
New York, New York
January 24, 2024

B E F O R E: HONORABLE JOEL M. COHEN,
Supreme Court Justice

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1964

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LORI SACCO
Official Court Reporters

PROCEEDINGS

1965

1 THE COURT: Good morning, folks. Just a couple of
2 preliminary things from my nightly mailbox. First of all,
3 with respect to the Spray bankruptcy hearing designations,
4 the one hearsay thing that continues to be less clear to me
5 in the AG's letter, yes, in the letter in describing his
6 testimony pages 95 to 101, you -- the letter says that "He
7 testifies to his attempts to eliminate nonessential first
8 class travel absent written approval. His discovery that
9 this was still occurring in an e-mail he wrote regarding NRA
10 business." And the part that I wanted to focus on is, what
11 he's actually asked is:

12 "And then you found out in fact in November 2020
13 that it was still going on is, that right?

14 "ANSWER: Verbal approvals were going on.

15 "And you had one of your staff track down which
16 board members in fact that applied to?

17 "ANSWER: We were able to have the travel agent run
18 a report which revealed this.

19 "And you found that at least three board members
20 were flying first class or business class without written
21 approval?"

22 And then it goes on. And the part that wasn't
23 clear to me is whether he is reporting on what others in his
24 office found, which, you know, raises at least a potential,
25 if he's testifying live, you can ask foundational questions,

LAS

PROCEEDINGS

1966

1 are you just telling us what somebody told you. I can't
2 really tell from the transcript. That's really the exchange
3 that I was focused on.

4 So, I don't know that I want to spend the time for
5 a full argument about that. But the rest of it I'm -- I'm
6 fine with subject to the discussion we had about, you know,
7 the possibility of telling the jurors that it's only
8 admissible against the NRA. But that one your letter says
9 that he found -- he discovered something. And that's not
10 quite what he says.

11 MS. CONNELL: Your Honor, I believe that the e-mail
12 chain that is attached to it, I'm going to try to locate it
13 while we're working this morning, is that he asked about it
14 and that it was confirmed by staff of the NRA. And that
15 that's in the e-mail chain where he says, Come on guys, this
16 has to stop. Where they found exact instances. Those are
17 NRA employees reporting it to him as part of the NRA
18 business.

19 THE COURT: So you're saying you can lay the
20 foundation by showing the underlying documents to me?

21 MS. CONNELL: I believe so, your Honor. I want to
22 just check that before I make that representation.

23 THE COURT: All right. The next one. I got the
24 information about the certifications of business records
25 which is usually -- usually a pretty straightforward affair.

LAS

PROCEEDINGS

1967

1 I haven't seen any objection letter at this point, but just
2 based on the face of them, they all seem to me sufficient.
3 One that was a little puzzling is I have a financial
4 institution who in their verification references a different
5 financial institution, an unrelated one. I was -- I think
6 you have to fix that, because as it stands on its face, it
7 doesn't verify that the records are those of the right
8 financial institution. So, whether you can get -- I mean in
9 context it's clearly a typographical error because the
10 person doesn't work for the financial institution that they
11 referenced. So, if you can either get confirmation that
12 it's a typographical error from the signer or just a new
13 verification, then I think that would suffice. But the rest
14 of it, you know, we count on these kinds of certifications
15 to avoid having to parade bunches of witnesses in here to
16 testify about pretty straightforward things. And I thought
17 that your letter described the other issues that at least
18 you represent the defendants had raised, and I was
19 satisfied. And I haven't seen any other letters from the
20 defendants. So, based on what's in front of me right now,
21 except for that one financial institution, which I would ask
22 to at least have that fixed, I'm -- I think they suffice
23 under CPLR 3122-a and CPLR 4518-a. All right.

24 MS. CONNELL: Thank you, your Honor.

25 THE COURT: I'm sure there is other mail I haven't

LAS

PROCEEDINGS

1968

1 responded to.

2 MS. ROGERS: There is one forthcoming letter on
3 that issue. So, the summary evidence intended to be offered
4 in consistent part of these business records that were
5 reportedly certified before and part of others that are
6 described in an expert report. And we don't object to all
7 of them, but we have objections to a few. One I wanted to
8 flag for your Honor is there is the Corporate Aviation
9 Services business record certification, where the person is
10 not certifying records he produced. He said, I reviewed
11 someone else's document production, and it looks like my
12 records, which does not seem to be what the CPLR provision
13 contemplates. And the document production he reviewed is by
14 someone who under oath in deposition she said she wasn't
15 sure where the records were stored. Someone got it off her
16 computer. We'll put in a letter so we could use our time
17 efficiently.

18 THE COURT: That's fine. The CPLR takes a very
19 practical approach, because in the modern world you're not
20 going to find an individual who is going to know everything.
21 So 3122-a talks about to the best of the affiant's knowledge
22 after reasonable inquiry. So, it presupposes that you're
23 going to have to -- you're able to rely on a corporate
24 representative who can -- won't necessarily have personal
25 knowledge immediately over every document produced.

LAS

PROCEEDINGS

1969

1 So, I think we all take a pretty practical view of
2 how that works. So, I mean, follow whatever you want but,
3 you know, if the end result of it is the only way to get
4 business records in from nonparties is to call everybody
5 whose documents they are to come in, that's not the rule.
6 Okay.

7 All right. So, Mr. Cotton is still at the tail end
8 hopefully of his testimony.

9 MR. CORRELL: Your Honor, if I may, sorry, if I may
10 be heard just briefly. Mr. LaPierre is -- is present in the
11 courtroom, and he is feeling well enough to proceed. If the
12 AG would like to put him on now, he's happy to go on now,
13 otherwise he's available for as long as he can.

14 THE COURT: Okay. Great. Good to hear. Thank
15 you. I assume you want to finish the witness who is on.

16 MS. CONNELL: Yes, your Honor. We're hoping
17 Mr. Cotton can go quite quickly. Hope stays alive. We do
18 have a nonparty witness who has been here and needs to leave
19 and he cannot wait until the afternoon. He has the last
20 flight out to Oklahoma City. We would like to do him. He
21 would be quite quick from our end as well and proceed to Mr.
22 LaPierre and see how we go.

23 THE COURT: That was the plan, and we'll stick with
24 it.

25 MS. CONNELL: Thank you.

LAS

PROCEEDINGS

1970

1 MR. FLEMING: Just to be upfront, your Honor. I
2 don't know how long I will have with Mr. Cotton. I don't
3 imagine it will be excessively long, but it won't be short
4 either.

5 THE COURT: Well, I would have been disappointed if
6 you said it was going to be excessively long. But look, I
7 mean, people use their time where they think it's most
8 useful. So, I assume you're aware of that. Let's get the
9 witness, please.

10 MS. CONNELL: Thank you. Your Honor, can I just
11 draw one attention. I filed a letter last night. We may
12 withdraw the Hallow deposition, so I didn't want you or
13 Mr. Blaustein working on those further, just because as a
14 time constraint I wanted to draw your attention to that.

15 THE COURT: Okay. Thank you. We're still waiting
16 for one juror. We can still bring Mr. Cotton down. Well,
17 actually they're not even here yet. We haven't heard from
18 them. Why don't you hold off on Mr. Cotton until we have
19 the last juror, okay. No reason for him to be sitting here.

20 MR. PETERS: While we're here, may I ask, is there
21 a hard stop with Mr. Winkler?

22 THE COURT: When does Mr. Winkler need to leave?

23 MS. CONNELL: I believe his flight is at like 6:20
24 from LaGuardia. I mean, hopefully Mr. Cotton doesn't take
25 too long. We can get him out well in advance of that.

LAS

PROCEEDINGS

1971

1 THE COURT: 6:20 at LaGuardia, I think you're fine.

2 MS. CONNELL: I think we're fine too. I know no
3 one is going to do an excessively long cross but, you know.
4 And we anticipate our direct will be half an hour perhaps.

5 THE COURT: He's not planning to walk to LaGuardia,
6 right?

7 MS. CONNELL: No. I don't think so, your Honor. I
8 think a car, he may take a black car service or something
9 like that.

10 THE COURT: I forgot there was one other thing in
11 Ms. Connell's letter I didn't address. On the counter
12 designations, I did make judgment calls as to which counter
13 designations I thought were legitimate counter designations
14 and those which if the defendants want to use them should be
15 in their case in chief. So, I think one can disagree with
16 my calls on those, but I did make them. So, the entirety,
17 my view is the entirety of the back play of the depositions
18 is part of plaintiff's case. And to the extent defendants
19 want to use the parts that I excluded on scope grounds when
20 they play -- if they play it on their case, that will count
21 on their side. And same rule. If you have counter
22 designations, those counter designations will apply to the
23 defendants at that time.

24 What made those difficult is because the
25 depositions were so long, sometimes the counter designations

LAS

1972

1 happened at a later part, but I still thought in my view
2 anyway they were legitimate to round out the testimony that
3 the plaintiff had chosen.

4 Counsel, can you come up for a minute.

5 (Whereupon a side bar conference was held.)

6 THE COURT: Just briefly summarize. One juror is
7 running late for a personal reason. And so after discussion
8 with counsel, as I said the last time a juror was going to
9 be fully absent, the choices are to either excuse the juror
10 and be down one, to one less alternate or to wait. And
11 given that the estimate at this point is roughly 11 o'clock
12 when the juror expects to be here, collectively the view was
13 that it's worth holding onto a juror to wait an hour and
14 then it will be one less break and we'll go from there.

15 So, that's what we're going to do. I will, you
16 know -- I would recommend staying in the courtroom if you
17 can or at least be nearby. So we'll let you know as soon as
18 we have a full jury, and then we'll get started, okay.
19 We're off the record.

20 (Whereupon a recess was taken.)

21 (Continue on the next page.)
22
23
24
25

LAS

Proceedings

1973

1 COURT OFFICER: All rise. Jury entering.

2 (The jury entered the courtroom.)

3 THE COURT: Okay. Have a seat, please.

4 Just initially, just a brief word of thanks,
5 first, to all the jurors for their patience.

6 And, for the juror who had a scheduling issue this
7 morning, I want to pass along my thanks, first, for staying
8 in contact with us, so that we knew what the schedule was,
9 so we could make our decisions; and as someone who has heard
10 more than their share of folks find various ways to not show
11 up for jury duty, to have someone literally run across the
12 Brooklyn Bridge to get here is extraordinary. So, thank you
13 very much for that.

14 And I know it's -- the day has gotten off to a
15 difficult start, but I really do appreciate it.

16 All right. So, given the schedule, we're going to
17 advance another witness who also has a travel issue. So,
18 the ever-patient Mr. Cotton is going to finish his testimony
19 after this next witness.

20 And so, the next witness is ...?

21 MR. WANG: Your Honor, plaintiff calls William
22 Winkler.

23 THE COURT: Okay. If we can bring Mr. Winkler
24 in ...

25 (The prospective witness entered the courtroom and

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Direct/Wang

1974

1 assumed the witness stand.)

2 THE COURT: Good morning, sir.

3 MR. WINKLER: Good morning.

4 W I L L I A M F. W I N K L E R, J R., called as a
5 witness by the plaintiff, having been first duly sworn/affirmed,
6 was examined and testified as follows:

7 THE CLERK: State your name.

8 THE WITNESS: William F. Winkler, Jr.

9 THE CLERK: Spell your last name.

10 THE WITNESS: W-i-n-k-l-e-r.

11 THE CLERK: Do you have a business address? If
12 not, then I need your home address.

13 THE WITNESS: Business address is 1133 North
14 Robinson Avenue, Oklahoma City 73103.

15 THE CLERK: Thank you.

16 You may be seated.

17 (Witness seated.)

18 THE COURT: Thank you, sir.

19 Just, if you can sit reasonably close to the
20 microphone ..., it's not as sensitive as I'd like it to be.

21 All right, Mr. Wang, you may proceed.

22 MR. WANG: Thank you, your Honor.

23 DIRECT EXAMINATION

24 BY MR. WANG:

25 Q Good morning.

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Direct/Wang

1975

1 A Good morning.

2 Q What is your name, sir?

3 A William F. Winkler, Jr.

4 Q And how are you employed?

5 A I'm the chief financial officer for Ackerman McQueen.

6 Q What kind of company is Ackerman McQueen?

7 A Advertising, public relations, broadcast production,
8 media buying.

9 Q And are you familiar with a company called Mercury
10 Group?

11 A Yes.

12 Q What was Mercury Group?

13 A It was strategic planning, crisis management, and PR.

14 Q Did Ackerman McQueen ever do business with the National
15 Rifle Association?

16 A Yes, they did.

17 Q During what period of time did Ackerman McQueen do
18 business with the NRA?

19 A From 1981 through June of 2019.

20 Q Who terminated the relationship?

21 A We did.

22 Q Who managed the relationship between the NRA and
23 Ackerman from the NRA's side?

24 A Wayne LaPierre.

25 Q How would you describe Wayne's involvement in the

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Direct/Wang

1976

1 relationship?

2 A He and Angus McQueen, who is our CEO, talked almost
3 every day; very involved.

4 Q Did Mr. LaPierre regularly attend meetings with
5 Ackerman McQueen?

6 A He did, with Angus. There were some other employees,
7 but I was not in many of those meetings.

8 Q Was Mr. LaPierre involved in budgeting?

9 A Yes.

10 Q Who did Mr. LaPierre communicate with most frequently
11 at Ackerman McQueen?

12 A Angus McQueen.

13 Q And what was Angus McQueen's role at Ackerman McQueen?

14 A He was the CEO.

15 Q Was Mr. Phillips involved in the NRA-and-Ackerman
16 relationship?

17 A Yes, he was.

18 Q How was Mr. Phillips involved?

19 A He worked with billing issues, budget issues.

20 Q During the course of Ackerman's relationship with the
21 NRA, did you ever correspond with Mr. LaPierre in writing?

22 A No.

23 Q Did you have an understanding of whether Mr. LaPierre
24 corresponded with Ackerman McQueen in writing?

25 A He never did, that I knew of.

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Direct/Wang

1977

1 Q And in the regular course of business between Ackerman
2 McQueen and the NRA, did -- would Ackerman incur expenses in the
3 course of that relationship?

4 A Yes.

5 Q And can you describe those expenses?

6 A Well, the largest line item would have been media being
7 purchased on their behalf. There was also an out-of-pocket job,
8 which was for travel, entertainment, meals; and then there was,
9 obviously, production costs that would go against jobs that we
10 were working on.

11 Q You mentioned an "out-of-pocket job." Can you describe
12 how that process worked?

13 A The out-of-pocket job was a -- primarily -- a single
14 line item. It involves, probably, four categories. It would
15 be: travel for Tony Makris, travel for Nader Tavangar, travel
16 for Tyler Schropp, and charges incurred at Landini's.

17 Q Were there ever any other expenses that Ackerman
18 McQueen bore on the account of the NRA and passed through to the
19 NRA via an invoice?

20 A It -- yeah, it could be.

21 Probably, the only other major line item would have
22 been hair and makeup for Susan LaPierre; it would have gone
23 through that job, also.

24 Q And when you described travel by Tony Makris and Nader
25 Tavangar, who is Tony Makris?

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Direct/Wang

1978

1 A Tony Makris was the president of Mercury Group.

2 Q And did Mr. Makris have a relationship with
3 Mr. LaPierre?

4 A Yes, he did.

5 Q Can you describe the relationship between Mr. Makris
6 and Mr. LaPierre?

7 A As far as I knew, they probably talked on a regular
8 basis. I don't know how much strategic planning they did
9 together; I was never in those meetings.

10 Q Who is Nader Tavangar?

11 A He was an executive VP at Mercury Group and he was
12 responsible -- he did a lot of travel coordination with Wayne.

13 Q And when there were travel expenses for Mr. Makris or
14 Mr. Tavangar, at whose direction did they travel?

15 A I would think, Wayne LaPierre's, because he's usually
16 with them.

17 MS. CONNELL: Excuse me, your Honor. I'm sorry to
18 interrupt Mr. Wang.

19 It's sometimes hard to hear Mr. Winkler.

20 Q Can you speak closer to the microphone, Mr. Winkler?

21 A I've never had that problem before.

22 Q And actually kind of angle it?

23 (The witness did so.)

24 A How is that? Is that better?

25 THE COURT: Move it a little closer, too. Just

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Direct/Wang

1979

1 move the whole thing.

2 (The witness did so.)

3 THE WITNESS: Okay. Is that good? Thank you.

4 MR. PETERS: I would -- I would move to strike his
5 last answer, because it's clear it wasn't based on personal
6 knowledge. He says, "I would think, Wayne LaPierre."

7 THE COURT: Well, he said what he said.

8 Overruled.

9 BY MR. WANG:

10 Q Mr. Winkler, you also mentioned an individual named
11 Tyler Schropp. Who is Tyler Schropp?

12 A He was the Director -- or is the Director -- of
13 Advancement for NRA.

14 Q You mentioned that Mr. Schropp would incur travel
15 expenses that Ackerman McQueen would pay for; is that right?

16 A That's correct.

17 Q How would Ackerman McQueen pay for those expenses?

18 A We had actually given him a credit card.

19 Q Ackerman McQueen had issued an NRA employee a credit
20 card; is that correct?

21 A That's correct.

22 Q At whose direction did Ackerman McQueen issue that
23 credit card?

24 A Wayne LaPierre's.

25 Q And Mr. Schropp's Ackerman Amex card would be paid for

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Direct/Wang

1980

1 by Ackerman McQueen?

2 A That's correct.

3 Q And would those expenses then be invoiced and billed to
4 the NRA?

5 A Yes.

6 Q And the NRA would pay those.

7 A Yes.

8 Q Do you know why a credit card was issued to an NRA
9 employee through Ackerman McQueen?

10 A You know, the -- the terms that we used on a constant
11 basis were "security and confidentiality." I, personally, think
12 that it probably had more to do with, Wayne didn't really trust
13 his accounting department with the sensitive nature of the
14 charges.

15 Q What do you mean by "sensitive nature of the charges"?

16 A Well, they were going on trips either -- ranging from
17 Wayne travel, which was in Tony's instance and Nader's instance.
18 In Tyler's instance, he may be going to a location seeking
19 donors.

20 Q Do you know who Gayle Stanford is?

21 A Yes.

22 Q Who is Ms. Stanford?

23 A She's a travel agent that also went through the
24 operating -- "out-of-pocket job." It was billed through the
25 out-of-pocket job.

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Direct/Wang

1981

1 Q And for whom did Ms. Stanford arrange travel?

2 A Wayne LaPierre.

3 Q How much in Ms. Stanford fees would Ackerman incur and
4 then bill to the NRA?

5 A It varied over time, but at the end it was \$4,000 a
6 month.

7 Q Do you understand --

8 Do you have an understanding as to why Ackerman McQueen
9 was billing the NRA for Ms. Stanford's services?

10 A It was at the request of either Wayne or Woody, but I
11 know that it was requested from one or the other of them.

12 Q You also mentioned the word "Landini's" in your prior
13 response. What is Landini's?

14 A It is a restaurant very close to our office at Mercury
15 Group.

16 Q What city is Landini's located in?

17 A Alexandria, Virginia.

18 Q And were charges for NRA employee meals charged to
19 Ackerman at Landini's and billed to the NRA?

20 A Yes.

21 Q How did this arrangement work?

22 A They would go in and, at the end of the meal, they
23 would tell Landini's to bill it to Tony Makris' credit card and
24 Tony would bill it through to the NRA.

25 Q Did you ever have any concerns about Ackerman McQueen

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Direct/Wang

1982

1 incurring expenses on behalf of NRA employees and then billing
2 those expenses back to the NRA?

3 A The main reason we didn't is, as part of all this
4 process, we requested that they come in and audit, which they
5 did from 2004 all the way through 2018.

6 Q When you say --

7 A They audited line-item expenses for the operating job
8 and for other jobs.

9 Q When you say "they," who are you referring to?

10 A Primarily Rick Tedrick. At the end, we had -- Woody
11 would come in, I think -- in 2014 and '15, I think, Woody may
12 have looked at the out-of-pocket job for those two years and
13 then Steve Hart looked at it for 2016 through 2018.

14 Q Were there ever any concerns raised by the NRA audits
15 of the Ackerman out-of-pocket job?

16 A Only one. In 2012, Rick wanted to take some documents
17 with him back to the office.

18 Q When you say "Rick," are you referring to Rick Tedrick?

19 A That's correct.

20 Q Can you describe the experience when Mr. Tedrick asked
21 to take documents back to his office?

22 A I told him I'd have to check with Wayne, went up and
23 talked with Angus. Angus got Wayne on the phone and said, "Rick
24 wants to take some documents back with him" and Wayne said,
25 "No."

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Direct/Wang

1983

1 MR. CORRELL: Objection, your Honor.

2 I think that's hearsay.

3 THE COURT: It's ... I don't think it --

4 Overruled.

5 He's not offering it for the truth of it; just that
6 it was said.

7 MR. CORRELL: Thank you.

8 THE COURT: Overruled.

9 Q Was Mr. Tedrick allowed to take documents concerning
10 out-of-pocket job expenses back to NRA headquarters?

11 A No, he was not.

12 Q And who did not -- who prevented Mr. Tedrick from
13 taking those documents back to the NRA headquarters?

14 A I did, because of the conversation I overheard with
15 Angus and Wayne.

16 Q I'm going to direct your attention to tab 1, which is
17 PX 3150. It is a large document. I'm not going to ask you to
18 flip through the entire document but I'm going to ask you if
19 you're familiar with it.

20 MR. WANG: I did not receive any objections to this
21 document.

22 A And what page is this?

23 Q I'm going to ask you, first, to turn to page 20.

24 THE COURT: Are there any objections to this
25 compilation?

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Direct/Wang

1984

1 MR. PETERS: Not from us, your Honor.

2 MR. CORRELL: No objection.

3 THE COURT: Okay. It is admitted; PX 3150.

4 (Image displayed.)

5 Q Before you turn to page 20, Mr. Winkler: Does this
6 compilation --

7 MR. PETERS: What -- can you give us the Bates?

8 MR. WANG: It's a PX number; PX 3150.

9 MR. PETERS: I -- for the -- it's not paginated 1
10 through 23.

11 MR. WANG: And the Bates on the very bottom is
12 "NYAG-00122496."

13 And at the bottom, there is a PX 3150 number and
14 there are page numbers at the bottom.

15 Q Does this compilation of documents look familiar to
16 you?

17 MR. PETERS: Ours doesn't have the --

18 THE COURT: 496 is the first page.

19 MR. WANG: Correct. And there is -- there are page
20 numbers.

21 THE COURT: No, no. I'm sorry. When you asked to
22 go to page 20, I think counsel doesn't have the same
23 pagination at the bottom, apparently.

24 So page 20 is --

25 MR. WANG: I'll tell you what the Bates number is

ALAN F. BOWIN, CSR, RMR, CRR

1985

1 for page 20.

2 THE COURT: 515 is the last three digits.

3 MR. WANG: Correct.

4 Q Does this compilation of documents look familiar to
5 you, Mr. Winkler?

6 A Yes, it does.

7 Q What is it?

8 A This would have been the backup provided to the
9 auditors for the out-of-pocket job.

10 Q And if I can ask you to turn to page 20 of PX 3150 --

11 (Image scrolled.)

12 Q -- the Bates numbers ending in 515 --

13 A I'm there.

14 Q -- does this invoice look familiar to you?

15 A Yes, it does.

16 Q What is it?

17 A This is for Gayle, travel coordination.

18 Q When you say "Gayle," are you referring to

19 Ms. Stanford?

20 A Yes.

21 Q I'll ask you to turn to page 47 of the same document.

22 Does this look familiar to you?

23 (Image scrolled.)

24 A Yes.

25 (Continued on next page.)

ALAN F. BOWIN, CSR, RMR, CRR

Direct-Winkler-Wang

1986

1 Q What is it?

2 A It's an invoice for the out-of-pocket expenses.

3 Q The invoice provides out-of-pocket expenses but no
4 further description. Do you see that?

5 A That's correct.

6 Q Did anyone ask you to prepare the invoices in this
7 manner?

8 A The answer is yes, the client asked us to. I would
9 assume it came from Wayne LaPierre, because most things did.
10 And once again, that's one of the reasons why we requested that
11 they come in and audit every year.

12 THE COURT: The questions really are personal
13 knowledge. So assumptions and the like is -- I think the
14 questions are asking, at least correctly asking, is for your
15 personal knowledge.

16 THE WITNESS: Okay.

17 THE COURT: Not asking you to assume or speculate.

18 MR. CORRELL: Objection, your Honor. Move to
19 strike everything after no or sorry after yes.

20 THE COURT: Sustained.

21 Q I'll ask you to turn to page 99 of PX 3510.

22 (Whereupon the witness complied with the above
23 request of counsel.)

24 Q Does this invoice look familiar to you?

25 A Yes, it does.

LAS

Direct-Winkler-Wang

1987

1 Q What is it?

2 A It's for hair and makeup for Susan LaPierre.

3 Q This was an expense that was included in the Ackerman
4 out-of-pocket job, is that correct?

5 A That's correct.

6 Q Was this paid for by Ackerman McQueen?

7 A Yes, it was.

8 Q And was this a cost that was passed through to the NRA?

9 A Yes, it was.

10 Q I'll ask you to turn to tab two, which is another
11 compilation of invoices. It's PX 3151, and it is tab two of
12 your binder.

13 MR. WANG: I've received no objection to this
14 document.

15 MR. PETERS: No objection.

16 THE COURT: Hearing none, this compilation exhibit
17 is admitted.

18 Q Is this document also familiar to you, Mr. Winkler?

19 A Yes, it is.

20 Q Is it -- What is it?

21 A It is once again the backup for the out-of-pocket job
22 for 2016.

23 Q I'll just ask you to turn to one page for this one
24 page, 3 -- 390 of PX 3151. Does this invoice look familiar to
25 you, sir?

LAS

Direct-Winkler-Wang

1988

1 A (Examining). Yes, it does.

2 Q What is it?

3 A Once again it's for makeup and hairstyle for Susan
4 LaPierre.

5 Q And do you know who Debbie Dover is?

6 A She's just a stylist that we use. I don't know
7 anything more than that.

8 Q Was this amount paid for by Ackerman McQueen?

9 A Yes, it was.

10 Q Was this amount billed through to the NRA through the
11 out-of-pocket job?

12 A Yes, it was.

13 Q To the best of your knowledge did the NRA pay this
14 amount?

15 A Yes, they did.

16 Q I'll ask you to turn to tab three of your binder. It
17 is PX 3152. It is another compilation of invoices.

18 MR. WANG: I have not received any objections to
19 this document as well.

20 MR. PETERS: No objection.

21 MR. CORRELL: No objection.

22 THE COURT: Hearing none, PX 3152 is admitted.

23 Q Mr. Winkler, does PX 3152 look familiar to you?

24 A (Examining). Yes, it does.

25 Q What is it?

LAS

Direct-Winkler-Wang

1989

1 A It's the backup for 2017 out-of-pocket expenses.

2 Q I'm actually going to ask you to turn back to tab one,
3 PX 3150 and go to page 298. It is also on your screen.

4 A Okay.

5 Q Does this document look familiar to you, Mr. Winkler?

6 A Yes, it does.

7 Q What is it?

8 A This would be a Tony Makris expense report that
9 included tips.

10 Q Can you explain how this tips process worked?

11 A Tony would often travel with Wayne or in his travel and
12 he was required, he had tips that he gave out to various
13 personnel to make sure that things went very smoothly.

14 MR. CORRELL: Objection, your Honor. Hearsay.

15 THE COURT: Do you want to follow up on the basis
16 for his knowledge.

17 Q How do you know that this was a tip -- this was an
18 amount, an expense for a tip from Tony Makris?

19 A Because I would literally with Rick, or whoever came in
20 and audited, sometimes he would get Tony on the phone to explain
21 to him what these were for.

22 MR. CORRELL: Objection. Hearsay.

23 THE COURT: Overruled.

24 Q I'm going to direct your attention to April of 2019.
25 Did there come a time where -- when the NRA sued Ackerman

LAS

Direct-Winkler-Wang

1990

1 McQueen?

2 A Yes.

3 Q Are you familiar with the April 2019 lawsuit?

4 A Yes.

5 Q What was the nature of that lawsuit?

6 A The -- It was filed saying we had improper
7 documentation.

8 Q Following the initiation of that lawsuit, did you take
9 any action with respect to the relationship between Ackerman and
10 the NRA?

11 A Yes. The answer to the question has to involve the
12 audits. So, if it's okay, I'll go and describe the last audit
13 which was FRA.

14 Q What do you recall about the FRA audit?

15 A The auditors -- That was actually the third audit that
16 was performed. There was one performed in September of '18.
17 Another one in October -- Pardon me -- November of '18. And
18 then FAR came in in February of '19.

19 Q And were there issues raised at the end of the FAR
20 audit?

21 A The only items that we knew were issues from Jessica
22 Bradley, who was the lead auditor on -- at the location. She
23 had asked us for receipts on Tyler Schropp, which we did not
24 have them. She asked for receipts on Landini, which were
25 incomplete. We did not have all of those. She asked for -- If,

LAS

Direct-Winkler-Wang

1991

1 on Tyler's credit card, she was asking if anyone else had ever
2 had a credit card. So we went back through our records and
3 realized Wayne had had a credit card for two months. Then she
4 asked for any gifts for -- that Ackerman gave to any NRA
5 employee.

6 Q And what was the answer to that last question?

7 A The answer was yes. There is only one gift that I knew
8 of.

9 Q And did you ever receive any final work product or
10 conclusion from this FRA audit?

11 A No.

12 Q I'm going to direct your attention to tab five of your
13 binder. It is PX 444. It is a two page document.

14 MR. WANG: I have not received an objection to this
15 document.

16 MR. PETERS: No objection.

17 MR. CORRELL: No objection.

18 THE COURT: Okay. It's admitted.

19 Q Mr. Winkler, does this document look familiar to you?

20 A (Examining). Yes, it does.

21 Q What is it?

22 A This is on the 444 as we are requesting from Gayle a
23 copy of all of the travel that she coordinated for Wayne.

24 Q Is this document an accurate summary of your request
25 for documentation related to Gayle Stanford's expenses paid for

LAS

Direct-Winkler-Wang

1992

1 by Ackerman McQueen and billed through to the NRA?

2 A Yes, it was. And it should be noted I left out that
3 one of the things that the FAR auditors asked for was a copy of
4 her contract, which we did not have.

5 Q I'll ask you to turn to tab six of the binder. And
6 this is PX 445.

7 MR. WANG: I've not received an objection to this
8 document.

9 THE COURT: Counsel?

10 MR. PETERS: No objection.

11 MR. CORRELL: No objection.

12 THE COURT: All right. It's admitted.

13 Q Mr. Winkler, does this document look familiar to you?

14 A (Examining). Yes, it does.

15 Q What is it?

16 A This is a listing of all the credit card charges that
17 Tyler incurred on his credit card.

18 Q On the exhibit I'll ask you to turn to page 2. The
19 charges begin in May of 2013 on the document. Do you see that?

20 A (Examining). Yes.

21 Q And these are charges that Mr. Schropp incurred on his
22 AmEx credit card, is that correct?

23 A That's correct.

24 Q And if you turn to page 18 of PX 445, the charges run
25 through September of 2018. Do you see that?

LAS

Direct-Winkler-Wang

1993

1 A (Examining). That's correct.

2 Q And then I'll direct your attention to the letter,
3 which is the last page of the document, page 53 of PX 445. This
4 is a letter that you wrote to Mr. Schropp, is that correct?

5 A (Examining). That's correct.

6 Q And is this an accurate summary of Mr. Schropp's
7 expenses paid for by Ackerman McQueen and passed through to the
8 NRA?

9 A Yes, it is.

10 Q Why did you write this letter to Mr. Schropp?

11 A The lawsuit had been filed and we were -- it was
12 improper documentation. We had no results from the lawsuit
13 itself. And so I met with Angus and I said, There is only these
14 areas that they asked for that we didn't have any of the
15 receipts. So, we wrote these letters to get the receipts so
16 hopefully the lawsuit could go away.

17 Q Who would have had the receipts in question?

18 A In this instance, Tyler Schropp.

19 Q Why?

20 A Because he was the one that incurred them as he was
21 using the credit card.

22 Q I'll ask you to turn to tab seven of your binder, which
23 is PX 446.

24 (Whereupon the witness complied with the above
25 request of counsel.)

LAS

Direct-Winkler-Wang

1994

1 MR. WANG: I've received no objection to this
2 document.

3 MR. PETERS: No objection.

4 MR. CORRELL: No objection.

5 THE COURT: Hearing none, it's admitted.

6 Q Mr. Winkler, does PX 446 look familiar to you?

7 A (Examining). Yes, it does.

8 Q What is it?

9 A This is a copy of the receipts for Wayne LaPierre's
10 clothing.

11 Q Directing your attention to the second and third pages
12 of the document. What do these dates and totals represent?

13 A They total where he went in and purchased clothing.

14 Q Were these clothing purchases at Zegna?

15 A Yes.

16 Q Were these purchases -- were these clothing purchases
17 charged to Ackerman McQueen?

18 A Yes, they were.

19 Q Were they billed to the NRA?

20 A No, they were not.

21 Q Directing your attention to page 4. Was this a letter
22 that you sent to Mr. LaPierre?

23 A (Examining). Yes, it was.

24 Q And is this letter an accurate summary of Mr.
25 LaPierre's AmEx -- Mr. LaPierre's Zegna suits paid for by

LAS

Direct-Winkler-Wang

1995

1 Ackerman McQueen?

2 A Yes, it is.

3 Q I'll ask you to turn to tab eight, which is PX 447.

4 (Whereupon the witness complied with the above
5 request of counsel.)

6 MR. WANG: I have not received any objection to
7 this document.

8 MR. PETERS: No objection.

9 MR. CORRELL: No objection.

10 THE COURT: Hearing none, that Exhibit PX 447 is
11 admitted.

12 Q Mr. Winkler, is PX 447 familiar to you?

13 A (Examining). Yes, it is.

14 Q What is it?

15 A It's for charges that were billed from Gayle to
16 Ackerman on Wayne's behalf and credit card charges that Wayne
17 was given a credit card from Ackerman that he used for
18 approximately one month. I don't think it was longer than that.

19 Q Did Ackerman McQueen issue a credit card for Mr.
20 LaPierre?

21 A Yes.

22 Q And did he use that credit card?

23 A Only for one month but yes.

24 Q Are those charges reflected on page 3 of this document,
25 section A?

LAS

Direct-Winkler-Wang

1996

1 A Yes, they are.

2 Q And those charges related to travel to Budapest?

3 A That's correct.

4 Q Directing your attention to section B of page 3. Do
5 you know what II and IS is?

6 A That's Gayle Stamford.

7 Q And I'll direct your attention, it's a little hard,
8 because this is a spreadsheet that has been converted to PDF.
9 If you look at the middle section of page 5, are those the
10 corresponding charges to section BII and IS on page 3?

11 A That's correct.

12 Q And were these amounts in 2013 and 2014 paid for by
13 Ackerman McQueen and billed through to the NRA?

14 A That's correct.

15 Q And were these amounts for travel to the first -- the
16 first row for the Bahamas?

17 A Yes.

18 Q And the last row, is this for travel to Budapest and
19 Brescia?

20 A Yes.

21 Q And directing your attention to page 2 of this
22 document, your letter to Mr. LaPierre.

23 A Yes.

24 Q Is this letter an accurate summary of Mr. LaPierre's
25 AmEx expenses and expenses related to Mr. LaPierre's travel

LAS

Direct-Winkler-Wang

1997

1 through Gayle Stanford?

2 A Yes.

3 Q And were these expenses paid for by Ackerman McQueen
4 and passed through to the NRA?

5 A Yes, they were.

6 Q Mr. -- You can take this off the screen, and you can
7 stop looking at this document. Are you familiar with a company
8 called Wbb Investments?

9 A Yes.

10 Q What is Wbb Investments?

11 A It was put together to -- to purchase a safe house.

12 Q Who -- who was going to reside in the safe house?

13 A Wayne and Susan.

14 Q Did there come a time when a \$70,000 invoice was
15 issued?

16 A That's correct.

17 Q What was that \$70,000 for?

18 A Well, first of all, the partnership itself, 99 percent
19 of the partnership was NRA. So it's an important feature to it.
20 It really was an investment that the money was there for a down
21 payment on a house if needed.

22 Q I'll ask you to look -- open up tab 11, which is a two
23 page document.

24 (Whereupon the witness complied with the above
25 request of counsel.)

LAS

Direct-Winkler-Wang

1998

1 Q Does tab 11 look familiar to you?

2 A (Examining). Yes, it does.

3 MR. WANG: I've received no objection to this
4 document.

5 MR. PETERS: No objection.

6 MR. CORRELL: No objection.

7 THE COURT: Okay. It's admitted. There may be
8 another copy of this somewhere as well, I think, but go
9 ahead.

10 Q I'll ask you to turn to the second page. There is the
11 front of a check and a back of a check, is that correct?

12 A That's correct.

13 Q And is that your handwriting on the back of the check?

14 A Yes, it is.

15 Q Do you recall receiving this check?

16 A Yes, I do.

17 Q And you deposited this check?

18 A That's correct.

19 Q And on the first page of this document this is a
20 deposit slip, is that correct?

21 A Yes.

22 Q And is that your handwriting at the top of the deposit
23 slip?

24 A Yes, it is.

25 Q This indicates that you deposited the \$70,000, is that

LAS

Direct-Winkler-Wang

1999

1 correct?

2 A That's correct.

3 Q What was the anticipated cost of the house in Dallas
4 that was meant as a safe house?

5 A \$6 million.

6 Q And did this anticipated house purchase, was this ever
7 finalized?

8 A No, it was not.

9 Q Why not?

10 A From my standpoint there was correspondence between
11 Susan and Melanie Montgomery, where Susan was asking for a
12 social membership at a country club. I saw that. I immediately
13 went up to Angus' office and I said, Wait a minute. Everything
14 about this -- We were suppose to be getting a house that nobody
15 knew who lived there. It was a safe house. Country club
16 membership is not going to have nobody knows who they are or
17 where they are at. Angus looked at me and said, I'll deal with
18 it. The deal was basically done within 24 hours.

19 Q I'll ask you to turn to tab 12 of your binder.

20 MR. WANG: I've received no objection to this
21 document.

22 MR. PETERS: No objection.

23 MR. WANG: PX 2922.

24 MR. CORRELL: No objection.

25 THE COURT: All right. Hearing none, it's

LAS

Direct-Winkler-Wang

2000

1 admitted.

2 Q Does this document look familiar to you, Mr. Winkler?

3 A (Examining). Yes, it does.

4 Q What is it?

5 A It's a list of things that she wanted to have happen at
6 the house, and it also includes the social membership at the
7 golf and country club.

8 Q Directing your attention to page 2. Right at the
9 bottom it says, "We need to discuss how to acquire a social
10 membership to the club." Is that the club that you were
11 referring to in your testimony?

12 A Yes.

13 Q And this deal didn't happen after that, right?

14 A No, it did not.

15 Q I'm going to direct your attention to the middle of
16 2019. Did there come a time when Ackerman McQueen was sued by
17 the NRA in federal court in Dallas?

18 A Yes. I don't remember the exact date though.

19 Q And that was a different litigation than the litigation
20 we talked about earlier in April of 2019, is that correct?

21 A That's correct.

22 Q And this federal litigation, that litigation ended,
23 correct?

24 A That's correct.

25 Q And a monetary --

LAS

Direct-Winkler-Wang

2001

1 MR. PETERS: I'm going to object to this line of
2 questioning, because I see that this is going towards trying
3 to get a confidential settlement into evidence and we object
4 to that.

5 MR. WANG: Your Honor, I'm asking a leading line of
6 questioning just to get to the same points that you ruled on
7 with respect to the -- Mr. Cox arbitration. And I'm going
8 to elicit the same limited testimony that you ruled on on
9 this same issue that we've discussed with you previously.

10 THE COURT: Okay. This is, as far as I can tell,
11 is not an adverse witness. So, the leading shouldn't really
12 be necessary.

13 MR. WANG: Okay.

14 Q How did that litigation end, Mr. Winkler?

15 A It ended in a settlement.

16 Q And was there a monetary amount that was paid by the
17 NRA to Ackerman McQueen?

18 THE COURT: Without stating the amount.

19 THE WITNESS: Yes.

20 MR. WANG: We'll pass the witness. I'm sorry.

21 THE COURT: Almost got away.

22 Q We talked about your out-of-pocket job, Mr. Winkler.

23 A Yes.

24 Q How long did that out-of-pocket job last?

25 A It stopped in the fall of 2018.

LAS

Direct-Winkler-Wang

2002

1 Q And NRA paid those expenses throughout that entire
2 period, is that correct?

3 A They actually paid them. They audited them. And when
4 they came in and changed their procedures, the out-of-pocket job
5 went away.

6 Q With respect to the charges at Landini's restaurant,
7 what was included in those charges?

8 A Usually meals. People would -- I think there would be
9 personnel that would go over there and basically have a meal.
10 Sounded like a business luncheon, but they would charge it to
11 Tony's account, and we pass it through to the NRA.

12 Q That restaurant, was it located close to the NRA
13 headquarters?

14 A It was close to the Mercury Group headquarters. I'm
15 not sure is the answer. I've been there once.

16 Q During the period of time that you sent out-of-pocket
17 bills to the NRA, did the NRA ever object to receiving those
18 bills?

19 A No.

20 Q And next to Landini's there was a cigar bar. Do you
21 recall that?

22 A Yes.

23 Q And were those charges also paid for by Ackerman
24 McQueen and passed to the NRA?

25 A In some instances. Not all instances.

LAS

Direct-Winkler-Wang

2003

1 Q Can you describe -- can you describe the instances
2 where they would have been paid and they would not have been
3 paid?

4 A I'm not totally clear. Normally Tony would drive that,
5 whether -- what the meeting was for, et cetera.

6 Q Can you speak closer to the microphone.

7 A Absolutely.

8 Q I'm sorry. Thank you. You mentioned Mr. Makris'
9 travel would be billed by Ackerman and passed through to the
10 NRA. Was Mr. LaPierre's travel also billed by Ackerman and
11 passed through to the NRA?

12 A Very seldom.

13 Q And was Mr. -- Who directed Mr. Makris to engage in
14 that travel?

15 A Probably discussion between Tony Makris, Angus McQueen
16 and Wayne LaPierre.

17 Q I think you said this already, but how many years did
18 the out-of-pocket job last?

19 A I can tell you when it stopped. And I would probably
20 say it started somewhere around 2004, because that's when Rick
21 began his audits. But I'm not exactly sure of when it started.
22 I know that Rick's audits started in 2004.

23 Q When did Rick's audits end?

24 A The audits that the NRA came in and did went all the
25 way through 2018.

LAS

Cross-Winkler-Peters

2004

1 Q But Mr. Tedrick at some point stopped performing those
2 audits?

3 A In 2015, I think. The out of pocket, the last two
4 years were audited by Woody.

5 MR. WANG: I'll pass the witness.

6 THE COURT: The first successful use of a binder in
7 order. I have to congratulate you for that.

8 CROSS EXAMINATION

9 BY MR. PETERS:

10 Q Good morning, Mr. Winkler. Good morning, Mr. Winkler.
11 My name is Noah Peters. I'm with the Brewer firm. And we
12 represent The National Rifle Association.

13 You previously testified, haven't you, that you never
14 billed back charges to the NRA that you believe were not
15 appropriate business charges for the NRA, didn't you?

16 A That is correct.

17 Q Okay. And you've testified previously that you believe
18 that all of Tyler Schropp's charges were appropriate NRA
19 business charges, isn't that right?

20 A That's correct.

21 Q Okay. Let us go to tab two of the cross binder, which
22 is the services agreement between the NRA and Ackerman.

23 THE COURT: Is this one in evidence?

24 MR. PETERS: This is in evidence. This is PX 3588,
25 if we can get it up on the screen. This was admitted into

LAS

Cross-Winkler-Peters

2005

1 evidence, I think, with respect to Mr. Phillips.

2 MS. CONNELL: Your Honor, I'm sorry. I think it
3 was a different number that it was admitted into evidence,
4 but we don't have an objection to it.

5 MR. PETERS: Great.

6 THE COURT: All right. So I guess we'll go ahead
7 and admit this again.

8 MR. PETERS: Yep.

9 MS. CONNELL: I guess so, your Honor.

10 Q Okay. And you're familiar with this document, aren't
11 you, Mr. Winkler?

12 A (Examining). Yes, I am.

13 Q And this -- Under this agreement, this included a wide
14 variety of different market -- marketing, public relation
15 services that were all geared to promote a positive image of the
16 NRA, isn't that right?

17 A That's correct.

18 Q Okay. And there are references in this contract to
19 providing services based on fair market value of the work. Do
20 you see that on page 2(b) under "advertising creative services"?

21 A Yes.

22 Q Okay. And then there is also a specific -- there are
23 also specific provisions in this contract for billing back
24 expenses to the NRA. Do you see those on page 5 under 3(a)?

25 A (Examining). Yes.

LAS

Cross-Winkler-Peters

2006

1 Q Okay. And could you read 3(a) for -- for us under
2 billing and payment?

3 A "Mailing express charges, long distance telephone
4 calls, photocopies, deliveries, sales taxes, reasonable out of
5 town travel, including transportation meals and lodging" --

6 THE COURT: Maybe just go a little slower so the
7 court reporter can follow you. Go ahead.

8 A -- "et cetera on NRA's express behalf shall be billed
9 at Ackerman's cost."

10 Q Okay. And it says then, "All out of town travel
11 expenses shall require prior written approval, in accordance
12 with written procedures established by the NRA executive vice
13 president or his designee." Do you see that?

14 A Yes.

15 Q Okay. And those written procedures, those don't allow
16 for luxury travel, do they?

17 A Not that I know of. No.

18 Q Okay. And then it goes on to say, "Payment of travel
19 expenses not approved in advance may result in denial of
20 reimbursement." Expenses not listed above shall be considered
21 to be -- "Expenses not listed above shall be considered to be
22 normal business expense of AMC and not billable to NRA unless
23 specifically authorized in writing by the NRA executive vice
24 president or its designee." You're familiar with that
25 provision, right?

LAS

Cross-Winkler-Peters

2007

1 A Yes, I am.

2 Q Okay. And the invoices that Ackerman provided are fair
3 to say were not consistent with that provision?

4 A I'm not sure.

5 Q Okay.

6 A The reason that I'm not sure is this agreement is in
7 2017. We were still billing the out of pocket and it was still
8 being paid as it always had been up until the summer of 2018.

9 Q But you were -- you were, weren't you, billing
10 out-of-pocket expenses to the NRA for which -- that had not been
11 approved in advance, is that right?

12 A I don't know that, because they were being paid.

13 Q Okay. And you weren't getting prior written approval
14 in accordance with written procedures, were you, before billing
15 those back to the NRA?

16 A Once again, I don't know. I just know they were
17 incurred. They were billed and they were paid. So I had no way
18 of knowing that certain systems weren't being followed.

19 Q You knew of this contract though, didn't you?

20 A Yes.

21 Q Okay. In fact, didn't you help negotiate this
22 contract?

23 A Yes, I did.

24 Q Okay. All right. Let's go on to page 9, "Examination
25 of Records". And it says, "During the term of this services

LAS

Cross-Winkler-Peters

2008

1 agreement AMC authorizes NRA, upon reasonable notice, to examine
2 AMC and Mercury's files, books and records with respect to
3 matters covered under this services agreement." Do you see
4 that?

5 A Yes.

6 Q Okay. Seems pretty straightforward, doesn't it, that
7 the NRA can audit the Ackerman's file -- Mercury's files, books
8 and records, right?

9 A They basically did audit every year from 2004 through
10 2018.

11 Q Okay. And then it says here also that "AMC is
12 authorized to act upon written communications received from the
13 NRA executive vice president or his designee. Here his designee
14 are the only persons within NRA who have the authority to issue
15 such communications", that is written communications, isn't that
16 right?

17 A Yes.

18 Q And you -- There were never any written communications
19 altering any provision of this contract except the amendment
20 that we're going to see in a little bit, right, the 2018
21 amendment?

22 A The answer is Wayne didn't really put anything in
23 writing ever. So, a lot of times --

24 Q That's not what I asked. I'm sorry.

25 A Okay.

LAS

2009

1 Q Did you ever get a written communication altering any
2 provision of this contract other than the 2018 amendment that
3 we're about to go to?

4 A We received, I think, two different notices that he
5 changed his designee.

6 Q Okay. Understood. So, in other words, the course of
7 business between the NRA and Ackerman was very clearly that
8 communications are to be in writing, isn't that right?

9 MR. WANG: Objection. Mischaracterizes his
10 testimony.

11 A The answer is no. Very seldom was in writing.

12 Q Okay. But you just testified to written communications
13 between -- changing the designee, didn't you?

14 A Yes.

15 (Continue on the next page.)
16
17
18
19
20
21
22
23
24
25

LAS

Winkler - by Plaintiff - Cross/Peters

2010

1 Q Okay. So it was in writing.

2 A They -- remember that those changes occurred after
3 there had been several letters going back and forth and we
4 realized there was a change in their policy.

5 Q Okay. And a letter is also written communication;
6 isn't it?

7 A That's correct.

8 Q All right.

9 So, then, if we go down to 10-D, "Integrated
10 Agreement," it says:

11 "This Services Agreement, together with any
12 exhibits hereto, constitute the entire agreement between the
13 NRA and AMC relating to the matters covered by the Services
14 Agreement at the time of its signing and the Services
15 Agreement, the written contract, supersedes all prior
16 agreements, including letter agreements and memoranda of
17 understanding."

18 Did you see that?

19 (Image displayed.)

20 A Yes.

21 Q Okay. Do you think it's reasonable to rely on previous
22 oral understandings in the face of a contractual provision like
23 that?

24 A When the course of doing business remained constant,
25 even after this was signed, for over a year, the answer is yes,

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Cross/Peters

2011

1 we --

2 Q Okay.

3 A -- we just assumed that that was the manner of doing
4 business; that if they wanted to enforce this provision, they
5 would let us know, which they did later.

6 Q Okay. So you assumed, and it turned out to be wrong;
7 right?

8 A Well, both parties did, because they were still paying
9 their invoices.

10 Q They were still paying.

11 I mean, you were -- you were violating the contract and
12 expecting them to pay for out-of-pocket expenses that were not
13 consistent with this contract; isn't that right?

14 MR. WANG: Objection; misstates testimony.

15 A And, once again, I can't tell you that they --

16 THE COURT: I'll overrule the objection.

17 You can answer.

18 MR. PETERS: Okay.

19 THE COURT: Did you get your answer?

20 I think I might have spoken over your answer, so
21 you can answer the question.

22 A Go ahead and ask the question again, please. Sorry.

23 MR. PETERS: Will the court reporter read back the
24 question, please?

25 THE COURT: Yes.

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Cross/Peters

2012

1 Please, Alan.

2 (The reporter read back the requested portion of
3 the record.)

4 MR. WANG: The other basis for my objection is, it
5 calls for a legal conclusion.

6 THE COURT: Overruled.

7 You can answer.

8 A The -- the answer is, I don't know that they weren't
9 being approved. They were still being paid.

10 Q Okay. And so, let's go, now, to tab 3 of the "Cross"
11 binder.

12 MR. PETERS: This is PX 3589. I'm not sure that
13 this has been admitted into evidence yet.

14 THE COURT: Are there any objections?

15 MR. WANG: No objection.

16 THE COURT: Anybody else?

17 MR. CORRELL: No objection.

18 MS. COUTU: Your Honor, we don't have the document.

19 MR. PETERS: I gave you guys a ...

20 MS. COUTU: No, you didn't.

21 MR. PETERS: Oh, I didn't?

22 (Binder handed to counsel.)

23 MR. PETERS: It's tab 3. I'll give you all a
24 chance to read it.

25 MS. COUTU: Thank you.

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Cross/Peters

2013

1 MR. PETERS: Yeah.

2 MS. COUTU: No objection, your Honor.

3 MR. FLEMING: No objection.

4 THE COURT: Okay. PX 3589 is admitted.

5 (Image displayed.)

6 BY MR. PETERS:

7 Q Okay. Do you remember this amendment to the Services
8 Agreement, Mr. Winkler?

9 A Yes, I do.

10 Q Okay. And you felt it necessary to enter into a
11 written amendment with the NRA to -- in order to -- be able to
12 bill -- to be able to bill more money to the NRA; right?

13 A I'm sorry; I don't understand what you're saying.

14 Q You believed that it was necessary to enter into a
15 written amendment to the 2017 Services Agreement; didn't you?

16 A Yes.

17 Q Okay. And that was because, in this instance, this
18 contract was giving Ackerman more money; isn't that right?

19 A This contract was substantially more and if -- if it
20 was not paid, it was going to leave us vulnerable.

21 Q Okay.

22 A That's what the purpose of the amendment was.

23 Q So, when it's time to protect Ackerman McQueen, written
24 contracts are necessary; right?

25 A That's correct.

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Cross/Peters

2014

1 Q Okay. But not NRA. NRA can be billed all sorts of
2 crap that's not in the contract, right?

3 A Well, it's --

4 MR. WANG: Objection.

5 (No audible ruling.)

6 A Pardon me.

7 It's interesting, because this -- this amendment was
8 not honored.

9 Q Okay. Understood.

10 Let us go -- okay.

11 So you said, at some point, the out-of-pocket job
12 ended; isn't that right?

13 A That's correct.

14 Q Okay. And the out-of-pocket job ended around summer or
15 fall of 2018; isn't that right?

16 A That's correct.

17 Q Okay. And at the time, was Ackerman happy about that
18 or --

19 MR. PETERS: Sorry. Strike that.

20 Q At the time, Ackerman was not happy about that, were
21 they?

22 A You're wrong. I was very happy.

23 Q Okay.

24 MR. PETERS: Let us introduce into -- or if we
25 may -- introduce into evidence DX 1-1092. And we've already

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Cross/Peters

2015

1 given --

2 Do you all have any objection?

3 A Sorry. Where is that?

4 Q Oh, sorry. This is tab 24 in the "Cross" binder, and
5 it's DX1-1092.

6 THE COURT: Any objection?

7 MR. WANG: No objection.

8 THE COURT: Anything from the defense?

9 (Pause.)

10 Q Okay.

11 THE COURT: Absent objection, it's admitted.

12 (Image displayed.)

13 Q Okay. And so, this is an e-mail that you sent to
14 Melanie Montgomery on August 24th, 2018; isn't that right?

15 A Actually, it was addressed to Revan McQueen.

16 Q Okay. It was addressed to Revan McQueen.

17 And you --

18 So, in the e-mail below the top one, Melanie
19 Montgomery -- sorry.

20 Melanie Montgomery is an executive at Ackerman, right?

21 A That's correct.

22 Q Okay. And she's saying: "Tried to call you. I don't
23 think we should do this. Can I call Woody to intervene?"

24 Right? Do you see that?

25 A That's correct.

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Cross/Peters

2016

1 Q Okay. What was --

2 And "Can I call Woody to intervene?" means that -- "Can
3 I call Woody to intervene to stop the NRA's demands for
4 backup?"; isn't that right?

5 A I'm not sure exactly what she intended with that.

6 I don't think it happened, anyway. I think the truth
7 is, Rick got what he wanted.

8 Q Okay. So -- but you --

9 MR. WANG: Counsel, I'm not sure we're on the same
10 document.

11 THE COURT: I'm not sure either.

12 MR. WANG: Tab 24?

13 MR. PETERS: I'm sorry; tab 25.

14 No, tab 24.

15 THE COURT: I don't see that, either.

16 MR. WANG: I'll show you what my tab 24 is
17 (indicating).

18 MR. PETERS: Okay. Yeah, that's different. It's
19 certainly different. Let's make sure that we're on the same
20 page, so to speak.

21 For me, it's 24. There might be different
22 varieties --

23 THE COURT: Can you, maybe, read the --

24 There are a bunch of numbers on the bottom; page
25 numbers.

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Winkler - by Plaintiff - Cross/Peters

2017

1 MR. PETERS: Yeah, let's do that.

2 THE COURT: What are the ones that you intend?

3 MR. PETERS: So this is "NYAG-00181388."

4 THE COURT: That's tab 25 in my binder.

5 MR. PETERS: Okay. Tab 25. My apologies.

6 BY MR. PETERS:

7 Q All right. So -- but your response to this
8 communication, at the time, is not to say, "Let's give them the
9 backup"; right?

10 A Actually, it was -- I -- I saw the change that was
11 occurring and I realized it was coming from Rick, which -- once
12 again, he's not the typical person that would have sent that to
13 me. But it did lead to the changes in the system and the
14 out-of-pocket job going away.

15 Q Okay. And to be clear, the change is that the NRA
16 requested backup for the charges that you were sending to the
17 NRA; right?

18 A No. It was a -- it was more that when Craig Spray came
19 in, he said that he didn't want any more Landini's; he wanted
20 Tyler Schropp's card gone; he didn't want -- Tony's travel had
21 to be pre-approved; Gayle Stanford needed to go away. All of
22 that happened within a two-week period --

23 Q Um-hmm.

24 A -- because -- at their request.

25 Q Okay. And --

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Cross/Peters

2018

1 MR. WANG: Your Honor, I just want to clarify the
2 correct exhibit number that went into evidence. We just
3 want our records clear for what exhibits are admitted into
4 evidence.

5 Was this DX 1-1092, tab 25, of the "Cross" binder?

6 MR. PETERS: It was tab --

7 Understanding that the -- it -- it was the -- the
8 document with the Bates stamp "NYAG-00181388."

9 THE COURT: And what exhibit number for the trial
10 are we putting that under?

11 MR. PETERS: Well, I had put -- we had put --

12 I went a little bit out of order, so if -- if we're
13 going to be going in the correct order of things, it should
14 be DX 1-1088.

15 So let's --

16 THE COURT: Well, is there a version of this
17 document anywhere that has the exhibit number that you want
18 on it? Because, if not, we need to give it to the court
19 reporter and mark it.

20 MR. PETERS: Yeah. Why don't we -- I mean, it --
21 To the extent that this is okay (handing) --

22 THE COURT: You have it already marked?

23 MR. PETERS: Yeah, I have it marked.

24 THE COURT: All right. Well, if it's --

25 Why don't you read in the marking. What's the

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Winkler - by Plaintiff - Cross/Peters

2019

1 number?

2 MR. PETERS: DX I, or 1 -- DX 1-1088.

3 THE COURT: All right. So you are now deputized to
4 make sure that that goes in the official pile of exhibits --

5 MR. PETERS: Okay.

6 THE COURT: -- because you now have the only
7 version of it that's marked.

8 MR. PETERS: Understood. Thank you.

9 MS. COUTU: Your Honor, so, is DX 1-1092 also
10 admitted?

11 THE COURT: No --

12 MS. COUTU: Okay.

13 THE COURT: -- because it's --

14 This is the only document that I was intending to
15 admit, based on the assumption that that was the exhibit
16 number, which seems to be not correct.

17 MR. FARBER: The problem is, 1-1092 is the exhibit
18 that the witness was answering questions about. So --

19 THE COURT: Oh, it is?

20 MR. FARBER: He was asked, you know, "Is this sent
21 to Melanie Montgomery?" and I believe his response was, "No,
22 it's sent to" -- I think it was Revan McQueen. I assume
23 that's because he was looking at the document that counsel
24 directed him to.

25 THE COURT: All right.

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Winkler - by Plaintiff - Cross/Peters

2020

1 Well, I have an easy way out of this: The
2 testimony about -1092 -- I think it's pretty clear that what
3 we were trying to do was ask questions about -1088, which is
4 in. -1092 is not in, at least not yet.

5 MR. PETERS: Why don't I -- why don't I hand the
6 document to the witness and have him --

7 THE COURT: No. That document, we have.

8 MR. PETERS: Okay, okay.

9 THE COURT: It's in tab 25. Everybody knows what
10 it is.

11 MR. PETERS: Um-hmm. Okay.

12 THE COURT: Everything's okay now.

13 MR. PETERS: Okay. Good. Excellent. Thank you.

14 BY MR. PETERS:

15 Q All right. As we -- if we could move to DX 1-1004 ...?

16 A Do you have a tab number?

17 Q It's 15 for mine, but let's make double sure that we're
18 on -- that we're having the same exhibit.

19 THE COURT: Yeah. And again --

20 Oh, this one does have a "DX 1" on it.

21 MR. PETERS: Yes.

22 THE COURT: Okay. That's tab 15. That seems to be
23 correct.

24 MR. PETERS: Yes.

25 Okay. May I move this --

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Winkler - by Plaintiff - Cross/Peters

2021

1 Is there any objection to moving this into
2 evidence?

3 MR. WANG: No objection.

4 MR. PETERS: Okay.

5 THE COURT: From the defense ...?

6 MR. CORRELL: No objection.

7 MR. FLEMING: No objection.

8 THE COURT: All right.

9 Hearing none, it's admitted.

10 (Image displayed.)

11 BY MR. PETERS:

12 Q Okay. So it was your testimony before, wasn't it, that
13 Mr. Tedrick would review the books and records at Ackerman
14 McQueen headquarters? Isn't that right?

15 A That's correct.

16 Q Okay. And did Mr. Tedrick ever express any concern to
17 you about the backup that was being provided for the
18 out-of-pocket expenses that were being billed to the NRA?

19 A No, he did not. I did, at the end of every audit,
20 request that if he wanted any changes to the systems or
21 processes, that he would please give it to me in writing and I
22 would make sure that it happened. I never received anything.

23 Q Okay.

24 MR. CORRELL: Objection.

25 Your Honor, move to strike everything after "No, he

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Winkler - by Plaintiff - Cross/Peters

2022

1 did not. "

2 THE COURT: Overruled.

3 Q Okay. So, were you aware that Mr. Tedrick found that
4 the documentation of NRA business purpose [sic] on Tony Makris'
5 receipts was minimal and practically nonexistent?

6 A I was not aware that he had a problem with it, no.

7 Q Okay. Are you --

8 Were you aware that Mr. Tedrick's finding was that the
9 tips are primarily the same on the days of all of his trips and
10 he just cuts and pastes the amount and changes the dates?

11 A I was not aware of that.

12 Q Okay. Were you aware that Tony Makris tended to --
13 that he found that Tony Makris tended -- to utilize a car
14 service when he is out of town, very frequently, rather than a
15 taxi?

16 A I was not aware that Rick had a problem with any of
17 that.

18 Q Okay. And were you aware that he had a problem that
19 Tony's girlfriend traveled with him on certain trips, the
20 majority of which were paid for by the NRA?

21 A He never raised an issue with it, no.

22 Q Okay. Let's --

23 So did you ever -- did Ackerman ever -- take any steps
24 to prevent Mr. Tedrick from auditing the out-of-pocket expenses?

25 A No.

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Winkler - by Plaintiff - Cross/Peters

2023

1 Q Okay. Did you --

2 Ackerman never said, "We demand that Woody audit the
3 out-of-pocket expenses"?

4 A No. Rick was very frustrated, after the 2012 or '13
5 audit, that he couldn't take the documents back with him, and
6 Woody audited it after that. I don't know what the discussion
7 was between the two of them.

8 Q Okay. What about before that? Did Ackerman ever take
9 any steps, before that, to frustrate Mr. Tedrick's ability to
10 audit the out-of-pocket -- the backup for the out-of-pocket
11 expenses?

12 A No.

13 MR. WANG: Objection to the characterization.

14 Q Okay.

15 THE COURT: Overruled.

16 MR. PETERS: Now I'd like to move into evidence tab
17 16 of the "Cross" binder, which is DX 1-1005.

18 Is there any objection?

19 MR. WANG: No objection.

20 MR. CORRELL: No objection.

21 THE COURT: Okay. It's admitted.

22 (Image displayed.)

23 Q Okay. So, if you go to page 2 of the document and
24 under "out-of-pocket" --

25 THE COURT: Counsel, have you established what

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Winkler - by Plaintiff - Cross/Peters

2024

1 these documents are? I -- I ...

2 Q So, were you aware that Mr. Tedrick prepared reports of
3 his audits when he would go do audits at Ackerman McQueen?

4 A I was not aware of it until I saw -- heard -- his
5 deposition and I realized that he had done reports all the way
6 back to 2004; but only through his deposition.

7 Q Okay. So you --

8 Were you working at Ackerman McQueen on the NRA account
9 in 2008?

10 A I'm actually the CFO, so I don't really work on any
11 account directly.

12 Q Okay. But you were the CFO of Ackerman McQueen in
13 2008, right?

14 A That's correct.

15 Q Okay. And you were --

16 At that point, you knew about Mr. Tedrick's audits?

17 A Yes.

18 Q Okay. So you were not aware of any efforts to make
19 sure that Mr. Tedrick did not conduct the audits of the
20 out-of-pocket expenses, right?

21 A No. We always opened it up to him.

22 Q Okay. Was there any reason why Woody Phillips would
23 have audited the out-of-pocket expenses, and not Mr. Tedrick,
24 the next year?

25 A In 2013?

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Winkler - by Plaintiff - Cross/Peters

2025

1 Q 2008.

2 A In 2008? I -- if he did, I don't remember him doing
3 it. But sometimes Woody might come in, if Rick's schedule was
4 too busy.

5 Q Okay. You never were part of any conversations with
6 anyone to make sure that Woody did the audits and not Rick
7 Tedrick?

8 A No.

9 Q Okay. So you were aware, weren't you, that at some
10 point, Forensic Risk Assessment [sic] was engaged by the NRA to
11 do an audit of the Ackerman McQueen expenses that were being
12 billed to the NRA? Right?

13 A That's correct.

14 Q Okay. You've just testified to that before.
15 Were you aware of --

16 A Excuse me.

17 I -- to the report?

18 Q Well, were you --

19 What was your awareness of the findings of the Forensic
20 Risk Assessment audit?

21 A I didn't receive any -- the findings. They didn't give
22 me an audit report; they didn't tell me what the audit found.
23 The only thing I knew about were the areas that they had asked
24 for receipts and we didn't have them.

25 Q Okay.

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Winkler - by Plaintiff - Cross/Peters

2026

1 A I never received anything else.

2 Q Okay. The purpose of the forensic audit, to your
3 knowledge, was to find out what was the basis for the charges
4 that Ackerman McQueen had been billing to the NRA; right?

5 A I -- all I knew is, they were coming in to audit.
6 Nobody gave me an explanation of what they were looking for or
7 anything else. They just came in and asked for documents.

8 Q Okay. Was your impression of the audit that it was
9 very --

10 Your impression of the audit was that it was very
11 thorough, right?

12 A Yes. It seemed very thorough. Jessica seemed very
13 professional in what she was doing.

14 Q Okay. And at this particular audit, I believe that
15 there were six different auditors who came to look at the
16 documentation for the out-of-pocket expenses; isn't that right?

17 A I'm not sure what all they looked at; we weren't in the
18 room with them.

19 Q Okay. And were --

20 So, did anyone at NRA express concern to you, at that
21 time, that the amounts being expensed to the NRA by Ackerman
22 McQueen were far outside the amounts that had been budgeted?

23 A No.

24 Q You never became aware of that through any of the
25 lawsuits or anything like that?

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Winkler - by Plaintiff - Cross/Peters

2027

1 A No.

2 Q Okay. Did you ever become aware of the finding of the
3 NRA -- or of the auditors -- that the amounts being billed as
4 part of OOP -- as part of the OOP job -- were not consistent
5 with NRA policies?

6 A I'm finding that out right now.

7 But we also had --

8 THE COURT: He just asked a question, so --

9 A Yeah. It's a little bit confusing in -- what you said,
10 because in two thousand -- the fall of 2018, everything changed
11 to what they wanted it to be.

12 Q Okay. You were aware, weren't you, that billing, for
13 example, cigar bar expenses to the NRA was not consistent with
14 NRA policy? Right?

15 A I was not made aware of the NRA policy until they
16 brought in the change in the systems.

17 Q Did you ever ask what the NRA policy was before that?

18 A I -- I did not, due to the fact that they were coming
19 in and auditing and I'm saying, "If there's anything you don't
20 like, please give it to me in writing," and they never did.

21 Q So, even after the NRA sued Ackerman McQueen, you never
22 looked to see what NRA's policy was on reimbursement of business
23 expenses?

24 A We had already made all the changes to our systems.

25 Q I asked a yes-or-no question: Did you look?

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Winkler - by Plaintiff - Cross/Peters

2028

1 A Yes.

2 Q Okay. When did you look?

3 A At the fall of 2018, when the systems all changed to
4 what their system was.

5 Q Okay. At that point, you reviewed NRA policies on what
6 appropriate business reimbursements were?

7 A For travel expenses, yes.

8 Q What about for other expenses?

9 A I don't know that I saw -- I only saw the travel
10 policy.

11 Q Okay. So, for the first time --

12 You had been sending invoices to the NRA for years and
13 years, right?

14 A Correct.

15 Q And you only looked at what the NRA's own policies were
16 for paying reimbursements in the fall of 2018; isn't that right?

17 A That's correct.

18 Q Okay. And this was --

19 And the reason why you didn't look before was because
20 the NRA continued to pay the invoices?

21 A And audit every year, yes.

22 Q Okay. And the -- and the reason -- okay.

23 MR. PETERS: If we go to tab 6 of the plaintiff's
24 exhibit binder --

25 THE COURT: Oh, plaintiff's exhibit binder.

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Winkler - by Plaintiff - Cross/Peters

2029

1 MR. PETERS: Right.

2 THE WITNESS: Is there one I don't have?

3 THE COURT: The big one (indicating), from before.

4 THE WITNESS: The big one, from before. Okay.

5 MR. PETERS: This is PX 445.

6 THE COURT: That was admitted earlier?

7 MR. PETERS: Yes.

8 THE COURT: Okay.

9 BY MR. PETERS:

10 Q Okay. So, in this document, you --

11 So you wrote this letter, yourself, on April 22nd,

12 2019; right?

13 THE COURT: Which page?

14 MR. PETERS: Sorry. This is "page 53 of 53."

15 (Image displayed.)

16 A Yes, I did.

17 Q Okay. You didn't have anyone's help writing this, did
18 you?

19 A I'm sure I probably solicited some help from my son,
20 and I probably -- yeah, that's probably it.

21 Q Okay. All right. And Ackerman McQueen had been sued
22 by the NRA at this point, right?

23 A That's correct.

24 Q Okay. And so, you wrote in this letter: "At Wayne
25 LaPierre's request, we issued you an American Express Card with

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Winkler - by Plaintiff - Cross/Peters

2030

1 the intent to keep your business travel confidential and
2 secure."

3 Do you remember writing that?

4 A Yes.

5 Q Okay. But you know that that's not true, right?

6 It wasn't at Wayne LaPierre's request, was it?

7 A From what I knew, yes, it was.

8 Q Well, could we perhaps refresh your recollection with
9 an audiotape?

10 A I -- I've heard the audiotape.

11 Q Okay. How did you hear the audiotape?

12 A It's on the Internet and I just -- somebody just sent
13 me a link to it.

14 Q Okay. What was -- maybe, if we play --
15 And it's your voice on the audiotape.

16 MS. COUTU: Objection, your Honor.

17 It's hearsay, and it hasn't been authenticated.

18 A We -- we also suspect that --

19 THE COURT: Hang on a second, since maybe you all
20 know things I don't.

21 I don't know what you all are referring to, so if
22 there's a dispute about the authenticity of whatever it is
23 you're talking about, that's probably something we should
24 discuss outside the jury's presence rather than going --
25 just going right --

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Winkler - by Plaintiff - Cross/Peters

2031

1 Q Well, can I ask: You listened to the audiotape that
2 I'm talking about, right?

3 A Yes.

4 Q And that's your voice on the audiotape, right?

5 A Yes, it is.

6 Q Do you have any reason to believe that the audiotapes
7 were altered in any way?

8 A I have no way of knowing. I don't remember the
9 conversation. But, more importantly --

10 THE COURT: We're not getting into the details of
11 it until --

12 THE WITNESS: Okay.

13 THE COURT: -- I -- I --

14 You're a couple of steps ahead of me.

15 MR. PETERS: Okay.

16 THE COURT: And so, when I hear objections from
17 your side of the room, over there (indicating), I want to be
18 cautious.

19 MR. PETERS: Okay.

20 THE WITNESS: Okay. Because I've got several
21 questions on it. That's all.

22 THE COURT: Well, we'll do one at a time, but not
23 right now.

24 BY MR. PETERS:

25 Q Do you have any reason to believe that the tape has

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1 been altered in any way?

2 A I would have no way of knowing, because I don't
3 remember the conversation.

4 Q Okay. Well, maybe we can refresh your recollection of
5 what the conversation was by playing you the audiotape.

6 THE COURT: I think we're missing each other a
7 little.

8 MR. PETERS: Okay. All right. So you want to have
9 a sidebar?

10 THE COURT: Well, I -- I -- we're kind of at the
11 breakpoint, anyway. I was going to give you a few extra
12 minutes to try to maximize the chances of getting the
13 witness out for his flight.

14 But can you accomplish anything else or do you --
15 If we need to talk about this, then we need to take
16 a break. That's fine. If you want to -- if this is what
17 you want to do next, then --

18 MR. PETERS: This is what I want to do next.

19 THE COURT: All right.

20 So we're going to break. We will reconvene at
21 2:15.

22 COURT OFFICER: All rise. Jury exiting.

23 (The jury left the courtroom.)

24 THE COURT: So this is one where --

25 I mean, typically, we release the witness when we

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Winkler - by Plaintiff - Cross/Peters

2033

1 talk about things. There may be a voir dire of the witness.
2 I don't -- I'm a little unsure of what you're referring to
3 here. So can you, maybe, just tell me what's going on?

4 MR. PETERS: Yes.

5 So, there was a report written in the Trace a
6 couple weeks ago that included audiotapes of Mr. Winkler,
7 Ms. Montgomery and Mr. Phillips, and they're in the Mercury
8 Group offices in Alexandria; Mr. Winkler is joining by
9 video -- by telephone; and they are discussing the -- this
10 very issue of how Tyler Schropp's expenses --

11 THE COURT: What's -- what information do you have
12 as to -- the "provenance" is what people sometimes use with
13 art. Who made this recording? Is there any human being
14 that can testify as to the circumstances under which it was
15 recorded?

16 I'm asking these questions a little on the fly, but
17 in the era of artificial intelligence, I am familiar with
18 the fact that things are not always what they appear. I'm
19 not saying that's what this is but I -- do you have any
20 witness who was involved in doing the recording?

21 MR. PETERS: We have Mr. Winkler.

22 THE COURT: Not who was in the conversation. That
23 may be relevant, too.

24 MR. PETERS: Right.

25 THE COURT: But the first step, when we talk about

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Winkler - by Plaintiff - Cross/Peters

2034

1 recordings and photographs and things like that, is --
2 typically, the foundation is: Where did the recording come
3 from?

4 MS. ROGERS: So, your Honor, our understanding of
5 the Court of Appeals decision in People v. Ely on
6 authenticating audio recordings is that there's four ways to
7 authenticate them and one is by having someone testify to
8 the provenance -- who was operating the recording machine.

9 But, in the absence of that, I believe New York
10 courts have said, if you can get a participant in the
11 conversation to listen to it, to testify that he doesn't
12 detect alterations or splices, then that's an alternative
13 acceptable mode of authentication. That's --

14 THE COURT: What year was that decision?

15 MS. ROGERS: I can't remember. It was -- it was
16 probably before the flourishing of AI, but I'm not aware of
17 any subsequent precedent that alters it and, I think,
18 treatises on the subject are still the same.

19 MR. PETERS: It was 1986.

20 THE COURT: Okay. So I'll have to look at it.

21 But you're saying --

22 And I understand, why you could do it this way is
23 if the person can testify that this is the conversation.
24 Well, this witness testified he doesn't remember the
25 conversation. He can -- so he can't -- so, whatever that

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Winkler - by Plaintiff - Cross/Peters

2035

1 method would be would not be this witness.

2 MS. ROGERS: Right.

3 I think -- I think the hope was to play the
4 conversation and that could refresh the witness'
5 recollection; and then, if he says, "I can't detect that
6 this was altered or truncated or spliced, that this seems to
7 be a reproduction of a conversation I had" --

8 THE COURT: Well, but this would be a voir dire
9 outside the jury's presence, then.

10 MS. ROGERS: Right.

11 So we're using it to refresh recollection. It
12 would be the equivalent of publishing it on the screen to
13 the witness (indicating).

14 THE COURT: So I'm okay doing a voir dire outside
15 the jury's presence, if that's what you want to do. It
16 would have the side benefit of me knowing what you all are
17 talking about.

18 (Laughter.)

19 MR. PETERS: Okay, that's fine.

20 THE COURT: So, if you have the recording -- and
21 the witness is still here -- let's do it.

22 MR. PETERS: Okay.

23 MS. COUTU: Your Honor, I would just note, the
24 witness just said that he does not recall the conversation
25 verbatim. The video -- or the recording that's at issue --

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Winkler - by Plaintiff - Cross/Peters

2036

1 is alleged to be from, I believe, 2009 and it's about
2 20-something minutes. So, the fact that they're saying --
3 he's not going to be able to -- he has to decipher whether
4 or not -- and he's not a tech expert -- whether or not this
5 was spliced or manipulated, he's not going to be able to
6 tell that. He doesn't recall.

7 THE COURT: Well, the first problem is, we don't
8 have 20 minutes.

9 MS. ROGERS: Right, and we're -- I don't think we
10 intend to introduce -- it's a 20-minute meeting, but there's
11 one contiguous, I think, 30-second excerpt that we intended
12 to play.

13 THE COURT: All right, why don't you --

14 Let's take it one step at a time, before we jump to
15 conclusions. Let's play the part that you would like to
16 question the witness about.

17 MR. PETERS: Okay.

18 MS. CONNELL: Your Honor --

19 THE COURT: What?

20 MR. WANG: I think Mr. Winkler is trying to say
21 something.

22 THE WITNESS: I'm trying to explain something.

23 THE COURT: No. I haven't asked you a question
24 yet.

25 THE WITNESS: I know, but there's -- there's an

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2037

1 important component here.

2 THE COURT: Hang on.

3 All right. Well, let me hear --

4 THE WITNESS: This conversation was supposedly in
5 2009, which I don't remember. Tyler Schropp's expenses
6 didn't start until 2013.

7 THE COURT: Well, whether it's relevant to anything
8 in the case or not, I can't really quite get to yet, because
9 he wants to ask you questions about it; I don't know what
10 those questions are going to be.

11 So I understand your point. We have to get, first,
12 to the question of whether they can play this and ask you
13 questions about it.

14 MR. WANG: We would object to playing anything less
15 than the whole tape.

16 THE COURT: Well, for now, let's just start with --
17 because the jury's not here. I'm trying to catch up to all
18 of you, and just play the part that you want to use, and
19 then we'll talk about what else we play.

20 (Audio played in open court.)

21 THE COURT: Okay. It's not the easiest thing to
22 hear. Normally -- if this had been fully vetted, if -- we
23 would normally have some sort of words under it so that
24 people could understand it. Now, we obviously don't have
25 that, I assume.

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Winkler - by Plaintiff - Voir Dire/Peters (Non-jury)

2038

1 MR. PETERS: We do have a transcription of it.

2 THE COURT: So, apparently, not so off-the-cuff.

3 So, if you want to ask the witness voir dire about
4 that portion ...?

5 MR. PETERS: Yeah.

6 VOIR DIRE EXAMINATION

7 BY MR. PETERS:

8 Q So, you said in this letter that you issued Tyler
9 Schropp an American Express?

10 THE COURT: No, the voir dire is just about this
11 recording --

12 MR. PETERS: Okay.

13 THE COURT: -- and whether you're going to use this
14 witness to satisfy whatever this Court of Appeals case says
15 is a way to get a document admitted into evidence.

16 Q Does that sound like your voice, Mr. Winkler?

17 A Yes.

18 Q Okay. Do you have any reason to believe that that
19 audio clip that we just played has been altered in any way?

20 A I am not qualified to say that. I don't know.

21 Q Okay. But you don't have any reason, sitting here
22 today, to think that that was altered or manipulated in any way
23 to make it sound like you said something you didn't.

24 A That -- probably not.

25 Q Okay.

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Winkler - by Plaintiff - Voir Dire/Peters (Non-jury)

2039

1 MS. ROGERS: So, as far as you can tell, this is an
2 accurate reproduction of that contiguous portion of your
3 conversation; right?

4 THE WITNESS: I -- I think the question is: What
5 year was that conversation and was it even recorded legally?

6 MS. ROGERS: Well, those -- those are relevant
7 questions for other purposes. But for purposes of the Court
8 of Appeals precedent, I think what we're just trying to
9 establish in this limited examination is that that --
10 that -- that portion of the conversation was completely and
11 accurately reproduced and you're not detecting that your
12 words were altered.

13 THE WITNESS: Once again, I -- I have no way of
14 knowing, one way or another. I do not remember the
15 conversation.

16 THE COURT: It's broader than your words: whether
17 any part of the conversation was altered.

18 MS. ROGERS: Right, your Honor.

19 BY MR. PETERS:

20 Q Is there any part of the conversation that you believe
21 might have been manipu --

22 Is there any part of the conversation that you believe
23 might have been manipulated or altered -- that you just heard?

24 A Once again, I don't remember the conversation, so I
25 can't tell you, one way or another.

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Winkler - by Plaintiff - Voir Dire/Peters (Non-jury)

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1 Q Okay. Does that sound like the type of conversation
2 you might well have had with Melanie Montgomery and Woody
3 Phillips?

4 A Once again, they're saying it's what; 2009?

5 Q Yes.

6 A I mean, you're asking me to remember something -- what
7 is it? -- 16 years ago, 15 years ago? I'm sorry; I just don't
8 remember.

9 Q Okay. You've testified, though, to other things that
10 occurred in that time period, though; haven't you?

11 A Yes.

12 Q Okay.

13 A I just don't remember that conversation.

14 Q Okay. Understood. But you don't --

15 With regard to that audiotape specifically, you don't
16 have any reason to believe that any part of it has been
17 manipulated or altered; isn't that right?

18 THE COURT: For my purposes, leading questions are
19 not helpful here.

20 MR. PETERS: Okay.

21 THE COURT: I'm trying to find out what the witness
22 knows, not have you lead him.

23 MR. PETERS: Okay. Understood.

24 Q So, do you --

25 Would you customarily or routinely have conversations

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Voir Dire/Peters (Non-jury)

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1 with Ms. Montgomery and Mr. Phillips at around that time period,
2 of 2009?

3 A You've -- first of all, that's where the whole tape
4 comes into play, because the majority of that discussion was
5 over budgeting and invoicing.

6 Q Okay.

7 A That was -- that was a sidebar to -- from what I could
8 tell, it was a sidebar.

9 Q Do you recognize Ms. Montgomery's voice on that audio
10 recording?

11 A Yes.

12 Q Okay. Do you recognize Mr. Phillips' voice on that
13 audio recording?

14 A Yes. Excuse me.

15 Q So that --

16 In other words, it sounds like Ms. Montgomery and
17 Mr. Phillips in a conversation that you may have had during that
18 time period.

19 A I'm -- I'm trying to be as clear as I can. You're
20 asking me something I don't remember and you're saying, "Because
21 it sounds like you, and was nothing altered, was nothing" -- if
22 I don't remember the conversation, I can't give you the answer
23 that you're looking for, because I don't remember it.

24 I also don't think Tyler got a credit card then.

25 Q Okay. But that's a slightly different issue.

ALAN F. BOWIN, CSR, RMR, CRR

Winkler - by Plaintiff - Voir Dire/Peters (Non-jury)

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1 So you listened to this audiotape before coming to
2 court today.

3 A Yes.

4 Q Okay. What were the circumstances around that?

5 A I just -- somebody told me that Trace had an article
6 coming out and I -- that -- or podcast or whatever it is that
7 The Trace does, and so I listened to that.

8 Q Okay. What was your --

9 What was your reaction to hearing it?

10 A Not just -- once again, my first thing is, it was --
11 could have been -- manipulated through AI; it could have been
12 something of that nature. I didn't remember the conversation,
13 so -- and I normally would remember something like that, but I
14 didn't.

15 MS. ROGERS: Your Honor, may I make a suggestion?

16 So, under the Court of Appeals precedent I cited,
17 you know, one way of getting the tape authenticated would be
18 for a participant to testify to its accuracy. If
19 Mr. Winkler is unable to do that, then another way of
20 getting it authenticated would be to have an expert witness
21 listen to it and analyze it for, you know, markers of
22 alteration or splicing. I would suggest that we do that and
23 reserve the right to offer it through our case-in-chief, if
24 we're able to get that testimony.

25 This tape surfaced on the Internet after pretrial

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Winkler - by Plaintiff - Voir Dire/Peters (Non-jury)

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1 disclosure, so, of course, it wasn't produced in discovery.

2 THE COURT: Okay. Well, I will agree to the extent
3 that I don't think this witness can be your authenticator
4 based on his testimony.

5 Can you give me the cite to that case, so I can
6 read it over lunch?

7 MR. PETERS: I can do better; I can give you a copy
8 of it, if you'd like (handing).

9 THE COURT: How do I know this (indicating) is not
10 AI?

11 MS. COUTU: Could we also get a copy, please?

12 MR. FARBER: A citation might be nice for those of
13 us what don't have it.

14 THE COURT: This would be 68 N.Y.2d 520.

15 And it wouldn't be the first case that somebody
16 gave someone that wasn't a real case, but I'm not going
17 to --

18 MR. FARBER: AI can do many things, your Honor.

19 Also, this -- you know, this was all on the record.
20 This -- whatever was played, I think, should be marked as an
21 exhibit; a court exhibit.

22 THE COURT: So we have a record of it.

23 Well, it wasn't actually played with a transcript,
24 so that part wasn't done. So you can't add -- and the court
25 reporter wasn't writing down, I doubt, what the

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1 transcription was.

2 MR. FARBER: No.

3 My point just is, your Honor: There should be a
4 record of what the witness was responding to, so the actual
5 tape that was played ought to be more --

6 THE COURT: Yeah, that part I agree with.

7 MR. FARBER: That's all.

8 THE COURT: So you guys will worry about how to --
9 how to do that, mechanically.

10 So we're going to break. I'll see you all at 2:15.

11 And, sir, just during the break: You're still on
12 the stand, essentially, so you shouldn't discuss your
13 testimony -- the substance of it anyway -- with anyone,
14 including counsel.

15 THE WITNESS: Including counsel, okay.

16 THE COURT: Yes.

17 THE WITNESS: Do I have a place that I get to go?

18 THE COURT: We'll find a place for you.

19 THE WITNESS: Thank you.

20 (The witness stepped down.)

21 (Luncheon recess.)

22 (Continued on next page.)

23

24

25

ALAN F. BOWIN, CSR, RMR, CRR

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1 THE COURT: So the jury is ready. I don't know
2 that we have any more to discuss. I've spent a entertaining
3 lunch hour with my law clerks going through at least the pre
4 AI period where all the audio recordings. But from the last
5 I heard, I think it seems pretty clear that the foundation
6 requirement at least initially set out in the Court of
7 Appeals case that you cited has -- has not been met at this
8 stage. And the case law and the commentary seem to envision
9 a combination of testimony and expert testimony. Anyway,
10 I'll withhold judgment on it. So, there is no questioning
11 this witness on -- on the audio recording. There is no
12 references to the audio recording until such time as we have
13 a hearing to determine admissibility.

14 I will just note that the first sentence of the
15 People versus Ely, E-L-Y case, 68 N.Y.2d 520. Again,
16 remember this is 1986, but still used in the commentary to
17 the jury instructions, at least in criminal cases. Quote,
18 "The predicate for admission of tape recordings in evidence
19 is clear and convincing proof that the tapes are genuine and
20 that they have not been altered."

21 Now, it's been a lot of years since 1986. So both
22 advances in science and in expert testimony and the like.
23 So I have an open mind as to whether you can meet that
24 standard, but for now it's not yet. So --

25 MR. PETERS: Your Honor, may -- you said references

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PROCEEDINGS

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1 to the audio tape. Does that preclude us from asking him
2 whether he made statements similar to the ones on the audio
3 tape?

4 THE COURT: Well, not by referencing the tape
5 though. You can say --

6 MR. PETERS: Right.

7 THE COURT: You can ask if he recalls meeting with
8 X, Y and Z. But you can't ask the leading question for
9 which the foundation is the audio tape, because that has --
10 you can only do that if you have an evidentiary basis to ask
11 it. And if your evidentiary basis has already been
12 previewed and found lacking so far, I can't let you do that.
13 So I don't want -- The jury has already heard a little bit
14 about this, which concerns me. So, I -- I think you have to
15 tread very carefully here and just ask, you know -- I think
16 you can ask independently about whether he is -- had any
17 conversations about, you know, how to charge for whatever.

18 I frankly couldn't really understand what was on
19 the tape from what I heard. But I got the general gist that
20 it seems to be about a discussion about methods for charging
21 for certain kinds of things. You've already been asking
22 about that. You can ask about it again but, you know,
23 enlight of what they have already heard and maybe expecting
24 to hear an audio tape, you know, I don't want it to be --
25 remember this tape that we were just talking about. Didn't

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Cross-Winkler-Peters

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1 that meeting happen or didn't that conversation happen. So,
2 that's my view of it. You can ask about it as if the tape
3 doesn't exist. That would be my guidepost for you.

4 MR. PETERS: I understood. That's very helpful.
5 Thank you very much.

6 THE COURT: Let's get the jury, please. I'm sorry.
7 The witness first and than the jury.

8 Got your travel clothes ready to go, right. There
9 is never any traffic near LaGuardia, so don't worry about
10 it.

11 THE WITNESS: Do I sit?

12 THE COURT: We're waiting for the jury to come in.
13 You can sit and then stand when they come.

14 THE COURT OFFICER: All rise. Jury entering.
15 (Whereupon the jury panel entered the courtroom.)

16 THE COURT: Welcome back. Have a seat. Okay. Mr.
17 Peters, I think you were in the midst of your questioning,
18 am I right about that, or are you done?

19 MR. PETERS: I am not done. I'm going to ask just
20 a few more questions of Mr. Winkler.

21 CONTINUED CROSS EXAMINATION

22 BY MR. PETERS:

23 Q Good afternoon, Mr. Winkler.

24 A Good afternoon.

25 Q Okay. So, at any point did you instruct someone in

LAS

Cross-Winkler-Peters

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1 your accounting department to issue an American Express card to
2 Tyler Schropp?

3 A In 2013, yes.

4 Q Okay. Did you ever --

5 A I'm sorry. One of the problems, that as I started
6 thinking about this at lunch, Tyler Schropp was still an
7 employee of Ackerman in 2009 for part of it. So I think we have
8 to look at what the date on that tape is.

9 MS. COUTU: Objection.

10 THE COURT: I haven't made any ruling on this tape
11 coming in or not. So for now it's not in. It's not going
12 to be referenced or used. He's asking you for your memory.

13 A Yes. At least once.

14 Q Okay. So, you -- And you just noted, didn't you, that
15 Mr. Schropp started -- moved from Ackerman McQueen to the NRA in
16 2009, isn't that right?

17 A I think. I don't have those records in front of me,
18 but I'm pretty sure it was 15 years ago, yes.

19 Q Okay. And -- and you were aware of the -- Strike that.
20 And you authorized the arrangement where Mr. Schropp would have
21 an Ackerman credit card and bill those expenses to the NRA
22 through an OOP, isn't that right?

23 A Timing has to be described here. When he was an
24 Ackerman employee --

25 Q I didn't ask about timing. I asked just generally.

LAS

Cross-Winkler-Peters

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1 A He had two different levels that it occurred. When he
2 was an Ackerman employee, he handled Wayne's travel. When he
3 was not, when he was an NRA employee, yes, whatever he put on
4 his credit card we billed back to the NRA.

5 Q Okay. Understood. So, moving now to PX -- to PX 3138,
6 this is tab nine of the plaintiff's exhibit binder.

7 A Okay.

8 THE COURT: Is this in evidence yet?

9 MR. WANG: It's in evidence.

10 THE COURT: Okay.

11 Q So, you -- Did you -- Ackerman's lawyers drew up this
12 agreement, didn't they?

13 A That's correct.

14 Q Okay. Not the NRA's lawyers?

15 THE COURT: Right now the document is not on the
16 screen yet. When you talk about "this agreement", the jury
17 doesn't know what you're talking about yet.

18 Q Okay. So just to ask again. Ackerman's lawyers drew
19 up this agreement, right?

20 A That's correct.

21 Q Okay. Not the NRA's lawyers, right?

22 A I would think they reviewed it, but I don't know that.

23 Q Okay. You're not even sure that the NRA's lawyers even
24 reviewed this, right?

25 A That's correct.

LAS

Cross-Winkler-Peters

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1 Q Okay. So there is a reference here to DJ Investments,
2 which I believe if you look at page 9 in -- it says there,
3 doesn't it, that "The sole manager shall be DJ Investments,
4 LLC". Do you see that?

5 THE COURT: What page are you on?

6 MR. PETERS: Page 9. Sorry. Let's go by the
7 number at the bottom, 13 of 34.

8 Q Thirteen of 34. There are two sets of numbers on the
9 page. Yes, there you go. If you look at 3.2, it says, "The
10 sole manager shall be DJ Investments, LLC", right?

11 A Correct.

12 Q DJ Investments, LLC was a company that was comprised of
13 Ackerman employees, right?

14 A That's correct.

15 Q Okay. And so under this agreement DJ Investments would
16 be receiving a management fee, isn't that right?

17 A Had not been determined.

18 Q Okay. And certainly if we go to page 17 of 34 and look
19 at 3.7, the expenses incurred by the -- by the manager would be
20 reimbursed by the company, isn't that right?

21 A I'm sorry. When you say company --

22 Q Well, let's -- let's look at the company. So, company,
23 if you look at page 6 of 34, means Wbb Investments, right?

24 A Yes.

25 Q Okay. That's the company Ackerman set up, right?

LAS

Cross-Winkler-Peters

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1 A Yes.

2 Q Okay. And if you look at costs and expenses in 3.7 it
3 says that "Expenses shall be paid by the manager and reimbursed
4 by the company", right?

5 A Correct.

6 Q Okay. So, they would be -- So DJ Investments would be
7 receiving reimbursements from Wbb Investments, right?

8 A If they incurred any expenses, yes.

9 Q Okay. And if we look at the very last page of this
10 document, 34 of 34, DJ Investments, which is comprised of
11 Ackerman employees, would be receiving a one percent interest in
12 this new venture, isn't that right?

13 A Yes.

14 Q Okay. So that means DJ Investments would be profiting
15 off of this venture, right?

16 A Not at this time. It's still too early to know whether
17 it was going to have a profit or not.

18 Q Okay. Fair enough. But if the value of the house were
19 to appreciate, DJ Investments would make money, wouldn't they?

20 A Depending on what the capital accounts were at. That's
21 one of the reasons why it was an LLC. The majority of the
22 investment would have been NRA. So they would have gotten paid
23 back first.

24 Q Okay. Did NRA ever approve this arrangement with Wbb
25 Investments?

LAS

Cross-Winkler-Peters

2052

1 A That's not a question for me.

2 Q Okay. If we go to tab ten of the plaintiff's binder,
3 we see an invoice.

4 THE COURT: Is this in evidence?

5 MR. WANG: Yes, it is.

6 THE COURT: Okay.

7 MR. WANG: 3134.

8 MR. PETERS: 3134, let's get it up on the screen.

9 Q Okay. So, this is an invoice that Wbb Investments sent
10 to the NRA, isn't it?

11 A That's correct.

12 Q Okay. And if we look at the top left, the address 1509
13 Northwest 158th Terrace, Headman, Oklahoma, that was your
14 address, wasn't it?

15 A That's correct.

16 Q So what happened with this invoice was that the -- that
17 the NRA initially paid it, but then the 70,000 was reimbursed
18 back to the NRA, isn't that right?

19 A That's correct.

20 Q Okay. So, did you ever speak to an NRA employee named
21 Portia Padilla?

22 A No.

23 Q So, she's the payables clerk at the NRA, isn't that
24 right?

25 A I wouldn't know.

LAS

Cross-Winkler-Peters

2053

1 Q Okay. Your testimony is you never spoke to her over
2 the phone, is that right?

3 A Not that I remember. No.

4 Q Okay. And you never demanded that she pay an invoice
5 sent by Ackerman?

6 A Not that I remember. No.

7 Q Okay. Did you ever speak with anyone in the NRA's
8 accounting department?

9 A Would have only been either Woody or Rick, nobody else.

10 Q Okay.

11 MR. PETERS: I will pass the witness. Thank you.

12 CROSS EXAMINATION

13 BY MR. CORRELL:

14 Q Mr. Winkler, my name is Kent Correll. I represent
15 Wayne LaPierre. You testified that you're the CFO for Ackerman
16 McQueen, correct?

17 A That's correct.

18 Q And you said that Ackerman McQueen functions in four
19 main areas. Advertising, correct?

20 A Yes.

21 Q Public relations, correct?

22 A Yes.

23 Q Broadcast production, correct?

24 A Yes.

25 Q And media buying, correct?

LAS

Cross-Winkler-Correll

2054

1 A That's what we currently do, yes.

2 Q And when you were -- when you had a relationship with
3 the NRA, were you doing those same four things?

4 A No. We add to it crisis management and strategic
5 planning.

6 Q Are you familiar with the initials WLF?

7 A Yeah.

8 Q Women's Leadership Forum.

9 A Okay. Thank you.

10 Q Do you know what that is?

11 A I've heard of that. I'm not real familiar. Once
12 again, I'm not familiar with all the different things within the
13 NRA. I was not that involved in that aspect.

14 Q What is your understanding of the Women's Leadership
15 Forum?

16 MR. WANG: Objection, your Honor. Outside the
17 scope of the direct.

18 THE COURT: Does it connect to anything?

19 MR. CORRELL: Yes. He talked about hair and makeup
20 invoices. Invoices on hair and makeup.

21 THE COURT: Okay.

22 Q Does that ring a bell?

23 A Yes.

24 Q Okay. And Ackerman McQueen charged the NRA a lot of
25 money to arrange events for Women's Leadership Forum, correct?

LAS

Cross-Winkler-Correll

2055

1 A I wouldn't know exactly, but I'm sure we did.

2 Q Well, you were sending invoices to the NRA for hair and
3 makeup, correct?

4 A Yes.

5 Q You understood the hair and makeup was in connection
6 with an event for the Women's Leadership Forum, correct?

7 A Yes.

8 Q Okay. And a lot of women attended that event, correct?

9 A Correct.

10 Q And it was a high donor event, correct?

11 A Correct.

12 Q And people had to speak on stage, correct?

13 A That is correct.

14 Q And videos were going to be made of it, correct?

15 A Correct.

16 Q And you did the hair and makeup for the -- Ackerman
17 McQueen did the hair and makeup or arranged for the hair and
18 makeup for the event, correct?

19 A Correct.

20 Q And you sent an invoice to the NRA for that?

21 A Yes.

22 Q You never talked to Susan LaPierre about that, did you?

23 A I would not have.

24 Q And you never talked to Wayne LaPierre about that, did
25 you?

LAS

Cross-Winkler-Correll

2056

1 A I did not. Somebody else may have, but I did not.

2 Q You don't know whether anyone else did or not. So you
3 would have to be speculating.

4 A That I recollect.

5 Q All right. You said earlier that Angus McQueen was
6 your CEO, correct?

7 A Correct.

8 Q And you said he talked almost every day to Wayne
9 LaPierre, correct?

10 A I thought he did, but yes, quite often.

11 Q Okay. You didn't talk every day to Wayne LaPierre, did
12 you?

13 A No, I did not.

14 Q The information you got about what Wayne wanted came
15 through Angus McQueen, correct?

16 A That's correct.

17 Q Angus could have said Wayne wanted something, and Wayne
18 might not have wanted that, correct? You had no way of knowing
19 whether what Angus McQueen said to you was something Wayne said
20 to him, correct?

21 A The only verification I would receive is the invoices
22 we sent were paid, but yes.

23 Q And you knew Woody would pay any invoice you sent,
24 correct?

25 A No.

LAS

Cross-Winkler-Correll

2057

1 Q Tell us about a time that it didn't happen that way.

2 A Oh, Woody had problems with invoices. He had problems
3 with things before. I mean, I don't remember specifics, but
4 Woody didn't just rubber stamp everything, no.

5 Q Okay. You would call Woody if there was a problem,
6 correct?

7 A Usually I would call Rick. Woody and I might end up
8 talking if Rick didn't have the answer.

9 Q You wouldn't call Wayne, right?

10 A No.

11 Q You wouldn't call Susan, right?

12 A No.

13 Q You said that Woody Phillips worked with you on billing
14 issues, correct?

15 A Correct.

16 Q Wayne didn't work with you on billing issues, did he?

17 A Not with me, no.

18 Q Okay. And you said Mr. Phillips worked with you on
19 budget issues, right?

20 A Woody actually worked with other people on most of the
21 budget issues, not with me.

22 Q Okay. Did you work with Wayne on budget issues?

23 A No.

24 Q Okay. You talked about travel coordination that --
25 that Nader Tavangar did. Do you remember talking about that?

LAS

Cross-Winkler-Correll

2058

1 A Yes.

2 Q And was that one of the services that you provided for
3 Ackerman McQueen, travel coordination for events?

4 A Yes.

5 Q Did Mr. LaPierre travel a lot?

6 A I don't know.

7 Q You sent out a lot of invoices for travel expenses,
8 correct?

9 A That's correct.

10 Q You could infer from that that he was traveling quite a
11 bit, correct?

12 A But once again, I infer. I did not actually see him
13 travel, which is kind of what you've been asking.

14 Q Did you ever see him make a speech on stage on
15 television?

16 A No.

17 Q Did you ever watch Crime Strike?

18 A No.

19 Q Did you ever watch Under Wild Skies?

20 A No.

21 Q Did you ever go to a convention, an NRA convention?

22 A No.

23 Q So you were pretty much located in Oklahoma doing what
24 you do, which is financial stuff, correct?

25 A Correct.

LAS

Cross-Winkler-Correll

2059

1 Q You had very little interaction with Wayne LaPierre,
2 correct?

3 A That is correct.

4 Q There has been some discussion about the issuance of a
5 credit card. And you talked about -- at one point you testified
6 that a credit card, an Ackerman credit card had been issued for
7 Wayne LaPierre the first time you said two months, correct?

8 A Then I corrected it to one, yes.

9 Q Okay. Then you went to one month, okay. Can you
10 explain to the jury the circumstances around the issuance of
11 that card?

12 A I can only go by what Angus McQueen told me, is that
13 Wayne had high donor events he was going to, and he considered
14 them very highly confidential. And Wayne always had a concern
15 about his security. So, we were doing the travel, arranging the
16 travel and arranging the card for those events.

17 Q Isn't it true that this card was issued for such a
18 short period of time because Wayne had been doxed?

19 A I'm sorry. What does that mean?

20 Q Do you know what doxed means?

21 A No.

22 Q It's when someone hacks you and takes your financial
23 information and credit card so you have to shut everything down.

24 A I wouldn't know that. I understand what you're saying.
25 I wouldn't know whether that happened or not.

LAS

Cross-Winkler-Correll

2060

1 Q One of the invoices that was flashed before the jury --

2 MR. CORRELL: I'll leave this up, your Honor.

3 THE COURT: Okay.

4 Q One of the invoices that was flashed before the jury
5 had Budapest on it. Did you see that?

6 A That's correct.

7 Q Okay. Wayne LaPierre went to Budapest, correct?

8 A As far as I know.

9 Q And that's when the card was issued, correct?

10 A For that trip, yes.

11 Q That's right. And he was there to do a film with Ugo
12 Berreta who was the head of an Italian family that was involved
13 with Berreta Arms, correct?

14 MR. WANG: Objection, your Honor. Assumes facts
15 not in evidence.

16 THE COURT: I mean, he can ask if he knows.

17 A I don't know.

18 Q Did you know that that was the purpose of the trip?

19 A All I knew is it involved a high donor.

20 Q Okay. And you also -- Did you know he took a side trip
21 to Budapest to meet with people from the official government
22 museum there to arrange for an exchange of firearms?

23 MR. WANG: Same objection.

24 THE COURT: Is this evidence that --

25 MR. CORRELL: It's evidence we can bring in.

LAS

Cross-Winkler-Correll

2061

1 THE COURT: Okay.

2 Q Any knowledge of that?

3 A I did not know.

4 Q So this was a convenience, it was offered by Angus
5 McQueen for a short term when Wayne was in trouble overseas
6 traveling and he couldn't use his own credit cards, correct?

7 A From what you're saying, yes.

8 Q So, there was nothing untort about that, correct?

9 A I didn't say that there was.

10 Q Okay. And if there had been, you would have said
11 something?

12 A Yes.

13 MR. WANG: Objection. Move to strike.
14 Nonresponsive answer.

15 THE COURT: Yeah. At this point he's just
16 testifying to what you said.

17 Q If you had seen -- if you had thought there was
18 anything wrong with issuing a credit card to Wayne LaPierre, you
19 would have said something, correct?

20 A Absolutely.

21 Q And you didn't?

22 A No, I did not.

23 Q Did Tyler Schropp do any good work for the NRA?

24 A I'm not qualified to tell you that one way or the
25 other.

LAS

Cross-Winkler-Correll

2062

1 Q So, you don't know what he did, right?

2 A I'm sorry. You got to remember there is a Tyler
3 Schropp that was an Ackerman employee and a Tyler Schropp
4 director of advancement.

5 Q Let me ask you two question. Did he do any good work
6 as an employee of Ackerman McQueen?

7 A He obviously did. The NRA hired him.

8 Q Do you have any knowledge as to whether he did any good
9 work for the NRA?

10 A I would assume that he did, but I don't know for sure.

11 Q You just testified that he was the head of advancement,
12 correct?

13 A Correct.

14 Q And would you please explain to the jury what
15 advancement means in your world?

16 A In my world I always believed that Tyler was looking
17 for large donors.

18 Q And you understand that that involved traveling around
19 the country, meeting with people, correct?

20 A Yes.

21 Q And that involves a lot of travel, correct?

22 A Yes.

23 Q And that all has to be coordinated, correct?

24 A Yes.

25 Q And there is an expense involved in that travel,

LAS

Cross-Winkler-Correll

2063

1 correct?

2 A That's correct.

3 Q And if you don't make the investment, you don't get the
4 return, correct?

5 A That's correct.

6 Q And as long as he's raising more money than he's
7 spending, that's a good thing for the NRA, correct?

8 MR. WANG: Objection, your Honor.

9 MR. CORRELL: Basis?

10 MR. WANG: Foundation.

11 THE COURT: Overruled. I'm watching our court
12 reporter try to keep pace.

13 MR. CORRELL: I'll slow down, your Honor. Sorry,
14 Lori.

15 Q Let's talk about Zegna. Have you ever been to Zegna?

16 A No.

17 Q Part of the responsibility of Ackerman McQueen in
18 organizing events for Wayne was to give him a proper wardrobe,
19 correct?

20 A Correct.

21 Q If you're going to be on TV, you can't go there in
22 Bermuda shorts and a T-shirt, right?

23 A Correct.

24 Q You got to put on something that's going to look good
25 on TV, correct?

LAS

Cross-Winkler-Correll

2064

1 A Correct.

2 Q And Gus McQueen was a stickler for fashion, wasn't he?

3 A He was a stickler for looking professional.

4 Q He bought Hermes, correct?

5 A I would not know.

6 Q And he bought expensive suits, correct?

7 A Correct.

8 Q He had a way that he thought people should look if they
9 are going to project the image that he was trying to create as a
10 brand image builder, correct?

11 A That's correct.

12 Q And he directed Wayne LaPierre to go to Zegna and get
13 some suits, correct?

14 A That's correct.

15 Q Okay. And the cost of that suit -- of the suits went
16 to Ackerman McQueen, correct?

17 A That's correct.

18 Q And then without Wayne's knowledge they were billed to
19 the NRA, correct?

20 A Incorrect.

21 Q Okay. They weren't billed to the NRA?

22 A They were not billed to the NRA.

23 Q Never?

24 A Ever.

25 Q And no receipt ever went to Wayne, correct?

LAS

Cross-Winkler-Correll

2065

1 A Well, he would receive a receipt when he picked up the
2 suits.

3 Q How do you know that? You just said you've never been
4 there.

5 A I don't. I would assume he would.

6 Q You weren't there. So, it's quite possible that
7 whoever was at the store sent the receipts to Ackerman McQueen,
8 correct?

9 A I would have known if they came to us. We just got the
10 charge that hit the card.

11 Q Whose card?

12 A Ackerman's.

13 Q Okay. And you never checked the receipts to see if the
14 number -- the amount they billed you was reflected by the
15 receipt?

16 A We knew that Wayne told us when he was going shopping,
17 and so we knew that he had gone shopping. And Zegna, we worked
18 very closely with them. I forget what the amount was. And
19 actually what was bought, but not a receipt.

20 Q You told us earlier that you never talked to Wayne.
21 Correct?

22 A I did not.

23 Q Okay. But now you're saying he called you and told you
24 he was going shopping?

25 A I'm sorry. He called Angus and told Angus when he was

LAS

Cross-Winkler-Correll

2066

1 going shopping. I always knew when he was going shopping.

2 Q Angus told you Wayne had called and was going shopping,
3 correct?

4 A Correct.

5 Q Why would he call Angus if he was going shopping for
6 suits?

7 A Giving the heads up that the charge was getting ready
8 to hit.

9 Q Did you go through and add up all the charges for the
10 Zegna suits?

11 A Ultimately yes.

12 Q Why did you do that?

13 A Because the auditors. We had been sued, and the
14 auditors had asked specific question. Were there any gifts
15 given to NRA employees. So, that's why we added it up. We said
16 we want to get this. We're trying to get the lawsuit behind us.

17 Q This was a gift to -- from the NRA to Wayne, is that
18 what you thought it was?

19 A She was asking for the copies of how much it was and we
20 didn't know.

21 Q But the NRA didn't pay for that, correct?

22 A That's correct.

23 Q So how can it be a gift from the NRA to Wayne if the
24 NRA didn't pay for that?

25 A It's -- it was a gift to us.

LAS

Cross-Winkler-Correll

2067

1 Q From you to Wayne?

2 A That's correct.

3 Q Did you tell Wayne it was a gift?

4 A I'm sure we did.

5 Q You're sure you did. Can you -- can you show us a
6 document that says that?

7 A No.

8 Q Did you tell -- Did Angus McQueen tell you that he told
9 Wayne that this was a gift?

10 A Yes.

11 Q He did?

12 A Yes.

13 Q Now Angus McQueen is deceased, correct?

14 A That's correct.

15 Q So that's convenient. So we can't check with Angus
16 McQueen, correct?

17 MR. WANG: Objection, your Honor.

18 MR. CORRELL: This is fair cross.

19 MR. WANG: Argumentative.

20 THE COURT: I believe you're the one who asked him
21 whether Angus McQueen had told you that.

22 MR. CORRELL: Well, I did. I'm trying to examine
23 the credibility of that statement.

24 THE COURT: Okay. The objection is overruled. You
25 can ask that question.

LAS

Cross-Winkler-Correll

2068

1 MR. CORRELL: Thank you.

2 Q Can you tell us where you were when Angus told you
3 that?

4 A In his office.

5 Q Okay. Did all of these suits, were they all purchased
6 at the same time?

7 A No.

8 Q Okay. So every time he would call you occasionally and
9 say we made a gift to Wayne LaPierre?

10 A He would call me every time and say Wayne is going
11 shopping and they are not to be billed for it.

12 Q And did you make a note that you should let Wayne know
13 that that would be a gift and something he should pay for?

14 A I did not, because Angus and I had a debate all the
15 time. Angus wanted Wayne in suits. And he understood if that
16 was going to happen, we were going to pay for it.

17 Q Angus used to want Charlton Heston in suits too,
18 correct? Were you around back then?

19 A I was around, but I don't remember us every buying a
20 suit for Mr. Heston.

21 Q Well, that's because Charlton Heston said he wasn't
22 going to wear the suits, right?

23 A Very possible.

24 MR. WANG: Objection.

25 Q And Angus arranged for suits to be bought anyway, and

LAS

Cross-Winkler-Correll

2069

1 he was mad because Charlton Heston didn't want to wear them, he
2 wanted to wear his own stuff, right?

3 MR. WANG: Objection.

4 THE COURT: What's the basis?

5 MR. WANG: Hearsay. Assumes facts not in evidence.

6 MR. CORRELL: Asking the witness whether he has any
7 knowledge of this. He's testified he had some knowledge.

8 THE COURT: If you have personal knowledge.

9 A I have no knowledge of Mr. Heston. Sorry.

10 Q Did Angus McQueen ever call you and tell you they were
11 making a gift to Charlton Heston, a gift of a suit?

12 A No.

13 Q Okay. You testified at a deposition in connection with
14 a bankruptcy, correct?

15 A Correct.

16 Q And you were under oath at that time, correct?

17 A Correct.

18 Q And you were asked the following question.

19 MR. WANG: Objection, your Honor.

20 Q I'll ask you this. Do you recall being asked a
21 question about Zegna?

22 THE COURT: Hang on.

23 MR. WANG: Objection.

24 THE COURT: Everybody hang on. You can use prior
25 testimony to impeach, of course, but the actual testimony

LAS

Cross-Winkler-Correll

2070

1 just coming in would be hearsay.

2 MR. CORRELL: I think this will impeach.

3 THE COURT: A question you've already asked before?

4 MR. CORRELL: Yes.

5 THE COURT: Okay.

6 MR. WANG: What statement is he impeaching?

7 THE COURT: Well, I'll take your representation
8 that when I hear what you're going to ask him, it's about a
9 question you've already asked.

10 MR. CORRELL: I can speed this up. I know
11 Mr. Winkler is trying to get a plane, so I'll try to
12 accommodate the witness.

13 Q There were some testimony about DDB Investment, do your
14 remember that? I'm sorry. Wbb, do you remember that?

15 A Yes.

16 Q Right. You never talked to Wayne about that, did you?

17 A Yes.

18 Q What did you say?

19 A We -- Okay. This is a story, but we actually met in
20 Dallas with Wayne. He was -- he was extremely scared. Was
21 wearing a hat. I almost didn't recognize him when I came in. I
22 think there were some things that occurred and he was very
23 scared over what was going on. We were talking about the safe
24 house. I was in that room as he was talking about the safe
25 house.

LAS

Cross-Winkler-Correll

2071

1 Q It was Angus McQueen's idea, wasn't it?

2 A Not that I know of.

3 Q Angus McQueen said, Wayne, you look terrible, in words
4 or substance?

5 MR. WANG: Objection.

6 Q You were there.

7 THE COURT: Overruled.

8 A Okay. The answer was I came in after they had had
9 original conversations. Whose idea it was, I do not know. I
10 know that Wayne had already gone house shopping. So he
11 understood that this is what we were looking for is a safe
12 house. Whose idea it was, whether it was Wayne's or Angus', I
13 do not know. Angus just asked me to come down and listen and
14 see if we could figure out how to create an entity that could
15 enter into contracts that wasn't tied as a management company to
16 the NRA.

17 Q So, if Angus had said to Wayne that Look, we invested a
18 lot of real estate in the Dallas area. And I bought a house for
19 my son through a vehicle. And we could do something like that.
20 We would view it as an investment, we could make it available as
21 a safe house. And we can try to work out some terms that would
22 make sense. You wouldn't know that because you weren't there,
23 correct?

24 MR. WANG: Objection. It's hearsay and he's
25 testifying.

LAS

Cross-Winkler-Correll

2072

1 THE COURT: Sustained.

2 A The partnership --

3 THE COURT: Hang on. It's sustained.

4 Q So, you don't know what Angus McQueen said to Wayne
5 LaPierre, correct?

6 A I know that what was ultimately presented to Wayne is
7 that NRA was going to have to basically own the house.

8 Q Correct. And at that point Wayne talked to Steve Hart.
9 And when he found that out, he said, Kill it. I don't want to
10 do. We're not doing it, correct?

11 A That I don't know.

12 Q Okay. So there is a lot you don't know about that,
13 correct?

14 A That's correct.

15 Q Because conversations occurred before you got involved
16 and conversations occurred with other people, correct?

17 A That's correct.

18 Q So you're not in a position to testify about all the
19 facts surrounding that matter, correct?

20 A I thought I was testifying as to what I knew, but I
21 probably know as much as a lot of people, but I don't know
22 everything.

23 Q Have you ever seen Wayne LaPierre smoke a cigar?

24 A No.

25 Q Have you ever seen him take a drink of alcohol?

LAS

Cross-Winkler-Correll

2073

1 A No.

2 Q Have you ever seen him at Landini's?

3 A No.

4 Q You only went there once, right?

5 A Maybe twice, but yeah, not very often.

6 Q So, as far as you know Wayne LaPierre was never hanging
7 out in a cigar bar, right?

8 A Not that I know of.

9 Q And so any expenses that came to Ackerman for cigars
10 were unlikely to be Wayne LaPierre's expenses, correct?

11 A Correct.

12 Q Did you ever see Tony Makris smoke a cigar?

13 A Not at the cigar bar, but I've seen him smoking a
14 cigar.

15 Q Anyone else in that crowd?

16 A You have to name the people. Remember, I didn't hang
17 out with that crowd, so I don't know the members.

18 Q Did you ever speak to Susan LaPierre?

19 A No.

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

21 CROSS EXAMINATION

22 BY MS. COUTU:

23 Q Good afternoon, Mr. Winkler. My name is Lisa Coutu,
24 and I represent Mr. Phillips.

25 A Thank you.

LAS

Cross-Winkler-Coutu

2074

1 Q Mr. Winkler, you have approximately 38 years of
2 experience as a chief financial officer, right?

3 A It's actually -- I'm in my 41st year now.

4 Q Congratulations.

5 A It just says I'm old.

6 Q And you originally graduated from Oklahoma State
7 University with a degree in accounting, right?

8 A That's correct.

9 Q And you're a certified public accountant?

10 A I have let my CPA lapse, because I was hoping for
11 retirement, which hasn't happened yet.

12 Q But you were a certified public accountant?

13 A That is correct.

14 Q For how many years?

15 A Forty --

16 Q Approximately.

17 A Forty-five years.

18 Q Okay. And for your department, the accounting
19 department, it wasn't just you, right?

20 A That's correct.

21 Q You had a team of people that were working underneath
22 you?

23 A That's correct.

24 Q How many people?

25 A Varied by the size. The company at the time. We've

LAS

Cross-Winkler-Coutu

2075

1 had anywhere from four to probably ten.

2 Q Okay.

3 A Depending on the clients that we were managing.

4 Q So in the time period between around 2015 to 2018 how
5 many people would you approximate?

6 A Probably six.

7 Q Okay. And were any of them also CPAs?

8 A Yes.

9 Q How many of them?

10 A Well, on and off we had, at any given time we could
11 have four. We usually almost always had three.

12 Q And did most of them also have accounting degrees?

13 A Yes.

14 Q Okay. And did Ackerman McQueen try to hire people that
15 were qualified?

16 A Yes.

17 Q Do you think they succeeded in that effort?

18 A Sometimes you do and sometimes you don't. The answer
19 is overall I think yes.

20 Q Did you think you had a reliable group in your
21 accounting department?

22 A Yes.

23 Q And, Mr. Winkler, you believe that Ackerman always
24 looked out for the NRA's best interest, right?

25 A Yes.

LAS

Cross-Winkler-Coutu

2076

1 Q And if Ackerman had suspected that there was anything
2 done that did not further the mission of the NRA, Ackerman would
3 have protested that, right?

4 A That's correct.

5 Q And Ackerman McQueen had a multiple decades long
6 relationship and partnership with the NRA, right?

7 A Correct.

8 Q And you had a strong relationship with Mr. Phillips?

9 A Yes.

10 Q And you also had a strong relationship with Mr.
11 Tedrick?

12 A Yes.

13 Q And Ackerman would not have done something it did not
14 believe was in the best interest and further the mission and
15 everything the NRA wanted to do?

16 A That's correct.

17 Q If you saw something that was wrong, you would have
18 spoken up about it?

19 A Yes.

20 Q And then after your team followed their processes for
21 invoices and internal audits at Ackerman, then the NRA would
22 complete their own audits annually, right?

23 A Correct.

24 Q I think you testified earlier that Mr. Phillips and Mr.
25 Tedrick completed some of those audits, right, for the NRA?

LAS

Cross-Winkler-Coutu

2077

1 A Yes. And in the last three years with Steve Hart.

2 Q Steve Hart. Thank you. Now, Mr. Winkler, you also
3 believe that Mr. LaPierre had legitimate security and privacy
4 concerns given his role at The National Rifle Association,
5 right?

6 MR. WANG: Objection.

7 MS. COUTU: What is the basis?

8 MR. WANG: Assumes facts.

9 THE COURT: She's asking a question.

10 MR. WANG: He's not a security expert.

11 THE COURT: Overruled.

12 Q You may answer, Mr. Winkler.

13 THE COURT: Not suggesting you are a security
14 expert, but you can answer.

15 A I know once again people keep asking me about my
16 conversations with Angus. Angus made it sound very real,
17 Wayne's concerns over security. Angus believed they were very
18 real, and he presented it to me that way.

19 Q So, Mr. Winkler, for the charges that Ackerman billed
20 to the NRA, you had no reason to believe that the charges were
21 not appropriate business charges for the NRA, right?

22 A That's correct.

23 Q You had no reason to believe it was inappropriate?

24 A That's correct.

25 Q Now earlier you were also asked questions by both

LAS

Cross-Winkler-Coutu

2078

1 Mr. Wang and by Mr. Peters regarding Wbb Investments. Do you
2 recall that?

3 A I've been asked several questions.

4 Q Several times, right?

5 A Whatever question you have, I think I can field it.

6 Q I'll keep it really, really short. I promise.

7 A Okay.

8 Q So just to get down to the heart of it. Ultimately the
9 house was not purchased by the NRA, right?

10 A That's correct.

11 Q And Wbb returned the money to the NRA?

12 A That's correct.

13 Q The NRA was not out of pocket any money as a result of
14 that transaction?

15 A That is correct. We even paid the legal bills.

16 Q Thank you.

17 MS. COUTU: No further questions.

18 MR. FLEMING: No questions, your Honor.

19 THE COURT: Anything further for the Government?

20 MR. WANG: Very brief redirect.

21 REDIRECT EXAMINATION

22 BY MR. WANG:

23 Q Mr. Winkler, Mr. Peters showed you a document. I'm
24 hoping we can bring it up. It was DX 1-1004.

25 MR. WANG: Can we bring up 1004, please.

LAS

Redirect-Winkler-Wang

2079

1 A Has it got a tab?

2 THE COURT: No.

3 Q It's going to be brought up on the screen by Mr. Stein.

4 THE COURT: It is in the small binder. Do you know
5 what tab it is, Mr. Peters?

6 MR. PETERS: Sorry.

7 THE COURT: It's on the screen.

8 A Okay. I've got it in front of me.

9 Q This was a document from Mr. Tedrick, is that right?

10 A That's what I understand.

11 Q Have you ever seen this document?

12 A No.

13 MR. WANG: Thank you.

14 Q Did the NRA continue to pay the out-of-pocket expenses
15 after Mr. Tedrick conducted his audits?

16 A Yes.

17 Q Did Ackerman McQueen have substantiation for the
18 business purpose of Mr. Schropp's expenditures?

19 A No.

20 Q Did Ackerman McQueen control the types of hotels Mr.
21 Schropp would stay at?

22 A No.

23 MR. WANG: Nothing further, your Honor.

24 THE COURT: Okay. Anything else?

25 MR. PETERS: Nothing from the NRA.

LAS

Redirect-Winkler-Wang

2080

1 MR. CORRELL: Nothing from Mr. LaPierre.

2 THE COURT: Okay, sir. You're free to go.

3 THE WITNESS: Thank you very much.

4 (Witness excused.)

5 THE COURT: Have you all discussed what's next?

6 MS. CONNELL: Your Honor, we're going to finish
7 Mr. Cotton so he also can finally make a plane.

8 THE COURT: I have to say, I genuinely forgot.
9 Okay. Let's call Mr. Cotton.

10 (Whereupon the DX 1-1088 was marked received in
11 evidence as of this date.)

12 THE COURT: Good afternoon.

13 MR. COTTON: Good afternoon.

14 THE COURT: How many birthdays have you celebrated
15 since you've been here? We do appreciate your patience. I
16 know it's been difficult to be moved around. So, I do
17 appreciate it.

18 MR. COTTON: Thank you.

19 C H A R L E S C O T T O N, after having been previously duly
20 sworn by the court clerk, was examined and testified further as
21 follows:

22 MR. FARBER: May I continue, your Honor?

23 THE COURT: Yes, please.

24 MR. FARBER: Is this working?

25 THE COURT: No, as far as I can tell. Try it

LAS

1 again.

2 MR. FARBER: Is this working?

3 THE COURT: Now it is.

4 (Continue on the next page.)

5

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LAS

Cotton - by Plaintiff - Cross/Farber

2082

1 Q Good afternoon, Mr. Cotton.

2 A Oh, good afternoon.

3 Q So you were asked some questions by Mr. Shiffman, which
4 probably seems like a long time ago now, about your views of
5 Mr. Phillips' job performance. You recall that?

6 A Yes, sir.

7 Q I'd like just to ask you a couple of questions about
8 what the job consisted of.

9 So, Mr. Phillips was both the CFO and the treasurer for
10 the NRA for 25-or-so years; correct?

11 A He held both those positions. Like I say, he was there
12 when I was elected by the members in 2001, so I couldn't tell
13 you how long.

14 Q Well, at least 2001 to 2018, when he retired and you
15 were on the board; correct?

16 A Yes, sir.

17 Q What's the range of responsibilities that he had in
18 those jobs? Can you tell the jury what some of the areas that,
19 as CFO and treasurer of the NRA, he would have been responsible
20 for?

21 A Well, I'm not trying to dodge the question. He's
22 probably better to answer that more than me. But what I know
23 of, he's in charge of the entire -- what we call the Financial
24 Services Group. He's in charge of the accounting side of it.
25 He would have contracts that -- that he would know about,

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Cotton - by Plaintiff - Cross/Farber

2083

1 because we have the signoff -- what I call a "Front Sheet" -- we
2 have a sign-off sheet on various contracts. So he would -- he
3 would be involved in that.

4 Q Did he do --

5 A So --

6 Q I'm sorry, sir. I didn't mean to interrupt.

7 A Well, he certainly was involved with the auditors; the
8 external auditors. He met with us when -- I'm sorry; "us" being
9 the Audit Committee -- whenever we had our meetings with the
10 auditors, which were, at a minimum, three times a year,
11 sometimes more than that. He would -- he would be involved in
12 that.

13 He would come to all of the Finance Committee meetings,
14 which, typically, involved four. They would be three, what I
15 would call, regularly scheduled Finance Committee meetings, in
16 conjunction with the -- again, what I call "Committee Week." We
17 have a series of committee meetings before the -- the board
18 meeting, on Saturday, and he would be involved in all of the
19 Finance Committee meetings, and he would give us information
20 about a lot of different financial issues.

21 He would -- he would come to -- he would come to a lot
22 of the Audit Committee meetings. I can't say he came to every
23 one of them, but he came to a lot of them. He certainly would
24 be there anytime there was an issue that the -- that the
25 committee was going to want to talk to our treasurer or CFO to

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Cotton - by Plaintiff - Cross/Farber

2084

1 get some more information.

2 Q So you mentioned both an Audit Committee and a Finance
3 Committee. Those were separate committees; is that right?

4 A Yes, sir.

5 Q Okay. And you said there'd be approximately four
6 Finance Committee meetings per year; is that right?

7 A Yes, sir. We -- we had the three that I was talking
8 about, the regular ones; and then we would have a Finance
9 Committee meeting, typically, on the first Saturday of December,
10 for several years; and it would be to -- to go over the proposed
11 budget, make any changes or ask for more information or
12 whatever, so that it could be either modified or approved at our
13 regular winter meeting -- winter board meeting -- I'm sorry --
14 and -- and Finance Committee meeting in January.

15 Q And so -- you referenced the "budget." So, was
16 budgeting another area that was under Mr. Phillips?

17 A Yes, sir.

18 Q And the Audit Committee meetings; approximately how
19 many times a year would the Audit Committee meet?

20 A A minimum of three times, for the last six years or --
21 I couldn't tell you -- 10, 12. I mean, we've had -- I'll be
22 frank: With all this going on, we've had a lot more meetings.

23 Q And there was also some testimony about something
24 called the "990 Form." You're familiar with that?

25 A Yes, sir.

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Cross/Farber

2085

1 Q And that was a tax form prepared by the NRA?

2 A Now, I am not a tax guy; I will tell you what I know:
3 It's my understanding that that is a tax return, if you want to
4 call it that, for nonprofit organizations.

5 Q So was overseeing the preparation of the 990, the tax
6 forms, also under Mr. Phillips' organization?

7 A Well, we have had -- we have [sic] a lady in the
8 Financial Services Group for several years that -- that had
9 expertise in that area, but we -- we -- until we got the
10 software to do it ourselves, we always had -- whichever CPA firm
11 that was doing our audit would also do the 990s. So I can't say
12 he was responsible for -- for, you know, getting it -- getting
13 it filled out. I mean, certainly, his -- his people would be
14 involved in it, as well, but we had a CPA firm that -- that
15 filled it out and that would sign the form (simulating).

16 Q All right. It was the people under him who had
17 responsibility for it. Is that what you're saying, Mr. Cotton?

18 A Yes, sir. That -- that -- all the tax stuff falls
19 under the Financial Services Group.

20 Q Okay. And you mentioned, at the Finance Committee
21 meetings, Mr. Phillips would provide a lot of information. Were
22 there written materials that were prepared for you in advance of
23 those meetings?

24 A Well, yes, sir. I mean, written materials were
25 prepared for us, but then he would give an oral presentation, as

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Cotton - by Plaintiff - Cross/Farber

2086

1 well.

2 May I shift this (indicating) over here (indicating)?

3 Q Please do.

4 A I don't want to drop it on the floor.

5 (Binder placed to witness' side.)

6 Q And approximately how many employees were in the
7 Financial Services -- approximately how many employees were in
8 the Financial Services Division during the years that we're
9 talking about, roughly?

10 A I'm not certain. I know the people that I worked with,
11 but they had people under them that I -- so I couldn't tell you
12 a number.

13 Q Does 50 to 60 sound approximately right?

14 A Like I say, I have no idea.

15 Q Okay. Let's pull up, if we could, for a minute, what's
16 in evidence as PX 5073 and turn to what's page 2 of 4.

17 And this will show up on our --

18 (Image displayed.)

19 Q Oh, that is -- yes. In your binder, sir, that is tab
20 26, if you want to pull it out.

21 A 26?

22 Q 26.

23 I told you, you could put that away --

24 A That's okay.

25 Q -- but I was misleading you. I apologize.

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Cross/Farber

2087

1 A It's no problem.

2 (Pause.)

3 A Okay, I've got it.

4 Q And are you on page 2, sir? It's also on the screen.

5 A Now I'm on page 2.

6 Q Okay. And this is the charter of the Audit Committee
7 that you were the chair of; is that correct?

8 A Well, I had -- I have served on -- as the chair of the
9 Audit Committee for certain years, yes, sir.

10 Q Okay. And under "Mission Statement," it says -- the
11 first sentence:

12 "The primary function of the Audit Committee is to
13 assist the Board of Directors in its oversight of the
14 integrity of financial information, its review of the
15 adequacy of the system of internal controls established by
16 the Association, and its monitoring of the audit process."

17 Did the Audit Committee, when you were on it, perform
18 that function?

19 A Yes, sir.

20 Q And then, in the next sentence, it says:

21 "In performing these functions, the Audit Committee
22 shall review the Association's financial reporting process
23 and internal controls, review and appraise the audit efforts
24 of the Association's independent auditors, and provide open
25 means of communication between the Directors, the

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1 independent auditors, and the financial and senior
2 management of the Association."

3 And did the committee do that, as well, during the
4 years that you were on it?

5 A Well -- excuse me -- as I explained earlier, the
6 individual members don't, but we make sure the job is done by
7 talking to the appropriate financial services people.

8 We have multiple meetings with the auditors. We have
9 a -- what we call our "Planning Meeting" before the audit
10 starts, and we talk about what they're going to do, what we --
11 if there's anything special that we'd like them to do, we talk
12 about that. Then we have a progress meeting with the auditors.
13 Sometimes it was in person; sometimes it was by phone;
14 occasionally, it's both. And then we have a -- what I call -- a
15 "Closeout Meeting," where they go over the results of the audit
16 and whether or not we're going to have what auditors call a
17 clean opinion, which we always have.

18 And then, if there's a management letter, we go over
19 that, as well.

20 So that's what we do to accomplish the -- the mission
21 statement.

22 Q Right.

23 And I didn't mean to suggest that the Audit Committee
24 was actually preparing financial statements. What I'm getting
25 at is: This sentence (indicating) says that you would review

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1 the Association's financial reporting process and internal
2 controls, and the committee performed that review; correct?

3 A There's -- the committee relied upon experts in the
4 field, such as our auditors, to do that.

5 Q Well, and -- but the committee is the one that had the
6 responsibility for oversight; isn't that right?

7 A Oversight; not to -- not to roll up our sleeves and go
8 to headquarters and -- and go into the Financial Services Group
9 and start saying, "Hey, give me your general ledger."

10 Q Right.

11 A That we can't do.

12 Q Right. And it doesn't say anything in here
13 (indicating) about the Audit Committee doing something like
14 that.

15 A No, sir. But perhaps I'm mistaken; I thought that's
16 what you were, kind of, getting to in your question.

17 Q No, no. What I was --

18 What I'm asking you, sir, is just if the Audit
19 Committee had that oversight function for making sure that --
20 for asking questions and overseeing what the management and the
21 staff did. Correct?

22 A Yes, sir.

23 Q Okay.

24 MR. FARBER: And if we can scroll down to where it
25 says "Meetings," at the bottom of the page, please ...?

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1 (Image scrolled.)

2 A Yes, sir.

3 Q And under "Meetings," it talks about: "The committee
4 shall meet at least twice a year or more frequently as
5 circumstances dictate." And, as you've testified, the committee
6 did do that; correct?

7 A Yes, sir.

8 Q And then, in the next sentence, it says:

9 "As part of its job to foster open communication,
10 the Committee should meet at least annually with management
11 and the independent auditors in separate executive sessions
12 to discuss any matters that the Committee or each of these
13 groups believe should be discussed privately."

14 Did the Audit Committee hold those meetings?

15 A Yes, sir. And every meeting that we had with the Audit
16 Committee, we would have a separate executive session just with
17 the auditors and then would have a separate executive session
18 with the management, the folks in the Financial Services Group
19 and one or more of the people that work under them.

20 Q Okay. And Mr. Phillips, as CFO and treasurer, was at
21 those meetings with management?

22 A For the audit purposes, I -- I can't say -- I can't say
23 I recall a time he wasn't, but he certainly would normally be
24 there, perhaps all the time.

25 Q Well, in the times that you recall, were there ever any

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1 questions that you asked him that he didn't answer?

2 A I -- I can't think of a time when Woody -- I'm sorry.
3 I can't think of a time when Mr. Phillips, you know, gave me a
4 blank stare and wouldn't answer my question. No, sir, I can't
5 imagine anything like that.

6 Q Do you recall any answers that he gave you that you
7 felt were inadequate?

8 A As I sit here now, no, sir.

9 Q Okay. Let's go to the next page -- it's 3 of 4 --
10 please.

11 (Image scrolled.)

12 A Okay.

13 Q And then this section's entitled "Roles and
14 Responsibilities"; "Financial Reporting," and under "General,"
15 the second bullet there says: -- and this is the
16 responsibilities of the Audit Committee -- "Ask management and
17 the external auditors about significant risks and exposures and
18 plans to minimize such risks."

19 Did you ever ask Mr. Phillips a question in this
20 category that he didn't answer?

21 A Over a period of 17 years, I have no doubt that I have.
22 As I sit here now, I say -- he hasn't been treasurer since
23 2018 -- I couldn't tell you anything specific. But this is
24 exactly the type of information that we would go over with the
25 auditors.

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1 And in case I was misleading when I described the Audit
2 Committee meetings earlier, I described two executive sessions.
3 That -- those two executive sessions -- always came after the
4 joint session where -- where the auditors and the Audit
5 Committee and -- and the folks from -- from Financial Services
6 Group are there and were discussing exactly this type item.

7 Q And when you said a moment ago you had "no doubt that
8 we have," I'm not sure I understood your answer. You have no
9 doubt that you asked Mr. Phillips questions in those meetings?

10 A Yes, sir.

11 Q Okay. And do you recall any instance where he didn't
12 answer your questions to your satisfaction? Do you recall any?

13 A I'm not trying to be flip, but I can't recall the
14 question, so I couldn't recall the answer.

15 Q Okay.

16 And then, just scrolling down here, under "Annual
17 Financial Statements," it says that the committee is supposed to
18 meet with management and the external auditors to review the
19 annual financial statements and the results of the audit.

20 And am I correct that the committee did that?

21 A Oh, yes, sir. That's -- that's what I described as a
22 Closeout Meeting. That's after it's over.

23 Q Okay.

24 And then, under "Internal Controls," it says, one of
25 the responsibilities of the Audit Committee -- in the first

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1 bullet there -- is to "ensure through inquiry whether management
2 is setting the appropriate tone by communicating the importance
3 of internal control and ensuring that all individuals possess an
4 understanding of their roles and responsibilities."

5 Did the committee do that?

6 A We did, but not in the form of sit down and ask this
7 particular question. We had -- there were numerous times when
8 we talked with folks that worked in the Financial Services Group
9 and we're talking about different issues. We'd talk about
10 internal controls. There's a number of things which we talk
11 about on a regular basis and it would certainly cover that
12 type -- that type information.

13 Q Okay. And --

14 A But -- but, again, that is really focusing on -- on the
15 CFO and the treasurer's employees, not the CFO himself. That
16 would -- that would have the CFO grading his own papers, and
17 we're not going to do that.

18 Q Well, it says here that you'd ensure whether management
19 is setting the appropriate tone; right? And that's what the
20 committee did, right?

21 A And you determine that by talking to the people that
22 work for the manager to see what kind of tone is being set: Are
23 they serious about internal controls? Are they prompt? I mean,
24 the -- you know, there's all kind of questions you can ask. But
25 you have to ask that of the subordinates to find out if

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1 management's sending the correct message; you can't ask
2 management that.

3 Q And you asked that of the subordinates.

4 A Well, again, we had numerous meeting -- well, I won't
5 say "meetings" -- interactions with the folks in the Financial
6 Services Group. This is the type information that would be
7 determined from those meetings, though not every single meeting.

8 Q And you were satisfied in the results of that; is that
9 correct?

10 A Up to a point, yes, sir.

11 Q Okay.

12 And then, in the third bullet, one of the other
13 responsibilities for the Audit Committee is to "gain an
14 understanding from auditors and management as to whether
15 internal control recommendations identified by external auditors
16 have been implemented by management, if appropriate."

17 Did the committee do that?

18 A Excuse me. Let me -- I don't want to answer you wrong.

19 Q The third bullet, Mr. Cotton.

20 A Yes, sir. I -- I was rereading it, because there's two
21 ways I can answer that:

22 First of all, "yes" to both of them; okay?

23 We do ask the auditors, "Are you having a problem?" We
24 look at the management letter. If the management letter -- I'm
25 sorry. The management letter that -- that's issued along with

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1 the audited financial statements will list whether or not there
2 are any concerns, I'll call it, from the auditors. So we're
3 going to see that from one year to the next; is it addressed?

4 We also talk to the Financial Services people; our --
5 my vice-chairman routinely talks to the Financial Services
6 folks. He lives close enough that he can drive up there and
7 he -- he sees them more than I do.

8 But, yes, sir, the team -- the audit team -- I'm
9 sorry -- the Audit Committee gets all of that done, yes, sir.

10 Q On an annual basis?

11 A Oh, more than annual. We don't just wait and do it
12 once a year.

13 Q Okay.

14 And then, if we go down under the last heading here,
15 "Compliance With Laws and Regulations" and we look at the first
16 bullet, it says, another responsibility of the Audit Committee
17 is to "review the effectiveness of the system for monitoring
18 compliance with laws and regulations and the results of
19 management's investigation and follow-up, including disciplinary
20 action on fraudulent acts or accounting irregularities."

21 And the Audit Committee did that, as well; isn't that
22 true, Mr. Cotton?

23 A I have a little problem answering that one, because in
24 my view, it covers two areas: it recovers -- it covers -- the
25 legal side and that really is general counsel. But, yeah, we

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1 talk to general counsel. I talked to Mr. Frazer when the law
2 changed in 2016 and he showed -- showed me, I think, three
3 volumes of books (simulating). And he -- he created a new
4 conflicts disclosure -- financial disclosure -- form to comply
5 with that, and that's something the Audit Committee, you know,
6 checked with him to make sure it was being done.

7 On the other -- other side of that -- that question --
8 well, for instance, the 990s. That's the reason we have tax
9 experts; typically CPA's, but now we actually use tax lawyers as
10 well as CPA's; and we want to make sure we're putting -- we're
11 filling that form out the way it should be. We've gone to
12 tax -- to 990 -- software that keeps you from making, you know,
13 clerical errors: you're supposed to check a box and you didn't,
14 or you checked a box that you shouldn't have and you should have
15 checked another one. That takes care of that.

16 So all of those things together, I think, answer that
17 question.

18 Q So, for much of this, you would rely on, whether it's
19 outside experts or internal experts, and legal to ensure that
20 the system for monitoring compliance was effective. Is that a
21 fair statement?

22 A Well, we certainly use experts such as tax counsel, our
23 general counsel, but that's not -- that's not all. Let's say --
24 let me go back to that example of the -- the amended financial
25 disclosure information -- form: Yes, we -- we get the

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1 information from John, but then we also get reports from -- I'm
2 sorry -- Mr. Frazer. I -- I didn't mean to do that.

3 Mr. Frazer, he would give us reports as to: "Okay, has
4 everybody got 'em in? If not, who's outstanding?"

5 So, yes, we get information from experts, but then,
6 again, in the interaction I was describing earlier, that's how
7 you're going to find out: Is it actually getting done?

8 Another way is when -- I'm trying to think. I believe
9 every one of us that's on the Audit Committee is also on the
10 Finance Committee, where we get detailed financial documents;
11 you know, financial statements and stuff like that. So we have
12 another chance to look at it at that point.

13 So there's a -- there's no one single thing I can tell
14 you covers that. It's -- it's -- it's a group of functions.

15 Q And the Audit Committee would look at all of that,
16 right?

17 A I'm sorry?

18 Q The Audit Committee would look at all of that and use
19 all those functions; is that right?

20 A As I just described it, yes, sir.

21 Q So --

22 Now, Mr. Phillips, you indicated, was treasurer up
23 until -- from -- he was there at the time you started in about
24 2001, through 2018; correct?

25 A Until twenty-eight -- I'm sorry. You're talking about

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1 from when I started. Yes. The whole time I was on the board,
2 up until 2018, he was the treasurer and CFO.

3 Q And --

4 A That's not true. He was the treasurer and in the
5 latter weeks, we had hired Craig Spray to be the CFO, and
6 when --

7 Q I'm just asking about the Treasurer title.

8 A Okay.

9 Q And the Treasurer, he was elected by the board; is that
10 correct?

11 A Yes, sir.

12 Q And was that every year?

13 A Yes, sir.

14 Q Okay. And you were on the board that entire time;
15 correct?

16 A From 2001 until 2018, yes, sir.

17 Q And I take it, you thought Mr. Phillips was doing a
18 good job throughout that whole time period; correct?

19 A That's -- you're asking me, personally?

20 Q Yes, during that time.

21 A That -- that's what I believed at that point, yes, sir.

22 Q Right. And you thought he was doing his best to
23 further the mission of the NRA; isn't that right?

24 A That's a qualitative answer I can't give you. I
25 thought he was doing a good job when I -- when I voted for him.

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1 Q Well, you voted for him in each of those years that he
2 was up for election; isn't that correct?

3 A Well, if we're going to get technical, no, sir. Unless
4 there's a contested race. Then, when an officer candidate is
5 put up for election, unless it's a contested race, nobody --
6 there is no vote taken. This -- according to our bylaws and --
7 I'm sorry; not our bylaws, our custom and practice, they are
8 elected by acclamation.

9 Q And were you there during the election by acclamation?

10 A At the vast majority. There were some annual meetings
11 I had to miss because of family health issues.

12 Q But you never opposed him.

13 A I'm sorry?

14 Q You never opposed his being re-elected as Treasurer?

15 A No, sir.

16 Q And the reason -- one of the reasons -- for that is,
17 you thought he was doing his best throughout to further the
18 mission of the NRA; isn't that true?

19 A I can't tell you whether or not he was doing his best.
20 All I can say is, I thought he was doing a good job.

21 Q Okay. Did you think he was acting in good faith
22 throughout?

23 A I had -- I had no reason to think otherwise.

24 Q Okay.

25 THE COURT: Counsel, I don't want to interrupt, but

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1 we haven't had our typical break. I've been -- if you're at
2 an ending point --

3 MR. FARBER: I'm almost done.

4 THE COURT: All right. Then we'll break after
5 you're done.

6 BY MR. FARBER:

7 Q And I take it, Mr. Cotton, that no one at the NRA has
8 ever chastised you for the job that you were doing as head of
9 the Audit Committee; is that correct?

10 A Not that I can recall, no, sir.

11 Q No one's accused of you of failing to properly oversee
12 the Financial Services Division as head of the Audit Committee?

13 A I don't oversee the Financial Services Division.

14 Q Okay. Well, no one's ever accused you of not doing
15 your job the way you should on the Audit Committee and
16 fulfilling those responsibilities that we talked about; is that
17 correct?

18 A No one -- no one has come to me and told me, "I don't
19 think you're doing a good job, Charles."

20 Q And, in fact, you're now the president of the NRA;
21 correct?

22 A Yes, sir.

23 Q And you're now serving your third term as president of
24 the NRA; isn't that correct?

25 A That's correct.

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1 Q And am I correct that no one's done that since Charlton
2 Heston?

3 A Oh. You mean, serve more than two terms?

4 Q Yes, sir.

5 A That's correct.

6 Q And Mr. Heston did that the last century; isn't that
7 right?

8 It's been a while; correct?

9 A Yes. Yes, sir.

10 Q And, in fact, the NRA changed its bylaws so that you
11 could have that third term --

12 A Yes, sir.

13 Q -- is that correct?

14 Am I also right that Mr. Shiffman and
15 Ms. Connell(indicating), they haven't brought any enforcement
16 action against you? Is that correct?

17 A No, sir.

18 MR. SHIFFMAN: Objection.

19 THE COURT: Overruled.

20 Q They're not suing you. The New York Attorney General's
21 office is not suing you.

22 A I'm -- I'm not a party to this case, no, sir, or any
23 other case.

24 MR. FARBER: Okay.

25 No further questions, your Honor.

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1 Thank you, Mr. Cotton.

2 THE COURT: All right, we're going to take a short
3 break and reconvene.

4 COURT OFFICER: All rise. Jury exiting.

5 (The jury left the courtroom.)

6 (The witness stepped down.)

7 (Recess.)

8 (Continued on next page.)

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1 THE COURT: Okay.

2 THE COURT OFFICER: All rise. Jury entering.

3 (Whereupon the jury panel entered the courtroom.)

4 THE COURT: Okay. Thanks everyone. Have a seat.

5 Mr. Fleming.

6 MR. FLEMING: May I proceed?

7 THE COURT: Yes, please.

8 CROSS EXAMINATION

9 BY MR. FLEMING:

10 Q Good afternoon, Mr. Cotton.

11 A Good afternoon, sir.

12 Q I'm William Fleming. I represent Mr. Frazer. First I
13 really appreciate you hanging around for what seems like a
14 really long time. I'm going to ask you some questions about
15 what you testified to today, but also what feels like long ago,
16 when Mr. Shiffman asked you questions.

17 A Okay.

18 Q I believe you just testified that Mr. Frazer played a
19 role of some sort in helping the organization adopt a conflict
20 of interest policy. Do you recall the testimony?

21 A Yes, sir. As I understand it, and I may be wrong, but
22 I think it was 2016 when New York law changed, and John and
23 perhaps other lawyers, I don't know were involved, in creating a
24 new form. Then some point later we actually added more to it
25 because we, I may be wrong, but we were trying to get one single

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1 form that would cover what we needed for -- for New York law and
2 other states where we solicit funds and -- and board members
3 have to turn in questionnaires to those individual states.

4 Q When you talk about a form, are you referring to a
5 financial disclosure questionnaire?

6 A Yes, sir.

7 Q Okay. And with respect to the policy itself, are you
8 able to tell the jury what role Mr. Frazer played in either
9 putting it together or getting the board to adopt it?

10 A I know he was -- I know he was involved, to my
11 knowledge heavily involved. I can't say if he had other folks
12 helping or not, but I know he was involved.

13 Q Okay. I would like to show you a document.

14 MR. FLEMING: If we could cull it up. It's for
15 identification PX 1782. And I've spoken with the
16 Government. They have indicated they have no objection to
17 it. I'll let them confirm that.

18 MR. SHIFFMAN: That's 172?

19 MR. FLEMING: 1782.

20 A Mr. Fleming, is there a tab for this one?

21 Q No.

22 A Okay.

23 Q Some will have a tab but many will not. It will appear
24 on your screen.

25 MR. SHIFFMAN: No objection, your Honor.

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1 THE COURT: Any objections from the defense?

2 MR. CORRELL: No objection.

3 MS. ROGERS: No objection.

4 MR. FARBER: No objection.

5 MR. FLEMING: May I publish it?

6 THE COURT: It is admitted. You may turn them back
7 on. We could have skipped that whole thing. There you go.

8 Q So, Mr. Cotton, I would like to direct your attention
9 first to your e-mail on the middle of the first page,
10 November 2nd, 2015 at 5:36 p.m. Do you see that?

11 A (Examining). Yes, sir.

12 Q Now, were you chair of the audit committee in 2015?

13 A I believe that's the year I took over as audit chair.

14 Q Okay. And you write, "I'm chair of audit, but I don't
15 anticipate us covering anything specific to that committee." Do
16 you know what committee was being referred to here?

17 MR. FLEMING: You have to let him read the
18 document.

19 A Can we scroll up a little bit. Maybe I could get a
20 hint in the body of it.

21 Q While you're looking at that, do you mind if I ask you
22 a question?

23 A Yes, sir.

24 Q Do you recall a bylaws issues task force in or around
25 2015?

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1 A I'm sorry. A bylaw what?

2 Q A bylaws issues task force.

3 A As I sit here now, Mr. Fleming, I don't remember.
4 Sorry.

5 Q Okay. Well, that's the headline of this e-mail or the
6 subject line I should say.

7 A Yes, sir.

8 Q And let me withdraw my prior question to which
9 committee you're referring to and then take you up to Mr.
10 Frazer's response at the top.

11 A If I could add on to my answer the last time.

12 Q Sure.

13 A I think I remember now. Carol Bambery created a task,
14 a bylaw task force to see if any changes were needed in the
15 actual bylaws themselves.

16 Q Okay. And do you recall any role that Mr. Frazer might
17 have played in that?

18 A I barely remember the committee to be honest with you,
19 Mr. Fleming. I don't know.

20 Q It's all right. We're going back a long time. But
21 I'll still direct your attention to the top of page 1 with Mr.
22 Frazer's response where he writes, "Charles, due to recent
23 amendments to New York law", let me stop and say, do you recall
24 in or around this time was when Mr. Frazer alerted you to the
25 changes in New York law that you just testified about?

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1 A Yes, sir. That's what I was talking about earlier. I
2 was thinking 2016. Perhaps that's when the change in the law
3 went into effect. I just don't recall at this point, but that
4 would have been the subject I was talking about earlier.

5 Q Okay. And then he finishes that top paragraph by
6 saying, "the audit committee could have an important role in
7 those". Do you see that?

8 A I do see that.

9 Q Do you recall having conversations, I know it's a long
10 time ago, with Mr. Frazer about what he meant by the audit
11 committee's role with respect to conflicts of interest and
12 related-party transactions?

13 A He -- I'm not certain. He may have been talking
14 about --

15 MR. SHIFFMAN: Objection, your Honor.

16 THE COURT: The question is if you have a personal
17 knowledge, actual recollection.

18 A I can't recall any conversations from November of 2015.
19 Sorry.

20 Q That's okay. That's okay. Now, do you recall being
21 asked by Mr. Shiffman about the conflict of interest and
22 related-party transactions policy that the NRA adopted in
23 January of 2016?

24 A Yes, sir.

25 Q Okay. Did the audit committee, after the passage of

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1 that policy, have any meetings where it addressed related-party
2 transactions?

3 A I'm sorry.

4 Q Addressed related-party transactions.

5 A After 2016?

6 Q After January of 2016, after the passage of the policy,
7 the adoption of the policy, what did the audit committee do, if
8 anything, with respect to related-party transactions as best you
9 can recall?

10 A Well, we -- we addressed some further related-party
11 transactions as was discussed in various audit committee reports
12 after that date. I know that -- I know that the form was
13 changed. I know that when I, as chair of the audit committee,
14 when I gave the audit committee report to the full board, I
15 stressed the need to be sure folks, you get your form turned
16 into Mr. Frazer. That's all I can tell you at this point.

17 Q Okay. I would like to show you another document which
18 is PX 2622 for identification.

19 MR. FLEMING: Not for the jury. I've been told
20 that the Government does object to this on foundation, I
21 believe, grounds.

22 MR. SHIFFMAN: 26 --

23 MR. FLEMING: 2622.

24 MR. SHIFFMAN: I don't think that was one. Just
25 give us a second.

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1 MS. STERN: Was it 206?

2 MR. FLEMING: PX 2622.

3 MR. SHIFFMAN: We object to this, your Honor, as
4 hearsay and lack of foundation.

5 MS. ROGERS: I'm sorry. The plaintiff is objecting
6 to the plaintiff's own exhibit?

7 MR. SHIFFMAN: Yes. Sorry. Your Honor, we
8 identified a number of our exhibits that we would use for
9 various purposes including impeachment. Also things that
10 would be party admissions if used by us against the other
11 side. This is an incomplete document. We were complete
12 in -- Just because we put something in our binders did not
13 mean we intended to use it for the truth of the matter
14 asserted or for any purpose. And particularly when it's a
15 document that can't contain statements only from the --

16 THE COURT: If the objection, first of all, is
17 about foundation, then I can have him ask the witness what
18 it is and if it's about whether it's a business record, so
19 that it would be permissible notwithstanding hearsay, that
20 this may be another witness who can speak to that. So, I'll
21 let them ask questions.

22 MR. SHIFFMAN: Objection is hearsay. It's not
23 complete. It's not a business record.

24 MS. ROGERS: Your Honor, we just note that other
25 documents which appear incomplete or concatenated or have

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1 been offered by plaintiff, that's the manner in which they
2 existed in the business files. The same would be true of
3 this record.

4 MR. SHIFFMAN: That's not what I'm talking about,
5 being incomplete on the portion of the document that's
6 presented to the witness. They are headlines, titles with
7 nothing underneath them.

8 THE COURT: Why don't you lay a foundation.

9 MR. FLEMING: I will.

10 Q So, Mr. Cotton, you obviously were on the audit
11 committee in March of 2016, is that right?

12 A Yes, sir.

13 Q Okay. And do you recall an audit committee meeting in
14 or around March 8th, 2016 where related-party transactions were
15 addressed?

16 A I can't recall the exact meeting from 2016. Timing
17 sounds right.

18 Q And was there a secretary of the audit committee?

19 A Yes, sir. Yes, sir, there would always be one. In
20 2016 it could have been one of two people. It could be Rick
21 Tedrick or it could have changed. No. I'm sorry. That's not
22 true. It would have been Rick Tedrick at that point.

23 Q At the beginning or -- Withdrawn. After the conflict
24 of interest policy was adopted by the board in January 2016, did
25 the audit committee undertake an effort to create minutes of its

LAS

Cross-Cotton-Fleming

2111

1 evaluation of related-party transactions?

2 MR. SHIFFMAN: Objection, your Honor. Leading.

3 THE COURT: Overruled.

4 A Two documents. Well, at that time there would have
5 been two documents. There would have been one document that
6 it's titled and we've always referred to it as the report of the
7 audit committee. There were also, it's my understanding, there
8 were also minutes that were taken by the secretary during that
9 particular meeting. Where they go, I'm not sure. All the -- We
10 put in the minutes of the board meeting is the report.

11 Q Understood. But at the time, if you recall, early on
12 in this process, after the passage of the policy, was there a
13 method that was developed by the audit committee to create
14 minutes and review them or have Mr. Tedrick create minutes and
15 review them?

16 A Yes, sir.

17 MR. SHIFFMAN: Objection.

18 A The secretary would -- would create the minutes and
19 then they would be presented at the next audit committee
20 meeting.

21 Q Okay. And do you recall ever seeing these minutes
22 before?

23 MR. SHIFFMAN: Objection. Mischaracterizes the
24 documents as minutes.

25 THE COURT: You can answer.

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Cross-Cotton-Fleming

2112

1 A This particular document, no, sir. I doubt it would
2 have come to us, because there is incomplete information on it.

3 MR. FLEMING: Okay. So, what I would like to do,
4 we can take this down. And I'll move to a second document,
5 which might help establish a foundation.

6 So, can I cull up JFX 52, which is a compilation
7 exhibit, your Honor, of audit committee reports from 2015
8 until 2000 -- January '22. And I've spoken to the
9 plaintiff, and they have indicated -- They can speak for
10 themselves they have no objection to this.

11 MR. SHIFFMAN: We have no objection to this
12 exhibit, your Honor.

13 THE COURT: Anything on the defense side?

14 MS. ROGERS: No objection.

15 MR. CORRELL: No objection.

16 THE COURT: Okay. This compilation exhibit --

17 MR. FARBER: Judge, could I see a copy first,
18 please. Thanks. (Examining). No objection, your Honor.

19 THE COURT: Okay. It's admitted. Did you say this
20 is all the audit committee reports for that entire period?

21 MR. FLEMING: Yes. Would you like to see it?

22 THE COURT: No.

23 MR. FLEMING: So, if I could draw particular
24 attention to the audit committee meeting or audit committee
25 report dated May 23rd-24, 2016.

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1 A Yes, sir.

2 Q Are we there? I don't believe we're there yet.

3 MR. FLEMING: May 23rd-24, 2016.

4 Q So, Mr. Cotton, what is this document?

5 A (Examining). It's an audit committee report. I'm
6 looking for the -- It looks like it may be for more than one --
7 No, it's not. It's for one meeting, but it's not May 23rd,
8 24th. It was conducted on March 8th, 2016.

9 Q March 8th. If I could direct your attention down the
10 first page to disclosure of financial interests.

11 A Yes, sir.

12 Q And in particular the second sentence, starting "The
13 majority". I'll read it. "The majority of the matters reviewed
14 either involved minimal dollar amounts or transactions in which
15 directors or their companies made payments to the NRA at fair
16 market value for services received such as advertising and
17 exhibit space or otherwise occurred in the ordinary course of
18 business." Do you see that?

19 A I do, sir.

20 Q Now, do you recognize any of those terms, you know,
21 minimal dollar amounts, ordinary course of business and the
22 like?

23 A Yes, sir. It's in our related party contract. There
24 is some exceptions to the applicability. One of them is de
25 minimus or small, excuse me, small dollar amounts. Others are

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1 those that are incurred in the ordinary course of business.

2 Q Okay. And those are exceptions that Mr. Shiffman took
3 you through a couple of days ago. Do you recall that?

4 A I take your word for it, Mr. Fleming.

5 Q Okay. Now the next sentence reads, "With respect to
6 the few transactions that are more substantial, primarily
7 involving consulting contracts, the committee plans to conduct a
8 more detailed review at its September meeting." Do you see
9 that?

10 A Yes, sir. I do.

11 Q Does this refresh your recollection at all about a
12 March 8th audit committee meeting and a consideration of
13 related-party transactions?

14 A I mean, it helps me -- it helps me remember we had a
15 meeting on March 8th and obviously the subject matter that was
16 discussed. I do remember discussing exceptions, because frankly
17 I don't remember -- I remember somebody had missed that line or
18 not about de minimus items, and in the regular course --
19 incurred in the regular course of business. I just don't
20 remember. And obviously we saw some matters that we wanted to
21 review more.

22 Q Do you recall if one of those matters related to Dave
23 Butz?

24 A I do recall that we looked at related-party
25 transactions with Dave Butz twice. I can't tell you for sure

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1 that this is what we were thinking of at this meeting.

2 Q Okay. Do you recall being asked by Mr. Shiffman
3 whether the NRA had not addressed in advance any contract
4 involving Dave Butz until 2019?

5 A I remember that subject matter, yes, sir.

6 Q Okay. Now, do you recall, I'm asking you to go back in
7 time so I understand, the September 2016 audit committee
8 meeting?

9 A If you got a document from that date, it might help me.

10 Q I will.

11 MR. FLEMING: Can I, for identical cull PX 1631. I
12 believe there is an objection to this, your Honor.

13 MR. SHIFFMAN: Your Honor, we do object to this
14 document for the same reasons as the previous.

15 MS. ROGERS: Your Honor, we would note that part of
16 the purpose of exchanging exhibit lists is so we have notice
17 what documents plaintiff wants to put in and isn't objecting
18 to. When we get 5,400 exhibits, and they reserve the right
19 to put any of them in, perhaps that affects the analysis of
20 whether they can object to their own documents.

21 MR. FLEMING: Scroll down, please, to the first
22 page.

23 THE COURT: I'll take each objection as it comes
24 up.

25 MS. CONNELL: What was the number?

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1 MR. FLEMING: 1631. Is there an objection pending?

2 THE COURT: I think they objected already. Again,
3 if you want to ask foundation questions, you can.

4 MR. FLEMING: Okay.

5 Q So, Mr. Cotton, you see before you PX 1631, which
6 purports to be a related-party transaction review for
7 September 2016. Do you see that?

8 A (Examining). Yes, sir.

9 Q Does this refresh your recollection at all about the
10 consideration by the audit committee of the more substantial
11 transactions that you had deferred in March?

12 MR. SHIFFMAN: Objection, your Honor. A few basis.
13 One, he was not asked that he -- I'm sorry. He did not
14 state he couldn't remember a meeting in March.

15 THE COURT: Well, no.

16 MR. SHIFFMAN: The same.

17 THE COURT: He's not introducing it yet
18 substantively. This is, as I understand it anyway, simply
19 he wants him to read it and see if it refreshes his
20 recollection.

21 MR. SHIFFMAN: That's what I'm saying. I don't
22 think he said that he didn't recollect a meeting in March.

23 THE COURT: Well, no. This the substance of the
24 individual things discussed is what I think he's talking
25 about.

LAS

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1 MR. FLEMING: And, your Honor, he said several
2 times now that it's difficult to remember back that far.

3 THE COURT: For present purposes, when you're
4 asking if it refreshes his recollection, it means he reads
5 it. And then you ask him the question again and you see if
6 you get an answer based on his refreshed recollection. So,
7 go ahead.

8 MR. FLEMING: Okay. Fair enough.

9 Q Does this refresh your recollection at all about a
10 September 2016 audit committee meeting?

11 A (Examining). I remember addressing related-party
12 transactions for each of the persons that are set forth on this
13 document. What I can't tell you is was it September 2016. They
14 were addressed. That's the best I can tell you.

15 MR. FLEMING: I would move this admission, your
16 Honor.

17 MR. SHIFFMAN: Objection, your Honor.

18 THE COURT: Sustained. You haven't -- This comes
19 in if it's a business record. And there is a way to show
20 what it is, if he either drafted it or oversaw it or knows
21 what this is. But I don't have anything on that front at
22 this point.

23 Q Mr. Cotton, in 2016 was it the ordinary practice of the
24 audit committee secretary to create minutes of audit committee
25 meetings?

LAS

Cross-Cotton-Fleming

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1 A It's my understanding that the secretary would keep
2 notes, minutes, whatever you want to call it, to use in creating
3 what I refer to, what board members refer to as the audit
4 committee report that goes to the full board. Some of them --
5 I'm sorry. Some of those reports reference either approval of
6 minutes or perhaps even attached those minutes.

7 Q So the minutes were necessary to create the audit
8 committee report, is that your testimony?

9 MR. SHIFFMAN: Objection. Leading.

10 THE COURT: Sustained. You can ask it differently.

11 Q Did the audit committee use the audit committee's
12 secretary's minutes of the meeting to create its report?

13 A Okay. I think there is -- I apologize. I must have
14 been misleading on that. The audit committee itself does not
15 create the report. The report is created by the secretary of
16 the committee and then it's submitted.

17 Q Okay. It's the ordinary practice of the audit
18 committee secretary to do both things to your understanding,
19 right?

20 MR. SHIFFMAN: Objection, your Honor. Lack of
21 foundation.

22 Q Create minutes and create a report, is that right?

23 MR. SHIFFMAN: And leading.

24 THE COURT: I'll let him answer if he knows.

25 A That is my understanding, yes, sir.

LAS

Cross-Cotton-Fleming

2119

1 Q And is it the ordinary practice of the NRA to maintain
2 records of these minutes and audit committee reports?

3 A Yes, sir.

4 MR. FLEMING: I move its admission.

5 THE COURT: There is one more question you have to
6 ask is whether this is one of them.

7 MR. FLEMING: Fair enough.

8 Q So, looking at these minutes from September 2016, is
9 this one of those documents that is kept in the ordinary course
10 of business?

11 MR. SHIFFMAN: Objection.

12 THE COURT: He can ask if he knows. If he has
13 personal knowledge.

14 MR. SHIFFMAN: I think he already testified to it.
15 If he hasn't, he can do it.

16 THE COURT: You can answer if you know that this
17 document that you're looking at is something that was
18 prepared in the ordinary course of business, and it's the
19 regular course of business for the company to prepare them.
20 So, now you were asked generally about it. Now the question
21 is, is this document in front of you something that's
22 prepared in the ordinary course based on your knowledge.

23 A This appears to be such a document.

24 MR. SHIFFMAN: Objection. Lack of foundation.

25 THE COURT: Keep going.

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Cross-Cotton-Fleming

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1 THE WITNESS: Can I finish?

2 THE COURT: Yes, you can.

3 A This appears to be such a document. It might help to
4 look in the next audit report to see if it's referenced.

5 MR. FLEMING: I'm happy to do that.

6 THE COURT: Mr. Fleming, the point is not whether
7 he can do it by reading a bunch of things. There may be
8 another witness who can do it. The person who has to lay
9 the foundation for the business record either has to be the
10 person who prepared it or someone who just knows from the
11 entire process that this document is prepared in the
12 ordinary course of business. I don't know that you can just
13 sort of build up to it. I'm not criticizing this or saying
14 it's not a business record, it's just that the individual
15 you have on the stand right now didn't prepare it. Didn't
16 really recognize it. So, I don't think you can use him to
17 establish it is a business record. You may be able to do it
18 later in the case, not as far as I can tell through
19 Mr. Cotton.

20 MR. FLEMING: If I may be heard for one last
21 moment, and that's the audit committee reports address that
22 the audit committee reviews the minutes from the prior
23 meetings.

24 THE COURT: I get all of that. But you still have
25 to have somebody who says that is what this is. And he's

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1 reading it, I don't know whether it's for the first time,
2 but he hasn't certainly indicated that he's seen it before.
3 So at this point the objection is sustained.

4 MR. FLEMING: Okay.

5 THE COURT: I'm not saying it's not admissible with
6 the right foundation.

7 MR. FLEMING: I understand.

8 Q So, Mr. Cotton --

9 MR. FLEMING: If I could cull back up JFX 52. I'm
10 sorry. Can I take that back. I want to do a different
11 document. I apologize. I'll get to that. If I could cull
12 up JFX 78. It's another document about which there is an
13 objection.

14 THE COURT: Which there is an objection?

15 MR. FLEMING: About which there is an objection.

16 MR. SHIFFMAN: I believe there is the same
17 objection to that. If we could have one second to pull it
18 up.

19 THE COURT: JFX 52?

20 MR. FLEMING: Seventy-eight.

21 THE COURT: JFX 78.

22 MR. SHIFFMAN: Yeah. We object. It doesn't appear
23 to be the final version. It's unsigned.

24 THE COURT: Can you scroll back up.

25 MR. SHIFFMAN: On hearsay and foundation.

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Cross-Cotton-Fleming

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1 THE COURT: Can you scroll back up to the first
2 page.

3 MR. SHIFFMAN: I also note it doesn't appear in JFX
4 52, which is the complete -- the set that's been offered as
5 a complete settle.

6 MR. FLEMING: Your Honor, it is a draft, that's the
7 whole point of it, which I'm happy to tell you about or ask
8 the witness.

9 THE COURT: All right. Well, if you want to build
10 a record for the draft being admissible, go ahead.

11 MR. FLEMING: Okay.

12 Q So, Mr. Cotton, do you see JFX 78 in front of you?

13 A (Examining). Yes, sir. Yes, sir.

14 Q And is this a draft report of the audit committee that
15 relates to the audit committee meeting held on September 8th,
16 2016?

17 A Since it's not signed, yes, sir it appears to be a
18 draft.

19 Q Okay. I would direct your attention to the section
20 headed "Disclosure of Financial Interests, Related-Party
21 Transactions".

22 MR. FLEMING: And ask that we scroll to the second
23 page for its continuation.

24 MR. SHIFFMAN: Objection, your Honor. To the
25 extent he'll be reading from the document that's not yet

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Cross-Cotton-Fleming

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1 entered.

2 MR. FLEMING: I won't be reading. Sorry. Scroll
3 to the second page, please.

4 Q So, Mr. Cotton, without reading from the document, are
5 you able to say whether this highlighted section refreshes your
6 recollection whether the audit committee addressed related-party
7 transactions pertaining to these individuals?

8 MR. SHIFFMAN: Objection. It's incomplete. There
9 is a reference to an attachment.

10 THE COURT: That's a different question. Just so
11 the jury has been sitting here not seeing anything for quite
12 some time.

13 MR. FLEMING: I know.

14 THE COURT: The question is, after you look at
15 this, then look away from it, you now have an independent
16 recollection without looking at it of this meeting and of
17 these topics coming up. That's how you can ask that
18 question.

19 A Mr. Fleming, what I can say is reading these two
20 documents together, it's obvious to me that the first word quote
21 unquote "minutes", that -- that's all I can say.

22 Q I'm sorry. "Quote unquote minutes" what?

23 A Reading these two documents, it's clear to me that that
24 first one are minutes as referenced here in this particular
25 document.

LAS

Cross-Cotton-Fleming

2124

1 Q Well, Mr. Cotton, it's a different question. As the
2 Judge rightly pointed out, sitting here now, having looked at
3 this independently, does it refresh or trigger an independent
4 recollection of that meeting having occurred on September 8th,
5 2016 and those transactions being addressed?

6 A It triggers a recollection of discussing each one of
7 those board members. I remember that quite well. Where I'm
8 having a problem is saying it was on a given date in 2016. I
9 know they were discussed from documents I've seen, from
10 Mr. Frazer before, I believe that to be the minutes. But
11 that's -- as I sit here now I can't see faces in that meeting
12 and hear what they're saying.

13 MR. FLEMING: Your Honor, I would move its
14 admission.

15 MR. SHIFFMAN: Your Honor, we object. I think this
16 is not the right witness for this document, to the extent
17 any witness is.

18 THE COURT: Sustained.

19 MR. FLEMING: Last question on this issue. Putting
20 aside all the documents. You can take them down.

21 Q You testified that you recall addressing the
22 individuals referenced in the document, right?

23 A Yes, sir.

24 Q Okay. So, I'm going to ask you sort of a simple and
25 general question. Were related-party transactions to your

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Cross-Cotton-Fleming

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1 knowledge addressed by the audit committee in 2016?

2 A Sometime in that year, yes, sir.

3 Q Okay. Now I would like to show you another
4 objectionable document, your Honor.

5 THE COURT: You might want to phrase that
6 differently.

7 MR. FLEMING: JFX 66, please.

8 MR. SHIFFMAN: I believe we have the same set of
9 objections, but if I could have one moment, please.

10 MR. FLEMING: I won't linger on it long, your
11 Honor. I'm mindful of the time.

12 Q So, Mr. Cotton, what you have up in front of you is a
13 document number JFX 66, which reflects minutes of the audit
14 committee December 7th, 2017?

15 MR. SHIFFMAN: Objection to that characterization.
16 It's an unsigned document. I think it's not really a
17 question. Counsel is testifying.

18 THE COURT: You can ask him what he thinks it is I
19 suppose as opposed to telling him.

20 Q Mr. Cotton, do you recognize this document?

21 A (Examining). Again, these are the minutes -- these are
22 the minutes that are representative of what I have seen several
23 times before we changed our procedure.

24 Q And I'll ask you again. Are these -- Is this a
25 document that is created in the ordinary practice of the NRA?

LAS

Cross-Cotton-Fleming

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1 A That's my understanding, yes, sir.

2 MR. SHIFFMAN: Objection.

3 Q Is it the ordinary course of business of the NRA to
4 maintain such records?

5 A Yes, sir.

6 MR. SHIFFMAN: Objection. This is an unsigned
7 document. It's hearsay. And he already testified that he
8 doesn't have the knowledge, the maintenance of the minutes
9 for the audit committee as opposed to the reports.

10 THE COURT: His answers were somewhat different on
11 this one. I mean, there is no rule that drafts of things
12 can't be business records, right. I mean, it doesn't count
13 as final minutes. But I still not yet, at the point where
14 I am, the mechanics of this, which I feel bad the jurors are
15 getting bogged down with me going through all of this, you
16 need someone, and maybe this is the right witness or maybe
17 it isn't the right witness, who could talk through the
18 process through which minutes go through before they are
19 finalized and signed to determine whether statements in
20 connection with a draft that is not signed is something that
21 would constitute a business record. You know, the signed
22 minutes are obviously already in. And so you just -- You
23 know, this witness is not the drafter of this. He's already
24 said that. He is -- I don't even know whether he is saying
25 he's familiar with these drafts or just sort of the concept

LAS

1 of drafts. I mean, I'm just not really -- I think -- Well,
2 I guess the question I have for you is are there factual
3 statements in this one that are not in the signed one that
4 you want to rely specifically on.

5 MR. FLEMING: Yes.

6 (Continue on the next page.)
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LAS

Cotton - by Plaintiff - Cross/Fleming

2128

1 MR. FLEMING: Yes.

2 THE COURT: And so, that then leads to the question
3 of understanding what the process of doing drafts are,
4 because what you -- the purpose of this document would be to
5 introduce facts that didn't make it into the final; right?

6 MR. FLEMING: Well, your Honor, I'm not even
7 certain that this is a draft. In fact, I don't think it is.
8 It just happens to be an unsigned final. It's obviously
9 maintained in the business records of the NRA, because it
10 was gathered and produced in this case.

11 And --

12 THE COURT: Well, if you have a witness who can
13 testify that this is the final, that's -- you know, I --
14 I -- I understand the -- the point you're trying to -- to
15 make. And -- but to -- to be able to establish that this --

16 The reason for the Business Record Exception, just
17 now for the jury, is:

18 Even though it's prepared out of court, if there
19 are certain kinds of things that a business puts together
20 for its own uses regularly -- it's part of their business --
21 that you can rely on this stuff, there's a certain amount of
22 reliability that comes with the repetitive nature of -- you
23 know, whether it's tax returns or whatever it is that you do
24 over and over for your business; so there's no reason to,
25 sort of, question it, or it has some indication of it being

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Cotton - by Plaintiff - Cross/Fleming

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1 an ordinary-course-of-business kind of thing.

2 You know, drafts can be prepared in lots of
3 different ways and it just seems to me, without having
4 either the drafter or somebody who can really testify as to
5 the process that goes from the initial drafting to the
6 final, um, I -- it just doesn't sound like this witness is
7 all that familiar with this particular document.

8 So I need something to show me that this is, in
9 fact, a business record, as opposed to just --

10 From all I can see, this could have been taken from
11 anyone's computer, reliable or not. Until somebody says,
12 "Oh, yeah, this is from the book in which we keep our drafts
13 that we've all worked on and then send to you, to the" --

14 You know, so I think there's a way to get it in,
15 maybe. But, you know, maybe Mr. Cotton's a little too high
16 on the chain to know the way the details work.

17 MR. FLEMING: Understood. Fair enough.

18 I'll move on.

19 BY MR. FLEMING:

20 Q Mr. Cotton, did there come a time at the Audit
21 Committee where it addressed related-party transactions in
22 advance?

23 A Oh, yes, sir; there have been times.

24 Q Okay. And in 2016, was that -- were you dealing --

25 MR. FLEMING: Well, withdrawn.

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Cross/Fleming

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1 Q In 2016 was the first time you had evaluated
2 related-party transactions; is that right?

3 A I'm sorry; first time we evaluated --

4 Q Evaluated related-party transactions.

5 A 2016? I don't believe so.

6 Q So tell me about the practice of the Audit Committee
7 before the conflict of -- the new conflict-of-interest policy
8 was passed.

9 A Well, that part of the procedure hasn't changed.
10 The -- the board members have to fill out all the financial
11 disclosure forms, as do officers and -- and employees;
12 everybody's supposed to fill them out, and they go to
13 Mr. Frazer's office. I can't say, you know, they lay on his
14 desk, but they go to his office. He reviews them; he writes
15 notes; he talks to some people so he can bring information to
16 us -- I'm sorry; "us" being the Audit Committee -- and then it's
17 presented at an Audit Committee meeting.

18 That's the general procedure, yes, sir.

19 Q Okay. And before Mr. Frazer was elected Secretary in
20 2015, how did the Audit Committee handle related-party
21 transactions?

22 A Well, that part -- that part of the procedure -- has
23 always been the same. I mean, when I said, "until we changed
24 the procedure," I'm talking about when we started putting what
25 would otherwise be in minutes; we actually started putting that

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Cross/Fleming

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1 into the report.

2 Q But did you have related-party transactions brought to
3 you to evaluate in 2013, 2012?

4 A I couldn't remember 2016. I'm sorry. I can't help you
5 with that one.

6 Q All right. And did there come a time when the Audit
7 Committee did away with minutes altogether and started putting
8 all of that into its reports?

9 A Yes, sir.

10 Q When --

11 A Okay, let me -- let me qualify the answer: All that
12 information started getting into the reports. Whether or not
13 Mr. Frazer or someone in his office also kept minutes, I -- I
14 don't know.

15 Q Understood.

16 But just to give the jury the flavor:

17 MR. FLEMING: Can we call up DX- -- JFX 52?

18 And if we could turn to the Audit Committee
19 Report --

20 THE COURT: That one's --

21 That one is in evidence; yes?

22 MR. FLEMING: That is in evidence, yes.

23 MR. SHIFFMAN: Yes.

24 MR. FLEMING: The Audit Committee Report dated
25 September 8th and 9th, 2018.

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Cotton - by Plaintiff - Cross/Fleming

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1 (Image displayed.)

2 MR. SHIFFMAN: Can you point us to a page, please?

3 MR. FLEMING: I don't have a page, but they're
4 (indicating) going to get there. It's just chronological.

5 MR. SHIFFMAN: But what's the date? I'm sorry.

6 MR. FLEMING: September 2018.

7 (Image scrolled.)

8 MR. FLEMING: Okay. And if we could scroll
9 down ...?

10 (Image scrolled.)

11 BY MR. FLEMING:

12 Q So, Mr. Cotton, you can see there where -- we've talked
13 a lot about them in the past few days, but there were -- a
14 related-party transaction, or conflict of interest, relating to
15 Oliver North is addressed. Do you see that?

16 A I do.

17 Q Okay. Do you recall --

18 Well, is this (indicating) Audit Committee Report from
19 September 2018 an example of a new style of report at the Audit
20 Committee, to include the details of its related-party
21 transaction reviews?

22 A Yes, sir.

23 Q Okay. And has the Audit Committee followed that
24 practice ever since?

25 A Yes, sir.

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Cross/Fleming

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1 Q And before that, how did the Audit Committee reflect,
2 or document, its reviews of related-party transactions?

3 A Well, as we discussed earlier, the secretary would take
4 notes of all the discussions and everything and if we approved
5 it or disapproved -- either one -- he would take minutes. Then,
6 at some point in the future -- and I'm not saying a long time;
7 could be a day, could be a week; I don't know. I mean, it
8 varied -- he would then create -- he would then create an Audit
9 Report that referenced either -- well, I mean, the Audit
10 Report's always going to reference accepting the minutes,
11 because if there are any problems, we're going to make them --
12 we're going to have them fixed before we addressed it.

13 Q Okay. Understood.

14 So I'd like to change topics.

15 THE COURT: I have a little bit of time on the
16 clock. Do we have a shot at getting Mr. Cotton out of here?

17 MR. FLEMING: We do.

18 THE COURT: Well, I don't know how much redirect
19 there's going to be.

20 MR. SHIFFMAN: Probably very little, your Honor --

21 THE COURT: Okay.

22 MR. SHIFFMAN: -- or none.

23 MR. FLEMING: I have -- I have, at most, three
24 small topics; maybe two. Maybe I can cut it.

25 Q So, did there come a time in July of 2018 when

ALAN F. BOWIN, CSR, RMR, CRR

Cotton - by Plaintiff - Cross/Fleming

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1 whistleblowers from the Financial Services Division came
2 forward?

3 A Yes, sir. I -- I --

4 Q And you testified, did you not, about having to leave
5 that July 30th meeting?

6 A Yes, sir.

7 Q Okay. You had to catch a flight, right?

8 A That's correct.

9 Q All right.

10 MR. FLEMING: Could I call up PX 2062 for
11 identification?

12 (To counsel) I don't think you guys have an
13 objection.

14 MR. SHIFFMAN: I don't believe so. Let me just
15 pull it up. 2062?

16 MS. CONNELL: What was the number?

17 MS. STERN: 2062, PX.

18 (Pause.)

19 MR. SHIFFMAN: No objection.

20 (Image displayed.)

21 THE COURT: Any from defense?

22 Do they know what this is?

23 MR. FARBER: Can we see a copy, please?

24 (Mr. Fleming handed a document to defense counsel.)

25 (Pause.)

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Cotton - by Plaintiff - Cross/Fleming

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1 MR. FARBER: No objection.

2 THE COURT: Okay.

3 MR. CORRELL: No objection.

4 MS. ROGERS: No objection.

5 THE COURT: It's admitted.

6 (Said document handed back to Mr. Fleming.)

7 (Image displayed.)

8 BY MR. FLEMING:

9 Q So, Mr. Cotton, can you take a look at document PX 2062
10 and tell me if that's your e-mail address at the top?

11 A Yes, sir, that's the e-mail address.

12 Q And do you recall receiving this e-mail from Mr. Frazer
13 on July 30th, in the evening?

14 A I -- I do.

15 Q And do you recall --

16 Well, what do you recall about what, if anything, he
17 did after that meeting?

18 A Let me see if I can keep it in -- in correct sequence.

19 Excuse me (coughing.)

20 I had spoken -- I spoke to David Coy; he was my
21 vice-chairman that took over the meeting when I had to leave to
22 catch a flight. I spoke to him. I believe I spoke to John
23 Frazer, as well. I had already spoken to Sonya Rowling, even
24 before the July 30th meeting. I spoke to counsel. I can't
25 think of any other folks that I would have spoken to immediately

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Cotton - by Plaintiff - Cross/Fleming

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1 after getting this.

2 Q Okay. And do you recall receiving a package from
3 Mr. Frazer?

4 A I do.

5 Q And what was in that package?

6 A The -- I remember getting a copy of the -- I forget
7 what its title was -- Top Ten Concerns, or something like that,
8 that had been distributed during the meeting with the folks from
9 Financial Services Division that came forward with -- with a
10 list of concerns. I believe there was something else in that
11 package; I think it was a copy of this e-mail, but I may be
12 wrong.

13 Q Well, in the e-mail he writes, does he not, in the
14 second sentence: "They brought a number of additional concerns
15 to the table" --

16 Referring to the whistleblowers, right?

17 A Yes, sir. That's the list I was talking about.

18 Q -- "along with more details or documentation of the
19 issues I outlined. I'm sending each of you a package of
20 information by priority FedEx."

21 Did you receive that FedEx?

22 A I remember receiving a FedEx package from Mr. Frazer,
23 yes, sir.

24 Q Okay. In the interests of time, I'm going to move on,
25 quickly, and show you -- and, hopefully, this objection won't

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Cotton - by Plaintiff - Cross/Fleming

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1 take too long, but PX 1801. It's another plaintiff's exhibit.

2 (Pause.)

3 MR. FLEMING: Not for the jury. Sorry.

4 (Pause.)

5 Q Mr. Cotton, did there come a time, in or around April
6 of 2019, when there were press reports about the NRA that
7 presented unfavorable information about the NRA?

8 A Yes, sir.

9 Q Okay. And do you recall having communications with
10 Mr. Frazer about that?

11 A I did.

12 Q All right. And if you look at this e-mail, at the
13 bottom, is that your e-mail address?

14 A Yes, sir.

15 Q And do you recall receiving an e-mail from Mr. Frazer,
16 at or about that time, concerning these issues?

17 A I recall receiving that e-mail; I couldn't tell you --
18 I assume it's that time because that's what's on the e-mail, but
19 I just couldn't -- I don't know when I opened my computer. If I
20 was on the road, it would have taken a little longer.

21 MR. FLEMING: (To counsel) Do you have an
22 objection?

23 MR. SHIFFMAN: I mean, our objection is to lay the
24 foundation and -- and that it's hearsay without a -- to the
25 attachment. I'm sorry; to the attachment to the e-mail.

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Cotton - by Plaintiff - Cross/Fleming

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1 (To counsel) Are you just talking about the e-mail
2 itself or are you doing the attachment, as well?

3 MR. FLEMING: I would like to do the attachment.

4 You guys have it in native form. I've seen it but
5 I don't --

6 MR. SHIFFMAN: We have it.

7 MR. FLEMING: Yeah.

8 MR. SHIFFMAN: Yeah. And our objection was on
9 hearsay and lack of foundation. And --

10 MR. FLEMING: I don't have it. You guys have it.

11 MS. STERN: Oh, you don't have it?

12 MR. FLEMING: I mean, I have it in hard-copy form.

13 THE TECHNICIAN: Excuse me. I have it.

14 MR. FLEMING: You have it. I'm sorry. Can we pull
15 it up? Just not for the jury.

16 Your Honor, I'll be done shortly after this.

17 (Pause.)

18 BY MR. FLEMING:

19 Q And, Mr. Cotton, have you ever seen this list before?

20 A I have.

21 Q And did you obtain this from Mr. Frazer?

22 A Yes, sir.

23 Q Okay. Did this respond to your question to him?

24 A I'm sorry; does it ...? I'm sorry; I missed the
25 question.

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Cotton - by Plaintiff - Cross/Fleming

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1 Q Had you asked Mr. Frazer to re-send you this list that
2 he had shown you a few months beforehand?

3 MR. SHIFFMAN: Objection; leading.

4 A I don't remember if I had --

5 THE COURT: Overruled.

6 THE WITNESS: Oh, I'm sorry, Judge.

7 THE COURT: Go ahead. You can answer.

8 A I don't know if I asked him to re-send it, but I asked
9 him to put this together and to give it to me, and he did.

10 MR. FLEMING: I ...

11 THE COURT: Okay. Does the NRA have any objection
12 to --

13 MS. ROGERS: No objection.

14 MR. SHIFFMAN: We have objections on hearsay and
15 privilege.

16 MS. CONNELL: There's a waiver of privilege, your
17 Honor, and it includes legal conclusions.

18 THE COURT: It's not your privilege to object to.
19 That's why I asked.

20 MS. ROGERS: To me, this looks like a list of
21 something in news articles, which --

22 THE COURT: I'm looking at the column I.

23 MR. SHIFFMAN: Yes, your Honor; that's what we were
24 looking at, as well.

25 THE COURT: I assume you have no basis for

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Cotton - by Plaintiff - Cross/Fleming

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1 objecting on --

2 MR. SHIFFMAN: No, but that's what I was talking
3 about; hearsay in that column.

4 THE COURT: This is a -- this is --

5 This is coming from Mr. Frazer, the general
6 counsel --

7 MS. ROGERS: Just give me one moment, your Honor.
8 I apologize. I'm on an angle, so I couldn't see column I.

9 (Pause.)

10 MS. ROGERS: I'm sorry. We're going to object to
11 this.

12 MR. FLEMING: Okay, fine.

13 Take it down, please.

14 (Pause.)

15 THE COURT: When you bat 300, you're in the Hall of
16 Fame, so you're doing okay.

17 MR. FLEMING: I'm batting zero, so I do not belong
18 in the Hall of Fame.

19 (Laughter.)

20 BY MR. FLEMING:

21 Q Mr. Cotton, I'm going to ask you one question: With
22 respect to press reports that appeared in the spring of 2019
23 about the NRA, you testified you had conversations with
24 Mr. Frazer; correct?

25 A That's correct.

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Cotton - by Plaintiff - Cross/Fleming

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1 Q Did you have any understanding of whether he was
2 looking into and/or investigating these issues?

3 MR. SHIFFMAN: Objection; lack of foundation, and
4 leading.

5 A It was -- it was --

6 THE COURT: Overruled.

7 A -- my -- I hesitate to say -- instruction. I'm sorry.
8 Mr. Frazer doesn't work directly for me, but I asked him to look
9 into these, to the extent he had any information. It was that
10 stuff that Ackerman McQueen started spewing out during our, what
11 I call, Convention Week in 2019.

12 Q Okay.

13 MS. ROGERS: I'll caution the witness --
14 Sorry to interrupt.

15 The witness can testify about facts he learned from
16 the media, but not about legal advice that Mr. Frazer gave.

17 THE WITNESS: Yes, ma'am.

18 MR. SHIFFMAN: And we object to the
19 sword-and-shield use of privilege.

20 Q Last topic: Mr. Cotton, you were asked questions about
21 the SLC. Do you recall?

22 A Yes, sir.

23 Q And that's the Special Litigation Committee?

24 A Yes, sir.

25 Q Why was the Special Litigation Committee formed?

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Cotton - by Plaintiff - Cross/Fleming

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1 A It was formed because, at the time, our executive
2 director -- he's actually the CEO in the private sector -- Wayne
3 LaPierre, had been sued individually, as had Mr. Frazer, in this
4 particular lawsuit. And I'm trying to get my timing correct. I
5 believe Mr. -- I believe Mr. LaPierre was a defendant and, you
6 know, battling lawsuits against Ackerman McQueen. I believe
7 they counterclaimed against him at that time. So he would have
8 had a conflict. That would be Mr. Fra -- I mean Mr. LaPierre
9 only; not Mr. Frazer.

10 That's the reason it was created: So that people who
11 had a -- a -- you know, if they had a conflict, we didn't want
12 those folks -- "we" being the board -- didn't want those folks
13 running the litigation.

14 Q Now, as a consequence of this conflict and the
15 formation of the Special Litigation Committee, did the Special
16 Litigation Committee have to take over any responsibilities that
17 Mr. Frazer had been performing up to that point?

18 A The only thing that -- that we would be taking over in
19 terms of --

20 Well, first of all, we took over none of his
21 responsibilities as secretary of the -- you know, the corporate
22 secretary. The only responsibilities we would be taking over
23 from him as general counsel would be those that were related to
24 dealing with -- with the particular lawsuit; either this one or
25 the Ackerman McQueen case.

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Cotton - by Plaintiff - Cross/Fleming

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1 Q And did that include reviewing the Brewer firm's
2 invoices?

3 A Yes, sir.

4 Q And prior to this formation of the Special Litigation
5 Committee, did Mr. Frazer have that responsibility?

6 A Well, not solely. He was one -- he was one person who
7 over -- looked over the bills.

8 Q And who else had looked over the billings?

9 A Craig Spray, at the time, was -- was our -- I don't
10 remember if he had been elected treasurer yet, but he was at
11 least CFO; he looked over the bills.

12 I'm trying to remember who else.

13 It was at least those two.

14 Q And were you aware that there was an outside insurance
15 company that was also looking at those bills?

16 MR. SHIFFMAN: Objection; lack of foundation.

17 MR. FLEMING: I'm asking his awareness.

18 A Yes, sir.

19 THE COURT: Overruled.

20 MR. SHIFFMAN: And outside the scope.

21 THE COURT: Overruled.

22 A At that particular time, yes, sir. A third party was
23 reviewing the -- the Brewer bills, as well.

24 Q And had any of those three parties, to your knowledge,
25 ever indicated they thought that the bills were unreasonable?

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1 A No, sir.

2 Q And you're a lawyer; correct?

3 A Yes, sir.

4 Q Okay. As part of the Special Litigation Committee, did
5 you take over, in any part, review of those invoices?

6 A When -- when the SLC was created, we had another
7 attorney -- board counsel -- that was reviewing the bills.

8 Q So you did not review them.

9 A At that -- immediately at that point, no, sir. It --
10 later -- pardon me. That board counsel left; he bought property
11 in Portugal -- pardon me.

12 MS. ROGERS: Excuse me. I'm sorry.

13 The witness can testify about facts but not what
14 board counsel advised.

15 THE COURT: I think --

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Go ahead.

18 A When he -- when -- when that attorney bought property
19 in Portugal, he left, we got -- we got yet another one. But in
20 the -- I'm sorry -- another board counsel. In the interim, all
21 the members of the SLC started reviewing the bills.

22 Q Okay. And in that interim period, did you -- you or
23 anyone else at the SLC -- reach a conclusion that the bills were
24 unreasonable?

25 MR. SHIFFMAN: Objection; lack of foundation.

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Cotton - by Plaintiff - Cross/Fleming

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1 A I -- I did not.

2 THE COURT: Overruled.

3 A And none of the other members of the SLC expressed to
4 me that they did.

5 MR. FLEMING: Nothing further.

6 I am sorry it took so long.

7 MR. SHIFFMAN: Your Honor, we just have a couple of
8 questions.

9 THE COURT: Okay.

10 MR. SHIFFMAN: I thought we were done.

11 REDIRECT EXAMINATION

12 BY MR. SHIFFMAN:

13 Q Mr. Cotton, you --

14 MR. SHIFFMAN: Can you hear me?

15 (The court reporter nodded.)

16 Q Mr. Cotton, you recall, you were asked some questions
17 about a review of some insurance bill -- or insurance company
18 reviewing the legal bills?

19 A Yes, sir.

20 Q Okay. And do you recall that you testified that the
21 review of those bills only covered a period of several months?

22 A That sounds about right, yes, sir.

23 Q All right. And do you also recall that that review of
24 the -- Brewer's bills was only for a portion of the work that
25 was done, not all of the Brewer bills?

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Cotton - by Plaintiff - Redirect/Shiffman

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1 A Yes, sir; a significant portion. But yes, sir, just a
2 portion. It wasn't everything.

3 Q All right. I'm going to read to you, sir, from your --
4 I believe it's your June 17th, 2022 transcript; page 345, line
5 9, through line 23:

6 "Question: So when you say a third party was
7 vetting Brewer's bills, it was not for all of Brewer's work
8 that was billed to the NRA; correct?

9 "Correct.

10 "It was just for some work.

11 "Yes" --

12 I'm sorry.

13 "Question: It was just for some work?

14 "Answer: Yes, ma'am.

15 "Question: Do you -- can you give me an estimate
16 of the percentage of work that was covered?

17 "Answer: I don't know.

18 "Question: No? Okay. Who would know? Do you
19 know who within the NRA would know the answer to that
20 question?

21 "Answer: I don't."

22 MR. SHIFFMAN: Okay, thank you.

23 We pass the witness.

24 No further questions, and thank you very much,
25 Mr. Cotton.

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1 THE WITNESS: Thank you, sir.

2 MS. ROGERS: I might -- I'm sorry. I might have a
3 bit more; five or ten minutes, and if Mr. Cotton could join
4 us in the morning, I wonder if that would be best.

5 THE WITNESS: I'm sorry?

6 THE COURT: Well, first of all, it's Friday.

7 MS. ROGERS: I'm sorry. Not tomorrow morning.

8 THE COURT: It would be Friday morning.

9 MR. SHIFFMAN: Is it limited to this last
10 questioning?

11 MS. ROGERS: Well, it would be limited, but also
12 some items that were brought up by the other defendants.

13 (Whereupon, the witness spoke to the Court outside
14 the hearing of the reporter.)

15 THE COURT: I would like to finish this witness
16 now, even if it means going to ten of or something, but not
17 beyond that.

18 MS. ROGERS: I don't think we would entertain
19 Mr. Cotton further today, so we'll have him back on our
20 direct case.

21 THE COURT: Yeah, that's what I was going to say.
22 You all could call him if you'd like.

23 All right, sir, you're free to go for now,
24 apparently.

25 (Laughter.)

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1 THE WITNESS: Thank you, sir.

2 THE COURT: You don't have to wait in that room for
3 the rest of the time.

4 THE WITNESS: No more juror jails [sic].

5 THE COURT: (To jury) All right, just hang on one
6 second. We're going to be adjourned for the night. We're
7 off tomorrow. We'll reconvene Friday morning at 9:30. See
8 you all then.

9 Just recall your instructions: Do not talk about
10 the case. Do not research anything you've heard. Try to
11 find things -- just relax and we'll see you Friday.

12 COURT OFFICER: All rise. Jury exiting.

13 (The jury left the courtroom.)

14 THE COURT: Counsel, I'm giving you back all these
15 (indicating) binders, so ...

16 All right. Thanks, everyone. See you on Friday.

17 MR. SHIFFMAN: Thank you, your Honor.

18 (Whereupon, the matter was adjourned to Friday,
19 January 26, 2024, at 9:30 a.m.)
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23
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25

ALAN F. BOWIN, CSR, RMR, CRR

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

3 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
4 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

5 -against-

6 THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
7 WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
8 and JOSHUA POWELL,

Defendants.

-----X
9 Index No. 451625/20 60 Centre Street
10 TRIAL New York, N.Y.
January 26, 2024

11 B E F O R E:

12 HONORABLE JOEL M. COHEN,
13 Justice; and a jury

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1 (Appearances continued:)

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4

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17

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LORI SACCO
Official Court Reporters

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1 THE COURT: Good morning, everyone.

2 Well, I see that the result of me giving you a day
3 off is more letters, so I have to -- more and longer
4 letters -- so I have to remember that. But, on the
5 substance, I did receive the letters from the medical
6 professionals and, you know, obviously, we're starting today
7 in the morning and we'll see how the -- how things go.

8 MR. CORRELL: Appreciate the accommodation, your
9 Honor.

10 THE COURT: And, you know, hopefully, we can, you
11 know, with a break for lunch, you know, test out and try to
12 move it into the afternoon as best we can.

13 I haven't really talked to the plaintiffs about the
14 logistics of completing their case and turning it over to
15 the defendants; you know, whether they're going to be able
16 to, you know, hypothetically, if we have to fill the
17 afternoon with other evidence -- I mean, I don't want to
18 spend a lot of time talking about this now, until we know a
19 little bit more about how this is going to play out, but at
20 the moment, I don't know how many other witnesses you have
21 after Mr. LaPierre.

22 MS. CONNELL: Thank you, your Honor.

23 Yeah. We spoke to Mr. LaPierre's counsel
24 (indicating) in terms of today and we're hopeful that if he
25 can make it to the afternoon break, we can play the

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1 deposition trans -- the deposition testimony of Craig Spray,
2 which is about, I think, an hour and 20 minutes, an hour and
3 a half. We have one issue to resolve with that, and I have
4 an e-mail to submit to your Honor. That was that one
5 hearsay issue that you wanted to talk about. I think it
6 will be very quick.

7 After that, we hope to move to Mr. Frazer and then
8 we have some short -- relatively short -- deposition
9 testimony and some live testimony to get in, and then we go
10 to our expert, Eric Hines.

11 We hope to wrap up on Tuesday, your Honor.

12 THE COURT: Okay. And do you have a current feel
13 for the relative time between the parties, or you're not
14 ready for that report yet?

15 MS. CONNELL: I do.

16 I think, your Honor -- I just -- let me
17 double-check; I don't want to give you the wrong numbers.

18 Actually, I think, yesterday, the defendants had
19 circulated a time count that we pretty much agreed with,
20 although I'm not seeing it.

21 MS. ROGERS: I circulated it.

22 THE COURT: That's a newsworthy item, in and of
23 itself.

24 MS. ROGERS: Yes.

25 So let's see... All right. So, according to our

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1 clock, the AG, as of yesterday -- or as of the day we
2 concluded -- was 27 hours and change, and the defense total
3 is 17 hours and change.

4 THE COURT: Okay.

5 MS. CONNELL: Your Honor, there is one slight issue
6 regarding the testimony today, if you have a moment.

7 THE COURT: I'm just trying to figure out why
8 it's -- what the average per day is.

9 Anyway ...

10 Okay, what's that?

11 MS. CONNELL: Mr. LaPierre --

12 As we had discussed, the plaintiff gave notice to
13 Mr. LaPierre, a few days ago, of what exhibits we intend to
14 use with him. You have the first binder (indicating) of
15 those in front of you. Yes.

16 THE COURT: That's the first binder?

17 MS. CONNELL: The first binder.

18 THE COURT: Okay.

19 MS. CONNELL: But we also let him know the first
20 set of exhibits we intended to go through with him. Those
21 include some invoices from a vendor for whom we have a
22 business record certification. We received objections
23 this -- I think -- this morning or late last night. This is
24 something we previous -- your Honor previously spoke to. We
25 think it's not really an issue but we wanted to raise it,

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1 rather than deal with it in front of the jury.

2 THE COURT: Well, look, the principles that were --
3 You're talking about Ms. Rogers' letters from last
4 night?

5 (Ms. Connell nodded.)

6 THE COURT: The legal principle is correct, right?
7 A compilation --

8 Well, is this a compilation exhibit or these are
9 individual invoices?

10 MS. CONNELL: No, your Honor. We're going to be
11 talking about individual invoices for which there's a
12 business record certification.

13 THE COURT: Okay. Well, a lot of the letter was
14 about a compilation, so that's not this issue.

15 But the point she makes is, the individual
16 documents that are in the compilation have to be admissible.
17 And so, is the main issue that the vendor who gave the
18 certification was certifying to records that were in the
19 possession of their client as opposed to certifying to
20 records from their own files? Is that the issue?

21 MS. CONNELL: So, your Honor, I think the issue is
22 that CAA, which is the private-jet source that Ms. Stanford
23 used solely to provide private-jet service for Mr. LaPierre
24 and others at the NRA, would give invoices to her and she
25 maintained those invoices. Rather than Mr. --

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1 I forget his name.

2 (Pause.)

3 MS. CONNELL: Darwish.

4 Rather than Mr. Darwish having to go through his
5 paper records which he maintained in a paper format, he
6 reviewed all of the invoice -- invoices -- he had provided
7 to Ms. Stanford. These are invoices the NRA also had; these
8 are invoices Ms. Stanford had; and he looked at them and
9 said, "Yes, those are in fact true and accurate copies of
10 invoices I produced to Ms. Stanford as part of my ordinary
11 course of business." He was an appropriate certifier. He
12 confirmed the records.

13 THE COURT: Right.

14 Now, I think that would -- you know, my view is
15 that there's nothing, in principle, wrong with that. If
16 somebody were testifying, "This is the entirety of our
17 invoices," I don't think that person could look at -- unless
18 they -- unless there was a record showing that they had
19 compared back and forth to say, "This is everything." But
20 as to individual documents, I don't think there's any
21 prohibition on someone being able to review the documents
22 that you have and say, "Yes, those were prepared in the
23 ordinary course, it's in the ordinary course of our business
24 to do it," and all the normal things. But I've had
25 situations, for example, where a bank would say, "Well, I

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1 can't testify that you have a complete record based on what
2 you have in front of you; I'd have to get those out of my
3 file."

4 So, if what you're doing today is going to use
5 records that both vendors, I guess, certified are business
6 records but -- you know, including the originating vendor,
7 my lean is that that's sufficient.

8 MS. ROGERS: So, your Honor, just to clarify:

9 There are a couple of layers of issues with these
10 invoices. So, all of the invoices, including the ones
11 certified by the air vendor CAA and the ones certified by
12 the travel agent, Gayle Stanford, all come from the files of
13 Gayle Stanford.

14 THE COURT: I understand that.

15 MS. ROGERS: And the manner in which they were
16 maintained by Gayle Stanford, sort of -- like, I don't think
17 she retained them in a systematic, deliberate way; they were
18 just "in the cloud somewhere," is what she says in her
19 deposition -- makes them unreliable because, as we itemized
20 in our letter, there are instances where a flight is
21 cancelled and rebooked and there are duplicative invoices,
22 and that complicates the summary.

23 And it also means that it's difficult for a witness
24 to look at one invoice, out of context, without comparing it
25 to a calendar or other records and --

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1 THE COURT: Well, that's -- that's a different
2 question than whether they are business records. That's
3 what they mean.

4 MS. ROGERS: Well --

5 THE COURT: And they --

6 I get your point, and you can, you know, make
7 whatever arguments you want out of that. But it doesn't
8 mean -- even if various business records were for a flight
9 that was ultimately cancelled and rebooked, that doesn't
10 make the invoice not a business record.

11 MS. ROGERS: Right.

12 I mean, I guess I could quibble with if it was
13 relied on in the ordinary course of business. No one relies
14 on a cancelled invoice.

15 THE COURT: Well, you might.

16 The point is not so much the -- the business record
17 is just to say that there's -- there's something about the
18 manner in which it was prepared and how it fits into the
19 person's business, that it is what it purports to be. So
20 that you're -- you're at least over that initial threshold
21 of: Is this some concocted, after-the-fact, made-up thing?
22 No.

23 Your point is, it may not be an invoice for an
24 actual flight. That's a substantive question about what the
25 invoice means, and both of you can try to make -- you

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1 know -- introduce separate proof of that. This is really
2 just to get over the hurdle of: Is this a genuine document?
3 Was it prepared in the ordinary course? And so, that
4 threshold level of admissibility, I think, is --

5 MS. ROGERS: Okay. We understand, your Honor.

6 I think we had separate objections on attempting to
7 summarize and total them up, because some of them are not
8 real. But we understand that's not --

9 THE COURT: That's a slightly different issue,
10 and -- I mean, you make some interesting arguments there
11 about, if the totaling up has got double-counting in it,
12 which is, I think, what I gleaned --

13 MS. ROGERS: That's right, your Honor.

14 THE COURT: -- from your suggestion, I'll certainly
15 want to at least understand what your argument is on that
16 and -- whether it goes to the weight or admissibility of the
17 compilation is the question.

18 All right. So these exhibits are fine, or as
19 individual invoices, subject to you all fighting about what
20 they actually mean.

21 MS. CONNELL: Thank you, your Honor. I just didn't
22 want to have that discussion in front of the jury.

23 THE COURT: Agreed. Thank you.

24 All right. The jury is ready, so shall we get
25 started?

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1 MS. CONNELL: Yes, your Honor.

2 The People call Wayne LaPierre.

3 THE COURT: Okay. Yeah, we can wait till the --

4 You may have to say that all over again once the
5 jury is here.

6 MS. CONNELL: Maybe we can have the court officer
7 shout it. He does a good job. I like that; that energy.

8 THE COURT: He's commanding.

9 (Laughter.)

10 (Pause.)

11 COURT OFFICER: Is the Court ready to receive the
12 jury, your Honor?

13 (The Court nodded.)

14 COURT OFFICER: All rise. Jury entering.

15 (The jury entered the courtroom.)

16 THE COURT: Good morning, everyone. Have a seat.
17 Welcome back.

18 All right, Ms. Connell, are you ready to call your
19 next witness?

20 MS. CONNELL: Yes, your Honor.

21 The People call Wayne LaPierre.

22 THE COURT: Okay. Mr. LaPierre ...?

23 (The prospective witness assumed the witness
24 stand.)

25 THE COURT: Good morning.

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LaPierre - by Plaintiff - Direct/Conley

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1 MR. LaPIERRE: Good morning.

2 W A Y N E L a P I E R R E, called as a witness by the
3 plaintiff, having been first duly sworn/affirmed, was examined
4 and testified as follows:

5 THE CLERK: State your name.

6 THE WITNESS: Wayne LaPierre.

7 THE CLERK: And spell your last name for the
8 record.

9 THE WITNESS: L-a-P-i-e-r-r-e.

10 THE CLERK: Thank you.

11 You may be seated.

12 THE WITNESS: Thank you.

13 (Witness seated.)

14 THE COURT: Okay. If you can just try to keep
15 close to the microphone, that would be great. Thank you.

16 THE WITNESS: Okay.

17 THE COURT: All right, counsel, you may proceed.

18 DIRECT EXAMINATION

19 BY MR. CONLEY:

20 Q Good morning, Mr. LaPierre.

21 A Good morning.

22 Q My name is Jonathan Conley. I'm an Assistant Attorney
23 General with the New York State Attorney General's Office. I
24 represent the People of the State of New York. How are you
25 today?

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

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1 A I'm fine, thank you.

2 Q As the executive vice president of the NRA, you have
3 significant discretion to hire and fire employees within the
4 NRA; correct?

5 A Yes.

6 Q And you have significant authority and discretion in
7 contracting with vendors; correct?

8 A Yes.

9 Q As the executive vice president, you have a
10 responsibility to manage the funds of the NRA prudently; right?

11 A Yes.

12 Q You understand that you're not allowed to use your
13 position to unlawfully enrich yourself?

14 A Yes.

15 Q And you have a responsibility to avoid conflicts of
16 interest.

17 A Yes.

18 Q And to report them if they exist?

19 A Yes.

20 Q And you understand that you're not supposed to
21 self-deal in matters involving the NRA; correct?

22 A Yes.

23 Q And you agree that you have a responsibility to follow
24 the internal policies of the NRA?

25 A Yes.

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LaPierre - by Plaintiff - Direct/Conley

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1 Q And you must act in the best interests of the NRA's
2 members and its mission.

3 A Yes.

4 Q And you agree that it's important to impose high
5 ethical standards on the people who work for you at the NRA;
6 correct?

7 A Yes.

8 Q Since at least 2012, the NRA has paid for you to fly by
9 private charter; correct?

10 A Yes.

11 Q You've previously testified that the NRA requires you
12 to fly by private charter at all times, for security reasons; is
13 that right?

14 A Yes.

15 Q And you claim that this is the NRA's policy because the
16 NRA's former Director of Security, Jim Staples, told you that;
17 is that correct?

18 A Yes.

19 Q Mr. Staples recently retired; yes?

20 A Yes.

21 Q And you hired Mr. Staples as the NRA's Director of
22 Security in 2015; correct?

23 A Yes.

24 Q But you had flown by private charter for several years
25 prior to that; is that accurate?

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LaPierre - by Plaintiff - Direct/Conley

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1 A Yes.

2 Q There is no written board policy mandating that you fly
3 by private charter; correct?

4 A No.

5 Q The board has not passed a resolution requiring you to
6 travel by --

7 THE COURT: Hang on, counsel.

8 Sometimes, when the question has a negative in
9 it --

10 MR. CONLEY: Understood.

11 THE COURT: -- and the answer is "no," it's not
12 entirely clear whether the answer is "no" to the question or
13 "no" to the last section which says, "is it correct?" So
14 you might want to be careful about that.

15 MR. CONLEY: Thank you, your Honor.

16 THE COURT: I for one don't know.

17 MR. CONLEY: I'll do that again.

18 Q Mr. LaPierre, isn't it true that there is no written
19 board policy mandating that you fly by private charter?

20 A There is now.

21 Q And when was that put into place?

22 A I believe it was drafted in 2019; it was adopted in
23 2020 by the board, officially.

24 Q Prior to 2020, there was no written board policy
25 mandating that you fly by private charter; is that right?

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LaPierre - by Plaintiff - Direct/Conley

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1 A Yes.

2 Q And prior to 2020, the board did not pass a resolution
3 requiring that you travel by private charter for security
4 reasons; correct?

5 A Yes.

6 Q You're familiar with Gayle Stanford; correct?

7 A Yes.

8 Q She's a travel consultant?

9 A Yes.

10 Q She made your travel arrangements for about 30 years,
11 right?

12 A Yes.

13 Q And for approximately 30 years, you booked your travel
14 exclusively through her?

15 A Yes.

16 Q Ms. Stanford was never the official travel agent for
17 the NRA, right?

18 A She -- well, she worked for the NRA as -- as a travel
19 agent.

20 Q Right. But the NRA has an official travel agency for
21 NRA employees, right?

22 A Yes.

23 Q And Ms. Stanford isn't that travel agency, right?

24 A Yes.

25 Q And when you made travel arrangements with

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LaPierre - by Plaintiff - Direct/Conley

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1 Ms. Stanford, you would call her directly; right?

2 A Yes.

3 Q And you didn't communicate with her in writing.

4 A No.

5 Q And when you called her, you would provide her
6 information about when and where you were going; right?

7 A Yes.

8 Q And Ms. Stanford would book your private flights?

9 A Yes.

10 Q And your lodging?

11 A Yes.

12 Q And your black-car services?

13 A Yes, sir.

14 Q And it would be fair to say that given your travel
15 schedule, you would speak with Ms. Stanford frequently; correct?

16 A Correct.

17 Q Fair to say, multiple times a month, on average?

18 A Yes.

19 Q And depending on what was going on, it could be
20 multiple times a week; right?

21 A Yes.

22 Q When you booked private flights with Ms. Stanford, you
23 never discussed the cost of the flights with her; correct?

24 A No.

25 Q I just want to make sure I understand that answer. Yes

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1 or no: When you booked private flights with Ms. Stanford, did
2 you ever discuss the cost of the flights with her?

3 A Occasionally.

4 Q Occasionally.

5 Do you recall being deposed in this action?

6 A Yes.

7 (Continued on next page.)

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ALAN F. BOWIN, CSR, RMR, CRR

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1 Q And you took an oath to tell the truth in that
2 deposition, correct?

3 A Yes.

4 Q And you tried to tell the truth?

5 A Yes, I did.

6 MR. CONLEY: Jesse, could you pull up the
7 deposition, page 390, lines five to eight.

8 Q When you would book private flights with Ms. Stanford,
9 you didn't know how much the flights cost, right?

10 A No.

11 Q You didn't ask Ms. Stanford how much the flights cost,
12 right?

13 A No.

14 Q And she -- she didn't tell you what the flights cost,
15 right?

16 A No.

17 THE COURT: Counsel, again you're -- you have a
18 negative in the question and a positive in the question, and
19 you're getting a no and I don't --

20 MR. CONLEY: Okay.

21 THE COURT: -- I, for one, don't know whether he is
22 saying no to the question or to the proposition.

23 MR. CONLEY: Let me rephrase.

24 Q Mr. LaPierre, when you would arrange private flights
25 with Ms. Stanford, did you know how much the flights cost?

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1 A No. No.

2 Q And when you would arrange flights with Ms. Stanford,
3 did you ever ask Ms. Stanford how much the flights cost?

4 A No.

5 Q And when you would book these private flights, would
6 Ms. Stanford ever tell you how much the flights cost?

7 A No.

8 Q And for the travel arrangements that Ms. Stanford
9 provided, she billed the NRA for the cost of the travel?

10 A Yes.

11 Q And this travel wasn't cheap, right?

12 A No.

13 Q We're talking about millions of dollars a year,
14 correct?

15 MR. CORRELL: Objection, your Honor. Assumes facts
16 not in evidence.

17 THE COURT: It's asking about facts. Overruled.

18 A I -- I don't know the total figures. I didn't -- I
19 don't know.

20 Q And to be clear, you are the head of a charity, right?

21 MR. CORRELL: Objection, your Honor. Calls for a
22 legal conclusion.

23 THE COURT: Overruled.

24 A I'm the head of a 501(c)(4) organization.

25 Q Okay. And as the person who oversees a large 501(c)(4)

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1 nonprofit, you never asked how much the private flights cost
2 that you were arranging?

3 A I didn't. I was doing my job.

4 Q When you arranged your travel with Ms. Stanford, you
5 would sometime discuss how to invoice your travel, correct?

6 A Pardon me? Could you say that again, counselor?

7 Q When you would arrange your travel with Ms. Stanford,
8 you would sometimes discuss how to invoice your travel, correct?

9 A No.

10 Q Do you recall, Mr. LaPierre, testifying in the NRA
11 bankruptcy proceeding?

12 A Yes.

13 MR. CORRELL: Objection, your Honor. We have an
14 objection to -- that we've discussed before about the
15 bankruptcy proceeding. He was not represented by counsel.
16 Was not given the opportunity to object or cross examine.

17 THE COURT: That might apply to other witnesses but
18 not to himself. So, overruled.

19 MR. CORRELL: Exception, your Honor.

20 Q And you testified you took an oath to tell the truth,
21 right?

22 A Yes.

23 Q And you try to tell the truth?

24 A Yes, I do.

25 MR. CONLEY: Jesse, could you please pull up the

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1 direct of Mr. LaPierre for April 8th, 2021, page 20, lines
2 11 to 13.

3 Q Mr. LaPierre on the screen do you see a transcript?

4 A Yes.

5 Q I direct you to the question, "Okay. Did you speak
6 with Gayle about how to invoice your travel?" Do you see that
7 travel?

8 A I do.

9 Q And you -- and the answer, "Occasionally". Do you see
10 that?

11 A I do.

12 Q Okay. Ms. Stanford received a monthly fee for her
13 travel services, right?

14 A Yes. I believe so.

15 Q Why did Ms. Stanford break up that fee into separate
16 monthly invoices that went to NRA, NRA ILA and Ackerman McQueen?

17 A I have no idea.

18 Q But you know that that was done, right?

19 A I did not know that they went to Ackerman McQueen. I
20 assume ILA hired her for something.

21 Q And are you aware that for several years the NRA paid
22 Ms. Stanford more than half a million dollars annually for her
23 services?

24 A I was not aware of the total cost.

25 Q How much did you think the NRA was paying Ms. Stanford?

LAS

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1 A I wasn't sure to tell you the truth.

2 Q You're familiar with Colleen Sterner, correct?

3 A Yes.

4 Q She's your niece?

5 A Yes. She's my wife's sister's daughter.

6 Q And you consider Ms. Sterner to be family, correct?

7 A Yes, I do.

8 Q And she's an NRA employee?

9 A Yes. That's correct.

10 Q She's been an NRA employee since 2016?

11 A Yes. I believe that's right.

12 Q Your wife Susan recommended that the NRA hire her,
13 correct?

14 A Yes.

15 Q And you supported that, right?

16 A Yes, I did.

17 Q Ms. Sterner lives in Nebraska, correct?

18 A Yes.

19 Q NRA headquarters are in Virginia, right?

20 A Yes.

21 Q Ms. Sterner is married, correct?

22 A Yes.

23 Q Her husband is Terry Sterner?

24 A Yes.

25 Q And they have a daughter, right?

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1 A Yes.

2 Q And when you would fly by private charter, you would
3 often stop in Nebraska to pick Ms. Sterner up or drop her off,
4 correct?

5 A Sometimes.

6 Q And sometimes Ms. Sterner's husband and daughter would
7 join as well, right?

8 A Occasionally.

9 Q And NRA paid for those private flights, right?

10 A Yes.

11 Q You've been to the Bahamas several times, right?

12 A Yes.

13 Q You and your wife would frequently vacation there in
14 the summers?

15 A Yes.

16 Q And when you would go to the Bahamas, you would take
17 private flights to get there, correct?

18 A Yes.

19 Q And the NRA paid for those flights, right?

20 A Yes.

21 Q I would like to introduce documents that are tabbed
22 one, two and three in your giant binder to your left there.

23 A Yes.

24 MR. CONLEY: And these are Plaintiff's Exhibits
25 4602, 4603 and 4605. These are not in evidence, and I would

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1 move for their admission.

2 THE COURT: Are these the documents we talked about
3 earlier?

4 MR. CONLEY: Yes.

5 THE COURT: Invoices. Okay. Are there any
6 objections other than the ones --

7 MS. ROGERS: Preserving the one we made earlier,
8 no.

9 THE COURT: They are admitted, PX 4602, PX 4603 and
10 PX 4605, yes.

11 MR. CONLEY: Yes.

12 MR. CORRELL: Your Honor, Mr. LaPierre preserves
13 the same objection.

14 THE COURT: Okay.

15 Q Mr. LaPierre, I would like to go through these invoices
16 one by one. If we could start with invoice or invoice in tab
17 one, Plaintiff's Exhibit 4602. Do you have that in front of
18 you, Mr. LaPierre?

19 A (Examining). Yes, I do.

20 Q Great. And is this invoice an instance of a private
21 flight you would take where you would stop in Nebraska to pick
22 up Ms. Sterner?

23 A Yes.

24 Q All right. The destination Grand Island, Nebraska,
25 that's one of the private airports where you would stop to pick

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1 up or drop off Ms. Sterner and her family?

2 A Yes.

3 Q Okay. And if we could turn to tab three, Plaintiff's
4 Exhibit 4603. This is another leg of the flight, is that right?

5 It's dated August 25th, 2017 from Grand Island, Nebraska to
6 Nassau, Bahamas?

7 A (Examining). Yes.

8 Q And the -- if we go to tab three, dated September 4,
9 2017, do you have that in front of you?

10 A Yes, I do.

11 Q Okay. And this is an example of a return flight from
12 the Bahamas to D.C., is that right?

13 A Yes.

14 Q All right. Are you aware that Ms. Stanford would often
15 omit information about stops in Nebraska and the Bahamas from
16 her invoices?

17 A No.

18 Q Did you instruct her to do that?

19 A No, I did not.

20 Q You directed Ms. Stanford to book and bill the NRA for
21 private flights where you were not even a passenger, is that
22 right?

23 A Yes.

24 MR. CONLEY: I would like to introduce the exhibit,
25 tab four, it's Plaintiff's Exhibit 4753. This is not in

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1 evidence. I move for its admission.

2 THE COURT: This is subject to the same objections.

3 MR. CORRELL: Yes, your Honor.

4 MS. ROGERS: Same your Honor.

5 THE COURT: No others, right?

6 MS. ROGERS: Correct.

7 THE COURT: It's admitted PX 4753.

8 Q All right. Mr. LaPierre, this reflects a flight that
9 you approved for your family, is that right?

10 A Yes.

11 Q CNS Stern, that refers to your niece Colleen Sterner
12 and Ms. Sterner's daughter, right?

13 A Yes.

14 Q And this flight cost \$11,435, is that right?

15 A Yes.

16 Q And Colleen Sterner was an NRA employee at the time of
17 this flight, right?

18 A Yes.

19 Q And isn't it true that NRA policy says that employees
20 must take the most commercially reasonable transportation?

21 A Yes.

22 Q And employees must fly coach unless there is a special
23 circumstance dictating otherwise?

24 A Yes.

25 MR. CONLEY: I would like to introduce the exhibit

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1 at tab 20, which is Plaintiff's Exhibit 4775. I would move
2 for its admission.

3 MS. ROGERS: Same objection. No others.

4 MR. CORRELL: Your Honor, we had an agreement at
5 the beginning of the case that one objection is objection
6 for all. So rather than cluttering the record with my
7 objections, I'll invoke that rule.

8 THE COURT: That's fine. The Three Musketeers rule
9 I got. PX 4775 is admitted.

10 Q Mr. LaPierre, this invoice reflects another private
11 flight that you authorized for your niece and her daughter,
12 correct?

13 A (Examining). Yes. Yes.

14 Q Okay. And this is a flight from Dallas, Texas to
15 Orlando, Florida on July 1st, 2017, is that right?

16 A Yes.

17 Q You authorized this trip after Ms. Sterner tried to
18 take a commercial flight and it was delayed, correct?

19 A Yes.

20 Q And this flight was nearly \$27,000, correct?

21 A Yes.

22 Q I would like to introduce the exhibit at tab 22, which
23 is Plaintiff's Exhibit 4473.

24 MR. CONLEY: This is not in evidence. I move for
25 its admission.

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1 THE COURT: Same objection.

2 MS. ROGERS: Same, your Honor. No others.

3 THE COURT: Okay. It's admitted, PX 4473.

4 Q Mr. LaPierre, this invoice reflects a flight that you
5 approved for your niece's husband Terry Sterner, correct?

6 A Yes.

7 Q It's a flight from Las Vegas to North Platte, Nebraska,
8 is that right?

9 A Yes.

10 Q You authorized this flight so that Ms. Sterner --
11 Mr. Sterner could help babysit their daughter while Ms. Sterner
12 was working at a convention, correct?

13 A Yes. I also want to wanted him to be familiar with the
14 job his wife did.

15 Q All right. And this flight was over \$15,000, correct?

16 A Yes.

17 Q And after this convention to Las Vegas, Ms. Sterner
18 flew back privately on a separate flight, isn't that right?

19 A I -- I'm not sure.

20 Q Okay.

21 MR. CONLEY: I would like to introduce tab 23,
22 which is Plaintiff's Exhibit 4763.

23 MS. ROGERS: Same objection. No others.

24 THE COURT: It's admitted.

25 MR. FLEMING: I think it's 4764, at least in mine.

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1 MR. CONLEY: Yes. Thank you.

2 THE COURT: PX 4764 is admitted.

3 Q Do you have that in front of you, Mr. LaPierre?

4 A Yes, I do.

5 Q This is an invoice for a private flight that you
6 approved for your wife Susan LaPierre, right?

7 A Yes.

8 Q Ms. LaPierre was flying to Nebraska to meet with your
9 niece, Ms. Sterner, right?

10 A Yes.

11 Q There was no NRA event being held in Nebraska at this
12 time, correct?

13 A They were working together on -- on an NRA project.

14 Q That wasn't my question, Mr. LaPierre.

15 A Yes.

16 Q My question was, there was no NRA event being held in
17 Nebraska at this time, is that right?

18 A Correct.

19 Q And this flight was just shy of \$9,000, correct?

20 A Yes.

21 MR. CONLEY: I would like to introduce the exhibit
22 tab 25, which is Plaintiff's Exhibit 4524. I move for its
23 admission.

24 THE COURT: It's admitted subject to the same
25 objection.

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1 Q Mr. LaPierre, this is an invoice for a private flight
2 for Tony Makris and another individual, correct?

3 A Yes.

4 Q And we'll discuss Mr. Makris in more detail later.
5 Would it be fair to say that he was a close friend of yours for
6 a long time, right?

7 A Yes.

8 Q And the NRA did business with Mr. Makris and several
9 companies that was affiliated with him, right?

10 A Yes.

11 Q And this flight \$17,200?

12 A Yes.

13 Q And you authorized Mr. Makris to fly on a private
14 charter on several occasions, correct?

15 A No. I did not authorize this flight.

16 Q You did not authorize this flight?

17 A Correct.

18 Q Would you agree that this flight was billed to the NRA?

19 A Yes.

20 Q And the NRA paid for it?

21 A I'm not sure of that. I just know I did not authorize
22 this flight, the invoices here.

23 Q So it's your testimony that you have never authorized
24 Mr. Makris to fly by private charter?

25 A No.

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1 Q Let me try to rephrase that. Yes or no, have you ever
2 authorized Mr. Makris to fly by private charter?

3 A Yes.

4 Q And on how many occasions?

5 A I know there was one trip where I was flying back
6 somewhere, Mr. Makris was with me, and they were going to drop
7 him off somewhere.

8 Q Okay. Any other instances?

9 A I know he flew with me a number of times.

10 Q I'm asking about flights where you were not a
11 passenger. Are there any other instances where you authorized
12 Mr. Makris to fly by private charter when you were not a
13 passenger?

14 A Not that I recall right now.

15 Q All right. Ms. Stanford would also arrange black car
16 services for you, correct?

17 A Yes.

18 Q And she would arrange black car serves the your wife
19 and family, is that right?

20 A On occasion.

21 Q And when you would arrange black car services through
22 Ms. Stanford, you weren't aware of how much the cars cost,
23 right?

24 A Correct.

25 Q And you didn't ask Ms. Stanford how much the cars cost,

LAS

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1 correct?

2 A Correct.

3 MR. CONLEY: I would like to introduce the exhibit
4 at tab 30, Plaintiff's Exhibit 3615, and I move for its
5 admission.

6 MS. ROGERS: No objection.

7 THE COURT: Hearing none, it's admitted.

8 Q All right. Mr. LaPierre, would you agree this invoice
9 reflects black car serves that you arranged for your niece, Ms.
10 Sterner?

11 A (Examining). I -- I believe I'm also on that -- on
12 that -- on that pick up.

13 Q I believe the invoice references you as a customer,
14 right? Is that right?

15 A I'm sorry. Where are you looking, counselor?

16 Q If you look under the Ready to Roll Transportation
17 remit to, if you look at the highlighted language on the
18 screen --

19 A (Examining). Yes.

20 Q -- it lists you as a customer, but below that it lists
21 the passenger, right?

22 A (Examining). It lists -- it lists, as far as I look, I
23 see it lists sedan, airport, Wayne Roberts, which is my middle
24 name, and then Colleen Sterner and it says one.

25 Q Right. And this is black car serves in Dallas, is that

LAS

Direct-LaPierre-Conley

2182

1 correct?

2 A Yes.

3 Q All right. And if you turn to the second page at the
4 top, this is black car serves in Orlando, Florida, right?

5 A (Examining). Yes.

6 Q Right. And we previously discussed a private flight
7 that you arranged for Ms. Sterner going from Dallas to Orlando.
8 That's back at tab 20 Plaintiff's Exhibit 4775. Would you agree
9 that this black car serves is for that flight?

10 A Yes. I believe so.

11 Q All right. And you were not on that flight, right?

12 A That's correct.

13 Q Right. And if you go back to the second page of
14 Plaintiff's Exhibit 3615, tab 30 in your binder, below you see
15 black car serves for Terry Sterner, is that right?

16 A Yes.

17 Q All right. And would you agree that this black car
18 service for the Sterners was approximately \$1,300?

19 A Yes.

20 MR. CONLEY: I would like to introduce the exhibit
21 at tab 31, which is Plaintiff's Exhibit 3662.

22 MS. ROGERS: No objection.

23 THE COURT: Hearing none, it's admitted.

24 Q And, Mr. LaPierre, take a moment to look at the
25 exhibit. My question is, would you agree this is an invoice for

LAS

Direct-LaPierre-Conley

2183

1 black car serves for your wife, Ms. LaPierre?

2 A Yes.

3 Q And would you agree that the invoice lists Ms. LaPierre
4 as the only passenger?

5 A Yes.

6 Q And would you agree that this black car service in
7 January of 2018 was approximately \$3,500?

8 A If you add them together, yes. She was working at an
9 NRA event.

10 Q Mr. LaPierre, I would like to ask you about David
11 McKenzie. You've known David McKenzie for a long time, correct?

12 A Yes.

13 Q Going back to the early 1990s?

14 A Maybe even before that.

15 Q And you consider him a friend, right?

16 A Yes. We met through business, but I consider him a
17 friend.

18 Q And you know Mr. McKenzie's wife, Laura McKenzie, as
19 well, right?

20 A Yes.

21 Q Mr. McKenzie owns Associated Television, correct?

22 A Yes.

23 Q And Associated Television has been a vendor of the NRA
24 for over 20 years, right?

25 A Yes.

LAS

1 Q And over the course of the NRA's relationship with
2 Associated TV, you would meet frequently with Mr. McKenzie,
3 correct?

4 A Yes.

5 Q Numerous times a year?

6 A Yes.

7 (Continue on the next page.)
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LAS

LaPierre - by Plaintiff - Direct/Conley

2185

1 Q Numerous times a year?

2 A Yes.

3 Q And you're also familiar with Membership Marketing
4 Partners, right?

5 A Yes.

6 Q It's been a vendor of NRA since 2011?

7 A Yes.

8 Q It's your understanding that MMP is owned by Laura
9 McKenzie; is that accurate?

10 A Yes.

11 Q But you would mostly discuss MMP business with David
12 McKenzie; correct?

13 A Yes, and the managing director and the staff.

14 Q Right. But you would discuss MMP business more
15 frequently with Mr. McKenzie than Ms. McKenzie; correct?

16 A Yes.

17 Q And you're familiar with the entities Allegiance
18 Creative, and Concord Social?

19 A Yes.

20 Q They have also been NRA vendors for about a decade,
21 since 2011; right?

22 A Yes.

23 Q And until 2022, the NRA had separate contracts with
24 MMP, Concord, and Allegiance; right?

25 A I believe that's correct.

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2186

1 Q And you signed several of the contracts and amendments,
2 right?

3 A Yes.

4 Q And the NRA paid these three companies separate monthly
5 fees, right?

6 A I believe so.

7 Q MMP, Allegiance, and Concord have the same employees;
8 right?

9 A Yes.

10 Q Share the same office location?

11 A Yes. I believe some of them are in the NRA building
12 and I believe some of them are in Alexandria, Virginia.

13 Q And in these offices in NRA headquarters and
14 Alexandria, there's the same office for those three entities;
15 right?

16 A Yes.

17 Q And you don't know why the NRA entered into separate
18 contracts with MMP, Allegiance, and Concord; right?

19 A No.

20 Q It's your understanding that MMP, Concord, and
21 Allegiance are functionally the same entity; correct?

22 A Yes.

23 Q The NRA entered into contracts with MMP, Allegiance,
24 and Concord in 2011; right?

25 A Yes.

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2187

1 Q I'd like to turn to Plaintiff's Exhibit 1695, which is
2 tab 37 in your binder.

3 MR. CONLEY: And this is already admitted.

4 (Image displayed.)

5 Q Mr. LaPierre, I ask you to turn to page 4 of this
6 exhibit, to the page where -- the heading "Contract Review
7 Signature Sheet." It's also on the screen, if that's easier.

8 (Image scrolled.)

9 A Thank you.

10 (Image modified.)

11 A Yes.

12 Q Would you agree that this is the Contract Review
13 Signature Sheet for the 2011 MMP contract?

14 A Yes.

15 Q And that's your signature; correct?

16 A Yes.

17 Q When you signed this Review Sheet, it wasn't your
18 practice to read the contract; correct?

19 A I did not read all the contracts. I -- I wasn't a
20 negotiator on the contracts.

21 Q But my question is really just about whether you would,
22 as a practice, review and read the contracts before you signed
23 the Contract Review Signature Sheet; and isn't it true that it
24 was not your practice to read the contract?

25 A Yes. I would rely on advice of our -- our staff.

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2188

1 Q And you would often skim the contracts, right?

2 A Yes.

3 Q And it wasn't your practice to read the Business Case
4 Analysis, either; right?

5 A Yes. Sometimes -- yes, I did not, sometimes.

6 Q And in this case, you did not review the MMP contract
7 or the Business Case Analysis when you signed this contract
8 signature sheet; right?

9 A Yes. I talked to our treasurer about it; about the
10 contract.

11 Q I'm sorry. You talked to Mr. Phillips about the
12 contract?

13 A Yes.

14 Q Isn't it true that when you were deposed in 2022, you
15 testified that you weren't sure that you had read the Business
16 Case Analysis or the contract for the MMP entities?

17 A Probably. I ...

18 Q Okay. There have been several amendments to the
19 contracts for the MMP entities; correct?

20 A Yes.

21 Q If you could turn to pages 19 and 20 of Plaintiff's
22 Exhibit 1697 -- -95 ... This is the same tab that you're in.
23 It's the last couple of pages of the exhibit.

24 (Image displayed.)

25 A Yes.

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2189

1 Q This is the first amendment to the 2011 MMP contract,
2 right?

3 A Yes.

4 Q And you signed this amendment, right?

5 A Yes.

6 Q And this amendment extended the term of the contract
7 for five years, right?

8 (Image modified.)

9 A Yes.

10 Q And the NRA entered into another amendment with MMP, in
11 2017; correct?

12 A Yes.

13 Q If you flip one page back, it's pages 17 and 18 of the
14 exhibit, with the heading "Second Amendment."

15 A Yes, I see it.

16 (Image scrolled.)

17 Q Okay. This is the second amendment to the 2011
18 contract, right?

19 A Yes.

20 Q And the first signature is your signature, right?

21 A Yes.

22 Q Under the first amendment to the MMP contract, the term
23 was set to run for five years, to December 1st, 2021. Isn't it
24 true that when you entered into the second amendment to the MMP
25 contract, there were nearly four years remaining under the prior

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2190

1 amendment?

2 A Yes.

3 Q And the second amendment to the MMP contract extended
4 the expiration date for an additional five years, right?

5 A Yes, that's correct.

6 Q That locked the NRA into a nearly nine-year contract,
7 right?

8 A Yes, that's correct.

9 Q And it's your understanding that the NRA was MMP's only
10 client, right?

11 A Yes.

12 Q And the reason you entered into this extension in 2017
13 was because MMP was concerned you might retire, right?

14 A Yes, and their employees were.

15 Q And you learned about these concerns about you
16 potentially retiring from Mr. McKenzie; correct?

17 A And also from the staff; they -- I wanted to keep their
18 core competence intact.

19 Q All right. And if you did retire, MMP's staff was
20 concerned that whoever succeeded you as executive vice president
21 might end the NRA's relationship with MMP; right?

22 A They were very worried. They did not like Chris Cox,
23 they did not have a relationship with him, and -- and I wanted
24 to keep their core competence within the organization on raising
25 money.

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2191

1 Q Understood, Mr. LaPierre. Again, please listen to my
2 question. It was a yes or no.

3 So, isn't it true that you agreed to enter into this
4 extension in 2017 to give MMP certainty that the NRA's
5 relationship with MMP would stay the same, regardless of whether
6 you retired?

7 A Yes.

8 Q David McKenzie suggested the contract extension to you,
9 right?

10 A Yes.

11 Q And at the time, the contract extension seemed
12 appropriate to you; correct?

13 A It did.

14 Q But you agree now that entering into this second
15 amendment to the MMP was a governance failure, right?

16 A No. We have changed our policy regarding contracts
17 now, but I didn't consider that back then.

18 Q Back then, you did not consider it to be a governance
19 failure; right? You thought it was appropriate --

20 A Yes.

21 Q -- is that right?

22 A Yes.

23 Q But sitting here today, do you think it was
24 appropriate?

25 A Under our new policies, it would not be appropriate.

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2192

1 Q And what specific policy are you referring to?

2 A We have looked at everything, start --

3 Q I'm only asking you for the actual policy.

4 MR. CORRELL: Objection, your Honor.

5 MR. CONLEY: I apologize.

6 THE COURT: Let him answer. It was an open-ended
7 question.

8 A We no longer have any long-term contracts like this.

9 Q And you concluded that this type of contract, this type
10 of long-term contract, wouldn't occur based on a 360 review that
11 you claim to have initiated at the NRA in 2017/2018; is that
12 right?

13 A I -- I did initiate it.

14 Q A 360 review?

15 A Of every vendor, employee, and all NRA procedures, and
16 New York nonprofit law.

17 Q And this review was initiated in 2017/2018?

18 A It started in 2017 and continued forward for many
19 years.

20 Q And you'd agree that you've signed several of the
21 agreements and amendments with the MMP entities, right?

22 A Yes.

23 Q And on several occasions, you've approved increases in
24 the scope of work for the MMP entities; correct?

25 A Yes, we did.

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2193

1 Q And when you approved increases in the scope of work
2 for MMP, that would increase the fees that MMP would charge;
3 right?

4 A Correct. I would have discussions with them regarding
5 the additional scope of their duties and then they would talk to
6 our treasurer's office about the -- how that would increase
7 fees.

8 Q You testified a moment ago that Mr. McKenzie also owns
9 Associated TV, right?

10 A Yes.

11 Q Associated TV is in the business of producing
12 television shows?

13 A Yes.

14 Q And the NRA started working with Associated TV in the
15 1990s, right?

16 A Yes.

17 Q And it continued working with Associated TV until 2019?

18 A Yes.

19 Q During the time that Associated TV provided services to
20 the NRA, you were the only person at the NRA who requested
21 services from the company; right?

22 A I was the primary -- primary person dealing with them,
23 yes.

24 Q But there was no one else at the NRA that was
25 requesting services from Associated TV, right?

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2194

1 A I was the principal.

2 Q My question is that there was no one else that was
3 requesting services from Associated TV. Right?

4 A Yes.

5 Q So, isn't it true that you were the only person at the
6 NRA that was requesting services from Associated Television?

7 A There was an occasion where they did a -- a women's
8 town hall meeting; I believe the -- the Women's Leadership Forum
9 worked with Associated Television on that. I did too.

10 Q Okay. But in terms of requesting services from
11 Associated TV, you were the only one at the NRA that was
12 actually doing that; correct?

13 A Yes. In terms of requesting services, yes.

14 Q And during the NRA's relationship with Associated TV,
15 you weren't always aware of how much the NRA was paying
16 Associated Television; right?

17 A Correct.

18 Q And you didn't monitor what Associated TV billed to the
19 NRA; correct?

20 A Yeah, that's correct.

21 Q You're familiar with the TV program called "Crime
22 Strike"?

23 A Yes, I am.

24 Q It was produced by Associated TV, right?

25 A Yes.

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2195

1 Q You were the host of "Crime Strike" for several years;
2 correct?

3 A Yes.

4 Q Starting in the late 1990s?

5 A Yes.

6 Q The NRA paid Associated TV for the production and
7 filming of "Crime Strike" episodes until the end of its
8 relationship in 2019, right?

9 A Yes.

10 Q You stopped hosting "Crime Strike" for several years,
11 beginning in 2014; correct?

12 A At -- at some date -- I'm not sure if it was 2014 -- I
13 stopped hosting "Crime Strike."

14 Q Isn't it true, you don't know who the host of "Crime
15 Strike" was between 2014 and 2018? Right?

16 A I do not.

17 Q And you don't know when Associated TV last filmed and
18 produced an entirely new episode of "Crime Strike"; correct?

19 A Correct.

20 Q And you're not aware of whether any "Crime Strike"
21 episodes were filmed and produced between 2014 and 2018, right?

22 A Correct. I know they were continuing to distribute.

23 Q I -- I'm sorry; "continuing to ..."?

24 A "Distribute."

25 Q Right. But you're not aware of whether any "Crime

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2196

1 Strike" episodes were filmed and produced between 2014 and 2018.

2 A No. When I looked at it in 2018, I was -- I was
3 shocked how diminished it had become and I ended the
4 relationship.

5 Q The NRA paid Associated TV millions of dollars, from
6 2014 to 2018, for the production of "Crime Strike"; correct?

7 A I don't know the exact figure.

8 Q You, yourself, have never seen an episode of "Crime
9 Strike" that was filmed and produced after 2014; right?

10 A I know I shot some films of "Crime Strike" in -- I
11 believe it was 2018, because Newsmax was considering --

12 Q Mr. LaPierre, that wasn't my question.

13 THE COURT: I think he can continue his answer.

14 MR. CONLEY: Sorry.

15 Q Continue. Okay.

16 (No further response.)

17 Q But you, yourself, have not seen an episode of "Crime
18 Strike" that was filmed and produced after 2014; right?

19 A Correct.

20 Q Most "Crime Strike" episodes were filmed in Los
21 Angeles, right?

22 A Yes.

23 Q At a house owned by David McKenzie?

24 A Yes.

25 Q And when you were filming segments of "Crime Strike" at

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2197

1 this house in Los Angeles, you knew the house was owned by David
2 McKenzie; correct?

3 A Yes.

4 Q The NRA was paying Associated TV to use Mr. McKenzie's
5 house as a location rental; correct?

6 A I know that now.

7 Q But at the time, you did not know that the NRA was
8 paying Associated TV to use the house owned by David McKenzie as
9 a location rental?

10 A I didn't know the fee arrangement or anything like
11 that.

12 Q And the NRA paid Associated TV approximately \$1.8
13 million in location rental fees for that house; correct?

14 A I know that now, that the NRA paid a significant
15 amount.

16 Q NRA officers and board members are required to submit a
17 questionnaire, each year, disclosing any related-party
18 transactions or potential conflicts of interest; right?

19 A Yes.

20 Q And you also have an independent obligation to report
21 any financial transactions between the NRA and other individuals
22 or organizations that present or might present the possibility
23 of a conflict of interest; correct?

24 A Yes.

25 Q And as the executive vice president, you have an

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2198

1 independent obligation to report to the Audit Committee any
2 financial interests of other officers or directors that you
3 become aware of; correct?

4 A Yes.

5 MR. CONLEY: I'd like to introduce five exhibits,
6 at tabs 41, 42, 43, 44, and 45. They are: Plaintiff's
7 Exhibits 2497, 2498, 2499, 642, and 639.

8 MS. ROGERS: No objection.

9 MR. CORRELL: No objection.

10 THE COURT: All right, those are all admitted.

11 Q When you would visit the --

12 Let me back up: In the last ten years, you visited the
13 Bahamas on several occasions; right?

14 A Yes.

15 Q And your family has joined you on those trips?

16 A On -- on many.

17 Q And during these trips to the Bahamas, you and your
18 family would often stay on a yacht called the Illusions;
19 correct?

20 A Yes.

21 Q And this yacht is owned by David and Laura McKenzie;
22 correct?

23 A I believe that's correct.

24 MR. CONLEY: I'd like to introduce the exhibit, tab
25 46, Plaintiff's Exhibit 4852; and this is not in evidence.

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2199

1 I move for its admission.

2 THE COURT: Any objection?

3 MS. ROGERS: Subject to foundation, none.

4 THE COURT: Well, are you going to use this witness
5 to lay a foundation or do you have some other grounds for
6 why it's admissible?

7 MR. CONLEY: I was going to lay the -- try to lay
8 -- the foundation with this witness.

9 THE COURT: Okay.

10 Q Mr. LaPierre, do you recognize Exhibit -- Plaintiff's
11 Exhibit -- 4852?

12 A Yes.

13 Q And what do you recognize it to be?

14 A As the boat that I believe David McKenzie and his wife
15 owned.

16 Q You recognize it to be the Illusions yacht?

17 A Yes.

18 Q And are the photos an accurate representation of the
19 yacht, when you would stay on it?

20 A Yes.

21 MR. CONLEY: Your Honor, we'd move for admission.

22 MS. ROGERS: No objection.

23 MR. CORRELL: No objection.

24 THE COURT: It's admitted.

25 (Image displayed.)

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2200

1 Q All right. So, Mr. LaPierre, the photos in Plaintiff's
2 Exhibit 4852, these are photos of the Illusions yacht; right?

3 A Yes.

4 Q The Illusions yacht has four staterooms; correct?

5 A Yes.

6 Q And has, typically, a crew of five; is that right?

7 A I believe that's correct.

8 Q Including a chef, right?

9 A Yes.

10 Q And it also comes with a jet boat, right?

11 A Yes, many times.

12 Q And also jet skis, right?

13 A Yes.

14 Q When did you first stay on the yacht Illusions?

15 A Maybe sometime in 2013.

16 Q And you would go each year; correct?

17 A Yes.

18 Q In the summers?

19 A Yes.

20 Q For about a week at a time?

21 A Yes.

22 Q Would it be accurate to say that from 2013 to 2018, you
23 visited the Bahamas every summer?

24 A Yes.

25 Q And on those trips, you stayed on the yacht Illusions;

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2201

1 right?

2 A Yes.

3 Q Your wife, Susan, joined you on those trips; correct?

4 A Yes.

5 Q And would you both stay in one of the state rooms?

6 A Yes.

7 Q Your niece, Colleen Sterner, would also join you on
8 those trips; right?

9 A Yes.

10 Q And Ms. Sterner's husband and daughter would join, as
11 well; correct?

12 A Yes, most of the time.

13 Q And your sister also occasionally joined on these
14 trips; correct?

15 A Yes.

16 Q And her husband?

17 A Yes.

18 Q And, sometimes, their daughter as well?

19 A Correct.

20 Q And you and your family would stay on the yacht;
21 correct?

22 A Yes.

23 Q And a chef would prepare your meals?

24 A Not all the time, but sometimes.

25 Q And you never paid the McKenzies for the use of the

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2202

1 yacht Illusions; correct?

2 A Correct.

3 Q The McKenzies covered everything; correct?

4 A Correct.

5 Q And when you would go to the Bahamas, you would fly
6 there by private charter; correct?

7 A Yes.

8 Q And the NRA would pay for those flights; correct?

9 A Yes.

10 MR. CONLEY: I'd like to introduce the exhibit at
11 tab 48, Plaintiff's Exhibit 4589.

12 MS. ROGERS: Subject to the same objection, no
13 others.

14 THE COURT: Okay, it's admitted.

15 (Image displayed.)

16 Q Do you have that in front of you, Mr. LaPierre?

17 A Yes, I do.

18 Q Okay. This is a flight invoice for one of the summer
19 trips to the Bahamas, right?

20 A Yes.

21 Q And this flight was approximately \$37,000, right?

22 A Yes.

23 Q And this doesn't include the flight back to D.C. ;
24 correct?

25 A Correct.

ALAN F. BOWIN, CSR, RMR, CRR

2203

1 Q But you did take a private flight back to D.C.;
2 correct?

3 A Yes.

4 Q You didn't disclose these trips to the Bahamas to the
5 NRA in advance; correct?

6 A Yes.

7 Q And you didn't tell your director of security about the
8 use of the yacht Illusions, right?

9 A I don't believe so.

10 Q And you didn't get board approval; correct?

11 A No, I didn't.

12 Q Your wife, Susan, also vacationed on the yacht
13 Illusions on several occasions without you; correct?

14 A Yes.

15 Q From 2015 to 2018, Ms. LaPierre visited the Bahamas in
16 the summer and stayed on the yacht Illusions with friends;
17 right?

18 A Yes.

19 (Continued on next page.)
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ALAN F. BOWIN, CSR, RMR, CRR

2204

1 Q And she and her friends would stay on the island?

2 A Yes.

3 Q And they would cruise around different islands and dock
4 at different harbors, correct?

5 A I wasn't there.

6 Q The McKenzie's covered all the costs for these trips,
7 correct?

8 A I don't -- I don't know all of the costs. They
9 covered -- they obviously covered the cost of the bought.

10 Q The McKenzies, did they charge you for lodging in
11 connection to Ms. LaPierre's use of the yacht Illusion?

12 A I don't know.

13 Q You don't know if they charged you?

14 A I wasn't there. I don't know.

15 Q You didn't disclose these trips that Ms. LaPierre took
16 on the yacht Illusions to the NRA in advance, correct?

17 A Correct.

18 Q You didn't get board approval for those, correct?

19 A Correct.

20 Q And in addition to these yacht trips, you also attended
21 retreats in the Bahamas organized by David McKenzie, correct?

22 A Yes.

23 Q And these were held annually, right?

24 A Yes.

25 Q In December?

2205

1 A Yes.

2 Q Your wife would join you on these trips, correct?

3 A Yes.

4 Q You would stay at the Atlantis Resort on Paradise
5 Island, right?

6 A Yes.

7 Q And when you attended these retreats, you wouldn't pay
8 for your lodging?

9 A Correct.

10 Q Or your food?

11 A Correct. Some of the food, but largely you're correct.

12 Q When did you start attending these retreats?

13 A When I was first invited, which was probably -- I'm not
14 sure exact. Sometime in the -- between 2008 and maybe 2010 or
15 something like that.

16 Q And you attended these retreats annually up until 2017?

17 A Yes.

18 Q Mr. McKenzie also owns a yacht named Grand Illusion,
19 correct?

20 A Yes, he does.

21 Q You've also stayed on this yacht, correct?

22 A Yes.

23 Q The Grand Illusion yacht is larger than the Illusion,
24 correct?

25 A Correct.

2206

1 MR. CONLEY: I would like to introduce the exhibit
2 at tab 47, Plaintiff's Exhibit 4853.

3 MS. ROGERS: Subject to foundation, no objection.

4 MR. CORRELL: No objection.

5 THE COURT: Handle it the same way.

6 Q Mr. LaPierre, do you recognize Plaintiff's
7 Exhibit 4853?

8 A (Examining). Yes.

9 Q And what is it?

10 A That is the boat Grand Illusions.

11 Q And do the photographs in this exhibit fairly and
12 accurately show the yacht Grand Illusions as it appeared when
13 you stayed on it?

14 A Yes, they do.

15 MR. CONLEY: Your Honor, I move for admission.

16 THE COURT: It's admitted.

17 Q You've also stayed on this yacht on several occasions,
18 correct?

19 A Yes.

20 Q Often in Europe?

21 A Yes.

22 Q You've also taken several international trips with the
23 McKenzies, right?

24 A Yes.

25 Q You would go on these trips annually?

2207

1 A Not every year but yes many times.

2 Q And your wife Susan would join on these trips?

3 A Yes.

4 Q And the McKenzies would pay for your lodging on these
5 trips, right?

6 A Yes.

7 Q And when you took these trips, you would generally fly
8 commercial, correct?

9 A Yes.

10 Q And when you would go on these international trips with
11 the McKenzies, the McKenzies would pay for your flights, right?

12 A Yes.

13 Q On some of the international trips with the McKenzies,
14 you would fly by private jet, right?

15 A Yes. I believe on one or two occasions.

16 Q The McKenzies paid for that as well, correct?

17 A Yes.

18 Q We previously discussed Ms. Sterner and Mr. Sterner.
19 Their wedding was in 2013, correct?

20 A Yes.

21 Q The wedding was in the Bahamas?

22 A Yes.

23 Q You and Susan attended, correct?

24 A Yes.

25 Q You stayed on the yacht Illusions, right?

2208

1 A Yes.

2 Q The Sterners did as well, correct?

3 A Yes.

4 Q Your sister also attended the wedding, correct?

5 A Yes.

6 Q And your sister and her family also stayed on the yacht
7 Illusions?

8 A Yes.

9 Q Did the McKenzies charge you anything for staying on
10 their yacht?

11 A No.

12 Q How about your family, did they charge you anything for
13 your family staying on the yacht?

14 A No.

15 Q Did the McKenzies charge you anything for the costs of
16 the crew or the meals on the yacht?

17 A No.

18 Q So the McKenzies comp'd all of that?

19 A Yes, they did.

20 Q That was really generous of the McKenzies, wasn't it?

21 A Yes. They were friends.

22 Q In July of 2015 you and Ms. LaPierre traveled to Greece
23 with the McKenzies, correct?

24 A Yes.

25 Q And you stayed on the McKenzies' yacht, The Grand

2209

1 Illusion, is that right?

2 A I'm not sure what -- what the -- what the boat was on
3 that.

4 Q But you were on a yacht on that trip?

5 A Yes.

6 Q And that was in the Mediterranean, is that right?

7 A Yes.

8 Q And you cruised around the Greek Islands on that trip,
9 right?

10 A Yes.

11 Q You didn't disclose this trip to the NRA in advance,
12 right?

13 A No.

14 Q And you didn't get board approval, correct?

15 A No.

16 Q I'm sorry. Yes or no, did you get board approval for
17 that trip?

18 A No.

19 Q Mr. LaPierre, I would like to turn to tab 41, which is
20 Plaintiff's Exhibit 2497.

21 MR. CONLEY: And this is admitted.

22 Q Mr. LaPierre, this is your financial disclosure
23 questionnaire for 2016, right?

24 A Yes.

25 Q You signed it on February 8th, 2016?

2210

1 A Yes.

2 Q I would like to direct your attention to question four
3 of the form. Do you see that?

4 A (Examining). Yes.

5 Q Question four asks, If you or any relative received or
6 do you or any relative expect to receive a gift, gratuity,
7 personal favor or entertainment with either a retail price or
8 fair market value in excess of \$250 from any person or entity
9 that has or is seeking to have a business relationship with or
10 receive funds from NRA or any NRA entity.

11 THE COURT: Counsel, are you reading from 41? You
12 said \$250. I think it says 300.

13 MR. CONLEY: I apologize, your Honor. I won't read
14 that again.

15 Q But you checked no to the question four in this
16 questionnaire, correct?

17 A Yes.

18 Q And at the time you didn't consider the trip to the
19 Greek Islands with your wife to be a gift, correct?

20 A I did not.

21 Q And you didn't consider the -- all the expense paid
22 trips to the Bahamas with your wife to be a gift either, right?

23 A No, I didn't.

24 Q And in 2016 you traveled with the McKenzies to
25 Montenegro and Croatia, correct?

2211

1 A Yes.

2 Q And the McKenzies paid for your airfare for that trip?

3 A Yes.

4 Q And you stayed on the Grand Illusion yacht during that
5 trip, right?

6 A Yes.

7 Q And on the Grand Illusion yacht you visited different
8 port cities in the Adriatic Sea, right?

9 A Yes.

10 Q And there were several stops along the way for
11 sightseeing, right?

12 A Yes.

13 Q In 2017 you and your wife traveled to Abu Dhabi, India
14 with the McKenzies, correct?

15 A Yes.

16 Q And the McKenzies covered all of your expenses for this
17 trip as well, right?

18 A Yes.

19 Q They paid for your lodging and your flights?

20 A Yes.

21 Q During this trip you visited Dubai and New Delhi,
22 correct?

23 A Yes.

24 MR. CONLEY: I would like to introduce the exhibits
25 at tabs 55 and 56. I move for their admission. And these

2212

1 are Plaintiff's Exhibit 76 and 77.

2 THE COURT: Any objection?

3 MS. ROGERS: Subject to foundation, none. I don't
4 think that the witness is on these e-mails.

5 THE COURT: Anything, Mr. Correll?

6 MR. CORRELL: Same.

7 THE COURT: Okay. Go ahead.

8 Q All right. Mr. LaPierre do you -- let's start with
9 Plaintiff's Exhibit 76.

10 THE COURT: Let's not put them up yet, because they
11 haven't been admitted yet.

12 Q Which is tab 55 in your binder.

13 A Okay.

14 Q Do you recognize this?

15 A (Examining). Yeah. I recognize it's a picture of
16 myself and -- and my wife.

17 Q And were these photos taken of you during your 2017
18 trip with the McKenzies?

19 A Probably.

20 Q But these are photographs of you and your wife, is that
21 right?

22 A Yes.

23 MR. CONLEY: Your Honor, I move for admission of
24 the photographs.

25 MR. CORRELL: No objection.

2213

1 MS. ROGERS: None.

2 THE COURT: Okay. They are admitted.

3 Q All right. Mr. LaPierre, I would like to ask you about
4 the exhibit at tab 57, which is Plaintiff's Exhibit 72.

5 MR. CORRELL: Your Honor, if Mr. Conley is moving
6 on to a new topic, would this be a good time for a break?

7 THE COURT: This is about the time I was targeting
8 for a break. Why don't we take a short break and we'll
9 reconvene.

10 THE COURT OFFICER: All rise. Jury exiting.

11 (Whereupon the jury panel departed the courtroom.)

12 THE COURT: Mr. LaPierre, as you've heard me say to
13 other witnesses, during the break you're essentially on the
14 stand, so you shouldn't discuss the substance of your
15 testimony with anyone, including counsel.

16 THE WITNESS: Yes, your Honor.

17 THE COURT: Thank you.

18 (Whereupon a recess was taken.)

19 THE COURT: Okay. I believe the jury is ready, so
20 why don't we get settled and bring the witness back.

21 MR. FARBER: Judge, there is something up on the
22 screen at the moment.

23 THE COURT: I was noticing that. Is that suppose
24 to be up there?

25 MR. FARBER: I don't think it should.

2214

1 MS. CONNELL: I think it was a test.

2 THE COURT OFFICER: All rise. Jury entering.

3 (Whereupon the jury panel entered the courtroom.)

4 THE COURT: Okay. Have a seat. Thank you. Okay.

5 Mr. Conley, you can continue.

6 MR. CONLEY: Thank you, your Honor.

7 Q Mr. LaPierre, I would like to turn to tab 56, which is
8 Plaintiff's Exhibit 77, which is not in evidence. And I would
9 like to ask, do you recognize Plaintiff's Exhibit 77?

10 A (Examining). I'm sorry. Is it 57, counselor.

11 Q Fifty-six.

12 A (Examining). Yes, I do.

13 Q What do you recognize it to be?

14 A It looks a picture of me in India at the -- in front of
15 the Taj Mahal.

16 Q And is that true for all three photos in Plaintiff's
17 Exhibit 77?

18 A Yes, sir.

19 MR. CONLEY: Your Honor, I move for its admission.

20 MS. ROGERS: No objection.

21 MR. CORRELL: No objection.

22 THE COURT: It's admitted.

23 Q So, Mr. LaPierre, these photos were taken of you during
24 your trip in 2017 with the McKenzies in India, is that true?

25 A Yes.

2215

1 Q All right. Did you obtain approval from the NRA in
2 advance for any of these international trips?

3 A No.

4 Q Did you disclose any of these international trips to
5 the NRA in advance?

6 A No.

7 Q Did you get board approval for any of these trips?

8 A No.

9 Q In 2017 Associated TV hired your niece Colleen Sterner
10 as a consultant for an NRA project, is that right?

11 A Yes. I know that now.

12 Q And Ms. Sterner was an NRA employee at the time that
13 Associated TV hired her?

14 A That's correct.

15 Q And she made \$50,000 from Associated TV, right?

16 A That's correct.

17 Q For work on two NRA town hall meetings?

18 A Yes.

19 Q Did you approve of this?

20 A No.

21 Q Who, if anyone, authorized this?

22 A She told me, when I found out about it later on, that
23 it was authorized by our treasurer.

24 Q Woody Phillips?

25 A Yes.

2216

1 Q Mr. LaPierre, I would like to turn to Plaintiff's
2 Exhibit 2498, which is tab 42.

3 MR. CONLEY: This has been admitted.

4 Q Is this your financial disclosure questionnaire for
5 2017?

6 A (Examining). Yes.

7 Q You completed and signed this form in October of 2017?

8 A Yes.

9 Q And the 360 degree review that you referred to, that
10 was underway at this point, right?

11 A It was underway starting in the end of 2017 and early
12 2018.

13 Q You did not disclose any conflicts in this form,
14 correct?

15 A Correct.

16 Q You did not disclose the international trip with the
17 McKenzies to Dubai in India, right?

18 A Correct.

19 Q I would like to turn your attention to question three,
20 which reads, "Do you or any relative have any management,
21 ownership or employment relationship with or financial interest
22 in any non NRA entity that is seeking to have a business
23 relationship with or receive funds from NRA or any NRA entity?"
24 Do you see that?

25 A (Examining). Yes, I do.

1 Q You checked no to that question, right?

2 A Correct.

3 Q You did not disclose that the NRA employee, Ms.
4 Sterner, accepted \$50,000 from an NRA vendor, right?

5 A Correct.

6 Q Mr. LaPierre, I would like to turn to tab 43, which is
7 Plaintiff's Exhibit 2499.

8 MR. CONLEY: This has been admitted.

9 Q This is your 2018 disclosure form, right?

10 A (Examining). Correct.

11 Q You completed this form in August of 2018?

12 A Correct. Yes.

13 Q And this is now about a year into what you've called
14 the NRA's 360 degree efforts, right?

15 A Yes.

16 Q In June of 2018 Ms. LaPierre stayed on the yacht
17 Illusions for a week with friends, correct?

18 A Possibly. Possibly.

19 Q I would like to introduce a document to see if it
20 refreshes your recollection. Could you please turn to tab 58,
21 which is Plaintiff's Exhibit 62.

22 MR. CONLEY: This is not in evidence.

23 MR. CORRELL: Objection, your Honor. Foundation.

24 MS. ROGERS: Same objection.

25 THE COURT: Are you seeking to admit it or do you

2218

1 want him to look at it to see if it refreshes his
2 recollection?

3 MR. CONLEY: I'm not seeking to admit it.

4 THE COURT: You're not?

5 MR. CONLEY: Just to refresh his recollection.

6 THE COURT: Okay. So there is no -- I'm overruling
7 the objection to the extent they are not seeking to admit it
8 yet.

9 Q If you could turn to page 5 of this exhibit, Mr.
10 LaPierre. My question is, does this refresh your recollection
11 on whether Ms. LaPierre stayed on the yacht Illusions in June of
12 2018?

13 A I'm sorry, counselor, where are you?

14 Q Page 5 of Plaintiff's Exhibit 62, which is tab 58 of
15 your binder.

16 A Okay. (Examining). Yes. That looks to be. You're
17 correct.

18 Q So, in June of 2018 Ms. LaPierre stayed on the yacht
19 Illusions for a week with friends, correct?

20 A Yes.

21 Q And less than a month later, in July of 2018 you and
22 Ms. LaPierre stayed on the yacht Illusions again, correct?

23 A Yes, I believe so.

24 Q But going back to your 2018 financial disclosure
25 questionnaire, you didn't disclose any conflicts in this form,

1 right?

2 A Yes.

3 Q Did you disclose any conflicts in your disclosure form
4 for 2018?

5 A No.

6 Q Mr. LaPierre, I would like to turn to Plaintiff's
7 Exhibit 642, which is tab 44 in your binder.

8 MR. CONLEY: This has been admitted.

9 Q This is your disclosure form for 2020, correct?

10 A Yes.

11 Q And you completed this form in January of 2020?

12 A Yes.

13 Q This is now more than two years into what you claim was
14 the NRA's 360 degree reform efforts, correct?

15 A Yes. That's correct.

16 Q Did you disclose any conflicts in this form?

17 A Not on that form.

18 Q Mr. LaPierre, I would like to turn to tab 45 in your
19 binder, which is Plaintiff's Exhibit 639.

20 A Yes.

21 Q This is your disclosure form for 2021, correct?

22 A Yes.

23 MR. CONLEY: This has been admitted.

24 Q And you signed this form on April 7th, 2021, correct?

25 A Yes, I did.

2220

1 Q Okay. And that was the day that you sat to testify in
2 the NRA's bankruptcy proceeding, right?

3 A Yes. It was during the bankruptcy proceeding.

4 Q And it was the day that you were to testify in the
5 bankruptcy proceeding, correct?

6 A Yes.

7 Q If you turn to page 6 of this exhibit, there is an
8 addendum. Did you draft this addendum?

9 A I did.

10 Q Did you review it before it was submitted?

11 A Yes, I did.

12 Q And did you believe it to be accurate at the time?

13 A Yes, I did.

14 Q If you could look at number four in this addendum, the
15 sentence that begins "Although there".

16 A Yes.

17 Q It states, "Although there are no gifts to report
18 within the 2020 reporting period, I did stay on David McKenzie's
19 yacht at no cost to the NRA on several occasions." Do you see
20 that?

21 A Yes, I do.

22 Q This is the first time that you disclosed here the use
23 of Mr. McKenzie's yacht, correct?

24 A Yes.

25 Q The second sentence of number four states, "During at

2221

1 least one of these trips I filmed segments for Crime Strike, but
2 the trip also had a personal component." Do you see that?

3 A Yes.

4 Q These segments were filmed on Mr. McKenzie's yacht, the
5 Grand Illusion, right?

6 A Yes.

7 Q And the segments were filmed off the coast of Monaco, is
8 that right?

9 A Yes.

10 Q The segments were not filmed in 2020, right?

11 A No.

12 Q Or 2020?

13 A No.

14 Q 2019?

15 A No.

16 Q And the segments, they didn't relate to Monaco, did
17 they?

18 A No. They related to Crime Strike.

19 Q They didn't need to be filmed at that location, did
20 they?

21 A Well, I filmed them with the actor Dean Cain, and
22 that's -- that's where he was at the time.

23 Q But the segments had no relation to Monaco, right?

24 A No, they didn't.

25 Q During your time as the executive vice president you

2222

1 would sometimes submit expense reports with the NRA requesting
2 reimbursements for goods and services, correct?

3 A Yes.

4 Q You would submit these expense reports to an employee
5 in the NRA's Institute for Legislative Action?

6 A That's correct.

7 Q That employee is Jocelyn Armstrong-Fuller?

8 A Yes.

9 Q Ms. Armstrong-Fuller works in NRA ILA's fiscal office,
10 right?

11 A Yes.

12 Q What is Ms. Armstrong-Fuller's position at the NRA?

13 A Well, she's no longer there now. She had a stroke.
14 But it was, I think, chief assistant fiscal officer or something
15 like that.

16 Q She wasn't an NRA officer, correct?

17 A Correct.

18 Q It would be fair to say she was junior to you, correct?

19 A Yes.

20 Q When Ms. Armstrong-Fuller was processing your expense
21 reports, there was no system in place requiring officer review
22 or signoff, correct?

23 A They were signed off on by the chief fiscal officer of
24 the Institute for Legislative Action.

25 Q Okay. But there was no system requiring officer review

1 or signoff, right?

2 A Right.

3 Q On several occasions you submitted reimbursement
4 requests for hotel rooms that you booked for your niece Colleen
5 Sterner, correct?

6 A Yes.

7 MR. CONLEY: I would like to introduce Plaintiff's
8 Exhibit 2697, which is tab 64, and I move for admission.

9 THE COURT: Any objections?

10 MS. ROGERS: Subject to foundation, none.

11 MR. CORRELL: Same.

12 MS. ROGERS: Actually no objection.

13 MR. CORRELL: Foundation.

14 THE COURT: Okay. We'll see.

15 Q Mr. LaPierre, do you recognize Plaintiff's
16 Exhibit 2697, which is tab 64 of your binder?

17 A Yes.

18 Q And what do you recognize it to be?

19 A It's an expense report for the trip to California where
20 they were working on the town hall meeting and I was also doing
21 a number of other meetings.

22 (Continue on the next page.)

23

24

25

LaPierre - by Plaintiff - Direct/Conley

2224

1 Q And if you just flip through the exhibit, pages 2, 3,
2 4, those reports, is that your handwriting?

3 A Yes, it is.

4 Q All right. And you would fill out and submit these
5 reports to the NRA/ILA fiscal office, right?

6 A That's correct.

7 MR. CONLEY: Your Honor, I move for admission.

8 MR. CORRELL: No objection.

9 MS. ROGERS: No objection.

10 THE COURT: It's admitted; PX 2697.

11 (Image displayed.)

12 Q All right. Mr. LaPierre, if we could start with page
13 2 ...?

14 (Image scrolled.)

15 Q So, is this a typical Entertainment Report that you
16 would fill out and submit?

17 A Yes.

18 Q All right. And if you turn to page 9 --

19 (Image scrolled.)

20 Q -- is this an example of a check that would be issued
21 to you as reimbursement for your expense reports?

22 A Yes.

23 Q And if you could turn to page 19, please --

24 (Image scrolled.)

25 Q -- this is an expense report for a hotel room for

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2225

1 Ms. Sterner at the Beverly Hills Hotel; correct?

2 A Yes.

3 Q And it's for \$6,561; correct?

4 A Yes.

5 Q And if you turn to page 20 and 21 --

6 (Image scrolled.)

7 Q -- is that the invoice for Ms. Sterner's room?

8 A Yes.

9 Q And you would agree that the nightly rate for this room
10 is more than a thousand dollars?

11 A Yes.

12 Q Okay. If you could please turn to tab 65, which is
13 Plaintiff's Exhibit 5105 ...

14 MS. ROGERS: No objection.

15 THE COURT: Hang on a second.

16 MR. CORRELL: No objection.

17 THE COURT: Okay.

18 You're moving it in?

19 MR. CONLEY: Yes, move for admission.

20 Thank you, your Honor.

21 THE COURT: It's admitted.

22 (Image displayed.)

23 Q Mr. LaPierre, is Plaintiff's Exhibit 5105, which is tab
24 65 of your binder -- is this a collection of expense reports
25 that you submitted?

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2226

1 A Yes.

2 Q If you could please turn to page 15 to 19 --

3 (Image scrolled.)

4 Q -- would you agree that this is hotel room charges for
5 Ms. Sterner at the Four Seasons Hotel?

6 A Yes, during our national convention.

7 Q And if you could turn to page 20, specifically --

8 (Image scrolled.)

9 Q -- you'll see a reference for "Colleen Sterner" with a
10 room number. Do you see that?

11 A Yes.

12 Q And the total for Ms. Sterner's room, that's \$12,332;
13 correct?

14 A Yes.

15 Q You also submitted reimbursement requests for gifts
16 that you purchased; correct?

17 A Yes.

18 MR. CONLEY: I'd like to turn to tab 66, which is
19 Plaintiff's Exhibit 2804, and I move for admission of this
20 exhibit.

21 MS. ROGERS: No objection.

22 MR. CORRELL: No objection.

23 THE COURT: It's admitted.

24 Q All right. Mr. LaPierre, I'd like to turn to pages 43
25 and 44 of Plaintiff's Exhibit 2804.

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2227

1 (Image displayed.)

2 Q Is this an expense report for a gift that you purchased
3 for Laura McKenzie?

4 A Yes.

5 Q And it's a gift, a \$1260 gift, that you purchased from
6 Bergdorf Goodman; correct?

7 A Yes.

8 Q And it was for a handbag; is that right?

9 A Yes.

10 Q All right. I'd like to turn to Plaintiff's Exhibit
11 2752, which is tab 67 in your binder.

12 MS. ROGERS: No objection.

13 MR. CORRELL: No objection.

14 THE COURT: Are you moving it in?

15 Q Mr. LaPierre --

16 THE COURT: Do you want to admit this?

17 MR. CONLEY: I'm sorry?

18 THE COURT: They didn't have any objection, so do
19 you want to move it into evidence?

20 MR. CONLEY: Yes, I would like to move it into
21 evidence.

22 THE COURT: It's admitted.

23 MR. CONLEY: Thank you, your Honor.

24 (Image displayed.)

25 Q Mr. LaPierre, Plaintiff's Exhibit 2752, is this a

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2228

1 collection of expense reports that you submitted?

2 A Yes.

3 Q If you could please turn to page 25 of this exhibit --

4 (Image scrolled.)

5 Q -- at the top, you'll see an expense report for a

6 Christmas gift for Elizabeth Stanton. Do you see that?

7 A Yes.

8 Q And Elizabeth Stanton is the daughter of Mr. and

9 Mrs. McKenzie; correct?

10 A Correct.

11 Q And if you could turn to pages 36 and 37 --

12 (Image scrolled.)

13 Q -- of this exhibit, this is an expense report for an
14 \$830 gift that you purchased for Mr. and Mrs. McKenzie; correct?

15 A Yes.

16 Q From Bergdorf Goodman; correct?

17 A Yes.

18 Q And it's for candlesticks; correct?

19 A Yes.

20 Q If you could please turn to pages 32 and 33 --

21 (Image scrolled.)

22 Q -- this is an Entertainment Report for Christmas gifts
23 from the Fitbit Store, right?

24 A Yes.

25 Q And you purchased Fitbits for Terry Sterner and Woody

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2229

1 Phillips; correct?

2 A Yes.

3 Q All right. If we could please turn to page 39 of this
4 exhibit --

5 (Image scrolled.)

6 Q -- this is an expense report for \$1600 in cash
7 Christmas gifts that you paid to landscapers; correct?

8 A It -- it was to the -- the security people that -- that
9 worked with the house.

10 Q It was cash tips for people that worked at Sisson
11 Landscapes; is that right?

12 A I'm not -- I'm not sure, to tell you the truth. I
13 think it was gifts -- Christmas gifts -- to the -- the security
14 people that worked -- worked at the house. But it doesn't read
15 that way; I would agree with you.

16 Q And --

17 A I'm not sure, to tell you the truth.

18 Q Sisson Landscapers, they had done landscaping work on
19 your residence; right?

20 A They do -- they do landscaper work at the house and
21 they also do landscape work in terms of the security that the
22 NRA had put in.

23 MR. CONLEY: I'd like to turn to Plaintiff's
24 Exhibit 2856, which is tab 68.

25 MS. ROGERS: No objection.

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2230

1 MR. CORRELL: No objection.

2 MR. CONLEY: I'd move it into evidence, your Honor.

3 THE COURT: It's admitted; PX 2856.

4 (Image displayed.)

5 Q All right. Mr. LaPierre, I'd like to direct you to the
6 second and third pages of 2856.

7 A Okay.

8 Q On the -- for the top Entertainment Report, on page 2,
9 this is a Christmas gift that you purchased for the McKenzie
10 family; correct?

11 A Yes.

12 Q From Neiman Marcus?

13 A Yes.

14 Q And below that, on the same page, it's a Christmas gift
15 that you purchased from Neiman Marcus for the Angus McQueen
16 family; correct?

17 A Yes.

18 Q And that gift was \$1,590, right?

19 A Yes.

20 Q And if you could turn to page 43 of the exhibit --

21 (Image scrolled.)

22 A Yes.

23 Q -- at the bottom of the page, will you agree that you
24 purchased a Christmas gift -- a birthday gift -- from Neiman
25 Marcus for Elizabeth Stanton?

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2231

1 A Yes.

2 Q And for \$543.91; is that right?

3 A Yes.

4 Q The NRA also reimbursed you, for several years, for a
5 golf club membership at a golf club in D.C.; correct?

6 A Yes.

7 Q If we could please turn to Plaintiff's Exhibit 2804,
8 which is tab 66, and this is in evidence at pages 69 to 71 --

9 (Image displayed.)

10 Q -- would you agree that this is an expense report for
11 golf club dues of \$885?

12 A Yes.

13 Q And you were reimbursed for these golf club dues for
14 several years, right?

15 A That's correct.

16 Q I'd like to turn to Plaintiff's Exhibit 2760, which is
17 tab 72. Do you have that in front of you, Mr. LaPierre?

18 A I believe I do. I have tab 72 in front of me
19 (indicating).

20 MR. CONLEY: And I would like to move for admission
21 of this exhibit.

22 MS. ROGERS: No objection.

23 MR. CORRELL: No objection.

24 THE COURT: It's admitted; PX 2760.

25 (Image displayed.)

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2232

1 Q Mr. LaPierre, if you could turn to pages 28 and 29 of
2 this exhibit --

3 (Image scrolled.)

4 A Yes.

5 Q -- the NRA also reimbursed you to have your backyard
6 treated for mosquitos; is that right?

7 A Yes, that's correct.

8 Q And this was a recurring charge; correct?

9 A Correct.

10 Q And the Entertainment Report, on pages 28 and 29, the
11 underlying receipt, is this for the mosquito service?

12 A Yes. It was for the security people that have to stay
13 out there all night long.

14 Q And it's for reimbursement of \$810; correct?

15 A Yes.

16 Q You're familiar with the EVP budget; correct?

17 A Yes.

18 (Image removed.)

19 Q And, as the executive vice president, you oversee the
20 EVP budget; right?

21 A Yes.

22 Q You'd agree that under the NRA Bylaws, board members
23 are not compensated; right?

24 A Correct.

25 Q They're volunteer positions?

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2233

1 A Yes.

2 Q But the NRA has paid several of its board members, for
3 decades; correct?

4 A Yes.

5 Q Several people have been paid for consulting services
6 out of the EVP budget, right?

7 A Yes.

8 Q And Marion Hammer is one of them, right?

9 A Yes.

10 Q Marion Hammer is a current NRA Board member; correct?

11 A Correct.

12 Q She served as NRA president from 1996 to '98?

13 A Yes.

14 Q And the NRA has paid Ms. Hammer for consulting services
15 since the 1990s, right?

16 A That's correct.

17 Q And the NRA has paid Ms. Hammer through several
18 different arrangements, right?

19 A Yes.

20 Q And one of them is that she's paid as a consultant by
21 the NRA through the EVP budget, right?

22 A Yes.

23 Q And you've overseen that arrangement; correct?

24 A Yes.

25 Q Now, we've heard testimony in this case about the NRA's

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2234

1 Institute for Legislative Action, or NRA/ILA. That's -- it's a
2 division of the NRA; correct?

3 A Yes.

4 Q It operates under the direction of the executive vice
5 president?

6 A Yes.

7 Q Under the Bylaws, NRA/ILA has its own fiscal office;
8 right?

9 A That's correct.

10 Q But it's still part of the NRA, right?

11 A That's correct.

12 Q So, when ILA spends money, it's ultimately the same
13 thing as the NRA spending money; right?

14 A That's correct.

15 Q Until 2022, Ms. Hammer was also paid as a consultant
16 through a separate arrangement with NRA/ILA; correct?

17 A Yes.

18 Q Ms. Hammer is the executive director of a nonprofit
19 called Unified Sportsmen of Florida.

20 A Yes, she is.

21 Q And if I refer to Unified Sportsmen of Florida as
22 "USF," you understand what I'm referring to?

23 A I do. I do.

24 Q NRA/ILA gives grants to USF; correct?

25 A They do.

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

2235

1 Q It's provided grants of approximately \$216,000 a year
2 to USF for several years, right?

3 A That sounds about right.

4 Q And nearly all USF's contributions have come from the
5 NRA; correct?

6 A Yes.

7 MR. CONLEY: I'd like to introduce Plaintiff's
8 Exhibit 387 --

9 Q Which is tab 75 in your binder.

10 MR. CONLEY: -- and this is not in evidence.
11 I move for its admission.

12 MR. CORRELL: Foundation, your Honor.

13 THE COURT: Subject to that?

14 MR. CORRELL: Yes, your Honor.

15 THE COURT: Okay.

16 So you can proceed.

17 Q Mr. LaPierre, do you recognize the exhibit PX 387?

18 A Yes, I do.

19 Q If you turn to the last page, is that your signature at
20 the bottom?

21 A Yes, it is.

22 Q And is that your handwriting next to the signature?

23 A Yes.

24 Q Is this a contract that the NRA entered into with
25 Marion Hammer in 2017?

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LaPierre - by Plaintiff - Direct/Conley

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1 A Yes.

2 MR. CONLEY: Your Honor, I move for admission.

3 MR. CORRELL: No objection.

4 MS. ROGERS: No objection.

5 THE COURT: It's admitted.

6 (Image displayed.)

7 Q Mr. LaPierre, under the terms of this agreement,
8 Ms. Hammer would receive \$165,000 in annual compensation
9 directly from the NRA; right?

10 A That's correct.

11 Q And prior to this arrangement, the NRA had been paying
12 Ms. Hammer \$84,000 a year through the EVP budget; correct?

13 A I believe that's correct.

14 Q And so, with this contract, it effectively doubled the
15 amount of money that Ms. Hammer was receiving through the EVP
16 budget; correct?

17 A Yes.

18 Q And you did not inform the Audit Committee about this
19 contract before executing it, right?

20 A No, I didn't. I did not.

21 Q And you'd agree that under NRA policy, this contract
22 required prior approval of the NRA president and one vice
23 president before it was executed; right?

24 A Yes.

25 Q And did you get that approval?

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

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1 A Not -- not at that time, although it was -- it was in
2 the back of the room at -- on all the 990s before it.

3 Q But you did not get approval of the NRA president and
4 one vice president before this contract was executed, right?

5 A No.

6 Q And under this contract, Ms. Hammer was to provide
7 services as may be requested by the NRA and NRA/ILA; right?

8 A Yes.

9 Q But Ms. Hammer was also getting paid by NRA/ILA during
10 this period, right?

11 A Yes.

12 Q Less than five months after entering into this
13 contract, in April of 2018 you negotiated and executed a new
14 contract with Ms. Hammer; right?

15 A Yes, that's correct.

16 MR. CONLEY: I'd like to introduce Plaintiff's
17 Exhibit 386, at tab 76.

18 (To counsel) And I believe this is admitted?

19 THE COURT: It's already in evidence?

20 MR. CORRELL: No objection.

21 MS. ROGERS: No objection.

22 MR. CONLEY: I move for admission.

23 I think it might be admitted already.

24 THE COURT: Okay. It's admitted if it hasn't
25 already been.

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

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1 (Image displayed.)

2 Q Mr. LaPierre, is that your signature at the bottom of
3 the page?

4 A Yes, it is.

5 (Image modified.)

6 Q This contract increased Ms. Hammer's compensation to
7 220,000, annually; correct?

8 A Yes, that's correct.

9 Q For a ten-year period?

10 A Yes, that's correct, with a 30-day cancellation.

11 Q This agreement was not approved by the Audit Committee
12 before it was executed, right?

13 A That's correct.

14 Q And it wasn't approved by the NRA president and a vice
15 president, either; right?

16 A That's correct, I believe.

17 Q And there was no Business Case Analysis completed for
18 this contract, right?

19 A Correct.

20 Q I'd like to discuss some other board members:
21 Sandra Froman is an NRA Board member, right?

22 A Yes.

23 Q And she's been a board member since 1992?

24 A Yes.

25 Q And she was NRA president from 2005 to 2007?

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

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1 A Yes, she was.

2 Q And the NRA paid Ms. Froman approximately \$40,000,
3 annually, for several years; right?

4 A Yes, that's correct.

5 Q The NRA didn't have a written contract with Ms. Froman;
6 correct?

7 A I believe that's correct.

8 Q And Ms. Froman was paid through the EVP budget, right?

9 A Yes.

10 Q And you're familiar with David Keene; right?

11 A Yes.

12 Q David Keene's a board member?

13 A Yes.

14 Q He was NRA president from 2011 to 2013?

15 A That's correct.

16 Q The NRA paid Mr. Keene approximately 50,000 a year, for
17 several years; right?

18 A Yes, that's correct.

19 Q He was paid through the EVP budget; correct?

20 A Yes.

21 Q You're familiar with Kayne Robinson; correct?

22 A I am.

23 Q He's on the Executive Council?

24 A That's correct.

25 Q And Kayne Robinson served as NRA president from 2003 to

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LaPierre - by Plaintiff - Direct/Conley

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1 2005, right?

2 A Yes.

3 Q And the NRA paid Mr. Robinson through the EVP budget,
4 for several years; correct?

5 A Yes, that's correct.

6 Q You're familiar with Mary Mallus; correct?

7 A Yes.

8 Q She was a consultant for the NRA?

9 A Yes, she was.

10 Q She worked on Women's Leadership Forum projects, right?

11 A Yes.

12 Q And she was your wife's administrative assistant;
13 correct?

14 A She worked for the -- the Office of -- well -- Office
15 of Advancement Women's Leadership Forum, but she worked directly
16 with my wife on a daily basis.

17 Q And she was paid out of the EVP budget, for several
18 years; right?

19 A Yes.

20 Q Approximately \$160,000 a year?

21 A Yes.

22 Q And your wife recommended that the NRA retain her,
23 right?

24 A Yes.

25 Q In addition to the NRA, Ms. Mallus also provided

ALAN F. BOWIN, CSR, RMR, CRR

LaPierre - by Plaintiff - Direct/Conley

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1 services to Youth For Tomorrow; correct?

2 A I believe, some. I don't -- I don't know for sure.

3 Q Ms. Mallus previously worked at PM Consulting with your
4 wife, Susan; correct?

5 A I don't know.

6 Q Ms. Mallus would have worked from your residence with
7 your wife, Susan; right?

8 A Yes. I believe she worked for the Carlyle Group;
9 Ms. Mallus did.

10 Q Now, you are familiar with Kyle Weaver; correct?

11 A Yes.

12 Q He was the Executive Director of General Operations for
13 about ten years?

14 A Yes.

15 Q You hired him for that position, right?

16 A Yes, I did.

17 Q You fired Mr. Weaver in 2016?

18 A Yes.

19 Q You felt that Mr. Weaver would not take your direction.

20 A There were many issues.

21 Q You felt that --

22 Employees of General Operations were complaining about
23 his management style; is that right?

24 A Yes.

25 Q And you claim that he was doing things behind your

ALAN F. BOWIN, CSR, RMR, CRR

2242

1 back, right?

2 A Yes. That's true too.

3 Q The day Mr. Weaver was fired, he was escorted out of
4 NRA headquarters by security; right?

5 A That's correct.

6 Q And on the same day, four of his direct reports in
7 General Operations were also fired; is that correct?

8 A I believe that's true.

9 Q And they were also escorted out of NRA headquarters by
10 security.

11 A I'm not sure of that, but may -- possibly.

12 Q After Mr. Weaver was fired, you directed the NRA to
13 enter into a severance agreement with him; correct?

14 A There was a severance agreement entered into.

15 Q And you directed the NRA to enter into that severance
16 agreement; correct?

17 A I knew they were negotiating one; I didn't participate
18 in the negotiation.

19 Q You tried to structure an exit agreement with him;
20 correct?

21 A Yes; NRA did.

22 (Continued on next page.)

23

24

25

ALAN F. BOWIN, CSR, RMR, CRR

Direct-LaPierre-Conley

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1 Q My question is, did you structure an exit agreement
2 with him?

3 A I wasn't the one who structured it. One was
4 structured.

5 Q Did you direct the NRA to enter into an exit agreement
6 with him?

7 A Yes.

8 Q And under that agreement the NRA paid Mr. Weaver
9 approximately \$1.8 million, right?

10 A I believe that's true.

11 Q And you directed the NRA to pay Mr. Weaver \$1.8 million
12 because you were concerned he might badmouth the NRA, correct?

13 A No. I think we wanted to treat him fairly for his
14 service. I think we thought that he was going to be within the
15 community still, and we wanted to treat him fairly, and that
16 severance agreement seemed fair.

17 Q So you were not -- you did not direct the NRA to pay
18 Mr. Weaver \$1.8 million out of concern that he might badmouth
19 the NRA?

20 A No, that wasn't my principal concern.

21 Q Woody Phillips was the CFO and treasurer of the NRA for
22 approximately 25 years, correct?

23 A Yes.

24 Q He joined the NRA shortly after you became the
25 executive vice president?

LAS

Direct-LaPierre-Conley

2244

1 A Yes.

2 Q As the chief financial officer he reported directly to
3 you, right?

4 A Yes.

5 Q Had Mr. Phillips ever been a CFO before coming to the
6 NRA?

7 A He was an auditor for Pricewaterhouse.

8 Q Right. That wasn't my question. Had Mr. Phillips ever
9 been a CFO before coming to the NRA?

10 A I don't believe so.

11 Q Had he ever been the treasurer of a large organization
12 before coming to the NRA?

13 A I don't believe so.

14 Q The last several years of Mr. Phillips' tenure at CFO
15 and treasurer he lived in Dallas, correct?

16 A Yes.

17 Q And you were aware that he was working mostly from
18 Dallas?

19 A Yes.

20 Q And you approved of that arrangement?

21 A Yes.

22 Q Woody Phillips retired in 2018, correct?

23 A Yes.

24 Q And before he retired, the NRA and Mr. Phillips entered
25 into a post-employment consulting contract, correct?

LAS

Direct-LaPierre-Conley

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1 A That's true.

2 Q And you're not aware of Mr. Phillips performing any
3 consulting services to the NRA after he retired, correct?

4 A I -- I wouldn't have been in the middle of that. It
5 would have been -- I wouldn't have been in the middle of that.

6 Q But sitting here right now, you're not aware of
7 Mr. Phillips having performed any consulting services of the NRA
8 after he retired, right?

9 A I know he worked with donors in terms of keeping up
10 relations in Texas.

11 Q Do you recall testifying in the investigation in this
12 matter, in an examination?

13 MR. CORRELL: Objection, your Honor.

14 A I just don't recall.

15 THE COURT: Wait a second. Is this kind of a
16 transcript where the witness doesn't get to see the
17 transcript and correct it?

18 MR. CORRELL: Yes, your Honor.

19 MR. CONLEY: Yes, your Honor. There is no errata.

20 THE COURT: Sustained.

21 MR. CONLEY: I would like to introduce and move for
22 admission of the exhibits tabbed 84, 85 and 86, which are
23 Plaintiff's Exhibits 2500, 337 and 3054.

24 THE COURT: Which tabs are these again?

25 MR. CONLEY: Eighty-four, 85 and 86.

LAS

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1 MS. ROGERS: No objection.

2 MR. CORRELL: No objection.

3 THE COURT: All right. Those three exhibits are
4 admitted.

5 Q Okay. Mr. LaPierre, I would like to direct you to
6 Plaintiff's Exhibit 2500, which is tab 84 in your binder.

7 A Yes, I see it.

8 Q This is a post-employment agreement between you and the
9 NRA, correct?

10 A (Examining). Yes.

11 Q The agreement is dated December 1st, 2013?

12 A Yes.

13 Q And on the last page of this exhibit that's your
14 signature, correct, on the right side?

15 A (Examining). Yes, that's correct.

16 Q Isn't it correct that you would be paid under this
17 agreement if you retired or were voted out as executive vice
18 president?

19 A That's correct.

20 Q And this agreement provided that you would receive
21 \$1.1 million a year for five years, correct?

22 A That is correct.

23 Q The NRA board did not approve this agreement before it
24 was signed, correct?

25 A I don't know. It was presented to me by the president

LAS

Direct-LaPierre-Conley

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1 of the NRA and the counsel to the board as something they wanted
2 to do.

3 Q So, sitting here today you have no knowledge of the NRA
4 board having approved this agreement, correct?

5 A I don't, but I wouldn't have been in on those meetings.

6 Q And would it be fair to say you have no knowledge of
7 the audit committee having approved this agreement in advance?

8 A That's correct.

9 Q I would like to turn to Plaintiff's Exhibit 337, which
10 is tab 85.

11 MR. CONLEY: And this is admitted.

12 Q Mr. LaPierre, do you recognize this document?

13 A (Examining). Yes, I do.

14 Q It's a 2015 extension of your 2013 post-employment
15 agreement, right?

16 A Yes, that's correct.

17 Q And this contract extends the 2013 post-employment
18 agreement two years, correct?

19 A Yes. That's correct.

20 Q All right. I would like to turn to Plaintiff's
21 Exhibit 3054, which is tab 86. Do you recognize this agreement?

22 A (Examining). Yes, I do.

23 Q And this agreement superseded your 2015 agreement,
24 correct?

25 A Yes. That's correct.

LAS

Direct-LaPierre-Conley

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1 Q And it extended the term of your post-employment
2 contract to 2023, is that right?

3 A Yes. That's correct.

4 Q And you have no knowledge of the NRA board having
5 approved this agreement, correct?

6 A That's correct.

7 THE COURT: This didn't go up on the screen by the
8 way. I don't know if you're intending it to.

9 MR. CONLEY: Thank you, your Honor.

10 THE COURT: Is this admitted?

11 MR. CONLEY: Yes, it is.

12 A Although again it was presented to me by the -- by the
13 president and the general counsel to the board.

14 Q Understood. And to your knowledge the audit committee
15 did not approve this in advance, correct?

16 A That's correct.

17 Q And, Mr. LaPierre, I would like to turn to tab 87,
18 which is Plaintiff's Exhibit 3073.

19 MR. CONLEY: This is admitted.

20 Q And, Mr. LaPierre, this is a contract extension
21 modifying your 2016 post-employment agreement, right?

22 A That's correct.

23 Q And the agreement, it's dated April 30th, 2018,
24 correct?

25 A That's correct.

LAS

Direct-LaPierre-Conley

2249

1 Q This contract provided that in the event that you
2 stopped being the executive vice president, you would receive
3 compensation for 12 years, correct?

4 A That's correct.

5 Q To 2030?

6 A Yes. That's correct.

7 Q It provided that you would receive \$1.3 million in
8 2019, right?

9 A Yes.

10 Q And then \$1.5 million for six years from 2020 to 2025?

11 A Yes.

12 Q And then \$1.3 million for two years in 2029 and '30.
13 And I skipped the three years, 2026, 2028 of 1.5 million for
14 those three years, is that right?

15 A Yes. You're correct.

16 Q You have no knowledge of the NRA board having approved
17 this agreement, correct?

18 A No, I don't.

19 Q And you have no knowledge of the audit committee having
20 approved this agreement, correct?

21 A No, I don't.

22 Q And would you agree that under this agreement if
23 someone were to take over as executive vice president, the NRA
24 would be stuck with \$17.4 million of obligations to you,
25 correct?

LAS

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1 MR. CORRELL: Objection, your Honor. Calls for a
2 legal conclusion.

3 A They would be stuck with what the contract says. Yes.

4 THE COURT: I was going to overrule it anyway.

5 Q All right. Mr. LaPierre, I would like to turn to tab
6 88, which is Plaintiff's Exhibit 572.

7 MR. CONLEY: And I believe this document is
8 admitted into evidence.

9 Q Mr. LaPierre, in January of 2021 you entered into a new
10 employment agreement with the NRA, correct?

11 A Yes. That's correct.

12 Q And this January 7th, 2021 agreement replaced your
13 prior post-employment agreements, right?

14 A That's correct.

15 THE COURT: Did you say January 2021?

16 MR. CONLEY: Yes, your Honor.

17 Q And you signed this agreement almost four years after
18 the 360 degree review you referenced started, right?

19 A Yes.

20 Q And four months after this lawsuit was commenced,
21 correct?

22 A Yes. Yes.

23 Q And this 2021 employment agreement promised you less
24 money than your prior agreement, right?

25 A Yes.

LAS

Direct-LaPierre-Conley

2251

1 Q It provides that the NRA, the sole option, may pay up
2 to \$500,000 a year for the use of your name, likeness and
3 signature, right?

4 A Yes, that's correct.

5 Q And for this contract you sought board approval,
6 correct?

7 A Yes. This went to the board.

8 Q And but you interpreted this 2021 agreement as giving
9 you the authority to file for bankruptcy on behalf of the NRA,
10 right?

11 A Yes, I did.

12 Q And eight days after this contract was approved by the
13 board, you signed the NRA's petition for Chapter 11 bankruptcy,
14 right?

15 A Yes. That's correct.

16 Q You attended part of the January board meeting where
17 your employment agreement was approved, right?

18 A I was not in the room when this employment agreement
19 was discussed. I was asked to leave the room.

20 Q But you were at the meeting prior to that, before it
21 went into executive session?

22 A Yes.

23 Q And you presented the board with your employment
24 agreement, right?

25 A No, I didn't. It would have been presented by the

LAS

Direct-LaPierre-Conley

2252

1 compensation committee or the officers.

2 Q But the board was presented with your employment
3 agreement at this meeting?

4 A Yes, they were.

5 Q And would you agree that filing for bankruptcy is a
6 significant decision for the NRA?

7 A Yes.

8 Q And you believe that this agreement gave you the
9 authority to put the NRA into bankruptcy, right?

10 A I did.

11 Q And if you could turn to the first page of the
12 employment agreement, Plaintiff's Exhibit 572, under "Duties and
13 Compensation". Do you see that provision?

14 A (Examining). Yes, I do.

15 Q Okay. And direct your attention, "Among his
16 authorities employees shall be empowered to exercise corporate
17 authority and furtherance of the mission and interests of the
18 NRA." Do you see that language?

19 A Yes, I do. Yes.

20 Q And then it continues, "Including without limitation to
21 reorganize or restructure the affairs of the association for
22 purposes of costs minimization, regulatory compliance or
23 otherwise." Do you see that?

24 A Yes, I do.

25 Q And this is the language that you believe gave you the

LAS

Direct-LaPierre-Conley

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1 authority to put the NRA into bankruptcy, correct?

2 A Yes, I do.

3 Q You would agree this language doesn't actually say
4 bankruptcy, right?

5 A It doesn't actually say bankruptcy but -- but
6 restructuring and reorganizing, that was -- that would have been
7 an option.

8 Q At the January 7th board meeting you didn't tell the
9 NRA board that you were considering filing for bankruptcy,
10 right?

11 A No, I did not.

12 Q And the board did not pass a resolution approving the
13 filing of the bankruptcy at the January 7th meeting, right?

14 A That's correct.

15 Q And you have no reason to believe that the NRA board
16 was told at this January 7th meeting that bankruptcy was being
17 considered, right?

18 A Well, they saw this resolution and they -- they -- it's
19 one of the options they -- they -- I think would have read into
20 it.

21 Q And when you say "this resolution", are you referring
22 to the provision of your employment agreement that we just went
23 through?

24 A Yes. The reorganization and restructure.

25 Q Okay. Mr. LaPierre, you made the decision to file for

LAS

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1 bankruptcy, correct?

2 A Yes, I did, after consulting with the special
3 litigation committee and with counsel.

4 Q And the committee, the special litigation committee,
5 that was appointed by Carolyn Meadows, right?

6 A Yes. And it -- Yes.

7 Q And the special litigation committee included
8 Ms. Meadows, Charles Cotton and Willes Lee at that time,
9 correct?

10 A That is correct.

11 Q Other than the three members of the special litigation
12 committee, you did not advise any of the other members of the
13 board that you were filing for bankruptcy before you did so,
14 correct?

15 A I did not. I thought about it. And the special
16 litigation committee, they had very strong feelings about it.
17 And we had a very strong feeling that given the Attorney
18 General's position, that she would try to go to a judge and put
19 the NRA into a receivership, which would take control of the NRA
20 away from the NRA, because she had been very clear that during
21 her campaign she considered the NRA a criminal terrorist
22 organization and wanted to open an investigation.

23 MR. CONLEY: Your Honor, I move to strike that
24 answer as nonresponsive.

25 THE COURT: The question was simply whether he had

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1 advised or did not. So, sustained. He didn't ask at this
2 point why.

3 Q Mr. LaPierre, yes or no, other than the three members
4 of the special litigation committee, you did not advise any of
5 the other members of the board that you were filing for
6 bankruptcy before you did so, correct?

7 A Correct.

8 Q You also decided to file for bankruptcy without
9 informing any of the salaried officers of the NRA, correct?

10 A Well, Mr. Spray had set up a -- a \$5 million trust fund
11 for purposes of restructuring.

12 Q But you decided to file for bankruptcy without telling
13 Mr. Spray or any other salaried officers of the NRA, correct?

14 A That -- that is correct, after consulting with the SLC
15 and with the bankruptcy attorneys.

16 Q The only salaried employee at the NRA besides you who
17 knew about the bankruptcy filing before it occurred was Mr.
18 Arulanandam, correct?

19 A Mr. Arulanandam knew, that's correct.

20 Q And to your knowledge he's the only salaried employee
21 at the NRA besides you who knew about the bankruptcy before the
22 petition was actually filed, correct?

23 A Yes.

24 Q At the time of the NRA's bankruptcy Mr. Arulanandam was
25 the NRA spokesperson, right?

LAS

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1 A He was the public affairs director.

2 Q And he was informed about the bankruptcy because of the
3 need to get press releases prepared, is that correct?

4 A Yes, and deal with the -- to deal with the outfacing in
5 terms of the media.

6 Q Mr. Frazer was general counsel at the time of the
7 bankruptcy filing, correct?

8 A Correct.

9 Q The top lawyer at the NRA?

10 A Yes.

11 Q And you did not tell Mr. Frazer that the NRA was going
12 to file for bankruptcy, correct?

13 A I -- I did not.

14 Q You did not ask Mr. Frazer for his ideas or input on
15 whether you should file for bankruptcy, right?

16 A No. I did not.

17 Q And at the time of the bankruptcy filing Craig Spray
18 was the CFO and treasurer of the NRA, right?

19 A Yes, that's correct.

20 Q You didn't consult with him about the bankruptcy
21 filing, correct?

22 A Well, as I said, he set up the \$5 million trust fund
23 to -- for purposes of restructuring. So, I think that would
24 have been an option that he would have recognized was available.

25 Q So, yes or no, did you consult with Mr. Spray about the

LAS

Direct-LaPierre-Conley

2257

1 bankruptcy filing before you filed?

2 A No.

3 Q You did not file for bankruptcy because the NRA was
4 financially insolvent, right?

5 A Correct.

6 Q When you filed for bankruptcy, the NRA was in its
7 strongest financial condition in years, correct?

8 A It was in sound financial condition.

9 Q You filed for bankruptcy in an effort to leave New York
10 and reincorporate in Texas, correct?

11 A I filed for bankruptcy to protect the NRA from
12 dissolution and cease of its assets by the Attorney General and
13 to put NRA in a sound position for the future in a state where
14 we felt we would have a fair regulatory playing field, which
15 would be Texas. And we felt we could not get that in New York,
16 where all we were receiving was ill will. During my deposition
17 first in 2020 they had not one question about all the compliance
18 we were doing.

19 MR. CONLEY: Your Honor, I move to strike as
20 nonresponsive.

21 THE COURT: Denied. Denied.

22 Q Two and a half months after the bankruptcy was
23 commenced, the NRA had an emergency board meeting, right?

24 A Correct.

25 Q In March of 2021?

LAS

Direct-LaPierre-Conley

2258

1 A Yes.

2 Q And the board took a vote on the bankruptcy that was
3 already ongoing, correct?

4 A Yes.

5 Q The NRA's bankruptcy proceeding was dismissed, correct?

6 A Correct.

7 Q And it was dismissed as not having been filed in good
8 faith, correct?

9 A I'm not a lawyer. I understand it was dismissed
10 without prejudice, and that the judge trusted NRA to maintain
11 control of its business and said that we understood compliancy
12 and should be trusted to carry forward.

13 Q Mr. LaPierre, the bankruptcy court held that the
14 bankruptcy had been improperly filed to avoid a regulatory
15 enforcement action, right?

16 MR. CORRELL: Objection, your Honor. He's
17 purporting to summarize a Court's opinion in another state
18 in another case.

19 THE COURT: Overruled.

20 A I'm not a lawyer, but that's not why we were filing it.
21 We would still have to deal with New York. We felt we had
22 complied with New York law in terms of self correction, and we
23 were comfortable that -- that that would be found to be true.
24 And I would still have to deal with the lawsuit against myself.
25 I would have no advantage at all.

LAS

Direct-LaPierre-Conley

2259

1 Q I'm not sure you answered my question, so I'm going to
2 try again. Yes or no, the bankruptcy court held that the
3 bankruptcy had been improperly filed to avoid a regulatory
4 enforcement action?

5 A I believe. I'm not a lawyer, but I believe that's what
6 the court held.

7 Q You're familiar with Angus McQueen?

8 A Correct.

9 Q Yes. He's the cofounder of a company called Ackerman
10 McQueen, right?

11 A Yes. That's correct.

12 Q And Mr. McQueen died in 2019?

13 A Yes.

14 Q Prior to his death in 2019, Mr. McQueen was the CEO of
15 Ackerman McQueen, correct?

16 A Yes. That's correct.

17 Q And Ackerman McQueen is an advertising and public
18 relations firm?

19 A Yes, that's correct.

20 Q It's affiliated with a company named Mercury Group?

21 A Yes. That's correct.

22 Q Mercury Group is a wholly owned subsidiary of Ackerman?

23 A Yes.

24 Q From 1992 to 2018 Ackerman was the NRA's largest
25 vendor, correct?

LAS

Direct-LaPierre-Conley

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1 A Yes.

2 Q By around 2018 the NRA was paying Ackerman McQueen
3 close to \$40 million a year, correct?

4 A Yes. That's accurate.

5 Q And during the NRA's business relationship with
6 Ackerman McQueen, your primary contact at Ackerman McQueen was
7 Angus McQueen?

8 A Yes, that's correct.

9 Q You relied on Mr. McQueen for advise on strategic
10 communication and crisis management?

11 A Yes, I did.

12 Q Up until late 2018, you and Mr. McQueen would often
13 speak on a daily basis, correct?

14 A Yes, that's correct.

15 Q And depending on the current events, you might speak
16 with him multiple times a day, right?

17 A Yes, that's correct.

18 Q In 2017 NRA entered into a new service agreement with
19 Ackerman McQueen, correct?

20 A Yes.

21 Q Prior to the 2017 agreement, Ackerman McQueen had been
22 providing services under a contract that had been entered into
23 in 1999, right?

24 A Yes.

25 Q I would like to turn to tab 90 in your binder, which is

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1 Plaintiff's Exhibit 1649, which is admitted. Mr. LaPierre, I
2 would like to turn to pages 15 to 26.

3 A (Examining).

4 Q Are you there?

5 A Yes, I am.

6 Q Is this the 1999 agreement between Ackerman McQueen and
7 Mercury Group?

8 A It is.

9 Q All right. And if you could turn to page 24 of the
10 exhibit, which is page 10 of the contract.

11 A Yes.

12 Q You would agree under the provision "authorized
13 contract, section 9", do you see that at the top?

14 A Yes, I do.

15 Q You would agree that this agreement expressly provides
16 that Ackerman McQueen was only to -- only authorized to act upon
17 written communications received from you or your designee,
18 correct?

19 A Yes. That's correct.

20 Q I would like to turn to tab 91, which is Plaintiff's
21 Exhibit 3145.

22 MR. CONLEY: This is also in evidence.

23 Q Mr. LaPierre, this is Plaintiff's Exhibit 3415. This
24 is the 2017 services agreement, right?

25 A (Examining). Yes, that's correct.

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1 Q And this agreement contains the same provision as the
2 1999 agreement providing that Ackerman's only -- to act upon
3 written communications received from you or your designee,
4 correct?

5 A Yes. That's correct.

6 Q Mr. Powell was a designee for a period of time,
7 correct?

8 A Yes, that's correct.

9 Q Was Mr. Arulanandam ever a designee?

10 A I'm not sure.

11 Q Other than Mr. Powell, in the last ten years have you
12 had any other designees that had the authority to order work
13 through Ackerman McQueen?

14 A Yes. Mr. Spray.

15 Q Anyone else?

16 A Those are the ones that I can recall.

17 Q You're familiar with Ackerman McQueen's practice of
18 passing through certain expenses to the NRA as out-of-pocket
19 expenses, right?

20 A I am now.

21 Q Ackerman McQueen would incur certain charges for NRA's
22 executives and then bill the NRA for those expenses, right?

23 A I know that now.

24 Q And they would describe the expenses as out-of-pocket
25 expenses?

LAS

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1 A Yes. I know that now.

2 Q Ackerman wouldn't provide the NRA with the underlying
3 documentation for the expenses, right?

4 A That's one of the things we discovered in our 360
5 degree review. I did not know that.

6 Q And you're familiar with Tyler Schropp, right?

7 A Yes.

8 Q He's the executive director of Advancement at the NRA?

9 A Yes, he is.

10 Q You hired Mr. Schropp, correct?

11 A That's correct.

12 Q Before joining the NRA he worked at Ackerman McQueen,
13 correct?

14 A That is correct.

15 Q And one of the expenses that Ackerman passed through as
16 the NRA's out-of-pocket expenses were Tyler Schropp's credit
17 card charges, right?

18 A I know that now.

19 Q You agree now that that wasn't a proper practice,
20 right?

21 A It's one of the things we have self corrected on, and I
22 -- I -- I think the NRA -- I think that was something that was
23 permissible, but it's probably not best practices. And we have
24 corrected it in 360, so it no longer happens.

25 Q The expenses that were passed through Ackerman as

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1 out-of-pocket expenses often included expenses that were
2 incurred for you, right?

3 A I think there were some.

4 Q And also expenses that were incurred for your spouse,
5 Susan LaPierre, right?

6 A I'm not sure. I don't believe it would have been many.

7 Q I am wanting to turn to tab 101 which --

8 THE COURT: Counsel, we're just about at the point
9 where we have to break.

10 MR. CONLEY: Okay.

11 THE COURT: If you're going to shift to a new
12 topic, you want to continue?

13 MR. CONLEY: I think now would be a good time to
14 break because we have to switch binders.

15 THE COURT: All right. Why don't we break and
16 we'll reconvene at 2:15.

17 THE COURT OFFICER: All rise. Jury exiting.

18 (Whereupon the jury panel departed the courtroom.)

19 THE COURT: All right. Have a seat. Close the
20 door. So -- You can sit. Everybody can sit.

21 Mr. Correll, you don't have to answer me now, but I
22 would at least ask you all to think about, you and your
23 client, although your client shouldn't talk to you about the
24 substance of the testimony, you know, it's a balance of
25 whether you want to continue and get this over sooner as

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1 opposed to spreading it out over multiple days. But that's
2 a discussion I'll let you -- I want to make it clear you can
3 talk about that, because at least so far so good, I suppose.

4 MR. CORRELL: Yes, your Honor. I'll speak with Mr.
5 LaPierre and see if he feels able to continue. I can see
6 the signs of the fatigue setting in. I've spent enough time
7 with him to know.

8 THE COURT: If you look at me, you'll probably see
9 the same. But, no. I -- I don't -- I don't make light of
10 it. I understand the point. But, you know, there will be a
11 break. I would ask if you are going to -- if you can
12 communicate with your colleagues on the other side so at
13 least they know what to expect. But as I said, there is
14 certainly an upside to having the whole process be over
15 sooner.

16 MR. CORRELL: If he feels well enough to continue,
17 we will continue.

18 THE COURT: All right. Thank you, sir.

19 THE WITNESS: Thank you.

20 (Whereupon a luncheon recess was taken.)

21 (Continue on the next page.)

22

23

24

25

LAS

Proceedings

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1 A f t e r n o o n S e s s i o n:

2 THE COURT: Okay. Are we all set to go?

3 MR. CORRELL: Your Honor, Mr. LaPierre feels well
4 enough to go till three o'clock, if that's suitable or
5 agreeable to the Court.

6 MS. CONNELL: That's fine with the plaintiff, your
7 Honor. We discussed it earlier with Mr. Correll.

8 There's a one issue I'd like to raise before the
9 jury comes out, if that's okay, very quickly:

10 I believe you made a ruling that we could not use
11 the investigatory examination under oath to impeach
12 Mr. LaPierre. That was a videotaped deposition under oath.
13 We're only using it just for impeachment, not for straight
14 admission; and we believe it's admissible, under CPLR 4514
15 and the Guide to New York Evidence 6.15, for impeachment
16 purposes.

17 THE COURT: Yeah, I -- my recollection of --

18 The statute I'm thinking of is the statute about
19 use of prior testimony if it's not something where the
20 witness has been given access to it.

21 So you're saying that that is solely for purposes
22 if you're going to use it as substantive evidence?

23 MS. CONNELL: Yes, your Honor, without waiving the
24 right to argue that it could be used for other purposes.

25 Here, we were using it solely for impeachment.

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1 And, again, this is a deposition transcript that
2 has been given to counsel; they have the videotape. If
3 there is a question --

4 THE COURT: Yeah, it's not a question of whether
5 they have access to it. I just had always understood that
6 rule was that when the transcript is not -- they haven't had
7 a chance to review the transcript, that there was some issue
8 about it. Again, it all came up rather quickly, without a
9 lot of briefing.

10 Counsel?

11 MR. CORRELL: Yes, your Honor.

12 The problem is multifaceted. One is not being able
13 to object, not being able to cross-examine, and also not
14 having the transcript and be able to read it and correct it.

15 So, if testimony was given in --

16 THE COURT: Well, I understand the theory. I just
17 want to know whether any other people in black robes have
18 addressed this question before.

19 MR. CORRELL: Unfortunately, your Honor, I'm not
20 prepared to address that right now, but if you give me an
21 opportunity, I could address it later.

22 I just thought that --

23 THE COURT: Okay.

24 Yeah, look, I'm not generally a big fan of these
25 kind of transcripts because, you know, they're useful for

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1 the investigation but there is an element of them that is,
2 you know, at least in some circumstances, potentially --
3 that, you know, there could be errors in the transcript.

4 But --

5 MR. CORRELL: Your Honor, the only reason --

6 THE COURT: -- I'll stay with my ruling for now,
7 and I'll take a look at it; the law, and see if --

8 Do you have any cases that say you can use it for
9 other purposes?

10 MS. CONNELL: We'll get them to your Honor. We
11 thought we had previously identified them to you, your
12 Honor. And, again, this is for impeachment.

13 THE COURT: You may have.

14 MS. CONNELL: I know, in the raft of the
15 submissions -- and I'm sorry; I did not mean that to come
16 across the wrong way.

17 But this is not a matter of hearsay. This is a
18 party admission that they've had possession of for years,
19 that they've had the videotape of.

20 THE COURT: Right.

21 Is it 3117, CPLR? There's a CPLR section on use of
22 transcripts.

23 MS. CONNELL: Yes, I believe, 3117; but there's
24 also 4514, as well.

25 THE COURT: All right. Well, I don't think I have

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1 my copy of all that with me.

2 I'll take a look at it.

3 All right, let's get the jury.

4 And Mr. LaPierre.

5 (The witness resumed the stand.)

6 THE COURT: Since I spent five minutes on that, can
7 we go to 3:05? That's when we would normally take the
8 break; around then, anyway.

9 MR. CORRELL: I think that's fine, your Honor.

10 THE COURT: Okay.

11 COURT OFFICER: Is the Court ready for the jury?

12 THE COURT: Yes, sir.

13 COURT OFFICER: All rise. Jury entering.

14 (The jury entered the courtroom.)

15 THE COURT: Okay, welcome back. Have a seat.

16 All right. If everyone is ready, Mr. Conley, you
17 can continue.

18 MR. CONLEY: Thank you, your Honor.

19 DIRECT EXAMINATION CONTINUED

20 BY MR. CONLEY:

21 Q Good afternoon, Mr. LaPierre.

22 A Good afternoon.

23 Q So, before the break, we were discussing the Ackerman
24 out-of-pocket invoice arrangement; correct?

25 A Yes.

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1 Q I'd like to go through some of the out-of-pocket
2 invoices, if we could.

3 Could you please turn to the -- unfortunately -- the
4 second binder. It's Binder 2, to your left.

5 A Okay.

6 (Binder handed to witness by court officer.)

7 THE WITNESS: Thank you.

8 Q And if you could go to tab 101, which is Plaintiff's
9 Exhibit 3152, which is in evidence, at 157 ...?

10 A Page -- I'm sorry; page 157?

11 Q Page 148, actually. I'm sorry about that.

12 (Image displayed.)

13 THE COURT: Is this document in evidence?

14 MR. CONLEY: Yes.

15 THE COURT: Okay.

16 A I'm sorry.

17 Q That's okay.

18 A I need to go back. I'm sorry.

19 (Pause.)

20 THE COURT: Page 157?

21 MR. CONLEY: 1 ...

22 A Page 148?

23 Q 148.

24 A Okay, I have it here (indicating).

25 Q And do you have a "tab 101," Mr. LaPierre?

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1 A I -- I believe so. I have page -- I have "page 148 of
2 467" --

3 THE COURT: He's got the one I'm looking at.

4 A Did that make any sense?

5 Q And, Mr. LaPierre, if you look at the screen, is that
6 the page that you have in front of you?

7 THE COURT: He's looking at something different.

8 A No. I'm sorry. It's not. It --

9 THE COURT: "148" in the page numbers at the
10 bottom.

11 THE WITNESS: Page 149 -- "148 of 467" is what I'm
12 looking at.

13 Q Is it the second binder? No, it's not that one.

14 It is that (indicating) one, yeah, and it's tab 101,
15 which should be the second of three documents; very large
16 documents.

17 A Oh, wait. I'm getting there. I'm sorry.

18 (Pause.)

19 A Okay. I think I'm with you now. I apologize.

20 Q Okay. I'd like to refer your attention to the second
21 item down and this appears to be an expense report for "Mike
22 Dennehy," and it's a purchase for "BH Photo Video"?

23 Do you see that?

24 A Yes. I'm looking at it.

25 Q Okay, great.

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1 And do you see where it states: "Purchase of MacBook
2 Pro, iPad Pro and iPod for Susan LaPierre"?

3 A I see it.

4 Q Okay. And if you go a couple below that, a purchase
5 from "apple.com"; do you see that?

6 A I do.

7 Q And this is a separate purchase, through apple.com, for
8 headphones, an Apple TV and an HDMI cable for Susan LaPierre?

9 A I see it.

10 Q And my question is: Do you dispute that Ackerman
11 McQueen incurred these expenses for Susan LaPierre?

12 A I don't have any idea, to tell you the truth.

13 And is an Apple TV a TV?

14 Q It is not a TV, no. It's an electronic device.

15 Do you have any knowledge of an Ackerman employee
16 purchasing these electronic goods for Ms. LaPierre?

17 A I -- I don't.

18 Q Okay. Do you have any reason to doubt that they did?

19 A I -- I -- I just had no -- honestly -- no idea. I
20 mean, I don't use a computer. I'm totally old school. I
21 just -- I'm -- I'm sorry. I just don't know.

22 Q Okay. Just one moment. I want to try to minimize the
23 page turning as much as I can.

24 (Pause.)

25 Q Okay. Mr. LaPierre, if you could turn to tab 100,

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1 which is the first document in this binder, and this is also in
2 evidence; it is Plaintiff's Exhibit 3151 ...

3 (Image displayed.)

4 Q And if you could turn to page 287 ...?

5 (Pause.)

6 A I'm almost there.

7 Okay, I'm on 287.

8 Q Okay. And do you see, on page 287, line items for "21c
9 Louisville"?

10 A You're on -- I'm sorry. You're on page 287 of 467?

11 Q Yes.

12 THE COURT: That's also a different page than I
13 have in tab 100.

14 MR. CONLEY: Okay.

15 THE COURT: What's the Bates number on it?

16 MR. CONLEY: "3151."

17 THE COURT: The NYAG number?

18 MR. CONLEY: Oh. The NYAG is "123187."

19 THE COURT: Yeah, that's correct. That was
20 different.

21 A You're at tab 100?

22 Q Yes.

23 A And I'm sorry; what page, again?

24 Q 287.

25 THE COURT: Okay. Put it back up and see if it --

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1 The one on the screen was different than ...

2 Q Let's go ahead, Mr. LaPierre, and put a pin in this for
3 a second. I'll ask you some questions on something else, okay?

4 A All right.

5 Q Sorry for that.

6 Let's switch back to the first binder, Mr. LaPierre.

7 A Okay.

8 Q Yeah.

9 We discussed Tony Makris earlier today.

10 (Court officer handed binder to witness.)

11 THE WITNESS: Thank you.

12 Q Mr. McKenzie was the CEO of Mercury Group; correct?

13 A That's correct.

14 Q And he was a close friend of yours for about 30 years?

15 A That's -- that's correct.

16 Q And he was an advisor to you; correct?

17 A Yes.

18 Q And he was like a brother to you; correct?

19 A Yes.

20 Q You would socialize together?

21 A Yes.

22 Q You would occasionally take vacations together;
23 correct?

24 A Well, I don't think vacations, but we traveled
25 together.

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1 Q And you would travel together with your respective
2 spouses?

3 A Yes.

4 Q And Mr. McKenzie also hosted a television program
5 called "Under Wild Skies"; correct?

6 A Yes, he did.

7 Q And NRA sponsored that program for several years;
8 correct?

9 A Yes.

10 Q I'd like to turn to Plaintiff Exhibit 746, which is tab
11 92 in your binder.

12 MR. CONLEY: I do not believe these are in
13 evidence -- this exhibit's in evidence -- but I would move
14 for its admission.

15 THE COURT: This is back to the first binder?

16 MR. CONLEY: This is back to the first binder.

17 MS. ROGERS: No objection.

18 MR. CORRELL: No objection.

19 MS. ROGERS: The cover e-mail -- the cover e-mail
20 may lack foundation, but no objection to the contract.

21 MR. CONLEY: Your Honor, we would be fine moving to
22 admit the attachments to the e-mail and not the cover
23 e-mail, but it -- it --

24 THE COURT: Okay.

25 Any other objections or comments?

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1 MR. CORRELL: None for Mr. LaPierre.

2 THE COURT: All right.

3 So, with the representation that the exhibit will
4 be modified to just be the -- to not include -- the first
5 page, it's admitted.

6 (Image displayed.)

7 BY MR. CONLEY:

8 Q All right. Mr. LaPierre, if you could turn to page 3
9 of this exhibit, is this your signature?

10 A Yes, it is.

11 Q On the -- on the right-hand side.

12 A Yes.

13 Q Okay. And this is an agreement that the NRA entered
14 into with "Under Wild Skies"; correct?

15 A Yes.

16 Q And the term of the agreement was January 1st, 2016 to
17 December 31st, 2021; correct?

18 A Yes.

19 Q And to your knowledge, was any Business Case Analysis
20 prepared for this agreement?

21 A I don't think so.

22 Q And was the Contract Review Signature Sheet circulated
23 and completed?

24 A I'm not sure.

25 Q Do you have any knowledge of one being completed for

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1 this agreement?

2 A No, I don't.

3 Q And if you could turn to pages 4 and 5 of this
4 exhibit --

5 (Image scrolled.)

6 Q Yeah. It's a different layout.

7 A Okay.

8 Q -- this is another agreement that the NRA entered into
9 with "Under Wild Skies"; correct?

10 A Yes.

11 Q And it was entered into --

12 THE COURT: Can you just rotate the one that's on
13 the screen? It was turned sideways.

14 (Pause.)

15 (Image modified.)

16 Q And this agreement, this advertising agreement, was
17 entered into on the same date as the sponsorship agreement;
18 correct? Or the -- apologies.

19 The sponsorship agreement on pages 4 and 5 of this
20 exhibit were [sic] entered into on the same date as the
21 advertising agreement on pages 2 and 3; right?

22 A Yes.

23 Q All right. And this agreement was also for a five-year
24 term; correct?

25 A Yes.

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1 Q And to your knowledge, was a Business Case Analysis
2 ever prepared for this agreement?

3 A Not that I'm aware of.

4 Q I'd like to turn to tab 32, which is Plaintiff's
5 Exhibit 2683.

6 MR. CONLEY: This is not in evidence, and I'd move
7 for its admission.

8 THE COURT: It's PX ...?

9 MR. CONLEY: -2683.

10 THE COURT: And what tab is this?

11 MR. CONLEY: Oh, I -- 93?

12 Did I say that wrong?

13 THE COURT: You said, "32."

14 MR. CONLEY: I apologize, your Honor.

15 Sorry, everyone.

16 THE COURT: What is it now; 93?

17 MR. CONLEY: 93, Plaintiff's Exhibit 2683.

18 MS. ROGERS: Thus is a large cluster of
19 attachments. Subject to foundation on each, no objection.

20 THE COURT: Is this being offered as one document?

21 MR. CONLEY: It --

22 I'm not sure I follow the question, your Honor.

23 We --

24 THE COURT: Well, the e-mail has about seven -- or
25 ten -- attachments, and then they're all separate documents

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1 that are all included as attachments. Are they grouped
2 together in a way that you want the whole set to be one
3 document?

4 MR. CONLEY: Your Honor, no. We are only
5 seeking -- I was only intending to ask Mr. LaPierre about
6 two of the agreements in this grouping of contracts that
7 were transmitted.

8 THE COURT: Yeah.

9 I mean -- look, I mean, I understand you have them
10 as attachments to an e-mail, but you -- I think you could
11 introduce them as independent documents. But it's going to
12 be kind of hard to do in this context, because they're all
13 clumped together in one large compilation; right?

14 (Mr. Conley nodded.)

15 THE COURT: So which --

16 MR. CONLEY: The contracts are on pages 6 and 7 and
17 on pages 70 and 71.

18 MS. ROGERS: The NRA would have no objection to
19 those two contracts.

20 THE COURT: Right.

21 I mean, what we've done before, I guess, is divided
22 this exhibit into two parts; so PX 263 -- 2683 -- I don't
23 know whether we did -A and -B or -1 and -2 or something.

24 But there's no reason to introduce --

25 MR. CONLEY: Sure.

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1 THE COURT: -- all of the attachments, right?

2 So the document at this exhibit, pages 6 and 7, can
3 be admitted as, I guess, what we'll call "PX 2683" --

4 What are we going with; "-A" or "-1"?

5 MR. CONLEY: -A.

6 THE COURT: Okay. So that's admitted.

7 We'll re-number them.

8 MR. CONLEY: And, your Honor, with respect to the
9 other agreement that's at pages 70 and 71, I would -- we
10 could number that "PX 2683-B"?

11 THE COURT: "-B," yes.

12 MR. CONLEY: Okay.

13 THE COURT: And that's admitted as well.

14 (Continued on next page.)

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1 Q Mr. LaPierre, I'll ask you first about the agreement on
2 pages six and seven of this exhibit as the sponsorship
3 agreement. Do you have that in front of you?

4 A Yes, I do.

5 Q And on page 7 is that your signature on the right?

6 A (Examining). Yes, it is.

7 Q Okay. And if we flip to pages 70, 71.

8 A I'm sorry. Pages 70 and 71?

9 Q Yes. It's the advertising agreement. Do you see that?

10 A I have the amendment services agreement, page 8 of 95,
11 9 of 95.

12 Q If you flip -- if you flip back one page, I think
13 you'll be there. Yeah. Mr. LaPierre --

14 A Yes, I think I have it right in front of me.

15 Q Yeah. On the right-hand side at the bottom of page 71
16 is that your signature?

17 A Yes, it is.

18 Q Okay. You entered into these agreements with Under
19 Wild Skies, the sponsorship agreement and the advertising
20 agreement, on the same day of January 24, 2018, correct?

21 A Yes.

22 Q And these agreements extended the NRA's contracts with
23 Under Wild Skies to 2025, correct?

24 A Yes.

25 Q And when you signed these contracts in 2018, the NRA

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1 already had agreements in place that went into 2021, right?

2 A Yes.

3 Q Mr. Makris requested this extension, correct?

4 A Yes.

5 Q And you approved it, correct?

6 A Yes, I did.

7 Q And no business case analysis was prepared for these
8 2018 agreements with Under Wild Skies, correct?

9 A That's correct. I believe so.

10 Q And the NRA paid compensation to Mr. Makris in addition
11 to the sponsorship and advertising agreements, correct?

12 A He was a -- he was an executive with Ackerman McQueen
13 and then he had -- he had an agreement to pay for sponsorship
14 events and costs of taking people on -- on hunts and donors and
15 things like that.

16 Q And so Mr. Makris sent supplemental invoices to NRA
17 several times a year, correct?

18 A Yes, did he.

19 Q And each of these invoices were just shy of \$100,000,
20 correct?

21 A That's what it appears to be now.

22 Q And the NRA paid Mr. Makris approximately \$600,000 a
23 year in connection to these supplemental invoices, right?

24 A That's what I know now.

25 Q And if you could turn to tab 94 in your binder, which

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1 is Plaintiff's Exhibit 2650.

2 MR. CONLEY: These are admitted, I believe.

3 THE COURT: Okay.

4 Q If you could flip a few pages, two through eight, Mr.
5 LaPierre, of this exhibit. My question is, are these some of
6 the supplemental invoices Mr. Makris billed to the NRA?

7 A (Examining). Yes, they are.

8 Q Okay. And on page 3 at the bottom of the invoice is
9 that your signature?

10 A (Examining). Yes, it is.

11 Q And if you look at the remaining --

12 MR. CONLEY: Jesse, could you publish. Yes.

13 Q Again, Mr. Makris, if you look at the bottom of page 4,
14 is that your signature as well?

15 A Yes, it is.

16 Q Okay. And if you flip through five through seven,
17 those are your signatures too, right?

18 A That is correct. Yes.

19 Q Okay. And the NRA believes that these invoices were
20 fraudulent, correct?

21 A Yes. When we started our 360 degree review, we asked
22 Mr. Makris for backup, because these were suppose to have actual
23 expenses backing them up on sponsorship events and -- and real
24 costs that -- that he incurred. And he could not provide -- did
25 not provide us with any backup. And he preemptively sued us,

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1 which ended Under Wild Skies and also this.

2 Q Okay. You have appeared on episodes of Under Wild
3 Skies, correct?

4 A Yes.

5 Q And so has your wife, Susan LaPierre?

6 A Yes.

7 Q And in connection with those episodes, you travel to
8 different places around the world for hunts and safaris,
9 correct?

10 A Yes.

11 Q And in connection with these Under Wild Skies episodes,
12 you've participated in several safaris overseas, yes?

13 A Yes.

14 Q You've gone on a hunting trip in Argentina, correct?

15 A Yes.

16 Q And a safari in South Africa?

17 A Yes.

18 Q And an elephant hunt in Botswana?

19 A Yes.

20 Q Under Wild Skies covered your expenses for all of these
21 hunts, correct?

22 A Yes.

23 Q They covered your airfare with the guides, the permits
24 all of that, right?

25 A Yes.

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1 Q And they also paid for you to preserve hunting trophies
2 for those trips, correct, to send them back to your home in
3 Virginia?

4 A Yes.

5 Q How much free taxidermy did you accept from Under Wild
6 Skies?

7 A They had a practice of sending taxidermy back to people
8 that run the shows, not all of it, but some of it.

9 Q And did you receive any?

10 A Yes.

11 Q And -- Okay. And do you recall what you received?

12 A Various animals, impala, Buffalo, gemsbok, a crocodile,
13 which went immediately to the Bass Pro Wildlife Museum in
14 Springfield. The ivory from the elephant that went into the NRA
15 museum and some other taxidermy that I gave away to people.

16 Q All right.

17 A I wasn't a trophy room guy. Never have been.

18 Q All right. You hired Millie Hallow, correct?

19 A She was originally an intern in our membership division
20 and then I hired her to work for me directly.

21 Q And Ms. Hallow worked directly for you for
22 approximately 25 years, correct?

23 A That sounds about right.

24 Q In the mid 2000s PricewaterhouseCoopers was the NRA's
25 external auditor, correct?

LAS

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1 A Yes.

2 Q PWC was the NRA's external auditor before the NRA
3 retained RSM, is that right?

4 A Yes.

5 Q PWC would audit the NRA's financial statements,
6 correct?

7 A Yes.

8 Q And in the mid 2000 PWC raised concerns about Millie
9 Hallow's expenses, correct?

10 A Yes.

11 Q And in the mid 2000s the NRA's audit committee directed
12 PWC to investigate Millie Hallow's expenses, correct?

13 A Yes, there was an investigation.

14 Q And PWC issued a report, correct?

15 A Yes.

16 Q And PWC interviewed you in its investigation, correct?

17 A They did.

18 Q Did you read the report?

19 A I have never read it.

20 Q Are you familiar with the reports findings?

21 A I talked to our general counsel of the board, Steve
22 Shulman, after it was completed and I said --

23 MS. ROGERS: Objection. Sorry. I'm going to
24 instruct the witness not to testify about what counsel
25 advised him.

LAS

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1 Q As a result of PWC's investigation, the NRA revoked
2 Ms. Hallow's credit card privileges, correct?

3 A I think so.

4 Q And the NRA started having Lisa Supernaugh review
5 Ms. Hallow's expenses, correct?

6 A I believe that's correct.

7 Q Ms. Hallow's credit card privileges were later
8 restored, right?

9 A I believe so.

10 Q And Ms. Hallow was also given a budget for her
11 expenses, correct?

12 A I'm not sure.

13 Q You're not aware of whether Ms. Hallow's was given a
14 budget for her expenses?

15 A No.

16 Q When Gayle Stanford was providing travel services to
17 the NRA, Ms. Hallow would book travel through her, correct?

18 A Yes. I believe.

19 Q And she continued to book travel through Gayle Stanford
20 after the PWC investigation into her expenses, correct?

21 A I think that's true.

22 Q Ms. Hallow spent hundreds of thousands of dollars in
23 NRA funds on black car services in the last ten years, correct?

24 A I know she -- she used those services. I don't know
25 how much she spent. I didn't see the bills.

LAS

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1 Q But sitting here now, you're aware that she spent
2 hundreds of thousands of dollars in NRA funds on black car
3 services, correct?

4 A I now know there were a lot of black car services that
5 she ordered.

6 Q I -- I'm not sure you quite answered my question, Mr.
7 LaPierre. I'll try it one more time. Yes or no, sitting here
8 now are you aware that Ms. Hallow spent hundreds of thousands of
9 dollars of NRA funds on black car services, is that true?

10 A I don't know the amount. I know -- I don't know the
11 amount, but yes, I believe that's true.

12 Q And these expenses were incurred after PWC's
13 investigation, correct?

14 A Yes. PWC investigation was early 2000 sometime, I
15 think.

16 Q Would you agree that a lot of those expenses were --
17 were not prudent or in the best interests of the NRA?

18 A I believe that I did not approve a lot of them, and I'm
19 not sure what they all were. I didn't see the invoices. In
20 fact, I didn't see most of the invoices until I was looking at
21 this booklet the other night, two nights ago.

22 Q So, sitting here today you're not sure one way or the
23 other whether the expenses were prudent or in the best interests
24 of the NRA, is that fair?

25 A I think some of them were and some of them probably

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1 weren't.

2 Q I hate to do this, but could we shift to binder three.

3 A Sure.

4 Q And, Mr. LaPierre, if you could please turn to tab 107,
5 which is Plaintiff's Exhibit 3125.

6 MR. CONLEY: This is not in evidence. And I move
7 for its admission.

8 A I'm sorry. Where are you, counselor?

9 Q It's tab 107.

10 A Okay.

11 MS. ROGERS: No objection.

12 MR. CORRELL: No objection.

13 THE COURT: Okay. PX 3125 is admitted.

14 Q Do you have that in front of you, Mr. LaPierre?

15 A Yes, I do. I'm sorry.

16 Q No. No. It's okay. So this invoice is for black car
17 services, correct?

18 A Yes.

19 Q It's your understanding that the NRA paid this invoice,
20 right?

21 A I believe probably so.

22 Q If you look to -- on the left-hand side, in the middle,
23 next to passenger, do you see the name Ian Walters?

24 A I do.

25 Q And Ian Walters is Millie Hallow's son, correct?

LAS

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1 A Yes.

2 Q And he does not work for the NRA, correct?

3 A That's correct.

4 Q And if you look below the passenger name, pick up and
5 stops, would you agree this invoice reflects a pick up at Penn
6 Station in New York and a drop off in Washington, D.C.?

7 A Yes.

8 Q And this invoice was for \$1,285, correct?

9 A Yes.

10 Q Would you agree that this expenditure was not in the
11 best interest of the NRA?

12 A Yes.

13 Q And would you agree that as the executive vice
14 president you have a responsibility to insurance that Millie
15 Hallow's expenditures are prudent?

16 A Yes, but not if it was done behind my back. I didn't
17 know about it.

18 Q And it's your testimony that this invoice was for black
19 car -- for black car services that were behind your back?

20 A I did not know about this.

21 Q Who did Millie Hallow report to when she was at the
22 NRA?

23 A She reported to me.

24 Q Mr. LaPierre, if you could turn to tab 108, which is
25 Plaintiff's Exhibit 3126.

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1 MR. CONLEY: This is not in evidence. I move for
2 its admission.

3 THE COURT: It looks like a similar invoice.

4 MS. ROGERS: No objection.

5 MR. CORRELL: No objection.

6 THE COURT: It's admitted.

7 Q Mr. LaPierre, you can take a moment to flip through
8 this invoice. My question is, this is an invoice for black car
9 services that Ms. Hallow arranged in France in 2018, correct?

10 A Yes.

11 Q And it's your understanding that the NRA paid this
12 invoice, right?

13 A Yes.

14 Q Several board members were on this trip in France,
15 correct?

16 A Correct.

17 Q Including Carolyn Meadows?

18 A Correct.

19 Q If you turn to page 3, there appear to be confirmation
20 numbers for two cars on August 5th. If you -- The top one shows
21 a start time of 17:00 to 22:00?

22 A Yes.

23 Q Do you see that? And it has a pick up and drop of at
24 the same hotel, do you see that?

25 A Yes, I do.

LAS

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1 Q The charge for that was approximately \$1,100, correct?

2 A Yes.

3 Q And below that is another confirmation number for the
4 same evening with the start time and in time of 5:00 p.m. to
5 11:00 p.m., and it shows a fee of \$1,381, do you see that?

6 A I do.

7 Q And so would you agree that this is for about \$2,500
8 for two SUVs for one evening?

9 A That's what it says, yes. I agree.

10 Q Okay. And if you could turn to page 5. There appear
11 to be charges for the following day, August 6th.

12 A Yes.

13 Q And it shows a pick up at a hotel and then a stop for
14 dinner as directed. Do you see that on the -- at the top?

15 A Yes, I do.

16 Q Okay. And the total for that car was about \$2,000. Do
17 you see that?

18 A Yes, I do.

19 Q Okay. And below that, starting on the same day, it
20 appears to be another confirmation for a second car and for
21 13 hours of time, shows a total about \$3,000. Do you see that?

22 A Yes, I do.

23 Q Okay. And if you could flip to the last page of this
24 exhibit. Well, the second to last page. Sorry. Do you see
25 that the last confirmation is August 19th is the date,

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1 August 19th, 2018. Do you see that?

2 A (Examining). Yes, I do.

3 Q Okay. And at the bottom you see total cost of trips,
4 and to the right it shows \$98,695.85?

5 A Yes, I see it.

6 Q Okay. And so would you agree that over approximately a
7 two week period for two chauffeur SUVs the NRA paid
8 approximately \$100,000?

9 A Yes, they did.

10 Q Did you authorize this expense?

11 A No, I did not.

12 Q Did Ms. Hallow arrange this trip?

13 A Yes, she did. It was -- May I explain?

14 Q You can certainly explain with your counsel. I was
15 just asking a yes or no question. Thank you, Mr. LaPierre.

16 All right. In 2012 Ms. Hallow had the NRA pay the
17 expenses for her son's wedding, correct?

18 A I know that now.

19 Q And you were told in 2018 that Ms. Hallow had done
20 this, correct?

21 A I was told by Tony Makris and Josh Powell. And they
22 talked something about Millie's wedding and an expense that the
23 NRA paid. And I immediately went to Millie and I asked her
24 about it. She said that's completely untrue. She said that
25 this guy, Erickson, would never be at the wedding. And I

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1 believed her for a time, until six months later it came up in
2 the media, a story about it. And then I asked lawyers to do an
3 investigation, and turned it over to them, and it turned out to
4 be true.

5 MS. ROGERS: Mr. LaPierre, don't testify about what
6 the lawyers told you.

7 Q And so Ms. Hallow had lied to you, correct?

8 A Yes.

9 Q Now, back in 2018, when Mr. Makris and Mr. Powell
10 raised this with you, you didn't ask anyone for back up
11 documentation to verify that was true, did you?

12 A They didn't have any, and I know that neither one of
13 them liked Millie and Millie didn't like them. I thought there
14 was a grudge between the three of them.

15 Q At that time did you inquire with anyone else at the
16 NRA to verify whether that was true or not?

17 A No. I trusted -- I trusted Millie to tell you the
18 truth.

19 Q When you discovered that Ms. Hallow had lied to you,
20 you didn't confront her with the information, did you?

21 A Yes, I did. I turned it over to the lawyers and --

22 MS. ROGERS: Mr. LaPierre, please don't testify
23 about the lawyers. Sorry.

24 THE COURT: That part is not privileged.

25 A I requested an investigation.

LAS

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1 Q But my question was, when you discovered that
2 Ms. Hallow had lied to you, you didn't confront Ms. Hallow
3 directly with that information, right?

4 A Yes. I was really upset with it, and I requested an
5 investigation of the whole matter.

6 Q I don't think -- I might be misunderstanding your
7 answer. I don't think you're answering my question. There was
8 a point in time when you learned that Ms. Hallow had lied to
9 you, right?

10 A I read in the papers that there was some South Dakota
11 company that I never heard of. Some guy name Erickson that had
12 been paid some money and the wedding, and I'm like I was
13 screaming bloody murder about it, not only to Millie, but to
14 everyone else, and I wanted an investigation.

15 Q When you learned that she had lied, did you approach
16 and actually talk about it with her? Did you ask her for any
17 information?

18 A Again, I requested an internal investigation of the
19 whole thing with the attorneys and let them handle it.

20 THE COURT: Counsel, we're going to take our
21 afternoon break now. I have to take care of something as
22 well. So, we'll take a short break.

23 THE COURT OFFICER: All rise. Jury exiting.

24 (Whereupon the jury panel departed the courtroom.)

25 THE COURT: All right. So, I take it we'll shift

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1 over now to the deposition. I'm just going to describe it
2 as just a, you know, scheduling thing. And we're going to
3 continue the testimony on Monday. And the deposition will
4 commence at that point.

5 And in terms of -- This is the Spray deposition
6 you're going to play excerpts from. You're going to do the
7 deposition one, which the objections have already been
8 adjudicated?

9 MS. CONNELL: Yes, your Honor.

10 THE COURT: Okay. See you soon.

11 MR. CORRELL: Thank you, your Honor.

12 (Witness excused.)

13 (Whereupon a recess was taken.)

14 THE COURT: Before we get the jury, I found a
15 scoundrel in the black robe that I looked at and resembles a
16 striking resemblance to me, which is why I remembered the
17 issue a few years ago in a case between the Attorney General
18 and Domino's Pizza. I addressed the admissibility of
19 investigative transcripts. And the part I remember was that
20 I ruled that it would be unfair to admit franchisee
21 deposition transcripts that had not -- that Domino's had not
22 been allowed to participate in and where there was no
23 writing and signing. But in the same decision I said that
24 those transcripts could be used against the party, because
25 the party is able to respond and tell its own story.

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1 So in this situation, for example, if used for
2 impeachment, whatever might have happened at the
3 investigation transcript, Mr. LaPierre could present his
4 side of the story. I didn't say that. Or if I had seen
5 the transcript, I would have changed it. So, anyway, and --
6 and CPLR 4514 simply requires that the prior statement be
7 under oath to be usable as impeachment. So, I think I
8 remembered the, I guess I could say, I remembered the tune
9 of the song but I got the lyrics wrong.

10 So I think that, you know, having thought about it
11 and looked back at my prior ruling, they can use a party's
12 own investigative transcript for impeachment purposes and
13 the party can -- is not disadvantaged in responding to that.
14 And so I think that's the way I will proceed.

15 I do think I would follow my prior ruling about not
16 using it against a different entity, because that party had
17 no ability to be there. This particular testimony really
18 only related to Mr. LaPierre. I don't think it related to
19 the other parties.

20 MS. CONNELL: And the NRA, your Honor.

21 MR. CORRELL: Your Honor, could we have -- Sorry.
22 Your Honor, could we have a limiting instruction that he was
23 not allowed to object or cross examine at the time, was not
24 allowed to --

25 THE COURT: No, because it's a different question.

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1 You know, when presented with that, he can say well, I don't
2 remember saying that or I was never given the transcript to
3 sign or whatever and, you know, but it was just being used
4 to show an inconsistent statement and it's under oath. So
5 that's the way I think that works.

6 My decision wasn't appealed, so I don't know
7 whether other judges would have a different view. But
8 having thought about it, I think I would come out the same
9 way.

10 All right. Jury ready?

11 THE COURT OFFICER: Yes.

12 MS. CONNELL: Your Honor, we forgot the instruction
13 to Mr. LaPierre about discussing his testimony. I'm sure
14 counsel will relay that.

15 THE COURT: Well, I told him that before the lunch
16 break and he's heard it ten or 12 times.

17 MS. CONNELL: I'm not asking that he be called
18 back, your Honor. I was just raising the issue.

19 THE COURT: Okay.

20 MR. CORRELL: He's well aware of that instruction.
21 He's mindful of it.

22 THE COURT: All right. Do you have a sense for how
23 much longer the direct will be?

24 MS. CONNELL: I don't, your Honor, but I can e-mail
25 the parties.

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1 THE COURT: We're deep into binder three at this
2 point.

3 MS. CONNELL: I'm hoping it's not very much longer.
4 I don't anticipate it being very much longer. Mr. Conley
5 made a concerted effort to move quickly.

6 THE COURT: All right. Look, my hope is not to
7 spread the testimony into three days, and to try to use a
8 similar amount of time on Monday to try to finish this, if
9 possible. Obviously he's an important witness, so we'll
10 take the time we need.

11 MS. CONNELL: No, your Honor. We don't anticipate
12 taking anything like the amount of time today. It should
13 be, you know, much less. But we will let you know.

14 THE COURT: We do have other people who are going
15 to ask questions potentially.

16 MS. CONNELL: Of course. No, I'm just letting you
17 know plaintiff's position.

18 One final issue on Mr. Spray.

19 THE COURT: On that note. I mean, one thing, this
20 is going to be up to Mr. LaPierre's counsel, you know, to --
21 to preserve or shift the burden around a little bit. He can
22 obviously defer some of the questioning now till the
23 defendants' case, but that's a tactical decision. I'm not
24 going to tell him what to do. All right. Anything else?

25 MS. CONNELL: Your Honor, there was that one aspect

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1 or one small portion of Mr. Spray's testimony that your
2 Honor had an unresolved hearsay question about. It
3 pertained to --

4 THE COURT: Probably not going to get to that today
5 though, right?

6 MS. CONNELL: I don't think so, but I wanted to
7 highlight it. It's a very small portion.

8 THE COURT: So, do you have clear evidence that
9 when he says, I later found out, I forgot what the exact
10 words were, I discovered, I don't remember what words he
11 used, but it was something that made it sound like to me I
12 would ask a follow-up question, well, who told you that.

13 MS. CONNELL: So, yes, your Honor. The testimony
14 and the document, the exhibit that was discussed there
15 showed that he asked his staff to say who is getting first
16 class air travel. And they came back and said well, at
17 least here's some of the people. He said, this is a total
18 breakdown, not acceptable.

19 THE COURT: Well, that's the part -- And I know
20 there is a hearsay within hearsay there, right. In other
21 words, he doesn't identify who it was. So, you know, maybe
22 you could say if he said, Well, Sonya Rowling told me and
23 you can go and talk to Sonya Rowling about it. But it's
24 sort of a general statement where there is no way to cross
25 examine or determine the credibility of where he got the

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1 information from.

2 MS. CONNELL: I don't agree, your Honor. I think
3 both the exhibit and his testimony made clear which NRA
4 staff member he -- staff members he was speaking to. And
5 then you can see who exchanged -- who was in the e-mail
6 exchange.

7 THE COURT: Well, I'll take another look at it.
8 Look, you also had a whole deposition in this case to probe
9 that, you know, is it still happening now argument or idea
10 and for whatever reason didn't. So, I was a little
11 uncomfortable with it. I'll take another look at it. But
12 there is no otherwise admissible document, internal business
13 records sort of saying here's an investigation we did. We
14 found that this was actually going on. Contemporaneous
15 documents saying -- You know, if you have -- if you have
16 other admissible evidence to show exactly who or how it was
17 discovered, that would be a different question.

18 MS. CONNELL: Your Honor, the portion of his
19 testimony that we're talking about, he indicates that they
20 looked at the travel records as to who had flown first
21 class. They gathered the names of people who had flown
22 first class.

23 THE COURT: Right. But do you have that evidence
24 now?

25 MS. CONNELL: Included in the e-mail we have it.

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1 We don't have -- As you know, it's something we raised over
2 and over again. We don't have like reports from internal
3 investigations or other investigations.

4 THE COURT: I'm talking about contemporaneous
5 business records showing continued use of whether it's
6 private or first class.

7 MS. CONNELL: You mean the first class flights he
8 was complaining about in that portion of his testimony?

9 THE COURT: Correct.

10 MS. CONNELL: We may have that.

11 MS. ROGERS: In fact, there are Form 990
12 disclosures that explain which persons were looked at and
13 what the findings were.

14 THE COURT: Well, so then what's the objection
15 to --

16 MS. CONNELL: Right.

17 MS. ROGERS: Well, we don't have an objection to
18 the Form 990. Hearsay within hearsay in a deposition is a
19 different matter.

20 THE COURT: Okay. All right. Look, I'll make a
21 final call on it before you're ready to use it. It's just a
22 portion of that portion. So it's just -- it was the part
23 that concerned me was the back and forth where he just said
24 -- essentially somebody told me it's still going on. And
25 given that that's, you know, seemed to me potentially one of

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1 the substantive uses you were intending to make of that
2 testimony, I saw some potential.

3 MS. ROGERS: Your Honor, I just wanted to note one
4 more thing quickly. Underscoring the hearsay problem, if
5 you look at the Form 990, what you'll discover is that what
6 someone told him turned out not to be entirely true and the
7 990 says oops, it turns out this guy paid for his own
8 upgrades essentially.

9 THE COURT: Well, I'm less concerned -- Well, the
10 990 is fine. But the underlying documents, if they have
11 them, if they are in the record and they want to use those
12 actual documents to show what was still going on in 2021 I
13 think it was --

14 MS. CONNELL: Yes, your Honor. That was -- Yes,
15 your Honor. He was deposed in 2021. He was still treasurer
16 of the NRA at that time technically.

17 THE COURT: I'm saying you have discovery from that
18 period. So if the underlying evidence --

19 MS. CONNELL: Yes.

20 THE COURT: -- upon which he was relying, then why
21 not just use that direct evidence rather than his secondhand
22 summarization of it?

23 MS. CONNELL: I think the point that we were
24 concerned with is that he as treasurer was saying we're not
25 having -- whether it's 20 people or these five people, that

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1 we can't have this continue. There should not be verbal
2 approvals.

3 THE COURT: You're admitting it essentially for the
4 truth of that these people were doing it. And it's
5 troubling. If the only evidence you have of that is him,
6 and sort of language that I found at least to suggest that
7 it may not have been firsthand knowledge, then that's all
8 you're asking. You're asking the jury to -- to take his
9 statement in that transcript for the truth of the matter
10 asserted. I'm not sure how you get there.

11 MS. CONNELL: Your Honor, now I think I understand
12 the Court's concern. I think I can address it more
13 pointedly. I think the 990 helps us. But I can summarize
14 it very shortly for you. I think we can make it admissible.

15 THE COURT: Okay.

16 MS. CONNELL: Thank you.

17 THE COURT: All right. How long is the first
18 transcript, the deposition of Spray? How long is that? How
19 long?

20 THE TECHNICIAN: Seven minutes for the first one.
21 One hour and 23 minutes for the second one.

22 MR. SHIFFMAN: The one that we're talking about
23 with the issue is the third, that's a short one.

24 MS. CONNELL: The second one, the longer one is --
25 it's largely audio with picture with documents. It was very

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1 document intensive and that's how it has to be displayed.

2 THE COURT: Okay. Let's get the jury.

3 THE COURT OFFICER: All rise. Jury entering.

4 (Whereupon the jury panel entered the courtroom.)

5 THE COURT: Okay. Have a seat, please. So for
6 scheduling and logistics reasons we're going to do a short
7 shift here. We're going to shift to a deposition transcript
8 of the State's next witness. And Mr. LaPierre is going to
9 resume on the stand on Monday morning.

10 So, who is the next witness, Ms. Connell?

11 MS. CONNELL: The NRA former CFO and treasurer,
12 Craig Spray.

13 THE COURT: This is a witness who is not available
14 to be here. And in those circumstances the testimony that
15 was, as you'll hear under oath, is admissible as if he was
16 here. So, I believe there is -- there is a short clip from
17 his first day and then a longer clip of about an hour of his
18 second day. All right.

19 (Whereupon the video is being played.)

20 MR. FLEMING: Your Honor, I'm so sorry. Can we
21 approach?

22 THE COURT: Okay.

23 (Whereupon the following proceedings were held at a
24 side bar conference.)

25 THE COURT: What's the issue?

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1 MR. FLEMING: So this may be my mistake. This is
2 not the first day of Mr. Spray's deposition. This is the
3 investigative interview. I had thought we were talking
4 about not being part of this, but maybe I misunderstood.

5 MR. SHIFFMAN: It's only his background information,
6 and all parties agreed to put it in.

7 THE COURT: So this is nothing substantive other
8 than just the background?

9 MS. CONNELL: Just the background.

10 MR. FARBER: I agreed to that.

11 MR. SHIFFMAN: There was no objection to it I
12 thought. There is similar testimony from his other excerpt
13 that was videotaped. Because this was videotaped, we didn't
14 receive any objection.

15 MS. CONNELL: It was circulated for some time.

16 THE COURT: If it was more substantive.

17 MR. FLEMING: Understood. I apologize.

18 THE COURT: No problem.

19 (Whereupon the following proceedings were held in
20 open court.)

21 THE COURT: The first portion you're going to hear
22 is from a deposition during the investigation, which
23 ordinarily is not what you would hear, but it's going to be
24 some background information about his education and the
25 like. So, while there might be some objection to other

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1 things coming out of that deposition, I think the parties
2 all agree now that just the background is pretty plain
3 manila and worth doing on video. The second day is really
4 going to be audio and a transcript. So, they thought they
5 you should get to see it.

6 So, if you can queue it back up and continue.

7 (Whereupon the video is being played.)

8 THE COURT: All right. That's the end of that
9 transcript. Now we're going to move on to the deposition,
10 right?

11 MS. CONNELL: Yes, your Honor.

12 THE COURT: We're not going to probably finish this
13 whole thing. We'll get close.

14 MS. CONNELL: Thank you, your Honor.

15 (Whereupon the video is being played.)

16 MR. FARBER: Judge, could we be heard?

17 THE COURT: I'm sorry?

18 MR. FARBER: Could we approach at side bar?

19 THE COURT: Aren't all these objections, weren't
20 they all presented to me? Hasn't this all been resolved?

21 MR. FARBER: It appears that there may be some
22 material, which you sustained an objection that is being
23 played it appears.

24 THE COURT: Okay. Well, I don't know if we need a
25 conference for that. We just need to figure out if that's

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1 true. So --

2 MR. FARBER: Agreed.

3 THE COURT: -- why don't we take, I guess, a short
4 break. We don't have to let everybody scatter, because that
5 will take forever to get us back. Can you all go off
6 somewhere and show them what you think I sustained that they
7 are playing and see if we can fix it? Well, let me not ask
8 that as a question. We're going to go off the record.
9 You're going to go talk about it and come back and tell me
10 if we need to change anything, okay.

11 MS. CONNELL: Yes, your Honor.

12 THE COURT: So, you don't need me for this, because
13 I've already given you my rulings. See you soon.

14 THE COURT OFFICER: All rise. Jury exiting.

15 THE COURT: The jury is not exiting unless they
16 really have to. We're better off just sheltering in place.

17 (Whereupon a discussion off the record between the
18 attorneys was held outside of the courtroom.)

19 THE COURT: They're coming in one at a time. I
20 don't know if that's a good or bad sign. You know what,
21 tell them to come on in. I think it's executive decision
22 time.

23 So, counsel, I think it's executive decision time.
24 It's 4:27 on a Friday afternoon. Whatever you come up with,
25 we're going to have at most five or ten minutes of time.

LAS

PROCEEDINGS

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1 So, I'm going to call it for the week, and you can work this
2 out for Monday morning. For Monday. You know, I assume you
3 haven't figured it all out yet, have you?

4 MS. CONNELL: Actually, I think, your Honor, we
5 have. And I think -- But we can leave it until Monday
6 morning.

7 THE COURT: Well, I mean --

8 MR. FARBER: Your Honor, I think there is just an
9 instruction that we ask that you give and then we can break
10 at that point.

11 MS. CONNELL: Your Honor, there was a question and
12 an answer that your Honor ruled on and excluded, but then
13 there is a continued answer that was left in, and I think
14 that lead us to some confusion. So, in fact, we did play a
15 question and part of an answer that should have been
16 excluded. We agreed there was an error in that. The jury
17 should be instructed. But there was another continued
18 answer to that question that was not excluded. That's where
19 the confusion lies.

20 THE COURT: Well, that may have been either you may
21 have misread -- I don't know why I would have left part of
22 an answer in.

23 MS. CONNELL: Maybe this is best left for Monday
24 morning.

25 MR. FARBER: Would you like us to show you the

LAS

PROCEEDINGS

2310

1 transcript that's at issue?

2 THE COURT: Not particularly. I mean, I will
3 ultimately before I give the instruction. That's why I
4 don't think we can sort of do this on the fly, because I
5 have to understand exactly what it is. It may be that I --
6 I intended to keep more of it out and it just wasn't clear.
7 So, having gotten the juror's hopes up to leave, I'm not
8 going to dash them at this point.

9 So why don't you send me a short note at some point
10 between now and Monday with exactly what you think I should
11 do. Where you think we should go. And then it's probably
12 going to be in the afternoon on Monday when we're actually
13 going to be affecting this, because we're going to go back
14 to Mr. LaPierre first thing on Monday.

15 MS. CONNELL: That's right.

16 THE COURT: So --

17 MR. FARBER: Could I suggest, your Honor, we excuse
18 the jury and maybe very briefly just explain to your Honor.

19 THE COURT: Good idea. Folks, I'm going to dismiss
20 you when we all talk about this. Please have a good weekend
21 and remember the instructions. Don't talk about the case.
22 Don't research it. Just relax and go on with your lives and
23 I'll see you Monday at 9:30.

24 THE COURT OFFICER: All rise. Jury exiting.

25 (Whereupon the jury panel departed the courtroom.)

LAS

PROCEEDINGS

2311

1 THE COURT: So now the court staff will be mad at
2 me.

3 MR. FARBER: I think we can just show your Honor
4 this one page and I think that may --

5 MS. CONNELL: Can we share it on the screen in some
6 fashion?

7 THE COURT: Do you have this available on the
8 screen?

9 MR. FARBER: I have a hard copy.

10 THE COURT: What I would need to understand is what
11 we sent you with my notes in the margin.

12 MS. CONNELL: That's what we have, your Honor. We
13 have what Mr. Blaustein returned to us with your rulings in
14 it. We have it electronically. Mr. Farber has it in hard
15 copy. And we have no objection to you seeing it.

16 THE COURT: Why don't we go off the record for a
17 second so you can give me this and I can take a look at it.

18 (Whereupon a discussion off the record was held.)

19 THE COURT: All right. I do remember this now. I
20 did intentionally sustain the objection only as to lines
21 nine to 13. As I now look at it, it really doesn't make
22 sense to break it down that way. And the rest of the answer
23 should go too, because it's all part of the same answer to
24 the same question. The most overtly hearsay part of it was
25 in the nine to 13, but it really doesn't make sense for them

LAS

PROCEEDINGS

2312

1 to hear the remainder of that. So, the question I suppose
2 is this is already coming on, right? They have already
3 played this?

4 MR. FARBER: Unfortunately, yes. So they need an
5 instruction.

6 THE COURT: Look, and I might as well put this on
7 the record, the -- the bit I was concerned about was really
8 the questions. The objection was a little strange in that
9 it comes into the answer to the previous question and then a
10 carryover. So, the question was, "Were you aware that the
11 NRA was making payments to a company affiliated with
12 Mr. Phillips' significant other?" And the answer was, "I
13 became aware of that." That's the hearsay. It also is an
14 embedded assumption in the question.

15 And so I -- I thought his testimony on that was --
16 was purely hearsay, what somebody told him. And then he
17 goes on. "I became aware of payments to an individual. I
18 wasn't aware certainly about any relationship." So, you
19 know, the question is what's the best way to deal with this.
20 Frankly, the jury has heard this story from so many
21 different witnesses. It's not as if there was some
22 bombshell in this section. But to the extent that it gave
23 the impression that or he testified as to the truth of the
24 matter asserted in the question, that is hearsay. So, he's
25 not an independent witness of that.

LAS

PROCEEDINGS

2313

1 So, I'm open to how best to deal with it. I think
2 it almost might end up being -- Well, look, I can describe
3 it and say there was a back and forth where he says he
4 became aware of something, of a transaction involving
5 Mr. Phillips, and that whole answer you should just
6 disregard.

7 MR. FARBER: Your Honor, what I would ask is that
8 the jury be instructed that there was a question played from
9 a deposition where the witness was asked whether he was
10 aware that the NRA was making payments to a company
11 affiliated with Mr. Phillips' significant other. That
12 question and answer -- and the answers should not have been
13 played and it should be disregarded.

14 THE COURT: Right. Look, I will also say, to take
15 both sides off the hook, that it was sort of my notes to it
16 that lead to the confusion. So, I think, because I did
17 not -- As it was written here, I'll throw it back at you a
18 little bit, the indication of what was being objected to end
19 at line 13 and then it doesn't seem to be an objection to
20 lines 14 going forward for whatever reason. But, in any
21 event, I should have been clearer that what I was meaning to
22 exclude when I said sustained as to lines 13 and 14, is to
23 make it clearer that lines seven and eight, which were the
24 answer to the prior question, I was not getting rid of that,
25 'cause that doesn't make any sense, right. So, the prior

LAS

PROCEEDINGS

2314

1 question was, "How much did he provide you with information
2 worth paying for?" Then the answer was, "Again, from a
3 finance perspective we had very little interaction in 2019."
4 The objection to that didn't strike me as being meritorious.
5 But the same objection applied to the next question, if you
6 know what I mean. So, I wasn't intending to impact the rest
7 of that answer, but I probably should have.

8 So, look, I'm open to -- to that. My guess is they
9 won't even remember it when I go back to it. The important
10 thing is is that if they ask, if they do remember it, and
11 I'll give the instruction that you're describing, if and
12 when they ask for the relevant transcript to go back to the
13 jury room, that part won't be in it.

14 MR. FARBER: And what your Honor is saying now is
15 that you're taking out nine through --

16 THE COURT: Twenty-three.

17 MR. FARBER: -- nine through 23.

18 THE COURT: Right, because it doesn't make sense
19 to -- to sustain an objection to a question and only part of
20 the answer and then have an answer coming in with no
21 question.

22 MR. FARBER: Agreed. Thank you, your Honor.

23 THE COURT: If you look at it from my perspective,
24 there was no objection at least indicated to the rest of the
25 answer. Only to part of the answer. I don't really

LAS

PROCEEDINGS

2315

1 understand why. But I didn't spend a lot of time thinking
2 through your objections. I mean, why you were objecting to
3 some things and not others. Anyway, but I think it's fine
4 to clean it up. I can do it essentially the way you
5 described it. And we can move on from there.

6 MR. FARBER: Thank you, your Honor.

7 THE COURT: Which is why live witnesses are better.

8 MS. CONNELL: We prefer them, your Honor.

9 Mr. Spray would come here, we prefer that.

10 THE COURT: Thank you all. It's been another hard
11 week I know. We should be getting down to where the math
12 around how much time you all have left is starting to become
13 clearer so that, you know, especially, you know, the
14 plaintiff, once they are done with their case, you tend to
15 have a clearer view of how much time you have for cross.
16 And to some extent it's easier for the defendants because
17 they also know how much time they have for direct. So, they
18 can reserve some time for redirect but, you know, it seems
19 like we're in a pretty predictable, except for today, of
20 about four hours a day. So, build in some uncertainty to
21 protect yourself and, you know, don't leave anything until
22 the very end, you know, if you really need it. Anything
23 else?

24 MS. CONNELL: Not from plaintiff. Thank you, your
25 Honor.

LAS

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MR. FARBER: Thank you, your Honor. No.

MS. ROGERS: Thank you.

THE COURT: All right. See you on Monday.

(Whereupon the trial was adjourned to January 29,
2024 at 9:30 a.m.)

LAS

2317

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

-----X
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against-

INDEX NO.
451625/20

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

Defendants.

JURY TRIAL
60 Centre Street
New York, New York
January 29, 2024

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

APPEARANCES:

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2318

Proceedings

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THE COURT: Just to briefly summarize what was off the record, we were talking about Mr. Spray's deposition testimony and the State had asked whether if they decide not to play the portion that had been objected on hearsay grounds with respect to his testimony that he found out -- although it is not entirely clear from the testimony from whom or how -- that certain charges were continuing to occur after the corrected measures were in place, would I have any other parts that I would be sustaining the objection to and the answer is no. That was the only portion that I had considered to. If you're going to take that out, we don't need to get into any further cutting.

MS. CONNELL: Thank you, your Honor.

THE COURT: I do want to -- you know, on the summary evidence letters, maybe I should have them; but everybody is referring to the actual exhibits. I don't see them on NYSCEF. Just so you all know, I look at NYSCEF, not e-mail. So, I don't know whether you're sending things in. I keep my focus on the public record for the most part.

Do I have copies of the proposed exhibits somewhere?

MS. CONNELL: Your Honor, I thought we had filed a notice on NYSCEF, but I will double check and make sure they're filed today.

BP

2319

Proceedings

1 THE COURT: So you might have filed it in an
2 original notice. The two letters that went back and forth
3 did not attach.

4 MS. CONNELL: Right, I don't believe they did, and
5 I think we sent notices to the defendant; but I'll make sure
6 it is filed on NYSCEF.

7 THE COURT: When you sent notices to the
8 defendants, you posted those on NYSCEF?

9 MS. CONNELL: I would have to double check. I
10 don't want to make a representation --

11 THE COURT: All right, I have a pretty good sense
12 from the letters, and I want to get to Mr. LaPierre and the
13 jury; but I do want to make sure I have the actual summary
14 exhibits that you're intending to use, but we'll talk about
15 that at a break when -- so, why don't we get to the jury,
16 then.

17 COURT OFFICER: Your Honor, do you want the witness
18 up?

19 THE COURT: Yes, thank you. What I would do
20 without you. I would have no witness is what I would do
21 without you.

22

23 (Continued on next page)

24

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BP

2320

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 (Whereupon, at this time the witness,
2 WAYNE LaPIERRE, having been previously duly sworn/affirmed
3 by the Clerk of the Court, resumed the witness stand and
4 testified as follows:)

5 MR. CONLEY: Your Honor, we took the binders back
6 and tried to consolidate everything into one binder that
7 will be used today and that should be -- yes.

8 THE COURT: So you changed the tab numbers?

9 MR. CONLEY: No.

10 COURT OFFICER: Court ready to receive the jury,
11 your Honor.

12 All rise, jury entering.

13 (Whereupon, at this time the jury then entered the
14 courtroom.)

15 THE COURT: Good morning, everyone. Welcome back.
16 Please have a seat. So, we're going to continue with
17 Mr. LaPierre's testimony.

18 Sir, do you recognize you're still under oath?

19 THE WITNESS: Yes, sir, your Honor.

20 THE COURT: Okay, Mr. Conley, you may continue.

21 MR. CONLEY: Thank you your Honor.

22 DIRECT EXAMINATION

23 BY MR. CONLEY:

24 Q Good morning, Mr. LaPierre.

25 A Good morning, counselor. Counselor, may I correct --

BP

2321

W. LaPierre - Plaintiff - Direct/Mr. Conley

1 thinking about one answer I gave last Friday?

2 THE COURT: Mr. LaPierre, you were saying?

3 A Counselor, I was just asking may I correct one answer
4 that I gave last Friday in thinking about it?

5 Q Yes.

6 A You asked me if Mary Mallus had ever worked for PM, and
7 I said no, she worked for Carlyle Group. In thinking about it,
8 I don't know anything about her employment background other than
9 I know she worked for the Carlyle Group.

10 Q Okay. Thank you, Mr. LaPierre.

11 Last Friday, I asked you a few questions about a
12 post-employment agreement that the NRA entered into with Woody
13 Phillips? Do you recall that?

14 A Yes, I do.

15 Q And when I asked you if Mr. Phillips had provided any
16 consulting services to the NRA after he retired, you testified
17 he'd worked with donors in terms of keeping up relations in
18 Texas.

19 Do you recall that testimony?

20 A Yes, I did.

21 Q Do you recall giving sworn testimony in 2020 during the
22 Attorney General's investigation of the NRA?

23 A I do.

24 Q And you took an oath to tell the truth in that
25 examination?

BP

2322

W. LaPierre - Plaintiff - Direct/Mr. Conley

1 A I did.

2 MR. CONLEY: Jesse, if you could please play page
3 153 lines 4-14.

4 Q Mr. LaPierre, do you see a transcript question:

5 "All right, do you know whether or not Mr. Phillips
6 provided consulting services to the NRA pursuant to this
7 contract?"

8 Do you see that?

9 A Yes, I do.

10 Q You responded "I -- I know that Woody -- I was not
11 aware of this, but I know that Woody stayed in touch with --
12 well, what is the date of this contract?" "December 31, 2018."

13 "QUESTION: As of December 31st, but was signed
14 much earlier.

15 "ANSWER: I do not know after December 31, 2018,
16 whether he did or whether he didn't.

17 A Yes.

18 Q And, Mr. LaPierre, last Friday I asked you a few
19 questions about Millie Hallow. Do you recall that?

20 A I do.

21 Q In November of 2020, the NRA reported in its Form 990
22 that Millie Hallow diverted approximately \$41,000 from the NRA;
23 is that right?

24 A I believe that's correct.

25 Q She took this money without the NRA's permission;

BP

2323

W. LaPierre - Plaintiff - Direct/Mr. Conley

1 correct?

2 A Yes.

3 Q She stole it; right?

4 A Yes.

5 Q Part of the \$41,000 that Ms. Hallow repaid the NRA were
6 expenses for her son's wedding; is that accurate?

7 A Yes.

8 Q Those weren't the only expenses; correct?

9 A Those were the ones that I was aware of, unless there
10 was something involving the -- the Russia trip that she worked
11 on that I was not aware of.

12 Q Ms. Hallow remained an employee at the NRA until 2023;
13 is that right?

14 A Yes, that's correct.

15 Q Up until Ms. Hallow left the NRA, she had the same job
16 title; correct?

17 A She did, although it was being looked at by the lawyers
18 and the investigation, was being looked at.

19 Q And she had the same salary?

20 A Yes.

21 Q What was her salary?

22 A I think it was 250 or something like that.

23 Q When you learned that Ms. Hallow diverted money from
24 the NRA, you believe that if she paid the money back, no
25 disciplinary action was necessary; correct?

BP

2324

W. LaPierre - Plaintiff - Direct/Mr. Conley

1 A She paid the money back. It was already with lawyers
2 and the investigators. Her lawyers believed what she had
3 cancer, she had breast cancer, she had leukemia; and she thought
4 she might attempt to pay it back earlier and it got hung up with
5 the lawyers and eventually she was let go.

6 Q But back in 2020 when you learned that Ms. Hallow
7 diverted money from the NRA; you believed that if she paid that
8 money back, no disciplinary action was necessary; is that
9 accurate?

10 A Not necessarily. It was -- it was with the lawyers at
11 that point, and she did -- she didn't come into the office
12 anymore. At some point, I decided that she wasn't worth what
13 she was being paid in terms of services even if she had come
14 back and I let her go.

15 Q Mr. LaPierre, do you remember being deposed in the NRA
16 bankruptcy proceeding?

17 A Yes, I do.

18 Q And you took an oath to tell the truth in that
19 deposition; is that right?

20 A Yes, I did.

21 Q And you tried to tell the truth?

22 A Yes.

23 MR. CONLEY: Jesse, could you please pull up
24 Mr. LaPierre's bankruptcy deposition, page 206, line 7 to
25 23.

BP

2325

W. LaPierre - Plaintiff - Direct/Mr. Conley

1 (Displayed)

2 Q So, if you see the question here, Mr. LaPierre, at line
3 7:

4 "So you never went -- did you ever go back to
5 Millie and say that you lied to me about whether you spent
6 the NRA money on your son's wedding?"

7 You responded: "ANSWER: You know, she since then
8 has been coping with, as I said, recovering for a second
9 time from cancer. Her husband's been terribly sick and has
10 passed away, and I didn't go back and beat her up on that.
11 I let -- I let the fact that we told her you're either going
12 to pay this back or you're going to be fired, and she agreed
13 to pay it back. I mean, I thought that sent the message
14 enough."

15 A Yes, that's true.

16 Q And 2020, you discussed this issue with the NRA board
17 officers at the time; is that right?

18 A Yes.

19 Q And at the time that was Ms. Meadows, Mr. Cotton and
20 Mr. Lee?

21 A Yes.

22 Q At the time they agreed that repaying the money was
23 sufficient for Ms. Hallow; is that right?

24 A Yes, but they were -- it was still being looked at.

25 Q Mr. LaPierre, you're aware that the NRA has paid a

BP

2326

W. LaPierre - Plaintiff - Direct/Mr. Conley

1 vendor for helicopter services for several years; correct?

2 A Yes.

3 Q And you authorized this?

4 A Yes.

5 Q And these helicopters would transfer you and other NRA
6 executives and board members to and from Nascar races; is that
7 right?

8 A Yes.

9 Q To avoid getting stuck in traffic, correct?

10 A Yes.

11 MR. CONLEY: I'd like to introduce what is Tab 130
12 and in your binder, which is Plaintiff's Exhibit 754.

13 And this has not been admitted. I would move for
14 its admission.

15 MS. ROGERS: Subject to foundation, no objection.

16 THE COURT: This one where there's a foundation
17 from the vendor or you're going to lay the foundation with
18 this witness?

19 MR. CONLEY: I will attempt to lay the foundation
20 with this witness, your Honor.

21 THE COURT: Okay.

22 Q Mr. LaPierre, you said that you were aware that the NRA
23 had engaged a vendor for helicopter services; is that right?

24 A Yes, yes. I wasn't sure whether we were paying for it
25 or Speedway Motor Sport.

BP

2327

W. LaPierre - Plaintiff - Direct/Mr. Conley

1 Q Are you familiar with the vendor, Henry Aviation?

2 A Yes, I am.

3 Q And you're aware that Henry Aviation has provided
4 services to the NRA?

5 A Yes.

6 Q And Lisa Supernaugh, you're familiar with her; correct?

7 A Yes.

8 Q She has worked -- she worked in the treasurer's office
9 for several years?

10 A That's correct.

11 Q And was Woody Phillips' assistant for several years?

12 A Yes.

13 Q And Ms. Supernaugh would often handle vendor invoices
14 for processing purposes; correct?

15 A Yes.

16 MR. CONLEY: Your Honor, I move for admission.

17 THE COURT: Well, I don't know how that has
18 furthered the foundation for this particular piece of paper,
19 though. I mean, somebody has to be able to describe what it
20 is; and do you want to see if he recognizes it or something
21 that he's seen in the NRA files or something like that?

22 Q Mr. LaPierre, do you recognize the exhibit, Plaintiff's
23 Exhibit 754 at Tab 130?

24 A Yes, I do.

25 Q And what do you recognize it to be?

BP

2328

W. LaPierre - Plaintiff - Direct/Mr. Conley

1 A It is a --

2 THE COURT: Well, just to be clear, the question is
3 do you recognize it from the business, from your work, not
4 from just preparing for today.

5 THE WITNESS: Yes, your Honor. It is a -- it is an
6 invoice for transportation, helicopter transportation to
7 Texas Motor Speedway.

8 THE COURT: I'll admit it.

9 Q And, Mr. LaPierre, you would agree that the listed
10 passengers for this helicopter service invoice is Tony Makris,
11 Werner Laughlin, you and Terry Sterner; is that right?

12 A Yes.

13 Q And Werner Laughlin, that's Tony Makris's wife;
14 correct?

15 A Yes.

16 Q And Terry Sterner, that is Colleen Sterner's husband;
17 correct?

18 A Yes.

19 Q And you authorized this trip; is that right?

20 A Yes.

21 MR. CONLEY: I would like to turn to Tab 131,
22 Plaintiff's Exhibit 776. This is not in evidence. I would
23 move for its admission.

24 MS. ROGERS: No objection.

25 THE COURT: Okay, it's admitted.

BP

2329

W. LaPierre - Plaintiff - Direct/Mr. Conley

1

2

(Plaintiff's Exhibit 776 was admitted and received

3

into evidence.)

4

Q Mr. LaPierre, do you have Tab 131 in front of you?

5

A Yes, I do.

6

Q And would you agree that these are helicopter charters

7

for Kayne Robinson?

8

A Yes.

9

Q And did you authorize Kayne Robinson to use

10

helicopters?

11

A I -- I don't know whether someone came to me for a

12

specific authorization on this, but it was a practice to get

13

people out there.

14

Q And Kayne Robinson is on the Executive Council, is that

15

right?

16

A Yes.

17

MR. CONLEY: And, finally, I'd like to introduce

18

Plaintiff's Exhibit 789, which is not in evidence. That's

19

Tab 132 in your binder. I would move for its admission.

20

MS. ROGERS: No objection.

21

THE COURT: All right, it is admitted.

22

(Plaintiff's Exhibit 789 was admitted and received

23

into evidence.)

24

Q Mr. LaPierre, would you agree this is another invoice

25

for helicopter services for Kayne Robinson?

BP

2330

W. LaPierre - Plaintiff - Direct/Mr. Conley

1 A Yes, I would.

2 Q And is Donna Kayne Robinson's wife?

3 A That's correct.

4 Q Mr. LaPierre, in addition to the trips that you've
5 taken with the McKenzies, you've also met with Mr. McKenzie on
6 numerous occasions in California; is that correct?

7 A Yes, it is.

8 Q Mr. LaPierre, I'd like to turn to Tab 59 of your
9 binder, Plaintiff's Exhibit 360. This is already in evidence.

10 And --

11 A Tab 59, I'm sorry?

12 Q Yes.

13 A Yes.

14 Q Great. And this is an e-mail from Murray Drechsler to
15 Craig Spray with attachment titled "MMP Group Retainer
16 Increases." And Murray Drechsler, he's the CFO of MMP; is that
17 right?

18 A Yes.

19 Q I'd like to ask a few questions about what's on page 5
20 of this exhibit, which is fee schedules that are listed. Do you
21 see that in front of you?

22 A I do.

23 Q And you see the headings for "Membership Marketing
24 Partners, Allegiance Creative and Concord?"

25 A Yes, I do.

BP

2331

W. LaPierre - Plaintiff - Direct/Mr. Conley

1 Q And you'd agree that the monthly fees reflected on
2 page 5, they increased numerous times from 2011, 2018; correct?

3 A Yes.

4 Q Now, you've previously testified that you had no role
5 in negotiating the fees with MMP entities; correct?

6 A Yes. Although I -- I was consulted on extra work they
7 were taking on.

8 Q The negotiation of the fees was handled by the
9 treasurer's office; is that right?

10 A Yes.

11 Q And it's your testimony that you didn't verbally
12 approve any fee increases for the MMP entities; correct?

13 A I approved the -- I said it was a good idea that I
14 thought to take on the additional work, and they should talk to
15 the treasurer's office in terms of the fees.

16 Q Mr. LaPierre, I'd like to turn to Tab 60 in your
17 binder, which is Plaintiff's Exhibit 2824.

18 MR. CONLEY: This is not in evidence and I move for
19 its admission.

20 MS. ROGERS: No objection.

21 THE COURT: Hearing no objection, it's admitted.

22 (Plaintiff's Exhibit 2824 was admitted and received
23 into evidence.)

24 Q And you can take a moment to flip through this.

25 Mr. LaPierre, but my question is would you agree this

BP

2332

W. LaPierre - Plaintiff - Direct/Mr. Conley

1 is a collection of expense reports you submitted for a trip to
2 California between May 27th and May 30, 2015?

3 A That is correct, to do a town hall meeting.

4 Q Would it be accurate to say you met with Mr. McKenzie
5 several times during this trip; correct?

6 A Yes.

7 Q So, for example, if you turn to 4 four of this exhibit
8 at the top, this is an expense report for a meal that you had
9 with the McKenzies; correct?

10 A Yes.

11 Q And you previously testified about your use of the
12 Yacht Illusions, correct?

13 A Yes.

14 Q And on several occasions Susan LaPierre used the Yacht
15 Illusions on trips with friends, correct?

16 A Yes.

17 Q And one of those trips on the Yacht Illusions occurred
18 the last week of May 2015; correct?

19 A I'm -- I'm not sure, but...

20 Q That's fair. That was a few years ago.

21 I'd like to see if a document produced by Associated TV
22 would refresh your recollection. If you could please turn to
23 Tab 49, Plaintiff's Exhibit 65.

24 MR. CONLEY: And this is not in evidence.

25 MS. ROGERS: We'll need to see a foundation.

BP

2333

W. LaPierre - Plaintiff - Direct/Mr. Conley

1 MR. CONLEY: I'm not seeking to admit it quite yet.

2 THE COURT: You just want him to look at it and see
3 if it refreshes his memory?

4 MR. CONLEY: Correct, your Honor.

5 Q If you could turn to Tab 49, Mr. LaPierre, page 3.

6 A Yes, I'm there right now.

7 Q Does this refresh your recollection on whether
8 Ms. LaPierre stayed on the Illusions Yacht in the Bahamas in May
9 of 2015?

10 A Yes, it does.

11 Q And on what dates did Ms. LaPierre stay on the Yacht
12 Illusions?

13 A It looks like the 24th through the 30th.

14 Q Thank you. And now turning back to the chart of MMP's
15 fees which is Tab 59 in your binder.

16 A Yes.

17 Q On page 6. You'd agree that MMP's fees increased from
18 \$575,000 a month to 645,000 a month in June of 2015; correct?

19 A Yes.

20 Q And Concord Social's monthly fees increased by 30,000
21 at the same time?

22 A Yes.

23 Q So, a few days after your trip to California to meet
24 with Mr. McKenzie and shortly after, Ms. LaPierre stayed on the
25 McKenzie's yacht for a week, MMP's fees increased a hundred

BP

2334

W. LaPierre - Plaintiff - Direct/Mr. Conley

1 thousand a month; correct?

2 A Yes, but I don't believe they had anything to do with
3 each other.

4 Q And isn't it accurate that you spent a week with the
5 McKenzies in the Bahamas between December 29th and January 5th,
6 for one of their retreats in 2016?

7 A That -- that sounds correct. Could you show me that?

8 Q Yes, Mr. LaPierre. If we could please turn to Tab 61
9 in your binder, which is Plaintiff's Exhibit 4705.

10 A Yes.

11 MR. CONLEY: And this is not in evidence, but I
12 would move for its admission.

13 MS. ROGERS: Subject to foundation, no objection.

14 THE COURT: Is this one that has been -- is this
15 part of the --

16 MS. ROGERS: I think this is part of the GS-2
17 production, but we would want the witness to at least be
18 voir dired on whether -- I don't want to say more in front
19 of the jury -- whether this is a real invoice or a not real
20 one.

21 THE COURT: Well, look, the admission of it is as a
22 business record of the vendor and so I'm admitting it on
23 that basis. Whether if the witness -- if you or the other
24 side wants to ask the witness whether it is real or not, you
25 can certainly do that.

BP

1 So, it is admitted.

2 (Plaintiff's Exhibit 4705 was admitted and received
3 into evidence.)

4 MR. CONLEY: Thank you, your Honor.

5 Q Mr. LaPierre, do you have the invoice from Corporate
6 America Aviation in front of you?

7 A Yes, I do.

8 Q Would you agree that it reflects a trip on December 29,
9 2015, from Washington DC to the Bahamas?

10 A Yes, this is a celebrity retreat that I used to attend
11 to try to get celebrities.

12 (Continued on next page)

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2336

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 MR. CONLEY: If you can please turn to Tab 62 in
2 your binder. It's Plaintiff's Exhibit 4444, and this is not
3 in evidence. I move for its admission.

4 THE COURT: Is this the same foundation from the
5 vendor?

6 MR. CONLEY: Yes.

7 THE COURT: It's admitted.

8 Q And Mr. LaPierre, would you agree this reflects a
9 private flight from the Bahamas to Dallas and then Washington DC
10 in January 4th and 5th, 2016?

11 A Yes. It's back from the Celebrity retreat to Dallas
12 the club and Wetherby Association dinner in Texas.

13 Q And so isn't it true that you spent a week with the
14 McKenzies in the Bahamas between December 29 and January 4 for
15 one of their retreats in 2016?

16 A Yes. That's correct.

17 Q And if we could turn back to the MMP retainer fees
18 chart, Tab 59 in your binder, Page 6. It's on the screen, if
19 that's easier.

20 Mr. LaPierre, will you agree that MMP's fees increased
21 \$100,000 in this time that coincided with your week-long stay
22 with the McKenzies in the Bahamas?

23 A Yes, I would, but Counselor, all of this is a part of
24 an investigation Greg Spray our new treasurer was doing as to
25 whether the increases in -- from MMP were justified. It was

KM

2337

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 part of an investigation he was doing.

2 Q Okay. And sitting here right now, do you have a view
3 on whether the fees were justified?

4 A He concluded they were.

5 Q And Mr. LaPierre, I'd like to turn to Tab 63 of your
6 binder which is Plaintiff's Exhibit 5114.

7 A Yes.

8 MR. CONLEY: And this is not in evidence. I move
9 for its admission.

10 MS. ROGERS: Subject to foundation, no objection.

11 THE COURT: These are documents that were produced
12 by who?

13 MS. ROGERS: These were produced by us. I'm not
14 sure if the witness --

15 MR. CONLEY: The NRA.

16 THE COURT: All right. You can ask.

17 Q Mr. LaPierre, do you recognize Plaintiff's Exhibit
18 5114?

19 A Yes, I do.

20 Q Are these expense reports that you submitted for a trip
21 to California in 2016?

22 A Yes.

23 MR. CONLEY: I move for their admission.

24 MS. ROGERS: No objection.

25 THE COURT: They are admitted.

KM

2338

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 Q So Mr. LaPierre, you'd agree this is a collection of
2 your expense reports for a trip that you took to California
3 between August 29 and September 2, 2016; correct?

4 A Yes, I would.

5 Q And you met with the McKenzies during this period;
6 correct?

7 A I did.

8 Q If you could turn to page 10. At the top there is an
9 entertainment report.

10 Do you see that?

11 A Yes, I do.

12 Q And this is an expense report for a meal on August 31,
13 2016 with David and Laura McKenzie and Brad O'Leary; correct?

14 A That is correct.

15 Q And if you turn to Page 16 of this exhibit, would you
16 agree that this is an expense report for your hotel room at the
17 Beverly Hills Hotel for this trip?

18 A Sir, on page 16?

19 Q Yes.

20 A Pardon me.

21 Q Page 16.

22 A Yes.

23 Q And will you agree you write on this expense report
24 that the stay for meetings with Associated TV, Membership
25 Marketing Partners and PM Consulting?

KM

2339

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 A Yes.

2 Q All right. And if you turn to page 20 of this exhibit,
3 will you agree that this is an expense report for another meal
4 with David and Laura McKenzie on September 1, 2016?

5 A Yes.

6 Q All right. And I'd like to again turn back to the
7 chart of the MMP retainer fees, Tab 59, Plaintiff's Exhibit 360.

8 Do you see the MMP fees increased \$150,000 a month
9 beginning on September 1, 2016?

10 A Yes.

11 Q And Concord's fees increased 40,000 a month at the same
12 time; correct?

13 A Yes.

14 Q So based on the chart of the MMP retainer fees and the
15 expense reports that we are looking at, once again MMP's and
16 Concord's fees increased substantially around the same time that
17 you met with the McKenzies.

18 A Yes, but I don't think they had anything to do with
19 each other.

20 Q You're familiar with Mike Marcellin; correct?

21 A Yes.

22 Q He was the NRA managing director of Affinity and
23 licensing?

24 A Yes. That's correct.

25 Q He retired in 2016?

KM

2340

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 A I believe so.

2 Q The NRA paid Mr. Marcellin more than \$2.5 million after
3 he retired; correct?

4 A I'm not aware of the numbers.

5 Q Are you aware that the NRA paid Mr. Marcellin after he
6 retired?

7 A I am now.

8 Q And Mr. Marcellin didn't provide any services to the
9 NRA for those payments; correct?

10 A I don't know. He didn't report to me.

11 Q Who did Mr. Marcellin report to?

12 A He reported to our treasurer's office. He may have
13 reported to membership at one point. I know he reported to our
14 treasurer's office.

15 Q So that would be Woody Phillips?

16 A Yes. That's correct.

17 Q And are you aware that after Mr. Marcellin retired,
18 approximately a million dollars was paid to Mr. Marcellin
19 through NRA vendor Lockton Affinity?

20 A I did not know that at the time. I know that now as a
21 result of the 360 degree course correction.

22 Q Would you agree that was inappropriate?

23 A Yes.

24 Q When Mr. Marcellin worked at the NRA, he managed the
25 NRA's relationship with Lockton Affinity; right?

KM

2341

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 A Yes.

2 Q Will you agree that Mr. Marcellin's arrangement with
3 Lockton Affinity should have been disclosed to the Audit
4 Committee?

5 A Yes.

6 Q And to your knowledge, it wasn't disclosed to the Audit
7 Committee; correct?

8 A Not that I know of.

9 Q Last Friday I asked you some questions about Ackerman
10 McQueen's practice of passing through expenses to the NRA's
11 out-of-pocket expenses.

12 Do you recall that?

13 A Yes, I do.

14 Q I'd like to turn to Tab 100 in your binder, Page 287.
15 This is an extract of the full exhibit because these are several
16 hundred pages long. I know it could be a little unwieldy
17 flipping through them, so this is just an extract. If you want
18 the full exhibit in hard copy, I'm happy to provide that for
19 you. And the specific page I'm asking about is 287.

20 THE COURT: Is this document in evidence yet?

21 MR. CONLEY: Yes. Thank you, your Honor. Yes,
22 this is in evidence.

23 Q And do you see the line items on this Ackerman McQueen
24 expense report for \$29,786 and \$7,550 for 21C, Louisville?

25 A Yes, I do.

KM

2342

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 Q And for those line items, it says underneath 21C,
2 Louisville, "NR guest lodging confidential per WLP."

3 "WLP." Those are your initials; correct?

4 A Yes, they are.

5 Q And people refer to you by those initials pretty
6 frequently; correct?

7 A No, not really. They refer to me as Wayne.

8 Q But in documents, would it be fair this reference to
9 WLP is referring to you?

10 A I know looking at these that's the way Mr. Makris used
11 to put it down.

12 Q Okay. And Ackerman booked this lodging for you;
13 correct?

14 A No. I believe they were booked by Mrs. Stanford. I'm
15 not sure.

16 Q And did Ms. Stanford book this lodging for you?

17 A I'm not sure. It was for a national convention, and it
18 could have been a combination of the two. I'm not sure is the
19 answer.

20 Q Okay. So you don't know one way or the other whether
21 this "guest lodging confidential per WLP" were rooms booked on
22 your behalf?

23 A I know about this now. I do not believe a lot of these
24 charges were mine. I believe they were Ackerman's. That's what
25 I believe. I believe at least half of them were Ackerman's.

KM

2343

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 Q What about the other half?

2 A They would have been mine.

3 Q So a portion of these expenses were for you; correct?

4 A Yes.

5 Q And Ackerman billed the NRA for these hotel expenses
6 through the out-of-pocket arrangement; correct?

7 A Yes.

8 Q Last Friday I asked you a few questions about Tony
9 Makris.

10 Do you recall that?

11 A Yes.

12 Q Mr. Makris is a close friend of yours for decades;
13 right?

14 A Yes.

15 Q In 2018, Mr. Makris accompanied you on two trips to the
16 Mayo Clinic in Arizona; correct?

17 A Yes. That's correct.

18 Q And you asked Mr. Makris to join you?

19 A Yes. He joined me because they thought I had lung
20 cancer and my wife could not go. So he joined me.

21 Q And during these trips, you both stayed at the Four
22 Seasons in Scottsdale, Arizona; correct?

23 A Yes. That's correct.

24 Q And the NRA paid for both you and Mr. Makris' rooms;
25 correct?

KM

2344

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 A Yes. I know that now.

2 Q I'd like to turn to Tab 102 in your binder which is
3 Plaintiff's Exhibit 3150.

4 Again, for convenience, this is just an extract from
5 the exhibit. I'd like to turn -- and this is in evidence. I'd
6 like to turn to Page 82.

7 A Yes. I found it.

8 Q Okay. Great. And I'd like to direct your attention on
9 Page 82 to a charge for lodging at the Four Seasons Hotel in
10 January of 2018 in Scottsdale, Arizona. The charge is for
11 \$4,753.28 cents.

12 Do you see that?

13 A Yes, I do.

14 Q This reflects the lodging expenses for one of the trips
15 that you took to Arizona with Mr. Makris; correct?

16 A Yes. That's correct.

17 Q And these were the charges for your and Mr. Makris'
18 rooms?

19 A Yes.

20 Q And this was billed through Ackerman McQueen as an
21 out-of-pocket expense; correct?

22 A Yes. That's correct.

23 Q Okay. If you could turn to Page 244. Same exhibit.

24 A Yes. I'm with you.

25 Q And I'd like to direct your attention to the third

KM

2345

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 charge up from the bottom dated April 19, 2018. It's a charge
2 from the Four Seasons Scottsdale Hotel for \$9,550.42.

3 Do you see that?

4 A Yes, I do.

5 Q This reflects a lodging expense at the Four Seasons
6 Hotel for the second trip that you took to Arizona with Mr.
7 Makris; correct?

8 A Yes. I believe --

9 Q And these expenses are for your and Mr. Makris' hotel
10 room during that stay?

11 A Yes.

12 Q The NRA also paid for your private jet travel for these
13 two trips to Arizona in 2018; correct?

14 A Yes, I was told by security whether it was personal or
15 business, I had to travel private.

16 Q You testified last Friday that you didn't recall any
17 instances when you authorized a private flight for Mr. Makris
18 where you were not a passenger.

19 Do you recall that testimony?

20 MR. CORRELL: Objection, your Honor. Misstates the
21 testimony.

22 A I said there might have been one or so where I was on
23 the plane and he had to be dropped off somewhere else and
24 authorize that.

25 Q And the instance that you're referring to, was this a

KM

2346

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 separate flight or was it the same flight that you were on that
2 just continued?

3 A It was the same flight.

4 Q I would like to introduce Plaintiff's Exhibit 4538.
5 This is not it in your binder, but I do have paper
6 copies.

7 THE COURT: Is it in evidence?

8 MR. CONLEY: It is not in evidence.

9 THE COURT: Does counsel have copies?

10 MS. ROGERS: I'd like one. Subject to the same
11 foundation with hearsay objection, no objection.

12 THE COURT: Again, is this part of the collection
13 that were attested to by the vendor?

14 MR. CONLEY: Yes.

15 THE COURT: It's admitted. So you do have it on
16 the screen. Okay.

17 Q Mr. LaPierre, would you agree that this invoice
18 reflects a private flight that you arranged for Mr. Makris after
19 he joined you on the trip to Arizona?

20 A I did not authorize this flight -- this flight back.

21 Q And this flight was \$35,800; correct?

22 A That's correct.

23 Q And the passengers listed are Tony Makris and his wife;
24 correct?

25 A Yes. I do not believe I authorized this flight.

KM

2347

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 Q Ackerman McQueen would also pay for your meals at
2 restaurants and pass those through to the NRA's out-of-pocket
3 expenses; right?

4 A They may have at some times.

5 Q You're familiar with Landini Brothers; correct?

6 A Yes.

7 Q It's an Italian restaurant in Alexandria, Virginia?

8 A Yes.

9 Q And you have dined there several occasions; right?

10 A Yes.

11 Q And you've dined there with Tony Makris?

12 A That's correct.

13 Q And when you dined at Landini's with Tony Makris or
14 someone else from Ackerman, Ackerman would often pick up the
15 bill; correct?

16 A Yes. It would often be a working lunch, and they would
17 pick it up sometimes.

18 Q I'd like to turn to Tab 100, Plaintiff's Exhibit 3151.
19 This is in evidence at page 321.

20 A Yes, sir. I'm with you.

21 Q And I'd like to direct your attention -- first, let's
22 start at the top.

23 Do you see this is an expense report for Jeff Minson
24 and below that it says "TM July travel."

25 Do you see that?

KM

2348

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 A I'm sorry. Where are you, Counselor?

2 Q If you look at the top. Do you see expense report
3 listed?

4 A LA Homes?

5 THE COURT: They are circling it on the version
6 that's on your screen, Mr. LaPierre.

7 THE WITNESS: Yes.

8 Q Okay. Great. And below that, do you see descriptions
9 for Landini brothers and Landini Rex?

10 A Yes, I do.

11 Q And "TM meal." Do you understand that to mean Tony
12 Makris?

13 A Yes, I do.

14 Q Okay. And so for example, on June 7, 2016, you see a
15 reference TM meal with WLP part of \$2,140.64?

16 A Yes.

17 Q The cost of that meal is \$129.58?

18 A Yes.

19 Q And below that do you see a description for Landini Rex
20 and TM meal with WLP and then other initials?

21 A Yes, I see that.

22 Q Okay. And that meal was approximately \$1,000. Do you
23 see that?

24 A Yes, I do.

25 Q And if you go down, you'll see meals for June 19, June

KM

2349

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 20, June 21, and 22.

2 Would you agree that this invoice lists meals that you
3 had at Landini's five times in five days?

4 A I did not believe that I was at most of these. I
5 occasionally attended a working dinner at this place called Rex,
6 but I didn't drink. I didn't smoke. I hated that cigar bar. I
7 hated going to that cigar bar, and I did not believe I was part
8 of most of these meetings.

9 Q Okay. But when you would dine with Tony Makris, there
10 were instances when he would be picking up the bill for you at
11 Landini's; right?

12 A That is correct. At the restaurant and occasionally, I
13 went to a working dinner at the Rex Cigar Bar, but I didn't like
14 it.

15 Q And you knew that those expenses would be billed to the
16 NRA; right?

17 A I expected Tony to bill his expenses that were on
18 working business with the NRA.

19 For example, if he had -- he attended -- if he -- if he
20 entertained Navy Seals that were up from Virginia Beach or
21 something like that.

22 Q And if it didn't have a business purpose and Mr. Makris
23 picked up the bill, who did you think would ultimately be paying
24 for it?

25 A If it didn't have a working experience -- a purpose,

KM

2350

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 they shouldn't have billed the NRA, and they should have picked
2 it up.

3 Q Mr. LaPierre, I'd like to turn to Tab 96 which is
4 Plaintiff's Exhibit 446, and this has been admitted into
5 evidence.

6 And I'd like to -- I'm sorry about the paperclip there.

7 I'd like to ask you about the letter on Page 4 of the
8 exhibit which is the last page.

9 A Yes.

10 Q Do you recognize this letter?

11 A Yes, I do.

12 Q It was addressed to you; correct?

13 A Yes, it was.

14 Q And it was sent by Bill Winkler?

15 A Yes, it was.

16 Q You're familiar with the retail company Zegna; correct?

17 A Yes, I am.

18 Q It's a high-end menswear store; is that right?

19 A That's correct.

20 Q In the letter Mr. Winkler refers to clothing purchases
21 at Zegna store in Beverly Hills and states that due to the
22 substantial nature of the total, we should address these items
23 immediately, and it lists out a figure of \$274,695.03.

24 Do you see that?

25 A I do.

KM

2351

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 Q And accompanying the letter which is on Page 1 and -- 2
2 and 3 of this exhibit, there are a list of purchases by a date
3 and amount.

4 MR. FLEMING: Excuse me, your Honor. I don't have
5 exhibit 446 at Tab 96.

6 Is that the right exhibit number?

7 MR. CONLEY: It is. I sent an email last night.
8 I replaced Plaintiff 3142 with 446 because they are the same
9 letter, and this was already admitted into evidence.

10 MR. CORRELL: I don't see the figure that you just
11 recited in my copy of the exhibit.

12 MR. CONLEY: Sorry for the confusion here.

13 Is this the Winkler letter regarding Zegna store
14 purchases?

15 MR. FLEMING: Yes, it is.

16 MR. CORRELL: My letter is dated May 6, 2019.

17 THE COURT: I'm not sure you are all on the same
18 place here.

19 MS. ROGERS: Is this PX 143?

20 THE COURT: Should be PX 446; right? It's Tab 96
21 in this new --

22 MR. CONLEY: Yeah. I apologize for the confusion.
23 My --

24 MR. CORRELL: Okay. I see it now.

25 MR. CONLEY: It's also on the screen if that's

KM

2352

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 helpful.

2 Q Okay. So you see on Page 2 and 3 of this exhibit a
3 list of purchases by date and amount?

4 A Yes, I do.

5 Q Okay. And you shopped at this Zegna store in Beverly
6 Hills that's referred in this letter; correct?

7 A Yes, I have.

8 Q And you have no reason to doubt the accuracy of the
9 list of purchases on Page two and 3 of this letter; correct?

10 A I'm not sure about the accuracy. I have never seen the
11 invoices.

12 Mr. McQueen used to literally beat me up to go get
13 wardrobe at this store. They tended to do wardrobe for people
14 that did television. I did literally all the television for the
15 NRA, and he hated my clothing. He wanted different varieties of
16 suits, different colors. He wanted -- style changed. He beat
17 me up, but yes, I would go and get wardrobe for work purposes,
18 and the bills would go directly to Ackerman McQueen.

19 Q Do you have any reason to doubt the accuracy of the
20 list of purchases in the letter?

21 A I don't. I just have never seen any invoices.

22 Q And stepping back, I'd like to talk about how this
23 arrangement would work. This Zegna location is a physical brick
24 and mortar store in Beverly Hills; is that correct?

25 A That's correct.

KM

2353

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 Q And you would go to the store and they would make
2 suggestions; right?

3 A Yes. They would have suits laid out that would be
4 appropriate for TV. They would be different colors. Some of
5 them would be light. Some of them would be dark. They would
6 have types that he thought you would work on TV. I would take a
7 look at them and go fine and leave.

8 Q And for tailored items, they would take measurements?

9 A Yes, they would.

10 Q And then you would pick what you wanted and the store
11 would ship those items to you; is that correct?

12 A That's correct. Yes. That's correct.

13 Q And so looking at this list of transactions, in March
14 of 2014, you spent \$29,060 on a visit to the Zegna store;
15 correct?

16 A Yes. That looks correct.

17 Q And in September 2014, an additional 15,050.

18 A Yes.

19 Q I'm sorry. I didn't mean to --

20 A I was just going to say that was about the time he
21 thought the styles had changed, and he wanted me to get a whole
22 bunch of different suits.

23 Q And in September of 2015, there is another expense for
24 \$39,000; correct?

25 A Yes. That's correct.

KM

2354

1 Q And when you went shopping at this store, you didn't
2 pay for the clothes; right?

3 A No. As I said, it was set up by Ackerman McQueen. The
4 invoices went straight to Ackerman McQueen. I never even saw
5 any of the invoices. I was just getting wardrobe to go -- they
6 were literally costumes I wore on TV for the NRA.

7 Q And it was your understanding that Ackerman was picking
8 up the tab?

9 A Yes, and they told me they didn't see anything wrong
10 with it, that they considered it appropriate in terms of my role
11 as the spokesperson for the organization.

12 Q Was Ackerman actually billing those expenses to the
13 NRA?

14 A No.

15 (Continued on the following page.)

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KM

2355

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1

2 Q So they were gifts?

3 A They weren't gifts. They were work items that were
4 worn by me to do literally hundreds of appearances for the NRA
5 on TV.6 Q Ackerman McQueen also paid tens of thousands of dollars
7 for hair and makeup services for your wife, Susan, in connection
8 with her attendance at NRA events; right?

9 A Yes, that's correct.

10 Q And those were also billed to the NRA's out-of-pocket
11 expenses right?

12 A Yes, they were.

13 Q You didn't see the invoices for those expenses?

14 A I did not.

15 Q Did you ever ask to see them?

16 A I did not.

17 Q But you knew the services were being provided?

18 A I knew that the Women's Leadership forum luncheon which
19 was attended by 800, 900 women, that the women had hair and
20 makeup services. So did the men at theirs.21 MR. CONLEY: I'd like to turn to Tab 101, which is
22 Plaintiff's Exhibit 3152. This is in evidence. Page 227,
23 227.

24 Q It is under Tab 101?

25 A Yes.

BP

2356

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 Q And it is page 227. It is also on the screen, if that
2 would be easier.

3 (Displayed)

4 A I have it.

5 Q Okay, great.

6 You agree this is an invoice for hair and makeup
7 services billed to the NRA, right?

8 A Yes, I do.

9 Q And do you see at the top left it says "Bill to NRA
10 Susan LaPierre?"

11 A Yes, I see that.

12 Q And the balance due for this invoice is \$7,850; right?

13 A Yes, I see that.

14 Q And if you look at the next page, page 228.

15 A Yes.

16 Q This is another invoice for hair and makeup services,
17 right?

18 A That's correct.

19 Q And there's several line items here in this invoice for
20 "Full day makeup for Susan LaPierre."

21 Do you see that?

22 A Yes, that's correct.

23 Q At a daily rate of \$1,800?

24 A Yes, I see that.

25 Q And this invoice is for \$10,275; right?

BP

2357

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1

2 A Yes.

3 Q And these invoices are for hair and makeup services
4 provided to your wife; right?

5 A Yes, during the Atlanta convention.

6 Q Ackerman McQueen also paid Gayle Stanford a flat
7 monthly fee and passed that expense through to the NRA as a
8 out-of-pocket expense; correct?

9 A Yes, Mrs. Stanford charged a fee to the NRA.

10 Q But she also received a flat monthly fee from Ackerman
11 McQueen; right?

12 A I wasn't aware of that.

13 Q Are you aware of it now?

14 A Yes.

15 Q As we covered, the NRA was already paying Ms. Stanford
16 a flat monthly fee for her services; right?

17 A Yes, that's correct.

18 Q So, you'd agree that Ackerman executives booked lodging
19 for you and billed the cost of the lodging to the NRA as
20 out-of-pocket expenses; correct?

21 A They may have occasionally. Not most of the time.

22 Q And you'd agree that Ackerman picked up the bill for
23 suits you purchased at a Zegna store in Beverly Hills; is that
24 correct?

25 A Yes.

BP

2358

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 Q And you that agree Ackerman picked up the bill for
2 numerous meals you had at Landini's and billed the cost of those
3 meals to the NRA as out-of-pocket expenses; right?

4 A Yes, during work lunches.

5 Q And you agree that Ackerman paid for professional hair
6 and makeup expenses for your wife and passed those expenses to
7 the NRA as out-of-pocket expenses; correct?

8 A Yes.

9 Q And you agree that Ackerman paid Gayle Stanford a flat
10 monthly fee and passed that cost to the NRA as an out-of-pocket
11 expense; correct?

12 A Yes, I know that now.

13 Q Do you agree -- yes or no -- that for the
14 out-of-pocket arrangement with Ackerman McQueen was an internal
15 control failure at the NRA?

16 A I think it certainly now was not appropriate given the
17 360 degree course correction. There were -- it was okay for
18 Ackerman to pick up certain charges as long as we audit them
19 every year for security and confidentiality, but this is not a
20 practice that NRA would do today.

21 Q And in your view, it never should have happened;
22 correct?

23 A I -- I think it was probably a mistake. I think it was
24 not anything illegally wrong wit it, but I think it was done for
25 security and confidentiality. I think it's not best practices

BP

2359

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 and it is not happening at the NRA. We ended it.

2 Q You're familiar with Youth for Tomorrow; correct?

3 A Yes, I am.

4 Q It's a charity?

5 A Yes, it is.

6 Q Your wife, Susan LaPierre, is on the board of trustees
7 at the Youth for Tomorrow?

8 A Yes, she is.

9 Q She joined the board around 2008?

10 A I think that's correct.

11 Q And during her time on Youth for Tomorrow's board, she
12 also served as the president for several years; correct?

13 A Yes, she sure did.

14 Q And the NRA's been a sponsor for Youth for Tomorrow for
15 several years; correct?

16 A Yes, they have.

17 Q It sponsored an annual gala for Youth for Tomorrow
18 called the Heart to Heart Gala?

19 A Yes, it did.

20 Q And you authorized those sponsorship payments; right?

21 A Yes, I did.

22 Q In April of 2019 the NRA Audit Committee approved and
23 ratified past NRA support for Youth for Tomorrow; right?

24 A Yes, they did some.

25 Q Right. I'd like to turn to Tab 129 of your binder,

BP

2360

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 which is Plaintiff's Exhibit 592 and this is in evidence.

2 And, specifically, I wanted to ask you about pages 19
3 and 20.

4
5 THE COURT: Are you referring to the exhibit page
6 numbers or?

7 MR. CONLEY: I'm sorry, no, I'm not. I was
8 referring to the actual minutes page numbers. Thank you,
9 your Honor.

10 It is actually pages 10 and 11 of the exhibit.

11 A Yes, I'm with you.

12 Q And so these minutes approved past support for Youth
13 for Tomorrow financial support of 155,000 in 2015, 170,000 in
14 2016, and 125,000 in 2018.

15 Do you see that?

16 A Yes, I do.

17 Q And these payments referenced by the Audit Committee
18 were referred to sponsorship payments made by the NRA for Youth
19 for Tomorrow Heart to Heart Gala; is that correct?

20 A Yes, that's correct.

21 Q And the various financial support of Youth for Tomorrow
22 hadn't been limited to those sponsorship payments; correct?

23 A That is correct.

24 Q The NRA also paid entertainment expenses for Youth for
25 Tomorrow events; right?

BP

2361

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 A Yes.

2 Q Like performances by country music stars?

3 A Yes.

4 Q And these expenses included payments to the performer,
5 themselves, as well as payments to vendors to provide services
6 to Youth for Tomorrow?

7 A Yes, that's correct.

8 Q The NRA paid approximately 200, 250,000 a year in these
9 entertainment expenses; correct?

10 A I think that sounds about right.

11 Q And you authorized those payments, right?

12 A Yes, I did.

13 Q And you did not report those payments to the Audit
14 Committee before authorizing them; right?

15 A No. Looking back on it, that was a process failure. I
16 think these -- it was totally appropriate for NRA to do this.
17 In fact, we're proud of it. It was done for NRA business. We
18 were good corporate citizen in northern Virginia, and we brought
19 in a lot of our high donors for these; and I think this helped
20 the kids a lot and it was a very good thing for the NRA to do.

21 Q Mr. LaPierre, so I'd like to walk you through some of
22 the payments you authorized for Youth for Tomorrow events. You
23 authorized payments for Martina McBride to perform at Youth for
24 Tomorrow event; right?

25 A Yes.

BP

2362

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 Q And payments to Sarah Evans to perform at Youth for
2 Tomorrow event?

3 A Yes.

4 MR. FLEMING: Your Honor, if I can interrupt for a
5 second. It's just been brought to my attention those
6 numbers are actually from the American Conservative Union,
7 Section 6, and not from Youth for Tomorrow.

8 Perhaps, Mr. Conley would want to redirect his
9 attention.

10 MR. CONLEY: I think I cited the correct numbers.

11 MR. FLEMING: I think there's a discrepancy between
12 the screen and the document.

13 THE COURT: The figures that you're talking about
14 are not in this document, right? The out-of-pocket
15 expenses?

16 MS. ROGERS: The out-of-pocket aren't. Some Youth
17 for Tomorrow figures are; but there's also figures for
18 unrelated charity there's concern, we're confused.

19 THE COURT: You're talking about -- well. You can
20 ask the witness fact questions which he's been answering, I
21 guess.

22 MR. CONLEY: I'm sorry, I think I was asking about
23 the correct expenditures.

24 THE COURT: Is it your -- do you think that this
25 document says Martina McBride was at the American

BP

2363

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 Conservative Union meetings?

2 MR. FLEMING: I'm confused as to the numbers. It
3 appears to me that the witness may have been directed to a
4 different portion of this document.

5 MS. ROGERS: There's different pagination. We were
6 talking about page 19, which has dollar figures on it for
7 American Conservative Union, but the dollar figures for YFT
8 are on page 20, and I think the correct figures are all on
9 the screen. There might have been confusion.

10 THE COURT: I'm not sure this is much confusion.
11 You've moved past the numbers that were in this approval,
12 and you went on to other kind of numbers that are not in
13 this document.

14 MR. CONLEY: That's correct, your Honor.

15 THE COURT: Well, as long as you're asking fact
16 witness questions to the witness, that's what matters most
17 to me.

18 MR. CONLEY: Okay. Thank you, your Honor.

19 Q So, Mr. LaPierre, I was going through some of the
20 entertainment expenses that you'd authorized for Youth for
21 Tomorrow events; and you authorized payments for performance by
22 Rascal Flats; correct?

23 A Yes.

24 Q And Jay Lenno?

25 A Yes.

BP

2364

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 Q And none of these expenditures were approved by the
2 Audit Committee; correct?

3 A No, some of them were, but it was a mistake not to
4 include all of them. They should have all been included in
5 that.

6 Q So, is it your testimony that the expenditures that the
7 Audit Committee approved for sponsorship were also going towards
8 some of these entertainment expenses?

9 A They were going toward Youth for Tomorrow, yes.

10 Q Going for Youth for Tomorrow?

11 A Yes, that's correct.

12 Q Do you recall being deposed in this action in the
13 summer of 2022?

14 A Yes.

15 Q And isn't it true that only a couple days before that
16 deposition you learned for the first time that the Audit
17 Committee had approved certain sponsorship payments to Youth for
18 Tomorrow?

19 A Yes, I believe that's true.

20 Q And no one from the Audit Committee asked you about
21 payments to Youth for Tomorrow before approving sponsorship
22 payments; correct?

23 A I don't think they knew about it. If anyone had asked,
24 I would have told them there were additional payments that were
25 not included in those numbers.

BP

2365

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 Q The NRA also paid NRA funds to Youth for Tomorrow in
2 another way, correct, through Ackerman McQueen?

3 A Yes, and I did not know about that. I thought Ackerman
4 McQueen were doing that pro bono.

5 Q And these payments weren't reported to the Audit
6 Committee; correct?

7 A That's correct. We all thought they were doing it pro
8 bono. In fact, they even got up on stage and accepted volunteer
9 awards and everything else.

10 Q Are you aware that in June of 2022 John Frazer was
11 deposed in this action as the NRA corporate representative?

12 A I know John Frazer has been deposed as the corporate
13 representative. I wasn't aware of specifically what happened at
14 that one.

15 Q And are you aware that in that deposition the NRA, as
16 John Frazer the corporate rep, admitted it did not know how much
17 money it had been paid to Youth for Tomorrow?

18 A I wasn't aware of that, but I believe that's true
19 probably.

20 Q In 2018, you had discussions with Ackerman McQueen
21 about the potential acquisition of a home for you and your wife
22 Susan; correct?

23 A Yes, that's correct, not for my -- not for us to own.

24 Q But you did have discussions with the Ackerman McQueen
25 about a potential acquisition of a house?

BP

2366

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 A Yes.

2 Q And you and Ms. LaPierre visited a number of real
3 estate properties in the Dallas area; correct?

4 A Yes.

5 Q After reviewing several properties, you and Susan
6 decided that you had a favorite residence that was located in
7 West Lake, Texas; correct?

8 A Yes. They were looking for a safe house in a gated,
9 guarded community for security. So, yes, that's correct. There
10 was one house that -- that had a safe room in it.

11 MR. CONLEY: I'd like to introduce Tab 118,
12 Plaintiff's Exhibit 4840.

13 THE COURT: Did you say Tab 118?

14 MR. CONLEY: Yes.

15 THE COURT: I think I don't have that one.

16 MS. ROGERS: Subject to foundation, no objection.

17 THE COURT: It is not in this new binder you gave
18 me, but -- wait, I'm sorry. It is out of order.

19 118?

20 MR. CONLEY: Yes.

21 THE COURT: All right. So, if you can ask
22 questions before putting it up.

23 Q Mr. LaPierre, do you recognize Plaintiff's
24 Exhibit 4840?

25 A I do.

BP

2367

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 Q And what do you recognize it to be?

2 A That was the house that I believe had the safe room in
3 it.

4 Q Okay, and you visited this house a couple of times;
5 correct?

6 A Yes, that's correct.

7 Q And do you believe these pictures accurately represent
8 the house at the time that you viewed it with your wife?

9 A Yes, I do.

10 MR. CONLEY: I move its admission.

11 THE COURT: It is admitted.

12 (Plaintiff's Exhibit 4840 was admitted and
13 received into evidence.)

14 Q And how many times did you and Ms. LaPierre tour this
15 house?

16 A We went by it a couple of times with a realtor that
17 Ackerman McQueen assigned.

18 Q And do you recall when that was?

19 A It would have been in April of 2018, I believe.

20 Q And is April of 2018 the last time that you toured it?

21 A I believe so. Our convention was coming up. We were
22 dealing with all -- I was dealing with all kinds of issues
23 involving New York State; and, as I said, our convention was
24 coming up. I believe that's the last time. It was sometime
25 in -- in mid to late April.

BP

2368

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 Q You hired Josh Powell to be your Chief of Staff,
2 correct?

3 A Yes, I did.

4 Q It was your decision to hire him?

5 A Yes, it was.

6 Q And you hired him in 2016; correct?

7 A Yes.

8 Q You didn't check his credentials first, did you?

9 A Well, he was on our board of directors, and I checked
10 with Pete Brownell who had been in business arrangements with
11 him and president of the NRA, and he told me he thought Josh
12 would do a good job as long as I managed him.

13 Q And did you do anything else to check his credentials?

14 A I did not.

15 Q And you promoted Mr. Powell to the position of general
16 director of general operations; correct?

17 A Yes, that's correct.

18 Q And his starting salary at the NRA was \$250,000;
19 correct?

20 A Yes, that's correct, I believe.

21 Q And you approved a raise of Mr. Powell's salary from
22 250,000 to 500,000 shortly after he was hired; correct?

23 A Yes, that's correct.

24 Q And you executed a five-year Employment Agreement with
25 Mr. Powell in late 2016, correct?

BP

2369

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 A I believe that probably is true. I'm not sure. I may
2 have.

3 MR. CONLEY: If we could please turn to Tab 113,
4 which is Plaintiff's Exhibit 2925, and I move for admission
5 of the exhibit.

6 THE COURT: Any objection?

7 MS. ROGERS: Subject to foundation, no objection.

8 THE COURT: Well, there's multiple documents in
9 this exhibit, yes?

10 MR. CONLEY: Yes. This is -- yes, this is how it
11 was produced, but it is multiple documents.

12 THE COURT: Are you seeking it for the whole thing
13 or just the Agreement at the beginning?

14 MR. CONLEY: The Agreement at the beginning, pages
15 5 to 10.

16 THE COURT: So, what do you want to do? Do you
17 want to create a new exhibit out of this, or do you want to
18 see if you can -- he can lay a foundation for the entire
19 thing?

20 MR. CONLEY: Your Honor, I'll create a new exhibit
21 out of this. Slash A I think we're doing.

22 THE COURT: So, this will be for identification at
23 this point anyway PX 2925-A, and it is solely going to be
24 pages 5 through 10 of the existing exhibit.

25 I think that will at least setting a foundation

BP

2370

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 easier than trying to go through all of these at the same
2 time.

3 MR. CONLEY: I agree. Thank you, your Honor.

4 Q Mr. LaPierre, do you have the exhibit in front of you?

5 A I do.

6 Q If you could turn to page 10. Is that your signature
7 at the bottom?

8 A Yes, it is.

9 Q And you'd agree this is an Employment Agreement that
10 was entered into with Mr. Powell?

11 A Yes, I do.

12 Q And if you could turn to page 5 of the exhibit, which
13 is the first page of the Employment Agreement.

14 You agree that this sets his base salary at 500,000 a
15 year?

16 THE COURT: Well, have we moved this in yet?

17 MR. CONLEY: Sorry, I didn't see it was published.

18 No.

19 THE COURT: Before you ask what's in it, is that
20 sufficient?

21 MS. ROGERS: Yes.

22 THE COURT: All right, this exhibit as amended
23 PX 2925-A is admitted just for the pages 5 through 10.

24 MR. CONLEY: Thank you.

25 (Plaintiff's Exhibit 2925-A pages 5 through 10 was

BP

2371

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 admitted and received into evidence.)

2 THE COURT: Now you can put it up and ask
3 questions.

4 Q Mr. LaPierre, you would agree this sets Mr. Powell's
5 compensation at 500,000 a year?

6 A Yes, I would.

7 Q And would you agree if you turn to page 10, that this
8 is dated November 17, 2016?

9 A Yes, I would.

10 Q And in June of 2017, you approved another pay raise for
11 Mr. Powell; correct?

12 A Yes.

13 Q To 650,000 a year?

14 A Yes.

15 Q In addition to Mr. Powell's salary, you also authorized
16 the payment of travel expenses between Michigan and Virginia for
17 Mr. Powell; correct?

18 A I'm not sure. Is that in the contract? I'm not sure
19 about that.

20 Q You don't recall authorizing him to do that?

21 THE COURT: I don't think he's questioning you out
22 of the document at this point now. He's just moving on to
23 just your recollection.

24 A I just don't remember it.

25 Q Do you recall authorizing Mr. Powell to rent an

BP

2372

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 apartment in Virginia to be paid for by the NRA?

2 A I know he had an apartment in Virginia. I don't recall
3 authorizing it. We may have authorized it for a time being.

4 Q In 2018, certain members of the NRA Financial Services
5 Division raised concerns about Mr. Powell's practices and
6 behavior; correct?

7 A Yes, that's correct.

8 Q And after that, you appointed Mr. Powell in 2019 to a
9 newly created position of senior strategist; is that right?

10 A Yes, I moved him out of general operations because
11 there were a lot of complaints that he was abusive to the staff,
12 and I moved him out of that position to put him in another
13 position.

14 Q And that was a promotion, correct?

15 A Not really. I wanted to get him out of general
16 operations where he would have been first in line if I ended up
17 getting hit by a bus, and I wanted to get him out of that
18 position because he was being abusive to employees.

19 Q Isn't it true that you announced to all NRA staff that
20 you were promoting Mr. Powell to the position of senior
21 strategist?

22 A Yes, I think that's true.

23 Q And around the time of this promotion, you also gave
24 Mr. Powell another raise; correct?

25 A He ended up getting another raise, that's correct.

BP

2373

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 Q To \$800,000 a year?

2 A Yes, he did.

3 Q You're familiar with Chris DeWitt; correct?

4 A I think Mr. Powell kind of -- I'm not sure how that
5 last raise happened, to tell you the truth. It looks like it
6 wasn't authorized by me. I think Mr. Powell may have worked the
7 system on that.

8 Q Worked the system?

9 A Yes.

10 Q Mr. Powell was your Chief of Staff, right?

11 A That's correct.

12 Q He reported to you; right?

13 A Yes.

14 Q He reported to you the entire time he worked at the
15 NRA; right?

16 A Yes, until I fired him.

17 Q And you're saying that you didn't approve his pay
18 raise?

19 A I was trying to figure it out at the time we fired him.

20 Q And what do you mean you were trying to figure it out?

21 A How it happened.

22 Q How he got a pay raise?

23 A Yes.

24 Q And what did you learn?

25 A I learned that there was a memo that went from the

BP

2374

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 treasurer's office to our -- our Human Resources Department
2 authorizing it.

3 Q And who sent the memo?

4 A It was sent by Mr. Phillips. Looking back on it, I
5 assumed he probably told Mr. Phillips that I had authorized it.

6 Q But you didn't authorize it?

7 A I wasn't aware of it.

8 Q So, I'm having trouble following this.

9 A Me, too.

10 Q So, did you discuss this with Mr. Phillips or
11 Mr. Powell?

12 A There were other issues going on with Mr. Powell at
13 that time that I -- I did not. I wasn't even aware of it for
14 awhile.

15 Q Did you make any efforts to rescind the pay raise or to
16 discipline Mr. Powell?

17 A I did not. Mr. Powell was working on Carry Guard. If
18 that had worked, the potential of it was \$30 million of revenue
19 to the NRA, and I did not.

20 Q So, why didn't you raise it with Mr. Powell?

21 A I didn't. I probably should have.

22 Q You're familiar with Chris DeWitt; correct?

23 A Yes, I am.

24 Q You're aware that in 2016 the Financial Services
25 Division found that Mr. DeWitt had been abusing his credit card

BP

2375

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 privileges?

2 A What was the year, counselor?

3 Q 2016.

4 A I was not aware of that in 2016.

5 Q Are you aware of that now?

6 A Yes.

7 Q And you're aware that in 2017, Mr. DeWitt was
8 delinquent in paying back money he owed to the NRA for improper
9 personal expenses; correct?

10 A No, I don't believe I was aware of that at the time.

11 Q Are you aware of that now?

12 A Yes, I've heard about that.

13 Q And you're aware that in 2019, the Financial Services
14 Division revoked Mr. DeWitt's credit card; right?

15 A No, I'm not.

16 Q You're not aware of that then or now?

17 A I'm not aware of that.

18 Q What are you aware of?

19 A I'm aware of the fact that at one point it came to my
20 attention that Mr. DeWitt had an expense account abuse, and we
21 called him in. We talked about it.

22 We -- we said if it happens again, you're not going
23 to -- there's not going to be -- you're going to be fired is
24 what we told him.

25 He had another job offer. He was probably our -- one

BP

2376

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 of our best guys in terms of relationships with donors. We were
2 juggling that. We ended up giving him a raise so that he would
3 not take that other job, but we put him on notice if anything
4 happened again with his expenses, he would be fired.

5 A couple months later, he took an advance for a
6 convention. He did not pay it back in time, and we fired him.

7 Q So, stepping back a little bit. After the NRA
8 bankruptcy proceeding in 2021 --

9 THE COURT: Counsel, if we're going to move to
10 another topic, this is usually the time we take our morning
11 break. Is this --

12 MR. CONLEY: Two questions.

13 THE COURT: Okay, that's fine.

14 Q After the NRA bankruptcy proceeding you approved a
15 raise for Mr. DeWitt; right?

16 A Yes.

17 Q And this raise increased Mr. DeWitt's salary up to
18 180,000 a year; correct?

19 A Yes, that was what it was going to take to retain him
20 given the offer he had.

21 Q And that raise that you approved more than doubled his
22 salary; correct?

23 A That's correct.

24 THE COURT: Never two.

25 MR. CONLEY: I tried.

BP

2377

1 THE COURT: You should avoid the specific numbers.
2 It's always a problem. We're going to take a short break.
3 We'll see you soon.

4 COURT OFFICER: All rise, jury exiting.
5 (Whereupon, at this time the jury then left the
6 courtroom.)

7
8 (Continued on next page)

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BP

2378

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 THE COURT: Just during the break, just you're
2 still on the stand. You shouldn't discuss the substance of
3 your testimony with anyone including counsel.

4 MR. FLEMING: Your Honor, one quick point.

5 THE COURT: Okay.

6 MR. FLEMING: During the testimony a question was
7 asked about Mr. Frazer's testimony as the corporate
8 representative. I don't know what your Honor's practice is
9 as far educating the jury or the difference between personal
10 versus corporate rep deposition, but I raise it because I'm
11 concerned there might be some confusion that this might be
12 his personal testimony which it was not.

13 THE COURT: Well, I mean the best place to do that
14 would be for you to elicit that from your client when he's
15 on the stand to explain that in his own words, if there is a
16 need to clarify it. There really wasn't much done with it
17 yet. I'm happy to do that. It's not the simplest thing to
18 explain because as with all corporate representative
19 depositions, some of it is asking for his own knowledge and
20 some of it is, he's put there to convey the corporate
21 position. So I don't know exactly how it this deposition
22 was, whether it was a purely corporate rep deposition or
23 partial.

24 MR. FLEMING: It was purely corporate. There was a
25 lot of education involved.

KM

2379

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 Perhaps a simple solution, I can ask my client
2 about it when he testifies, but also perhaps in the future
3 we can refer to the NRA's corporate or deposition rather
4 than having to name Mr. Frazer.

5 THE COURT: Did he have a separate personal
6 deposition?

7 MR. FLEMING: He did.

8 THE COURT: All right. Thanks.

9 (Whereupon at this time there was a recess taken.)

10 (Witness resumed the witness stand.)

11 THE COURT: What's the order of witnesses after
12 this just to give me a sense of timing and when we are
13 getting near the end of the State's case?

14 MS. CONNELL: So as soon as Mr. LaPierre wraps up,
15 we are showing the rest of Mr. Spray's videotape deposition.
16 We are moving on to Mr. Frazer. After that will be
17 Lieutenant Colonel Lee. And then depending on -- there's
18 very, very short video from Ms. Hallow, if we get that
19 finalized.

20 Gayle Stanford can not appear in person. She was
21 supposed to so we have her video deposition which I think
22 has been submitted to Mr. Blaustein, and then Mr. Hines
23 Plaintiff's expert will close it out.

24 I think I left off Ms. Supernaugh.

25 THE COURT: S-U-P-E-R-N-A-U-G-H?

KM

2380

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 MS. CONNELL: Yes. S-U-P-E-R-N-A-U-G-H. And we
2 have called board member David Coy and Second Vice-President
3 of the NRA, but really it's for admission of a document. We
4 have asked the NRA if they would agree to submission of
5 those documents or that document, and if so, we don't need
6 to call him.

7 THE COURT: This all fits within the time
8 allocation, you think?

9 MS. CONNELL: It's tight, and we would love to get
10 a little more time.

11 THE COURT: One thing I can't do is create time, but
12 when -- just whatever additional -- all of your time on
13 direct of new witnesses comes at the expense of cross of
14 their witnesses, so it's just a zero sum game.

15 MS. CONNELL: We understand that, your Honor.

16 MR. FARBER: So as to -- I could -- I can't speak
17 to anyone else, but we are not going to stipulate to that
18 exhibit.

19 MS. ROGERS: The NRA does not intend to stipulate
20 to the admission of that exhibit.

21 THE COURT: Let's put a pin in that for a minute,
22 and let's let the jury back in.

23 THE COURT OFFICER: All rise. Jury entering.

24 (Whereupon, at this time the jury entered the
25 courtroom.)

KM

2381

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 THE COURT: Welcome back. Have a seat, please.

2 CONTINUED DIRECT

3 EXAMINATION BY MR. CONLEY:

4 THE COURT: Okay. Mr. Conley, you may continue.

5 Q Mr. LaPierre, before the break we were discussing Josh
6 Powell.

7 Do you recall that?

8 A Yes, I do.

9 Q And we were discussing his raise from 650 to \$800,000 a
10 year.

11 Do you recall that?

12 A Yes, I do.

13 Q Do you recall when that raise occurred?

14 A I think it was sometime in 2018.

15 Q If you could please turn to Tab 113, Page 15, and this
16 portion is not in evidence, but I would like to see if this
17 refreshes your recollection.

18 A Yes, it does.

19 Q And when was Mr. Powell's salary raised to \$800,000 a
20 year?

21 A It looks like Tuesday, March 20, 2018.

22 Q Mr. LaPierre, I'd like to, if you could, continue down
23 on this page.

24 A Okay.

25 THE COURT: Just to refresh his recollection.

KM

2382

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 MR. CONLEY: Yes. Yes.

2 A Yes.

3 Q Does that refresh your recollection on when Mr.
4 Powell's salary was raised to \$800,000 a year?

5 A It says January 1, 2018.

6 Q And is that consistent with your understanding of when
7 Mr. Powell's salary was raised?

8 A Yes.

9 Q Mr. Powell was terminated in 2020; correct?

10 A That's correct.

11 Q And you didn't do anything in an attempt to rescind or
12 question his salary from January 1, 2018 to 2020?

13 A That's correct.

14 Q I'd like to turn to board elections.

15 Every year the nominating committee puts out a list of
16 candidates for the NRA Board of Directors; correct?

17 A Yes.

18 Q These candidates are then put on a ballot that's
19 submitted to NRA members eligible to vote; right?

20 A Yes.

21 Q Candidates who are not elected to the Board are then
22 automatically included as candidates for the 76th board member
23 seat?

24 A Yes.

25 Q The vote for the 76th board member seat happens at the

KM

2383

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 annual meeting; correct?

2 A Correct.

3 Q And every year you would discuss your preferred
4 candidates for the Board with Millie Hallow; correct?

5 A Well, there would be officers. The officers would
6 discuss candidates with me, and Millie would be in a lot of
7 those meetings.

8 Q And you would provide your recommendations; right?

9 A They would ask me my recommendations, yes.

10 Q And when you were deposed in this litigation in 2022,
11 you could not recall an instance in the last 10 years when the
12 nominating committee had nominated a board candidate you did not
13 agree with.

14 Do you recall that?

15 A I do recall that.

16 Q You're familiar with Paul Payne; correct?

17 A Yes, I am.

18 Q He is a former NRA employee?

19 A Yes. He was a California activist that volunteered out
20 there that became an NRA employee.

21 Q And you hired Mr. Payne; correct?

22 A Yes. That's correct.

23 Q He was paid out of the EVP budget?

24 A He was hired first by the Institute for Legislative
25 Action I believe and then he moved out to the EVP budget and

KM

2384

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 then he moved over to the Director of General Operations budget.

2 Q And he moved over to the EVP budget in 1998; is that
3 right?

4 A I think that sounds about right.

5 Q And he moved to General Operations around 2019; is that
6 right?

7 A Yes, I believe that's correct.

8 Q His job title when he was paid out of the EVP budget
9 was Special Assistant to the Executive Vice President; correct?

10 A Yes.

11 Q He reported to you; correct?

12 A Yes.

13 Q Mr. Payne would organize volunteers to hand out
14 pamphlets for particular board candidates for the 76th director
15 election at the annual meetings; correct?

16 A A lot of the California activists came in. I think Mr.
17 Payne probably did that.

18 Q And he oversaw that effort; right?

19 A He was one of the people that participated in it.

20 Q And he would organize volunteers for this pamphleting?

21 A Maybe.

22 Q You don't have personal knowledge of that?

23 A I didn't instruct that, but he may have -- I think he
24 probably did that.

25 Q And it's your understanding that these volunteers would

KM

2385

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 circulate pamphlets for particular board candidates; right?

2 A Yes. There were -- the Board would decide on which
3 candidate they preferred to be 76th director, and they -- yes,
4 there were pamphlets handed out.

5 Q And when you were deposed in 2022 in this litigation,
6 you couldn't recall a time when you provided a recommendation
7 for the 76th election that Mr. Payne's group didn't follow;
8 correct?

9 A I think that's true, but it wasn't only me. It was the
10 officers that ultimately decided. In fact, it was the officers
11 that ultimately decided.

12 Q But you weighed in.

13 A Yes. They asked me my recommendation, and they got to
14 the point where the person actually was the next person in line
15 in terms of -- if -- it was the one that was next in line that
16 did not get the votes to get in but was next in line.

17 Q When the volunteers would go to the annual meetings to
18 pamphlet, the NRA would pay for their travel; correct?

19 A Yes, we brought in the California activists as a reward
20 for the work they were doing out there as volunteers.

21 Q And they would pay for their lodging?

22 A The NRA did.

23 Q And entertainment expenses?

24 A Yes.

25 Q And these were not the only expenses the NRA paid to

KM

2386

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 support particular candidates for NRA Board elections; right?

2 A I don't know what you're referring to.

3 Q You don't -- you don't know of any other expenses the
4 NRA paid to support particular candidates for board elections?

5 A No.

6 Q Will you agree that it wasn't appropriate for the NRA
7 to pay the expenses of these volunteers?

8 A I don't know. They were being brought in because they
9 were volunteering. I mean, they helped the NRA on programs,
10 shooting events, instructors' programs, legislative advocacy. I
11 mean, they worked their tails off out in California, and I
12 thought that it would be a nice thing to bring them in for the
13 Board meeting.

14 Yes, they did participate in doing what you're talking
15 about also. A lot of them did.

16 Q The pamphleting?

17 A Yes.

18 Q For particular board candidates?

19 A Yes.

20 Q You hired John Frazer as general counsel in 2015;
21 correct?

22 A Yes, I did.

23 Q And the NRA didn't use an executive search firm to
24 identify candidates for the general counsel position; correct?

25 A No, we didn't.

KM

2387

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 Q You didn't interview any other candidates; correct?

2 A I did not.

3 Q Prior to hiring John Frazer, he had been in private
4 practice for about 18 months; correct?

5 A I believe that's correct.

6 Q And isn't it true that when you hired Mr. Frazer, you
7 did not know if he had any knowledge of New York not-for-profit
8 law?

9 A That's correct.

10 Q And when you hired Mr. Frazer as general counsel, you
11 did not know if he had familiarity with the law governing tax
12 exempt organizations; correct?

13 A Correct.

14 Q And you did not make any inquiry of him to determine if
15 he had those areas of expertise when you hired him as general
16 counsel; correct?

17 A Correct.

18 Q You've told others that you wouldn't use Mr. Frazer to
19 pay your parking tickets; right?

20 A That's been taken way out of context.

21 What I was talking about was John was a stickler to
22 details, and what I was referring to was John was such a
23 stickler to details, he might end up in an argument with a judge
24 over some minor point, and that wouldn't go well. That's what I
25 was referring to. That's been taken way out of context.

KM

2388

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 Q But you said it as a joke; right?

2 A I said it kind of -- kind of as an off -- off-hand
3 comment in regard to what I just talked about.

4 Q And didn't you tell Josh Powell that you kept John
5 Frazer as general counsel because he could be controlled?

6 A No, I did not. I did not say that in any way.

7 Q The NRA found Craig Spray by using an executive search
8 firm; correct?

9 A Yes, we did.

10 Q When Craig Spray became CFO and treasurer of the NRA,
11 he instituted a number of changes in the way the treasurer's
12 office operated?

13 A Yes, he did.

14 Q One of Mr. Spray's priorities was putting a stop to
15 verbal approvals or agreement to vendors; correct?

16 A Yes, and I was completely behind that in support of
17 what he did.

18 Q And in May of 2020, the NRA entered into an employment
19 agreement with Craig Spray; correct?

20 A Yes.

21 Q And you signed the agreement; correct?

22 A Yes, I did.

23 Q Mr. LaPierre, I'd like to turn to page 103 in your
24 binder which is -- not 103. Sorry. One second. Under the
25 agreement that the -- never mind. I don't have the right tab in

KM

2389

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 front of me.

2 Under the agreement the NRA committed to paying Mr.
3 Spray 18 months severance in the event he was terminated without
4 cause; correct?

5 A Yes. That's correct.

6 Q In 2020 you advised the NRA's first vice president and
7 second vice president of your intention to pay Craig Spray a
8 retention bonus; correct?

9 A Yes. That's correct.

10 Q If you could please turn to Tab 104 in your binder.
11 This is Plaintiff's Exhibit 603. It's not in evidence.

12 MR. CONLEY: I move for its admission.

13 MS. ROGERS: No objection.

14 MR. CORRELL: No objection.

15 THE COURT: Having heard none, it's admitted.

16 Q Mr. LaPierre, do you recognize Plaintiff's Exhibit 603?

17 A Yes, I do.

18 Q This is an October 2020 memorandum that was sent to the
19 compensation committee under your name; correct?

20 A Yes. That's correct.

21 Q And on the second page of this exhibit, that's your
22 signature; right?

23 A It sure is.

24 Q You reviewed and approved this memorandum before it was
25 sent to the compensation committee; right?

KM

2390

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 A Yes. I also talked to the compensation committee about
2 it.

3 Q And this memorandum is dated October 29, 2020?

4 A Yes, it is.

5 Q In the memorandum you advised Carolyn Meadows, Charles
6 Cotton and Willes Lee of your intention to give retention
7 bonuses; correct?

8 A Yes, I did.

9 Q Including a retention bonus to Craig Spray of \$250,000;
10 correct?

11 A Yes, I did.

12 Q Craig Spray signed the NRA Form 990 for 2017; correct?

13 A I believe so.

14 Q And 2018?

15 A Yes, I believe that's correct.

16 Q You signed the NRA Form 990 for 2019; correct?

17 A That is correct.

18 Q And you signed the Form 990 in November of 2020;
19 correct?

20 A Yes, that would have been right.

21 Q Shortly before you signed the Form 990, Craig Spray
22 asked you and several other senior executives and counsel to
23 sign a certification attesting to the accuracy of the Form 990;
24 correct?

25 A I don't remember that.

KM

2391

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 Q You don't recall being asked to sign a certification?

2 A No, I don't.

3 Q Isn't it true that Mr. Spray would not sign the 2019
4 Form 990?

5 A I know he did not end up signing it. I signed it.

6 Q In January of 2021, you fired Craig Spray; correct?

7 A Well, I had a conversation with Mr. Spray that we
8 intended to move on. He had moved out of his office. He had
9 moved back home. He had moved out of his apartment. He had
10 moved back home. I knew that we needed -- he had -- he had a
11 horrible heart attack in 2018. If he had Covid, they had told
12 him from what I was informed by Craig Spray, he would probably
13 not make it, and we needed a full-time CFO in the office.

14 I said to Craig, I intend to move on, and he said I
15 want to retire for health reasons, and I want you to let
16 everyone know it's for health reasons I'm doing this.

17 I had actually intended to do a consulting arrangement
18 with him where he would continue to help us because I thought he
19 was doing great.

20 Q And so you called Craig Spray; right?

21 A Yes. That's correct.

22 Q And you told him that you were moving in a different
23 direction; correct?

24 A Yes.

25 Q You told him that you needed a full-time CFO?

KM

2392

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 A We never even got that far to tell you the truth. I
2 said I'm moving in a different direction.

3 He said, Look, I have to retire for health reasons.
4 Please tell everyone it's for health reasons, and I said okay, I
5 will. And that's -- that's what took place.

6 Q And during this call with Mr. Spray, you also had on
7 the line Linda Crouch, John Frazer, Vanessa Shahidi and Andrew
8 Arulanandam?

9 A Yes, I did.

10 Q So you had the director of human resources, your
11 general counsel and head of public relations on the call; right?

12 A Yes.

13 Q And that call had not been scheduled with Mr. Spray in
14 advance; correct?

15 A I don't believe that it had.

16 Q And a few minutes after your call with Mr. Spray ended,
17 the NRA shut off Mr. Spray's access to his work email and NRA's
18 computer network; right?

19 A I believe they did. I believe that was the practice.
20 I believe they did.

21 Q And the NRA paid Mr. Spray 18 month severance; correct

22 A Yes, we did as part of the contract.

23 Q Because under Mr. Spray's employment contract that you
24 signed, he was entitled to 18-months severance in the event he
25 was terminated without cause; right?

KM

2393

W. LaPierre - by Plaintiff - Direct/Mr. Conley

1 A Yes. That's correct. Yes.

2 Q What's the cost of an annual membership for the NRA?

3 A Well, it varies. It goes from \$45 to we discount it to
4 25.

5 Q And \$45 for an annual membership?

6 A Yes, I believe.

7 Q You're represented in this lawsuit by Kent Correll?

8 A Yes, I am.

9 Q In preparing to testify in this trial, did you meet
10 with Mr. Correll?

11 A Yes, I did.

12 Q Did counsel for any of the other defendants take part
13 in these meetings?

14 A Mr. Brewer was in one of the meetings.

15 Q Anyone else?

16 A There was an attorney named John that sat in for a
17 little bit. I am trying to think if there was anyone else.
18 Maybe Sarah was there for a minute.

19 Q Sarah Rogers?

20 A Yes.

21 Q Of the Brewer firm?

22 A Yes, but she was just --- I can't remember. Someone
23 asked her a question.

24 Q And do you remember what firm or party John the
25 attorney is affiliated with?

KM

2394

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 A The Brewer firm.

2 Q Okay. A few days before this trial started, you
3 announced you were retiring from the NRA; correct?

4 A Yes.

5 Q You are not leaving the NRA because you were fired;
6 right?

7 A No.

8 Q You are not leaving the NRA because you were facing
9 suspension?

10 A No.

11 Q You're not leaving the NRA because you were facing any
12 disciplinary action; correct?

13 A Correct.

14 Q As far as you know, you're leaving on good terms with
15 the NRA; right?

16 A Correct.

17 MR. CONLEY: Pass the witness, your Honor.

18 THE COURT: Okay.

19 Have you all decided which order you're going to
20 go? The usual order?

21 MS. ROGERS: The usual order, yes.

22 CROSS-EXAMINATION

23 BY MS. ROGERS:

24 Q Mr. LaPierre, good morning.

25 A Good morning.

KM

2395

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 Q Have you and I spoken since you took the stand last
2 Friday?

3 Mr. LaPierre, have you and I spoken since you took the
4 witness stand last Friday?

5 A No, we haven't.

6 Q And you mentioned that I, and I don't want you to
7 testify about counsel's advice, but you mentioned that I asked
8 you -- maybe I answered maybe one question during your
9 preparation; right?

10 A You were asked one question.

11 Q Right. Otherwise, we haven't met or spoken or prepared
12 for your testimony; right?

13 A Correct.

14 Q You would agree with me, Mr. LaPierre, that if you sent
15 a private plane to pick up your family or your friends without
16 an NRA business purpose at the NRA's expense, that was wrong?

17 A Yes.

18 Q It shouldn't have happened.

19 A Yes.

20 Q And before 2018, you never told the Board about it;
21 right?

22 A That's correct.

23 Q And in fact, it violated explicit policies of the
24 Board; right?

25 MR. CONLEY: Objection. Leading.

KM

2396

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 THE COURT: Hang on a second.

2 MS. ROGERS: So I think there's clearly an adverse
3 dimension in this case, and I don't intend to lead the
4 witness on issues where were not adverse, but here, the
5 witness is being sued for breaches of duty to my client.
6 Any damages awarded will be paid to my client, and I'm
7 examining him on issues where the interest are divergent.

8 MR. CONLEY: Your Honor, he is the current
9 executive vice president. He certified the response to the
10 Notice to Admit on January 28.

11 MR. ROGERS: He certified some responses to the
12 Notice to Admit, but I don't think they were on the
13 questions I'm asking him now.

14 THE COURT: Certainly, it would be unusual to have
15 the company take that position with it's CEO.

16 Do any of the defendants have a position on this?
17 Mr. Correll?

18 MR. CORRELL: I defer to the NRA on this, your
19 Honor.

20 THE COURT: Despite the adversity.

21 MR. CORRELL: Well, I understand the argument, and
22 I think that's correct. I do think the Court should allow
23 some latitude in this regard. It is cross.

24 MS. ROGERS: And your Honor, there is a reason the
25 parties have separate counsel, and Mr. LaPierre is the

KM

2397

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 outgoing. So obviously, if there are --

2 THE COURT: Overruled.

3 Q All right. Mr. LaPierre, would you agree that even if
4 that happened by mistake, even if you accidentally authorized a
5 flight for someone you shouldn't have, you had a duty to tell
6 the Board about it; right?

7 A I was instructed by security on how to fly private. I
8 would agree that most of the Board did not know until 2020
9 actually when they were presented a security plan that I was
10 flying private.

11 Q And the security instructed you to fly private, but
12 there was no security expert who said that your niece had to fly
13 private.

14 A Not until 2019 study was done that went to the Board in
15 2020.

16 Q And so you would agree it was a mistake to authorize
17 private flights for her without a business purpose; right?

18 A For myself.

19 Q Well for you to authorize private flights for your
20 family or friends who don't face the security threat you do.

21 A Yes, I would.

22 Q Okay. And we looked at some invoices for some times
23 that this happened. So you sent a plane to pick up your niece's
24 husband in Las Vegas because the kid needed a babysitter; right?

25 A Yes, that's correct.

KM

2398

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 Q And that was wrong and it shouldn't have happened.

2 A Yes.

3 Q It was a violation of what the Board authorized you to
4 do; right?

5 A Yes.

6 Q And until the course correction or the 360 review that
7 you're talking about, you never told the Board about that;
8 right?

9 A Right.

10 Q And we looked at an invoice for a time when you sent a
11 plane for your niece because she and her baby was stuck in a
12 commercial airport and their flight had been delayed; right?

13 A Yes.

14 Q And that was wrong, and it shouldn't have happened.

15 A Right.

16 Q And the Board never authorized you to do it.

17 A Yes.

18 Q The Board forbade you to do it.

19 A Yes. It was not -- not the right thing to do.

20 Q And until 2018 or 2019, you never told the Board;
21 right?

22 A Correct.

23 Q All right.

24 Now, we talked about plans. But you would agree with
25 me that the same rules govern black car service; right?

KM

2399

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 A Yes.

2 Q If your family or friends used a black car at the NRA's
3 expense without a business justification for that luxury
4 service, you would agree that that broke the rules; right?

5 A Yes, I would.

6 Q And it shouldn't have happened.

7 A Yes.

8 Q And the Board forbade it.

9 A Yes.

10 Q And until 2018 or 2019, you never told the Board.

11 A Yes.

12 Q All right. And even though it didn't cost the NRA
13 anything, you would agree with me that you had a duty to tell
14 the Board about luxury vacations you took with the McKenzies on
15 their yacht or to the Taj Mahal; right?

16 A Yes, I would.

17 Q It was wrong, and it shouldn't have happened; right?

18 A Yes.

19 Q And until 2018, you never told the Board.

20 A Correct.

21 Q And for years, you filled out conflict disclosure forms
22 prescribed by the Board and you left this information off;
23 right?

24 A Yes.

25 Q We looked at some invoices for some specific trips you

KM

2400

1 took with the McKenzies, a time that your wife went on the
2 McKenzies yacht about nine years ago in 2015.

3 Do you recall that this morning?

4 A Yes.

5 Q And we looked at some MMP price increases that happened
6 during the same years?

7 A Yes.

8 Q And you testified that you didn't think those were
9 related?

10 A Yes. I do not believe they were related in any way.

11 Q And can you explain to the jury why you seem confident
12 that they are not related?

13 A Well because I trusted them. They told me that the NAR
14 would bear no cost.

15 MR. CONLEY: Objection. Hearsay.

16 THE COURT: I'm sorry. Say again.

17 MR. CONLEY: Objection. Hearsay.

18 MS. ROGERS: I'm asking the basis for his belief.

19 THE WITNESS: They testified under oath that none of
20 that was charged to the NRA.

21 THE COURT: Well, I'll overrule it anyway. That's
22 fine. If there's an objection you should --

23 MS. ROGERS: If there's an objection, wait for the
24 judge to rule.

25 (Continued on the following page.)

KM

2401

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1

2 Q You testified that the Attorney General -- one of the
3 very first questions Mr. Conley asked you was whether you had
4 significant authority and discretion as EVP and CEO. Do you
5 recall that?

6 A Yes.

7 Q That's how they led off their examination. You would
8 agree with me the board never gave you authority or discretion
9 to send a private plane for your niece; right?

10 A Yes.

11 Q The board never gave your authority or discretion to
12 let Ackerman McQueen charge the NRA for hair or makeup for your
13 wife without a business reason; right?

14 A Yes.

15 Q And the board never gave you authority or discretion to
16 let your friend or your family or their nieces or their husbands
17 use limousines and charge the NRA; right?

18 A Yes.

19 Q And, in fact, you'd agree with me that you were acting
20 outside your authority as Executive Vice President to the extent
21 that you authorized any of those things; right?

22 A Yes.

23 Q You were acting outside your authority as Executive
24 Vice President when you buy a handbag for David McKenzie's wife
25 at Bergdorf Goodman as a gift; right?

BP

2402

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 A Yes. I thought it helped maintain relationships.

2 Q Now, that was on an expense report that we looked. All
3 those little handwritten expense reports that filled the screen,
4 you recall those; right?

5 A They all run expense reports.

6 Q Right. And for years we heard on Friday, we heard
7 testimony that for years your expenses were processed through
8 the NRA Lobbying Division, ILA. Do you recall that discussion?

9 A Yes, that's how it started out and continued that way.

10 Q Can you explain to the jury how why your expenses were
11 processed through ILA?

12 A It started out that way and no one thought to change it
13 until Craig Spray came in and said that he thought that probably
14 was not a good way to do it, and they should be done through the
15 treasurer's office.

16 Q Now, to your understanding during all those years that
17 your expenses were processed through the Lobbying Division, do
18 you know of any way that Sonya Rowling or Craig Spray or anyone
19 else in the NRA Financial Services Department could have known
20 about those expenses?

21 A Yes. ILA could be audited by NRA whenever NRA wanted
22 to, and I know for a fact that in some years Pricewaterhouse
23 used to review them.

24 Q If one of those audits wasn't conducted, do you have an
25 understanding as to whether those expenses would be visible to

BP

2403

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 someone like Ms. Rowling in the ordinary course?

2 A No, they wouldn't.

3 Q And the NRA Audit Committee wouldn't have seen those
4 expenses either; right?

5 A That's correct.

6 Q Last week on Friday you were shown a ten-year contract
7 that you signed with a board member, Marion Hammer, for lobbying
8 an activist in Florida as you would call them?

9 A Yes.

10 Q I think you testified that a contract like that
11 wouldn't happen now. Do you recall that?

12 A That's correct.

13 Q Can you explain to the jury why that kind of contract
14 wouldn't happen now?

15 A Because under the course correction, which is a 360
16 review of every single thing that the NRA did, every employee
17 and every vendor starting in 2018 to make sure we're in complete
18 compliance with policies and procedures of the board and New
19 York Nonprofit Law. There are no more long-term contracts.

20 Q And Marion Hammer is a board member. So why would you
21 offer her payments to her in the first place?

22 A Because she was a legendary person in the 2nd Amendment
23 movement. She had incredible talent, not only in terms of
24 lobbying, but also in terms of advice in terms of other states
25 and also in terms of just things like, direct mail, in terms of

BP

2404

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 opinions on that and other NRA issues that I would seek advice
2 on.

3 Q We also saw that you offer as payments to another board
4 member named Sandra Froman. Do you recall that?

5 A I do.

6 Q Why would you authorize payments to Sandra Froman?

7 A Because she had a unique talent of being as a lawyer
8 from Harvard, being able to do speeches at law schools, at
9 places like the Federal Society and other places where it would
10 be in NRA's interest.

11 Q To your knowledge -- well, can you describe the extent
12 to which your knowledge board members still receive payments
13 from the NRA today?

14 A We have stopped all of that under the course correction
15 with the exception of Ms. Hammer's contract is still in effect.

16 Q Is Ms. Hammer's contract a long-term contract?

17 A No, it is a 30-day contract. It has a 30-day
18 revocation clause.

19 Q All right, now over the course of what you called a
20 course correction or 360 review, that's an effort the NRA
21 undertook starting in 2018 I think you testified?

22 A That's correct.

23 Q Over the course of that process, can you describe for
24 the jury how your business expense practices changed?

25 A Well, my business expense process changed because in

BP

2405

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 the course correction, the new treasurer, Craig Spray, said that
2 he thought it wasn't best practices to have them done under ILA.
3 He thought they should be done through the treasurer's office
4 and they were transferred over to the treasurer's office.

5 Q To your knowledge, since 2018 can you describe the
6 extent to which any of your expenses have been paid through ILA?

7 A I don't believe they have been.

8 Q Were there any expenses that the NRA refused to pay?

9 A Yes, actually there were about -- I think it was about
10 \$200,000 worth of expenses that were dated that they refused to
11 pay.

12 Q Between the time the NRA started its course correction
13 and the time you announced your resignation, can you describe
14 how your relationship with David McKenzie changed?

15 A Well, yes. When I started to look into what everything
16 as part of the course correction in 2018, one of the things we
17 looked at was all of our top vendors; and I came to realize that
18 Crime Strike had diminished in a big, big way. I thought
19 that -- I couldn't understand the invoices, some of the invoices
20 were coming in and I ended the relationship with Associated
21 Television. Crime Strike used to go to about 145 stations. It
22 had diminished down to a very small number.

23 Q How many trips have you taken on the McKenzie's yacht
24 since 2018?

25 A Since 2018, none.

BP

2406

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 Q What about your wife, how many times has she been on
2 the yacht since 2018?

3 A None.

4 Q Since 2018, how many times has David McKenzie taken you
5 to Budapest or the Taj Mahal?

6 A I've taken no trips with the McKenzies since the course
7 correction.

8 Q And between the time the NRA started its course
9 correction and the time you announced your resigning, can you
10 describe how your relationship with Tony Makris of Under Wild
11 Skies changed?

12 A Well, it ended. I -- I used to consider him like a
13 brother; and as we got into the course correction, one, he
14 worked for Ackerman McQueen. Ackerman McQueen became -- the
15 only word you can describe is hateful toward the NRA when we
16 started asking to see their books and records, and Tony Makris
17 became -- well, part of that in terms of being really not being
18 nice toward the NRA or to me. But, also, when we asked to see
19 the backup on his supplementals as part of the investigation in
20 Under Wild Skies.

21 Q Just to clarify for the jury, when you say Tony Makris
22 became part of that hate toward the NRA and you, is this the
23 same Tony Makris that was such a close friend of yours that he
24 went with you when you thought you had cancer?

25 A Yes.

BP

2407

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 Q So, let's talk about this conflict between the NRA and
2 Ackerman McQueen that precipitated this.

3 So, you testified that you started looking at
4 Ackerman's out-of-pocket expenses, I think; right?

5 A We started looking at everything, involving Ackerman
6 McQueen. It started in 2017 when I started to look at their
7 online TV platform, which was costing NRA 20-some million
8 dollars and I started to ask about whether we're getting value
9 out of it. And, so, it started there and it just continued
10 downhill all the way.

11 Q Can you describe the extent to which in 2018 the NRA
12 sought to audit those records?

13 A Yes, we did. I was at a meeting down Ackerman McQueen.
14 They had nothing but nasty, hateful words to say to me. They
15 said that the Attorney General can never touch our records.
16 We're Oklahoma/Texas corporation; and I'm, like, we've got to
17 see the records and they were just hateful toward me, all kinds
18 of nasty words.

19 And they -- they also told me that I was crazy to have
20 sued the attorney -- not the attorney general -- to have sued
21 the Department of Financial Services and the Governor of New
22 York, that he was popping the champagne cork. That's exactly
23 what he wanted and I was stupid fool to have done that.

24 Q Now, when you talk about a lawsuit with the State of
25 New York, we're not talking about this lawsuit; right?

BP

2408

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 MR. CONLEY: Objection.

2 THE COURT: You can ask.

3 Q Mr. LaPierre, when you talk about a lawsuit between you
4 -- between the NRA and the State of New York, you don't mean the
5 case that this jury is sitting in right now; right?

6 A No.

7 MS. ROGERS: I'd like to put up Plaintiff's
8 Exhibit 2300, just for the witness for identification.

9 I have extra paper copies if the Court would like
10 one.

11 (Handed up to the Court)

12 MS. ROGERS: It is your exhibit. You should have
13 it.

14 THE COURT: Do you have one for the witness?

15 MS. ROGERS: Actually, can I give that one to the
16 witness.

17 (Handed to the witness)

18 Q Mr. LaPierre, you're not on this letter, but do you
19 recall whether this is a letter you saw in August 2018 from
20 Ackerman's lawyers?

21 A Yes, I remember this letter.

22 MS. ROGERS: I move to admit it.

23 MR. CONLEY: Objection, hearsay.

24 MS. ROGERS: The witness remembers it. I'm going
25 to ask the witness's response to it; and, of course, it is a

BP

2409

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 Plaintiff's Exhibit.

2 THE COURT: I guess the question is are you seeking
3 to admit it for the truth of the matters or just the fact
4 that these statements were made to him?

5 MS. ROGERS: I'm seeking to admit it to the fact
6 that the statements were made.

7 THE COURT: All right, I think both on that ground
8 and -- I do think the fact that it has been marked as a
9 Plaintiff's Exhibit is relevant to the question, but I'll
10 admit it. Again, as we did in some other exhibits, whatever
11 factual statements are made in here are not being offered as
12 to whether they're true or not, but just that they were said
13 for these purposes.

14 So, with that caveat, PX 2300 is admitted and you
15 can publish it.

16 MS. ROGERS: Thank you your Honor.

17 (Plaintiff's Exhibit 2300 was admitted and received
18 into evidence.)

19 Q Mr. LaPierre, you mentioned -- I think you testified
20 earlier that Ackerman said to you the Attorney General couldn't
21 get to them.

22 Is that your testimony?

23 A Yes.

24 Q On seeing this letter refresh your recollection about
25 some of the things Ackerman was saying about the Attorney

BP

2410

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 General?

2 A Yes. This was a letter from Ackerman McQueen's
3 attorney that I remember reading at the time. That talking
4 about it would be stupid for -- that's not what the letter says,
5 but it is my language. That Ackerman McQueen shouldn't turn
6 its -- its -- the documentation over to the NRA because they'd
7 be creating paper trails, which I'm reading from the letter now
8 New York State Department of Financial Resources or Congress
9 might be able to get a hold of.

10 Q Now, you testified that you authorized expenditures
11 through Ackerman that violated my client's policies; right?

12 A I authorized expenditures through Ackerman that
13 violated -- could you be specific?

14 Q Sure. So, for example, the hair and makeup invoices we
15 looked at, that was wrong and it shouldn't have happened; right?

16 A Well, I don't think NRA had a policy, policy on it, but
17 NRA --

18 Q It would be fair to say --

19 THE COURT: Are you finished with your answer? I
20 just wasn't sure if you were finished with your answer.

21 THE WITNESS: Yes, your Honor.

22 THE COURT: Okay.

23 Q In this letter, Ackerman is telling you, "We know where
24 the bodies are buried and you don't want to create a paper
25 trail;" right?

BP

2411

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 MR. CONLEY: Objection.

2 THE COURT: Sustained.

3 Q Mr. LaPierre, do you see where this letter says that
4 the NRA should proceed with caution in creating paper trails
5 because of Attorney General subpoenas?

6 A I do.

7 Q Can you describe how you interpreted that message when
8 you read it?

9 A Well, I interpreted it to be ridiculous because we were
10 the ones that were trying to see the books and records of
11 Ackerman McQueen so that we could be in compliance with New York
12 Nonprofit Law. We wanted to look at everything. It was
13 Ackerman McQueen that didn't want their records to be looked at.

14 Q And how did you respond to this kind of warning from
15 Ackerman?

16 A The more they were determined not to let us see their
17 books and records, the more determined I became to see their
18 books and records.

19 Q Even though they warned you that you were creating
20 paper trails that could hurt you; right?

21 A They not only warned me of that, but they said every
22 nasty cuss word under the sun to me about it over the next
23 several months.

24 Q And we talked about this a little bit; but in the time
25 between the NRA began its course correction and the time you

BP

2412

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 announced your resignation, can you describe how the
2 relationship with Ackerman McQueen changed?

3 A From the time I began the course correction it -- it
4 went constantly downhill. I mean, it started with me asking
5 questions about what value we're getting for the TV platform.
6 Then Mr. Spray who I thought was terrific and doing a great job
7 went down there, started asking about what are we paying for,
8 what are we getting. They called me on the phone, spent an
9 entire day on the phone trying to get me to fire Craig Spray,
10 which I said I'm not going to do. He's doing a great job.

11 Then, I went down there. It just ended up with them
12 cussing at me and telling me they weren't going to let us look
13 at their books and records, and I was stupid -- as I said -- sue
14 the Department of Financial Services.

15 And then there was a meeting in October of 2018 where
16 -- where I was looking at their budget, and I ended up cutting
17 their budget from 41 million down to 21 million where they
18 actually said -- pointed at me and said, you're --

19 MR. CONLEY: Objection, hearsay.

20 THE COURT: Overruled.

21 Q You can continue.

22 A They said -- Ackerman McQueen said, "You're dead to
23 me." "You're dead to me," and pointed his finger in my face.

24 And after that, we continued on. I made it clear to
25 Mr. Cotton, the Audit Committee and I was not going to back off

BP

2413

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 on that, he did not want me to back off on that. We went down
2 this path together.

3 I met with him on March 30, 2019, and this hatefulness
4 was continuing when we agreed to pursue it; and I, ultimately,
5 filed a books-and-records case in Virginia against Ackerman
6 McQueen to see their books and records. I think it was on
7 April 12, 2019.

8 Q Thank you.

9 Can you describe any repayments you've made to the NRA
10 for money Ackerman spent, but might have benefitted you?

11 A Yes. I have gone through the records and I have paid
12 back to NRA any payment that looking through expense reports,
13 looking through NRA ledgers, looking through any other records I
14 could find; and I have paid them all back the NRA with interest.
15 I have also filed 4720 forms with the IRS paying that back with
16 interest.

17 Q We talked about --

18 MR. CONLEY: I'm sorry. Objection to that answer
19 and move to strike to the extent he's describing the process
20 of repaying back these expenses. This isn't the sword and
21 shield release --

22 MR. CORRELL: Your Honor, there's no sword and
23 shield release with respect to Mr. LaPierre. He has not
24 invoked any privilege that would warrant any blocking of any
25 information from the jury.

BP

2414

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 Q Just to be clear, Mr. LaPierre --

2 THE COURT: Overruled.

3 Q Just to be clear, Mr. LaPierre, I don't think you have;
4 but I will instruct you don't tell the jury about any legal
5 advice you got or private conversations you had with lawyers
6 about what was legal, but you can tell the jury what you did;
7 okay?

8 A When I first started down this course correction and I
9 didn't know whether any investigations were coming or not. It
10 had been mentioned to me from a board member that New York State
11 Nonprofit Law changed a lot. That former Attorney General of
12 New York Schneiderman had called that board member and told him
13 there were people putting pressure to -- to use the government
14 in New York State to try to destroy the NRA, and we --

15 THE COURT: I think the question was just about
16 repayments, right?

17 MS. ROGERS: I was sort of giving him an
18 instruction on privilege. I didn't elicit that directly.

19 THE COURT: The initial question was just about the
20 repayment, so let's stick with that.

21 MR. CONLEY: We object on hearsay.

22 Q Mr. LaPierre, without getting into politics, can you
23 describe the kinds of expenses you repaid to the NRA?

24 A Yes. I told the NRA when we first started down this
25 path I made it very clear if there were any calculations that

BP

2415

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 were done incorrectly, if there were any mistakes that have been
2 made, if I was completely unaware of it, if anything was found
3 where I received an advantage, I received a benefit, I wanted to
4 pay it back with interest, which is what I did.

5 Q We talked -- you talked this morning with the Attorney
6 General about a charity in northern Virginia called Youth for
7 Tomorrow.

8 Do you recall that?

9 A Yes, I do.

10 Q And your wife is on the board of that charity; right?

11 A Yes.

12 Q Can you describe the financial relationship between
13 your wife, Susan, and Youth for Tomorrow?

14 A Susan is a complete volunteer, is not paid a penny.

15 Q To your knowledge, are any other NRA board members
16 involved with Youth for Tomorrow?

17 A Colonel North is on the board -- was on the board. I
18 don't know whether he still is.

19 Q Without naming any of them, to your knowledge are any
20 NRA donors involved in these events with Youth for Tomorrow?

21 A Yes. We brought in many, many of our high donors for
22 these events. That was coordinated by our Office of Advancement
23 bringing in the high donors.

24 Q Now, we saw the Attorney General introduce evidence
25 that Ackerman McQueen was getting paid for something it did in

BP

2416

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 connection with Youth for Tomorrow.

2 Do you recall that?

3 A Yes, I do.

4 Q And you testified that you thought Ackerman was doing
5 that work for free; right?

6 A I thought they were doing that for free.

7 Q And something about accepting a volunteer award; right?

8 A Yes.

9 Q Can you explain that to the jury?

10 A Yes, Nader Tavangar, who worked for Ackerman McQueen
11 actually was given the Volunteer of the Year Award because they
12 thought they were doing it for free.

13 Q When you say "they thought they were doing it for
14 free," you mean Youth for Tomorrow thought that Ackerman was
15 volunteering for that?

16 A Yes, to help the kids.

17 Q Did Ackerman ever tell you they weren't volunteering
18 and charging the NRA for helping the kids?

19 A No, they didn't. I found that out when we were doing
20 the 360 degree review.

21 Q We heard testimony earlier that Josh Powell received a
22 raise which you might not have authorized. Do you recall that
23 discussion?

24 A I do.

25 Q And have you had heard the phrase "Wayne said

BP

2417

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 approvals" before?

2 A I have.

3 Q Can you describe to your understanding between the time
4 the NRA started its course correction and the time you announced
5 your resignation, how did practices change regarding "Wayne said
6 approvals?"

7 A Craig Spray told the entire building there were no more
8 "Wayne said" and I agreed with that and backed him completely
9 because I never wanted a culture "Wayne said." I knew it
10 happened, but I never wanted it; and he made it very clear there
11 were no more "Wayne says."

12 There was, also, no more signature machine, which was
13 being abused.

14 Q When you say the "signature machine," that's a machine
15 that creates a handwritten signature, but you're not the one
16 doing it; right?

17 A That's correct.

18 Q On Friday you explained a little bit about your thought
19 process when you authorized the NRA's bankruptcy. Do you recall
20 that discussion?

21 A Yes, I do.

22 Q And do you recall describing New York as a hostile
23 environment?

24 A I did.

25 Q Can you explain to the jury what you meant?

BP

2418

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 MR. CONLEY: Objection.

2 THE COURT: Overruled.

3 Q I went into this whole process and whether there was
4 going to be review or not by -- by New York State or whatever.
5 I went into this whole process thinking, okay, look, let's look
6 at everything. Let's look at every employee. Let's look at
7 myself.

8 If there's anything we're doing that's not in
9 compliance with New York law, let's correct it because as I
10 understood it, New York had a safe harbor provision. If you
11 were out of compliance or you had overrides and you corrected
12 the course and you came into compliance with your obligations,
13 that's what New York law required you to do.

14 I was shocked at -- well, the way -- the way the
15 attacks started to proceed --

16 THE WITNESS: Your Honor, I don't know how much of
17 this I can go into?

18 THE COURT: I haven't sustained any objections.

19 Q Answer the questions truthfully. If there's a problem,
20 the judge will tell you.

21 A First, it started -- first, New York State opened an
22 investigation on our Carry Guard program.

23 Q That was an insurance program?

24 A It was an insurance program.

25 MS. CONNELL: Your Honor, I'm sorry, I'm just going

BP

2419

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 to object to this. We brought this up and it came up
2 earlier in the summer. To the extent we're going to get
3 collateral matters --

4 THE COURT: I ruled that he could answer exactly
5 these questions.

6 MS. CONNELL: Your Honor, I think your ruling --

7 THE COURT: My, my point was he can answer; but
8 we're not going to bring in collateral evidence on any of
9 these points, but he can -- if asked why he did it or did
10 these things, he can answer.

11 That was my ruling.

12 MS. CONNELL: Your Honor, please note our
13 exception.

14 THE COURT: Noted.

15 Q You can answer.

16 A The next thing that happened was was the fact that we
17 started to receive -- we received letters from the Department
18 of Finance. We didn't receive them. Our banks, our insurance
19 companies, our infinity partners received letters from the
20 Department of Financial Services on the Governor's side of New
21 York State saying that it was a risk factor to do business with
22 the NRA and that that would be taken into consideration.

23 Our banks, our insurance companies understood those
24 threats and they started to break relationships with us.

25 The next thing that happened is we, we -- there were

BP

2420

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 press conferences that were held by Governor Cuomo about
2 attacking the NRA, and there were guidance letters following up
3 to the banks and the insurance companies.

4 So, it started to look like everything that had been
5 described to us was actually starting to happen.

6 Then, the next thing that would happen is the Attorney
7 General -- when the Attorney General is running for Attorney
8 General, made the statement that she believed we were a criminal
9 terrorist organization. She was going to open up an
10 investigation.

11 I still felt like, okay, look, we're complying with the
12 law. We're doing everything we can to check everything, do
13 everything under our responsibility.

14 And my first deposition was in New York, was in
15 June 2020; and what really shocked me because, I don't know, you
16 know, I'm -- I'm just a kid still at 70 or 69 that believed --
17 well, believed in what -- in the law. I didn't get one question
18 during my deposition about our course correction, how much we
19 were doing on compliance, how much we had done in 2020, in 2019,
20 how we already had compliance seminars.

21 It was just this ill will toward the NRA going back to
22 stuff we -- we, by and large, corrected and to the point where I
23 just felt like we weren't dealing with a fair regulatory playing
24 field in New York State.

25 And then the next thing was in August of 2020 when the

BP

2421

1 New York Attorney General filed to dissolve the NRA, seize its
2 assets in what I honestly felt was in an attempt to fulfill a
3 campaign promise, which is what she said during the campaign.

4 Q Now when it comes to the bankruptcy, we heard a lot of
5 questions about whether you told certain people you were going
6 to file, like, whether you told John Frazer or Craig Spray.

7 Do you recall that testimony?

8 A I do.

9 Q Why didn't you talk more explicitly with more people
10 before filing bankruptcy?

11 A I talked with the SLC, the Special Litigation
12 Committee. I talked with bankruptcy counsel, and I didn't tell
13 more people because we -- based on everything we saw from New
14 York State's Attorney General office, we felt that if it leaked
15 and the SLC felt that if it leaked, the Attorney General might
16 go to a judge and try to get a receivership and take over the
17 NRA and I wanted to protect the NRA. I thought it was a proper
18 business judgment for me to protect the NRA.

19 (Continued on next page)

20

21

22

23

24

25

BP

2422

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 Q Let's look at Plaintiff's Exhibit 603 which is tab --

2 A May I say one other thing?

3 Q Of course.

4 A That was for the future though as I've said. It wasn't
5 for the past. Everything -- I was trying to get the NRA on a
6 fair level regulatory playing field for the future.

7 We would still -- NRA would still have to deal with
8 this case right here that we're in here today, and I would still
9 have to deal with the lawsuit that had been filed against me by
10 the Attorney General's Office, and neither the NRA or myself
11 would get any advantage from that by filing for the bankruptcy
12 which was actually a reorganization.

13 Q And can you explain how -- how you saw it as different
14 for the NRA to go to Texas and you to face the lawsuit here?

15 A How I thought it was different?

16 Q Right. The distinction you saw.

17 A Well, I thought NRA would be dealing with a fair
18 regulatory playing field in Texas which would be a good thing
19 for the organization.

20 I actually felt that NRA her complied with it's
21 obligations in New York in terms of all the 360 course
22 corrections.

23 I actually -- and I had to in terms of paying back
24 everything where I received any benefit or calculation or
25 mistake was made, and I honestly felt the Attorney General

KM

2423

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 should be enthusiastic about the work we had done and patting us
2 on the back under New York State Law.

3 Q Let's look at Plaintiff's Exhibit 603 which is Tab 104
4 in your binder.

5 You looked at this with Mr. Conley a minute ago. There
6 is --

7 THE COURT: We have about 10 minutes before the
8 break.

9 MS. ROGERS: And this will be short.

10 Q Mr. LaPierre, do you recall testifying about this memo
11 which you wrote to the Officers' Compensation Committee
12 explaining that you intended to pay executive bonuses even
13 though the committee hadn't recommended any?

14 A Yes, I do.

15 Q I want to direct your attention to the first paragraph
16 underneath Linda Crouch's name. Linda Crouch is the head of
17 human resources at the NRA; right?

18 A Yeah. That's correct.

19 Q And I'm directing your attention to where you write,
20 "Notably, the aggregate amount of these bonuses is roughly half
21 the amount of the EVP bonus that I willingly foregone."

22 Do you see that?

23 A Yes, I do.

24 Q How did the officers react when you told them that you
25 -- that you wanted to pass up your bonus so that people like

KM

2424

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 Craig Spray and Linda Crouch could get one?

2 A They -- they -- well, they reacted -- I think they
3 thought it was a good thing I did.

4 I also starting in 2020 took my salary down to 80
5 percent of what it was, and I -- I did not receive any bonuses
6 from that point forward.

7 Q On Friday, the Attorney General showed you some old
8 post-employment severance agreements.

9 Do you recall that?

10 A Yes, I do.

11 Q They asked you whether the NRA would be stuck with
12 paying you if you weren't reelected or if you retired.

13 Do you remember that?

14 A I remember that.

15 Q And to your understanding, what is -- what are the
16 terms of your current agreement with the NRA?

17 A My current agreement with the NRA is -- is if I retired
18 or if I let the NRA or if the NRA was not reelected, at their
19 option, not mine, they could use my name and my image and my
20 signature to help them raise money if they decided to on their
21 own, and I think the payment would -- if they decided to do
22 that, would have been \$500,000.

23 Q Let's put up Plaintiff's Exhibit 572 which is already
24 in evidence.

25 This is -- is this your current employment agreement

KM

2425

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 with the NRA, Mr. LaPierre? And we can flip --

2 A Yes, it is.

3 Q And to your understanding, you were not entitled to a
4 penny from the NRA under any of those old contracts that this
5 contract replaced; right?

6 A That is correct.

7 Q Now, as you -- you noted that you understand the NRA
8 has an option to use your name and likeness under this contract.

9 You announced your resignation before this trial
10 started; right?

11 A I'm sorry.

12 Q That was my fault. The question was muddled. I'll ask
13 it more clearly.

14 You announced your resignation before this trial
15 started; right?

16 A Yes, I did.

17 Q Can you describe for the jury, what if any money or
18 benefits you've been offered by the NRA since you announced you
19 were resigning?

20 A I have not been offered anything.

21 Q Can you think of any burdens or payments that you feel
22 entitled to or that the NRA is stuck with now that you're
23 stepping down?

24 A None.

25 MS. ROGERS: Nothing further.

KM

2426

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 THE COURT: Why don't we take the -- our lunch
2 break now. We will reconvene at 2:15.

3 Again with the witness, you're still on the stand,
4 so please don't discuss your testimony during the break.

5 Thank you all. See you soon.

6 THE COURT OFFICER: All rise. Jury exiting.

7 (Whereupon, at this time the jury exits
8 the courtroom.)

9 THE COURT: Just a couple of quick things in terms
10 of the sword and shield.

11 As I mentioned when we talked about this all
12 before, it's -- the best way to evaluate is to see what
13 questions he answers and then that is what dictates whether
14 questions that are legitimately brought to cross-examine
15 those answers are rebuffed by reference to attorney/client
16 privilege.

17 So the witness testified to a lot of things and
18 including an interpretation of New York Law and a bunch of
19 other things about repayments and seems to me that the
20 decision point is when the Attorney General cross-examines
21 those and to see whether there are particular points that
22 they want to question him on.

23 I will say also, you know, this is part of my
24 weekend. I was working on jury instruction. Things such as
25 repayments have multiple possible relevance here. One of

KM

2427

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 which is potentially as a setoff.

2 The burden of proof on that will be on the
3 defendants as to the extent that repayments are going to
4 have to be shown. They will have to be proven. So just --
5 this oral testimony probably wouldn't be sufficient. So we
6 will see what the evidence is one way or the other, but --

7 MR. CORRELL: Your Honor, we are prepared to do
8 that in our case in chief.

9 THE COURT: Yeah. So -- right. That's my point
10 about the sword and shield is that you see what the witness
11 is able to testify to and then I'll see whether your cross
12 is hampered.

13 MS. CONNELL: Your Honor, thank you. We can cross
14 him, but we don't even have the information to effectively
15 cross him.

16 If he says I stood up, I looked at everything and
17 paid back everything, we got a repayment in December of
18 2023, and this is --

19 THE COURT: Like I said, I'm guided by the scope of
20 his testimony, and you can ask your questions as to cross
21 that. And if my conclusion is that you are being blocked
22 from being able to fairly cross-examine what the witness
23 said without objection, I think I have the tools to handle
24 that.

25 MS. CONNELL: Your Honor, I just note one thing.

KM

2428

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 Sometimes Mr. LaPierre, for example, may not have
2 been the person in charge of determining something and we
3 asked multiple witnesses for that information and received
4 privilege as a block in those instances. So our efforts to
5 establish, for example, how they calculated the amounts he
6 repaid for flights which is an example we put in front of
7 your Honor numerous times, Mr. LaPierre may say, oh, yeah, I
8 looked at everything and I paid everything back. It's the
9 characterization that we objected to, not the amount for
10 setoff.

11 We agree that's important and relevant, but it's
12 that characterization, and we can't unring the bell, the
13 fact that the defendant has made an election to say this is
14 hidden behind privilege is an election they are free to
15 make, but that precludes them from making representations
16 like that we would suggest to you.

17 THE COURT: It could be one of two ways. It could
18 either lead to an instruction that that evidence can't be
19 considered because of the block or it could be that you're
20 entitled to receive anything that you need to properly
21 cross-examine.

22 I mean, I was not prepared to make that call until
23 I heard what the evidence actually coming in is because it
24 was in my view kind of hypothetical when it was all raised
25 in advance which I did think it was helpful because I like

KM

2429

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 to have this teed up, but sword and shield, it kind of
2 depends on what the sword looks like. And so this would be
3 the sword. This is the affirmative use of various things,
4 and I'll evaluate it as we proceed.

5 MS. CONNELL: Thank you, your Honor. Again, I
6 would just note it was hard to unring the bell once the jury
7 hears something.

8 MS. ROGERS: In that extensive briefing, we cite
9 numerous portions of the corporate representative deposition
10 covering the same agreement and that the distinction we have
11 attempted to draw with Mr. LaPierre is what did you do, not
12 what did the lawyers tell you about it, but we understand
13 the Court's guidance.

14 THE COURT: Right. At this point now he's
15 testified about, you know, or generally as to what he paid
16 and they can probe what his process was and you can -- you
17 know, to the extent that he's asked that, I would not
18 expect -- you know, if they say, You testified that you did
19 this. How did you come up with that?

20 If you -- if -- if there is an assertion of
21 privilege to block him from answering that question to
22 probe, well, how did you determine what to do, then we may
23 have an issue.

24 MS. ROGERS: We understand, your Honor, and I think
25 we would try to cabin our objections the same way I tried to

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2430

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 cabin my objections to my questions to him on the stand.

2 You can say what you repaid. Don't say what legal
3 advice you received.

4 THE COURT: That's where it gets a little trickier
5 because he did say that he made a determination that
6 everything that he thought was inappropriate was paid back,
7 and I think they can ask what went into that.

8 MS. ROGERS: We understand, your Honor.

9 THE COURT: Okay. See you at 2:15.

10 MS. CONNELL: Thank you, your Honor.

11 (Whereupon, at this time there was a luncheon
12 recess.)

13 A F T E R N O O N S E S S I O N

14 * * * * *

15 THE COURT: So before we start, there was one part
16 of the testimony I wanted to just raise briefly.

17 Since there was the entity CEO responding to a
18 question from the entity, I just wanted to make sure I
19 understand what the legal position is, but during the latter
20 part of the testimony in response to the question about the
21 hostile environment in New York, the witness said among
22 other things "If there is anything we are doing that's not
23 in compliance with New York Law, let's correct it because as
24 I understood it, New York had a safe harbor provision. If
25 you were out of compliance or you had overrides and you

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2431

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 corrected the course and you came into compliance with your
2 obligations, that's what New York Law required you to do."

3 So I've been working on jury instructions including
4 instructions on the relevance of course correction kind of
5 information. That is not consistent with -- well, first,
6 the only safe harbor provision that I'm aware of is the
7 ratification provision which is much narrower than that. So
8 does anyone on the defense side -- is that an instruction
9 that you're seeking or is that -- again, I don't want to be
10 too hard on a non-lawyer sort of expounding on things, but
11 that's the first thing the jury has heard from anyone as to
12 some New York Law, and it's -- and how it -- and to what
13 extent course corrections are relevant, and it sounded to me
14 like it was described as a complete defense to everything
15 that came before it.

16 MS. ROGERS: So that's not the NRA's legal position
17 on certainly any of the discrete statutory charges.

18 I think depending upon how the amorphous and proper
19 administration charge is shaped --

20 THE COURT: Well, it won't be amorphous when I'm
21 done with it.

22 MS. ROGERS: Right. So that's what I mean.
23 Depending upon the form that amorphous crystalizes into
24 depending upon the breadth of that; it might be part of that
25 reasoning.

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2432

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 THE COURT: Part of it.

2 What I had said before to you all as a general
3 matter, and this is what I'm baking into the instructions
4 that I'm writing now is that it will be up for the jury, you
5 know, with respect to subsequent actions that, you know, the
6 relevant question on all the alleged violations to the
7 extent state of mind is a piece of it such as good faith or
8 ordinary care or whatever it might be is the state of mind
9 at the time of the violation, and what I am proposing is if
10 you find that subsequent actions bear upon or are relevant
11 to someone's state of mind at the time of the events being
12 challenged, then you can certainly take that into account.
13 And if you find that it is not relevant to their state of
14 mind at the time, then you should not. That's how I have
15 thought about the -- these things.

16 Now it may be slightly different with the NRA as an
17 entity, and you know -- but I still think the challenges in
18 the complaint are to specific conduct and transactions that
19 occurred over time.

20 So the question of whether -- you know, changing
21 policies in the future, if the jury concludes, well, that
22 shows either the NRA or somebody else's state of mind at the
23 time, I have left open the argument that you can make that,
24 and I think there is some support for this, that if somebody
25 is genuinely surprised by a violation and immediately

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2433

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 corrects it, that subsequent action could bear on a jury's
2 finding as to whether they were acting in good faith at the
3 time, but it's a very fact specific kind of analysis. And
4 it's certainly not what this description is which is that if
5 you correct it and come into compliance going forward,
6 that's a safe harbor.

7 MS. ROGERS: We understand, your Honor, and I think
8 the entity was not trying to assert or elicit a legal
9 position and what I think we got was a lay understanding of
10 the law.

11 That question was honestly aimed at eliciting what
12 we had discussed before. And if you look at the wording of
13 the question, it wasn't tell the jury, you know, what a safe
14 harbor is in New York. It was tell the jury what you meant
15 by hostile.

16 THE COURT: I'm not inclined to do a curative I
17 don't think right now because I want to very carefully craft
18 what I want to say to them on this issue because its become
19 obviously a fairly important issue in the defense. And you
20 know, I -- I don't know whether they -- whether it resonated
21 with them at all, but it's something that will have to be
22 corrected.

23 MS. ROGERS: I think very concisely our legal
24 position is, you know, when it comes to these discrete
25 statutory items like 715, the ratification defense

KM

2434

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 co-extensive with 715J, and it's very specific. When it
2 comes to business judgment rule, willfulness and a couple of
3 other items that have a mens rea type of element, then I
4 think your Honor has specified the manner in which remedial
5 measures can be considered questions which is do they shed
6 light as Learned Hahn said in these Second Circuit cases on
7 scienter essentially, but the third prong context in which
8 we submit is irrelevant is depending upon the morphology of
9 the amorphous charge, right, depending upon what improper
10 administration ends up meaning, if it just means, you know,
11 do you think they did anything improper --

12 THE COURT: Well, I will tell you this. I don't --
13 I'm not sure exactly what the verdict form is going to look
14 like. But hypothetically, if you -- and by the way; proper
15 administration is a phrase that has been used in the
16 surrogates world for hundreds of years or at least a hundred
17 years.

18 MS. ROGERS: But it's a interim charge usually --

19 THE COURT: Yeah, and it talks about the level of
20 care that one uses in administering an estate, for example,
21 or a trust, but whatever it is. You know, you can
22 improperly administer an estate in 2016 on a Thursday. In
23 other words, it can be a thing that you do that on that
24 Thursday, you've improperly administered the trust by doing
25 X, Y or Z. Right. So to that extent, it's the same thing

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2435

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 as applying subsequent events as you would under the
2 fiduciary or under the MPCL in that if you improperly
3 administer the fund on a Thursday in 2016, the fact that you
4 three years later have a new set of procedures and are
5 changing your stripes or whatever it is you're doing doesn't
6 mean that you didn't improperly administer the trust in 2016
7 on a Thursday.

8 MS. ROGERS: Right. And I think that if this does
9 start resembling -- if the ultimate charge resembles that
10 kind of trust and estates surrogate court's version of
11 estate and administration, then obviously that will guide
12 how the jury thinks about it.

13 Part of the reason that our presumption has been so
14 broad, we don't know exactly what it's going to look like,
15 and in some of the motion practice and pleadings, it seems
16 like there's a version of improper administration proposed
17 by the Government which is just let's throw everything at
18 the wall that seems expensive or improper in any way, and if
19 that were the charge, then we would -- then the entity's
20 position would be then you get to consider everything proper
21 that we did too. And so I think a lot of this comes down to
22 what the charge looks like.

23 THE COURT: Yeah. And look, I've been watching the
24 evidence come in to help me craft the charge. And you know,
25 we will see.

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2436

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 So you're saying it's sort of a binary question you
2 think that you either have improperly administered the fund
3 during this entire era or you haven't.

4 MS. ROGERS: I don't think it necessarily needs to
5 be binary.

6 So if the Court is guided by the trusts and estates
7 surrogate use of improper administration, then we would say,
8 you know, maybe the form of the charge, the limiting
9 principle derives from that body of law, and it looks a
10 little more in rem. It looks like were the charitable
11 assets misspent, for example.

12 I think that even regardless of what the charge
13 looks like, it doesn't need to be a crisp binary because,
14 for example, if the Court is looking to fashion injunctive
15 relief that takes into consideration the jury's findings,
16 you know, one way to craft a verdict form that doesn't have
17 that open-ended continuing harm thing on it but still takes
18 account of relevant facts might be do you think the fund was
19 improperly administered in 2018, 2020. Those are crisp jury
20 questions.

21 THE COURT: Look, I think inevitably all of this
22 stuff, a lot -- certainly more important or directly
23 relevant to the second phase, if there is one, on
24 non-monetary remedies. I think we have always understood
25 that, but you're putting a lot of that in here which I have

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2437

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 permitted on this theory that a post -- that subsequent --
2 subsequent actions can be used by a fact finder in
3 determining, you know, was this a good faith decision back
4 in the day and now we are seeing their true colors or is
5 this just a, you know, deathbed conversion or something like
6 that.

7 So I -- you know, I'm continuation to think about
8 it, but I -- I do read the complaint to allege a lot of
9 examples that they claim are improper administration which
10 would be individual violations. Not just one big blob of --
11 but I'm curious. I mean, we are going to have more
12 discussions about this. But whatever it is, it's not a safe
13 harbor. And again, I'm not being too hard on Mr. LaPierre
14 in the back as a non-lawyer, but I get -- my ears perk up
15 when I hear legal principles told to the jury about a very
16 central aspect of the defense, and it's not accurate.

17 MS. ROGERS: We understand, your Honor.

18 Just to clarify, again, you know that, I don't
19 think is what the question was targeted to elicit or what we
20 wanted to elicit, and I don't -- Mr. LaPierre's testimony is
21 fact testimony by an individual defendant. It's not the
22 entity putting our legal position before the jury.

23 THE COURT: So what I may say is I just may mention
24 that in the course of the testimony the, witness gave a view
25 about New York Law. Just to be clear, he is here to testify

KM

2438

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 about facts, and I will tell you what the law is, and you
2 know, what I'm leaning -- what I wanted to say, what I came
3 out here kind of thinking about was to say there is no safe
4 harbor provision such as is described. There are other
5 provisions that I will tell you about at great length.

6 MS. ROGERS: I think some kind of instruction that,
7 you know, I will give you -- I will tell you what the law
8 is, and the witness is giving fact testimony, we would
9 actually agree is appropriate. I think until the charge is
10 finalized, you know, we would -- the NRA would disfavor any
11 instruction that there is no safe harbor.

12 THE COURT: Well, not the safe harbor that the
13 witness described.

14 MS. ROGERS: But I think an instruction that the
15 witness is giving fact testimony, he is not a lawyer, and
16 even if he was, you get the law from the judge is entirely
17 appropriate.

18 MS. CONNELL: Your Honor --

19 MR. CORRELL: I think that's the way to address it.
20 That would be acceptable to Mr. LaPierre.

21 THE COURT: But it doesn't correct it.

22 MS. CONNELL: Thank you for pointing that out.

23 We would ask for a curative instruction.

24 I would just note that, and just remind everyone
25 that on December 14 the Appellate Division, First Department

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2439

W. LaPierre - by Plaintiff - Cross/Ms. Rogers

1 upheld your ruling that the Plaintiff had stated a claim
2 under the EPTL for past violations and conduct as alleged in
3 the complaint.

4 THE COURT: I don't want to --

5 MS. CONNELL: I don't want to get into that either,
6 but I think a curative instruction in the law is not as Mr.
7 LaPierre stated. He's a layperson, and the Court will
8 explain to you would take care of that.

9 THE COURT: I think I have to say something because
10 if they are going to spend the rest of the trial hearing
11 nothing else other than there is a safe harbor for course
12 corrections, I think that's problematic.

13 MS. CONNELL: I too, your Honor.

14 THE COURT: I will explain it to them. I think I
15 can do it. I'm not going to throw anybody under any buses,
16 but I don't want them to be laboring under a
17 misunderstanding.

18 MS. CONNELL: I appreciate that.

19 THE COURT: Everybody agrees with that.

20 MS. CONNELL: That's right.

21 MR. CORRELL: My concern is that a layperson might
22 well view ratification of past related-party transactions as
23 a sort of safe harbor. A layperson might view --

24 THE COURT: Well, it is. That's the -- that's not
25 the issue. The -- by safe harbor, it's a complete defense.

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It says it. That's not the context of the testimony.

(Continued on the following page.)

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2441

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 MR. CORRELL: I understand, and I think to the
2 extent you're talking about related-party transactions which
3 is quite a focus of this case, that it is arguable that
4 there is a safe harbor for related-party transactions.

5 THE COURT: I think there's too much of a risk.
6 I'll do it in a way that just makes it clear that, you know,
7 I will tell them about the claims and defenses and that
8 the -- that they should not consider any testimony from
9 anyone about what New York law is and -- look, I just think
10 the notion that there is a safe harbor defense is just
11 inaccurate enough that I need to say something about it, but
12 it won't be designed to suggest that it is irrelevant and
13 I'll explain that.

14 All right, let's bring the jury in.

15 MR. CORRELL: Your Honor, before we call the jury,
16 Mr. LaPierre is prepared to go till three o'clock. Can we
17 take the break at three?

18 THE COURT: I've spent fifteen minutes already on
19 this, so can we have a little bit longer?

20 MR. CORRELL: Yes, your Honor.

21 THE COURT: You're questioning now, right?

22 MR. CORRELL: Yes.

23 THE COURT: So that should be a little easier. If
24 it's not, that's a problem.

25 MR. CORRELL: He does kind of hit a wall at

BP

2442

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 three o'clock. His eyes start closing.

2 THE COURT: I understand. I'll let you take the
3 lead at that point; and at three, if you feel like things
4 are still going okay, we'll keep going for a little bit
5 longer.

6 MR. CORRELL: We'll go as long as we can.

7 THE COURT: Okay.

8 (Whereupon at this time the witness,
9 WAYNE LAPIERRE, having been previously duly sworn/affirmed
10 by the Clerk of the Court, resumed the witness stand and
11 testified as follows:)

12 COURT OFFICER: Court ready to receive the jury,
13 your Honor?

14 THE COURT: Yes.

15 COURT OFFICER: All rise, jury entering.

16 (Whereupon, at this time the jury entered the
17 courtroom.)

18 (Continued on next page)

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2443

W. LaPierre - by Plaintiff - Cross/Mr. Correll1
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MR. CORRELL: May I proceed, your Honor?

THE COURT: Before we start, just a very brief note.

As you remember at the instructions at the beginning, I said that the only instructions you'll get about the law will come from me.

So, occasionally, witnesses will venture into questions about the law, and there was just a short segment of Mr. LaPierre's testimony where he referenced New York having a safe harbor provision or something along those lines. This is not a criticism because people shouldn't be held to strict standards of legal scrutiny just in giving lay testimony. Again, the only instructions you get on the law should be from me.

There are claims and defenses, I'll explain those to you at great length when we get to the end. There is no safe harbor provision in the way that was described, but there are defenses that you will be able to take into account; but I didn't want you to be led to believe that that is the law that you will hear from me at the end. It will be different from that.

And so I just wanted to just reiterate that instruction that even though sometimes witnesses will talk about the law, often times there will be an objection. This

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2444

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 time there wasn't, but I just wanted to make sure you're not
2 blocking in on any particular statement of the law
3 prematurely until I can explain it to you at the end. Okay.

4 All right, Mr. Correll.

5 CROSS-EXAMINATION

6 BY MR. CORRELL:

7 Q Good afternoon, Mr. LaPierre.

8 A Good afternoon.

9 Q I'd like to take you back to Friday briefly to talk
10 about a few of the things that Mr. Conley spoke about. You
11 spoke about security and there were some discussion of
12 Mr. Staples.

13 Do you remember that?

14 A Yes, I do.

15 Q Who was the head of security before Mr. Staples?

16 A Russell Gordon.

17 Q Did you have any conversations with Mr. Gordon about
18 security?

19 A Yes, I did.

20 Q And what, if anything, did he tell you about flying
21 private?

22 A We went back and forth for awhile.

23 MR. CONLEY: Objection.

24 THE COURT: I'm sorry, say again?

25 MR. CONLEY: Objection, calling for hearsay.

BP

2445

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 THE COURT: Overruled.

2 A We went back and forth for awhile. When the threat
3 went up, he told me to fly private. When the threat went down,
4 I flew commercial. After about -- after 2013, it was fly
5 private all the time.

6 Q And was the fact that the NRA was providing charter
7 travel to you disclosed in the 990s that were filed with the
8 IRS?

9 A Yes.

10 Q There was some discussion about mosquito treatments at
11 your home.

12 A Yes.

13 Q Can you explain what that was about?

14 A Well, our house was kind of on a -- in the back was a
15 lot of sitting water, and the mosquitoes would be just horrible
16 in the summer and the security people would be out there all
17 night. They'd walk around and they would just get eaten up by
18 mosquitoes.

19 So, the NRA paid for mosquito treatment so that it
20 would help protect the security people.

21 Q There was some discussion of landscaping on one
22 invoice. Do you remember that from Friday?

23 A Yes.

24 Q Could you please tell the members of the jury what the
25 landscaping was for?

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2446

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 A Yes. What the NRA did was they put a bunch of bushes
2 in so that somebody couldn't run down through the -- straight to
3 the door. They also put a wall behind the house in front of my
4 office so that somebody couldn't shoot into the office from the
5 back hill. And then they put up this little fountain to try to
6 disguise the fact that it was a security wall.

7 Q Did you ever actually have any security problems at
8 your house?

9 A Yes.

10 Q What kind of problems did you have?

11 A Well, we were swatted. I mean, I was home in the
12 middle of the night with my wife, and the phone rang about 2:15.
13 It was the Police Department saying, "Come out with your hands
14 up in the air. Turn all the lights off." And we were running
15 around with our heads cut off, and my wife was going, "Don't go
16 out there. Someone is going to kill you."

17 And I kept running around turning on lights and,
18 finally, I said, "I'm coming out," and I walked out with my
19 hands up. About fifteen police officers with their guns drawn
20 were charging toward me, and we realized later from the police
21 what had happened.

22 Q Did the police take any action to investigate to
23 determine who did that?

24 A They did. They investigated it for a quite awhile. It
25 was ready to go to court locally. That ended up being taken

BP

2447

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 away. It turned out it was took -- taken away by the FBI, and
2 they, ultimately, arrested someone.

3 Q And did that person, ultimately, go to jail?

4 A I believe they did. There were many other instances,
5 also.

6 Q Did you have stalker incidents at your home?

7 A Yes, we did.

8 Q Was that a frequent occurrence?

9 A Yes, it was. There were people taking pictures through
10 the windows. There were people out there on the streets. The
11 neighbors called the police several times. We had all kinds of
12 things happening. We were doxxed.

13 Q What is doxxing?

14 A When they invade all of your bank accounts and your
15 credit cards and try to apply for all types of things under your
16 name because they have your credit information and that was
17 investigated by the FBI, also.

18 Q I want to change subjects. There was some discussion
19 that you actually were asked a question about --- I think the
20 question was are you the head of a charity.

21 Do you remember that question?

22 A Yes, I do.

23 Q And I objected and my objection -- on the grounds it
24 called for a legal conclusion, and that objection was overruled.

25 I believe your answer was that you were head of the

BP

2448

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 501(c)(4) organization. Was that your answer?

2 A Yes.

3 Q And you were drawing the distinction between a charity
4 and a 501(c)(4) organization; correct?

5 A Yes.

6 Q What -- why were you drawing that distinction?

7 A Well --

8 MR. CONLEY: Objection.

9 THE COURT: Overruled. Go ahead.

10 A A charity is it's taxed deductible. There's a
11 501(c)(3) that's affiliated with the NRA that is a charity. A
12 501(c)(4), while it is nonprofit, is not tax deductible.

13 Q Does that mean when someone wants to join and send in
14 dues, they don't get to deduct that from their taxes?

15 A Yes.

16 Q And, so, that's no taxpayer money is being used to
17 support the 501(c)(4) through member dues; is that a fair
18 statement to your understanding?

19 A Yes.

20 MR. CONLEY: Objection.

21 THE COURT: Hang on. What's the objection?

22 MR. CONLEY: Leading.

23 THE COURT: I thought it was also a legal
24 conclusion, but he is the CEO of an entity. I think his
25 understanding of what it is is I think relevant.

BP

2449

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 I'll overrule it.

2 A So, in your understanding, is this like donating to say
3 a Catholic charity?

4 A Catholic charity, I believe, would be tax deductible.
5 The NRA is not tax deductible. It is nonprofit.

6 Q Or any religious charity would be, in your
7 understanding, a (c)(3), not a (c)(4)?

8 A That's my understanding.

9 Q There was some discussion of your wife flying with you
10 on private jets. Do you recall that?

11 A Yes.

12 Q Why did she fly with you on occasion?

13 A My wife was the volunteer unpaid for the Women's
14 Leadership Forum, which is a philanthropic organization for
15 women of the organization to raise money and not of the
16 organization, and my wife would fly with me to represent the
17 Women's Leadership Forum.

18 Q Can you tell the jury how that came about?

19 A Well, my wife volunteered back in I think it was 2004,
20 2005 to -- to do this with the NRA because she had a background
21 in the area. She thought she could -- she knew how to put it
22 together.

23 Q What was her background?

24 A Fundraising.

25 Q And did she work as a volunteer for the NRA from that

BP

2450

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 time on?

2 A Yes.

3 Q Is she still working as a volunteer for the NRA?

4 A In someways, not as much right now.

5 Q Is she still involved with the Women's Leadership
6 Forum?

7 A Yes.

8 Q How much of her time did she spend working on WLF
9 matters?

10 A Well, back when she was doing it then which was 2004,
11 2005 up to about 2018, it was virtually a full-time job for her.

12 Q Was she -- was she ever offered -- did anyone ever
13 suggest that she be paid for her work?

14 A Yes.

15 Q And what did she say?

16 A She said no.

17 Q And did she explain why?

18 A Yes. It was because she thought that if -- if she was
19 going to be successful at doing what she was doing, which was to
20 engaging women around the country to step up and give a donation
21 to help the NRA or programs or whatever it went for, that she
22 should be on the same equal footing as they should and she
23 shouldn't be paid.

24 Q Did you have any sense of whether Gayle Stanford was
25 shopping around to get the best prices on air transport?

BP

2451

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 A That's what I understood, but I really wasn't involved
2 with it in terms of what she did.

3 Q Did you ever get any questions from the treasurer, the
4 treasurer's office as to -- that indicated to you that there
5 was -- that Gayle Stanford wasn't getting the best price for air
6 travel?

7 A No.

8 Q There was a question yesterday where Mr. Conley showed
9 you an invoice and it had Hotel ZaZa on it. Do you remember
10 that?

11 A I do.

12 Q Can you tell us anything -- do you know anything about
13 Hotel ZaZa and what your wife might have been doing taking a car
14 at seven a.m. to Hotel ZaZa?

15 A Yes, I believe that's where the Women's Leadership
16 Forum was holding a brooch ceremony for people that gave --
17 women that gave a certain amount of money to the Women's
18 Leadership Forum, and I think she was doing a site visit there.

19 Q Did you have any understanding at the time as to
20 whether the time she was spending doing this kind of thing for
21 the NRA had any benefit for the NRA?

22 A It had incredible benefit.

23 Q And what was that benefit?

24 A Well, over the last ten years, it raised 59 million in
25 cash and, approximately, another 110, 112 in plain gifts from

BP

2452

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 what the figures had been provided to me.

2 Q There was talk of MMP on Friday. Do you remember
3 that?

4 A Yes.

5 Q How much money did MMP raise for the NRA on average
6 year over year?

7 A Well, it depends on the year. Several years ago they
8 raised somewhere around 200 million, 215-20 million. In recent
9 years, it's gone down more to 130, 140, 150.

10 Q What portion of that of what they brought in did they
11 get to keep under the arrangement that the NRA had with them
12 roughly on average?

13 A Well, about ten percent in the old days, and now I
14 believe -- I believe -- I wasn't involved with it. I believe
15 their new contract is 9 million, and they're raising -- if you
16 count ILA and PVF, I think they're raising about 130 --
17 somewhere between 130 and 50 million.

18 Q So, they're a little under ten percent now?

19 A Yes.

20 Q Between 10 and 5?

21 A Yes.

22 Q Did the NRA derive any benefit from the time you spent
23 with McKenzies on their boat in the Mediterranean?

24 A Yes, what I was trying to do is I was trying to --
25 there were so many people in Hollywood that were speaking out

BP

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W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 against the organization. I felt that NRA needed to compete
2 because I knew there were a lot of people in Hollywood on our
3 side. And the reason I took those trips is I was trying to
4 cultivate celebrities, build relationships with celebrities;
5 and, also, that was a portal I could go through and end up in a
6 world I never could have ended up in on my own and I would meet
7 celebrities.

8 I would build relationships with them and would also
9 meet wealthy people, that maybe I could draw in to build a
10 relationship with and get to give NRA quite a bit of money.

11 Q Were you successful in developing any relationships
12 with any celebrities?

13 A Yes, I was.

14 Q Could you give us a few examples?

15 A Well, I'll give you all kinds; but, I mean, most
16 recently like Dean Cain, Erik Estrada, Montel Williams, folks
17 like that, that --

18 Q For the members of the jury who may not know these
19 names, can you just tell us briefly who each of these people
20 are?

21 A Yes. Erik Estrada was on the show, I believe it was
22 Cops.

23 Q CHIPS.

24 A CHIPS, yes, sir. It was about police officers on -- in
25 Los Angeles that were on motorcycles. It was on a long time,

BP

2454

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 maybe the most popular show on TV and he was one of the highest
2 paid actors in the country.

3 Q And CHIPS means California Highway Patrol; correct?

4 A Yes.

5 Q What about Montel Williams?

6 A Montel was one of the longest hosted -- one of the
7 longest running television shows --- interview shows in the
8 country, and he was also a naval academy graduate with a lot of
9 military experience.

10 Q And were you able to persuade Montel Williams to do
11 anything for the NRA?

12 A Yes, I persuaded all of them to do something for the
13 NRA. Montel came and spoke to all the high donors at -- 40 or
14 50 of our highest donors at the convention. Erik Estrada did
15 safety spots for us in terms of children. He also did episodes
16 of Crime Strike. He came to our convention. Dean Cain actually
17 ended up running for the board.

18 Q For those of us who don't know the name Dean Cain, was
19 he an actor?

20 A Yes, he played Superman.

21 Q And when did he do that?

22 A I think that was probably 15, 18 -- I'm not sure of the
23 exact year.

24 Q Was that a popular show at the time?

25 A Yes, it was a movie, I believe, and Roger Moore was

BP

2455

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 another one I developed a relationship with.

2 Q And what benefit did your relationship with Roger Moore
3 produce, if any?

4 A He was -- the United Nations was trying to talk him --
5 because he was involved with the UN and being a spokesperson on
6 a lot of their firearms treaty efforts and things like that, and
7 I was able to develop a relationship with him, talk to him about
8 it, make him -- educate him to the point where that ended up not
9 happening.

10 Q And what roles did he play as an actor?

11 A He was -- for quite awhile he was James Bond in the
12 movies.

13 Q And did you see some benefit to having a person who
14 played James Bond not acting as a spokesperson against the
15 positions you were taking?

16 A Yes, it -- as I've said, the whole reason I did this
17 was to try to educate celebrities about the NRA and what a good
18 mainstream organization it was and how much actors in Hollywood
19 were -- I mean, America is influenced by celebrities in a big
20 way. That's why you see them on so many TV ads, and I wanted us
21 to play on that field and not concede that ground to the other
22 side.

23 I thought that was simply smart in terms of protecting
24 the NRA and further the mission of the NRA.

25 Q Mr. Conley showed some photographs on Friday. Do you

BP

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W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 recall that?

2 A Yes, I do.

3 Q One of the photographs I believe was a photograph of
4 you in Dubai or somewhere?

5 A Yes.

6 Q I notice some tripods in the background, some camera
7 tripods in the background. Do you recall that? There being any
8 filming going on in that trip?

9 A Yes, they used to film a travel show, and they use to
10 film it wherever they went with, with the -- the people that
11 went with them.

12 Q And did you ever do any filming on any of those trips
13 for the NRA?

14 A I did not do filming for the travel show. I did some
15 standups, in general, and I did some Crime Strike; but I did not
16 do the travel show.

17 Q When you filled out your financial disclosure
18 questionnaires, did you believe you were filling them out
19 correctly?

20 A Yes, I did.

21 Q And when you -- when it came to your attention that you
22 had not filled them out correctly, did you undertake to go back
23 through and correct your answers?

24 A I did. I mean, the compliance thing, I wasn't the
25 compliance guy. I now know that if I was to give anybody

BP

2457

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 advice, it would be don't transfer that function to anybody.
2 You need to be an expert on it.

3 But, at the time, I mean, I was learning. I was being
4 educated and I -- I know on those trips now what I should have
5 done was either go to the Audit Committee and tell them what I
6 was doing, why I was there or not go at all. I mean, it -- I
7 mean, that's what I would do now.

8 Q There was -- Mr. Conley pointed a receipt for handbag
9 from Bergdorf's.

10 Do you remember that?

11 A I do.

12 Q Can you tell the jury what your thinking was behind the
13 handbag gift?

14 A My wife building the Women's Leadership Forum in
15 particular, but I did, too, with employees and with some donors
16 would to build relationships and continue relationships, we
17 would give birthday gifts, wedding gifts, holiday gifts,
18 Christmas gifts. Hostess gifts, if somebody was hosting a
19 reception.

20 And I put all those on my expenses that I turned in to
21 NRA because I -- I thought they were the glue in terms of
22 building relationships and holding things together.

23 Q And at the time you did that, did you have any
24 knowledge of whether there was a limit on the amount that the
25 NRA could reimburse people for gifts to employees or vendors or

BP

2458

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 volunteers?

2 A I did not know at all there was a limit. I now know
3 there was a limit of \$25. And what I have done is go back
4 through every one of those expenses, and I have paid all those
5 gifts back to the organization.

6 Q So, the NRA received a benefit from the gift giving,
7 but didn't have to pay the price. You ultimately paid the
8 price; correct?

9 A I paid it back.

10 Q And did you pay the price for that particular bag?

11 A I paid all those gifts back.

12 Q And did you pay interest on that, as well?

13 A I paid interest and I, also, went back and paid taxes
14 with interest.

15 Q And so you think you're all square with the NRA, at
16 least on that bag; right?

17 A Yes, I do.

18 Q And on the other things you went back to repay?

19 A Yes, I did. Yes, sir.

20 Q There was -- Mr. Conley mentioned a gift for David and
21 Laura McKenzie's daughter. Do you remember that one? Did you
22 pay that one back?

23 A Yes, I did.

24 Q And Mr. Conley mentioned some candlesticks. Do you
25 remember that?

BP

2459

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 A Yes.

2 Q Did you pay that one back?

3 A Yes.

4 Q And he also mentioned a Fitbit, a Fitbit store. Did
5 you pay those back?

6 A I paid all of them back.

7 Q As you sit here today, is there any gift that you gave
8 that you can think of that you did not pay the NRA back for?

9 A No.

10 Q There was some mention about a golf club on Friday. Do
11 you recall that?

12 A Yes.

13 Q Can you explain to the jury what, if any, benefit there
14 was to the NRA for you having a membership to a golf club?

15 A Yes, it was a place I could take supporters. I could
16 take donors. I could socialize with donors and members. It was
17 NRA's policy up until about -- until Craig Spray came on board
18 that that was a proper thing to do.

19 When Craig Spray came in, he informed us that the law
20 had been changed; and it was not the proper thing to do and it
21 was all discontinued in 2018.

22 Q And do you still belong to that golf club?

23 A I do.

24 Q And you pay your own dues?

25 A I do.

BP

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W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 Q Do you still bring people to the golf club to talk
2 about NRA business?

3 A I do.

4 Q And I think there might have been some mention that
5 this golf club belonged to Donald Trump; is that correct?

6 A Not originally, but he ended up buying it.

7 Q Did you ever socialize with him there?

8 A No. I saw him there, waved to him a couple of times,
9 but I did not socialize with him there.

10 Q Did you have any involvement in the preparation of the
11 Form 990?

12 A Well, I worked with our tax lawyers, the auditors
13 worked on it. I worked with our general counsel's office and
14 I -- and our accounting staff.

15 Q Did you actually go around and collect data from
16 people, accountants to populate the form?

17 A No, I didn't.

18 Q Did you actually draft the disclosures that were
19 included in the 990?

20 A I looked at them and worked with the people preparing
21 them. I did not draft them. I -- I thought it was the most
22 transparent 990 we've done. It reflected all the work we've
23 done in terms of what's referred to as the course correction,
24 so.

25 Q And you're referring to the one that you signed?

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W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 A Yes. It was an ongoing process still.

2 Q There was some talk about Youth for Tomorrow and I know
3 you mentioned -- talked a little bit about it; but can you tell
4 the jury whether you believed there was any benefit to the NRA
5 to having a relationship with Youth for Tomorrow?

6 A Yes, I did. The NRA had corporate headquarters in
7 northern Virginia, and Youth for Tomorrow is one of the most
8 prominent charities in northern Virginia. It does an
9 unbelievable job in terms of saving kids. It would be
10 completely lost. I thought the benefits were, one, to help the
11 kids; two, to have NRA seen as a really good corporate citizen
12 in front of all of northern Virginia, in front of the political
13 class of northern Virginia that came to most of those events.

14 And we also brought in a lot of our high donors from
15 around the country to our Advancement Office to participate in
16 those dinners, and they thought that was a really great thing
17 for the organization to do, also.

18 So, I think there were -- and we also got to meet a lot
19 of people we wouldn't have gotten to meet in terms of potential
20 donors, and I just thought it was a great business thing for the
21 NRA to do in a place -- in a corporate place of business
22 resided.

23 Q Were you able to interact with legislators in
24 Washington?

25 A Yes, there were Congressmen there. There were local

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1 members of the City Council there, the Board of Supervisors and
2 NRA had requests from time to time going to the Board of
3 Supervisors and it was just a good thing, in general, for the
4 NRA.

5 (Continued on next page)

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2463

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 Q Did military people attend?

2 A Yes.

3 Q And who started that foundation?

4 A Coach Joe Gibbs of the Washington football team.

5 Q Was that a (c)(3) or (c)(4)?

6 A It was a (c)(3).

7 Q And so deductions were or contributions were tax
8 deductible to Youth For Tomorrow?

9 A Yes.

10 Q There was talk about helicopters today. I'm jumping
11 back to today.

12 Do you remember that?

13 A I do.

14 Q Why were you in those helicopters?

15 A We were going out to the NASCAR tracks.

16 One of the things I always thought, NRA -- I knew NRA
17 is about as mainstream an organization you can get. The media
18 makes it try to sound otherwise, but we probably got a member on
19 every block in this country, and the other side always tried to
20 push NRA to the fringe, and I knew that's how the organization
21 would lose. We didn't want to be there. NRA is not some
22 right-wing organization, so I tried to build a relationship with
23 all of these cultural institutions that had an influence on
24 American society and that would include NASCAR, country music,
25 the NFL alumni, the NBA, even organizations like Youth For

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W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 Tomorrow, and that would help the NRA in terms of being
2 culturally relevant and showing America that NRA is a good
3 citizen, good people and not what they might read about in the
4 papers.

5 Q And did you have any success with that effort?

6 A Yes, we did.

7 Q And what benefit did it ultimately produce for the NRA?

8 A It produced owners. It produced a lot of good will.
9 It -- at the NASCAR races, they used to -- just because I
10 happened to be the position I hold, they used to introduce me at
11 the drivers meeting to the drivers. So we were able to form
12 relationships with them.

13 On country -- at the country music, we actually were
14 able to get the clay shoot on CBS national television at the
15 Academy of Country Music Awards that they would hold every year.

16 We would get many celebrities come out and shoot at
17 those events, whether it be Blake Shelton or you could go on
18 with a whole list of celebrities, but all that in this culture
19 which is influenced by all these institutions is a good thing
20 for an organization like ours.

21 Q And did you -- did the NRA have signage and branding at
22 these events?

23 A Yes, we did.

24 Q Did you pay for the right to do that?

25 A Yes. It depended. At NASCAR, it was -- we did

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W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 originally and then it was part of our relationship with their
2 foundation that we would get signage.

3 At the country music, we would get signage.

4 The NFL alumni, we would actually get use of the NFL
5 alumni logo which was virtually similar to the NFL logo, so it
6 was all very positive for an organization that you don't want
7 people to think is some right-wing organization but is deepest
8 part of the river, the mainstream of society which is what our
9 organization is.

10 Q Did the NRA donate funds to the Speedway charity that
11 was associated with the NASCAR events?

12 A We did.

13 Q And what was the Speedway charity?

14 A Speedway Children's Charity is -- NASCAR is kind of
15 broken up into two kingdoms. There is the France family and
16 then there was the Smith family that owned about eight or nine
17 of the tracks and then the France family owned the largest other
18 group of tracks. So the Speedway Children's charity was the
19 Speedway motor sports charity.

20 Q Going back to YFT, did your wife and you ever sponsor a
21 child from A Child At Risk?

22 A Yes, we did.

23 Q And could you just tell me generally what that process
24 was like, what that entailed?

25 A We got to know her through Youth For Tomorrow. We took

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W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 her into our home. We went through the process in Virginia of
2 them okaying for her to spend time in our home, and we tried to
3 love her, and we tried to give her a chance.

4 MR. CORRELL: I think this would be a good time to
5 break, your Honor.

6 THE COURT: Okay. Let's take our break, and we will
7 see you shortly.

8 THE COURT OFFICER: All rise. Jury exiting.

9 (Whereupon, at this time the jury exits
10 the courtroom.)

11 THE COURT: Can I just ask a quick question. So I
12 want to make sure I'm informed enough to be able to deal
13 with any objections that come up. I was never good at tax
14 which is why I went into litigation, so I don't really know
15 much about it.

16 You were making a distinction about tax exempt
17 organizations, I think. The Form 990, at least that I have
18 looked at now, a lot of them, it's a return of an
19 organization exempt from income tax.

20 How -- what's the -- and that's all the (c)(4) an
21 (c)(6) as well.

22 MR. CORRELL: It's tax exempt from I think (c)(1)
23 to I think (c)(8).

24 THE COURT: What's the distinction that you're
25 drawing?

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W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 You're drawing what about contributors can
2 deduct the contributions from their taxes?

3 MR. CORRELL: A 501(c)(3) organization is
4 recognized as a charity under federal law, and the money
5 that you give is tax deductible. You can deduct it from
6 your taxes.

7 A 501(c)(4) social welfare organization is not --
8 the money is not tax deductible.

9 THE COURT: But the organization is tax exempt.

10 MR. CORRELL: It's tax exempt from certain things,
11 but that doesn't mean when someone donates money, they get
12 to deduct.

13 THE COURT: From the donor's perspective, there is
14 a difference, but from the entity's perspective in terms of
15 its organization, it's taxed the same way that the other 501
16 C's.

17 MR. CORRELL: Not exactly. There may be
18 differences. I'm not a tax lawyer either. I hated taxes in
19 law school.

20 As I understand, the rules can vary slightly from a
21 classic charity which is a foundation which is tax
22 deductible with certain rules from a (c)(4) which tended to
23 be a membership organization where you were serving members
24 rather than widows and orphans. Widows and orphans don't
25 join a foundation in order to get benefits. Members join a

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W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 social welfare organization to associate, and the
2 organization is exempt from taxation for certain things.
3 Not all things. They pay sales tax, and Mr. LaPierre might
4 be able to speak better to this than I can.

5 THE COURT: In ways -- would a (c)(3) not pay sales
6 tax?

7 MR. CORRELL: I believe they do pay sales tax.

8 THE COURT: Maybe it's a question for -- I'm not
9 going to micromanage every word you use when you talk about
10 taxation, but it's not accurate to say that the NRA is
11 not -- that's two negatives. A tax exempt organization.

12 MR. CORRELL: I have not said it's a tax exempt
13 organization. It is. It's also a not-for-profit
14 corporation, but there are nuances that the wisdom of the
15 Internal Revenue Service has created that are sometimes hard
16 to navigate and one clear one, and the expert that the
17 Attorney General put on on non-profit organizations admitted
18 that there are differences between --

19 THE COURT: And under the N-CPL, is there a
20 difference at this point under the N-CPL as it exists now
21 between non -- not-for-profit corporations that are
22 charities and those that are not?

23 MS. ROGERS: Yes, your Honor.

24 MR. CORRELL: Excuse me. If I could respond to
25 that.

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W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 MS. ROGERS: That was me. I just want to clarify
2 the NRA's position on this because it's us.

3 So the NRA is federally tax exempt in that the NRA
4 does not pay taxes in the way a for-profit corporation
5 would, but there is two distinctions being bandied about.

6 There is tax exempt, and there is charity. So the
7 N-CPL defines a charitable corporate purpose to be the same
8 language as 501(c)(3) in the Internal Revenue Code, and I'm
9 reciting from memory so there could be little improvisation
10 here, but the money has to be spent under the N-CPL for
11 charitable purposes and under the 501(c)(3) provision of the
12 Internal Revenue, those tax exempt funds have to be spent
13 for charitable scientific education purposes meant to
14 prevent cruelty to children or animals.

15 When tax lawyers talk about a non-profit, lawyers
16 talk about charitable funds and charitable purposes, that's
17 where that language comes from.

18 The language in the N-CPL mirrors the 501(c)(3)
19 language in the Federal Court, and I think that was what --
20 that's why Mr. Correll objected on legal conclusion to the
21 term "charity," but he would not object on legal conclusion
22 to the term "tax exempt" because the whole ecosystem of
23 501(c) organizations from a dark money 501(c)(4) to the Red
24 Cross to a 501(c)(3) foundation to help orphans are all 501c
25 tax exempt.

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W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 THE COURT: In terms of the N-CPL and the EPTL and
2 the executive law, does it make a difference whether one is
3 a charity or not?

4 MS. ROGERS: Yes, and we have briefing on this, and
5 I would give a much shorter cliff notes version or a letter.

6 THE COURT: I remember seeing it, but I don't
7 remember being entirely persuaded that it mattered.

8 MR. CORRELL: Your Honor, if I may.

9 THE COURT: I didn't -- actually, I -- really just
10 did want to ask about the tax exempt thing because it seemed
11 a little off to me. But since I had both of you speak, I
12 should at least let the State --

13 MR. CORRELL: I think --

14 THE COURT: Well, let me --

15 MR. CORRELL: If I may --

16 MS. STERN: Mr. Correll, thank you.

17 I think that what we have here is a a huge ball of
18 confusion. Under state law, -- I think it is.

19 The issue is that the NRA is a charity under state
20 law. The regulations in New York define 501(c)(3) and
21 (c)(4) as the charity, and the NRA has been registered and
22 continues to be registered under the charitable umbrella
23 under New York Law and the discussion of the (c)(4) and the
24 (c)(3) is very confusing, I think.

25 MR. CORRELL: Your Honor, the problem --

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W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 MS. STERN: Excuse me. That is not the standard,
2 and under the N-CPL, there are distinctions. The
3 obligations of a charitable not-for-profit corporation
4 versus a not-for-profit corporation.

5 For example, under 715 with respect to
6 related-party transactions, certain procedures apply to the
7 NRA because under New York Law, it is a charitable
8 not-for-profit corporation. It's a social welfare
9 organization.

10 MR. CORRELL: Your Honor, the genesis of this is
11 1973 where there was a law change that people were supposed
12 to check a box whether they were a Type A, B, C or D.
13 That's been wiped out.

14 For whatever reason, Chad Walter advised -- well,
15 the NRA checked the box "Type B" which was charitable and
16 has since been known as a charitable corporation.

17 The fact is the Certificate of Incorporation says
18 it was formed as a social organization which has an
19 exception. So setting that aside, there is a difference
20 between 501(c)(3) and 501(c)(4) organizations at the federal
21 level, and we believe that my concern anyway was the
22 Attorney General has been throwing the word "charity" around
23 in a way that suggests, and I thought it was suggesting to
24 the jury that this was tax deductible money going to the NRA
25 that somehow justified the government in engaging in the

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W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 level of micromanagement that they are trying to impose on
2 this organization.

3 During jury selection, we talked to some jurors.
4 One of them said, I can't believe that the NRA is a
5 non-profit, and there is this thing in the air that people
6 are wondering how --

7 THE COURT: Well, it's both a non-profit and tax
8 exempt.

9 MR. CORRELL: Yes.

10 THE COURT: I was meaning to ask you that question.
11 I remember that. But in any event, let me let Ms. Rogers
12 have the last word, and then we will take a short break.

13 MS. ROGERS: The N-CPL provision from which I am
14 gleaning the 501(c)(3) language defining charity is
15 N-CPL 102 subpart 3-A. I'm not aware of any provision of
16 the N-CPL that defines 501 (c)(4) as a charity but would
17 love the Attorney General to point it out to me, and I do
18 think this has been briefed extensively and now is probably
19 not the time to delve back into it, but we are happy to.

20 THE COURT: Well, I'm most concerned. Not
21 concerned. If it has any impact on the instructions on the
22 actual claims in this case, that's where my concern is.

23 When people toss words around, you know, "tax
24 status" or "charity," I know ultimately the instructions I
25 give the jury -- I wasn't anticipating having to give

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2473

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 different instructions on whether they determine it's a
2 charity or not because the statutory provision that this
3 case is brought under make no distinction.

4 MS. ROGERS: That's true. As to some other
5 statutory provisions, EPTL is about charitable. They use
6 the phrase "charitable assets."

7 THE COURT: You are not suggesting that the NRA is
8 not subject to the EPTL; are you?

9 MS. ROGERS: I'm not suggesting NRA is not subject
10 to the EPTL, but I am suggesting that there can be a
11 distinction. There are different streams of funds that are
12 acquired in different ways. I agree we don't want to spend
13 a ton of court time on it, but we are happy to do a short
14 letter.

15 THE COURT: Like I said, I'm most focused on the
16 practical here. What I have to tell the jury makes a
17 difference, and if the -- if the characterization matters
18 which I have not heretofore seen it matter, then I want to
19 make sure I'm careful about that in the instruction

20 MR. CORRELL: One case for it. It will resolve
21 your issues. Court of Appeals, 2005, Consumer's Union drew
22 a distinction between a charity and a 501(c)(4)
23 organization. It's right there. I'll send it to you in a
24 letter. Consumer Union.

25 MS. CONNELL: I would suggest that's a federal

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W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 case. This is not appropriate. This is a question of law.

2 MR. CORRELL: It's not a federal case. It's a
3 New York Court of Appeals.

4 MS. CONNELL: If I can just finish. I'm sorry. I
5 just don't think that having a witness explain the law is --

6 THE COURT: Well, it isn't. Anyway, I have learned
7 a lesson about not raising issues like this during a break.
8 At least, I got the tax exempt question answered, so thank
9 you.

10 (Whereupon at this time there was a recess taken.)

11 THE COURT OFFICER: All rise. Jury entering.

12 (Whereupon, at this time the jury entered the
13 courtroom.)

14 THE COURT: Okay. Have a seat, please.

15 So we are again going to take a short -- a break
16 from Mr. LaPierre's testimony until the morning and go back
17 and try to finish up Mr. Spray's testimony. That's the one
18 that's on audio.

19 Before we get started, I was informed that during
20 the playback last time there was one question and answer
21 that I had found was hearsay, and when I marked it up,
22 apparently this caused some confusion, so the question and
23 answer ended up being played. My guess is you won't
24 remember it anyway, but in case you did remember it, the
25 question that was asked was, and it's at Page 86 of the

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1 transcript. So if you at some point later on are listening
2 to this again, the question is were you aware that the NRA
3 was making payments to a company affiliated with Mr.
4 Phillips's significant other, and the answer was based on
5 what he had heard from somebody else. So the whole answer
6 and question, the intent was for that not to be played. It
7 was played. So if you remember it, forget it. If you don't
8 remember it, carry on. But if you do ask during
9 deliberations for a readback of this testimony or have it
10 played back again, that part won't be in it.

11 Okay. So how much time do we have left in this
12 current one?

13 MR. SHIFFMAN: 56 minutes.

14 THE COURT: And then we are rolling into the other
15 transcript.

16 MR. SHIFFMAN: 55 minutes here and a minute and a
17 half.

18 THE COURT: About an hour total. All right. Let's
19 roll 'em.

20 (Video played.)

21 (Continued on the following page.)

22

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Proceedings

1 THE COURT: Was that supposed to happen?

2 THE TECHNICIAN: I think the system shut down.

3 THE COURT: Let's see if we can reach out to IT.

4 (Brief pause)

5 THE TECHNICIAN: The issue has been solved.

6 THE COURT: Okay.

7 (Whereupon, at this time the video continued to
8 play.)

9 THE COURT: This next transcript is from the
10 bankruptcy trial, is that right? So, this prior transcript
11 was from the deposition in this case. This is a short one
12 from the bankruptcy trial; yes?

13 MS. CONNELL: Yes, your Honor.

14 (Whereupon, at this time the video was played.)

15 THE COURT: Okay, I don't think we have time to get
16 to a next witness. We have ten minutes left, so you get a
17 ten-minute extra holiday.

18 Let's reconvene tomorrow morning, 9:30.

19 COURT OFFICER: All rise, jury exiting.

20 (Whereupon, at this time the jury then left the
21 courtroom.)

22 THE COURT: Have a seat.

23 So, look, the plan for tomorrow I think should be
24 the presumption is that we will start with Mr. LaPierre in
25 the day and go until we finish with him with all the

BP

2477

Proceedings

1 questioning. I think, obviously, if I'm looking at him and
2 he really can't continue, I'll make a judgment call to
3 change that; but we're not going to have any preconceived
4 stop time.

5 My observation is that he's been pretty strong, not
6 to suggest that disagreement with any diagnoses beyond my
7 expertise; but I think it is important not to have this go
8 to a third day with another chopping up of things.

9 So, let's make that presumption, unless I see
10 something different tomorrow.

11 And then remind me, again, the witnesses after
12 that?

13 MS. CONNELL: I believe that Lieutenant Colonel Lee
14 is in town and needs to go?

15 MS. ROGERS: Yes. So, we had understood that the
16 order was John Frazer and then Lieutenant Colonel Lee. He
17 is in town.

18 MS. CONNELL: I'm happy to go in that order.
19 That's plaintiff's preferred order. I was trying to be
20 considerate of a witness who, I believe, lives in Hawaii.

21 THE COURT: Meaning assuming we finish
22 Mr. LaPierre, we would then go to Mr. Lee because he's in
23 town?

24 MS. ROGERS: We'll check with Colonel Lee and see
25 if he has a date he has to fly out by.

BP

2478

1 MS. CONNELL: So, we'd like to proceed with
2 Mr. Frazer after this.

3 THE COURT: If he's flexible.

4 MS. CONNELL: Yes.

5 THE COURT: And we have to see how long -- I admire
6 your confidence about finishing Mr. LaPierre. So, we'll see
7 how that goes; but we're sort of part of the way through the
8 defense group. So, do you know in advance at this point
9 whether the other two defendants are going to have a long
10 period?

11 MR. WERBNER: I'm going to have a very short period
12 of time.

13 MR. FLEMING: As would I, if any at all.

14 THE COURT: All right. See you tomorrow morning.

15 (Whereupon, at this time the trial was adjourned
16 and continued on January 30, 2024.)
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BP

2479

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

-----X

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against-

INDEX NO.
451625/20

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

Defendants.

JURY TRIAL
60 Centre Street
New York, New York
January 30, 2024

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

APPEARANCES:

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NOAH PETERS, ESQ.

2480

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 THE COURT: Good morning. Have a seat.

2 Okay. Good morning, everyone. I do find our legal
3 discussions useful, by the way, as the discussion we had
4 yesterday as I work on the instructions, and thank you, Mr.
5 Correll, for your letter this morning.

6 MR. CORRELL: You're welcome, your Honor.

7 THE COURT: The only thing I'll say is to some
8 extent I phrased -- maybe I positioned the issue
9 incorrectly.

10 The question is not whether the NRA can properly be
11 characterized as a charity in common parlance. The legal
12 question that I think I'm more focused on is in connection
13 with the EPTL and as opposed to federal tax law or other
14 areas, and there, the concept of a trustee under the EPTL is
15 whether the entity is a non-profit corporation organized
16 under the laws of this state for charitable purposes, and
17 the definition of the purposes that are covered by the
18 statute is fairly broad, and what it covers is the
19 definition of charitable beneficiary, for example, means
20 that beneficiary of a disposition for a religious,
21 charitable, educational or benevolent purpose, and the
22 definition of a trustee which is probably more important
23 similarly, any non-profit organized under the laws of the
24 state for charitable purposes.

25 So as I read the statute, and it has been applied

KM

2481

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 to many organizations including the NRA, obviously, through
2 its annual filings, that may not fit the traditional
3 definition of a purely charitable organization, but the
4 definition of the statute which talks about charitable
5 purposes is broader than that, and it does -- there is a
6 commentary that references that the statute refers broadly
7 to religious, charitable, educational or benevolent purposes
8 and has been applied to sort of a wide range of
9 public-facing entities. So I think that's more the question
10 than whether someone would commonly call it a charity full
11 stop.

12 I don't know that anyone on the defense side is
13 really disagreeing with that, but I did find it useful, and
14 I appreciated the citation to the case, but the statute I'm
15 dealing with here is the EPTL. The not-for-profit
16 corporation, there is no question that it covers the NRA,
17 and I don't think there's any question that the NRA is a
18 trustee under the definition of the EPTL. At least, I don't
19 know that I've seen that argument made.

20 MR. CORRELL: Your Honor, and I agree with all that
21 and the -- a distinction must be drawn between the NRA as a
22 corporation and individuals.

23 THE COURT: Well, the definition-- right. The
24 definition of trustee for the individuals is going to be a
25 separate question for the jury, but the charitable purpose

KM

2482

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 part which is, you know, an element of it is the same
2 because the question is whether the statutory language
3 reaches the individual officers which I do think is an issue
4 that certainly is not as clear as the one about the NRA
5 because the definition specifically is if you're a
6 non-profit corporation for charitable purposes defined
7 broadly, and I think there is an unbroken, you know, years
8 and years of the Attorney General asserting jurisdiction and
9 requiring filings under the EPTL. So but it was an
10 interesting read, your letter, and I appreciate the
11 education.

12 MR. CORRELL: Thank you.

13 THE COURT: All right. So shall we get started?
14 Is the jury ready?

15 (Witness Mr. LaPierre resumed the witness stand.)

16 THE COURT OFFICER: All rise. Jury entering.

17 (Whereupon, at this time the jury entered the
18 courtroom.)

19 THE COURT: Good morning, everyone. Have a seat
20 please.

21 Okay. Mr. Correll, do you want to continue?

22 CONTINUED CROSS-EXAMINATION

23 BY MR. CORRELL:

24 Q Good morning, Mr. LaPierre.

25 A Good morning.

KM

2483

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 Q On Friday you were asked a question about an expense
2 for car service in France.

3 Do you remember that?

4 A Yes, I do.

5 Q And you were asked did you authorize this expense.

6 Do you remember that question?

7 A Yes, I did.

8 Q And you replied no, I did not.

9 Do you remember that?

10 A Yes. Correct.

11 Q And then you were asked did Ms. Hallow arrange this
12 trip.

13 Do you remember that question?

14 A Yes.

15 Q And you responded, yes, she did. It was -- may I
16 explain?

17 Do you remember that?

18 A Yes.

19 Q And Mr. Conley said, "You can certainly explain with
20 your counsel. I was just asking you a yes or no question.
21 Thank you, Mr. LaPierre."

22 Would you like to explain now?

23 A Yes. I found out later, but that was Colonel North's
24 Freedom Alliance cruise that they did every year where Colonel
25 North arranged with his people. He picked the places and NRA

KM

2484

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 participated in it.

2 The purpose was to recruit donors and celebrities.
3 Mainly donors. Not celebrities. And what they had done and
4 what Ms. Hallow had done is arrange for two cars to apparently
5 follow the trip and follow the buses in case -- apparently,
6 there were elderly people there. In case somebody needed to be
7 taken back to the hotel or somewhere else is what I was told. I
8 thought it was a ridiculous expense, and I wasn't happy about
9 it.

10 Q Were you on that trip?

11 A No.

12 Q Had you ever gone on the Freedom Alliance trip to
13 France before?

14 A Not to France. Years ago, I used to go on those trips
15 and then I stopped going.

16 Q And just for the jury's edification, what is Freedom
17 Alliance exactly?

18 A It is an organization that Colonel North founded to
19 help military folks along with their families. It does a lot of
20 good work.

21 Q And did you believe that that was a good cause?

22 A Yes, I did.

23 Q And did you believe it was in the best interest of the
24 NRA to support that cause?

25 A Yes, I did.

KM

2485

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 Q You were asked questions about Craig Spray.

2 Do you remember that?

3 A I do.

4 Q And it was mentioned that his background included an
5 education at the U.S. Naval Academy.

6 Do you remember that?

7 A Yes.

8 Q And what, if any, understanding do you have as to the
9 U.S. Naval Academy in regard to whether it's regarded as an
10 institution that's known for its integrity?

11 A Well, I think it's the top -- one of the top
12 educational institutions in the United States that produces men
13 and women of character and integrity and that go into military
14 service.

15 Q So these are people who are trained to lead; correct?

16 A That would be correct.

17 Q And they are trained to serve; correct?

18 A Yes.

19 Q And they are trained to serve in the military; correct?

20 A Yes.

21 Q And to command; correct?

22 A Correct.

23 Q And did you think that that -- that those qualities
24 were qualities that you wanted to have at the NRA?

25 A Yes.

KM

2486

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 Q And were you familiar with his -- with Kellogg School
2 of Management?

3 A Yes.

4 Q What is that?

5 A It's one of the top business schools in the United
6 States.

7 Q So when you hired Craig Spray, what were you thinking
8 in terms of what expertise and integrity and ethical standards
9 you wanted to bring to the NRA?

10 A Well, Craig Spray was -- Craig Spray was recommended to
11 us by Korn Ferry which is one of the top consulting firms in the
12 country that recommends candidates to companies. He had a
13 strong background in terms of being the CFO of major businesses.

14 We wanted somebody with really broad experience that
15 could -- that could help in a whole number of areas and of all
16 the candidates, he seemed to be the strongest. He seemed to be
17 the one with the strongest background that would do the best job
18 with the widest variety of experience.

19 Q And did you believe based on what you've been told by
20 Korn Ferry and his resume that he would be competent to handle
21 the tasks that he would be facing?

22 A Yes. Absolutely.

23 Q And I don't know if you were here when we heard him
24 say, "I empower my people. I trust my people."

25 Did you hear that?

KM

2487

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 A I was not here. I did not hear that.

2 Q Would you agree with that principle that you empower
3 your people, you trust your people?

4 A Yes, I do.

5 Q Did you later find that some people turned out to be
6 not trustworthy?

7 A Yes.

8 Q When you learned that, did you take what you believe to
9 be appropriate action to adjust the situation?

10 A Yes, I did.

11 Q Mr. Spray brought David Warren into the organization;
12 correct?

13 A He did.

14 Q And can you tell us a little bit about Dave Warren?

15 A Dave Warren is a top person in the financial office. I
16 think he has tremendous integrity, tremendous intelligence, and
17 Craig Spray hired him, and we were -- we rely on him on all
18 sorts of things.

19 Q Did you resist the -- Craig Spray's request that you
20 hire -- make this new hire?

21 A No, not in any way.

22 Q And was the idea to provide Craig Spray with the
23 support he felt he needed to grapple with the task at hand?

24 A Yes.

25 Q Turning to the issue of one of the invoices that was

KM

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W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 shown to you previously. It involved a trip where you went from
2 the Bahamas to the Safari Club.

3 Do you remember that invoice?

4 A Yes, I do.

5 Q And why were you in the Bahamas at that point?

6 A That was the celebrity retreat that the McKenzie
7 Associated Television held with celebrities every year, and I
8 was trying to recruit celebrities to help the NRA as I said to
9 mainstream us to compete in Hollywood and to further the mission
10 of the NRA.

11 Q And so you were there on business in your mind?

12 A Completely.

13 Q And then you had to travel from there to Texas for the
14 Safari Club and the Wetherby Association.

15 A That's correct.

16 Q Would you please tell the members of the jury what the
17 Safari Club is.

18 A Safari Club is a -- one of the largest organizations in
19 the country that deals with the hunting community and the
20 conservation community. They have a big national convention in
21 Houston -- in Dallas every year with a big exhibit hall, and
22 there are a wide variety of people there, everyday people,
23 people of wealth, just people that enjoy hunting. It's a wide
24 mixture of people.

25 Q Was there a business purpose for your trip to the

KM

2489

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 Safari Club?

2 A Yes, there was, to further the outreach of the NRA to
3 work with donors, to put the NRA in front of the hunting
4 community.

5 NRA was doing most of the legislative work when it came
6 to hunting and a lot of conservation and not getting any credit,
7 and we were trying to put the NRA front and center in terms of
8 the hunting community.

9 Q And did you have any success with that strategy?

10 A Tremendous amount of success.

11 Q Can you give some examples of benefits to the NRA that
12 came out of that effort?

13 A Well, it wasn't only that effort, but we were able to
14 integrate NRA in the center of the hunting community getting
15 credit for participation, and the NRA tended to be viewed as a
16 hunting conservation organization in addition to a Second
17 Amendment advocacy organization and all the other programs the
18 NRA runs, the safety, the training, the education, the 14,000
19 law enforcement instructors, the 135,000 safety and training
20 instructors. All that.

21 Q There's been some talk of free safaris that the
22 Attorney General accuses you and your wife of going on.

23 Can you please explain to the jury what, if any, trips
24 you took on safari and why you took them?

25 A Sure. As I said, NRA tended to be viewed not as a

KM

2490

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 hunting organization or conservation organization. It tended to
2 be viewed as a Second Amendment gun rights organization, and I
3 knew that a huge number of folks that were NRA members hunted, a
4 huge number of people in the NRA had a big interest in that.

5 I wanted to project NRA as a hunting organization. We
6 were doing most of the legislative work as I said already, so
7 the idea in this was to create television program, put NRA on TV
8 in front of the hunting community as a hunting organization.

9 I had a reputation of not being a hunter, so I needed
10 to develop a reputation as a hunter, be seen as a hunter. Tony
11 Makris was actually my mentor in terms of hunting. I had to be
12 able to walk the walk, talk the talk, develop the street cred if
13 I was going to do my job which enabled me to get into a lot of
14 hunting organizations where I was able to help -- help recruit,
15 build relationships with people and eventually became numbers,
16 eventually became donors. To me, it was all business what I
17 did.

18 Q And did you do hunts in the U.S. as well?

19 A Yes, I did.

20 Q And were some of those filmed for Under Wide Skies?

21 A Yes, they were.

22 Q And what was the reaction among your membership to
23 those efforts on your behalf?

24 A It was very positive. I mean, the show was on front
25 and center on ESPN for years. It then transferred over to NBC

KM

2491

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 Sports, and then it ended up transferring over to the -- I
2 believe the Sportsmen's Channel.

3 Q Did you get -- did you get the impression from talking
4 to members that they valued your participation in this effort?

5 A Yes, I did. They were proud to see us on there -- the
6 NRA on there, and they thought it was a good thing for the
7 organization.

8 Q Was that one of the factors that you took into account
9 in deciding whether or not to continue to sponsor that show and
10 appearing on some of the shows?

11 A Yes, it was. NRA also had a major hunting division
12 for -- where, for example, with hunter safety, and we are now in
13 14, 15 states on-line where someone can get their hunting
14 certificate which you need in order to participate in hunting
15 through our NRA on-line educational programs.

16 Q And was one of those programs helping to feed the
17 needy -- people who needed food?

18 A We did that.

19 MR. CONLEY: Objection.

20 MR. CORRELL: I can rephrase.

21 Q Were any of those programs directed to providing
22 services to people who were less fortunate?

23 A Yes.

24 Q What was one of those programs?

25 A It was Feed The Hungry or Hunts For The Hungry and the

KM

2492

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 meat would go to various shelters that would help feed people
2 that needed help.

3 Q And was there a -- you mentioned a conservation
4 component to what you were doing.

5 Could you please just describe briefly for the jury
6 what conservation efforts the NRA engaged in?

7 A Well, the reason the wildlife populations are what they
8 are in the United States today is professional hunting --
9 professional game management where they only allow certain
10 number of people to hunt. They manage it all for the well-being
11 of the wildlife, and we put our efforts totally behind the
12 fishing and game professionals. We also fight to preserve
13 programs like the Pittman Robinson Program which provides funds
14 going into those areas.

15 Q And was part of the NRA's mission as you saw it
16 preserving access to public lands for members?

17 A Yes, we did that all the time too. We tried to keep
18 public lands open for hunting where it was appropriate.

19 Q And did you serve on any national organizations that
20 were focused on preserving public lands?

21 A Yes, I did. I served on the National Fish and Wildlife
22 Foundation Board and I served on the National Wetlands
23 Commission Board.

24 Q What is the Wetherby Association?

25 A The Wetherby Association, there used to be a firearms

KM

2493

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 company named Wetherby. The gentleman has passed away named
2 George Wetherby. He managed that company.

3 What the Wetherby Foundation now has turned into is
4 largely a conservation organization. They have a big banquet
5 every year in Dallas, and they raise money and they dole it out
6 to conservation grants and to organizations that further that
7 purpose.

8 Q And what was your purpose in attending the Wetherby
9 Association dinner in Texas?

10 A Well, one, it was to represent the NRA in front of a
11 large group of conservationists and hunters. It was also to
12 make contact and build relationships with people that might end
13 up donating to the NRA and to represent NRA on the Board of
14 Directors of the Wetherby Foundation.

15 Q Going back to the Safari Club and these so-called free
16 safaris, did you enjoy going on these hunts?

17 A It was interesting for me. I mean, I had never done it
18 before as I said. I was -- I was a novice. I was not seen as a
19 hunter, but the truth is it was -- it was business. I mean, I
20 would never take a shot without it being on camera. So I mean
21 what the purpose was to produce a television show, and that's
22 what I was there for, and it was a lot of work.

23 On the other hand, for a kid from Roanoke, Virginia, I
24 mean, it was -- it was fascinating to get to do some of that
25 stuff.

KM

2494

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 Q And -- but was it something you would have done on your
2 own if you hadn't had a business purpose for doing it?

3 A No.

4 Q Had you ever booked a safari on your own before that?

5 A No, I never had.

6 Q You talked a little bit about Youth For Tomorrow and
7 you talked about the Ackerman -- your understanding that the
8 Ackerman firm was doing things pro bono for Youth For Tomorrow.

9 A Yes.

10 Q Was there ever a time that anyone from Ackerman McQueen
11 made any sort of a pledge to YFT?

12 A Yes. Angus McQueen made a million dollar pledge to
13 Youth For Tomorrow to build a music center for the kids and in
14 the name of his wife who had passed away, and yes, he did.

15 Q And did he get recognition for that pledge?

16 A He did. He got up on stage at the big banquet. He
17 accepted all the recognition. Everyone applauded and yes.

18 Q Did he ever make good on that pledge?

19 A I think he paid half of it and then he -- they
20 rescinded the rest of the money and never paid it.

21 Q Was that one fact that led you to conclude that the
22 work Ackerman was doing for YFT was purely pro bono?

23 MR. CONLEY: Objection. Leading.

24 THE COURT: I'm being a little flexible, but you
25 can go ahead with this one, but by and large, you should --

KM

2495

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 MR. CORRELL: Thank you, your Honor. I'm just
2 trying to move things along.

3 THE COURT: Understood. You can answer.

4 Q You can answer.

5 A I just always assumed that the work they were doing was
6 for free. That's what they led us to believe.

7 As I said, one of their employees got up and accepted
8 the Volunteer of the Year Award.

9 They always acted like they were doing it for free, and
10 we just assumed they were doing it for free. They never
11 mentioned to us that they were charging for it.

12 Q Mr. LaPierre, how long have you worked for the NRA?

13 A This is my -- this would have been -- I'm leaving --
14 would have been my 46th year.

15 Q And you said you're leaving. Why are you leaving?

16 A I have late stage Lyme's Disease. It has also gone
17 into the neurological receptors between my eyes and my brain and
18 my eyes work so hard to see that that affects my brain and I
19 start to have cognitive issues as a result of the neurological
20 receptors between the brain and the eyes that actually presents
21 as a form of dementia, and I just concluded I can no longer do
22 my job anymore.

23 Q Did you seek advice from any physicians as to whether
24 you should proceed or not proceed with your employment?

25 A Yes, I did.

KM

2496

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 Q And what, if any, advice did you receive?

2 MR. CONLEY: Objection. Hearsay.

3 MR. CORRELL: Just for notice.

4 THE COURT: Overruled.

5 A All of them said that if I had any chance of
6 recovering, I could not continue to be working, and that's my
7 -- internal medicine doctor. It is the Jemsek Clinic in
8 Washington which is the premiere Lyme Disease Center, and it's
9 also Dr. Pachella in Connecticut that I consulted on the
10 brain/eye which is one of the top neurological ophthalmologist
11 in the country.

12 Q If you could continue to serve the NRA, would you?

13 A I love the NRA. I love its mission. I love our
14 members. I think our members are some of the nicest people in
15 the country. I felt really bad about stepping down, but I had
16 gone undiagnosed for four years where I was walking in the
17 office with tremendous pain. I tried to fight through it, but
18 all of my doctors told me, Wayne, you're at risk of a
19 catastrophic medical incident if you continue and you have to
20 retire, and I took their medical advice.

21 Q Over the -- how many years did you say that you've
22 worked for the NRA?

23 A I worked 45 full years.

24 Q Over the 45 years, did you ever ask for a raise?

25 A No.

KM

2497

W. LaPierre - by Plaintiff - Cross/Mr. Correll

1 Q Did you ever ask for a bonus?

2 A No.

3 Q Did you ever ask for a post-employment contract?

4 A No, I never did.

5 Q Did you ever not accept the compensation that was
6 offered to you by the Board?

7 A No.

8 Q Did you ever check to see where your compensation fell
9 on the scale of compensation for people who were providing
10 executive services for other not-for-profit corporations?

11 MR. CONLEY: Objection.

12 THE COURT: Out of scope?

13 MR. CONLEY: Out of scope, yes.

14 THE COURT: Overruled.

15 A I saw studies that -- that had those ranges in it.

16 Q And what information did you see in those studies?

17 A In those studies, I was somewhere middle range.

18 Q And did it ever occur to you that you would ask to try
19 to get yourself up to the top end of that scale?

20 A No, I didn't. I always had the attitude from the time
21 I started, I would work hard, I let my performance speak for
22 itself, and that's what I would do, and that's what I had done
23 the 45 years I was there.

24 Q Were you in it for the money?

25 A No. I was in it for the cause and the members who I

KM

2498

W. LaPierre - by Plaintiff - Cross/Mr. Werbner

1 really thought were some of the nicest people in America.

2 MR. CORRELL: No further questions at this time,
3 your Honor.

4 THE COURT: Thank you. Mr. Werbner.

5 MR. WERBNER: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MR. WERBNER:

8 Q Good morning, sir.

9 A Good morning.

10 Q I'm Mark Werbner, and I think you probably know by now
11 I represent Woody.

12 A Yes, sir, I do.

13 Q There's been a lot of talk about the increase in fees
14 for MMP.

15 A Yes.

16 Q I think you said in your examination by Mr. Conley that
17 the fee increases were found to be justified by Craig Spray.

18 Is that your testimony?

19 A That is correct.

20 Q And did you hear Mr. Erstling testify earlier in the
21 trial that he also had Ms. Rowling say that those fees were
22 justified?

23 A I believe I did.

24 Q All right. And in your view, were those fees increases
25 by MMP justified?

KM

2499

W. LaPierre - by Plaintiff - Cross/Mr. Werbner

1 A Yes.

2 Q Why is that?

3 A Because they had taken on a lot of additional work.
4 Some of it had not been -- been readjusted into their contract.

5 When Mr. Spray went back and took a look at that and
6 did a full evaluation, he felt that the fees were appropriate
7 based on the additional work they had taken on.

8 Q And what was your feeling about Mr. Spray in terms of
9 relying on him finding that those increase fees were justified?

10 A I thought he was extremely competent and taking a
11 completely independent look at the whole situation.

12 Q There was some talk about post-employment retirement
13 contracts or consulting fees.

14 Do you remember that?

15 A Yes, I do.

16 Q I just wanted to ask you if you had at the NRA an
17 employee who say had worked at the NRA for 20 plus years. Would
18 it be in the NRA's best interest to have that person remain
19 accessible to the NRA?

20 A Yes. We have done that from time to time.

21 Q One last thing. You don't fault Woody for paying
22 \$25,000 for that yacht trip; do you?

23 A No, I don't.

24 MR. WERBNER: Okay. I'll pass the witness. Thank
25 you.

KM

2500

1 THE COURT: Thank you.

2 MR. FLEMING: I have no further, your Honor.

3 THE COURT: Thank you.

4 Okay. Mr. Conley, anything further?

5 MR. CONLEY: No redirect, your Honor.

6 THE COURT: Anything further?

7 MR. ROGERS: Nothing further from the NRA.

8 THE COURT: Sir, you're free to go.

9 Okay. Next witness for the state.

10 MS. CONNELL: Your Honor, the People call John
11 Frazer.

12 THE CLERK: Do you solemnly swear or affirm the
13 testimony you're about to give will be the truth, the whole
14 truth and nothing but the truth?

15 THE WITNESS: I do.

16 THE CLERK: State your name.

17 THE WITNESS: John Frazer.

18 THE CLERK: Spell your last name.

19 THE WITNESS: F-R-A-Z-E-R.

20 THE CLERK: State your business address.

21 THE WITNESS: 11250 Waples Mill Road W-A-P-L-E-S,
22 Fairfax, Virginia, 22030.

23 (Continued on the following page.)

24

25

KM

2501

J. Frazer - by Plaintiff - Direct/Ms. Stern

1

2

THE COURT: You may proceed.

3

DIRECT EXAMINATION

4

BY MS. STERN:

5

Q Good morning, Mr. Frazer.

6

A Good morning.

7

THE COURT: Are you able to hear? I'm having more trouble hearing the questioner than the answers. Is the microphone a little low?

8

9

10

MS. STERN: Testing, testing. I don't want to talk into the mike like this, like a secret agent.

11

12

THE COURT: That's a little better, I think.

13

MS. STERN: Good?

14

Q Good morning, Mr. Frazer, again.

15

A Good morning.

16

17

Q I know we've met before, but I'll introduce myself to you and the jury. I'm Emily Stern. I'm an Assistant Attorney General in the Charities Bureau.

18

19

Mr. Frazer, you've attended everyday of this trial; haven't you?

20

21

A Everyday of the trial. I missed a couple days of jury selection.

22

23

Q And you've you heard all the testimony that's come in, have you not?

24

25

A Yes.

BP

2502

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 Q You've heard a number of people talk about you as the
2 General Counsel of the NRA; correct?

3 A Yes.

4 Q And as the secretary of the NRA?

5 A Yes.

6 Q So, you've worked at the NRA with the NRA for
7 approximately thirty years; right?

8 A Going on 31 years in March with minus my time in
9 private practice.

10 Q How old are you, Mr. Frazer?

11 A I am 57.

12 Q You spent pretty much your entire professional career
13 at the NRA; isn't that right?

14 A Pretty much.

15 Q And there's a short period of time, which we'll talk
16 about when you were in private practice; right?

17 A That's right.

18 Q And during your entire tenure at the NRA, Mr. LaPierre
19 was the EVP, right?

20 A That's right.

21 Q The Executive Vice President. And since 2015 you
22 reported directly to Mr. LaPierre; right?

23 A As, as General Counsel, yes. As secretary, I'm elected
24 by the board and kind of report to the board; but I'm under his
25 day-to-day supervision.

BP

2503

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 Q So, in both respects, you are working under
2 Mr. LaPierre; right?

3 A Generally speaking, yes.

4 Q But you do have obligations to the board; don't you?

5 A Absolutely.

6 Q And you have relationship with the board members that
7 you've developed over this period of time you worked at the NRA;
8 right?

9 A Definitely.

10 Q Valuable relationships to you?

11 A Yes.

12 Q Charles Cotton is one of those relationships?

13 A Right.

14 Q David Coy who's a current officer of the NRA, he's also
15 one of those important relationships to you; right?

16 A Yes.

17 Q Caroline Meadows who's a recent past president of the
18 NRA?

19 A Yes.

20 Q She's another person?

21 A Yes.

22 Q We'll try not to talk over each other because pore
23 Bonnie has to -- okay, and Marion Hammer, she's a long-term
24 board member and you've known her a long time as well; right?

25 A Absolutely.

BP

2504

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 Q And during your time at the NRA, you've received a lot
2 of promotions; haven't you?

3 A I've had a number of different roles and certainly
4 promotions, yes.

5 Q And on the way, your salary has increased as you've
6 gone up the ladder; right?

7 A Yes.

8 Q And Mr. LaPierre was very supportive of your upward
9 movement in the organization; isn't that right?

10 A Yes.

11 Q The board members, too, very supportive of you?

12 A Yeah.

13 Q And they reelected you as the Secretary of Chair?

14 A Every year since 2015, yes.

15 Q So, let's just go back to the beginning.

16 So, the first twenty years or so you were not a lawyer
17 at the NRA; right?

18 A The first fifteen years I was not a lawyer, right.

19 Q Your job at the NRA during that first period of time
20 was not as a lawyer; is that right?

21 A After I finished law school in 2008, there was a period
22 when -- when, you know, legal-related duties were part of my
23 job, but not primary.

24 Q And the nature of those duties were legislative work;
25 is that right?

BP

2505

J. Frazer - by Plaintiff - Direct/Ms. Stern

1

2 A Legislative analysis, legislative drafting. Worked on
3 some litigation matters supporting 2nd Amendment cases, for
4 example.

5 Q So you were in the ILA side of the organization; is
6 that right?

7 A That's correct.

8 Q And you just mentioned that you -- you got your law
9 degree in 2013?

10 A 2008.

11 Q 2008, sorry. And the NRA actually paid for your law
12 school tuition; didn't it?

13 A That's right. I went at night. The NRA has a tuition
14 reimbursement program.

15 Q So, after you graduated from law school, you continued
16 to work at the NRA?

17 A Yes, for several years.

18 Q And during that period of time where you were doing
19 legislative work?

20 A Right, I was the director of research information.

21 Q But you weren't in the office of General Counsel?

22 A No.

23 Q At some point, you decided to leave the NRA. Was that
24 in 2013?

25 A Yes.

BP

2506

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 Q And you started your own law practice; right?

2 A I did.

3 Q And you were a solo practitioner?

4 A Yes.

5 Q So, after about eighteen months, the NRA asked you to
6 come back; didn't they?

7 A Roughly. It was a little -- it was about eighteen
8 months until I actually came back, but the discussion happened a
9 little earlier than that.

10 Q So, we heard you're very detail oriented, so I'll try
11 to be as very detail oriented as you are.

12 So, after they wooed you back, Mr. LaPierre hired you
13 as the General Counsel; right?

14 A Yes.

15 Q And that was in -- just to give our timeframes --
16 January 2015?

17 A Correct, I came back in 2015.

18 Q And then in or about April of 2015 you were elected to
19 be the Corporate Secretary of the NRA; is that right?

20 A That's right.

21 Q And that was at the annual meeting?

22 A Yes.

23 Q And it was former president, Jim Porter, who had
24 recruited you to run for secretary; is that right?

25 A That's right.

BP

2507

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 Q Okay. Another person that you have a longstanding and
2 positive relationship with?

3 A Sure.

4 Q An important relationship to you, right?

5 A Yes. And to clarify a previous answer, he, at the time
6 that he recruited me, he was still the President of the NRA.

7 Q Okay, thank you.

8 So, you took the job of NRA General Counsel having less
9 than two years of experience in private practice; right?

10 A Yes.

11 Q And during the time that you were in private practice,
12 you did not work as -- in a corporation as a General Counsel or
13 as an associate General Counsel; right?

14 A That's right.

15 Q And you didn't work inhouse as a lawyer at another
16 not-for-profit organization; right?

17 A No, it was private practice. I had my own clients.

18 Q And, so, when you became the General Counsel at the
19 NRA, you had no prior experience doing General Counsel work;
20 right?

21 A I had never worked in a General Counsel office.

22 Q For a for-profit or for a not-for-profit corporation;
23 right?

24 A That's right.

25 Q You had no legal experience handling the fiduciary

BP

2508

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 duties of officers and directors and key persons of
2 not-for-profit corporations?

3 A Trying to remember if I had anything for any private
4 clients, but I don't think -- I don't think I had really worked
5 in that area.

6 Q It would be very limited, right, because you were only
7 in private practice for about a year and a half?

8 A Most of my clients weren't in that area anyway.

9 Q Were not, okay. So, you're not now a member of the New
10 York bar, are you?

11 A No, I'm not.

12 Q And you never have been a member of New York bar, have
13 you?

14 A No, just Virginia and DC.

15 Q And when you became the General Counsel, you had no
16 legal experience with New York law governing not-for-profit
17 organizations or charities?

18 A Right. I had some exposure to New York not-for-profit
19 law from various NRA roles, tending issues that had come up at
20 board meetings; but I hadn't represented clients on those
21 topics.

22 Q And you had no legal experience with the regulatory
23 reporting requirements of not-for-profit and charities?

24 A I'm trying to think. No, I don't think so.

25 Q You never previously prepared an IRS Form 990; had

BP

2509

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 you?

2 A I was familiar with the form, but I hadn't prepared
3 one.

4 Q But, you were never responsible for ensuring it was
5 complete, accurate and true; were you?

6 A No.

7 Q And you never prepared a State charity's regulatory
8 filing before; had you?

9 A No.

10 Q And when you came to the role of General Counsel, you
11 had no legal experience conducting internal corporate
12 investigation; had you?

13 A I had -- I had helped a little bit with a matter like
14 that when I was in ILA filling in for someone who was sick, but
15 I hadn't -- it hadn't been a primary task.

16 Q Okay, you were not responsible for managing the
17 corporation's interest in the context of, say, discovering some
18 wrongdoing within a corporation; had you?

19 A No.

20 Q And you had no legal experience dealing with
21 whistleblowers?

22 A No.

23 Q And before you ran for the position of NRA board
24 secretary, you had no prior experience serving on a board?

25 A No, I hadn't.

BP

2510

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 Q You hadn't been a director; right?

2 A That's right.

3 Q You hadn't been an officer?

4 A I was an officer of a couple of activities in college,
5 but -- and I was on student council at University of Virginia.

6 Q Okay. So, your responsibilities as the Corporate
7 Secretary include maintaining the records of the NRA; right?

8 A Yes.

9 Q So that includes maintaining the records of the board;
10 right?

11 A Right. To be clear, not all of the records of the NRA,
12 but the -- but certainly board records, yes.

13 Q Does that include maintaining the minutes of the full
14 board meetings?

15 A Yes.

16 Q And making sure those minutes are complete and
17 accurate; right?

18 A Yes.

19 Q And you are responsible for keeping track of the
20 board's policies as the secretary of the organization; aren't
21 you?

22 A Yes.

23 MS. STERN: Jesse, can we pull up PX 421, please.

24 (Displayed)

25 Q It is in your Binder No. 1, at Tab 32.

BP

2511

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 A Okay, I have it.

2 MS. STERN: And just if you can turn to the next
3 page, Jesse. Okay, that's the cover page.

4 (Displayed)

5 Q So, just focussing your attention -- actually, the
6 bottom of the page it says "Office of the Secretary Reference
7 Copy."

8 So, this is a copy of the policy manual that's kept in
9 your office as the secretary; right?

10 A Yes.

11 Q The official policy manual; right?

12 A Right.

13 Q And this one is the policy manual that was in effect as
14 of March 11, 2020; right?

15 A Yes.

16 Q And it would contain all of the policies that were --
17 that the board had adopted as of that date; right?

18 A Well, I can't -- I can't speak to how it began. I
19 believe it contains policies back to the 1960s; but, obviously,
20 it had been worked on by NRA secretaries before me.

21 Q But this is the institution's, essentially, their bible
22 of policies; right?

23 A Yes.

24 Q And in the interest of time, we don't need to flip
25 through it; but as you just described, it will have earlier

BP

2512

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 versions of the policies in it?

2 A Sometimes -- as we go forward, we'll sometimes clean it
3 up and remove things that have just been, you know, completely
4 superseded or outdated; but we try to maintain it after board
5 meetings. If anything has been adopted that reflects,
6 basically, a -- something that's intended to be a permanent, you
7 know, rule of the organization.

8 Q But if I wanted on March 11, 2020, to know what the
9 NRA's policy was on purchasing and procurement, I would go to
10 this manual; right?

11 A You could go there or other places, but it is in the
12 manual.

13 Q And the policy manual also includes the NRA's Statement
14 of Corporate Ethics; right?

15 A I believe so.

16 Q And it also includes a policy on related-party
17 transactions and conflicts of interest; right?

18 A Yes.

19 Q And policies on financial disclosure requirements for
20 officers and directors?

21 A Well, that's within the conflict of interest policy,
22 yes.

23 Q But at one point in time there was a separate policy
24 for financial disclosures for officers and directors; wasn't
25 there?

BP

2513

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 A I think there was before my time, yes.

2 Q Okay. And, also, addressing whistleblowers?

3 A That's within the Statement of Corporate Ethics at this
4 time, yes.

5 Q The NRA separately has an Employee Handbook, right?

6 A Yes. Although, some of the items were the same.

7 Q Okay. And in the Employee Handbook, that's where I
8 would find the travel and business expense reimbursement policy;
9 is that right?

10 A Yes.

11 MS. STERN: Jesse, we can take this down.

12 Q So, I think you covered this; but just to be very clear
13 for the jury, so you have kept track of the board's policies
14 at least from 2015 to the present in your role as secretary;
15 right?

16 A Yes.

17 Q Okay. So, as the General Counsel of the NRA, you're
18 responsible for managing the legal aspects of the NRA's
19 corporate and business affairs; right?

20 A Yes.

21 Q And the 2nd Amendment and advocacy work is done by
22 someone else; is that right?

23 A Right. That's within ILA.

24 Q And that's overseen by a different lawyer; right?

25 A Correct. We collaborate from time to time, but

BP

2514

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 generally, yes.

2 Q But that's not your oversight?

3 A Right.

4 Q So, among your responsibilities is legal matters
5 relating to contracts; right?

6 A Yes.

7 Q And that includes reviewing and drafting contracts?

8 A Yes, from time to time.

9 Q Making sure that the NRA is protected in its contracts
10 and agreements; right?

11 A Yes.

12 Q And making sure that there's proper documentation for
13 the NRA's financial transactions; right?

14 A That's not an exclusive responsibility of the General
15 Counsel's office. That's something that really a lot of people
16 share, and financial documentation is primarily in the
17 treasurer's office and Financial Services Division.

18 Q My focus is on the documentation of the terms of the
19 contracts and the terms of financial transactions. That falls
20 at least under your responsibility as the General Counsel of the
21 corporate side of the NRA's operations; right?

22 A The actual contract files are in the Financial Services
23 Division, but we, obviously, keep records of what we work on.

24 Q So, are you suggesting that you don't have
25 responsibility for making sure that those contracts are

BP

2515

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 appropriately drafted?

2 A Well, you weren't asking about drafting. You were
3 asking about recordkeeping. I was telling you where the records
4 are. The drafting is done largely in the Office of General
5 Counsel.

6 Q Mr. Frazer, I want to make sure I'm being clear on my
7 questions because I know you want the jury to fully understand
8 your answers.

9 So, my question is do you have responsibilities as
10 General Counsel to ensure that agreements and contracts that the
11 NRA makes are properly documented?

12 A And, again, yes, but it is not only the OCG's
13 responsibility.

14 Q But you do bear some responsibility; don't you?

15 A Sure.

16 Q And among your responsibilities are ensuring compliance
17 with regulatory requirements that govern the NRA; right?

18 A Many of them, yes.

19 Q And that includes charities filings; right?

20 A Yes, we currently do those inhouse, yes.

21 Q And the charities' responsibilities include filing with
22 the New York State Attorney's Office; right?

23 A Yes.

24 Q And that includes filing the form that we've been
25 talking about a little bit, the CHAR500 form; right?

BP

2516

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 A Yes.

2 Q And you have to ensure that form gets filed in a timely
3 manner?

4 A Yes.

5 Q And you also have to ensure that form is complete in
6 that it has all the required attachments, schedules, et cetera;
7 right?

8 A Yes. That's part of the certification.

9 Q And for the NRA, that includes the IRS Form 990 each
10 year; right?

11 A That's something that the Charity Bureau asks for, yes.

12 Q And it also includes an audit and financial statement?

13 A Correct.

14 Q You have been since you came back to the NRA in 2015
15 one of the officers that has certified the CHAR500 each and
16 every year you've been there since 2015; right?

17 A Yes.

18 Q Okay. Within the scopes of your responsibilities are
19 corporate governance matters; right?

20 A Yes.

21 Q And you also have responsibility for retaining and
22 overseeing outside counsel?

23 A Other than the legislative or 2nd Amendment advocacy
24 matters.

25 Q And just to be clear, that's what the scope of my

BP

2517

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 questions are, but please --

2 A Okay, okay.

3 Q But like I said, I know you're very detailed oriented
4 so put in the details to make it accurate.

5 So, you have to also manage a budget; don't you?

6 A Yes.

7 Q And that's a budget for the Office of General Counsel?

8 A And the secretary's office, yes.

9 Q And you have people that work under you; right?

10 A Sure.

11 Q And so that's part of your budget?

12 A Right.

13 Q And, also, outside counsel?

14 A Outside counsel, various consultants, sure.

15 Q And so every year you set that budget; right?

16 A Right.

17 Q And you manage that budget; right?

18 A Correct.

19 Q So, just stepping back from the particulars, as the
20 General Counsel you are looked to -- to identify legal risk
21 presented to the association; right?

22 A I'm, I'm one of the people that are looked to for that,
23 yes.

24 Q The General Counsel as the top lawyer in the
25 organization, your opinion on what legal risks are presented to

BP

2518

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 the organization is important; right?

2 A I hope so, sure.

3 Q Okay. And as a lawyer in the senior management of the
4 NRA, you're responsible for advising on those legal issues;
5 right?

6 A Yes.

7 Q And navigating those legal risks?

8 A Fair to say.

9 Q And informing the board of the NRA of legal risks that
10 have been presented?

11 A Correct.

12 Q And keeping the board apprised of legal issues; right?

13 A Yes.

14 Q And the board looks to you, just like management, to
15 manage those legal risks; right?

16 A Yes.

17 Q Would you agree with me that one of your objectives is
18 to minimize the legal risks to the organization?

19 A Oh, definitely.

20 Q And you want to protect the interests of the
21 organization; don't you?

22 A First and foremost.

23 Q So, in order for you to fulfill those responsibilities,
24 you have to be informed about what's going on; don't you?

25 A Yes, with the caveat that, you know, that can't include

BP

2519

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 things where I'm conflicted, for example.

2 Q And you rely on other people to keep you informed;
3 don't you?

4 A Sure.

5 Q Your other co-executives in the organization; is that
6 right?

7 A Yeah.

8 Q And others in management; right?

9 A Yes.

10 Q But you also have to take affirmative steps to keep
11 yourself informed; don't you?

12 A Yes.

13 Q You have to ask questions?

14 A Sure.

15 Q You have to do due diligence?

16 A Sure.

17 Q Keep your nose to the ground; right?

18 A Yeah.

19 Q So, if you learn that information is not being provided
20 to you that undermines your ability to fulfill those
21 responsibilities we talked about, that's a problem; isn't it?

22 A Could be.

23 Q And if you've been purposely left out of the loop
24 concerning legal matters affecting the organization's interests,
25 that's a problem?

BP

2520

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 A It could be, depending on the issue and the reasons.

2 Q But Mr. LaPierre repeatedly authorized the association
3 take major legal actions without informing you; didn't he?

4 A I think you'd have to be more specific, talk about
5 specifics.

6 Q So, he authorized the lawsuit against Ackerman without
7 first informing you; right?

8 A That's right.

9 Q And that was --

10 A I should say one of, one of the lawsuits, yes.

11 Q That was in April 2019?

12 A Correct.

13 Q That was the first lawsuit?

14 A Yes.

15 Q So, that was the beginning of a whole number of
16 lawsuits that then continued between and among NRA and Ackerman
17 McQueen; right?

18 A Yes.

19 Q And you never informed the board that Mr. LaPierre
20 decided to sue Ackerman without telling you first?

21 A I'm trying to remember. I don't recall a discussion of
22 that at the board as a whole, but I believe I talked to some
23 board members or board officers about it at some point.

24 Q And Ackerman had been the -- one of the NRA's longest
25 standing vendors at that point in time; right?

BP

2521

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 A Yes, they had.

2 Q And highest dollar vendors?

3 A Yes.

4 Q It was a major step to sue Ackerman; wasn't it?

5 A It's fair to say.

6 Q And that litigation went on for years; didn't it?

7 A Yes.

8 Q And there were lawsuits in Virginia and there were
9 lawsuits in Texas, a lot of activity; right?

10 A Yes.

11 Q A lot of risk; right?

12 A A lot of -- excuse me?

13 Q A lot of risk?

14 A Um, I mean, major litigation is always a risk for both
15 sides, sure.

16 Q And it was very costly; wasn't it?

17 A It was substantial.

18 Q So, it ultimately settled, though; didn't it?

19 A Yes.

20 Q You signed the Settlement Agreement?

21 A I did.

22 Q And under that Agreement, the NRA paid Ackerman;
23 right?

24 A That's right.

25 Q You didn't inform the NRA board about the settlement;

BP

2522

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 did you?

2 A I don't think there was anything in the -- in our board
3 policies or Bylaws that required that, so, no.

4 Q But my question, Mr. Frazer, is simple: You didn't
5 inform them, right?

6 A The board officers were certainly aware at the time,
7 yes.

8 Q But the other, what, 73 members of the board, you
9 didn't tell them?

10 A No. We didn't have a board meeting at that time.

11 Q But you're the corporate secretary of the NRA. You
12 send messages to the board all the time; right?

13 A True, and I'm trying to remember what we did on that,
14 but --

15 Q But you didn't do it to tell them that this major
16 litigation had settled?

17 A I don't remember.

18 Q You don't remember?

19 A I don't remember whether we sent anything out on that
20 occasion.

21 Q Do you have any reason sitting here today to think that
22 you did do that?

23 A I'm sorry, I don't remember one way or the other.

24 Q Okay. So, Mr. LaPierre also sidestepped you when he
25 decided to file the bankruptcy petition; right?

BP

2523

J. Frazer - by Plaintiff - Direct/Ms. Stern

1

2 A He informed me shortly before it was filed, but --

3 Q "Shortly before" meaning the day it's filed; right?

4 A Correct.

5 Q Okay. And filing a bankruptcy petition is one of the
6 biggest legal decisions a corporation could make?

7 A It was a significant decision.

8 Q But you weren't involved in evaluating that decision at
9 all; were you?

10 A I was aware it was being considered, but I didn't -- I
11 wasn't actively consulted. I'm not a bankruptcy lawyer.

12 Q But your judgment as the General Counsel with the NRA
13 was not even sought?

14 A I'm trying to remember what I can answer without going
15 into any privileged discussions, but I don't think so.

16 Q Okay. And the NRA actually went to outside counsel to
17 consider whether or not to file for bankruptcy; right?

18 A The NRA retained some very experienced bankruptcy
19 lawyers on that matter.

20 Q And you weren't involved in that retention decision;
21 right?

22 A No.

23 Q And, in fact, you first learned from Sarah Rogers who
24 is sitting right here, you learned from Sarah Rogers that the
25 NRA had retained counsel to look into the matter of a possible

BP

2524

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 bankruptcy filing?

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MS. ROGERS: The witness can answer that coextensive with what he testified in the bankruptcy, but I'm going to instruct him otherwise not testify about communications he had with General -- as General Counsel with outside counsel about legal matters.

THE COURT: This question didn't call for that, so I assume it is not an objection to this question, but it is for a general caution.

MS. ROGERS: Correct.

A I'm sorry, can you repeat the question for clarity?

MS. STERN: Bonnie, can you read it back?

THE COURT: Yes, please.

(Whereupon, at this time the court reporter read back the requested portion.)

A I can't remember exactly what Ms. Rogers told me in the conversation or conversations we had in advance of the filing.

Q Yeah, I'm not asking you for the conversations, again, mindful of the privilege issue. I'm just asking that you learned from Ms. Rogers about that retention; right?

A Again, I'm trying to remember. Sitting here right now, I can't remember whether she told me that specifically.

BP

2525

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 Q You can't remember whether she told you what
2 specifically?

3 A Whether she told me that we had retained bankruptcy
4 counsel.

5 Q So, let me clarify my question. My question was did
6 you first -- didn't you first learn from Sarah Rogers that they
7 were, in fact, looking into the question of bankruptcy?

8 A That's correct, yes.

9 Q Okay. So, you didn't authorize Sarah Rogers' law firm,
10 the Brewer firm, to undertake that work?

11 A No.

12 Q And you don't even know who did; right?

13 A No, I had an understanding of who did.

14 Q And who was that?

15 A That it would have been Mr. LaPierre and the Special
16 Litigation Committee.

17 Q So, Mr. LaPierre asked the Brewer firm look into the
18 question of bankruptcy?

19 MR. CORRELL: Objection, your Honor. The answer
20 was "Mr. LaPierre and the Special Litigation Committee."

21 MS. STERN: I'm not sure what the basis of that
22 objection is.

23 MR. CORRELL: Misstating prior testimony.

24 THE COURT: She didn't state the testimony. She's
25 just asking him another question, so you can ask the

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2526

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 question if you want to ask it again.

2 MS. STERN: It's okay, your Honor.

3 Q So, once you did learn that the Brewer firm was looking
4 into bankruptcy matters, you weren't actually overseeing that
5 work; right?

6 A That's correct until after the filing, and then I had a
7 role in that.

8 Q And you mentioned that Mr. LaPierre told you on the day
9 that the bankruptcy was being filed that it was happening that
10 day; right?

11 A Yes.

12 Q And he did not consult you before that?

13 A That's correct.

14 Q When he told you it was a decision that had been made?

15 A Yes.

16 Q Papers were drafted?

17 A I believe so.

18 Q The train was going down the station, right? I think
19 it is the train going down the track, sorry.

20 And you didn't inform the board on that occasion that
21 you were not in the loop on that decision; did you?

22 A There was an announcement to the filing, but I don't
23 recall it mentioning anything about my role.

24 Q And you didn't, subsequently, tell the board "I wasn't
25 involved in this decision?"

BP

1 A Not that I recall.

2 Q Okay.

3 MS. STERN: Jesse, can we bring up Plaintiff's
4 Exhibit 572, which is Tab 21 in your binder and it is in
5 evidence.

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7 (Continued on next page)

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Frazer - by Plaintiff - Direct/Ms. Stern

1 Q Mr. Frazer, you recognize this employment agreement
2 between the NRA and Mr. LaPierre; do you?

3 A I do.

4 Q And did you present this employment agreement to the
5 Board on January 7, 2021 for their approval?

6 A I didn't, no.

7 Q You did not. Were you present at that meeting?

8 A I was.

9 Q And who presented it?

10 A I think it came up as part of the report -- of a report
11 by the Officer Compensation Committee which would have been
12 presented by Mr. Cotton who is in the chair that day because Ms.
13 Meadows was not able to attend.

14 Q And you were present at the meeting; correct?

15 A Yes.

16 Q And one of the purposes of the meeting was to have the
17 Board approve this employment agreement; right?

18 A It was -- it was part of the meeting agenda, yes.

19 Q You hadn't reviewed this employment agreement before
20 that meeting; had you?

21 A I'm trying to remember. I don't remember exactly when
22 I first saw it, but I think it was the day of the meeting.

23 MS. STERN: Jesse, can we bring up the bankruptcy
24 trial testimony, please. April 6, 2021, Line 75, 225.

25 Q Mr. Frazer, you testified at the hearing in the

KM

2529

Frazer - by Plaintiff - Direct/Ms. Stern

1 bankruptcy matter in Texas; didn't you?

2 A I did.

3 Q And you took an oath to tell the truth there.

4 A I did.

5 Q And you told the truth; didn't you?

6 A I tried to, sure.

7 Q And you were asked -- okay. For this employment
8 agreement, you had not reviewed it before it was presented to
9 the Board for approval; isn't that right?

10 A That's correct. I did say that. I'm not sure that was
11 100 percent correct just in terms of the timing of when I first
12 saw this on a piece of paper.

13 Q And so what is your testimony today about when you saw
14 that employment agreement?

15 A I think it was the day of the meeting, but I'm not --
16 but don't remember if I saw it before it actually went to the
17 Board or how far before it went to the Board, you know.

18 Q Okay. But you weren't involved in the negotiations
19 over the employment agreement; were you?

20 A No, I wasn't.

21 MS. STERN: Jesse, you can take that down.

22 Q And those were handled by the Brewer firm; weren't
23 they?

24 A I wasn't involved, so I don't know for sure, but I
25 believe they were involved in some way.

KM

2530

Frazer - by Plaintiff - Direct/Ms. Stern

1 Q And on behalf of the NRA, Mr. Correll handled that;
2 isn't that right?

3 THE COURT: On behalf of who?

4 MS. STERN: I'm sorry. Mr. LaPierre.

5 Q On behalf of Mr. LaPierre, he was represented by Mr.
6 Correll in those negotiations; correct?

7 A I believe that's correct.

8 Q Mr. Correll previously practiced law with the Brewers
9 -- with Bill Brewer; right?

10 A I have some recollection he did some time ago.

11 Q Okay. So before the January 7 board meeting where this
12 employment agreement was presented to the board members, you had
13 not been clued in the notion that the employment agreement was
14 going to be the basis on which Mr. LaPierre would have authority
15 to take the NRA into bankruptcy; right?

16 A No.

17 Q So now I'm going to take a word of advice from the
18 judge to make sure that by "no," you mean that you -- yes or no?
19 All right. Correct or not?

20 You had not been clued in prior to that meeting that
21 the employment agreement was going to be the basis for which Mr.
22 LaPierre was going to be granted authority to file for
23 bankruptcy without board approval?

24 A I don't recall any discussion of any -- of a
25 relationship between the employment agreement and the bankruptcy

KM

2531

Frazer - by Plaintiff - Direct/Ms. Stern

1 filing --

2 Q And the --

3 A -- prior to that.

4 Q -- relevant portion of the employment agreement,
5 Paragraph 2 is up on the screen for the jury, and I think it's
6 in front of you.

7 And this is the provisions of the employment agreement
8 that gave Mr. LaPierre some additional powers; right?

9 A It -- you know, I don't know. I don't know if I would
10 agree with the word "additional" given the broad powers that the
11 executive vice president already has under the bylaws, but it
12 spells out some duties of the EVP.

13 Q And nowhere in this provision does it talk about
14 bankruptcy; right?

15 A It does not mention bankruptcy.

16 Q And nowhere else in the employment agreement does it
17 talk about bankruptcy; does it?

18 A The word "bankruptcy" isn't used, but it does refer to
19 reorganizing or restructuring.

20 Q Again, but reorganization under the Bankruptcy Code is
21 not discussed in the employment agreement; right?

22 A There is not a reference to the Bankruptcy Code.

23 Q Okay. And members of the Board of Directors complained
24 later that they hadn't been informed that by approving Mr.
25 LaPierre's employment agreement, they were authorizing him to

KM

2532

Frazer - by Plaintiff - Direct/Ms. Stern

1 take the NRA into bankruptcy if he so chose.

2 A I don't -- I think that's correct. I don't remember
3 exactly what every board member said after that point.

4 Q Yeah, but some board members did express some concern
5 about that; didn't they?

6 A I think that's correct.

7 Q Judge Journey was one of them; wasn't he?

8 A I believe Mr. Journey raised that issue.

9 Q And Dwayne Liptak who was on the Board at the time, he
10 was also upset about this; wasn't he?

11 A I don't recall Mr. Liptak saying anything about the
12 employment agreement specifically, but I could be wrong.

13 Q He was upset that he hadn't been told though that
14 bankruptcy was being considered; isn't that right?

15 A That's right.

16 Q Okay. And he actually resigned from the Board; didn't
17 he?

18 A He did.

19 MS. STERN: Okay. So I'd like to introduce for
20 identification Plaintiff's Exhibit 342 which is Tab 1 in
21 your binder. I have not had any objections to this, and so
22 I ask to move it into evidence.

23 THE COURT: Any objection?

24 MR. FLEMING: No objection.

25 MR. FARBER: May I have a moment to look at it,

KM

2533

Frazer - by Plaintiff - Direct/Ms. Stern

1 your Honor.

2 MS. EISENBERG: No objection, your Honor.

3 MR. CORRELL: No objection, your Honor.

4 MR. FARBER: No objection.

5 THE COURT: Okay. It's admitted.

6 Q Thank you. Is this an email that Mr. Liptak sent you
7 on or about January 19, 2021?

8 A It is.

9 Q And that's what, like four days after the bankruptcy
10 was filed; right?

11 A I don't remember the exact date but approximately.

12 Q January 15, 2021, that was the day the bankruptcy was
13 filed.

14 Does that sound right to you?

15 A Sounds right.

16 Q So it's shortly after that; right?

17 Okay. So Mr. Liptak expressed to you and to the
18 president of the Board, Ms. Meadows and the other officers the
19 reasons why he was resigning; right?

20 A Yes.

21 Q And he states in this letter, "However, in the current
22 organizational environment, I am no longer able to effectively
23 perform the duties of a director with what I feel is the
24 appropriate level of oversight required;" right?

25 A I see that.

KM

2534

Frazer - by Plaintiff - Direct/Ms. Stern

1 Q And that was -- those were his concerns.

2 A Yes.

3 Q And you understood he was resigning because he had not
4 been apprised about the bankruptcy filing in advance; right?

5 A That was my understanding, yes.

6 MS. STERN: Okay. Thank you, Jesse.

7 Q So in the bankruptcy action, there were motions to
8 dismiss that were brought by the Attorney General's Office and
9 by Ackerman; right?

10 A Yes.

11 Q And you were a witness during that proceeding --

12 A I was.

13 Q -- right? And you were asked to testify about the
14 reasons why the NRA was filing for bankruptcy; weren't you?

15 A I'm sorry. I thought I heard an objection.

16 Q No.

17 A Yes, I was asked to testify about various things.

18 Q But you had not been involved in any of the decisions
19 about making that filing; right?

20 MS. EISENBERG: Objection, your Honor. This is
21 misleading. The witness was a corporate representative on
22 behalf of the NRA.

23 THE COURT: Well, I think he can answer.

24 A Right, and I think that's correct. I was testifying as
25 a corporate representative, not as myself I think on that topic.

KM

2535

Frazer - by Plaintiff - Direct/Ms. Stern

1 Q Okay. The bankruptcy filing was dismissed; wasn't it?

2 A Yes.

3 MS. STERN: And can we pull up PX 2281 which is in
4 evidence. And oh, I don't have the page number. I think
5 it's at the very last page.

6 MR. FLEMING: Do you have a tab?

7 MS. STERN: Yes. Give me one second. 25.

8 Q Okay. So when the -- when Judge Hale issued his
9 decision dismissing the bankruptcy, he did note that there were
10 several, and I'm reading from the top of the conclusion. "There
11 are several aspects of this case that still trouble the Court
12 including the manner and secrecy in which the authority to file
13 the case was obtained in the first place."

14 THE COURT: I'm not sure they are on the same page
15 you are.

16 MS. STERN: I'm sorry. Jesse, Page 37 of 38 of
17 PX2281. Apologies to the jury.

18 Okay. Now we are all on the same page or same
19 screen.

20 Q So Mr. Frazer, when the bankruptcy judge dismissed the
21 case, he noted that there were several aspects of this case that
22 still trouble the Court including the manner and secrecy in
23 which the authority to file the case was obtained in the first
24 place, the related lack of express disclosure of the intended
25 Chapter 11 case to the Board of Directors and most of the

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2536

Frazer - by Plaintiff - Direct/Ms. Stern

1 elected officers, the ability of the debtor to pay its debts and
2 the primary legal problem of the debtor being a state regulatory
3 action.

4 Do you see that?

5 A I do.

6 Q Did that concern you because you had not informed the
7 Board?

8 A Well, I'm not -- I had informed the Board via past --
9 about various aspects of the case via passing along messages
10 about the case for sure. So -- so I'm sorry. Could you repeat
11 the question?

12 Q No. That's fine. We can move on.

13 So -- and notwithstanding these concerns, you believed
14 that it was in the best interest of the NRA for Mr. LaPierre to
15 file for bankruptcy without obtaining a vote from the Board;
16 right?

17 A You know, it's hard looking at that with 2020
18 hindsight. If the case had come out differently, it would have
19 been, you know, kind of the ultimate genius move in retrospect.
20 I mean, I might have done it differently if I had --

21 Q You might have done what differently?

22 A I don't know. I hate to -- I hate to second guess. I
23 think it was a -- I think it was a reasonable judgment call
24 based on where we were at the time and what we knew at the time.

25 Q Okay. So the decision whether the NRA should commence

KM

2537

Frazer - by Plaintiff - Direct/Ms. Stern

1 a lawsuit concerning its business or corporate affairs is
2 squarely within the scope of your responsibility; right?

3 A It's not the sole -- I mean, it's something that the
4 OGC is normally involved in, but it's not the sole
5 responsibility of the OGC. The OGC is not the sole decision
6 maker.

7 Q My question isn't whether you were the only decision
8 maker. But it was within the scope of your responsibilities as
9 the general counsel; isn't it?

10 A Other than when there is some type of conflict, yes.

11 Q And you didn't have a conflict with respect to the
12 bankruptcy; did you?

13 A No. Not generally, no.

14 Q Okay. So Mr. LaPierre made the decisions with respect
15 to suing Ackerman and filing for the bankruptcy without
16 consulting you; right?

17 A Yes.

18 Q And those matters each cost the NRA millions of
19 dollars. Multi-millions of dollars; right?

20 A Correct.

21 Q And management of legal risk is within your scope of
22 responsibilities; right?

23 A Yes.

24 Q And oversight of legal spending, that's within the
25 scope of your responsibilities; right?

KM

2538

Frazer - by Plaintiff - Direct/Ms. Stern

1 A Legal spending on corporate matters, yes. Carving out
2 anything where there is a conflict of interest. I was already
3 being sued at this time.

4 Q And these were legal matters within the scope of your
5 responsibilities; right?

6 A Yes.

7 Q And you didn't notify the Board that those decisions
8 were made without consulting you; right?

9 A Not that I recall.

10 Q And you didn't think that Mr. LaPierre side stepping
11 you was undermining you as the general counsel; is that right?

12 A I was a little -- I was a little bit concerned about
13 it, but I also understood what was going on.

14 Q But you deferred to Mr. LaPierre because he was your
15 boss; right?

16 A He is the CEO of the organization, and under the
17 bylaws, he has the ability to manage the association's affairs.

18 Q And he had the authority to fire you as general
19 counsel; didn't he?

20 A Yes.

21 Q He fired Kyle Weaver; right?

22 A Correct.

23 Q And he fired Chris Cox?

24 A No. No.

25 Q Okay. Chris Cox left and then he was sued by the NRA;

KM

2539

Frazer - by Plaintiff - Direct/Ms. Stern

1 right?

2 A He actually filed the claim against us.

3 Q And the NRA counterclaimed against him; didn't they?

4 A Correct.

5 Q Okay. That was another lawsuit that the NRA spent a
6 lot of money on; right?

7 A Yes.

8 Q And it was resolved by a settlement; right?

9 A Yes.

10 Q And the NRA paid Mr. Cox; right?

11 A Correct.

12 Q And Mr. LaPierre also fired Craig Spray; didn't he?

13 A Yes.

14 Q Okay. So in the NRA's --

15 A I want to clarify that. I think with Mr. Spray, I
16 think there was -- I think there was some mutuality to that.

17 Q And in the NRA's governance structure, Mr. LaPierre at
18 the executive level, he is the top of the top; right?

19 A Within the staff, yes.

20 Q So the buck stops with him; right?

21 A Yes.

22 Q And he, Mr. LaPierre, is responsible for reporting up
23 to the Board; right?

24 A Several of us are, but he is.

25 Q Yeah, but --

KM

2540

Frazer - by Plaintiff - Direct/Ms. Stern

1 A Sure.

2 Q Just my question is Mr. LaPierre and the governance
3 structure is required to report up to the Board; right?

4 A Yes.

5 Q And in turn, the Board is required to oversee him;
6 right?

7 A Yes.

8 Q And oversee you as well; right?

9 A Sure.

10 Q Okay. So are you aware that Mr. LaPierre considers the
11 president of the NRA Board to have a ceremonial role?

12 A I'm not -- I'm not sure he considers it that way. I
13 don't know Mr. LaPierre's opinion on that subject. I know he
14 works -- he's worked closely with many, many presidents of the
15 NRA over the last, you know, 30 plus years.

16 Q Sir -- sir, are you suggesting that the role of the
17 president depends on who is sitting in the seat?

18 A I mean, the responsibility under the bylaws doesn't
19 change, but some presidents are more active than others.

20 Q But is the role a ceremonial role is my question.

21 A I don't think so. The president has a lot of authority
22 within the organization.

23 Q And if Mr. LaPierre thought the role was ceremonial, he
24 would be wrong; isn't that right?

25 A I mean, again, I think that the bylaws spoke for

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2541

Frazer - by Plaintiff - Direct/Ms. Stern

1 themselves. The president has a lot of independent authority.

2 Q So Mr. Frazer, I'm just asking you if you can answer my
3 question.

4 If Mr. LaPierre thought that the role of the president
5 was ceremonial, he would be wrong; isn't that right?

6 A I mean, the role is what you make it. Some presidents
7 treat it ceremonial. I don't -- I can't make a blanket yes or
8 no answer to that regardless of who is the president in any
9 given time.

10 Q Okay. So you have responsibilities we talked about to
11 oversee the legal spending of the NRA; right?

12 A Yes.

13 Q And in overseeing outside counsel's legal billing, you
14 don't have any guidelines on how those bills should be prepared;
15 right?

16 A We don't have written guidelines, no.

17 Q Okay. So you don't have any guidelines about how time
18 entries should be recorded?

19 A I mean, we follow standard practices in the legal
20 profession.

21 Q And guidelines on how many people can bill for any
22 given activity?

23 A I mean, the NRA doesn't have any written guidelines,
24 but there are ethical rules that cover that, and we expect our
25 outside attorneys to follow.

KM

2542

Frazer - by Plaintiff - Direct/Ms. Stern

1 Q I'm just asking you as the general counsel managing the
2 legal bills, whether or not you say to the outside counsel that
3 you retain, you can only have X number of people bill for one
4 meeting.

5 A No, I don't have a written rule like that. Again, I go
6 by the ethical standard which is whether it's reasonable.

7 Q You have seen -- you are aware of guidelines like that;
8 aren't you?

9 A Sure.

10 Q Do you have any limits on the amount of time that can
11 be billed in any given time; right?

12 A No.

13 Q Okay. And during your tenure as the NRA's general
14 counsel, the NRA's legal fees for its corporate matters have
15 escalated; haven't they?

16 A Yes, because there have been a lot more corporate
17 matters.

18 MS. STERN: Okay. So can we turn to for
19 identification PX 2373 at Tab 37. That is going to be in
20 your second binder, and I've had no objections to this
21 document. I ask when we eventually get our binders in front
22 of us to move for its admission.

23 THE COURT: This is regulatory filing?

24 MR. FLEMING: No objection.

25 MR. CORRELL: No objection.

KM

2543

Frazer - by Plaintiff - Direct/Ms. Stern

1 THE COURT: Hearing none, it's admitted.

2 Q Okay. Thank you.

3 Mr. Frazer, do you recognize this to be the NRA's CHAR
4 500 for 2015?

5 A Yes.

6 MS. STERN: Okay. And just on Page 1 of 94, Jesse.
7 Right ahead of me.

8 Q Can we look at the paragraph that's numbered "to
9 certification?"

10 Do you see that?

11 A I see it.

12 Q It says on the left-hand side, "President, Authorized
13 Officer."

14 Is that your signature, Mr. Frazer?

15 A It is.

16 Q And okay. And can you just read to me what the
17 certification language says?

18 A Sure. It says, "We certify under penalties of perjury
19 that we reviewed this report including all attachments and to
20 the best of our knowledge and belief they are true correct and
21 complete in accordance with the laws of the State of New York
22 applicable to this report."

23 Q Okay. So within this CHAR 500 filing is the Form 990.
24 If you turn to page 38 of 94 of the exhibit, do you see that?

25 A I do.

KM

2544

Frazer - by Plaintiff - Direct/Ms. Stern

1 Q Okay. And just within -- now we are in the 990s. So
2 if we can turn to Page 47 of 94, please, and this is the
3 statement of functional expenses in the 990.

4 You're familiar with that form?

5 A Yes.

6 Q I'm sorry. That portion of the form, to be clear.

7 A Yes.

8 Q And the NRA is required to report its expenses -- its
9 legal expenses in this portion of the form; correct?

10 A Yes.

11 Q Okay. So if we can just turn to Line 11, item B.

12 Do you see where it says "Legal?"

13 A I do.

14 Q Okay. And so the total amount of the expenses in 2015
15 was how much, Mr. Frazer?

16 A \$4,544,582.

17 Q And then next to that there is two columns. One,
18 Column B, Program Service Expenses and one is Column C,
19 Management and General Expenses.

20 Do you see that?

21 A I do.

22 Q And the Program Service Expenses for legal there, that
23 would reflect generally the expenses that -- to the NRA legal
24 expense for advocacy work; correct?

25 A I think that's correct.

KM

2545

Frazer - by Plaintiff - Direct/Ms. Stern

1 Q The column that's entitled Management and General,
2 Expenses, with respect to legal expenses, that would be more the
3 corporate business type of legal expenses; right?

4 A Yes.

5 Q Okay; and so what was the amount of the management and
6 general legal expenses in 2015 when you started?

7 A \$308,367.

8 Q Okay; and now can we turn to page 45. So you're going
9 to page back of 94 in this exhibit, and I'm going to direct your
10 attention to the bottom of the page where it says "Section B,
11 Independent Contractors."

12 And you're familiar with this table that's in the 990?

13 A Yes.

14 Q And this table requires the filer to report the five
15 highest compensated independent contractors.

16 A Correct.

17 Q Right. That receive more than \$100,000. I'm reading
18 right from the form; right?

19 A Correct.

20 Q And in the list of five, there is no vendor or
21 contractor here that provides legal services; right?

22 A That's right.

23 Q Okay. Ackerman McQueen, I see is number two at \$13.8
24 million; right?

25 A Right.

KM

2546

Frazer - by Plaintiff - Direct/Ms. Stern

1 Q Thank you. You can put this aside.

2 Now, we are going to turn to Tab 45 in your binder
3 which is Plaintiff's Exhibit 2346 which is in evidence. This is
4 the reason for the two binder set.

5 Okay. Now, Mr. Frazer, do you recognize this to be an
6 amended 2018 990 Form that was filed by the NRA?

7 A I do.

8 Q And the -- sorry -- and the form -- the amended -- the
9 reason for the amended filing was actually to correct some
10 disclosures with respect to the legal spend; right?

11 A Correct.

12 Q Okay.

13 A That was at least one of the reasons.

14 Q Okay. So can we look at -- sorry -- Page 14 of 122 of
15 this document; please. Okay. And here we are again at the
16 Statement of Functional Expenses, and I'm going to direct your
17 attention to line 11B here. So this is 2018. And the total
18 legal expenditures for 2018 is how much?

19 A \$25,064,761.

20 Q And of that 25 million plus dollars, how much is within
21 the corporate side of the NRA's operations?

22 A Are you referring to Column C.

23 Q That's right.

24 A \$16,431,583.

25 Q Okay. And turning to Page 8 of 122 back to the chart

KM

1 of independent contractors in Section B.

2 Do you see where I am?

3 A I do.

4 Q Okay. So here we again have the five most highly
5 compensated independent contractors for the year 2018; right?

6 A I see that.

7 Q And third on this list is the Brewer Law Firm; right?

8 A Yes.

9 Q And the amount that the Brewer Law Firm received that
10 year was how much?

11 A \$13,756,142.

12 (Continued on the following page.)

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2548

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 Q And the Brewer law firm started working for the NRA
2 about March that year?

3 A In or about March, yes.

4 Q So, it is about three-quarters of the year?

5 A A little more, but, yes.

6 Q And let's now turn to tab 44, Plaintiff's Exhibit 226,
7 which is also already in evidence.

8 (Displayed)

9 And you recognize this to be the CHAR500 Form for 2022;
10 right?

11 A I do.

12 Q So let's do this exercise again. If you can turn to
13 page 14, I believe, it is of 99, and we're again at the
14 Statement of Functional Expenses; right?

15 A Yes.

16 Q And on line 11.b, the legal spend in 2022 now reported
17 as total as how much?

18 A \$40,196,015.

19 Q And of that how much falls within the management and
20 general expenses which are under your purview?

21 A \$38,483,187.

22 Q Okay, and if we can turn back to page 12 of 99, the
23 chart of the independent contractors. For 2022, the top of the
24 list is who?

25 A Brewer Attorneys.

BP

2549

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 Q And during the period from 2018 to 2022, each and every
2 year the Brewer firm was one of the most highly compensated
3 contractors for the NRA; wasn't it?

4 A I believe that's correct.

5 Q And between 2018 and 2022, the NRA reported in total
6 paying the Brewer firm in over a hundred million dollars; isn't
7 that correct?

8 A I don't have a total in my head.

9 Q You never calculated that?

10 A I've never -- I haven't sat down and added it up over
11 the years.

12 Q Does a hundred million sound like to be in the right
13 range for you?

14 A It might be.

15 Q It might be? But the 990 has the accurate disclosures
16 about it; doesn't it?

17 A We are very careful to have the 990 be accurate.

18 THE COURT: Counselor, if we're going to move to
19 something new, it might be time for our morning break.

20 MS. STERN: One second. That's fine.

21 THE COURT: Okay, we'll take a short break. See
22 you shortly.

23 COURT OFFICER: All rise, jury exiting.

24 (Whereupon, the jury then left the courtroom.)

25 (Whereupon, a short recess was then taken.)

BP

2550

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 MS. CONNELL: Before the jury comes out, Mr. Lee
2 may or may not be available this afternoon.

3 MS. ROGERS: We've reached out to his counsel.
4 He's represented separately. We had some discussions if we
5 can't produce him, there may be another witness that can go.

6 THE COURT: Okay, was he supposed to go today?

7 MS. CONNELL: Yes. We had him as the next
8 following Mr. Frazer, and we think we'll potentially get to
9 him. We're trying to pick up speed and keep it moving. We
10 don't want to waste any minutes, so we proposed
11 Ms. Supernaugh -- she's available -- in his place, but,
12 ideally, Mr. Lee will be here.

13 THE COURT: Why don't you all use the lunch hour to
14 just ensure there's somebody that comes next if that was the
15 agreement.

16 MS. CONNELL: Thank you, your Honor.

17 COURT OFFICER: Is the Court ready to receive the
18 jury, your Honor?

19 THE COURT: Yes.

20 COURT OFFICER: All rise, jury entering.

21 (Whereupon, at this time the jury then entered the
22 courtroom.)

23

24 (Continued on next page)

25

BP

2551

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 (Whereupon, at this time the witness,
2 JOHN FRAZER, having been previously duly sworn/affirmed by
3 the Clerk of the, Court, resumed the witness stand and
4 testified as follows:)

5 THE COURT: Welcome back, have a seat.

6 Ms. Stern, you may continue.

7 MS. STERN: Thank you, your Honor.

8 DIRECT-EXAMINATION

9 BY MS. STERN:

10 Q Mr. Frazer, ready?

11 A Yes, thanks.

12 Q So, you've been talking a lot about your areas of
13 responsibilities, and one is the oversight of financial
14 transactions between the NRA on the one hand, and directors,
15 officers, employees, their family members or businesses
16 associated with any of those?

17 A Yes.

18 Q And those are within your oversight because they
19 present potential conflicts of interest; right?

20 A Right.

21 Q And something that we talked a lot about, related-party
22 transactions; right?

23 A Correct.

24 Q Related-party transactions are a subset of conflicts of
25 interest; right?

BP

2552

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 A That's right.

2 Q Key aspect of a compliance program is to properly
3 police related-party transactions; isn't it?

4 A Right, yes. Actually, they're disclosed, reviewed,
5 vetted, yes.

6 MS. STERN: Bonnie, can you do me a favor and read
7 me back the last question, please.

8 (Whereupon, at this time the court reporter read
9 back the requested portion.)

10 Q So, just to broaden the question, the compliance
11 program should also properly police conflicts of interest more
12 broadly; right?

13 A Yes.

14 Q And the NRA Bylaws actually provide that no director
15 can receive a salary or other private benefit unless
16 specifically authorized by a resolution of the board or a
17 committee of the board; right?

18 A I think, yeah, words to that effect.

19 MS. STERN: So, can we pull up Plaintiff's
20 Exhibit 8, which is found at Tab 33 of your binders and this
21 is in evidence.

22 Q And just turn to Article 5, Section 5, on
23 "Compensation," which is I think on page 14 of 30.

24 A I'm sorry, what tab are we in?

25 Q Oh, I'm sorry. It is Tab 33.

BP

2553

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 A You said that. I just had to switch binders.

2 Q And, actually, Mr. Frazer, I don't want to go too, too
3 fast. I just want to make sure you recognize these are the
4 Bylaws of the NRA; correct?

5 A They are the Bylaws as of April 2019, yes.

6 Q And for convenience, these are in evidence so I just
7 reference to the provisions in Article 5 on "Compensation" and
8 that's found at page 14 of 30 of the exhibit.

9 A I see that.

10 Q And this provision has been in place at least the
11 entire time that you have been General Counsel; hasn't it?

12 A It was actually changed a little bit since I became
13 secretary. It was part of the Bylaw review that I was involved
14 in leading in 2015 to '17, roughly.

15 Q Okay, and so this provision has -- so before you
16 amended the Bylaws, did it permit directors to receive a salary
17 or a private benefit?

18 A I don't remember off the top of my head what the prior
19 version was. I think there was some restriction.

20 Q Some restriction, okay. And so here we see that it is
21 "A prohibition unless specifically authorized by resolution of
22 the board of directors or an authorized committee thereof."

23 Isn't that right?

24 A Yes.

25 Q And the NRA also has rules that require directors and

BP

2554

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 officers that receive compensation pursuant to if it's
2 authorized to disclose that; right?

3 A Yes. I mean, we require a disclosure form from
4 everyone whether they have anything to disclose or not.

5 Q And if they are receiving any compensation, \$2,000 a
6 year or more, they have to make a disclosure about that; right?

7 A That's a separate Bylaw provision. It's been in effect
8 since the late 1970s, I believe; but the form, itself, is, is --
9 I think would require disclosure of any amount. It is not
10 limited to \$2,000, right.

11 Q Oh, the other form, is that what you're saying?
12 Let's -- now I think we're getting a little confusing.

13 So, can we turn to Article 4, Section 3. I'm going to
14 apologize, I need to find the page number. Actually, let's just
15 strike that. I'm going to move on. I'll move back to it not to
16 waste time.

17 But you as the secretary of the board, you make reports
18 every year at the annual meeting respect to any directors who
19 are receiving any compensation from the NRA; right?

20 A The disclosure that's made at the, at the -- annually,
21 I think you're referring to the disclosure at the annual meeting
22 of members and then there are similar disclosures at board
23 meetings, and that relates to that Bylaw provision that you just
24 saw.

25 It was I think goes back to 1978 when I looked it up

BP

2555

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 awhile ago, and what that -- and that requires them to be --
2 transactions involving goods and services over \$2,000 to be
3 reported at the next board meeting and, also, annually at the
4 members meeting.

5 So, our process captures more than that, but that's
6 what's reported at those meetings under the secretary's report.

7 Q And if a director is providing services, say,
8 consulting services, they would have to be disclosed in that
9 report; right?

10 A Yes.

11 Q And those -- that consultant arrangement would also
12 present a potential conflict of interest that would have to be
13 disclosed, potentially, to the Audit Committee as well; right?

14 A Right, standards are a little bit different, but,
15 generally, yes.

16 Q So you, as the secretary, make a report to the members;
17 right?

18 A Yes.

19 Q And since you have become the secretary of the NRA,
20 have you fully complied with that requirement?

21 A I believe so. I'm not -- I don't know that I can say
22 that there were never any errors, but I've certainly done my
23 best to comply.

24 Q Okay. And you have responsibilities to enforce the NRA
25 conflict of interest in related-party transactions policy;

BP

2556

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 right?

2 A I'm one of the people involved in that process, yes.

3 Q And you work in conjunction with the Audit Committee?

4 A Primarily, yes.

5 Q And if there was a reason to believe that an NRA
6 officer, director or employee violated the conflict of interest
7 and the related-party-transaction policy, the Office of General
8 Counsel would be, typically, involved in looking into that;
9 wouldn't they?

10 A Typically, it would really be an Audit Committee
11 responsibility. I mean, ultimately there were -- you're
12 covering a lot of ground; but if something was reported,
13 ultimately would go to the Audit Committee for review on
14 determination on what remedy there should be.

15 Q Are you saying you would not have any role in that
16 process?

17 A No, not at all. The secretary and the OGC would be
18 involved.

19 Q So, you would be integral to addressing that situation?

20 A Again, barring if some situation there might be a
21 conflict of interest or where it gets put to outside counsel,
22 for example.

23 Q But if it was put to outside counsel, that would be
24 your decision to be put to outside counsel?

25 A Not necessarily. The Audit Committee can also make

BP

2557

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 that decision.

2 Q Okay. If there was reason to believe that an NRA
3 officer, director or employee violated the conflict-of-interest
4 policy, it would be within your purview, though, to conduct an
5 investigation; wouldn't it?

6 A Again, you know, unless there's a conflict it would
7 normally be, but, you know, there's flexibility in how you
8 handle it.

9 Q But you would have the authority to conduct an
10 investigation; wouldn't you?

11 A To -- again, you know, with, with -- not if I had a --
12 not if I had a legal conflict of interest. So, for example, if
13 it involved this lawsuit, I couldn't weigh in.

14 But, it is something that the OGC would, typically, be
15 involved in; but, again, I don't want to be talking past each
16 other, but I think that there are -- I think there's a lot of
17 flexibility in exactly how you handle situations case by case.

18 THE COURT: It's probably been clear, but OGC is
19 Office of General Counsel?

20 THE WITNESS: Yes, I'm sorry. I don't want to fall
21 into internal abbreviation to speak.

22 Q So, I just want to be clear, though, I'm talking about
23 financial transactions that may raise conflicts of interest or
24 may be related-party transactions, that's what we're talking
25 about here; right?

BP

2558

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 A Understood.

2 Q And the financial disclosures we've been talking about
3 a little bit that board members and executives are required to
4 make, that's your responsibility to make sure that that occurs;
5 right?

6 A Right. The secretary's office sends out the forms,
7 receives the returns, return forms, analyzes them and starts the
8 process of figuring out whether there are any issues.

9 Q And I think we covered this before, but just to
10 clarify, the NRA had a financial disclosure policy that applied
11 to officers and directors before you became the General Counsel;
12 right?

13 A Yes. Yeah, we updated and superseded it.

14 Q Right, and at some point you created a standalone
15 conflict of interest in related-party-transaction policy; right?

16 A Correct.

17 Q And that has a financial disclosure requirement within
18 that; right?

19 A Correct. It -- it replaced the two separate forms that
20 we had previously.

21 Q Okay.

22 A One of them was really a letter, but.

23 Q Okay. And so under the policy that's been in effect
24 since -- it's been in effect since, what, about January 2016; is
25 that right?

BP

2559

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 A That's right.

2 Q Okay. Financial disclosure forms are required at least
3 annually; right?

4 A Yes.

5 Q And updates to the disclosure require if circumstances
6 change and they require an update; right?

7 A Yeah, that's something we've hammered on for the last
8 five or six years.

9 Q And accurate financial disclosures are necessary for
10 you and for the NRA to be able to identify potential conflicts
11 of interest; right?

12 A Yes.

13 Q So, the complimentary use of a vendor's yacht or being
14 hosted by a vendor at no cost on a trip to, say, the Taj Mahal
15 or receiving designer suits; that would trigger a minimum
16 disclosure requirement, right?

17 A I think so, yes.

18 Q And even if that vendor was a deep personal friend of
19 the recipient; right?

20 A Right. You need to disclose so that it can be properly
21 addressed internally.

22 Q And that's pretty obvious, right?

23 A You know, I think it is something that in any area
24 there are judgment calls, and I'm always open to take those
25 questions.

BP

2560

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 Q But, for you, is that a hard question?

2 A I would report it personally.

3 Q You would report it personally?

4 A Yeah, the -- I'm thinking more on the trips. The
5 wardrobe might be a little bit different.

6 Q I'm talking about just, hypothetically, if someone gave
7 you those things, you'd have to -- you'd expect -- you'd expect
8 somebody working at the NRA to disclose that to you; right?

9 MS. EISENBERG: Your Honor, objection. Compound.

10 THE COURT: Overruled.

11 A I would hope they would disclose that, yes.

12 Q And the Audit Committee needs that information, right?

13 A The Audit Committee needs whatever information it can
14 get to handle things properly.

15 Q Okay. If we can turn to Tab 2 in your binder, it is
16 Exhibit PX 639, which is in evidence.

17 Mr. Frazer, you've seen this form before today; right?

18 A Sure, yeah.

19 Q And this is the financial disclosure that Mr. LaPierre
20 made on April 7, 2021; right?

21 A Yes.

22 Q And that was -- I think as we've heard -- right in the
23 middle of the bankruptcy trial; right?

24 A Yes.

25 Q Indeed, right before he testified; right?

BP

2561

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 A I don't remember a hundred percent, but it sounds
2 right.

3 Q Okay. So, as of April 7, 2021, you were aware of the
4 disclosures that Mr. LaPierre made here for the first time in
5 this questionnaire; right?

6 A Could we turn to the --

7 Q Sure, let's turn to the addendum, which is page 6 of 6
8 of the document.

9 (Displayed)

10 A Yes.

11 Q So, as of that date, you were on notice of the yacht
12 trips that Mr. LaPierre disclosed; correct?

13 A As of that date, yes.

14 Q And of the discovery of wardrobe purchases; right?

15 A The -- well, right, because Ackerman had put out the
16 documents about wardrobe purchases.

17 Q So, you actually learned that earlier?

18 A Yes.

19 Q But they had not been disclosed by Mr. LaPierre in
20 the -- in the, in the manner in which the policy required;
21 right?

22 A They hadn't been disclosed on the conflict form. I
23 don't know what Mr. LaPierre's thought process was on that.

24 Q Yeah, I'm not asking you. Just asking whether they, in
25 fact, had been disclosed in accordance with the policy before

BP

2562

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 that?

2 A I mean, Mr. LaPierre hadn't disclosed them on a
3 conflict form, no.

4 Q And you were aware as of at least your deposition in
5 this case, July 2022, that Susan LaPierre had acknowledged
6 receiving gifts or things of value from the McKenzies; right?

7 A I don't recall that. I don't recall that part of the
8 deposition.

9 MS. STERN: Jesse, can we bring up Mr. Frazer's
10 testimony at his litigation deposition on July 12, 2022.

11 MR. FLEMING: Your Honor, just is this to test his
12 recollection or impeach because I don't think there's a
13 basis for impeachment.

14 THE COURT: Overruled. Well, I assumed it was
15 impeachment, is that right?

16 MS. STERN: Yes.

17 Q Mr. Frazer you recall that you were deposed in this
18 action; right?

19 A I do.

20 Q And you swore to tell the truth at that deposition?

21 A I did.

22 Q And you endeavored to tell the truth; right?

23 A Absolutely.

24 MS. STERN: And, Jesse, can we play the clip,
25 please.

BP

2563

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 (Video played)

2 Q So, you would agree that the LaPierres' admission that
3 they received gifts and things of value from the McKenzies
4 implicated issues under the NRA policy concerning conflicts of
5 interest?

6 A Again, I'm, I'm -- even after looking at the deposition
7 testimony, I'm not sure what I personally knew when; but
8 speaking, generally, receiving gifts from a vendor would require
9 disclosure.

10 Q So, Mr. Frazer, my question is do you agree that
11 McKenzies giving gifts to the LaPierres and the McKenzies
12 relationship, financial -- given McKenzies' financial
13 relationship to the NRA through their business operations, that
14 that raised issues under the conflict-of-interest policy;
15 right?

16 MR. FLEMING: Objection, foundation.

17 THE COURT: Sustained.

18 Q So, as of your deposition, you were on notice -- your
19 deposition in July 2022 you were on notice that Ms. LaPierre had
20 acknowledged receiving gifts or things of value; right?

21 A If I understood that clip correctly, I was aware that
22 there was some allegation of it. I don't know if I knew that
23 for a fact personally.

24 Q Okay. So, you have no recollection, though, of ever
25 having taken any action to determine whether Mr. LaPierre

BP

2564

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 violated the conflict-of-interest policy; right?

2 A Not -- not personally on that topic; but, of course,
3 since your office had already sued the NRA and me by then, you
4 know, some issues were in the hands of litigation counsel at
5 that point.

6 Q So, you did not personally take any action with respect
7 to determining whether the internal NRA policy was violated;
8 right?

9 A I don't recall personally doing that.

10 Q Sitting here today, you have no recollection of having
11 done anything, right?

12 A Again, not with it already, I mean, in the hands of
13 others.

14 Q And you didn't conduct any inquiry to determine whether
15 or not Mr. LaPierre's disclosures were complete; did you?

16 A Again, for the same reason, not personally.

17 Q For the same reason being what?

18 A That it was already a subject of this litigation.

19 Q And so that meant that you didn't take any action,
20 that's your explanation; right?

21 A It meant that I understood that subject that was
22 already the topic of litigation was being handled by litigation
23 counsel.

24 Q And you did not, yourself, ask Mr. LaPierre about the
25 disclosures; did you?

BP

2565

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 A Not that I recall.

2 Q And you don't have any knowledge, do you, of the Audit
3 Committee reviewing the MMP relationship from the perspective
4 of conflict of interest after Mr. LaPierre's disclosures; right?

5 A No, that's not -- that's not correct. I know the Audit
6 Committee has looked at that issue.

7 Q And when did they look at it?

8 A I recall a discussion of that issue at the
9 February 2023 meeting.

10 Q February 2023?

11 A At least, yes.

12 Q And the disclosures were made in April 2021; right?

13 A Yes. I'm not saying that was the only one, but that's
14 the one I remember.

15 Q Okay. So, the NRA doesn't advise the board when other
16 board members fail to complete their financial disclosure
17 questionnaires; right?

18 A I remind the board members at every meeting to turn in
19 their forms and to update them continuously; but we don't
20 publish a naughty list.

21 Q And the NRA had problems in the past with compliance
22 with the association's conflict of interest and
23 related-party-transactions policy; right?

24 A Yeah, I mean, we've -- like, anything else, it is a
25 process and people didn't always complete their forms in a

BP

2566

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 timely way; and we've worked really hard over the last several
2 years to increase it, and we've been at the hundred percent the
3 last couple of years.

4 Q And beyond just the disclosure forms, there are
5 problems with providing advanced notice of transactions to the
6 Audit Committee, to give the Audit Committee the opportunity to
7 review the transactions before they commenced; right?

8 A Yeah, that -- that was an issue that we noted several
9 years ago. I don't recall any recently.

10 Q And but my question is in the past, that was a problem;
11 wasn't it?

12 A Yes, that was an issue the Audit Committee noted at
13 least in 2018.

14 Q A serious problem that led to ratifications of a lot of
15 transactions; right?

16 A There were a number of transactions ratified in the
17 2016 to '18 timeframe.

18 Q And the Audit Committee's reports of those meetings
19 will reflect the transactions that were reviewed and ratified;
20 right?

21 A Yes.

22 Q Those are accurate reports; right?

23 A Yes.

24 Q So, when you took the position of General Counsel, you
25 found that it was -- it was necessary to improve the internal

BP

1 policies of the -- policy of the NRA; right?

2 A Absolutely.

3 Q And you drafted a new policy?

4 A I drafted it in conjunction with Bob Dowlut, the
5 previous General Counsel who had been General Counsel for, I
6 think, thirty-eight years.

7 Q And the procedures were lacking as well; right?

8 A I thought there was room for improvement in the
9 procedures, so we consolidated the forms, for example.

10 (Continued on next page)

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2568

Frazer - by Plaintiff - Direct/Ms. Stern

1 Q Okay. So one of the requirements under the policy, the
2 related-party conflict-of-interest policy is that the financial
3 transaction has to be presented to the Audit Committee for its
4 review; right?

5 A Yes. Generally, yes.

6 Q And you've typically handled those presentations;
7 right?

8 A Not exclusively, but I have made a number of
9 presentations on potential issues.

10 Q And when you've done those presentations, they have
11 been in an oral format; right?

12 A I think for some of them, we had a written, you know,
13 like a draft resolution circulated, but generally, I mean, I
14 always am going to discuss them orally.

15 Q And the draft resolution if it was circulated in
16 advance would reflect what the Audit Committee was considering;
17 right?

18 A It would reflect our factual understanding -- the
19 factual understanding that we had going into the meeting.

20 Q And the consideration of the transaction occurs in the
21 executive session; right?

22 A Correct.

23 Q And the Audit Committee practice is not to take minutes
24 in an executive session; right?

25 A We do now, but we haven't always in the past.

KM

2569

Frazer - by Plaintiff - Direct/Ms. Stern

1 Q So now you take minutes in the executive session?

2 A Yes.

3 Q When did that commence?

4 A I don't remember the first. I know -- I know that
5 before last September's meeting, I saw draft minutes that
6 covered one or more previous meetings.

7 Q So last September being September 2023?

8 A Correct.

9 Q So -- and those were minutes of a meeting in the middle
10 of 2023?

11 A I'm not sure. And actually to clarify, in 2016 and
12 maybe 2017, there were also -- well, I guess, they weren't
13 technically executive session minutes, but they were minutes
14 documenting that.

15 What occurred -- when a committee meets in executive
16 session, you then report action items out after the executive
17 session concludes.

18 Q And the action items --

19 A I think that's what I'm thinking of for 2016, '17.

20 Q And the action items are reflected in the Audit
21 Committee's official report; right?

22 A Some of them were documented -- were documented in
23 separate minutes that were kept within the committee records and
24 not in the report to the Board because the idea of a report to
25 the Board is to report action items to the Board.

KM

2570

Frazer - by Plaintiff - Direct/Ms. Stern

1 Q So if an action was taken to approve a transaction,
2 that would be in the Audit Committee report so the Board knew,
3 right, the fuller Board know?

4 A I want to clarify. When I say "action items for the
5 Board", I mean action -- action items for the Board to take
6 action on.

7 If something is delegated to the Audit Committee, it
8 doesn't necessarily need to be reported to the -- separately to
9 the Board because it wouldn't necessarily be an action for the
10 Board to take. I'm sorry. That's maybe a little confusing.

11 Q If the Audit Committee issued a resolution --

12 A Uh-huh.

13 Q -- that would be in the Audit Committee report;
14 wouldn't it?

15 A Currently, yes, but not for a couple of the meetings in
16 '16 and '17.

17 Q So in 2016 and 2017, your testimony is they had secret
18 resolutions?

19 A No. Not secret. They were resolutions that were
20 maintained in the Audit Committee -- in the Audit Committee's
21 files. They are not secret because they are available for
22 inspection, and if anyone asks questions, we can answer the
23 questions.

24 Q But those are files that are maintained by the
25 secretary of the Audit Committee; correct?

KM

2571

Frazer - by Plaintiff - Direct/Ms. Stern

1 A Correct.

2 Q Not by you.

3 A I had a copy, but actual copy would be in the
4 secretary's files.

5 Q But you didn't maintain the official records of the
6 Audit Committee.

7 A No because our practice at the NRA is that committee
8 secretaries maintain their own records.

9 Q Okay. So when you're doing the presentations of the
10 potential conflict of interest, the transaction that raises a
11 potential conflict of interest or raised an issue and you're
12 ratifying it, right, you didn't provide -- you, personally, did
13 not provide the contracts to the Audit Committee members; right?

14 A I'm trying to remember. In some cases, we didn't.
15 In -- I think in some more recent cases, we may have, but there
16 haven't been as many issues like this lately.

17 Q When you say "more recent cases," are we talking 2023?

18 A I don't remember specific instance.

19 Q So can you remember any instance?

20 A Not off the top of my head.

21 Q Okay. So when you raised it, you didn't have anything
22 specific in your mind; right?

23 A I have some recollection of an issue, but I just don't
24 remember which particular.

25 Q Okay. And besides contracts, you didn't provide other

KM

2572

Frazer - by Plaintiff - Direct/Ms. Stern

1 materials for the Audit Committee to review in advance of the
2 meeting; did you?

3 A I don't know if I can give a blanket yes or no to that.
4 I know that we would sometimes provide a draft resolution in
5 advance of the meeting, and what we all tried to do was to
6 include the key information in that resolution so that it would
7 be properly documented.

8 Q But you didn't give -- well, I'll call primary source
9 material.

10 You didn't give the Audit Committee members information
11 say about comparable to transactions for their independent
12 review; right?

13 A Sometimes we did. And actually, I'm thinking of a
14 specific example on that. You know, a little bit different
15 context, but it might -- depends on the timeframe and the issue.

16 Q So what's the example that you're thinking of?

17 A I don't remember when we considered it, but there was
18 an issue involving a company called Crow Shooting Supply which
19 by the time I'm thinking of last year was owned by a former
20 board member and past-president Peter Brownell. It's some
21 ownership interest. I'm not sure of the exact structure, and
22 they provided fulfillment of grant materials for the NRA
23 foundation.

24 It's not the NRA itself, but I know that when we --
25 when that, you know, relationship was approved and ratified as

KM

2573

Frazer - by Plaintiff - Direct/Ms. Stern

1 beneficial to the NRA and the foundation, one of the action
2 items was to follow up periodically and make sure it was fair
3 market value. And so they actually put out an RFP and those
4 materials were provided to the Audit Committee.

5 Q So just a little confused, the sequence.

6 So the RFP occurred as a condition?

7 A It occurred as a follow-up item on the -- on the
8 original approval and ratification.

9 Q So the original agreement was ratified?

10 A Yes.

11 Q There was no RFP?

12 A Well, because it was a review of an ongoing
13 transaction, yes.

14 Q And then there was a subsequent RFP?

15 A Correct.

16 Q And other than that, no other examples; right?

17 A I'm not saying there were no other examples. That's
18 just the one that comes.

19 Q But you can't tell me about other examples.

20 A That's what comes to mind.

21 Q So beginning of the Fall of 2018, the Audit Committee
22 had a series of meetings where they were reviewing and ratifying
23 past transactions; rights?

24 A I'm sorry. The Fall of when?

25 Q 2018.

KM

2574

Frazer - by Plaintiff - Direct/Ms. Stern

1 A We were reviewing past transactions well before that.

2 Q Okay. When did you start reviewing them?

3 A March of 2016, I believe. Excuse me.

4 Q And you were continuing to review them for a number of
5 years; right?

6 A Yes.

7 Q Because there was a lot of transactions; right?

8 A I mean, there were a number of transactions. I don't
9 know how you define "a lot."

10 Q Those are transactions between the NRA and board
11 members; right?

12 A Some of them were between the NRA and board members.
13 Some of them were between the NRA and trustees of
14 related-organizations. Some of them were between
15 related-organizations and NRA Board members. It was anything
16 that crossed that line of doing business with the NRA and its
17 affiliates.

18 Q And we are talking all about ratifications; right?

19 A Some of them were ratifications and some of them were
20 approvals in advance.

21 Q Right. And my question to you was about the
22 ratifications.

23 A Yes.

24 Q Okay. And one of those transactions that was reviewed
25 during that period of time was a contract we have heard about

KM

2575

Frazer - by Plaintiff - Direct/Ms. Stern

1 between Oliver North and Ackerman McQueen; right?

2 A Yes.

3 Q Okay. And that was a transaction that the Board -- I'm
4 sorry -- that the Audit Committee reviewed where there was no
5 contract provided to them; right?

6 A That's right. We had a summary, but not the full
7 contract.

8 Q And so you proceeded to review that -- present that
9 based on just a summary of the contract; right?

10 A I don't remember. I don't remember whether it was I or
11 someone else who -- who kicked off that discussion.

12 Q You were present at the meeting; right?

13 A I was present at the meeting, yes.

14 Q All right. And you understood that the Audit Committee
15 was making its determination based on just a summary of the
16 terms of the contract; right?

17 A Yes.

18 Q Okay.

19 A And with an understanding that we would work on trying
20 to get the full contract which was an issue as we've heard.

21 Q You hadn't seen the contract; right?

22 A I had not.

23 Q Okay; and you were okay with that; right?

24 A I would have preferred to have the whole contract, but
25 the committee was acting based on what was available at the

KM

2576

Frazer - by Plaintiff - Direct/Ms. Stern

1 time.

2 Q And you didn't say to the committee, You don't have
3 enough information. We should hold on this.

4 A I think again the idea was that the committee based on
5 what it understood thought that the transaction was reasonable
6 but that we would continue to try to get more information and be
7 able to revisit it as the committee later did.

8 Q And the posture at this time was the contract had
9 already started; right?

10 A It had.

11 Q Okay. Can we bring up JFX52. It's in Tab 35 of your
12 binder, and it's in evidence. Okay. And this is the document
13 we've looked at which is a compendium of Audit Committee
14 reports. So unfortunately, they're not paginated, but if you
15 turn to the report dated September 8 to 9, 2018, they are in
16 chronological order.

17 THE COURT: Is there a page number at the bottom?

18 I know that they are not consecutive.

19 MS. STERN: Right. Let me get to it, your Honor.

20 MR. FLEMING: It's 243.

21 MS. STERN: Thank you, Mr. Fleming.

22 Q Okay. So I'm going to direct your attention to the
23 bottom of the page, the paragraph that starts, "the Audit
24 Committee met at the Westin."

25 Do you see where I am?

KM

2577

Frazer - by Plaintiff - Direct/Ms. Stern

1 A I do.

2 Q That's reflecting a meeting that occurred on
3 September 6, 2018; right?

4 A Correct.

5 Q Okay; and Mr. Frazer you were present at that meeting;
6 right?

7 A I was.

8 Q And that day, you served as the committee secretary?

9 A I did.

10 Q And that was just why?

11 A It was taking the notes, and you know, I took the roll
12 call. I called -- I took the notes.

13 Q So my question was why did you serve as the committee
14 secretary that day?

15 A Because Mr. Tedrick who was the normally appointed
16 committee secretary had been placed on administrative leave or
17 medical leave; right.

18 Q And that was because of complaints about him being
19 inebriated at work; right?

20 A I don't know about at work, but there were some
21 concerns that he needed some help for some personal issues.

22 Q Okay. And let's see who else was at that meeting.
23 Steve Hart was at that meeting. He was another lawyer, right,
24 an outside lawyer?

25 A Yes.

KM

2578

Frazer - by Plaintiff - Direct/Ms. Stern

1 Q And Sarah Rogers was also at that meeting; wasn't she?

2 A She was.

3 Q Okay. And so let's turn to -- it's numbered page 244
4 of the actual report, and this reflects the resolution that the
5 Audit Committee made about the Oliver North/Ackerman contract;
6 right?

7 A Yes, it does.

8 Q So -- and it states at the beginning, right, "Whereas
9 on or about May 15, 2018, Colonel North and Ackerman had entered
10 into a contract;" right?

11 A Yes.

12 Q And so this is a few months later. So that's already
13 in process; right?

14 A Yes.

15 Q And it reflects that Colonel North had a substantial
16 financial interest at stake; right?

17 A Yes.

18 Q And the amount of that interest was close to \$7 million
19 over a three-year term of the contract; right?

20 A Approximately sounds right.

21 Q But that's not reflected anywhere in the resolution
22 what the magnitude of the contract is; right?

23 A No. The dollar amount isn't there.

24 Q And the -- and Ackerman was under this contract
25 engaging Colonel North to create content for NRA TV; right?

KM

2579

Frazer - by Plaintiff - Direct/Ms. Stern

1 A Yes.

2 Q And that's not discussed here; right?

3 A It is -- well, it refers to his experience in
4 television reporting and production, so I think it was
5 understood.

6 Q And Ackerman was going to be billing the NRA for the
7 creation of the content for NRA TV; right?

8 A Yes.

9 Q And that's not discussed either here; right?

10 A No.

11 Q So the NRA -- so Ackerman was really going to pass
12 through the millions and millions of dollars it was going to pay
13 North back to the NRA; right?

14 A Yes.

15 Q And that wasn't in the resolution.

16 A It's not spelled out in the resolution.

17 MS. STERN: Okay. So can we have for identification
18 only, Jesse, JFX 69 which is found at Tab 20.

19 THE COURT: You want to turn the screens off? Is
20 that the idea?

21 You don't need me to put it up. The lawyers all
22 have it.

23 MS. STERN: I think the lawyers all have it, and
24 Mr. Frazer has it. And your Honor, you have it.

25 THE COURT: Okay.

KM

2580

Frazer - by Plaintiff - Direct/Ms. Stern

1 MS. STERN: Unless there is an objection, I move
2 this into evidence.

3 MR. FLEMING: No objection.

4 MR. CORRELL: No objection.

5 MR. FARBER: No objection.

6 THE COURT: Seeing none or hearing none, it's
7 admitted JFX 69.

8 Q Mr. Frazer, is this the summary on which you relied at
9 that meeting?

10 A It's the summary that the committee relied on.

11 Q And that's what you had; right?

12 A That's all I had at the time.

13 Q Okay. Now the Audit Committee didn't reconsider that
14 ratification of the contract between Colonel North and Ackerman
15 until the end of May, 2019; right?

16 A Sounds about right without looking at the reports.

17 Q Okay. Do you want to look at the reports?

18 A Sure.

19 Q Okay. So let's go back to the reports, and that was
20 PX -- I'm sorry. JFX52, Tab 35.

21 And again, looking at the report dates, I think it's
22 May 30, 2019. Let me just make sure. Sorry. Trying to
23 minimize the different exhibits using my counsel's exhibit.

24 A I have it.

25 Q You have it?

KM

2581

Frazer - by Plaintiff - Direct/Ms. Stern

1 A It's in the report to the Board for the September 14
2 meeting. September 14, meeting. It covers multiple meeting.

3 THE COURT: Page 167 at the bottom.

4 MS. STERN: Okay. Got it.

5 Q And so that -- does that refresh your recollection that
6 that's when the ratification that was done in September 2018 was
7 reconsidered?

8 A Yes. That's right.

9 Q Okay; and that was -- that was after Lieutenant Colonel
10 North had lodged complaints about the manner in which the Brewer
11 Firm was retained; right?

12 A Yes.

13 Q And he had made some complaints about the magnitude of
14 the bills; right?

15 A He had.

16 Q And he had asked for an independent audit of those
17 bills; right?

18 A He had.

19 Q Okay.

20 A It was also after we actually saw his contract.

21 Q And as the general counsel of the NRA, you're aware
22 under New York Law the NRA has to have a whistleblower policy;
23 right?

24 A Yes.

25 Q And that's the law that took effect July 1, 2014. Does

KM

2582

Frazer - by Plaintiff - Direct/Ms. Stern

1 that sound right to you?

2 A The law taking effect, that sounds about right. I
3 mean, I know we had a policy in effect before that.

4 Q Okay. And where is the policy found?

5 A The policy that was in place when I first came on board
6 was in the Statement of Corporate Ethics.

7 MS. STERN: Okay. So can we mark for identification
8 PX 415 which is found at Tab 31, and I ask that it be moved
9 into evidence.

10 THE COURT: Any objection?

11 MS. EISENBERG: No objection, your Honor.

12 MR. FLEMING: One second, Judge.

13 MR. CORRELL: No objection.

14 MR. FLEMING: No objection.

15 THE COURT: It's admitted.

16 Q Mr. Frazer, can you turn to Page 12 of 225 of this PX
17 415, please.

18 A I see it.

19 Q And is this the Statement of Corporate Ethics that you
20 referred to that served in part as the whistleblower policy?

21 A Yes.

22 Q Okay. And that was the policy that was effective as of
23 January 26, 2015.

24 A That's what it says; although, I kind of wonder about
25 whether it might have been earlier.

KM

2583

Frazer - by Plaintiff - Direct/Ms. Stern

1 Q Okay. But what's the basis for your wonder?

2 A Because there was no board meeting on January 26, 2015,
3 so I'm just -- I'm not sure how that update -- how that
4 effective date gets applied by the Human Resources Division that
5 maintains this document.

6 Q I see. And that was around the time that you started
7 in your role as general counsel?

8 A That was actually the day I started.

9 Q Oh, okay. And you were aware that that was the policy;
10 right?

11 A At least as of that date.

12 Q Okay. And it's in the employee handbook because
13 employees would then know where to look if they had a whistle
14 blowing complaint; right?

15 A Yes.

16 Q But this whistleblower policy -- well, where in the
17 policy would you say is the whistleblower component?

18 A The whistleblower provisions are on the bottom of page
19 13 of 225.

20 Q Okay. Underneath the "Ethical Business Relationships?"

21 A Right. It's the paragraph at the bottom.

22 Q Okay. And this was the form of the policy that
23 remained in place until about January 2020; right?

24 A I believe that's correct.

25 Q And then the policy was changed?

KM

2584

Frazer - by Plaintiff - Direct/Ms. Stern

1 A Yes.

2 Q Okay. And that was after the Attorney General's Office
3 had started its investigation of the NRA; right?

4 A Yes.

5 Q Okay. So under the whistleblower policies, the one
6 that we looked at that started in 2015 or thereabouts and the
7 policy that was put in place in 2020, you have responsibilities
8 for receiving whistleblower reports; right?

9 A Yes.

10 Q And for assisting investigation of whistleblower
11 complaints; right?

12 A Sure.

13 Q So we've heard about -- moving back in time a little
14 bit to July 2018 -- of Financial Services Division employees
15 came to the Audit Committee and brought them concerns they had;
16 right?

17 A Yes.

18 Q And you didn't investigate those concerns; right?

19 A No, that's not right at all.

20 Q Okay. Was the Brewer Firm engaged to assist in that
21 investigation?

22 A That's one of the many things that the firm worked on,
23 but I -- I was personally involved on my own in investigating
24 some of those issues.

25 Q And one of the whistleblowers -- they are all called

KM

2585

Frazer - by Plaintiff - Direct/Ms. Stern

1 whistleblowers now; right?

2 A I'll know who you're talking about, yes.

3 Q You will. All right.

4 One of them was Emily Cummins; right?

5 A Yes.

6 Q And she left the NRA voluntarily; right?

7 A Yes.

8 Q And that was in about 2018?

9 A Late 2018, yes.

10 Q So after these concerns had been raised.

11 A Several months after that time, yes.

12 Q And you learned after Ms. Cummins left that she had
13 some complaints about the Brewer Firm; right?

14 A Yes. She sent in a letter out of the blue several
15 months after she left.

16 Q And she had a complaint that they were putting pressure
17 on Financial Services Division to pay their bills; right?

18 A That's what she -- I believe that's what she said.

19 Q And she had a complaint that materials the Brewer Firm
20 was using in the interview was intimidating?

21 MS. EISENBERG: Objection, your Honor. Hearsay.

22 THE COURT: Sustained.

23 Q Okay. Did you have an understanding that she had a
24 complaint about the way that the Brewer Firm was interviewing
25 NRA employees?

KM

2586

Frazer - by Plaintiff - Direct/Ms. Stern

1 MS. EISENBERG: Objection, your Honor.

2 THE COURT: That would be based on the same
3 out-of-court statement, yes.

4 MS. STERN: Yes. I just want to know if he had an
5 understanding.

6 THE COURT: Sustained.

7 MS. STERN: Okay.

8 Q The Brewer Firm did in the course of those
9 investigations develop research files on the witnesses it was
10 interviewing; didn't it?

11 MS. ROGERS: Objection to questioning general
12 counsel about what kind of research outside litigation
13 counsel were doing.

14 MS. STERN: I don't think I asked that. I'm not
15 asking about the content -- I'm not asking him about the
16 content. I'm asking him about the -- just the fact of --

17 THE COURT: Sustained.

18 Q Are you aware that -- sorry. Strike that -- Board
19 Member Marion Hammer criticized the Financial Service Division
20 employees who brought their complaints to the Audit Committee;
21 didn't she?

22 A I've seen a document to that effect.

23 Q And she said that the whistleblowers -- sorry -- that
24 these employees from the Financial Services Division, that they
25 weren't whistle blowers, but they were quote "Soldiers of the

KM

2587

Frazer - by Plaintiff - Direct/Ms. Stern

1 coupe against Wayne."

2 A I have seen that statement by her.

3 Q And Marion Hammer doubted their good will; right?

4 A I don't remember if she said that.

5 Q Did she -- she accused them of trying to protect one of
6 their own as well as attempting to advance their own interests;
7 didn't she?

8 A I recall that statement.

9 Q And she accused them of protecting someone whose been
10 observed and documented to be drunk at work at the NRA; right?

11 A She did. I mean, I disagreed with that as --

12 MS. STERN: Can we -- I want to make sure that this
13 is in evidence.

14 Can we pull up for identification PX 2080 which is
15 found at Tab 4.

16 THE COURT: 2080?

17 MS. STERN: Yes.

18 Q Okay. In Frazer, do you recognize this email?

19 A I do.

20 Q And is this the email that -- in which Ms. Hammer was
21 expressing her views about the bona fides of the Financial
22 Services Division complaints to the Audit Committee?

23 A It is.

24 MS. STERN: Okay. I ask to move this into evidence.

25 THE COURT: Any objection?

KM

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MS. EISENBERG: No objection, your Honor.

MR. CORRELL: No objection, your Honor.

MR. FARBER: One moment.

MR. FLEMING: No objection.

(Continued on the following page.)

2589

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 MR. FARBER: No objection.

2 THE COURT: It's admitted.

3 Q So, Ms. Hammer writes this e-mail in May 2019; right?

4 A That's the date stamp.

5 Q So, that's awhile after the complaints were brought to
6 the attention of the Audit Committee; right?

7 A Yeah, about ten months.

8 Q And in the third paragraph, she writes:

9 "Clearly these accounts are not seeking to protect
10 the NRA. I think they're trying to protect one of their own
11 as well as attempt to advance their own interests."

12 Do you see that?

13 A Yes.

14 Q And one of their own was Mr. Tedrick; right?

15 A I believe that's who's being referred to here.

16 Q And then she -- just moving down the page, she states
17 that the, quote, "The whistleblower should be ashamed. They're
18 not whistleblowing what I see is orchestrating leaking of
19 distorted information with impure motives, not good deeds."

20 Right?

21 A Yes.

22 Q And that was former president of the NRA; right?

23 A Yes.

24 Q So you're aware --

25 MR. STERN: You can take that down, Jesse. Thank

BP

2590

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 you.

2 Q You're aware that Judge Journey filed a motion in the
3 bankruptcy action seeking to appoint an examiner; right?

4 A Yes.

5 Q And I think he testified here at this trial that he
6 wanted an examiner independent body to come and look into the
7 allegations that were made of wrongdoing at the NRA; right?

8 A Yes.

9 Q After Mr. -- sorry -- after Judge Journey filed that
10 motion, you distributed a message to the board on behalf of
11 Carolyn Meadows commenting on that; didn't you?

12 A I did.

13 Q Okay.

14 MS. EISENBERG: Your Honor, could I just remind
15 everyone about your instruction regarding references,
16 honorary references to witnesses.

17 MS. STERN: Apologies. I won't use the term,
18 sorry.

19 THE COURT: Okay.

20 MS. STERN: I stand corrected. Can we turn to
21 PX 2254, Tab 24, which is in evidence.

22 (Displayed)

23 Well, we have this up, so let's just take a look at
24 it, and this is the motion for the appointment of the
25 examiner that Judge Journey filed, right? Do you recognize

BP

2591

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 it?

2 A Yes, I do.

3 Q And the date of this filing was February 8, 2021. Do
4 you see that at the top of the page?

5 A Yes.

6 Q NYSCEF filing, okay. And now if we can turn to -- let
7 me just double check.

8 Okay, Tab 8, which is PX 2235, and this is also in
9 evidence.

10 Okay, Mr. Frazer, do you have it?

11 A I do.

12 Q And is this the message that you distributed to the
13 board?

14 A The bottom part is, yes.

15 Q And, and this went to the full board; correct?

16 A Yes, the board and the executive counsel and probably
17 some -- and the inhouse officers and probably some of the other
18 inhouse staff.

19 Q Did you exclude Mr. Journey from the distribution list?

20 A No.

21 Q And if we can turn to page 2 of the document. And you
22 understood in this message that then President Meadows was
23 calling out Mr. Journey for filing that motion; right?

24 A Ms. Meadows was definitely in strong disagreement with
25 Mr. Journey, and she was expressing her opinion on that.

BP

2592

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 Q And she was calling him a liar in this e-mail; wasn't
2 she?

3 A I see a reference to saying that his filing "contained
4 outright untruths," yes.

5 Q So, just turning your attention to -- there's not
6 paragraph indentations; but I think the sentence starts:

7 "Beyond other glaring errors and omissions, I'm sad
8 to say the legal filling includes many outright untruths."
9 Right?

10 A I do.

11 Q And you were fine with distributing that?

12 A I mean, our -- the secretary's office policy going back
13 to when -- when I first started has been that if, if one of the
14 officers asks you to distribute it, you distribute it.

15 So, basically, I'm the messenger here, 2019, Ollie
16 North and Wayne LaPierre both asking me to send stuff and I send
17 it and I followed that practice here.

18 Q That only applies to officers; right?

19 A Correct.

20 Q So, if Mr. Journey had wanted you to distribute
21 something to respond to this, that would not be your
22 responsibility; right?

23 A Right. It's been a consistent policy of passing along
24 communications from officers, not every single board member.

25 Q You decided that Mr. Journey wasn't a whistleblower;

BP

2593

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 right?

2 A I didn't regard Mr. Journey as a whistleblower, no.

3 Q And you didn't because you didn't think he was acting
4 in good faith; right?

5 A I don't know if it is a matter of good faith or -- or
6 a matter of -- you know, to my mind a whistleblower complaint is
7 one that raises something new, some information that isn't --
8 that hasn't been available before, and I don't know that he did
9 that.

10 MS. STERN: Jesse, can we --

11 Q Again, I'm going to remind you that you were deposed;
12 right?

13 A Yes.

14 Q And we've gone through this and you took an oath;
15 right?

16 A Absolutely.

17 Q And you testified truthfully, right?

18 A Of course.

19 MS. STERN: Jesse, can we bring up on Mr. Frazer's
20 deposition on July 12, 2022, page 249, lines 15 to 250, line
21 5, please.

22 (Video played)

23 Q So, with respect to the lack of good faith, you
24 determined that he was lacking good faith based on an allegation
25 that he shared confidential information with the media; right?

BP

2594

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 A Yes, thanks for refreshing my memory about that
2 concern.

3 Q But you didn't know what the confidential information
4 was; did you?

5 A I'm not sure. I know there was a concern that he
6 had -- that he had done that.

7 Q And you didn't know -- you couldn't identify the source
8 of that allegation; could you?

9 A I don't remember that.

10 Q You didn't recall taking any investigation into that
11 allegation?

12 A Into the -- I'm sorry, into what allegation?

13 Q That he had supposedly leaked confidential information
14 to the media?

15 A I did not investigate that, no.

16 Q But you determined that he lacked good faith; right?

17 A You know, I think what I said in the deposition was
18 that there was some question about his good faith. I'm not
19 sure if I ever reached a conclusion personally one way or the
20 other.

21 Q Okay. So, when Esther Schneider was a board member,
22 she brought concerns to your attention, too; didn't she?

23 A She did.

24 Q And she brought those concerns to you after she was
25 unable to get a satisfactory response from the board's counsel,

BP

2595

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 Mr. Wit Davis; right?

2 A Yes.

3 Q And she was asking you for information about serious
4 allegations of financial mismanagement at the NRA; right?

5 A Right, she was asking questions about issues that had
6 been raised around the 2019 annual meeting and that were under
7 investigation.

8 Q And Ms. Schneider's concerns were shared by other board
9 members; weren't they?

10 A Don't recall if I knew that at the time, but I
11 understood that to be the case later.

12 Q And when did you learn it later?

13 A Again, it might have been around the same time. I just
14 don't remember.

15 Q And the other board members are Sean Maloney, one of
16 them; right?

17 A Yes.

18 Q And Tim Knight?

19 A Yes.

20 Q And all three of them were stripped of their committee
21 assignments; weren't they?

22 A They were not assigned to committees; but, you know,
23 under our policy the president -- under the Bylaws the President
24 has the power to make whatever assignments the President sees
25 fit.

BP

2596

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 Q Can we bring up PX 2094, Tab 15, please.

2 This is in evidence.

3 THE COURT: Counsel, we're closing in on the break,
4 so this is the last document before we take a break?

5 MS. STERN: Yes, sure.

6 THE COURT: All right.

7 Q Mr. Frazer, do you see this document?

8 (Displayed)

9 A I'm sorry, what tab? I see it on the screen, I'm good.

10 Q 15, 15. Okay, and do you recognize this e-mail and the
11 attached letter, it went to you, among other people on July 12,
12 2019?

13 A I do.

14 Q And this is a communication from Sean Maloney who was a
15 board member; right?

16 A He was.

17 Q And attached to it if we turn to page 2 of 4 is a
18 letter Mr. Maloney wrote directed to Carolyn Meadows; right?

19 A Yes.

20 Q And turning to page 3 of 4 of that letter, dropping
21 down to the paragraph that begins, "Yet, after all I've done in
22 support of the Grassroots Development Committee and all the
23 other NRA committees of which I faithfully served, I was
24 blacklisted."

25 Do you see that?

BP

2597

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 A I do.

2 MS. STERN: I think this is --

3 THE COURT: Okay. We're going to take our break
4 for lunch.

5 We'll reconvene at 2:15. See you all soon.

6 COURT OFFICER: All rise, jury exiting.

7 (Whereupon, at this time the jury then exited the
8 courtroom.)

9 THE COURT: Mr. Frazer, you've heard the advice
10 about while you're on a break you're still on the stand, you
11 shouldn't discuss the substance of your testimony with
12 anyone, including counsel?

13 THE WITNESS: Absolutely, your Honor.

14 THE COURT: Thank you.

15 (Whereupon, at this time a luncheon recess was then
16 taken.)

17 (Continued on next page)

18

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BP

2598

J. Frazer - by Plaintiff - Direct/Ms. Stern

1

AFTERNOON SESSION

2

* * * * *

3

THE COURT: Ready for the jury?

4

(Whereupon at this time the witness,

5

JOHN FRAZER, having been previously duly sworn/affirmed by

6

the Clerk of the Court, resumed the witness stand and

7

testified as follows:)

8

MS. EISENBERG: Your Honor, may I ask a question?

9

THE COURT: Off the record or on the record?

10

MS. EISENBERG: Off the record.

11

(Whereupon, at this time a discussion was then held

12

off the record.)

13

COURT OFFICER: Jury entering.

14

(Whereupon, at this time the jury then entered the

15

courtroom.)

16

THE COURT: Okay, welcome back, everyone. Please

17

have a seat.

18

THE COURT: Counsel, you may continue.

19

Q Good afternoon, Mr. Frazer.

20

A Good afternoon.

21

Q So, before we broke for lunch, we were talking about --

22

is this okay? Is the sound okay?

23

JUROR: Barely.

24

MS. STERN: Barely. Okay, hold on. Is that okay?

25

JUROR: Yes.

BP

2599

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 Q So, we were talking about Esther Schneider, Sean
2 Maloney and Mr. Knight. Do you remember that?

3 A I do.

4 MS. STERN: And, Jesse, can you bring backup
5 PX 294, Tab 15 in your binder.

6 Q And if you can turn to page 3 of that letter, 3 of 4,
7 please.

8 A I see it.

9 Q Did you consider Mr. Maloney who indicates in this
10 letter that he felt that he was blacklisted to be a
11 whistleblower?

12 A No, I don't think I really did.

13 Q And did you consider Esther Schneider to be a
14 whistleblower?

15 A Again, no, I don't think so.

16 Q What about Mr. Knight?

17 A I didn't have -- I don't remember I had any direct
18 communication with Mr. Knight other than his -- his resignation
19 letter. Again, same answer.

20 Q And can we bring up, please, Exhibit 590, PX 590, which
21 is Tab 18 in your binder and this is already in evidence.

22 A I see it.

23 Q Mr. Frazer, is this a letter that you received from
24 Sean Maloney, Esther Schneider and Tim Knight in or about
25 August -- on or about August 1, 2019?

BP

2600

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 A It is.

2 Q And they were resigning from the board, correct?

3 A Yes.

4 Q And just turning your attention to page 3 of 4 of
5 Exhibit 590, the third paragraph, they say:

6 "As board members we are duty bound to act with
7 care and in the best interest of the NRA and its mission.
8 Proper discharge of that duty compels us to speak up and
9 take action when we become aware of matters within the
10 Association that run counter to its mission, governing
11 principles, policies or the law."

12 Do you see that.

13 A I do.

14 Q Did you consider their concerns about that?

15 A I did. I mean, these were all issues that were
16 ongoing, that were already under investigation by the time they
17 raised them.

18 Q Okay.

19 MS. STERN: You can take that down, Jesse. Thank
20 you.

21 Q Colonel North and Richard Childress complained to you
22 about the process by which the Brewer firm was retained; didn't
23 they?

24 A I don't remember if I heard directly from
25 Mr. Childress, but I did hear it from Lieutenant Colonel North.

BP

2601

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 Q And at some point you were aware that Mr. Childress
2 also had a concern about that?

3 A I believe he signed on to a letter about that.

4 Q And an outside law firm found that the NRA's retention
5 of the Brewer firm was not in compliance with policy; right?

6 A No, not quite.

7 Q You signed the letter retaining the law firm; didn't
8 you?

9 A I did.

10 Q And Morgan Lewis provided an opinion on the question of
11 whether they were properly retained; correct?

12 A Right, Morgan Lewis was the firm, yes.

13 MS. STERN: Can we turn to PX 658, which is Tab 3
14 in your binder and it is in evidence.

15 (Displayed)

16 Q Mr. Frazer, is this a memorandum that Morgan Lewis
17 prepared for NRA?

18 A It is. After this issue came up, we thought it was
19 good to get a -- that it would be a good idea to get an
20 independent review.

21 Q And turning your attention to the bottom of the first
22 page, do you see at the bottom of the page where Morgan Lewis
23 writes:

24 "As a practical matter when a management board
25 officers have a substantial disagreement regarding the

BP

2602

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 direction scope and course of legal representation, it is
2 incumbent upon the board to decide what is in the best
3 interests of the association in a proceeding that is free of
4 any conflicts of interest."

5 Do you see that?

6 A I do.

7 Q And the concern was that the Brewer firm had been
8 retained by the executives at the NRA; right?

9 A Yes.

10 Q And the two board officers, Lieutenant Colonel North
11 and First Vice President Childress, raised concerns because they
12 had not been asked about the retention?

13 A That wasn't quite -- no, that wasn't quite the issue.
14 Mr. -- Lieutenant Colonel North actually wasn't a board officer
15 at the time the firm was retained.

16 Q He was not a board officer at the time?

17 A That's right.

18 Q And Mr. Childress was, though; correct?

19 A I believe he was.

20 Q And the NRA's purchasing policy required that a
21 contract in excess of a hundred thousand dollars required a
22 President and at least one of the two Vice Presidents to review
23 the contract and acknowledge it; right?

24 A Acknowledge it, yes.

25 Q And that had not happened, right?

BP

2603

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 A Unfortunately not, and that's -- and when that point
2 was raised, I thought, you know, they're suggesting that I made
3 a misstep, that it ought to be reviewed independently and that's
4 the memo you see here.

5 Q Retaining counsel, something you would do in the
6 ordinary course; right?

7 A Sure.

8 Q You'd be pretty familiar what the process was; right?

9 A Yes.

10 Q And so the Morgan Lewis did determine that policy
11 wasn't followed; right?

12 A I think they said it was a technical violation; but
13 that because the firm's engagement was well-known and the firm
14 had reportedly regularly to the board, that it should be taken
15 as ratified and they cited some case law to that effect.

16 Q So, this is another instance where there was a
17 ratification that was necessary; right?

18 A I mean, it was Morgan Lewis's opinion was that it was
19 an effective ratification.

20 Q And you relied on Morgan Lewis's opinion that was
21 ratified to proceed forward with the Brewer firm; right?

22 A Only with respect to the matters that were already in
23 place. When we've engaged them on new matters, we have done
24 that whole signoff process.

25 Q Okay, so in response to that, you had to correct your

BP

2604

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 action; right?

2 A Sure. I believe that it was right to, you know,
3 acknowledge a misstep and correct it and move on.

4 Q But before doing that, you had to go outside to an
5 outside firm to get an opinion before you went ahead and did
6 that; right?

7 A I'm not quite sure I follow the question. I mean, we
8 got the opinion to deal with the immediate issue and then going
9 forward, we followed the process.

10 Q Okay. So, Lieutenant Colonel North, Mr. Childress also
11 had a complaint about the magnitude of the Brewer firm's bills;
12 right?

13 A They did.

14 Q And they asked for an independent audit of those bills?

15 A That's correct.

16 Q You were the person that was responsible for reviewing
17 them; right?

18 A Not alone, but I was a person who would review them,
19 yes.

20 Q But you were reviewing them, right?

21 A Absolutely.

22 Q And no independent audit was conducted; right?

23 A No.

24 Q You didn't consider Colonel North to be a
25 whistleblower; did you?

BP

2605

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 A You know, I really didn't think of him as one at the
2 time because the President has a lot of authority. Actually
3 going back to the discussion of whether it's a ceremonial role,
4 the President has a lot of authority to get things done; but,
5 but, nonetheless, he did raise a new concern here and we got the
6 independent opinion on the subject and, you know, tried to
7 remedy going forward.

8 Q But he raised another issue, right, which was about the
9 bills?

10 A Correct.

11 Q And we've previously seen letters that he wrote that
12 talked in detail about his concerns about the bills; right?

13 A He did, but I didn't consider those to be whistleblower
14 complaints.

15 Q But the President of the NRA could be a whistleblower;
16 right?

17 A If the President was reporting, you know, a violation
18 of law or policy, sure.

19 Q But -- and he was raising issue about a violation of a
20 policy here; wasn't he?

21 A Not on the size of the bills I don't think.

22 Q But on the other issue, he raised an issue of violation
23 of policy; right?

24 A Right. And so what I'm saying is that even though I
25 didn't really consider him to be a whistleblower com --

BP

2606

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 whistleblower, excuse me. Effectively we treated it the same
2 way I would have treated a whistleblower.

3 Q You said that he didn't have a good-faith complaint;
4 right?

5 A That was part of the concern, and that's a fair point,
6 yeah.

7 Q And the basis of your belief that he didn't have good
8 faith was because he had a conflict with respect to Ackerman;
9 right?

10 A Right.

11 Q But Mr. Childress did not have a conflict with respect
12 to Ackerman; right?

13 A No, he didn't.

14 Q And he had the same concern, right?

15 A I believe -- I mean, I think he signed on to the same
16 letter or letters. There were a lot of letters going back and
17 forth.

18 Q But you're not doubting that Mr. Childress also joined
19 in that concern, right?

20 A No.

21 Q He made a complaint?

22 A Yes.

23 Q And you never spoke to Mr. Childress about his
24 concerns; did you?

25 A I'm not sure if I did or not going back that far.

BP

2607

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 Q So, sitting here today you can't remember ever having
2 discussed with him; right?

3 A I mean, I talked -- no, I talked to all of them at
4 different times about differential things. I just don't
5 remember a specific conversation with Mr. Childress on that
6 subject.

7 Q When you were deposed in July 2022, you didn't have any
8 recollection then; right?

9 A I don't remember now whether I remembered that then.

10 Q Okay. And you don't recall ever discussing with
11 Mr. Childress whether an independent audit was necessary, right?

12 A Again, I don't remember whether I did or not.

13 Q And to the best of your knowledge, no one ever
14 explained to Mr. Childress why his request for an independent
15 audit was declined?

16 A I'm not sure about that.

17 Q Information security is very important to the NRA;
18 right?

19 A Yes.

20 Q And the NRA takes measures to secure information when
21 it is sharing it; right?

22 A Definitely.

23 Q You're familiar with using secure online portals;
24 right?

25 A Right. The information security is a key control to

BP

2608

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 protect the association against risk.

2 Q And you're familiar with encrypting documents, right,
3 so you can send them and only the recipient can access the
4 document through a password; right?

5 A Sure.

6 Q And the NRA actually used a secure portal, right, to
7 provide information to board members?

8 A Some of the -- for some of the committee processes,
9 yes.

10 Q Is that called Sendinc?

11 A Correct.

12 Q So, Rocky Marshall raised some concerns to you while he
13 was a board member; didn't he?

14 A He did.

15 Q And he asked you for some information about allegations
16 that had been made in the complaint that is the -- being tried
17 here in this courtroom today; right?

18 A I don't -- he raised a number of questions different
19 times without looking at a document. I don't remember that
20 specific issue.

21 Q And he had some concerns about -- he needed to see
22 access to the directors and officers insurance policy; right?

23 A He did. He wanted to review that.

24 Q And you said, Well, you can see it if you come to
25 Virginia; right?

BP

2609

J. Frazer - by Plaintiff - Direct/Ms. Stern

1 A Yeah -- well, or and I offered -- that and I offered to
2 bring it to our annual meeting, which was held in the fall that
3 year.

4 Q But you could have just used Sendinc, right, and just
5 sent it to him through that portal; right?

6 A I don't think we would have been comfortable doing that
7 because anything that's out there electronically, yeah, you can
8 encrypt it; but you can't stop someone from coming in looking
9 over your shoulder. You can't stop them from taking screen
10 shots. You can't stop them from taking pictures of the screen
11 with their phone or from printing a document.

12 So, we were just being consistent with our policy about
13 reviewing sensitive business materials. For years the policy
14 has been people can come into the office and look at them and I
15 actually went a little farther with Mr. Marshall by saying I'll
16 actually bring it to the annual meeting.

17 Q So, when someone is elected to the NRA board, they go
18 through some sort of trainings; right?

19 A Right, we've had a board orientation, gotten bigger
20 over time.

21 Q And confidentiality is something that you emphasize in
22 those trainings; right?

23 A Yes.

24 Q And so board members understand they have
25 confidentiality concerns; right?

BP

2610

1 A It is one of the core duties of a board member.

2 Q But a board member who might be exposed to liability
3 by virtue of being on the board has a reasonable basis for
4 looking at the directors and officers policy that is going to
5 cover them; right?

6 A They would -- I think they would have -- have a
7 reasonable basis to want to know what the coverage is, but I
8 thought and still think that that's different from insisting
9 that it be e-mailed to him immediately on demand anytime.

10 Q So, are the -- is the Audit Committee provided
11 sensitive information so that it can do its work?

12 A Yes.

13 Q And is that provided through the Sendinc portal?

14 A I'm trying to remember what's sent, and I can't think
15 of anything -- anything that sensitive being sent that way.
16 What's usually sent to them through Sendinc is the prior
17 minutes, an agenda and things of that nature. I may be
18 forgetting some things. I'm usually getting it internally, not
19 on Sendinc.

20 (Continued on next page)

21

22

23

24

25

BP

2611

Frazer - by Plaintiff - Direct/Ms. Stern

1 Q That's because they don't usually get a lot of
2 information in advance of the Audit Committee; right?

3 A No. I think they get what they need to plan for the
4 meeting.

5 Q So then there's a way to get it to them that's secure;
6 right?

7 A Right, but subject to the concerns.

8 Q And you trust those Audit Committee members?

9 A Sure.

10 Q And they're directors; right?

11 A Yes.

12 Q And Mr. Marshall was a director too; wasn't he?

13 A He was.

14 Q And Mr. Journey testified. You heard his testimony;
15 right?

16 A I did.

17 Q Okay. And he testified about having to go sort of
18 stand in line and review the LaPierre employment agreement at
19 the January 7, 2021 meeting and being sort of pressed for time
20 because other people were in line behind him. Do you remember
21 that testimony?

22 A I do. I do.

23 Q Okay. And that employment agreement, that's another
24 thing that could have been sent to the Board members through
25 secure portal so they could have reviewed it in advance and been

KM

2612

Frazer - by Plaintiff - Direct/Ms. Stern

1 prepared to address the matter that they were being asked to
2 authorize; right?

3 A I think that, again, that was considered a sensitive
4 thing to handle. They handled it in a way that was appropriate
5 to that sensitivity. They had copies.

6 Charles Cotton was in the chair. He repeatedly said,
7 has everyone had a chance to look at it, has everyone had a
8 chance to look at it. Until all people were in their seats and
9 nodding, the meeting didn't move forward.

10 Q But they weren't given the opportunity to consider it
11 and formulate questions that they might have had in advance of
12 the meeting. It had to be done in real time; right?

13 A It was. It was provided for review at the meeting;
14 correct.

15 Q And nevertheless, it did not actually highlight the
16 issue that was looming which was giving Mr. LaPierre the
17 authority to file for bankruptcy; right?

18 A I mean, we have seen the document, and it didn't refer
19 to that.

20 Q Okay. And is the practice of the NRA to provide the
21 990s in draft form to board members at -- in person at a meeting
22 a couple of copies; right?

23 A The practice for many years on the advice of our
24 outside tax preparers at least going back to when RSM did it was
25 that -- you know, so there is a question on the form that asks

KM

2613

Frazer - by Plaintiff - Direct/Ms. Stern

1 if board members have reviewed the form, and/or if its been
2 provided. I can't remember the wording off the top of my head.
3 And RSM's position at least and maybe people before them was
4 that making it available for inspection at a meeting was
5 sufficient.

6 Q And so there is 76 members of the NRA Board; right?

7 A Correct.

8 Q And just about -- but not 76 copies aren't put on each
9 chair; right?

10 A That's right. I don't remember how many copies they
11 have.

12 Q And they are not put in a board book so they can review
13 them the night before.

14 A No.

15 Q And we have looked at a lot of 990s here today.
16 Probably much to everyone's chagrin. They are multi multi-page
17 documents.

18 A About 100 pages.

19 Q Lots of detailed information; right?

20 A Yes.

21 Q And it's the disclosure by the NRA; right. It's a very
22 important disclosure; right?

23 A Right. It's not the only one by far, but it's
24 important.

25 Q Right. Okay. And that -- that could be provided to

KM

2614

Frazer - by Plaintiff - Direct/Ms. Stern

1 them in advance through a secure portal; right?

2 A It could. Again, with the same concerns I mentioned
3 earlier.

4 Q And there's software that exists that you can send
5 someone something but they can't print it. You're aware of
6 that; right?

7 A Yes.

8 Q Okay. Can we turn to PX 159 which is in evidence.
9 It's Tab 41 in your binder.

10 Okay. Do you have it, Mr. Frazer?

11 A I do.

12 Q I just want to ask a clarification question.

13 So this is the 2019 CHAR 500; right?

14 A It is.

15 Q You recognize it; right?

16 A Yes.

17 Q And that's your signature on the certification section
18 of the first page of PX 159; right?

19 A Yes.

20 Q Okay. And can you just read the little notation there.

21 A Sure. So this is the standard certification language
22 that I read earlier, and I added in it, "Except as noted in the
23 cover letter."

24 I hope you can all read my handwriting.

25 Q So Mr. Frazer, when the NRA filed this particular CHAR

KM

2615

Frazer - by Plaintiff - Direct/Ms. Stern

1 500 with the Attorney General's Office, it didn't simultaneously
2 accompany it with the 990 and the financial statement; right?

3 A That's right because the 990 hadn't been signed yet,
4 and I didn't want to say that the form was complete if we didn't
5 have the 990 attached.

6 Q And then the NRA did subsequently file the 990 and the
7 financial statement; is that right?

8 A Right. We -- I can't remember if the financial
9 statement came later on or if it was filed with this originally,
10 but the 990 was sent in a couple of days later after it was
11 signed.

12 Q And ultimately, you intended that your certification
13 would apply to the complete -- what would be the -- constitute
14 the complete CHAR 500 filing which is the CHAR 500 forms, IRS
15 990 and the audited financial statement; right?

16 A That's correct, yes.

17 Q Because you didn't want to be in violation of the
18 filing requirement and not have certified it; right?

19 A Right.

20 Q Okay. With respect to the preparation of the 990s, you
21 have certain responsibilities; right?

22 A Sure.

23 Q Okay. And one of your responsibilities is just to
24 answer questions of others about the form itself; right?

25 A Sure. If someone asks information, it's within my

KM

2616

Frazer - by Plaintiff - Direct/Ms. Stern

1 areas of knowledge, I'll provide it.

2 Q Okay. And you also addressed factual questions that
3 might be within the scope of your knowledge and responsibility;
4 right?

5 A That's kind of what I was getting at; right.

6 Q Okay. So questions about governance fall within the
7 scope of your responsibility; right?

8 A Among others, yeah.

9 Q And there are questions on the 990 about governance;
10 right?

11 A Yes.

12 Q And questions within that section or elsewhere about
13 policies that the NRA has. Those are within the scope of your
14 responsibilities; right?

15 A Depending on the policy, yes.

16 Q But you would know where to find them, right, because
17 you are the secretary.

18 A Generally. I hope so.

19 Q Okay. So that would include whether there is a
20 conflict-of-interest policy; right?

21 A Right.

22 Q And whether the policy is regularly and consistently
23 monitored?

24 A Yes.

25 Q And it's regularly and consistently enforced; right?

KM

2617

Frazer - by Plaintiff - Direct/Ms. Stern

1 A Yes.

2 Q Okay. And whether there is a whistleblower policy;
3 right?

4 A Yes.

5 Q And whether there are policies concerning the
6 reimbursement of travel expenses; right?

7 A Yes.

8 Q And whether there are policies concerning employee
9 perks like payment for health clubs, social clubs, housing
10 allowances. That would be something that you would know or know
11 where to get; right?

12 A I think so.

13 Q Okay. Now, going back to PX 159, the 2019 filing,
14 turning to Schedule L -- let me give you the page on that.
15 Okay. That would be Page 92 of 114, Jesse. Thank you.

16 A I have it on 942.

17 Q Oh, sorry. Wait a minute. You're right. I stand
18 corrected. Hold on. Sorry. Page 98 to 99 of 114.

19 A Okay. Got it.

20 Q So in this 990, the NRA made a number of disclosures on
21 its Schedule L; right?

22 A Yes.

23 Q And those are disclosures of excess benefit
24 transactions; right, what we are looking at right here in front
25 of you.

KM

2618

Frazer - by Plaintiff - Direct/Ms. Stern

1 A Some of them are, yes.

2 Q Okay. And just focusing on the top of Page 99. The
3 box at the top of that page are disclosures concerning Mr.
4 LaPierre; right?

5 A Right.

6 Q Use of travel?

7 A Yes.

8 Q And you don't have any personal knowledge how this
9 was -- the content of this -- strike that.

10 You have no personal knowledge about how these excess
11 benefits disclosed in this portion of the Schedule L were
12 determined; do you?

13 A I didn't participate in that process.

14 Q Okay. And in 2020, additional excess benefits were
15 disclosed for Mr. LaPierre; right?

16 A Do you mean on the 2020 tax form?

17 Q I'm sorry.

18 A This is the 2019.

19 Q That's right. On the 2020 990 which is filed in 2021,
20 there were additional disclosures of excess benefit
21 transactions --

22 A Yes.

23 Q -- involving Mr. LaPierre; right?

24 A That's right.

25 Q Okay; and you also did not personally determine what

KM

2619

Frazer - by Plaintiff - Direct/Ms. Stern

1 they were; right?

2 A I would have to look at that one because there is -- I
3 would have to look at that one.

4 Q Okay. So let's look at it. Let's turn to PX 2374
5 which is in Tab 42 of your binder.

6 A I have it.

7 Q Okay. And Schedule L starts on Page 48 of 108, Mr.
8 Frazer.

9 A Okay.

10 Q And continues to Page 52 of 108.

11 A Right.

12 Q And is there any of these disclosures -- principally, I
13 think they are discussed on Page 51 and 52 of 108 that you
14 personally calculated.

15 A I did.

16 Q Which ones?

17 A The top of Page 52 regarding auto leases.

18 Q Okay. And none of the disclosures about Mr. LaPierre
19 excess benefits other than to the extent that there was a car
20 lease; right?

21 A Right. I didn't -- that's right. I didn't -- I did
22 not perform the review of the other issues involving Mr.
23 LaPierre.

24 MS. STERN: Okay. Excellent. Thank you. Okay. We
25 can put that aside.

KM

2620

Frazer - by Plaintiff - Direct/Ms. Stern

1 Thank you, Jesse.

2 Can we turn to PX 2374 which is Tab 42. That's
3 what we were just looking at. Sorry. Hold on a second. I
4 jumped the gun. Let's bring that back up for a second.
5 Apologies.

6 Q And back to Page 52 of 108. Directing your attention
7 to the bottom of the graph -- of the chart there. There was a
8 question about whether there were any excess benefit
9 transactions involving travel for board members; right?

10 A Yes.

11 Q And that's something that you looked into?

12 A It is.

13 Q And that -- you looked into that in around November of
14 2021?

15 A I believe that's correct.

16 Q November 2021, that would be shortly before the 2020
17 990 was filed; right?

18 A I think it was a couple of weeks before the filing.

19 Q Okay. So can we bring up the -- there is an Excel
20 spreadsheet that accompanies PX 1419 which is already in
21 evidence, both of these documents. It's at Tab 17, but you're
22 not going to see the Excel spreadsheet there. If you want to
23 see the cover email --

24 A Okay.

25 Q And once that's up on the screen -- okay.

KM

2621

Frazer - by Plaintiff - Direct/Ms. Stern

1 So Mr. Frazer, is this a spreadsheet that you used to
2 look into this question as to whether there were excess benefit
3 transactions involving travel for board members?

4 A I'm not 100 percent sure. I think this -- I think
5 there were a couple of them, and this may be one of them, and it
6 would have been at the other tab. I think at the "Board and
7 Officer" tab at the bottom.

8 MS. STERN: Okay. I think -- isn't that what we are
9 in, Jesse. Is that right?

10 Q Okay. And Ms. Rowling provided this information to
11 you, right, direct travel?

12 A I'm not 100 percent sure if this is the spreadsheet.
13 It may have been or it may have done a sort.

14 As I look at this, I see a lot of non -- non-board
15 people on it who we wouldn't have needed to look at. So there
16 was some method to exclude those that -- that are clutter.

17 Q So this is a big data set.

18 A It is.

19 Q So if we can just scroll over to Column U and the
20 column is entitled "trip dest country." Trip destination
21 country is what I guess.

22 A Right.

23 Q And I'm going to ask Jesse to just sort it for Italy.
24 Okay. And then if we can just scroll back over to the left, and
25 you see under "passenger names." Whose names do you see there?

KM

2622

Frazer - by Plaintiff - Direct/Ms. Stern

1 A I see James W. Porter II and Kathryn Hicks Porter.

2 Q And Kathryn Hicks Porter is Mr. Porter's wife?

3 A That's correct.

4 Q And James Porter is Jim Porter who is the then
5 president of the NRA who recruited you to come back to the NRA
6 and be the corporate secretary; right?

7 A Right. Past-president 2013 to '15, I think.

8 Q And so does this shows that -- let's see if we can
9 slide across again to Column O. I mean O and P, please. And
10 that reflects a travel from Dallas to Venice for each of them.
11 Do you see that?

12 A It looks like there are some connecting legs. I'm not
13 quite sure how to read that.

14 Q Okay. There is a trip there from the U.S. to Italy.
15 Would you agree with me on that?

16 A I would agree with that. The Porters actually live in
17 Birmingham, so I'm not sure how to read it.

18 Q Birmingham, Dallas, Venice. And let's see -- and that
19 flight -- let's look over at Column M.

20 Do you see the dates of the trip there?

21 A I do.

22 Q That's in May 2018; right?

23 A Yes.

24 Q And going over to Column Y, they are flying business
25 class part of that trip; right?

KM

2623

Frazer - by Plaintiff - Direct/Ms. Stern

1 A Correct.

2 Q And that was a -- let's see -- did you determine that
3 there was a business purpose for that trip?

4 A You know, sitting here, I can't -- I can't reconstruct
5 the exact business purpose of every trip, but we reviewed -- we
6 reviewed the spreadsheet. We reviewed documents. I recall
7 talking to staff members who might have knowledge of the dates
8 and travel and so on, and we determined that there were business
9 purposes for the trips.

10 Q And what was the business basis on which you determined
11 there was business purpose for this trip?

12 A I don't know if I could reconstruct those facts, but I
13 think I recall it being some donor-related activity.

14 Q So as of August 2022 when you were deposed as the
15 corporate representative of the NRA, you didn't have any
16 recollection at that time what the basis was for determining
17 that there was a business purpose; right?

18 A I don't remember what I testified as the corporate
19 representative.

20 MS. STERN: So Jesse, can we pull up the testimony
21 from the corporate rep deposition, Page 529, Lines 4 through
22 22, please.

23 (Video played.)

24 Q Thank you. Mr. Frazer, can I ask you to turn back to
25 PX 639 which is in your binder at Tab 2 which is in evidence.

KM

2624

Frazer - by Plaintiff - Direct/Ms. Stern

1 A Before we do that, I want to say one thing that I think
2 that video reminded me is that in some cases, the spreadsheet
3 was helpful in figuring out that some of upgrades or some of the
4 travel had been paid for on personal cards. Not necessarily
5 charged to the NRA.

6 Q What reminded you of that while you are sitting here in
7 the courtroom today?

8 A Watching that prior testimony reminded me of the
9 process that we went through, and part of that process is that
10 the spreadsheet shows the credit card number that was used for
11 the travel.

12 Q Okay. So turning to your Tab 2 PX 639, and this is Mr.
13 LaPierre's disclosure form we talked about a little bit earlier.

14 So after you received this disclosure in April, 2020 --
15 2021, you didn't make any inquiry of Mr. LaPierre concerning the
16 information that he disclosed; right?

17 A I did not personally.

18 Q Okay. And you weren't aware of whether the NRA had
19 undertaken any type of investigation or inquiry to determine why
20 the disclosures that are in this PX 639 had not been made
21 previously?

22 A No. I think the NRA had looked into that. I think
23 that's one reason that I thought this -- there was really
24 nothing here that -- that wasn't already known.

25 Q So there is nothing here for anyone to be concerned

KM

2625

Frazer - by Plaintiff - Direct/Ms. Stern

1 about? Is that what you're saying?

2 A That's not what I said. The -- I mean, if you want to
3 break it down item by item, items three and five are the same,
4 and you know, we knew that Colleen's niece worked for -- or that
5 Wayne's niece worked for the NRA.

6 Obviously, we knew about the litigation that's going
7 on, item nine. And then item four were issues that were already
8 under review to my knowledge at the time.

9 MS. STERN: Jesse, can we bring up Mr. Frazer's
10 deposition on Page 370. This is from the litigation lines 4
11 through 12, please.

12 Jesse, if there is a problem, I can just read it.

13 Q Okay. So Mr. Frazer, you recall being deposed in
14 July 2022; right? July 12.

15 A Several times, but yeah. That's right.

16 Q And you were under oath and you swore to tell the truth
17 and you told the truth; right?

18 A Okay.

19 Q And at that deposition you testified:

20 "Question: Are you aware of whether the NRA has
21 undertaken any type of investigation or inquiry to determine
22 why the disclosures that were made by Mr. LaPierre in this
23 2020 financial disclosure questionnaire were not disclosed
24 previously?

25 Answer: I don't recall."

KM

2626

Frazer - by Plaintiff - Direct/Ms. Stern

1 So you didn't recall at that time; right?

2 A I think that's right.

3 Q Okay. And you aren't aware of whether the NRA had
4 undertaken any investigation or inquiry to determine whether the
5 disclosures that Mr. LaPierre made in April 2021 were complete
6 and accurate; right?

7 A Again, I think it -- I think at that -- by that point,
8 it's all wrapped up in litigation and has continued to be
9 investigated right up to this trial.

10 Q So at your deposition you testified:

11 "Question: Are you aware of whether the NRA has
12 undertaken any investigation or inquiry to determine whether
13 the disclosures that Mr. LaPierre made in April of 2021 were
14 complete and accurate?

15 Answer: Um. I had trouble following that. Can you
16 -- can I have that read back?" And the reporter reads it
17 back.

18 And your answer is: "I don't know."

19 And I -- and the next question was: "Who would
20 know that?

21 I don't know who would know that."

22 Okay. Mr. Frazer, are you being indemnified for
23 your attorneys' fees?

24 A My fees have been advanced by the NRA.

25 Q By the NRA?

KM

2627

Frazer - by Plaintiff - Direct/Ms. Stern

1 A Right.

2 Q And did you prepare for your testimony here today with
3 anyone other than your lawyer Mr. Fleming?

4 A I prepared also with counsel from the Brewer Firm.

5 Q Can you -- and who from the Brewer Firm?

6 A Different times with -- excuse me. Very little bit
7 with Mr. Brewer. And then also with Ms. Eisenberg, Ms. Rogers
8 and I think Ms. Dillon the non-attorney.

9 Q So the attorneys who are here and going to question you
10 today, they prepared you for your testimony today?

11 A We did meet on that.

12 Q And how long did you meet with them?

13 A Several times. Several times broken up over a number
14 of days. I couldn't give you a specific amount.

15 Q Several times over what period of time?

16 A A few hours Sunday afternoon, several hours last
17 weekend and some sessions here and there a couple of months ago.
18 I don't remember the dates.

19 Q Did they provide you with materials for those sessions
20 that you reviewed?

21 A I think we went -- I think we went over some documents
22 that were expected to be in evidence, but I don't remember the
23 particulars.

24 Q Did they provide you with a list of the questions that
25 they were going to ask you?

KM

2628

Frazer - by Plaintiff - Direct/Ms. Stern

1 A We discussed some potential lines of questioning.

2 Q And you discussed how you were going to answer those
3 questions?

4 A Discussed some potential answers.

5 Q Okay. And your obligation as an officer of the NRA is
6 to protect the interest of the NRA; right?

7 A Absolutely.

8 Q And you were here yesterday in this courtroom; right?

9 A Yes.

10 Q So you heard Mr. LaPierre's testimony; right?

11 A I did.

12 Q And you heard that he admitted to violating NRA
13 policies; right?

14 A Yes.

15 Q And you heard him admitting to using the NRA's
16 charitable assets for personal benefit; right?

17 MR. CORRELL: Objection, your Honor.

18 Characterizing testimony.

19 A I don't remember his testimony.

20 Q And you heard Mr. LaPierre testify though that he
21 charged expenses that I think he himself said were purely
22 personal to the NRA; right?

23 A I don't remember him phrasing it that way but --

24 Q Did you not understand his testimony to be admitting
25 that he had -- when he chartered a flight to take his niece from

KM

2629

1 Nebraska to an NRA meeting, that that was inappropriate?

2 MR. CORRELL: Your Honor, this is argumentative.
3 Objection.

4 THE COURT: It's a bit of an awkward way to do it
5 because you're summarizing lots of testimony in ways that --
6 you know, unless you're going to cite transcripts and give
7 the actual testimony, there is a risk of it being not
8 entirely consistent with what the testimony was.

9 MS. STERN: I'm not trying to misrepresent the
10 testimony.

11 THE COURT: I didn't suggest that. There is no way
12 to encapsulate hours of testimony into a question like that.

13 MS. STERN: Certainly understand, your Honor.

14 (Continued on the following page.)
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J. Frazer - by Plaintiff - Direct/Ms. Stern

1 Q So, I guess my question to you, Mr. Frazer, is did
2 Mr. LaPierre breach your trust?

3 A I think Mr. LaPierre has always been very open and
4 honest with me in terms of the communications that we would have
5 and then, and then in trying to rectify issues. You know,
6 whenever I talked to him about a potential problem, he's been
7 very forthcoming.

8 Q So, my question to you is did he breach your trust?

9 A I mean, person to person, no. I mean, to the extent
10 that he's admitted policy violations, I mean -- I don't know how
11 I would characterize that.

12 Q You don't know how to characterize that, is that what
13 you said?

14 A I mean, I don't think it really fits your question.

15 Q In your opinion, did he breach the trust he owed to the
16 members of the NRA?

17 A I'd have to say probably, yes, I think that policy
18 should be followed.

19 Q And in your opinion, did he breach the trust he owed to
20 the NRA as an institution?

21 A I mean, it's the same, the same thing. The
22 organization really is its members.

23 MS. STERN: We'll pass the witness.

24 THE COURT: Okay, do you want to break now so
25 that --

BP

J. Frazer - by Plaintiff - Cross/Ms. Eisenberger

1 MS. EISENBERG: Whatever the jury --

2 THE COURT: We're going to have to break so we
3 might as well do it before you get started on a cross.

4 So, let's take a quick break now.

5 COURT OFFICER: All rise, jury exiting.

6 (Whereupon, at this time the jury then left the
7 courtroom.)

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

10 (Continued on next page)

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J. Frazer - by Plaintiff - Cross/Ms. Eisenberger

1 (Whereupon, at this time the witness,
2 JOHN FRAZER, having been previously duly sworn/affirmed by
3 the Clerk of the Court, resumed the witness stand and
4 testified as follows:)

5 COURT OFFICER: Is the court ready?

6 THE COURT: Yes.

7 COURT OFFICER: All rise, jury entering.

8 (Whereupon, at this time the jury then entered the
9 courtroom.)

10 THE COURT: Have a seat, everyone. We're trying to
11 work on making it a little less warm in here. It is a
12 little hot in here. We've got all of our best people on it.

13 JUROR: How about the blind is crooked?

14 THE COURT: Is that bothering you?

15 JUROR: We look at everything.

16 THE COURT: I'll have to add that to the
17 instructions next time.

18 All right, counsel.

19 MS. EISENBERG: Thank you, your Honor.

20 THE COURT: Ms. Eisenberg, you may proceed.

21 MS. EISENBERG: Thank you.

22 CROSS-EXAMINATION

23 BY MS. EISENBERG:

24 Q Good afternoon.

25 MS. EISENBERG: Members of the jury, can you hear

BP

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J. Frazer - by Plaintiff - Cross/Ms. Eisenberger

1 me okay?

2 JUROR: Barely.

3 MS. EISENBERG: Is this better?

4 JUROR: Yes.

5 Q Good afternoon, Mr. Frazer.

6 A Good afternoon.

7 Q We heard testimony earlier about buck stopping with
8 Mr. LaPierre.

9 Do you recall that?

10 A Yes, I do.

11 Q Is it true that tomorrow is Mr. LaPierre's last day at
12 the NRA?

13 A I believe so.

14 Q Are you aware of any authority he will retain after
15 tomorrow?

16 A None.

17 Q Are you aware of any funds he will receive from the NRA
18 after tomorrow?

19 A No.

20 Q Let's talk a little bit about the
21 related-party-transaction topic.

22 Can you tell us in general terms what you understand
23 the related-party-transaction law to require?

24 A Sure. So as we discussed with Ms. Stern, the statute
25 defines related parties, and it is a long, convoluted statute.

BP

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J. Frazer - by Plaintiff - Cross/Ms. Eisenberger

1 Basically, spouses, family members, close family members and so
2 on of officers, directors or key persons of the NRA; and you can
3 engage in business transactions with related parties as long as
4 you meet certain requirements.

5 Q And what are they?

6 A Generally, approval in advance --

7 MR. FARBER: I'm going to object to these
8 questions. These are asking for legal opinions on what
9 you're going to instruct the jury on.

10 THE COURT: Sustained.

11 Q Mr. Frazer, please tell us what you did upon joining
12 the NRA as General Counsel to help ensure that the NRA complies
13 with the related-party laws?

14 A Sure. So, first of all, we tried to get our arms
15 around the legal requirements; and after analyzing that, as I
16 testified earlier, I started working with our former General
17 Counsel who was still on retainer as a consultant to draft a new
18 conflict-of-interest and related-parties-transaction policy.

19 We went back and forth on that for a month or two, and
20 it was adopted by the board, recommended by the Audit Committee
21 and adopted by the board at the January 2016 meeting.

22 On a parallel track, we revised the disclosure process
23 that had previously been a letter that would go out from the
24 secretary's office based on the business with the association in
25 excess of \$2,000 requirement that was in the Bylaws. And then

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J. Frazer - by Plaintiff - Cross/Ms. Eisenberger

1 separately there was a short questionnaire that the treasurer's
2 office sent out to get information, basically, for the 990s that
3 you've seen, and we thought well that's not efficient. We can
4 combine them.

5 And then I was also being asked to sign charitable
6 filing forms in New York and all over the country that asked for
7 other stuff, different states will have unique questions and so
8 we started adding those in, and it's up to 13 or 14 questions
9 now.

10 Q What, if anything, did the Audit Committee of the NRA
11 do with regard to related-party transactions in early 2016?

12 A So, after the policy was in effect immediately when it
13 was passed at the January 2016 board meeting, at the next
14 scheduled Audit Committee meeting we discussed what the legal
15 standards and requirements were and, basically, planned on a
16 more detailed review of existing transactions and potential
17 transactions later in the year. That happened, I believe, in
18 September, and we continued that process ever since as the need
19 arose.

20 Q And what happened specifically at the September 2016
21 Audit Committee meeting with regard to related-party
22 transactions?

23 A The committee adopted a motion or series of motions
24 ratifying existing contracts that were in place, and the
25 committee found that various dealings with board members that

BP

2636

J. Frazer - by Plaintiff - Cross/Ms. Eisenberger

1 had been going on in some cases for several years were very
2 reasonable and in the best interest of the NRA.

3 Q What is the basis for your testimony as to that's what
4 happened?

5 A I was at all the of those meetings.

6 Q Is there any doubt in your mind that at the
7 September 2016 meeting, the Audit Committee in fact reviewed,
8 approved and ratified related-party transactions?

9 MS. STERN: Objection, your Honor.

10 THE COURT: Overruled.

11 A No doubt in my mind.

12 Q Is it true that if you look at the report of the Audit
13 Committee to the board for that meeting, there's no reference to
14 this?

15 A I'd have to look at the report to be sure, but I think
16 that's right.

17 Q Is there a reason for that?

18 A Because as I mentioned -- yeah, there is a reason. As
19 I mentioned earlier, our understanding in talking to -- step
20 back a second, since being elected secretary I had occasion to
21 work with our parliamentary a lot. His job is to advise us on
22 Robert's Rules of Order conducting meetings and documenting
23 meetings; and the guidance that I got was that the minutes
24 should reflect what was done, not what was said. You're not
25 trying to write a transcript, just what actually happened.

BP

2637

J. Frazer - by Plaintiff - Cross/Ms. Eisenberger

1 And that you had two kinds of documents coming out of
2 committee meeting. You can have minutes and then you could have
3 a report, and some -- in some committees, customarily at the NRA
4 they have been kind of the same, they only produce one document.
5 And others, it's been on separate tracks based on reporting to
6 the board, reporting to the board the action items that the
7 board would need to take.

8 So, the committee recommends X, it's in boldface in the
9 report; so the board members at their desk sitting at the
10 meeting can say, This is a recommendation that's before us, pick
11 that out of the whole sometimes multipage report.

12 And so the course of action that we took in the Audit
13 Committee was to say, Look, committee has the authority to
14 document things in its minutes. They don't require board
15 actions, so they don't necessarily need to be in the committee
16 report and we did that for awhile.

17 Later, we decided that the simpler -- and the simpler
18 course of action was just to put them all in there and report
19 everything to the board.

20 Q Are you familiar with Part 7 of the Form 990?

21 A I am.

22 Q Does it typically disclose information related to
23 related-party transactions?

24 A Well, it discusses various things; but, basically,
25 includes a list of your board members and any compensation that

BP

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J. Frazer - by Plaintiff - Cross/Ms. Eisenberger

1 they're paid.

2 Q Once filed, is the Form 990 available publicly?

3 A Yes, on demand, basically.

4 Q And as secretary of the NRA, do you provide a report to
5 the members of the association at the NRA's annual meetings?

6 A I do.

7 Q Does that report typically include information about
8 certain related-party transactions?

9 A Sure. For the transactions in excess of \$2,000 as the
10 Bylaw provision spells out.

11 Q As the secretary of the board, do you provide reports
12 to the board at its regularly scheduled meetings?

13 A Yes. Again, the same provision of the Bylaws says that
14 if a board member is doing business in excess of \$2,000, they
15 have to report it to the secretary. The secretary has to report
16 it to the board at the next meeting.

17 Q And is that something that you have done?

18 A Yes.

19 Q Who is Sandra Froman?

20 A Ms. Froman is a current honorary board member,
21 long-time board member since the early nineties, past NRA
22 president, now retired attorney.

23 Q Did you understand the Audit Committee to approve and
24 ratify certain payments to her law firm in connection with her
25 speaking engagements on behalf of the NRA?

BP

2639

J. Frazer - by Plaintiff - Cross/Ms. Eisenberger

1 A I did.

2 Q What is your understanding regarding those speaking
3 engagements?

4 A My understanding of those engagements is that Ms.
5 Froman definitely while she was president of the NRA and for at
6 least some time after that had a busy schedule of going out and
7 traveling and speaking to, you know, to law student groups and
8 others about 2nd Amendment issues.

9 Q To the extent that the Audit Committee of the NRA's
10 board determined that payments in support of those speaking
11 engagements were in the best interest of the NRA, what is your
12 understanding as to how her activities promoted the NRA's
13 mission?

14 MS. STERN: Objection, your Honor.

15 THE COURT: Sustained.

16 Q Who is David Keene?

17 A David Keene is another current board member and past
18 president of the NRA.

19 Q And do you understand the Audit Committee to have
20 approved payments to him in connection with his appearances at
21 Friends Dinners?

22 A Yes.

23 Q What are Friends Dinners?

24 A So, I think it's been testified to before, you have the
25 NRA and then you have various (c)(3) affiliates, you know, where

BP

2640

J. Frazer - by Plaintiff - Cross/Ms. Eisenberger

1 tax contributions are tax deductible. One of those is the NRA
2 foundation and the largest funding mechanism of the NRA
3 foundation is Friends NRA Dinners. They're not like black tie
4 galas. They're kind of low key. They're usually at an American
5 Legion Hall or something like that. And, you know, you'd go
6 there. You'd have dinner. There's a -- there's an auction,
7 sometimes a silent auction, sometimes a live auction, both,
8 raffles and charitable gaming activities.

9 They raise funds for the NRA foundation to support the
10 NRA's eligible activities, and Mr. Keene would go speak at those
11 events.

12 Q Have you attended Friends Dinners?

13 A I have.

14 Q Have you attended a Friends Dinner at which Mr. Keene
15 spoke?

16 A I did.

17 Q In your opinion, did his appearance at the dinner
18 advance the NRA's mission?

19 MS. STERN: Objection, your Honor.

20 THE COURT: Overruled.

21 A It did. It was a -- it was an effective speech
22 motivational, connects well with the members and I thought it
23 was good.

24 Q Who was David Butz?

25 A Dave Butz, sadly now deceased, was an NRA board member

BP

2641

J. Frazer - by Plaintiff - Cross/Ms. Eisenberger

1 for a long time. He was also a retired NFL player. He was kind
2 of a legend of the Washington team in the 80s and played in two
3 Superbowls.

4 He was, also, as I understand it -- I never had the
5 pleasure of going shooting with him; but as I understand it, he
6 was also an excellent shotgun instructor. So, he would take
7 people out and teach them how to hit clay pigeons. So he would
8 do -- do donor events and so on to help the cause.

9 Q And if the NRA made payments to him to show up at these
10 events and to provide marksmanship instruction, do you believe
11 that that advanced mission of the NRA?

12 MS. STERN: Objection, your Honor.

13 THE COURT: Sustained. It's a compound question
14 and it's not based on his personal observation, unlike the
15 one that he heard.

16 MS. EISENBERG: Yes, your Honor.

17 Q Who is Marion Hammer?

18 A Marion Hammer is another current NRA board member, past
19 president, really a legend in the 2nd Amendment community.

20 Regardless of what you think about the issue, she's
21 been highly successful in advocating for what she believes in.
22 She is a -- she's, she's -- she punches above her weight. She's
23 4 foot 11, but has very strong opinions, positions and is just
24 an unflinching advocate for what she believes in. You don't
25 have to agree with everything she says. I think I indicated in

BP

2642

J. Frazer - by Plaintiff - Cross/Ms. Eisenberger

1 some of my earlier testimony, but there's no question sincere.

2 Q While working at the NRA, did you have an opportunity
3 to personally interface with her in connection with lobbying
4 and/or strategic advice?

5 A Many, many, many times over the decades, yes.

6 Q Please tell us a little bit about that?

7 A Sure. So, I first got to know her as when she was an
8 NRA board member and I was at one of my early positions at the
9 NRA working for the then executive director of the Institute for
10 Legislative Action, a woman named Tanya Metaksa of Chris Cox's
11 predecessors. And I would talk to Marion from time to time --
12 excuse me -- Ms. Hammer from time to time on board-related
13 issues or even legislative or political issues where she was
14 working with my boss on one thing or another.

15 I went from the there to the NRA Federal Affairs
16 Division where I worked with the House and Senate delegations
17 for various states including Florida; and with respect to
18 Florida politics, no one knew the players better and I would
19 work with her on that, on that type of thing.

20 From there, I went to the Research and Information
21 Division, which is basically the policy analysis shop in the
22 Institute for Legislative Action. We did a lot of stuff,
23 including reviewing state legislation and, you know, litigation
24 issues that were coming up in Florida; and she would want our
25 take on that and I or my staff would help her with that.

BP

2643

J. Frazer - by Plaintiff - Cross/Ms. Eisenberger

1 When I went into private practice, I actually worked
2 on some litigation issues around issues that she was working on
3 in Florida and filed a couple of -- at least one brief in the
4 Florida Supreme Court that I worked with her on. And then when
5 I came back as secretary in General Counsel, I continued to work
6 with her most on board matters now.

7 Q Let's switch topics a little bit and talk about the
8 financial disclosure questionnaire.

9 Please tell us if you don't mind what role you played
10 in the NRA's efforts to comply with conflict-of-interest and
11 related-party laws?

12 A Sure. I think the bottom line on that is that if you
13 don't know about conflicts or potential conflicts or
14 related-party transactions or potential transactions, you can't
15 do anything about them. You can't make sure that they're
16 appropriate. You can't get the necessary reviews, approvals,
17 disclosures and so on, and so we always thought that that
18 process was important and that's why we've tried to augment it
19 over time.

20 Q Is it fair to say that you periodically send blank
21 financial disclosure questionnaires to every member of the 76
22 member board?

23 A We send it to the entire board, the Executive Counsel,
24 which has been mentioned a couple times; but it is, basically,
25 usually past board members or officers who have been elected for

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2644

J. Frazer - by Plaintiff - Cross/Ms. Eisenberger

1 life as non-voting board members. They can attend the meetings
2 and make motions. They don't get to vote. And, also, all of
3 the inhouse officers and key people that would be defined as key
4 employees under various laws.

5 Q Once questionnaire is filled out, is it returned to the
6 secretary's office?

7 A Right. We typically hand it out in person at the
8 January board meeting and e-mail it to the inhouse people around
9 that same time and then they return it to us.

10 A year before last, maybe, we also created an online
11 portal so people can fill it out on a web application.

12 Q Under the NRA conflict-of-interest policy, is it
13 contemplated that you would then pass certain of that
14 information on to the Audit Committee?

15 A Sure.

16 MS. STERN: Objection.

17 THE COURT: Overruled.

18 A Sure. The -- the conflict-of-interest policy says that
19 the forms will be provided to the Audit Committee.

20 As a practical matter, I don't dump all of the forms
21 that report nothing, nothing, nothing, no, no, no, blank, you
22 know, to the committee. I give them the information that they
23 need to act on, which is the people do report something that
24 might require further action or investigation.

25 Q And just because you forward some information to the

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2645

J. Frazer - by Plaintiff - Cross/Ms. Eisenberger

1 Audit Committee, does that necessarily mean that you,
2 personally, decided that action is in fact required by the Audit
3 Committee?

4 MS. STERN: Objection, your Honor.

5 THE COURT: Overruled.

6 A No. I forward things on where I already may have an
7 opinion that there's not a conflict, but that it is worth
8 discussing.

9 Q What was Mr. North's related-party transaction?

10 A It was an indirect transaction through Ackerman
11 McQueen.

12 Q Did he disclose it on his financial disclosure
13 questionnaire in 2018?

14 A Not on the first one that he did, which I believe we
15 saw the other day. He reported it eventually, but I don't
16 remember if it was in '18 or '19.

17 Q Did the Audit Committee of the NRA's board,
18 nonetheless, consider information about that contract at its
19 September 2018 meeting?

20 A Yes.

21 Q After that meeting, did any issues arise?

22 A Yes.

23 Q What were they?

24 A After that meeting, I continued -- you know, based on
25 my understanding of the meeting, I continued to press him -- and

BP

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J. Frazer - by Plaintiff - Cross/Ms. Eisenberger

1 I don't think I was the only one -- but I continued to press him
2 and there were parallel tracks asking Ackerman for the -- for a
3 copy of the contract.

4 We just thought we needed more information to fully
5 understand what was going on. And North -- Lieutenant Colonel
6 North would always say, "I'll give it to you when Ackerman says
7 I can" and Ackerman would say "Well, we'll give it to you when
8 North says we can."

9 So, it was basically a stonewall situation until
10 February of 2019.

11 Q Is it fair to say that in or around 2018, the NRA's
12 conflict-of-interest policy required related parties to disclose
13 all material information about potential conflicts of interest?

14 MS. STERN: Objection.

15 A I'd have to look at the --

16 THE COURT: Hang on.

17 THE WITNESS: Sorry.

18 THE COURT: The objection being that the document
19 speaks for itself?

20 MS. STERN: Correct, your Honor.

21 THE COURT: Overruled.

22 A I don't remember the exact phrasing. I think there are
23 words to that effect.

24 Q The fact that he wouldn't give you the contract, did
25 that present a problem with regard to that provision of the

BP

2647

J. Frazer - by Plaintiff - Cross/Ms. Eisenberger

1 conflict-of-interest policy?

2 MS. STERN: Objection.

3 THE COURT: Overruled.

4 A Yeah, again, I think the way I would look at that is
5 that the fact that they weren't providing it made us really
6 wonder why they weren't providing. You know, is there some
7 basis -- I think it heightened the concern.

8 Q Was there any issue with regard to whether or not he
9 actually found episodes as he was required to under his contract
10 with Ackerman?

11 A Yes.

12 Q What did you understand that issue to be?

13 A I think he was -- it's in the summary that you saw, but
14 I think he was supposed -- and I think he was supposed to film
15 twelve feature-length issues a year and fell far short of that.

16 Q I'd like to talk to you a little bit about
17 whistleblowing and the NRA's whistleblower policy.

18 What is your understanding as to what the NRA's
19 whistleblower policy has required since 2015?

20 A Well, going back to at least the policy that's dated
21 2015 that's in the Employee Handbook, its provided a reporting
22 channel and we've added to that more recently. But its provided
23 a reporting channel and a requirement that people report issues
24 and the promise that no retaliation would occur if someone
25 reports in good faith.

BP

2648

J. Frazer - by Plaintiff - Cross/Ms. Eisenberger

1 Q And this anti-retaliation provision, would you agree
2 that that's quite important?

3 A Sure. Because, ultimately, you want whistleblowers and
4 that's where one of my points of disagreement with Ms. Hammer's
5 message that we saw earlier, that the -- you know, you want
6 whistleblowers because, otherwise, you might not learn about a
7 problem that exists.

8 Q Have you personally ever counselled anyone at the NRA
9 for what you perceived as a potential violation of this
10 anti-retaliation provision?

11 A Yes.

12 Q Please tell us about that.

13 A We had a situation where an employee had raised -- you
14 know, came to the General Counsel's office with what we thought
15 were well-founded concerns, that he had been pressured into
16 signing a contract above his level of authority and that some of
17 the activities that -- you know, it was basically for a sport
18 shooting activity and there was actually a concern that it might
19 violate the local law in that jurisdiction.

20 Because he came forward, we were -- it was kind of too
21 late to do anything about the contract because the goods had
22 already been purchased, but we were able to resolve the issue
23 with the jurisdiction. So, it was very helpful to have him come
24 forward.

25 Later, he felt that he was being -- I don't remember

BP

2649

J. Frazer - by Plaintiff - Cross/Ms. Eisenberger

1 the details but disparaged or mistreated, and we talked to his
2 human resources director, Ms. Crouch and I talked to his boss at
3 the time and counselled against that, documented it. And the
4 employee was -- told me later e was very happy with the outcome.

5 Q When you say that you "counselled against that," what
6 did you mean?

7 A We met with the manager and said, you know, you
8 don't -- said, you can't do that. He reported in good faith.
9 It was a legitimate issue. We resolved it and, and, you know,
10 whatever kind of pressure or criticism he was getting afterwards
11 was inappropriate.

12 Q You were previously asked by Ms. Stern whether you
13 considered certain individuals to have engaged in
14 whistleblowing.

15 Do you remember being asked those questions?

16 A I do.

17 Q And to the extent that you reached certain conclusions
18 on that issue, what tests in your mind do you apply in deciding
19 whether someone is engaging in whistleblowing?

20 A It's what's in the policy, which is raising a --
21 whether the person, you know, is bringing forward a -- a concern
22 about a violation of -- of law or policy.

23 Now, you know, as I said, with Ms. Stern, if someone is
24 just asking a question about something that someone else
25 previously reported, I don't think I would consider that

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1 whistleblowing. But, if - but if it's, you know, new
2 information that might require investigation and action, then
3 that would basically be my standard.

4 (Continued on next page)

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2651

Frazer - by Plaintiff - Cross/Ms. Eisenberg

1 Q Moving on to the July 2018 meeting of the Audit
2 Committee, you were here when Ms. Rowling told the jurors that
3 she felt that the concerns that were reported were listened
4 today and received with great interest and attention in sum and
5 substance; right?

6 MS. STERN: Objection.

7 THE COURT: Same ruling on that. I sustain the
8 objection. You can't summarize a witness' testimony that
9 way. You can ask your own questions.

10 Q Did you attend the presentation to the Audit Committee
11 in July of 2018?

12 A I did.

13 Q And what did you perceive the reception to be?

14 A I thought the committee members were very receptive.
15 They -- they were very interested in the information. They
16 asked a lot of questions. After the presentation concluded they
17 were eager to take action. I remember Mr. Coy in particular was
18 very -- vice-chairman at the time and was chairing because Mr.
19 Cotton had to leave early. Mr. Coy was very animated on the
20 subject and his pretty strong opinions about courses of action.

21 Q Do you recall that unfortunately several members of the
22 committee had to leave before the presentation began?

23 A I do.

24 Q What, if anything, did you do to address that?

25 A I -- I preserved the original -- an original copy -- so

KM

2652

Frazer - by Plaintiff - Cross/Ms. Eisenberg

1 the whistleblowers had brought a package of documents to us, and
2 I preserved my original copy and made copies. I Fed Exed them
3 priority overnight to Mr. Cotton and Ms. Meadows and had -- I
4 can't remember if it was separate calls with both of them or if
5 we did a conference call the next day, but I filled them in on
6 what was discussed.

7 Q You were asked about what the investigations were
8 arising out of that meeting, and you testified I believe that
9 you personally undertook certain investigation with regard to
10 the concerns.

11 MS. STERN: Objection.

12 Q Do you recall testifying to that effect?

13 THE COURT: Overruled.

14 A I do.

15 Q Without getting into any privileged matter given that
16 you are the general counsel of the NRA, can you tell us a little
17 bit about the timing, the link, the context of those meetings?
18 I'm sorry.

19 Can you tell us what you did without getting into the
20 substance of the privileged matter?

21 MS. STERN: Objection, your Honor. This was not --
22 this information was not provided during discovery.

23 THE COURT: You're just asking for how long --

24 MS. EISENBERG: I'm asking what he did. I can
25 rephrase if that's easier.

KM

2653

Frazer - by Plaintiff - Cross/Ms. Eisenberg

1 THE COURT: No. I mean -- you know, asking how
2 long something took or -- that's okay. I don't know what
3 was or was not provided in discovery. We will deal with
4 that on cross.

5 Q If I may rephrase.

6 You attended the meeting on July 30?

7 A I did.

8 Q Did you meet with any of the whistle blower individuals
9 before or after that meeting?

10 A I met with different groups of people before and after
11 the meeting.

12 Q What was the purpose of your meetings with them?

13 A So the Top Concerns memo which we have seen had been
14 provided a few days before the meeting. I don't remember
15 exactly when, and I had a meeting with some of the
16 whistleblowers within a few days before the meeting to
17 understand the issues that were in that memo. Some of them and
18 maybe some other topics that had been discussed involved
19 accounting terms. I'm not an accountant, and I'm not familiar,
20 so I wanted to get educated. So I met with them to understand
21 the concerns. And then the day -- and then during the meeting,
22 you know, I took a bunch of notes and follow-up questions and so
23 on -- I met maybe the next day or a day after, very soon after
24 the meeting. I met with Ms. Rowling and Mr. Erstling to go
25 through my follow-up list and figure out what else might need to

KM

2654

Frazer - by Plaintiff - Cross/Ms. Eisenberg

1 be done down the road.

2 Q You were asked questions about whether or not certain
3 individuals were appointed to board committees in the Summer of
4 2019.

5 Do you recall being asked those questions?

6 A I do.

7 Q Under the NRA's bylaws in effect at the time, who
8 decides whether to appoint a board member to a committee?

9 A The -- with a couple of exceptions like the nominating
10 committee which is elected by the Board, the executive committee
11 which is elected by the Board, the president is responsible for
12 appointing all members to all committees.

13 Q And that has been the case since you've been the
14 secretary of the NRA?

15 A Definitely.

16 Q Who is Buz Mills?

17 A Buz Mills is a fairly long time NRA Board member. I
18 don't remember how long he's been on, but he's at least 14 or
19 15 years.

20 Q Do you recall whether or not Mr. Mills joined
21 Mr. Journey's motion for an examiner in the NRA's Chapter 11
22 proceeding?

23 A I think he did. I know he testified in that matter.

24 Q Is he currently on the ballot for next year's election?

25 A Yes he was -- he was nominated at the nominating

KM

2655

Frazer - by Plaintiff - Cross/Ms. Eisenberg

1 committee meeting this past fall.

2 Q And that's the nominating committee of the NRA's board
3 is that correct?

4 A It has six board members and three non members to get
5 an outside perspective, but it's elected by the board.

6 Q Let's switch gears a little bit and talk about the
7 NRA's CHAR 500.

8 You were asked about the language that preceded your
9 signature. Do you remember that?

10 A I do.

11 Q You were also asked whether you had personal knowledge
12 of excess benefits or potential excess benefits by Wayne
13 LaPierre reported in Form 990, and you said that you didn't have
14 any personal knowledge.

15 A Other than the auto lease issue, yes.

16 Q Right. Please tell us how you were able to certify the
17 CHAR 500 despite not having personal knowledge with regard to
18 that specific issue?

19 A Well, you're dealing with a 100-page form. It's
20 prepared by a whole accounting team, and in some years outside
21 professional preparers who sign it as well who I understood to
22 be very well qualified, highly recommended.

23 I work -- we work changing group of people, but when I
24 came back, Emily Cummins was in the treasurer's office and had
25 the primary responsible for it. She took it very seriously. I

KM

2656

Frazer - by Plaintiff - Cross/Ms. Eisenberg

1 learned a lot from her, and you know, she and the outside
2 advisors, and you know later people who came in to work on it, I
3 thought did, you know, from any observation I had, did a
4 thorough job.

5 The form is ultimately signed by the treasurer Mr.
6 Phillips or later Mr. Spray or Ms. Rowling, and I relied on what
7 I observed of their skills.

8 Q Did anything in the certification that you signed on
9 the form CHAR 500 in your mind require you to have personal
10 knowledge as to all matters reported in the form or any of its
11 attachments?

12 A No. I don't know if anyone would have personal
13 knowledge of all of the matters afforded in the forms or its
14 attachments or schedules.

15 Q Can you give us a sense of the size of the NRA? For
16 example, how many employees does it have?

17 A I don't know the current payroll and its spread because
18 we have a facility in New Mexico and remote people, but 300, and
19 I mean, I think in the time that I've worked there, recently its
20 been anywhere from 350 to 700 people depending on, you know,
21 Covid furloughs and other issues.

22 Q And based on your observations as an employee and an
23 officer of the NRA -- let's just pick a date. Let's say since
24 August 1, 2020, would you say that compliance has been a way of
25 life at the NRA?

KM

2657

Frazer - by Plaintiff - Cross/Ms. Eisenberg

1 MS. STERN: Objection, your Honor.

2 THE COURT: Overruled.

3 A No. I think that's a fair statement, and it's born out
4 by the training seminars, NRA's and other activities that we do.

5 Q Did Mr. DeWitt share in that attitude?

6 A There was a history of problems with Mr. DeWitt that I
7 think have been pretty well described.

8 Q Does he still work at the NRA?

9 A No.

10 Q Let's talk a little bit about -- or a little bit more
11 about the nominating committee.

12 There was previously testimony regarding the process by
13 which the nominating committee makes its decisions.

14 MS. STERN: Objection, your Honor. Outside the
15 scope.

16 THE COURT: I think that's right. I don't think he
17 was asked about that, so sustained.

18 Q You testified about your responsibilities to the Board
19 aspect.

20 Does the Board also have its own outside counsel?

21 A The NRA as long as I've attended board meetings, so
22 we're going back to 1994 off and on has always had an outside
23 counsel advising the Board.

24 Q When you learned that the NRA filed a lawsuit against
25 Ackerman demanding that Ackerman turn over records, did you

KM

2658

Frazer - by Plaintiff - Cross/Ms. Eisenberg

1 agree with the decision to file that lawsuit?

2 A Oh, yes.

3 Q You were asked earlier whether it was Ms. Rogers my
4 colleague from whom you learned that certain counsel was engaged
5 who had experience in bankruptcy law. Do you recall that?

6 A Yes.

7 Q In your mind, is there anything wrong with the fact
8 that you learned that information from her?

9 A No.

10 Q Do you recall whether or not the Attorney General filed
11 a motion to dismiss the NRA's Chapter 11 petition in the
12 Northern District of Texas?

13 A They did.

14 Q And do you recall whether or not any other state
15 regulator actually supported the NRA's Chapter 11 petition and
16 opposed the motion to dismiss filed by Ms. James?

17 A I'm trying to remember whether the -- I'm not sure I
18 remember.

19 Q No problem. There was some conversation about a
20 purported demand from Lieutenant Colonel North and Richard
21 Childress for an independent audit of outside counsel's
22 invoices.

23 Please tell us what you personally did to review those
24 invoices.

25 A Sure. So I review -- basically, it's the same process

KM

2659

Frazer - by Plaintiff - Cross/Ms. Eisenberg

1 for any outside law firm that I -- that the NRA engages on
2 corporate matters. You know, I get -- the invoice comes in.
3 You know, systems have changed over time, but it comes in either
4 by email, paper, whatever, and I review the -- I review the time
5 entries, the billing.

6 I'm -- you know -- if it's something that one of my
7 assistant general counsels or deputy general counsels have been
8 working on, I'll have them review it to assess whether the
9 charges are reasonable. Do we know everything that that firm
10 was doing? They had the opportunity to ask questions and do ask
11 questions.

12 Q Did there come a time when a portion of the invoices
13 was reviewed by an independent law firm?

14 A Yes.

15 Q Please tell us about that.

16 A Sure. Following a settlement of a litigation matter,
17 pursuant to that settlement -- it's a confidential settlement,
18 so I'm being careful here. Pursuant to that settlement, the
19 other party agreed to reimburse the NRA's bills for certain
20 issues.

21 So those -- I think it was at the insistence of the
22 other party's insurer that was footing the bill. Those invoices
23 would be sent to the -- would be sent to an outside firm Reilly
24 Rhine from my personal knowledge is well regarded in the
25 insurance field, and they reviewed them, and the overwhelming

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2660

Frazer - by Plaintiff - Cross/Ms. Eisenberg

1 majority were paid.

2 Q When you were asked --

3 A And that firm has every insensitive to, you know,
4 reduce their client's costs, so you know.

5 Q You were asked about the difference in legal spend
6 between 2015 and 2018.

7 Do you recall being asked those questions?

8 A I do.

9 Q Can you explain what contributed to the increase in
10 that expense item?

11 A Yes. The NRA was placed under attack on a whole
12 variety of fronts starting in really late 2017.

13 So in the Fall of 2017, the NRA began to be the subject
14 of some insurance-related investigations about some Affinity
15 insurance programs that I think we've talked about previously.
16 We had to respond to that from 2017 until well into 2018.

17 In 2018 we commenced civil litigation against one of
18 our Affinity partners that had -- that we believed had breached
19 contract with us.

20 We commenced related litigation against the State of
21 New York. We were targeted with I loose count, three or four
22 congressional investigations demanding documents about -- about
23 certain issues, and we had -- responding to those is extremely
24 labor intensive, and we had to -- we had to deal with those.

25 Then it just -- it just -- it just kept going from

KM

2661

Frazer - by Plaintiff - Cross/Ms. Eisenberg

1 there including this lawsuit.

2 Q You referenced litigation against the State of New
3 York.

4 What was the claim?

5 A Violations of the First Amendment.

6 Q And that's Freedom of Speech and Freedom of
7 Association?

8 A Correct.

9 Q What was the factual basis for the NRA's claim?

10 MS. STERN: Objection.

11 THE COURT: Sustained.

12 Q In 2015, did a candidate for New York Attorney General
13 pledge to go toe to toe with the NRA?

14 MS. STERN: Objection, your Honor.

15 THE COURT: Sustained.

16 Q In 2015 did a candidate for New York Attorney General
17 pledge to use the constitutional power of her office to
18 investigation the association's legitimacy?

19 MS. STERN: Objection, your Honor.

20 THE COURT: Sustained. You're just trying to ask
21 him questions about why the actual litigation spend went up?
22 Sustained.

23 MS. EISENBERG: Your Honor, I assume if I ask
24 whether that actually happened in 2018 --

25 THE COURT: About actual matters that that caused

KM

2662

Frazer - by Plaintiff - Cross/Ms. Eisenberg

1 litigation expense to be incurred, yes, you can ask that.

2 MS. EISENBERG: Thank you, your Honor.

3 Q Did things that Candidate James say on her campaign
4 trail in Summer of 2018 affect or necessitate the legal -- some
5 of the legal spend that you testified about?

6 MS. STERN: Objection.

7 THE COURT: I'm not -- I mean you've tied them
8 together, so I'll let you ask that. Overruled.

9 A Yes. I mean, basically -- basically, we were already
10 dealing with a lot of issues, and we had had -- had, you know,
11 arguably then the leading candidate for the office say that she
12 was going to investigate us, called us a terrorist organization
13 and so on. And you know, preparing for that possibility of what
14 became this litigation was actually something that we had been
15 looking at in the course correction for some time.

16 MS. STERN: Your Honor, I move to strike the
17 hearsay in his response.

18 THE COURT: Denied.

19 Q You understood her to refer to the NRA as a terrorist
20 organization on what basis?

21 MS. STERN: Objection.

22 THE COURT: Counsel, the sole ground I am letting
23 you do this is to tie it to actual litigation spending, so
24 if you can stick to that. Not -- just about actual
25 on-the-ground need for litigation expense and not litigating

KM

2663

Frazer - by Plaintiff - Cross/Mr. Fleming

1 the actual issues, please.

2 MS. EISENBERG: Certainly, your Honor.

3 Q In August of 2020, when Attorney General James filed
4 this lawsuit, she sought to -- did she seek to dissolve the NRA?

5 MS. STERN: Objection, your Honor.

6 THE COURT: Overruled.

7 A Yes.

8 Q And did she seek upon such dissolution to distribute
9 the NRA's assets to others?

10 MS. STERN: Objection.

11 THE COURT: Overruled.

12 A Yes.

13 MS. EISENBERG: I'll pass the witness.

14 MR. CORRELL: No cross, your Honor.

15 MR. FARBER: No questions, your Honor.

16 CROSS-EXAMINATION

17 BY MR. FLEMING:

18 Q Good afternoon, Mr. Frazer.

19 A Good afternoon.

20 Q Give me one second here.

21 THE COURT: So Counsel, just for planning purposes,
22 we have about 15 minutes or so and then we can continue in
23 the morning.

24 MR. FLEMING: Yeah. I don't know that I have much,
25 so I might be able to get through it. So let me just see.

KM

2664

Frazer - by Plaintiff - Cross/Mr. Fleming

1 I'm going to jump around a little bit. I just want to go at
2 different issues.

3 Q You talked about the Audit Committee ratifying
4 transactions in September 2016.

5 Do you recall that?

6 A Yes.

7 Q In September 2016, did the Audit Committee not only
8 ratify but approve and advance those transactions that were
9 continuing?

10 MS. STERN: Objection to the leading, your Honor.

11 THE COURT: Sustained.

12 Q Did the Audit Committee take any steps to approve
13 related-party transactions in advance?

14 A Yes.

15 Q When did they do that?

16 A Without looking at the documents, I don't remember if
17 we did that -- the committee did that in '16, but I know they
18 did that in late '17.

19 Q Okay. I'll --

20 A And actually, I think in '16 when they said ratified or
21 approved and ratified, I think there was some intention to make
22 it an ongoing approval.

23 MR. FLEMING: Can I call up document PX 1674 for
24 identification. Not for the jury, please. Not in evidence.

25 Q So Mr. Frazer --

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2665

Frazer - by Plaintiff - Cross/Mr. Fleming

1 MS. STERN: I'm sorry. Are you going to ask him to
2 identify it?

3 MR. FLEMING: I was going to ask him to identify
4 it.

5 MS. STERN: We object to this document.

6 MR. FLEMING: On what ground?

7 THE COURT: I think that's my line.
8 What's the ground of the objection?

9 MS. STERN: It's hearsay, and there is no
10 foundation.

11 MS. ROGERS: It's Plaintiff's Exhibit.

12 MS. STERN: Sorry, your Honor.

13 MR. FLEMING: I can lay a foundation.

14 MS. STERN: Just by virtue of the document being on
15 the Plaintiff's exhibit list, it's not an agreement that
16 it's admissible. We raised this before that we certainly
17 wanted to give the defendants notice of documents that we
18 potentially will use in rebuttal and on cross-examination.
19 So there is no agreement that this document is admissible
20 document nor is there any testimony in the discovery record
21 that would render it so.

22 THE COURT: The objection is to hearsay or
23 foundation?

24 MS. STERN: Both, your Honor.

25 THE COURT: Well, foundation, they can address.

KM

2666

Frazer - by Plaintiff - Cross/Mr. Fleming

1 What about the hearsay? Is there factual
2 statements in here that -- I haven't looked at this, so I
3 don't really know.

4 MS. STERN: Yes, your Honor, there is. We don't
5 think that it meets the business records.

6 MR. FLEMING: Your Honor, why don't I try to lay a
7 foundation?

8 THE COURT: Well --

9 MR. FLEMING: I think I can address hearsay as
10 well.

11 THE COURT: Okay. Including as to the attachment?

12 Are we going to be able to do that with the jury
13 present or -- you can start asking questions about the
14 background of it, and we will see how we go.

15 Q Mr. Frazer, can you see the two pages that are in front
16 of you?

17 A I do.

18 Q Do you have any personal knowledge about this document?

19 A I do.

20 Q How do you have personal knowledge about it?

21 A Well, which document are you referring to; the cover or
22 the attachment?

23 Q The attachment.

24 A I believe that this is a document that I either drafted
25 or drafted some version of.

KM

2667

Frazer - by Plaintiff - Cross/Mr. Fleming

1 Q And did you draft it at or near the time of the event
2 of the Audit Committee meeting?

3 A Yes.

4 Q And did you make it as part of what you interpreted to
5 be a required practice?

6 A Yes.

7 Q And is this type of document kept in the ordinary
8 course of business by the NRA?

9 A Yes.

10 MR. FLEMING: I move its admission, your Honor.

11 MS. STERN: Your Honor, I believe that his
12 testimony was he believed, but he is not able to testify
13 that he did prepare the document, and I believe that his
14 testimony on direct was that he did not maintain the minutes
15 of the Audit Committee at the time that this document is
16 purportedly to have been made. And in addition, the email
17 transmittal is several years after the document purportedly
18 was created, and I believe it's also a draft.

19 MR. FLEMING: Which shows that it's maintained.

20 THE COURT: Yeah. I'm more concerned with the fact
21 that he didn't testify that this document was something he
22 drafted. He said it was either him or somebody else.

23 I mean, you know, without -- I think I can get past
24 the other part but not that part.

25 MR. FLEMING: Can I explore that part of it?

KM

2668

Frazer - by Plaintiff - Cross/Mr. Fleming

1 THE COURT: Okay.

2 Q Mr. Frazer, as best as you can recall, tell us what you
3 can recall about the extent to which you drafted the attachment
4 without talking about the contents. Page -- okay.

5 A It looks like what I drafted to prepare for that
6 meeting and to keep records after the meeting.

7 Q And was it your normal practice in the early years to
8 create documents like this in anticipation of Audit Committee
9 meetings?

10 A Yes.

11 Q What purpose did you create these documents for?

12 A To guide the presentation of issues to the committee,
13 to -- to document the basis for the committee's decisions and to
14 provide appropriate language for resolving issues.

15 Q And do you recall after the meeting passing on your
16 draft to anyone?

17 A I passed it to Mr. Tedrick. I can't remember if it was
18 before or after the meeting.

19 Q And who is Mr. Tedrick with respects the Audit
20 Committee?

21 A He was the committee secretary at the time.

22 Q And with respect to any work he might have done on this
23 -- on your draft afterwards, did you come to see what he had
24 done?

25 A I don't remember. I don't remember if he made any

KM

1 edits or changes at all.

2 MR. FLEMING: Those are my last questions, your
3 Honor, on this document. I move its admission.

4 THE COURT: I have some other questions. I'm not
5 going to do them with the jury present. So for now, I'm not
6 admitting it, but I'm -- I may ask questions that will
7 potentially resolve the issues I have.

8 (Continued on the following page.)

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2670

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1

2 Q Mr. Frazer, you talked about Ms. Hammer's message about
3 the Financial Services Division whistleblowers. Do you recall
4 the testimony?

5 A I do.

6 Q Did Ms. Hammer comments affect in any way your work
7 that you performed to address the whistleblowers' concerns?

8 A No. I mean, the message was several months after
9 that -- after that committee meeting it was in response to a
10 later magazine article, I believe, and didn't affect my review
11 or investigation or counseling of employees at all.

12 Q Now, you were asked questions by both Ms. Stern and
13 Ms. Eisenberg about the Brewer invoices. Do you recall the
14 questions?

15 A I do.

16 Q Now, were you aware of -- withdrawn.

17 You were part of the engagement of the Brewer firm;
18 isn't that right?

19 A Yes.

20 Q Are you aware of whether the Brewer firm imposed any
21 limits on the amount of time that its lawyers spent on matters?

22 A Yes.

23 Q Can you explain that for the jury?

24 A I was told by the firm that most of the firm employees
25 time was capped at I want to say eight hours a day regardless of

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2671

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 how much they actually worked, and I had some personal
2 observation that they were working a lot more than that.

3 MS. STERN: Objection to the hearsay, your Honor.
4 Move to strike.

5 THE COURT: I'm just trying to assess whether --
6 I think the way you asked it was what his review was based
7 on his understanding of what they said. I mean, I'll permit
8 it for his state of mind as to what he thought their policy
9 was. It is not admissible for what actual policy was. That
10 you'd have to talk to the firm about, but I'll permit it
11 solely that this is what he heard.

12 MR. FLEMING: That's how I intended it, your Honor.
13 I apologize.

14 Q Without revealing the content, can you describe the
15 relative level of descriptions of activities that the Brewer
16 firm included in its invoices compared to, say, other law firms
17 you dealt with?

18 A It is comparable. It's a difficult balance for
19 attorneys having, you know, had to write my own bills in my own
20 private practice between overwhelming the client with
21 information and not giving them any clue about what was going
22 on.

23 Q Were you able to tell from the descriptions was work
24 they were doing?

25 A Yes.

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2672

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 Q And did it give you a sufficient basis to conclude
2 whether they were complying with what they had been engaged to
3 do?

4 A Yes, and if I had any questions, I could always call.

5 Q And do you have --

6 MS. STERN: Your Honor, I just want to object to
7 the notion of going into this detail when this is
8 information that was redacted and not provided to us during
9 discovery.

10 MR. FLEMING: Your Honor, the question is his
11 review. He's one of several people reviewing and continues
12 to be an issue, so I'm just trying to --

13 THE COURT: I'll overrule the objection. Whether I
14 permit them to based on the breadth of your examination to
15 ask questions that go beyond that, I'll consider it at the
16 time.

17 MS. ROGERS: Your Honor, on behalf of the NRA, we
18 would, obviously, object to questions or answers about
19 content of legal advice discussed in bills; but questions
20 about how long the bills were, were they detailed, were they
21 not, we don't see that as invading the privilege.

22 Q So, Mr. Frazer, moving on to discuss Form 990. You
23 were asked a lot of questions about the Form 990. Do you
24 recall?

25 A Yes.

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2673

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 Q And do you recall testimony about the number of
2 individuals and professionals that worked on the 990 annually?

3 A Yes.

4 Q Did you know who Jim Sweeney was?

5 A I did.

6 Q Who was Jim Sweeney?

7 A He was a -- I don't think he was an attorney, but he
8 was a tax advisor with our former accounting firm, RSM.

9 Q Did you have any understanding personally about Mr.
10 Sweeney's reputation and capability.

11 A I understood him to have an excellent reputation, and
12 the little bit that I worked with directly, he was very
13 knowledgeable.

14 Q And do you know who Steve Shulman is?

15 A Steve Shulman is sadly deceased. He's our former
16 outside counsel.

17 Q And same question about Mr. Shulman, do you have any
18 understanding about his reputation or capability or
19 accomplishments?

20 A He was kind of a legend in -- in the DC bar. He had
21 been the General Counsel of the airforce when he was 32 and kind
22 of went on from there. He represented the NRA for decades.

23 Q And do you know what -- withdrawn.

24 Do you know whether Mr. Shulman advised the NRA with
25 respect to 990 issues?

BP

2674

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 MS. STERN: Objection, your Honor, lack of
2 foundation.

3 MR. FLEMING: I just asked him --

4 THE COURT: Well, that question is asking --

5 MR. FLEMING: I just asked him if he knew.

6 THE COURT: You're saying this is before he was
7 involved?

8 MR. FLEMING: Well, he was at the NRA, but before
9 2015, yes, before his second go-round with the NRA.

10 THE COURT: If you have personal knowledge, you can
11 answer.

12 MR. FLEMING: That's all I'm looking for.

13 A I know he advised us on tax issues. I'm drawing a
14 blank sitting here whether he advised us specifically on 990
15 issues.

16 Q Did you understand him to have sort of a tax expertise
17 at all?

18 A He definitely worked on tax issues for us, so...

19 Q I want to ask you one other question with the 990. I
20 know it is getting late.

21 You testified that you had personal knowledge about an
22 auto lease issue. Do you recall?

23 A Sure. So, that's on -- I do, yes.

24 Q I was going to ask you to describe for the jury what
25 your personal knowledge was and what the issue was?

BP

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J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 A Sure. So, I'll try to boil it down in light of the
2 time that's available.

3 But, basically, I was involved in discovering,
4 reporting and analyzing an issue that involved a purchase of NRA
5 leased vehicles; and the way that it came about is that,
6 historically, for many years the NRA officers and some other
7 executives had the -- as part of the compensation had the use
8 of a leased car.

9 And I got one when I was first elected secretary in
10 2015. It was a three-year lease; and what I was told at the
11 time was that the lease had a termination value, stated a lease
12 termination value you could buy the car for that price at the
13 end of the lease.

14 And in 2018, I did that and got -- you know my wife
15 started driving that car, and I got another car, another leased
16 vehicle.

17 In '21 when the lease on the second car ran out, I was
18 thinking about buying it. And if anyone bought a car in '21,
19 you know that the prices were insane. And I, and I started -- I
20 looked at it again and I thought -- I started asking questions
21 and discovered basically the lease-termination values were
22 significantly lower than fair-market value; and what I figured
23 out was that some employees who had leased vehicles, like the
24 field reps, were being charged fair-market value and officers
25 were being charged the lease termination value. From a

BP

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J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 leadership standpoint, that didn't seem right to me and I, you
2 know, we reviewed it. We discussed it with tax counsel and,
3 ultimately, decided to report that as a potential excess benefit
4 to me, to Mr. LaPierre, to Mr. Phillips and to Major Land who
5 was the previous secretary.

6 Q So you called that on yourself; is that fair?

7 A Yes.

8 Q And did you pay anything as a result of that?

9 A I paid back the balance. I was able to determine
10 through the JD Power website -- basically, the used car Blue
11 Book, I was able to determine -- it's actually really detailed.
12 You can find out what the price of particular car with those
13 particular options on any particular day would have been at
14 auction. Figured that out, figured out the difference. I paid
15 back the difference with interest and brought the issue to the
16 attention of others, as well.

17 Q And did you pay any excise tax on that?

18 A I did. I there's a 25 percent excise tax. It's an
19 excise tax on excess benefit transactions, so I paid that as
20 well.

21 MR. FLEMING: Your Honor, this might be a good
22 time.

23 THE COURT: Okay, we'll reconvene in the morning,
24 9:30. We'll see you then.

25 COURT OFFICER: All rise, jury exiting.

BP

1 (Whereupon, at this time the jury then left the
2 courtroom.)

3 THE COURT: All right, see you tomorrow.

4 * * * * *

5 (Whereupon, at this time the trial was adjourned
6 and continued on Wednesday, January 31, 2024.)

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BP

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

-----X
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against-

INDEX NO.
451625/20

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

Defendants.

JURY TRIAL
60 Centre Street
New York, New York
January 31, 2024

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

APPEARANCES:

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

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Proceedings

1 THE COURT: All right, good morning, everyone.

2 I just wanted to start with a couple of preliminary
3 things if everybody is here.

4 I saw the note last night about a few open items
5 which we had been working on. I did finish reviewing
6 Ms. Stanford's testimony and marked up my responses to the
7 objections and the like. My law clerk will be sending those
8 to you shortly, soon.

9 There's a fair amount at the end that I'm
10 concluding may well be admissible in the defendants' case,
11 but is not at least in my view in this case necessary as a
12 counter-designation for completeness. And as I did last
13 time, I -- once I concluded that, I didn't go in and look
14 within that part as to whether there were other objections.

15 I'll wait and see what the defendants are going to
16 do, whether they want to bring that in. And in the same
17 vein, I assumed in that section, there's a bunch of State
18 rebuttal testimony, that that would similarly carry along
19 with the portions that I'm ruling out of scope or I
20 shouldn't say out of scope. It's really more just not
21 counter-designations.

22 I have looked at the summary evidence exhibits and
23 find that they are subject to foundation admissible. If the
24 State represents to me -- which it seems like they are --
25 that all of the underlying documents on the chart have all

BP

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Proceedings

1 either already been admitted or are covered by business
2 records certifications that I've accepted and, you know, the
3 cases also make clear that the witness who is going to be
4 tendering the summary exhibits has to be here for
5 cross-examination and my assumption is that the expert is
6 that person; so subject to that, I think it does comply with
7 the voluminous writings case law. The classic use of it
8 where you have, you know, reams and reams of individual
9 invoices and you have somebody organizing it for the jury.

10 I think we can caution them that it is not new
11 substantive evidence; but it is, instead, only as persuasive
12 as the underlying evidence is, but that it is purely for
13 their convenience. I think the cases indicate that it is a
14 good idea to advise the jury of that. But I don't think
15 there's any sort of broader fundamental, legitimate
16 objection to summarizing all of those records in this way.

17 Again, I'm assuming that the witness can explain
18 what he did and how he did it.

19 So, subject to that, those will be admitted.

20 MR. FLEMING: Your Honor, just to make a technical
21 point because I didn't have time last night, I do join in
22 Mr. Phillip's letter request on that issue.

23 MR. CORRELL: Mr. LaPierre does, too.

24 THE COURT: Is that a different request?

25 MR. FARBER: It's a -- that goes to the

BP

2681

Proceedings

1 demonstratives they plan to use with Mr. Hines.

2 THE COURT: Well, that -- I'm trying to follow one
3 thing at a time. Is there a separate demonstrative that has
4 been sent to me?

5 MS. ROGERS: The demonstratives that were
6 circulated by plaintiff with use for their expert and they
7 incorporate the summary evidence, but they have additional
8 -- there's like a hundred slides. Some of them are summary
9 evidence. Some of them are objectionable on the ground
10 Mr. Phillips filed objections which the NRA joins.

11 With respect to the summary evidence, how does your
12 Honor propose to handle the double counting in the
13 tabulations? Does the Court view that as a
14 cross-examination issue?

15 THE COURT: Well, there could be objections to
16 specific kinds of questions if he's not explaining what the
17 numbers are, but assuming they're not proffering them as
18 double counting on purpose and they can just clarify that;
19 I'm assuming that that will be done in the questioning and,
20 yeah, it will be cross-examination.

21 I did not look at the demonstratives. I'm juggling
22 enough things that I didn't notice that that was a separate
23 thing that's going on. I'm happy to look at that if
24 somebody can give me a copy of it at some point during the
25 day and I can look at it over the lunch hour.

BP

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Proceedings

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MR. WERBNER: Demonstratives were attached as Exhibit A to that letter so you should have that.

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THE COURT: I don't doubt that I do. I, also, can tell you I have not seen it.

5

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MR. FARBER: We can get you a copy, your Honor.

7

Thank you.

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THE COURT: In terms of the schedule about the jury instructions, I saw there was also a request that I block off next Friday.

10

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12

I should just make it clear these Fridays are not days off. I have back-to-back-to-back hearings on my other cases, which hard as it may be to believe are every bit as important to me as this one. I'll do the best I can. I don't want to use a trial day if I can avoid it. And I -- we're looking to try to get these to you this week and we'll just kind of see.

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MR. CORRELL: Your Honor, would it make sense for the Court to give us sort of proposed or the instructions you're considering and we can try to hammer it out?

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THE COURT: That's what I'm talking about. That's what I'm going to give you. I have reconstructed them. I'll just give you -- you know, what I received was probably the most thoughtful set of threes instructions and, also, the least useful because they're just -- I mean, it would be

BP

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Proceedings

1 like reading War and Peace to them. I could start now and I
2 wouldn't finish. They're great and this interesting and the
3 next law school seminar that I teach on this I might use
4 them.

5 I don't mean to chide you all. They weren't
6 practical to just give a straightforward set of
7 instructions, and I am adhering in many ways to the
8 statutes. I think there's a lot of principles that people
9 have been sort of tossing around, and we're dealing with --
10 especially with the N-PCL, a statute that is relatively
11 straightforward saying what the standards are and I don't
12 see a great reason to overcomplicate things.

13 But, anyway, I won't give you more clues than that.

14 I do have it substantially shorter now and, you
15 know, we'll see.

16 Anything else before we get the jury? I don't know
17 if they're here.

18 MR. FARBER: One other scheduling matter, your
19 Honor.

20 So, I assume that the State is going to rest today
21 or maybe the latest tomorrow morning. We -- I and the State
22 both asked the NRA who their initial witnesses would be; but
23 we haven't gotten a response to that, and I'd ask the Court
24 direct that. We needed their witnesses who they're going to
25 call tomorrow. We need to know who they are.

BP

2684

Proceedings

1 THE COURT: I thought the letter that just came
2 around last night said exactly who was coming in and in what
3 order; right?

4 MS. CONNELL: That was for the Plaintiff's case --
5 like the resting of the plaintiff's case; but the
6 defendants, collectively, have like 80 or something more
7 witnesses on their list; and we've just asked for at least
8 the first day or two just to know how to focus.

9 THE COURT: Wait, what was the defendants -- the
10 defendants' request you want to know who the State's
11 witnesses are; right?

12 MR. FARBER: You're talking about the defense as a
13 block, but that's not the way things are.

14 THE COURT: You're asking for your other
15 co-defendants' witnesses?

16 MR. FARBER: Correct, your Honor, who as I pointed
17 out is adverse.

18 THE COURT: You all have work to do in
19 coordination, I get it, and 80 is not going to happen.

20 So, I told that you at the beginning that you can
21 plan out your case as much as you want, but you have the
22 time we have and, you know, the rule was to give 24-hours
23 notice, certainly of documents for each witness.

24 I would like to know what's -- what the defense
25 calling of witness is going to be. So, I'll certainly ask

BP

2685

Proceedings

1 you to meet on that over the lunch hour and have some
2 guidance that you can give to the State and to each other as
3 to what you're going to do, but it is not going to be chaos.

4 Whatever it is, I get that it that there are some
5 pieces on which you may have different views, but I don't
6 buy the narrative that this is a completely disjointed group
7 and nobody knows what each other is doing, I just don't.
8 You all have been working together maybe until recently, but
9 certainly for quite a long time as a group; and I think
10 there should have been plenty of time to coordinate all
11 this.

12 And we, also, have to think in terms of scheduling.
13 It wouldn't be the first time that there would be a motion
14 at the end of the State's case, and so I do need to plan
15 that out as to how we're going to do that. It is often
16 oral, and we can -- I think there may well be a need to have
17 to block out an hour to have argument back and forth on
18 that; but we'll find the right -- the right time to do that.
19 Well, we know what the right time is, after you rest; but
20 we'll have to -- hopefully it will fit during either a break
21 or something like that. But there's certainly some
22 questions I have as well, but that will be part of that
23 discussion.

24 So, all right, we have a lot to do and let's get to
25 it.

BP

2686

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 THE COURT: I've forgotten who's on the stand right
2 now?

3 MS. STERN: Mr. Frazer.

4 THE COURT: Sorry, Mr. Frazer, nothing personal.
5 Everyday is a new day for me.

6 (Whereupon, at this time the witness,
7 JOHN FRAZER, having been previously duly sworn/affirmed by
8 the Clerk of the Court, resumed the witness stand and
9 testified as follows:)

10 COURT OFFICER: All rise, jury entering.

11 (Whereupon, at this time the jury then entered the
12 courtroom.)

13 THE COURT: Good morning, everyone. Have a seat,
14 please.

15 All right, we're going to continue with Mr. Frazer.
16 Mr. Frazer, you acknowledge that you're still under
17 oath?

18 THE WITNESS: I do, your Honor.

19 CROSS-EXAMINATION

20 BY MR. FLEMING:

21 Q Good morning, Mr. Frazer.

22 A Good morning.

23 Q As I intended to do last night, I'm going to try to go
24 quickly.

25 JUROR: Can't hear you.

BP

2687

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 MR. FLEMING: No?

2 THE COURT: I think it's okay now. There was a lot
3 of noise.

4 Q Let me start with a couple of technical questions.

5 There's been some reference in the testimony to a
6 corporate representative deposition, and I was wondering if you
7 could clarify for the jury your understanding of the difference
8 between a corporate representative deposition and a personal
9 deposition?

10 A Sure. So, basically, during pretrial discovery in a
11 case that involves a corporation, the parties can ask each other
12 for a deposition by a corporate representative; and that's
13 someone who's appointed by the organization to speak on behalf
14 of the organization.

15 So, instead of a deposition where you're talking about
16 your personal knowledge and you can only prepare about your
17 personal knowledge, you actually can sit down with anyone else
18 in the organization who can fill you in, cram you with
19 information on all type of topics you wouldn't normally deal
20 with.

21 So when you testify, you're testifying on behalf of the
22 total knowledge of the organization rather than what you deal
23 with personally.

24 Q And --

25 MS. STERN: Your Honor, I object. I didn't want to

BP

2688

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 interrupt the witness, but I don't think it is appropriate
2 for him to be instructing on the law.

3 THE COURT: Overruled. I would suggest objected
4 before he already says it, but I think that's fine. I was
5 going to, frankly, say something similarly anyway, but, go
6 ahead.

7 MR. FLEMING: I'm sorry, Judge --

8 THE COURT: Overruled.

9 Q Now, you also testified several times about your own
10 conflict of interest caused by this case?

11 A Yes.

12 Q Can you explain what that is?

13 A Sure. So, under the legal ethics rules, you have to
14 avoid acting as --

15 MS. STERN: Objection, your Honor, same issue.

16 THE COURT: Overruled.

17 A You can't take a role in advising or representing a
18 client in a case where you have a personal interest, personal
19 conflict, any question about your objectivity. And so, you
20 know, my position has been that once I got sued here, I
21 couldn't, you know, really do anything other than be a defendant
22 and witness.

23 Q Now, who first identified for the NRA the conflict you
24 just testified about?

25 MS. ROGERS: Object to the extent this calls for a

BP

2689

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 privileged conversation between the General Counsel and NRA.

2 Q Without disclosing any communications, advice, any
3 privileged communications, are you able to identify who first
4 identified the conflict you just testified about?

5 MS. STERN: Objection, hearsay.

6 THE COURT: It depends on the answer, but, go
7 ahead.

8 A I would say it came to my mind pretty quickly, and then
9 certainly had talks with counsel about it.

10 Q Now, what did the NRA -- NRA do, if anything, to
11 address this conflict?

12 A The NRA created a Special Litigation Committee to
13 manage this litigation and related matters.

14 Q And how, if at all, has this affected your ability to
15 do your full job?

16 A I don't -- basically, the NRA's lawyers don't brief me
17 on the case. They brief the Special Litigation Committee or
18 periodically the board when the board meets; and then on a more
19 day-to-day matter, I don't see the invoices for anything about
20 this case.

21 Q Now, you were asked questions about your preparation
22 for your testimony today.

23 Do you recall the questions?

24 A I do.

25 Q Are the answers you have given in the last two days

BP

2690

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 your answers?

2 A Yes.

3 Q Now, yesterday you were asked about litigation by the
4 NRA against its former public relations agency Ackerman McQueen.

5 Do you recall the testimony?

6 A I do.

7 Q Can you clarify for the jury how many legal disputes
8 there have been with Ackerman?

9 A We -- trying to remember. It goes back a way now. We
10 had the initial demand seeking their access to their books and
11 records under the contract. There was later -- and it was filed
12 in Virginia state court.

13 There was later an additional books and records -- no,
14 additional case on other causes also filed in Virginia. Those
15 were consolidated.

16 Then there was a third case filed in Texas covering
17 some of the same issues, but also intellectual property disputes
18 about the ownership of work and possession of work that they had
19 done for us.

20 All of that was eventually settled, and then the -- and
21 now there's a new case pending based on they're not keeping up
22 their end of the Settlement Agreement.

23 Q And did Ackerman play a role in the NRA's bankruptcy
24 proceeding?

25 A They did.

BP

2691

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 Q What did they do?

2 A I believe they filed a -- I believe they filed a motion
3 to dismiss. I don't remember a hundred percent.

4 Q Did anyone else file a motion to dismiss in the
5 bankruptcy case?

6 A The attorney general did.

7 Q And those are the two, the only two?

8 A I think the DC attorney general joined, as well.

9 Q Now, out of all -- well, let me ask you, did the NRA
10 have any litigation against Under Wild Skies?

11 A We did.

12 Q And how does Under Wild Skies relate to Ackerman
13 McQueen?

14 A Under Wild Skies is a separate corporation owned by
15 Tony Makris who you heard about, an Ackerman executive.
16 Therefore, we believe it's a related company to Ackerman in some
17 respect. And they -- they initially sued us in Virginia state
18 court for breach of contract. We filed counterclaims against
19 them and that was -- that's actually on appeal now.

20 Q Now, out of all the lawsuits involving Ackerman McQueen
21 that you just mentioned, how many were filed without your
22 involvement?

23 A Only the initial books and records demand case.

24 Q And you played a role in all the other litigations?

25 A Yes, yes.

BP

2692

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 Q Now, what led up to the Virginia records lawsuit, the
2 first one you just referenced?

3 A What led up to that lawsuit was that starting in late
4 2018 as we were, you know, trying to understand all of the
5 issues around different vendor relationships and contracts, make
6 sure vendors complied with their contracts, make sure that
7 vendors complied with NRA expense reimbursement policies and so
8 on, we sent letters to -- I don't remember the number -- but
9 probably hundreds of vendors, sort of starting at the top in
10 terms of dollar amounts, reminding them of their obligations,
11 asking them for -- stating NRA policies, asking them for in some
12 cases for backup of -- of records.

13 Q Now, what part -- well, what role did the
14 whistleblowers who came forward from the Financial Services
15 Division in July of 2018 play in causing the efforts we just
16 talked about?

17 MS. STERN: Objection, leading.

18 A One of --

19 THE COURT: Overruled. Go ahead.

20 A One of their issues raised in the Top Concerns Memo was
21 about whether there had been vague or deceptive billing or
22 overbilling, and that was one of the things we were starting to
23 look into with the vendors.

24 Q And did Mr. LaPierre's 360-degree review play any role
25 in this effort, as well?

BP

2693

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 A Well, it was all part of that review.

2 Q Now, in addition to the law -- well, did the NRA
3 utilize outside law firms in this effort?

4 A Yes.

5 Q And did the NRA hire any other professional firms to
6 inspect Ackerman's records?

7 A Yes.

8 Q Can you describe that?

9 A We hired a forensic accounting firm -- well, a couple
10 of things. The -- the Brewer firm attempted to inspect Ackerman
11 records. They met with resistance.

12 There was a separate effort by a different firm, Cooper
13 & Kirk, primarily related to the litigation against one of our
14 insurance partners.

15 Then, and then eventually we hired a forensic
16 accounting firm called Forensic Risk Alliance to really dig in.

17 Q Now, I'd like to explore what role you played in hiring
18 Forensic Risk Alliance.

19 MS. STERN: Objection. Scope, your Honor.

20 MR. FLEMING: Your Honor, Ackerman was asked a lot
21 about, especially Mr. Frazer's role and this goes directly
22 to his role.

23 THE COURT: Overruled.

24 Q What role did you play in hiring Forensic Risk, was it
25 Analysis?

BP

2694

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 A Alliance.

2 Q Alliance, sorry. What role did you play in hiring
3 Forensic Risk Alliance?

4 A We looked at a couple of firms. They had a good
5 proposal. I signed that engagement to engage them to work at
6 the direction of the Office of General Counsel. I received
7 briefings on their findings.

8 Q Well, had Ackerman's lawyers insisted that the Brewer
9 firm not play a role?

10 A I don't -- yeah, I believe at one point they stated
11 that the relationship was adverse, and that they were highly
12 resistant to allowing further inspection.

13 Q So, did you handle Forensic Risk Alliance on your own
14 or did you have help?

15 A I worked with them along with the Brewer firm.

16 Q Now, without disclosing any legal advice privileged
17 communications, are you able to tell the jury what actions you
18 took based on Forensic Risk Alliance's findings?

19 A It all fed into the -- to the litigation ultimately.

20 Q Did Forensic Risk Alliance furnish a report at the end
21 of their work?

22 A They did.

23 MR. FLEMING: Can I call up for identification
24 PX 2333, and I have hardcopies here.

25

BP

2695

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 MS. STERN: Your Honor, just renewing the scope
2 objection. This is going far outside of what we covered.

3 THE COURT: Do I need one of those, too?

4 MR. FLEMING: Oh, you do. So sorry.

5 (Handed up to the Court)

6 THE COURT: Thank you.

7 MR. FLEMING: Can I give one to the witness?

8 THE COURT: Is it marked?

9 MR. FLEMING: It is. It is PX 2333.

10 (Handed to the witness)

11 Q Are you ready for me to ask questions?

12 MS. STERN: I'm sorry if I didn't hear your Honor,
13 if you ruled on my objection on scope? This is going into a
14 level of detail that I think far exceeds the scope of the
15 direct.

16 THE COURT: Yeah --

17 MR. FLEMING: Your Honor, if I may, I'd like to get
18 the exhibit in at least; and if you don't want me to ask
19 questions on it because too much detail, I'm happy to not
20 ask questions.

21 THE COURT: Well, I'm willing to give some latitude
22 to round out the story; but if you want to go into great
23 detail on this analysis, it can be in your -- part of your
24 case.

25 So, if this witness is the one -- is this the

BP

2696

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 witness who's going to lay the foundation for the admission
2 of this?

3 MR. FLEMING: Yes, I believe so.

4 MS. STERN: Your Honor, I understand FRA is on the
5 defendants' witness list.

6 MS. ROGERS: FRA is on the list by designation, but
7 we think Mr. Frazer who just testified that he hired the
8 firm and was issued a report by them and took actions based
9 on the report can lay a foundation for the document.

10 MS. CONNELL: Your Honor, we -- FRA is available,
11 but it is not unavailable for the purposes of 3117, we
12 believe.

13 Also, FRA as we deposed them, prepared this report
14 and there are questions we have regarding the foundation for
15 this.

16 THE COURT: Yeah, look, I don't think receiving --
17 look, it is a hearsay document, out-of-court statement.
18 Typically, a report like this if it is going to come in at
19 all, I don't even know what the basis would be for it to
20 come in.

21 I think if there's a lot of factual -- I haven't
22 seen this before I don't think, but I'm -- I don't know what
23 kind of foundation you can lay for this with this witness.

24 MR. FLEMING: Your Honor, just to -- Mr. Frazer
25 worked closely with FRA. You're right, he did receive this

BP

2697

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 report. It is their work product, but he engaged with them
2 during it and after it.

3 THE COURT: Well, does that mean that anyone who
4 reads a hearsay statement can have it admitted? I mean, you
5 know, there could be some kinds of things where you say, you
6 know, I took action based on something I heard; and if it is
7 not being offered for the truth of it, then that's okay.
8 But it looks like if I'm just taking a quick glance at this
9 you'd be wanting this to be in for the substantive findings
10 that they, which I don't think I can let in through this
11 witness.

12 MR. CORRELL: Your Honor, if I may, there's another
13 purpose for this which is to show a good-faith effort to
14 investigate and just the fact that this occurred and --

15 THE COURT: Yeah, and he's testified that he went
16 out and got these folks to come in and do the analysis and
17 everything else, but the substance of the analysis has to
18 have a different evidentiary basis to come in to the jury.

19 MR. CORRELL: Correct, but the extent which this
20 was no minor investigation, this is evidence of the extent
21 of the investigation.

22 THE COURT: Yes, but that's -- the exception would
23 swallow the rule if I bought that. To show what the
24 investigation was, we can have this long document come in.
25 It may be ultimately admissible, I don't know, but I don't

BP

2698

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 think the recipient is the right foundation for it.

2 MS. ROGERS: Your Honor, just quickly on the
3 hearsay issue.

4 FRA is not available because although custodians of
5 FRA have left FRA and we can't reach them and this document
6 was admitted in the bankruptcy based on a business record
7 certification by FRA on both I think used it and it is part
8 of a court record.

9 MS. CONNELL: Your Honor --

10 THE COURT: Look, let's not spend the time on this
11 quite yet because it is not ripe.

12 So, for now, not admitted.

13 Q Mr. Frazer, did you discuss with Mr. LaPierre any of
14 the results of the FRA analysis that was done?

15 A At some point I did, yes.

16 Q Did you discuss the results with the Audit Committee?

17 A I don't remember. That committee had a lot of
18 meetings. I'm not sure if we touched on this or not.

19 Q Now, yesterday you testified that you spoke with board
20 officers about the Ackerman litigation. Did you speak with them
21 about the FRA analysis?

22 A Again, I think so, but I'm -- at some point, but I'm
23 not a hundred percent sure.

24 Q Now, yesterday you testified to Ms. Eisenberg that you
25 agreed with the decision the NRA made to sue Ackerman. Can you

BP

2699

1 tell us why?

2 A You know, the Ackerman relationship had been
3 problematic for years. The way I kind of think of it is sort of
4 like an abusive relationship. You know, they gave great service
5 and did good work. They did some really path breaking ad
6 campaigns for us back in the eighties, some good work in the
7 nineties and so on.

8 When I was in ILA, I would fight with them about their
9 messaging. You know, it sort of turned -- as I said -- into an
10 abusive relationship. You're nothing without us. We're going
11 to take the whole place down, obstructing everything we were
12 trying to get.

13 And, you know, at some point you really need to put
14 your foot down and the litigation was a way to do that.

15 Q So, I'd like to change topics and talk about a
16 frequently-discussed topic, which is the Oliver North contract.

17 When did you -- well, withdrawn.

18 Do you recall when you first undertook to try to see
19 his contract with Ackerman McQueen?

20 A At least as -- I personally was trying to get it at
21 least as early as late summer or early fall of 2018.

22 Q And when did you ultimately see his contract?

23 A February 2019.

24 (Continued on next page)

25

BP

2700

Frazer - by Plaintiff - Cross/Mr. Fleming

1 Q Okay. Now, when you saw it, had you reached any
2 conclusions about whether Lieutenant Colonel North had given his
3 consent to let you see it?

4 A I -- yeah I think so. I think -- I think he had based
5 on -- as I said, he had said that he wasn't going to show it
6 unless the company agreed to it, and they wouldn't allow it
7 unless he would. So it appeared to be by, you know, mutual
8 agreement on their side.

9 Q And were you in discussions with Ackerman McQueen's
10 lawyers during this period of time?

11 A I was.

12 Q Did they tell you ever that they needed Mr. North's
13 consent?

14 MS. STERN: Objection. Leading.

15 THE COURT: Overruled.

16 A I think so.

17 MR. FLEMING: Now, I'd like to call up for
18 identification JFX118 just not for the jury.

19 MS. STERN: Is this a new document?

20 MR. FLEMING: I tried to get it in the other day.
21 It's on the screen so.

22 Q So Mr. Frazer, do you recognize this email?

23 A I do.

24 Q And were you a participant in the communications in
25 this email?

KM

2701

Frazer - by Plaintiff - Cross/Mr. Fleming

1 A Yes.

2 MR. FLEMING: I would move its admission, your
3 Honor.

4 MS. STERN: Objection. It's hearsay, your Honor.

5 MR. FLEMING: I'm not offering it for its truth,
6 your Honor. Just to set a date and give Mr. Frazer's state
7 of mind.

8 THE COURT: Can I -- is this the whole thing, these
9 two pages?

10 MR. FLEMING: No. It goes on. So if we can scroll
11 through it and show --

12 THE COURT: I mean, it's hard for me to say what --

13 MS. STERN: We don't have a copy of it in -- it
14 wasn't provided to us electronically.

15 MR. FLEMING: Can we scroll through the document?

16 Can I ask further foundation questions, your Honor?

17 THE COURT: Well, I'd just like to look at it.

18 MR. FLEMING: Sure.

19 MS. STERN: Ali, can we go to the end?

20 THE COURT: Work backward. Okay. Page before.

21 Page before. Page before. Page before. A lot of talk
22 about traffic. Page before.

23 Okay. I'll admit it. You can't use it for the
24 truth of the matter asserted about how bad the traffic was
25 at the particular time.

KM

2702

Frazer - by Plaintiff - Cross/Mr. Fleming

1 This is admitted -- I think it's correct. It's for
2 the -- what Mr. Frazer is being told about various things
3 and whether they are true or not is not what this document
4 is for.

5 MS. STERN: Your Honor, we just note that it does
6 not appear that it's the entire email chain. We are a
7 little bit hampered by the fact we don't have a hard copy,
8 but from what we can see on the screen and we don't have the
9 ability to look at that independently.

10 THE COURT: Well, I would ask that they get a hard
11 copy, but everybody has all the same documents in this case.

12 If on redirect you want to bring up a different
13 part of the chain, you're certainly free to do that.

14 MR. FLEMING: I would just note that its been an
15 exhibit as you can see several times.

16 Q Mr. Frazer, who is Steve Ryan?

17 A I'm sorry.

18 Q Who is Steve Ryan?

19 A Steve Ryan is a lawyer at a DC-based law firm that
20 represented Ackerman at that time.

21 Q Okay. Had you had discussions with Mr. Ryan about
22 seeing Mr. North's contract?

23 A Yes. He was one of the individuals we were in touch
24 with about those requests.

25 Q And does this -- having reviewed this email, does this

KM

2703

Frazer - by Plaintiff - Cross/Mr. Fleming

1 refresh any recollection about the date on which you set up to
2 see Mr. North's contract?

3 A It does.

4 Q And what date was that?

5 A February 26, 2019.

6 Q And do you recall actually seeing the contract on that
7 date?

8 A I did.

9 Q And what time of day was that?

10 A I think he was on time. About 8:00 a.m.

11 Q Okay. Now did Lieutenant Colonel North challenge the
12 Brewer Firm engagement at some point in time?

13 A He did.

14 Q And do you recall what day that was?

15 A I think the first communication from him questioning
16 the approval or validity of the contract was later that day.

17 Q Now, you testified that you responded to Lieutenant
18 Colonel North's challenge by sending out a request for help to
19 Morgan Lewis, the law firm; is that right?

20 A Correct.

21 Q Okay. What was Morgan Lewis' conclusion to the
22 question you posed to them?

23 MS. STERN: Objection.

24 THE COURT: On what grounds?

25 MS. STERN: It's both hearsay and it's also

KM

2704

Frazer - by Plaintiff - Cross/Mr. Fleming

1 represented in a document.

2 THE COURT: I was going to say hasn't the written
3 document already been admitted into evidence.

4 MS. STERN: Yes, it has, your Honor.

5 THE COURT: Overruled.

6 Q So speaking to that, can we turn to Tab three in your
7 binder which is PX 658 which is in evidence. And I would direct
8 your attention on the first page of -- well, I would direct your
9 attention on the first page to the second to last paragraph
10 beginning, "In the event."

11 A Yeah, I see it.

12 Q Okay. Can you read that out loud?

13 A Sure. The firm writes, "In the event that the Board
14 officers believe it is in the best interest of the association
15 to terminate the existing engagement with the Brewer Firm, they
16 should obtain an authorizing resolution of the Board of
17 Directors or the executive committee" --

18 THE COURT: You have to read a little bit more
19 slowly. It's surprising how much faster we all talk when we
20 are reading.

21 A I'll start after the comma if that works.

22 "They should obtain an authorizing resolution of the
23 Board of Directors or the executive committee withdrawing
24 management's authority to engage the Brewer Firm."

25 Q So based on your -- based on your knowledge of the NRA

KM

2705

Frazer - by Plaintiff - Cross/Mr. Fleming

1 Bylaws, does the NRA president have authority to do anything of
2 that sort?

3 A Yes. The president has the authority to call a special
4 meeting of the board, to call a meeting of the executive
5 committee and under special circumstances even on less than
6 48 hours notice. And of course at a regular meeting of either
7 of those bodies, the president can offer any resolution he
8 desires.

9 Q And is it fair to say that you believed he had the
10 authority to do that for the purpose of terminating the Brewer
11 engagement?

12 MS. STERN: Objection. Leading.

13 THE COURT: Sustained.

14 Q Well, let me ask you this way.

15 Did Lieutenant Colonel North convene a meeting of the
16 Board of Directors or the executive committee for the purpose of
17 terminating the Brewer Firm engagement?

18 A No.

19 Q Now, you testified yesterday about Lieutenant Colonel
20 North's compliant about the size of the law firm bills.

21 Do you recall that?

22 A I do.

23 Q Can you educate the jury on how such billings might
24 violate -- might violate NRA policy?

25 A You know, any -- any amount that we pay to a vendor has

KM

2706

Frazer - by Plaintiff - Cross/Mr. Fleming

1 to be, you know, fair, reasonable, within the contract amounts
2 and/or if there is an amount specified.

3 Q And were you taking any steps to ascertain that that
4 was -- the Brewer Firm was billing within the bounds of its
5 engagement?

6 A Sure.

7 Q What were you doing?

8 A The invoices would come in every month. I would review
9 them top to bottom thoroughly. They were detailed invoices, and
10 I would ask questions about anything that I didn't understand or
11 that might have seemed out of line and always got satisfactory
12 answers.

13 Occasionally, there would be an adjustment, and you
14 know, it was a pretty simple process.

15 Q Now, there's been a lot of testimony in this, so I'll
16 just ask the simple question.

17 Were you alone in doing that review?

18 A No. After -- well after or at the same time the
19 treasurer of the association would get the bills and review them
20 as well.

21 Q Now, did you ever make any of the Brewer Firm's bills
22 available to Lieutenant Colonel North as he was requesting?

23 A I did.

24 Q When did you do that?

25 A My recollection is it was later on that same day

KM

2707

Frazer - by Plaintiff - Cross/Mr. Fleming

1 February 26 that I informed Colonel North that -- that -- that
2 the invoices for the issues that he wasn't conflicted on would
3 be available for his inspection at my office.

4 Q And where are those bills today?

5 A They are in a box in my office.

6 Q Has Lieutenant Colonel North ever come to see them?

7 A No. I put them in an empty desk drawer, and they sat
8 there for two years probably.

9 Q Okay. New topic. Quick question. Yesterday you were
10 asked questions about dissolution.

11 Do you recall the questions?

12 A I do.

13 MS. STERN: Objection, your Honor.

14 THE COURT: Why don't you just go to the questions
15 rather than summarizing the testimony.

16 Q The question is do you have an understanding of what is
17 meant by dissolution?

18 MS. STERN: Objection, your Honor.

19 THE COURT: Overruled.

20 A Dissolution is the termination of the existence of an
21 organization.

22 Q And so the dissolution of the NRA would mean what to
23 you?

24 MS. STERN: Objection.

25 THE COURT: Overruled.

KM

2708

Frazer - by Plaintiff - Cross/Mr. Fleming

1 A Basically, a corporate death penalty.

2 Q So would it be out of existence if it was dissolved?

3 A Yes.

4 Q Now, do you recall testimony about the 990 and travel
5 expenses?

6 A I do.

7 Q You started in your position in 2015; right?

8 A Yes.

9 Q Did you believe the organization followed a written
10 policy on first class and charter travel?

11 A Yes.

12 Q What was that based on?

13 A It was based on -- on reviewing both the travel policy
14 published to employees and other policies that were -- are in
15 the Board policy manual.

16 Q And did you have any understanding whether your view
17 that the NRA followed a written policy on these issues differed
18 from the historical view taken by the NRA before 2015?

19 MS. STERN: Objection. Leading.

20 A I'm sorry.

21 THE COURT: Hang on a second. Overruled.

22 THE WITNESS: I'm sorry. Could I have the question
23 again?

24 MR. FLEMING: Can you read it back?

25 (Whereupon, at this time the referred to

KM

2709

Frazer - by Plaintiff - Cross/Mr. Fleming

1 question was read back by the Reporter.)

2 A I don't think -- I think 2015. And from 2015 until we
3 comprehensively amended the policy in '21, I think that the
4 policies were fairly clear.

5 Q Now, did there come a time when the NRA changed its
6 view that it was following a written policy on first class and
7 charter travel?

8 A I think there was a little bit of a difference of
9 opinion on that internally.

10 Q But did there come a time when the NRA changed how it
11 treated that question on the 990?

12 A Yes.

13 Q When was that?

14 A That was on the 2019 form that was filled out in late
15 2020.

16 Q Can you describe what happened to cause that change?

17 A Yes. Craig Spray was reviewing the form. He was
18 asking for information about all of this. And when he -- he --
19 shortly before the form was filed, he was looking at the issue
20 of approvals for travel upgrades and questioned whether we were
21 following a policy about having approvals for such -- for first
22 class or business class upgrades.

23 His position -- the position he expressed in
24 conversations with me was that we wouldn't follow a policy
25 because he couldn't locate written approvals for board members

KM

2710

Frazer - by Plaintiff - Cross/Mr. Fleming

1 in particular.

2 Q Well, I'm not asking about board members. I'm talking
3 about the travel policy for employees.

4 A Oh, sure. That was a little bit different. Yes, there
5 was a policy on that.

6 Q Do you recall what Schedule J is on the 990?

7 A I do.

8 Q What is Schedule J?

9 A Schedule J is an -- is an attachment or disclosure
10 attachment to the 990 that talks about compensation issues
11 primarily.

12 Q Okay. Do you recall the testimony in this case about
13 Schedule J and box checking?

14 A Yes.

15 Q What does the box checking indicate?

16 A Check boxes as to whether certain type of expenses or
17 benefits were paid or reimbursed to officers, directors or key
18 employees. And then there is a box about whether you followed
19 written policies about those types of expense.

20 Q Sir, okay. And historically, the NRA had checked the
21 box "yes;" is that right?

22 A Yes.

23 Q All right. And is it your testimony that that changed
24 with the 2019 990?

25 A Yes.

KM

2711

Frazer - by Plaintiff - Cross/Mr. Fleming

1 Q Okay. And I'll go back and ask you ask you the same
2 question.

3 Can you describe the circumstances of how that came
4 about?

5 A Yes. Mr. Spray was, you know, raising fair questions
6 about some of the travel records he saw and he wondered whether
7 there had been written approvals. He believed that there hadn't
8 been. I went looking and found written approvals for the
9 upgrades he was asking about. He didn't believe that they -- he
10 didn't believe that they were sufficient. I thought they were.
11 I thought with respect to board members they actually tracked
12 the policy that was in place for board members at that time and
13 then the employee policy was a little bit different as well.

14 Q Okay. Now -- but in 2019, did the NRA check the box
15 "no," that it did not follow written policy with respect to
16 first class and charter travel for employees?

17 A Yes.

18 Q And was that the first time it had done so to your
19 knowledge?

20 A To my personal recollection, yes.

21 Q Okay. And when was the 2019 990 filed?

22 A Mid-November 2020.

23 Q And when had the Attorney General filed this case?

24 A August 6, 2020.

25 Q So a couple of months before then.

KM

2712

Frazer - by Plaintiff - Cross/Mr. Fleming

1 A Yes.

2 Q Did you have any understanding about whether that
3 filing by the Attorney General had spooked Mr. Spray in any way?

4 MS. STERN: Objection.

5 THE COURT: I think you may need to ask that a
6 little more of a factual way.

7 Q Did you have any conversations with Mr. Spray that gave
8 you any indication that he might have been unnerved by that
9 filing?

10 MS. ROGERS: Object to the extent it calls for
11 privileged conversations.

12 MS. STERN: The objection is leading.

13 THE COURT: Just sorting through all of that.
14 Overruled on the leading, but the -- to the extent that he
15 was not asking for or seeking legal advice if there is a
16 conversation about that filing, you can answer.

17 A I don't remember a specific conversation on that topic.
18 I know Craig was being very, very careful.

19 Q More careful than usual in your experience?

20 A Well, it was his second year signing the form, and the
21 first year I don't remember him raising any significant
22 questions.

23 Q Now, you had talked about board or -- withdrawn. You
24 had talked about travel expenses for board members just a moment
25 ago.

KM

2713

Frazer - by Plaintiff - Cross/Mr. Fleming

1 Do you recall?

2 A Yes.

3 Q All right. Can you go to Tab 32 of your binder.

4 Are you able to find a policy that relates to board
5 member travel expenses?

6 A Sure. If you give me a moment.

7 Q PX 421 in evidence. Sorry. Nope. Get rid of that
8 first page.

9 I think it's Page 36 of 300.

10 A I think I went past it. Yes. I'm sorry. I see it.

11 Q And I direct your attention to the January 26-27, 1985
12 Board of Director's paragraph.

13 Do you see that?

14 A I do.

15 Q All right. Can you tell us what that reflects?

16 A That reflects the policy that was adopted on the -- on
17 that date in 1985 regarding airfare for attendance at board
18 meetings.

19 Q Okay. And was this policy in effect -- well,
20 withdrawn.

21 Has this policy been changed?

22 A Its been changed now.

23 Q When was it changed?

24 A 2021.

25 Q And before 2021, it was in effect?

KM

2714

Frazer - by Plaintiff - Cross/Mr. Fleming

1 A Yes.

2 Q And I direct your attention to the second sentence.

3 Can you read that out loud?

4 A Sure. It says, "Any special circumstances requiring a
5 variance from that policy must be approved by the executive vice
6 president."

7 Q And what did you understand that sentence to mean as a
8 practical matter for getting approval for variances to travel
9 expenses?

10 A That there had to be an approval by the EVP, but that,
11 you know, it didn't say that it -- it had to be in writing.

12 Q And did you have a debate with Mr. Spray about this
13 issue in or around November 2020?

14 A I did.

15 Q Can you tell us what that -- what was said in that
16 conference?

17 A Sure. So when he asked as I think I mentioned a couple
18 of minutes ago, he asked about approvals for upgrades that he
19 was seeing in documentation of board member travel and I located
20 some emails indicating that Andre Fisher, Mr. LaPierre's
21 assistant saying that Mr. LaPierre had approved travel upgrades
22 for a few people. And then there was another one involving one
23 of my own employees, and Mr. Spray's response was, these aren't
24 approvals. You know, there is no Wayne says.

25 I pointed out to him that the policy in effect at the

KM

2715

Frazer - by Plaintiff - Cross/Mr. Fleming

1 time didn't require a, you know, written piece of paper signed
2 by the EVP. He disagreed with that, and I think that was the
3 basis of his checking the form.

4 Q And who is Andre Fisher?

5 A Mr. LaPierre's long-time executive assistant.

6 Q Did you view writing by Ms. Fisher about what Mr.
7 LaPierre had said to be what Mr. Spray had characterized as
8 Wayne said approvals?

9 A I thought it was a written documentation of an approval
10 that had been given by Mr. LaPierre.

11 MR. FLEMING: Can we call up PX 1890 for
12 identification only. Not for the jury. 1890. And for the
13 benefit of the witness and the Court and everyone, can we
14 scroll from the bottom up slowly.

15 THE COURT: Has this not been admitted yet?

16 MR. FLEMING: It has not.

17 THE COURT: None of it? I just recall some of
18 these from maybe the Spray deposition.

19 MR. FLEMING: There was, but this was one of the
20 attachments that included all of the, you know, things that
21 was not included.

22 THE COURT: So a portion of it may have already
23 been in front of the jury but not all of it.

24 MR. FLEMING: That's right. That's right. Scroll
25 up please. Again.

KM

2716

Frazer - by Plaintiff - Cross/Mr. Fleming

1 MS. STERN: Plaintiff has no objection.

2 MR. FLEMING: Again --

3 THE COURT: Does anyone have an objection?

4 MR. CORRELL: No objection, your Honor.

5 MR. FARBER: No objection.

6 MS. ROGERS: No objection.

7 THE COURT: Okay. I'll admit it.

8 Q So Mr. Frazer, have you had a chance to review this
9 email and do you recall it?

10 A I do. Well --

11 Q So what does it show?

12 A What it shows is a series of communications where Mr.
13 Spray had asked for documentation of approvals for travel
14 upgrades for certain people.

15 I had asked staff members in my office here mentioned
16 Steven McCormick who was my executive assistant at the time to
17 search the records and find what we had on file. Steven
18 forwarded them to me. I forwarded them to Craig Spray and we
19 -- and you know, Mr. Spray responds as you saw in the first
20 page.

21 Q Okay. And just to cut this a little bit short. Does
22 this email address the approvals for three board members?

23 A It does.

24 Q Marion Hammer, Susan Howard. And is it Major Brown?

25 A Colonel Brown. Lieutenant Colonel to be precise.

KM

2717

Frazer - by Plaintiff - Cross/Mr. Fleming

1 Q Did you view these to be written approvals, by the way?

2 A I did.

3 Q You can take it down.

4 Changing topics again. Esther Schneider. Do you
5 recall the testimony about Ms. Schneider asking questions of
6 board counsel Wit Davis?

7 A I do.

8 Q Did you subsequent to that email have a discussion with
9 Ms. Schneider?

10 A I did.

11 Q Was it in person or by telephone?

12 A It was by phone.

13 Q How long was the conversation?

14 A About 40 minutes.

15 Q Now did she in the course of that conversation provide
16 any information that you hadn't heard before?

17 A No. She was asking questions.

18 Q What, if anything, did you tell her in that
19 conversation about the work you were doing?

20 A We -- we bounced around a lot of different topics that
21 she had raised and I tried to answer her questions as best I
22 could about the status of different litigation matters,
23 investigations, potential things that we might be doing, and you
24 know, tried to have a dialogue with her.

25 Q And when had you started the work that you were talking

KM

2718

1 to her about?

2 A She was asking about a lot of different topics, so some
3 cases weeks and some cases months.

4 Q How did she respond to your message?

5 A She was argumentative.

6 Q Had you ever come to learn about an incident where Ms.
7 Schneider had insulted President Meadows?

8 A I did hear about that at some point.

9 Q How did you hear about that?

10 A I don't remember exactly how.

11 Q Did you ever have any other information about Ms.
12 Schneider's poor behavior?

13 MS. STERN: Objection.

14 THE COURT: Sustained.

15 (Continued on the following page.)

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2719

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 THE COURT: Sustained.

2 Q Couple questions about Rocky Marshall.

3 A Sure.

4 Q At the time Mr. Marshall first asked to see the NRA's
5 D&O insurance policy, did you have it?

6 A No.

7 Q Do you recall when you finally -- well, withdrawn.
8 He had asked you in or about August 2021, is that
9 right?

10 A Correct. I think it was around the first week in
11 August.

12 Q Do you recall when you first received the insurance
13 company policy?

14 A End of August, last few days of August.

15 Q Well, are you sure about that?

16 A The policy, yes.

17 Q Now, when you -- do you recall testimony that you had
18 required Mr. Marshall and others to come to the office to view
19 the D and O policy?

20 A I told Mr. Marshall as I -- as I told others around
21 that time and since that they could inspect -- I had requests
22 for other documents and I told them all they could review those
23 documents at headquarters. In Mr. Marshall's case, I also tried
24 to accommodate by making them available at the annual meeting
25 and board meeting that were coming up.

BP

2720

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 Q Did the NRA view the D&O policy to be a sensitive
2 document?

3 A Yes, we've always viewed specific insurance policies to
4 be sensitive.

5 Q Was there a practice at the NRA to require directors to
6 come to the office to view sensitive documents?

7 A Yes.

8 MS. STERN: Objection, leading.

9 THE COURT: Overruled.

10 A Yes.

11 Q Did you ever receive any instruction from the board not
12 to send out this particular D&O policy?

13 MS. STERN: Objection.

14 THE COURT: Overruled.

15 A Before responding to Mr. Marshall's request, I spoke to
16 the board leadership or at least exchanged e-mails with the
17 board leadership president and vice presidents and was told that
18 we should stick with policies and keep things at headquarters.

19 Q And did you apply that practice to everyone?

20 A Yes. I did have a couple of directors later come to
21 headquarters to review insurance policies.

22 Q Now, did you bring the policy to the board meeting as
23 you had promised?

24 A I did.

25 Q Did Mr. Marshall fly from Texas to the meeting in

BP

2721

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 Charlotte?

2 A I don't know how he got there, but he attended the
3 meeting.

4 Q So COVID did not prevent him from coming?

5 A No.

6 Q Did Mr. Marshall ask to see the policy at the meeting?

7 A No.

8 Q Now, another topic. Messages to the board, you
9 testified about this, do you recall, as secretary you convey
10 messages, certain messages; is that right?

11 A I do.

12 Q Now, you were asked about a particular message you
13 forwarded from President Meadows to the board. Do you recall
14 the questions?

15 A I do.

16 Q Did you endorse the content of that message?

17 A Without looking at it, no, I didn't say anything. I
18 had a cover note that said, Please see the message below from
19 Ms. Meadows or something like that.

20 Q Can you recall a time when you as corporate secretary
21 had ever endorsed a message from the board or from the
22 president?

23 A Not offhand.

24 Q Did you ever receive advice --

25 A I might have said something like, you know, please --

BP

2722

J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 you know, there might have been some congratulatory message from
2 a president or something like that where I would say, Please
3 join us all congratulating someone; but I don't know the -- I
4 don't remember particularly.

5 Q But apart from that, you have no memory of endorsing
6 any particular content?

7 A No.

8 Q And were you ever advised when you started as NRA
9 secretary about being neutral?

10 MS. STERN: Objection, hearsay.

11 THE COURT: Just what he was advised, no. It's
12 overruled.

13 Q Can you describe what that -- what that advice was?

14 MS. STERN: Objection.

15 THE COURT: Overruled.

16 A Sure. When I was first elected secretary, I had been
17 working closely with Major Land, Jim Land, who was retiring and
18 he was in his late is seventies and ready to retire, extremely
19 well-respected person within the association, legendary career
20 in the Marine Corp., had been elected in a four-way race for the
21 to secretary's job in I think 1994.

22 And I sat with him for several hours when he was in
23 there cleaning out his office and said -- and he gave me a lot
24 of advice about how did the position. Part of it was, Treat
25 them all the same. He said, "What you do for one board member,

BP

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J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 you're going to have to do for all of them. Everything you do
2 sets a precedent." And I've tried to stick by that.

3 Q Okay, change topics, last topic.

4 There's been a lot of testimony about the organization
5 moving toward compliance?

6 A Yes.

7 Q Do you recall that testimony?

8 A I do.

9 Q In your view, does Mr. LaPierre get enough credit for
10 that?

11 A No. Mr. LaPierre has been a hundred percent on board
12 with everything we've done over the last five, six years.

13 Q And you testified yesterday that he never breached your
14 trust and that he was always open and honest with you.

15 Do you recall that?

16 A Yes.

17 Q Now, you've worked with him for decades now, is that
18 right?

19 A Yes. I met him shortly after I started at an entry
20 level job in 1993.

21 Q So, based on your observations of him, do you have a
22 view about whether he wanted what was best for the NRA?

23 A Absolutely.

24 MR. FLEMING: I have nothing further. Thank you.

25 THE COURT: Okay. Anything further from the State?

BP

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J. Frazer - by Plaintiff - Cross/Mr. Fleming

1 MS. STERN: No, your Honor.

2 THE COURT: Anything further from the NRA?

3 MS. ROGERS: No, your Honor.

4 THE COURT: Anyone else?

5 MR. CORRELL: No, your Honor.

6 MR. FARBER: No, your Honor.

7 THE COURT: All right, thank you, sir. You step
8 down.

9 THE WITNESS: Thank you, your Honor.

10 (Whereupon, at this time the witness was then
11 excused.)

12 THE COURT: For the State, next witness?

13 MS. CONNELL: Your Honor, the State calls
14 Lieutenant Colonel Willes Lee.

15 THE COURT: Okay, let's bring the witness in,
16 please.

17 Do you know where he is?

18 MS. CONNELL: Your Honor, we're told Colonel Lee
19 would be here yesterday and then this morning. He's an NRA
20 witness.

21 THE COURT: Any intel you can offer?

22 MS. ROGERS: I believe he is around here somewhere.
23 We'll determine where.

24 THE COURT: We'll call this an informal break. You
25 can stretch, fix the shades if you want. Move them back.

BP

2725

Proceedings

1 (Brief pause in the proceedings)

2 MS. CONNELL: I apologize for the break, your
3 Honor. We had no idea this was --

4 MR. BREWER: Your Honor, I apologize. Colonel Lee
5 is nearby. We have been in contact with his counsel.

6 Apparently, there was some family situation that
7 arose. He's got a father that is 103, but I've now been
8 informed he's a few minutes away.

9 We do have Lisa Supernaugh who is also in the
10 lineup. If that pleases the plaintiffs, we can make her
11 available.

12 I'm sorry, your Honor. This is not a problem any
13 of us anticipated. I apologize again.

14 THE COURT: Okay, I'll leave it up to the State for
15 now. We can either take a break and wait, or we can
16 shuffle.

17 MS. CONNELL: I want to do whatever is the most
18 efficient. If the jury is okay with taking their break now
19 and Colonel Lee will be here in that time, that's a way to
20 go. If you prefer to proceed with Ms. Supernaugh, we're
21 happy to do that.

22 MR. BREWER: Appreciate the accommodation.

23 THE COURT: Start your first deliberation now. Are
24 you all interested in taking a short break now?

25 JURORS: Yes.

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Proceedings

1 THE COURT: All right, we'll take a break.

2 COURT OFFICER: All rise, jury exiting.

3 (Whereupon, at this time the jury then left the
4 courtroom.)

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

7 * * * *

8 THE COURT: Just an update. I don't know what
9 folks are hearing, but the court officers are in touch with
10 Colonel Lee security detail and just a few minutes ago they
11 said they're about twenty, twenty-five minutes away.

12 MS. CONNELL: Yes, your Honor, Mr. Brewer just
13 told us that. So we're going to go with Ms. Supernaugh, I
14 guess.

15 THE COURT: You can sit.

16 Before we bring the jury back, there's been an
17 objection that's come up a few times, and I've overruled it
18 without explanation because I didn't want to get into it in
19 front of the jury.

20 Here's my view on the references to the fact that
21 there was a dissolution claim at the beginning.

22 In my view -- first of all, it is a historical fact
23 and it is relevant in my view factually, given the challenge
24 to the amount spent on legal fees. My judgment has been
25 that the historical fact that the case had a dissolution

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Proceedings

1 claim is factually relevant.

2 Now, I know typically you don't talk about
3 dismissed claims, but here I think for unusual reasons, it
4 has some factual significance.

5 Now, the question is whether there's any need for
6 any explanation, and it can be from the bland to the
7 somewhat more specific. I can say to the jury, "You've
8 heard reference to a claim for dissolution of the NRA," and
9 then say, "While that was in the original complaint, it is
10 no longer in the case," just say that, as opposed to, "While
11 that was in the original complaint, it was dismissed by the
12 Court." Either one of those is both accurate, and I think
13 neutral.

14 The concern would be that if the jury is sitting
15 there thinking that's still in the case and something that
16 they have to sort of either they're worried about or that
17 they're going to have to think about or that it is still
18 hanging over this, that might be something that's worth
19 disabusing them of.

20 MS. CONNELL: Your Honor, Ms. Stern and I had
21 discussed that. We're going to ask you for a curative
22 instruction.

23 We were particularly concerned about a statement
24 that Mr. Frazer made about dissolution in seeking to take
25 the NRA's money and give it to other sources; and I think

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Proceedings

1 your first kind of bland statement would be fine, and I
2 think it would both serve the purpose that you're admitting
3 those statements for and not mislead the jury.

4 THE COURT: Right, I don't think it is curative
5 because I don't think there was anything inappropriate about
6 it, but just explanatory.

7 MS. ROGERS: Your Honor, saying that that may have
8 been it was in the case, but it was dismissed does not
9 impeach the witness because he was telling the truth. He
10 was basing his actions on a true perception of the case.

11 THE COURT: I think the phrasing I was thinking
12 of was that it was in the case originally, but it is no
13 longer in the case now and it is not something you're going
14 to be having to address, rather than getting into dismissal
15 which gets a little more complicated.

16 MS. ROGERS: I understand, your Honor.

17 THE COURT: All right. So, with both sides think
18 that's at least a fair way to describe it, I'll tell the
19 jury when they come in.

20 All right, so we're going to switch tracks,
21 right?

22 MS. CONNELL: Yes, your Honor, to Lisa Supernaugh.

23 THE COURT: I'll let you announce that. Let's get
24 the jury, if they're ready.

25 Also, while we're waiting, has somebody sent me or

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Proceedings

1 if you can send me the demonstrative you want me to look at
2 over the lunch break?

3 MS. COUTU: Your Honor, I have that right here and
4 a copy of our letter of last night.

5 (Handed up to the Court)

6 THE COURT: Thanks.

7 MS. ROGERS: Your Honor, before we get the jury, my
8 understanding is that Ms. Supernaugh is getting into the
9 building; but I don't know if we want them to wait for her
10 so maybe we should give them another five minutes break.

11 THE COURT: You can't really make this up.

12 All right, can you -- if they're not already
13 assembling, just tell them to hang a minute more.

14 (Pause in the proceedings)

15 THE COURT: While we're waiting, I meant to ask you
16 about this.

17 I see there's a statute-of-limitations argument in
18 the papers here. Where would I go to find the State's
19 position on statute of limitations? I'm sure it's in some
20 court papers somewhere.

21 MS. CONNELL: Yes, your Honor.

22 THE COURT: Can you turn the mike on.

23 MS. CONNELL: Yes, your Honor. I think it would be
24 in -- best summarized in the opposition to Mr. Powell's
25 summary judgment motion, and I'm sorry, I don't have the

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Proceedings

1 NYSCEF number of our memo --

2 THE COURT: I'll find it. I don't recall deciding
3 it, one way or the other, did I?

4 MS. CONNELL: You did not decide it because you
5 decided Mr. Powell had waived it. But I would point the
6 Court, in particular, to the Porter case from the Supreme
7 Court, 328 U.S. 395, which we think is very important here.

8 THE COURT: For the New York statute of
9 limitations?

10 MS. CONNELL: Yes. I think, fundamentally, your
11 Honor, the argument is that this is a legal issue or legal
12 claim, so a three-year statute of limitations applies; and I
13 think the Porter case is definitive.

14 Our position has always been that this is a
15 primarily equitable case, which seeks primarily equitable
16 relief and that even to the extent money relief that is
17 monetary in nature is sought is in the form of restitution
18 to the NRA, the Porter case establishes that's equitable
19 nature when the government seeks such relief; and, thus,
20 six-year statute of limitations applies.

21 Here, in addition there's the fiduciary in place
22 that tolls the statute of limitations. That can be found in
23 the Trump case that we cited in the Powell memorandum of law
24 along with a plethora of other authorities.

25 MS. COUTU: Your Honor, if I may briefly respond to

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Proceedings

1 that.

2 Your Honor actually already decided when you
3 bifurcated this case that as to especially the individual
4 defendants, that it is predominantly monetary damages that
5 are being sought here and it is actually the law of the case
6 here.

7 THE COURT: In this phase of the trial, for sure,
8 it's that; but the argument is that it is the claim that
9 determines the statute of limitations.

10 MS. COUTU: Your Honor --

11 THE COURT: Look, I'm not going to decide this as
12 we sit here right now. I will note, by the way, that the
13 section of the N-PCL doesn't actually talk about fiduciary
14 duties. It just says duty, but whatever it is --

15 MS. CONNELL: The Trump Foundation case spoke to
16 this, your Honor. It is by a colleague in the Supreme
17 Court, but it did apply a six-year statute of limitations
18 even where there were equitable and monetary relief sought
19 and so I think that should guide the Court --

20 THE COURT: Now, what you call restitution here, I
21 haven't heard your damages witness at this point; but is it
22 -- it's compensatory, right? The idea whether it is
23 related-party transaction or whatever, it is not
24 disgorgement. I mean, you may be seeking -- I don't know
25 whether you're still seeking return of salary, but with

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Proceedings

1 respect to excess benefit transactions or whatever, those
2 are compensatory; right?

3 MS. CONNELL: Well, your Honor, first the N-PCL 720
4 permits an accounting, and it permits the Court to direct
5 the -- the officers or directors, whoever, to return the
6 monies owed to the NRA.

7 THE COURT: Well, we have sailed passed this idea
8 as an accounting -- I think the word "account" there is of
9 somewhat unclear. By everyone agreeing that the jury was
10 going to decide this, this is a damages case. This is not
11 some equitable proceeding to determine the number. I think
12 I specifically asked that. There's got to be a mechanism
13 for calculating this. This is not some number they pull out
14 of thin air.

15 MS. CONNELL: Your Honor, it's true to have the
16 number that the jury assigns to repay the NRA, the jury is
17 going to decide that; but that doesn't change the
18 fundamental nature of the claims here. Even the nature of
19 the monetary relief they're awarding, it is equitable in
20 nature. It is restitution.

21 That's why we pointed to Porter, and we do seek
22 equitable relief even as to the individual defendants,
23 including removal, including the fiduciary bar and those are
24 important. Those are I would say primary and predominant
25 really.

BP

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Proceedings

1 MR. CORRELL: Your Honor, with respect to
2 Mr. LaPierre, he as of today will be removed. So, she
3 can't -- the Attorney General can't base her argument on
4 that with respect to him.

5 It is a statutory claim. It is a claim created
6 based on a duty created and imposed by statute, and the
7 Trump case was settled and without any Appellate review and
8 the discussion was, I believe, a few sentences about these
9 issues.

10 So, I would argue that that is inapposite.

11 THE COURT: Well, let me think this all over.

12 So, let's -- the witness is now here. Which
13 witness is now here?

14 MS. CONNELL: I've understood that Ms. Supernaugh
15 is now here.

16 THE COURT: All right, let's bring her in. Well,
17 no, we haven't told the jury who's coming in yet.

18 So, get the jury in.

19 MS. CONNELL: Your Honor, we have EPTL claims
20 against the individuals, as well.

21 THE COURT: Did anybody raise statute of
22 limitations during the motion-in-limine marathon because it
23 would have been nice to probably have resolved that
24 evidentiary question before trial rather than trying to do
25 it now. But I'm not saying it is waived; I just don't

BP

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L. Supernaugh - by Plaintiff - Direct/Ms. Kandel

1 recall it.

2 MR. FARBER: I think we mentioned at some point,
3 your Honor, but as jury instruction issue.

4 MS. CONNELL: My recall is nobody raised it, your
5 Honor; but a discussion of whether things could be raised
6 dated back to, like, the 1990 board variance memo came up.

7 THE COURT: All right, let's bring them in.

8 COURT OFFICER: All rise, jury entering.

9 (Whereupon, at this time the jury then entered the
10 courtroom.)

11 THE COURT: Okay, have a seat, please. Sorry for
12 the back and forth there.

13 We have two witnesses, both racing to the
14 courthouse at the same time, and we're just going to take
15 the first one that arrives, which is a different one.

16 So, with that change, the State want to call your
17 next witness?

18 MS. CONNELL: Yes, your Honor. We understand
19 Ms. Supernaugh is here, and we will proceed with her; and
20 with the Court's permission, my colleague, Erin Kandel will
21 question.

22 THE COURT: Of course. Let's bring the witness in.

23

24 THE CLERK: Raise your right hand.

25 L I S A S U P E R N A U G H

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L. Supernaugh - by Plaintiff - Direct/Ms. Kandel

1 called as a witness in behalf of the Plaintiff,
2 and after having been first duly sworn by the Clerk of the
3 Court, took the witness stand and testified as follows:

4 THE CLERK: State your name.

5 THE WITNESS: Lisa Supernaugh.

6 THE CLERK: Spell your last name.

7 THE WITNESS: S-U-P-E-R-N-A-U-G-H.

8 THE CLERK: Thank you. You may be seated.

9 THE COURT: The microphone is not terribly
10 sensitive, so the closer you can sit to it, the better.

11 THE WITNESS: Okay.

12 THE COURT: Ms. Kandel, you may start.

13 MS. KANDEL: Thank you. Can everyone hear me okay?

14 DIRECT-EXAMINATION

15 BY MS. KANDEL:

16 Q Good morning, Ms. Supernaugh.

17 A Good morning.

18 Q My name is Erin Kandel, and I represent The People of
19 the State of New York in this action.

20 You worked for a period of time as Mr. Phillip's
21 executive assistant; is that right?

22 A Yes.

23 Q And, approximately, how long were you his executive
24 assistant?

25 A About twenty-one years we worked together.

BP

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L. Supernaugh - by Plaintiff - Direct/Ms. Kandel

1 Q And, eventually, you became the NRA's managing director
2 of Executive Operations general operations; right?

3 A Correct.

4 Q And do you still hold that position with the NRA?

5 A I do.

6 Q While you were Mr. Phillip's executive assistant, you
7 were responsible for processing invoices from certain NRA
8 vendors; isn't that right?

9 A That's correct.

10 Q And as part of processing invoices, you would give the
11 invoices to Mr. Phillips to review and sign if he approved
12 payment; is that right?

13 A Yes.

14 Q And once the invoices were approved and signed, they
15 were sent on to the NRA's Department of Financial Services to
16 issue payment; right?

17 A Correct.

18 MS. KANDEL: I'd like to introduce a document
19 that's been premarked for identification as PX 2068.

20 Q That's Tab 1 in the binder right next to you.

21 MR. CORRELL: Your Honor, I'm sorry to interrupt,
22 but the realtime is not functioning down here. I don't know
23 if it is up there?

24 THE COURT: It's not.

25 (Pause in the proceedings)

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L. Supernaugh - by Plaintiff - Direct/Ms. Kandel

1

2

THE COURT: Is there any objection to this exhibit?

3

MR. PETERS: No objection.

4

THE COURT: This document is admitted.

5

MS. KANDEL: Thank you, your Honor.

6

Q Ms. Supernaugh, this document is two e-mails dated
7 September 16, 2018, that you sent to Mr. Phillips. Do you see
8 that?

9

A I do.

10

Q And the subject of the e-mails is "List of Invoices
11 Processed Regularly Without Contract."

12

Do you see that?

13

A I do.

14

Q And in the two e-mails you wrote a list of NRA vendors;
15 right?

16

A I did.

17

Q And Mr. Phillips requested that you put this list of
18 vendors together; is that correct?

19

A He made that request, yes.

20

Q And one of the vendors listed in your e-mail is "GS2
21 Gayle."

22

Do you see that?

23

A I do.

24

Q And you were referring to Gayle Stanford and her
25 company GS2 Enterprises; right?

BP

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L. Supernaugh - by Plaintiff - Direct/Ms. Kandel

1 A Yes. That's the name of her company.

2 Q And you're familiar with Gayle Stanford; right?

3 A Only over the phone.

4 Q You worked with her for over twenty years; right?

5 A Close to it, yes.

6 Q Ms. Stanford billed the NRA through her company, GS2
7 Enterprises; right?

8 A Yes.

9 Q And she billed the NRA through another entity called
10 I.I. and I.S.; right?

11 A Yes, early on.

12 Q And you were responsible for processing invoices for
13 Ms. Stanford's entities, right?

14 A Yes.

15 Q Ms. Stanford would send invoices directly to you by
16 e-mail; right?

17 A Yes.

18 Q And she would send you invoices for travel services
19 she had arranged for Mr. LaPierre and other NRA executives;
20 right?

21 A Yes, but predominantly Mr. LaPierre.

22 Q And among those invoices were invoices for air
23 transportation; right?

24 A Yes.

25 MS. KANDEL: I'd like to introduce a document

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2739

L. Supernaugh - by Plaintiff - Direct/Ms. Kandel

1 that's been pre-marked for identification as PX 830. That's
2 Tab 2 in the binder.

3 And, having received no objection, I'd move to
4 admit it into evidence.

5 MR. CORRELL: No objection, your Honor.

6 THE COURT: Hearing none, it is admitted.

7 MS. KANDEL: Thank you, your Honor.

8 Q This document is a December 13, 2017, e-mail from
9 Ms. Stanford to you attaching three invoices. Do you see that?

10 A I do.

11 Q And looking at the second attached invoice which is the
12 third page of the document, this is an invoice for air
13 transportation from GS2 Enterprises; right?

14 A It is.

15 Q And this is how invoices for air transportation
16 typically looked when you received them from Gayle Stanford;
17 right?

18 A Yes, they did.

19 Q And the invoices typically included the outbound or
20 departure location for the flight; isn't that right?

21 A Yes, they included origination and destination.

22 Q And this invoice includes that information, right?

23 A Yes.

24 Q And turning now to the third attached invoice, which is
25 the fourth page of the document. This is another invoice for

BP

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1 air transportation from Gayle Stanford; right?

2 A It is.

3 Q Now, after you received air transportation invoices
4 from Ms. Stanford, you would modify the information included on
5 those invoices; right?

6 A The invoice would just then say air transportation, but
7 the original would be attached to that and filed in my office.

8 Q So, you would modify the invoices Ms. Stanford sent you
9 by removing the flight departure location and flight destination
10 location; right?

11 A Correct, for security reasons for Mr. LaPierre.

12 (Continued on next page)

13

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2741

Supernaugh - by Plaintiff - Direct/Ms. Kandel

1 Q And Mr. Phillips directed you to modify the invoices in
2 that way; right?

3 A He asked me too, yes.

4 Q I'd like to introduce a document that's been premarked
5 for identification as PX 1926. And having received no
6 objections, I would move to admit it into objection.

7 MR. FLEMING: No objection

8 THE COURT: Having heard no objection, it's
9 admitted.

10 MR. CORRELL: No objection.

11 Q Ms. Supernaugh, I would like you to turn to Page 165 in
12 your binder, and this is an invoice for air transportation from
13 GS2 Enterprises which you processed for payment; right?

14 A It is.

15 Q And earlier we were looking at the original of this
16 invoice sent to you by Gayle Stanford which is Page 3 of Exhibit
17 PX 830.

18 A That's right, yes.

19 Q And the original invoice included the flight departure
20 and flight destination information?

21 A It did.

22 Q And you removed that information from the invoice when
23 you processed it; right?

24 A I did for security reasons for Mr. LaPierre.

25 Q Now, turning to Page 166 of PX 1926. And a few moments

KM

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Supernaugh - by Plaintiff - Direct/Ms. Kandel

1 ago, we looked at the original of this invoice that Ms. Stanford
2 sent you which was Page 4 of PX 830; right?

3 A Yes.

4 Q And this is another example of an invoice where you
5 removed the flight departure and flight destination location;
6 right?

7 A It is.

8 MS. KANDEL: Okay. We are going to turn to a
9 document I'd like to introduce that's been premarked for
10 identification as PX 846. That's Tab 5 in the binder.

11 Having received no objections, I would move to
12 admit this into evidence.

13 MR. WERBNER: No objection.

14 MR. CORRELL: No objection, your Honor.

15 THE COURT: All right. Hearing none, it's
16 admitted.

17 Q Ms. Supernaugh, this document contains three emails
18 between you and Ms. Stanford dated May 10, 2018.

19 Do you see that?

20 A I do.

21 Q Looking at the bottom most email, Ms. Stanford writes
22 to you, "Would you like to separate invoices under \$50,000 for
23 the cars rather than one very large one."

24 MR. FLEMING: Objection.

25 THE COURT: I think you added a word. You said

KM

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Supernaugh - by Plaintiff - Direct/Ms. Kandel

1 like two separate invoices.

2 Q I'll try that again.

3 And Ms. Stanford writes in the bottom most email,
4 "Would you like separate invoices under \$50,000 for the cars
5 rather than one very large one."

6 Do you see that?

7 A I do.

8 Q And you understood this email as Ms. Stanford offering
9 to send you multiple invoices for under \$50,000 rather than one
10 invoice for a larger amount; right?

11 A I understand that, yes.

12 Q And in the middle email you responded to Ms. Stanford,
13 "Yes, if possible. Makes it easier on this side to get
14 processed."

15 Do you see that?

16 A I do.

17 Q And at the time you exchanged these emails with Ms.
18 Stanford, NRA policy required two NRA officers' signatures
19 approving invoices over \$50,000 for payment; right?

20 A It did and it still does, yes.

21 Q And invoices for under \$50,000 only required one NRA
22 officer signature approving the invoice for payment; right?

23 A Correct.

24 Q So if Ms. Stanford sent multiple invoices for under
25 \$50,000, those invoices only needed to be signed by Mr. Phillips

KM

2744

Supernaugh - by Plaintiff - Direct/Ms. Kandel

1 to be approved for payment; is that correct?

2 A That's correct.

3 Q And in your email to Ms. Stanford you told her to send
4 separate invoices for under \$50,000 rather than one large one so
5 it would be easier to process the invoices; right?

6 A I did. So that we could get her payment in seven to
7 ten days as she required.

8 MS. KANDEL: You can take that down, Jesse. Thank
9 you.

10 I'd now like to turn to a document that's been
11 premarked for identification as PX 853, and that's Tab 6 in
12 the binder. And having received no objections, I'd move to
13 admit it into evidence.

14 MR. WERBNER: No objection.

15 MR. CORRELL: No objection, your Honor.

16 THE COURT: Hearing none, it's admitted.

17 Q Ms. Supernaugh, turning to Page 2 of this document,
18 Page 2 is a letter dated January 18, 2018 that you wrote to Mr.
19 Powell when he was then the NRA's chief of staff and executive
20 director of general operations; right?

21 A Yes.

22 Q And the letter is attached to two pages of bullet
23 points followed by some documentation; right?

24 A It is.

25 Q And you wrote the bullet points and gathered the

KM

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Supernaugh - by Plaintiff - Direct/Ms. Kandel

1 accompanying documentation; right?

2 A I did.

3 Q And you did that at Mr. Powell's request; correct?

4 A Correct.

5 Q And turning to Page 3 of the document and looking at
6 the third bullet point, you describe an invoice for payment from
7 Paul Erickson.

8 Do you see that?

9 A I do.

10 Q And you wrote, "It is believed that this invoice is for
11 deposits and payments for Hallow's son's wedding in
12 Minneapolis."

13 Do you see that?

14 A I do.

15 Q And the last sentence of the third bullet point you
16 wrote, "Close to the date of this invoice, I recall her saying
17 that WLP wanted us to 'pass this through' as it was easier this
18 way." Do you see that?

19 A I do.

20 Q And by "her" you meant Millie Hallow; right?

21 A Correct.

22 Q And by "WLP" you meant Wayne LaPierre; right?

23 A Yes.

24 Q And the fourth bullet point you described another Paul
25 Erickson invoice dated June 20, 2012.

KM

2746

Supernaugh - by Plaintiff - Cross/Mr. Peters

1 Do you see that?

2 A Yes.

3 Q And you wrote, "It is believed that this was the first
4 of the invoices for Hallow's son's wedding."

5 Do you see that?

6 A I do.

7 Q And in the fifth bullet point, you similarly identified
8 another Paul Erickson invoice dated July 16, 2012 that you
9 believed was for deposits for Ms. Hallow's son's wedding.

10 Do you see that?

11 A Yes, this was my suspicion.

12 Q And turning to Page 5 of the document. Not Page 5.
13 Turning to Page 8 of the Document 8 of 55, this is one of the
14 Paul Erickson invoices that you believed was for Millie Hallow's
15 son's wedding; right?

16 A It is.

17 Q And the amount of that invoice is \$10,000; correct?

18 A It is.

19 MS. KANDEL: Thank you. No further questions.

20 THE COURT: Okay. Any cross?

21 MR. PETERS: Yes.

22 CROSS-EXAMINATION

23 BY MR. PETERS:

24 Q Good morning. I'm Noah Peters for the NRA.

25 Ms. Supernaugh, can you tell us how long you've worked

KM

2747

Supernaugh - by Plaintiff - Cross/Mr. Peters

1 for the NRA?

2 A I've been there 25 years.

3 Q Do you believe that the NRA is effective in advancing
4 its mission?

5 A I certainly do.

6 Q Can you -- and why do you say that?

7 A I believe we're the most effective educator in the
8 country when it comes to training.

9 MS. KANDEL: Objection. Scope.

10 THE COURT: The direct was very, very narrow, and
11 to keep things moving, you can call this witness in your
12 case if you want to.

13 I will ask you to keep to the scope of the direct,
14 so sustained.

15 MR. PETERS: Okay.

16 THE COURT: So sustained.

17 Q Yeah. Did you in your work at the NRA, did you review
18 invoices?

19 A I did.

20 Q Okay. Can you describe your role in reviewing invoices
21 that were sent to be paid by the NRA?

22 A Invoices would cross my desk at the treasurer's office
23 for things that Mr. Phillips would oversee. Certain contracts,
24 certain vendors, that sort of thing. I would apply the
25 appropriate coding, ask him questions about it if I wasn't sure

KM

2748

Supernaugh - by Plaintiff - Cross/Mr. Peters

1 what it was for and then go to him to get approval.

2 Q Would you seek to insure that the NRA only paid charges
3 that complied with its policies?

4 MS. KANDEL: Objection. Leading.

5 Q Did you or did you not see your role as insuring that
6 the NRA would follow its policies?

7 MS. KANDEL: Objection leading.

8 THE COURT: Overruled.

9 A Yes.

10 Q Can you describe how you did that?

11 A We always looked at invoices to make sure if we had
12 contracts and had backup and that sort of thing and make sure
13 that those vendors that had contracts were actually doing work
14 that was benefiting the mission itself.

15 Q And so do you believe that you were effective in that
16 role of insuring that the NRA only spent money on its mission?

17 MS. KANDEL: Objection. Scope.

18 THE COURT: Sustained. Sustained.

19 Q Okay. Did you ever raise -- did you ever raise
20 concerns to anyone about invoices that did not comply with the
21 NRA's policies?

22 A I did.

23 Q Who did you raise those concerns to?

24 A I'd speak is to Mr. Phillips about it since he was my
25 principle.

KM

2749

Supernaugh - by Plaintiff - Cross/Mr. Peters

1 Q So what were those complaints -- what would those
2 concerns consists of?

3 MS. KANDEL: Objection. Scope.

4 THE COURT: Sustained. They asked -- she was asked
5 about very specific invoices.

6 Q Okay. Fair enough. If we -- so if we move to PX -- so
7 let me take a step back.

8 Did there ever come -- was there ever a time in your
9 career when the NRA's approach to paying invoices changed?

10 A Yes.

11 Q Okay. Can you describe what that time was?

12 A Late 2017, early 2018 we did a compliance refresh that
13 we looked at all of our policies and procedures and buttoned
14 things up and made them tighter.

15 MS. KANDEL: Objection to scope.

16 THE COURT: I'm trying to figure out if that time
17 period is the time period of the invoices at issue in your
18 direct. Is that your point?

19 MR. PETERS: Yes. So if we look at PX -- yes,
20 certainly is. So if we -- do you want me -- if you look at
21 PX 2068, this is an email from September 6, 2018 which would
22 have been the time that she's describing.

23 THE COURT: Is that one of the documents she saw on
24 direct?

25 MR. PETERS: Yes. It's the first document.

KM

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Supernaugh - by Plaintiff - Cross/Mr. Peters

1 THE COURT: Well, if you want to ask her about that
2 document and then bring in whatever relevance you think it
3 has about the process that was going on around it, that's
4 one thing. But just general questioning about the process
5 changing is outside the scope.

6 MR. PETERS: Understood. Why don't I go -- I'll go
7 through that document.

8 Q Okay. So if you look at Tab 1 of the Plaintiffs binder
9 PX 2068, can you describe why you wrote this email?

10 THE COURT: You want to put that on the screen?

11 Q Yes. It's Tab 1 of the plaintiffs.

12 THE COURT: PX 2068.

13 A That was the email to Woody Phillips with contracts.

14 Q Can you describe why you wrote that email?

15 A Because we were buttoning things up. We were making
16 sure that our consultants and that sort of thing all had
17 contracts.

18 Q So what -- what was -- so if we go through this
19 document here, what specifically were you flagging for Mr.
20 Phillips about these different relationships?

21 A That these were the relationships that were being paid
22 that did not have contracts but all had value.

23 Q Okay. Can you describe a little bit, for example, what
24 Ms. Froman was being paid for?

25 MS. KANDEL: Objection. Scope.

KM

2751

Supernaugh - by Plaintiff - Cross/Mr. Peters

1 THE COURT: Overruled.

2 MR. PETERS: Yeah.

3 THE COURT: It's relevant to this document. Go
4 ahead.

5 Q Go ahead, Ms. Supernaugh.

6 A Ms. Froman was past-president of the NRA, and she would
7 be a surrogate for Mr. LaPierre and go out and speak at NRA
8 events, speak at local politico events, that sort of thing and
9 continue the Second Amendment Grassroots mission.

10 Q And you knew that how?

11 A I knew that because she would discuss with me via phone
12 that she'd be traveling for Wayne and that sort of thing.

13 Q Okay. Was she ever after that given a written
14 contract?

15 A I don't believe so.

16 Q Okay. Now Mr. Robinson, can you describe what services
17 he was performing for the NRA?

18 A Mr. Robinson's the same. Former president. He's an
19 excellent auditor and surrogate for Wayne to go out and speak on
20 the Second Amendment issues. Very politically motivated.

21 Wayne can't be in 500 different places at once, so he
22 had good folks that would be a great representation of him.

23 Q Okay. With respect to GS2, Gayle. Can you describe
24 what services Gayle was providing to the NRA?

25 A She provided travel arrangements.

KM

2752

Supernaugh - by Plaintiff - Cross/Mr. Peters

1 Q And did she -- she booked travel arrangements for
2 Mr. --

3 A She booked travel arrangements for Mr. LaPierre.
4 Wayne, yes.

5 Q Anyone else at the NRA?

6 A She would do some for Ms. Hallow car services. That
7 kind of thing, yes.

8 Q What about Mr. Keene. What was Mr. Keene doing?

9 A Mr. Keene, the same way. He's past-president,
10 wonderful politico, worked for the Reagan administration, things
11 like that and just another great speaker to go out and get the
12 Second Amendment.

13 MS. KANDEL: Just object on foundation grounds.
14 The witness hasn't described how she knows this information.

15 Q How do you know Mr. Keene was doing all this?

16 A We discussed it. He would tell me he was flying. If
17 his assistant was unavailable, I would make flight arrangements
18 for him.

19 THE COURT: Objection. Sustained. Hearsay.

20 Q What about Mr. Kopel? Do you know what services he was
21 performing?

22 THE COURT: By your personal knowledge.

23 Q By your personal knowledge.

24 A My personal knowledge, he would be a researcher and
25 writer, mogul for the Second Amendment.

KM

2753

Supernaugh - by Plaintiff - Cross/Mr. Peters

1 He would do a lot of great work to help Mr. LaPierre
2 make speeches, help us in defense cases such as Heller and
3 Brewer.

4 Q Now when you -- and would these individuals send you
5 invoices to be processed?

6 A They would.

7 Q Did you require that they had backup for those
8 invoices?

9 A No. It was just mostly verbal what they were doing.
10 Not actual backup.

11 Q But would you check in with them.

12 A Yes.

13 Q Okay.

14 A We would be in constant contact.

15 Q Okay. What about 501(c). What services was 501(c)
16 providing?

17 A 501 (c) was engaged to identify high net worth donors,
18 put together events in strategic geographical areas.

19 MS. KANDEL: Your Honor, I just object on
20 foundation grounds.

21 THE COURT: Again, just -- I'll -- to the extent
22 that you're testifying as things that you personally
23 observed and saw, that's fine. If it's things that people
24 told you, that's hearsay.

25 THE WITNESS: These are things I've personally seen

KM

2754

Supernaugh - by Plaintiff - Cross/Mr. Peters

1 my self and attended.

2 THE COURT: Okay.

3 Q Go ahead.

4 A He -- they would do small intimate dinners with some of
5 our already high net worth donors to bring more people into the
6 fold and contribute. It was very effective.

7 Q So it was effective at what?

8 A At raising funds.

9 Q What about Dave Butz? Do you have personal knowledge
10 of what services Dave Butz was performing for the NRA?

11 A I have very great knowledge of Dave Butz. He taught me
12 how to shoot myself.

13 He is about 6'6" and can tower over you so he's a great
14 shotgun instructor.

15 MS. KANDEL: Objection. Non-responsive.

16 THE COURT: Overruled.

17 Q Go ahead.

18 A He was very dedicated to youth education, when it came
19 to safety, when it came to patriotism, when it came to shooting
20 sports. And he --

21 Q Go ahead.

22 A He was always there. He was teaching Boy Scouts how to
23 shoot. He was going to disabled shoots and even in the field
24 with them with this large towering man that he would be in wheel
25 chairs equal to theirs and shoot the same way.

KM

2755

Supernaugh - by Plaintiff - Cross/Mr. Peters

1 Q Now, is Mr. Butz -- is he still alive?

2 A Mr. Butz passed.

3 Q What about Warp Speed Lou Raibla? What services based
4 on your personal knowledge was Warp Speed Lou Raibla providing?

5 A Warp Speed brought us into the world of major league
6 baseball, NFL, and brought us into a whole different demographic
7 of people that didn't understand who we were. They may be
8 Second Amendment supporters. They may be gun owners and then he
9 continued into the country music industry and made us very
10 relevant in Nashville at the time, and it just moved us into
11 mainstream people that didn't know that much about us and got to
12 learn about us.

13 Q Okay. What about Jennifer Krempinen. Do you know what
14 she was doing for the NRA?

15 A She's a writer, script writer. She writes letter to
16 potential female donors to attend summits of educational on
17 programs, political events, that sort of thing and what women of
18 the NRA can actually do. It's not just a mens' group. She
19 would write scripts, handle things like that.

20 Q Okay. What about -- did we -- did I -- what about
21 DeeDee Lancaster?

22 A DeeDee Lancaster came from politics. I can't remember
23 exactly where I worked with her on some other events.

24 She was doing logistics for these womens' events,
25 locating sites, handling all the hotel rooms and food logistics

KM

2756

Supernaugh - by Plaintiff - Cross/Mr. Peters

1 and that sort of thing. Just hired as a contractor per event.

2 Q What about Grassroots Behavior.

3 A Grassroots Behavior with Brad O'Leary was a subsidiary
4 after PM Consulting changed over, and he continued to research
5 and make our brand very relevant. He was very good with male
6 fundraising and that sort of thing.

7 Q What about Veritas Management?

8 A Veritas Management. Veritas Management brought us into
9 the world of NASCAR and introduced us to a lot of high net worth
10 folks, again, people who were with us, supported the Second
11 Amendment but just didn't understand the fight we were fighting
12 to keep this -- this right, and they were the first group, if
13 memory serves, to bring our first gold jacket million dollar
14 donor.

15 Q So in your estimation, these individuals were advancing
16 the mission of the NRA?

17 A Absolutely.

18 Q But the issue was that they didn't all have written
19 contracts.

20 A They all did not have, no, contracts, no.

21 Q Okay. So and you were -- you've testified -- testified
22 have you -- haven't you, that you were sending this email to Mr.
23 Phillips because of a compliance refresh?

24 A We were doing -- yes.

25 MS. KANDEL: Objection. Misstates the testimony.

KM

2757

Supernaugh - by Plaintiff - Cross/Mr. Peters

1 THE COURT: Why don't you just ask the question.

2 Q Go ahead.

3 A Yes, we were doing a compliance refresh. The processes
4 were always in place. We just needed to dot our I's, cross our
5 T's, tighten up some things, refresh as things changed in the
6 financial world and made sure we were right on point.

7 Q So if we go to Tab 20 of the cross binder, DX 1-0270
8 are you?

9 MS. KANDEL: I'm going to object. This is entirely
10 beyond the scope of the direct which did not get into the
11 compliance refresh.

12 THE COURT: I agree. Sustained.

13 MR. PETERS: Well, maybe we can --

14 THE COURT: You can have that all part of your
15 case. I'm not saying you can't. It's just this is just
16 about crossing Ms. Kandel's direct.

17 Q Did there ever come a time when the NRA's relationship
18 with Ms. Stanford ended?

19 A Yes.

20 Q Okay. Can you describe how that came about?

21 A We did an RFP which she won the bid on and sent her a
22 contract and she did not like the terms of the contract and did
23 not sign.

24 Q Okay. And when was the last time that the NRA had
25 dealings with Ms. Stanford?

KM

2758

Supernaugh - by Plaintiff - Cross/Mr. Peters

1 A I'm not quite sure. Maybe -- maybe 2021,2020.

2 Q Was it or was it not the way that the relationship
3 ended that you required Ms. Stanford to undergo an RFP for her
4 is services. Was there --

5 A I'm sorry.

6 Q Strike that. Was there ever a time when you required
7 Ms. Stanford to undergo an RFP for her services?

8 A Yes.

9 Q So can you describe what that process consisted of?

10 MS. KANDEL: I'm going to object as beyond the
11 scope of my direct.

12 THE COURT: Sustained.

13 Q With respect to PX 853 --

14 THE COURT: Is that in one of the binders?

15 MR. PETERS: Yes. That's Tab 6 of the plaintiff's
16 binder. If we go to Page 2.

17 Q Can you describe why it was that you put this timeline
18 together?

19 A Because there was suspicion of Mrs. Hallow with
20 invoices for Paul Erickson resurfacing again after 2012. I just
21 had a suspicion that it was not accurate.

22 Q Okay. Did you -- did you every -- who was it who
23 authorized the invoices that are described on Page 3 of this
24 document?

25 A I would code those and discuss those with Mr. Phillips,

KM

2759

Supernaugh - by Plaintiff - Cross/Mr. Peters

1 and we would get coding, approve those and send them through.

2 Q Was there ever a time in 2012 when you raised concern
3 with Mr. Phillips about any of these invoices?

4 A I remember when I told him I wasn't sure what that was
5 for, but if I had to guess, based on the timing, it was probably
6 for Millie's son's wedding.

7 Q What was Mr. Phillips response to that statement?

8 A Let me look into it and then we held the invoices and
9 it came back and it was good to go.

10 Q Okay. So Mr. Phillips -- and you didn't have any
11 further conversations, did you, with Mr. Phillips regarding why
12 he approved those invoices; did you? Is that right?

13 A No.

14 Q Okay. Now, was -- so after you raise -- so was part of
15 your job duties to review Millie Hallow's expenses?

16 A It was.

17 Q What were you reviewing her expenses for?

18 A I was reviewing her expenses from 2004 on at the
19 direction of Wayne and Woody to make sure that she was in
20 compliance with what was appropriate -- appropriate business
21 purposes, appropriate receipts.

22 Q Was there ever a time when you didn't approve expenses
23 that Ms. Hallow was incurring?

24 A Yes.

25 Q Did that happen -- did that happen frequently, is it

KM

2760

Supernaugh - by Plaintiff - Cross/Mr. Peters

1 fair to say?

2 A It happened very frequently.

3 Q Okay. So when that happened, would Ms. Hallow be
4 required to pay back the expenses?

5 A On some of the charges that would have been on the
6 corporate American Express hotel folios that were all charges,
7 she would have things on there that were inappropriate such as
8 movies, that sort of thing, and they would be deducted from her
9 expense reports so we could make the NRA whole.

10 Q And that process continued -- did that process take a
11 lot of your time?

12 A The process took a lot of time and a lot of tracking
13 down of her, yes, to get receipts and appropriate backup.

14 MS. KANDEL: I'm going to object now as beyond the
15 scope of the direct.

16 THE COURT: Overruled.

17 Q Okay. So with respect to these invoices that are being
18 discussed in Page 3 of PX 853, was there ever a time -- did you
19 or did you not ever become aware that Ms. Hallow had not been
20 fully honest as to the purpose of these invoices?

21 A I certainly did.

22 Q Can you describe that.

23 A It was when she sent an invoice through that she said
24 Wayne approved.

25 It initially started with special projects, and I

KM

2761

Supernaugh - by Plaintiff - Cross/Mr. Peters

1 kicked back on it and said what is this for.

2 Q And what happened then?

3 A She then sent an email to myself and my colleague Nick
4 Perrine that Wayne approved this invoice.

5 Q Was that true?

6 A That was not true.

7 Q Okay. How did you find out that Ms. Hallow wasn't
8 telling the truth about that?

9 A Because my boss of 21 years who had never raised his
10 voice to any of us raised his voice to me, goes what is this and
11 what are we doing. And I explained to him the process that
12 Millie had asked us to follow and found out that she had not
13 told me the truth about that.

14 Q So did Ms. Hallow ever apologize to you for lying?

15 A She most certainly did. I told her then I would never
16 do anything for her that did not have Wayne's actual signature
17 on it or approval or I heard from him directly that it was good
18 to go no matter what it was.

19 Q And then after that apology, you put together this
20 document or -- is that right?

21 A I did, yes.

22 Q Okay; and this document, can you describe your purpose
23 for putting it together?

24 A The purpose came about in talking to Mr. Powell with
25 other -- we had more Erickson invoices coming through, and there

KM

1 was more question about the Russia part of this, and I told him
2 that I had suspicions about the other Paul Erickson invoices
3 that they were for her son's wedding, and he asked me to put
4 together a timeline of all this for him.

5 Q And do you know if Ms. Hallow is still with the
6 National Rifle Association?

7 A Not to my knowledge.

8 (Continued on the following page.)

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2763

L. Supernaugh - by Plaintiff - Cross/Mr. Werbner

1 Q Was she -- do you know whether she was required to pay
2 these amounts back to the NRA?

3 MS. KANDEL: Objection, beyond the scope and lack
4 of foundation.

5 THE COURT: Overruled.

6 Q You can answer.

7 A I've been told she has, yes.

8 MR. PETERS: No further questions. Thank you.

9 MR. CORRELL: No cross, your Honor.

10 MR. WERBNER: May I proceed, your Honor?

11 THE COURT: Yes.

12 CROSS-EXAMINATION

13 BY MR. WERBNER:

14 Q Ms. Supernaugh, my name is Mark Werbner. I represent
15 Woody Phillips.

16 Have we ever met before?

17 A We have not.

18 Q It's a pleasure to meet you. I just have a few
19 questions. Let's look at Plaintiffs 2068.

20 THE COURT: Is that -- do you have a tab number on
21 that, by chance?

22 MR. WERBNER: That I think is Tab 1, your Honor.

23 Q That's the one we talked about where there was a list
24 of invoices without a written contract?

25 A Yes.

BP

2764

L. Supernaugh - by Plaintiff - Cross/Mr. Werbner

1 Q To your knowledge, did Mr. Phillips get any personal
2 benefit from those invoices not having contracts?

3 A No.

4 Q You smile when you say that. Would you explain to the
5 jury why?

6 A I don't think Mr. Phillips had any reason to need
7 personal gains from those.

8 Q From your working with him for twenty-plus years and in
9 this invoice, in particular, do you think with respect to these
10 people and vendors he act4ed in good faith or was he acting in
11 bad faith?

12 A I think he acted in good faith for the mission.

13 MS. KANDEL: Objection, lack of foundation and
14 asking for a legal conclusion.

15 MR. WERBNER: She worked with him for over
16 twenty-one years, and this relates to the document that was
17 being discussed, her impressions from this particular
18 situation in terms of her boss of twenty-plus years.

19 THE COURT: Yeah, I'm only hesitating because
20 there's nothing about this e-mail that suggests that they
21 were discussing anything relating to his good or bad faith.
22 It was just providing information.

23 So, are you asking her a different question?

24 MR. WERBNER: No, but the implication is from the
25 Attorney General that there's something wrong by not having

BP

2765

L. Supernaugh - by Plaintiff - Cross/Mr. Werbner

1 the written contracts; and so I'm rebutting that, your
2 Honor, to bring out from this witness from her personal
3 knowledge whether this situation of not having the written
4 contracts was something that was done in good faith or bad
5 faith.

6 THE COURT: Yeah, that wasn't the
7 direct-examination, though. It was -- as far as I could
8 tell, it was just getting in this document that these
9 were -- these were examples of vendors without contracts.

10 There was nothing on the direct -- at least as I
11 heard it -- attacking Mr. Phillips.

12 MR. WERBNER: Well, I think it wasn't directly
13 stated; but I think, clearly, the Attorney General offered
14 this document to suggest there was something wrong by
15 Mr. Phillips not having the written contracts and so I want
16 to rebut that inference that they made.

17 THE COURT: I think that can be part of the defense
18 case.

19 MR. WERBNER: All right.

20 Q You mentioned, Ms. Supernaugh, in reference to this
21 document that they all had value. Would you elaborate on what
22 you meant by that testimony?

23 A They all had value to the 2nd Amendment mission, to the
24 mission of the NRA. They put us in mainstream when we weren't.
25 They got us places that and opened doors that we couldn't have

BP

2766

L. Supernaugh - by Plaintiff - Cross/Mr. Werbner

1 got to just on our own.

2 Q Let's look at Plaintiff's Exhibit 1305.

3 MR. WERBNER: That was Tab 3, your Honor, that was
4 discussed in the direct-examination.

5 THE COURT: 1305? Was that Tab 3?

6 MS. KANDEL: This is in the Plaintiff's binder, but
7 I did not admit this document.

8 THE COURT: Right. Are you sure it is Tab 3
9 because Tab 3 is 1926, as far as I can tell.

10 MR. WERBNER: I'm pretty sure it is 1305. Let me
11 check what tab it is. I have it as Tab 3.

12 THE COURT: It is Tab 4. I don't think they
13 discussed this one.

14 MS. KANDEL: I did not move to admit, this document
15 was not admitted.

16 MR. WERBNER: Let me approach it a different way
17 then, your Honor.

18 Q There was testimony during direct-examination about
19 changing on the flight invoices where in one invoice it showed
20 the origination and the destination, but there was an invoice
21 that changed that and omitted the destination and origination.

22 Do you remember that?

23 A Yes.

24 Q Would you explain to the jury why that was done?

25 A That was done for the sole protection of Mr. LaPierre.

BP

2767

L. Supernaugh - by Plaintiff - Cross/Mr. Werbner

1 It was so that wandering eyes in other divisions wouldn't see
2 exactly where Mr. LaPierre was going. We wanted to keep him
3 safe. He had death threats. There was a lot going on.

4 Q You indicated that you kept the documents that showed
5 the destination in your file for audit purposes; is that right?

6 A That's correct.

7 Q Explain what you meant, why you retained the ones that
8 had the destination on them for audit purposes?

9 A I retained it for audit purposes so if there was any
10 about Mr. LaPierre's travel by the auditors, they can see how I
11 adjust the invoice and could see the actual invoice so where he
12 went, and he could elaborate on the business purpose of that.

13 Q And I presume it was Mr. Phillips who instructed you to
14 treat these invoices in that manner?

15 A He asked me to, yes.

16 Q Based on his instruction to you and you're working with
17 him on that project, do you think he was acting in furtherance
18 of the mission in good faith for the NRA, or do you have reason
19 to think otherwise?

20 A I think he --

21 MS. KANDEL: Objection, calls for a legal
22 conclusion.

23 THE COURT: Overruled.

24 Q You can answer.

25 A I think he was acting in good faith to protect Wayne

BP

2768

L. Supernaugh - by Plaintiff - Cross/Mr. Fleming

1 LaPierre and the Association, yes.

2 MR. WERBNER: I pass the witness. Thank you,
3 ma'am.

4 THE COURT: Mr. Fleming.

5 CROSS-EXAMINATION

6 BY MR. FLEMING:

7 Q Good afternoon. I have one quick question for you.

8 With respect to the first document you looked at, PX
9 2068, did I hear your testimony correctly that this was done for
10 compliance cleanup? Is that what you said?

11 A It was, yes.

12 Q Did you have occasion to work with John Frazer at all?

13 A I did, yes.

14 Q Can you tell the jury what your impressions were of
15 Mr. Frazer with respect to his contributions to compliance
16 cleanup?

17 MS. KANDEL: Objection, this is beyond the scope of
18 the direct.

19 THE COURT: Sustained.

20 MR. FLEMING: Thank you.

21 THE COURT: Do you want to take your mike back.
22 Any further questions from the State?

23 MS. KANDEL: Just a couple, your Honor.

24 THE COURT: Okay. You didn't nail it down to a
25 specific number like Mr. Fleming did, and then tripled.

BP

2769

L. Supernaugh - by Plaintiff - Redirect/Ms. Kandel

1

2 REDIRECT-EXAMINATION

3 By MS. KANDEL:

4 Q Ms. Supernaugh, turning back to the most popular
5 document in this folder, PX 2068, which is Tab 1.

6 The vendors that are listed in this e-mail, do you know
7 how much the NRA was paying these vendors without written
8 contracts?

9 A Um, off the top of my head, I'm not sure. I think
10 Mr. Keene was maybe \$4,000. It's been awhile so I don't
11 remember exact amounts.

12 Q And you had no role on the oversight of these contracts
13 with respect to the services that were being provided; right?

14 A No, not really.

15 Q And with regards to Millie Hallow, can you tell us when
16 she was required to pay money back to the NRA?

17 A It would have been, I believe, after the January 18th
18 synopsis that I wrote, that that was brought forward. I'm not
19 sure exactly when she paid it back.

20 Q And who determined how much she had to pay back?

21 A I'm not sure of that answer, either.

22 Q And when did she stop working for the NRA?

23 A I'm not sure.

24 Q And you testified that the flight -- the destination
25 and location information was removed from the invoices to

BP

2770

L. Supernaugh - by Plaintiff - Recross/Mr. Correll

1 protect Mr. LaPierre's schedule from wandering eyes; right?

2 A Yes.

3 Q And whose wandering eyes were you concerned about?

4 A It can be anybody from a file clerk in Financial
5 Services or assistant. We are not exactly the most popular
6 group, and Mr. LaPierre had a lot of death threats and that sort
7 of thing; and if people offering money to staff, things like
8 that, anything is up for grabs.

9 Q So, you were concerned about the wandering eyes of NRA
10 employees?

11 A I was concerned about anybody.

12 Q But you don't have any specific individuals in mind?

13 A No, it could have been cleaning people, if I leave the
14 invoice out on my desk.

15 MS. KANDEL: No further questions.

16 THE COURT: Anything else? Okay.

17 RECROSS-EXAMINATION

18 BY MR. CORRELL:

19 Q Good afternoon, Ms. Supernaugh. I'm Kent Correll. I
20 represent Wayne LaPierre.

21 I have, I think, one question for you. To your
22 knowledge, did Mr. LaPierre benefit from any of the invoices
23 listed in -- not having contracts for the invoices listed in
24 Tab A?

25 A No.

BP

2771

L. Supernaugh - by Plaintiff - Recross/Mr. Correll

1 MR. CORRELL: Thank you.

2 THE COURT: Anything else? Thank you very much.

3 You can step down.

4 (Whereupon, at this time the witness was then
5 excused.)

6 Does the State have the next witness to call?

7 MS. CONNELL: I'm sorry, your Honor. I just wanted
8 to check. Colonel Lee?

9 MS. ROGERS: Your Honor, we are informed that
10 Colonel Lee remains en route and will definitely be here
11 after lunch.

12 In the meantime, we have Professor Coy, who I think
13 was next on the Attorney General's list ready to testify.

14 THE COURT: Hang on a second.

15 Our court officers have been in contact with the --

16 (Brief pause)

17 MS. CONNELL: Your Honor, I don't want to waste
18 time. If Colonel Lee is still not here, then we can move on
19 to Mr. Coy.

20 THE COURT: Okay, let's do it.

21 MS. CONNELL: We're going to shuffle around for one
22 minute, if you don't mind; and Mr. Shiffman is going to take
23 this witness.

24 THE COURT: This is very exciting. We have mystery
25 witnesses and people coming in from side doors.

BP

2772

D. Coy - by Plaintiff - Direct/Mr. Shiffman

1 (Pause in the proceedings)

2 THE COURT: Good morning.

3 THE WITNESS: Good morning, sir.

4 THE CLERK: Raise your right hand.

5 D A V I D C O Y

6 called as a witness in behalf of the Plaintiff,
7 and after having been first duly sworn/affirmed by the
8 Clerk of the Court, took the witness stand and testified as
9 follows:)

10 THE CLERK: State your name.

11 THE WITNESS: David Coy.

12 THE CLERK: Spell your last name.

13 THE WITNESS: C-O-Y.

14 THE CLERK: You may be seated.

15 THE COURT: The microphone is a little weak. The
16 closer you can get, the better.

17 MR. SHIFFMAN: May I proceed, your Honor?

18 THE COURT: Yes, Mr. Shiffman.

19 DIRECT-EXAMINATION

20 BY MR. SHIFFMAN:

21 Q Good afternoon, Mr. Coy. My name is Steven Shiffman,
22 and I'm an Assistant Attorney General. Good afternoon.

23 Mr. Coy, you're currently the Second Vice President of
24 the NRA; is that correct?

25 A Yes, sir.

BP

2773

D. Coy - by Plaintiff - Direct/Mr. Shiffman

1 Q And you were elected to that position in 2021?

2 A Yes, sir.

3 Q And you've been a member of the NRA's board since
4 approximately 1998?

5 A That is correct, sir.

6 Q And you also serve on the NRA's Audit Committee?

7 A Yes, sir, I do.

8 Q And you served on that committee since approximately
9 2001?

10 A Yes.

11 Q And you're currently Vice Chair of that committee?

12 A Yes.

13 Q You've also served as Chair of that committee at times,
14 right?

15 A Yes, sir.

16 Q And, in fact, you're the Chair of the Audit Committee
17 in the early to mid 2000s; isn't that right?

18 A Yes, sir.

19 Q And in 2007, the NRA board of directors received an
20 anonymous letter complaining of various types of financial
21 mismanagement at the NRA; isn't that correct?

22 A Yes, we did.

23 Q And in that letter, the author complained about a few
24 things, including --

25 MR. FARBER: Objection, your Honor. He's reciting

BP

2774

D. Coy - by Plaintiff - Direct/Mr. Shiffman

1 from something that's not in evidence, your Honor.

2 THE COURT: Fair point.

3 Q Well, Mr. Coy, do you recall that in that letter the
4 author made a number of complaints?

5 A Yes, I do.

6 Q And did one of those complaints involve Millie Hallow?

7 A It did.

8 Q Did one of the complaints also involve private travel
9 by -- that was arranged by I.I. and I.S.?

10 A The letter did.

11 Q And one of the complaints was that the travel was
12 arranged by I.I. and I.S. rather than the NRA's approved travel
13 agent; correct?

14 A It alleged that there was private travel --

15 MR. FARBER: Objection, your Honor. He's starting
16 to say what it alleged and it was a yes or no question.

17 THE COURT: Well, at this point, what is it offered
18 for, to show that the complaint was made, not the underlying
19 truth?

20 MR. SHIFFMAN: Exactly, your Honor.

21 THE COURT: All right, you can ask.

22 A Could I hear the question repeated, please?

23 Q Sure. One of the complaints in the letter was that
24 I.I. and I.S. was used as a travel agent instead of the NRA's
25 authorized travel agent; isn't that correct?

BP

2775

D. Coy - by Plaintiff - Direct/Mr. Shiffman

1 A To the best of my recollection of the letter, yes.

2 THE COURT: Just for the jury, again, I'm
3 permitting this to come in just for the fact that the
4 witness received this information.

5 There's no evidence in front of you now that is
6 admissible as to whether it is true or not.

7 MR. SHIFFMAN: We're offering it to show that
8 Mr. Coy received it.

9 Q And you also recall that that letter raised some
10 concerns about Ackerman McQueen?

11 A Yes.

12 Q And after you received that letter, you wrote a memo
13 with some questions that you had about the letter; isn't that
14 right?

15 A I did. Could I clarify for a moment, please?

16 Q I just want to recall whether -- do you recall you
17 wrote a memo after receiving the letter?

18 A I did.

19 Q Please take a look at Tab 1 in that binder over there,
20 Mr. Coy. This is PX 1249.

21 Mr. Coy, do you recognize the exhibit that's been
22 marked as PX 1249?

23 A I do, and at some point I would like to clarify, if I
24 could.

25 Q Is this the memo you wrote?

BP

2776

D. Coy - by Plaintiff - Direct/Mr. Shiffman

1 A It is my writing style. Yes, I did write it.

2 Q And this --

3 MR. SHIFFMAN: Your Honor, we would move for
4 admission. This is a document produced by the NRA.

5 MS. ROGERS: No objection.

6 MR. CORRELL: No objection.

7 MR. FLEMING: No objection.

8 THE COURT: It's admitted.

9 Q In this memo if we look at the very first paragraph
10 there, you note that the Audit Committee is charged with
11 reviewing and making inquiry into the allegations in the
12 anonymous letter that we were just talking about; right?

13 A Yes.

14 Q And so this memo contains the questions that you had
15 with respect to the anonymous letter, right?

16 A Yes.

17 Q If you look at paragraph 2 of the letter, which we'll
18 also put up on your screen (displayed). You could look at the
19 memo, itself, in the binder if you'd like.

20 In paragraph 2 you noted your questions concerning
21 whether the NRA had appropriate policies in place related to
22 employee terminations and resignations; right?

23 THE COURT: Personnel policies.

24 A Yes, that paragraph does make that statement.

25 Q It says -- and as the Judge correctly pointed out, I

BP

2777

D. Coy - by Plaintiff - Direct/Mr. Shiffman

1 left out the word "personnel" from that statement.

2 And in paragraph 3, here you note your questions with
3 respect to ensuring that NRA expenditures for promotional
4 activities and consultants are properly budgeted and reviewed;
5 right?

6 A Yes.

7 Q If you go to paragraph 5, here you have a question in
8 this paragraph about whether -- what the reference to I.I. and
9 I.S. is; right?

10 A Yes.

11 Q You know now sitting here today that I.I. and I.S. is
12 the travel agent that Mr. LaPierre used for his travel; right?

13 A Yes.

14 Q If you go to paragraph 6, in paragraph 6, here you note
15 your questions that you had concerning the letter's complaints
16 about Ms. Hallow; right?

17 A Yes.

18 Q And you wanted to have some -- you mention in this --
19 strike that.

20 In this paragraph, you mention that you wanted to have
21 somebody look at the findings of Jacob Frenkel's report. Do you
22 see that?

23 A Yes.

24 Q You wanted to get a report from staff about the
25 procedures that the NRA had put in place in response to a report

BP

2778

D. Coy - by Plaintiff - Direct/Mr. Shiffman

1 that Mr. Frenkel wrote; isn't that right?

2 A Yes.

3 Q And you also wanted to know if the policies that were
4 put in place to response to Mr. Frenkel's report were being
5 followed or had been updated; isn't that correct?

6 A Yes, it is.

7 Q And the report that Mr. Frenkel that you refer to in
8 your memo was issued a couple of years earlier in 2003; right?

9 A Yes, sir.

10 Q And in 2003, you were the Chair of the Audit Committee;
11 correct?

12 A Yes, sir.

13 Q And at that time, in 2003, Pricewaterhousecoopers was
14 the firm that audited the NRA's financial statements; right?

15 A That is correct.

16 Q And during the audits of the NRA in the early 2000s,
17 Pricewaterhouse discovered that an NRA employee had incurred
18 over \$500,000 in credit card expenses; right?

19 A There were \$500,000 of expenses charged plus, charged
20 to the credit card.

21 THE COURT: I want to pause for a second here to
22 explain to the jury.

23 The information you're hearing now is about a
24 period before the allegations in the case. I've permitted
25 this to come in. To some extent, it is historical

BP

2779

D. Coy - by Plaintiff - Direct/Mr. Shiffman

1 background and just -- but I just want to make it clear that
2 these allegations are not involved in this case. You're not
3 going to be asked to make findings as to these facts.

4 It's just part of the historical story. Okay.

5 MR. SHIFFMAN: Thank you, your Honor.

6 Q And the employee who incurred the charges,
7 Pricewaterhouse identified was Millie Hallow; right?

8 A That is correct.

9 Q And at the time, Ms. Hallow was the special assistant
10 to Mr. LaPierre?

11 A Yes.

12 Q And she reported directly to Mr. LaPierre?

13 A That is my understanding.

14 Q Okay, and Ms. Hallow was using an NRA credit card for
15 the expenses; correct?

16 A Yes.

17 Q There was a card that was under Woody Phillips'
18 account; correct?

19 A That is my understanding, yes, sir.

20 Q And the NRA paid for the charges on that credit card;
21 correct?

22 A Yes.

23 Q And those credit card charges included many charges
24 that were for personal expenses; right?

25 A The Frenkel report identified the charges that were

BP

2780

D. Coy - by Plaintiff - Direct/Mr. Shiffman

1 personal, and it identified the charges that were taxable to her
2 which were a minority of the \$500,000.

3 Q We'll take a look at that in a bit.

4 And when it was discovered that Ms. Hallow had incurred
5 over -- strike that, excuse me. I apologize to the court
6 reporter.

7 And Pricewaterhouse also discovered that Ms. Hallow
8 incurred over \$500,000 in credit card expenses in the second
9 year; isn't that correct?

10 A That is correct.

11 Q And when Pricewaterhouse learned of these over a
12 million dollars in charges on Ms. Hallow's account, it reported
13 that to the NRA; right?

14 A I received a phone call from Pricewaterhousecoopers at
15 home in the evening that expressed concern over this, and I took
16 immediate action to follow the chain of command and bring it to
17 the attention of senior leadership of the board; and a meeting
18 of the Audit Committee was convened shortly thereafter.

19 Q Right, and one of the things that the Audit Committee
20 did after it received that report from Pricewaterhouse was it
21 engaged a law firm to investigate Ms. Hallow's use of the card;
22 right?

23 A Yes.

24 Q And the lawyer that the Audit Committee retained to do
25 that investigation was Jacob Frenkel. Do you recall that?

BP

2781

D. Coy - by Plaintiff - Direct/Mr. Shiffman

1 A Yes, sir. That is correct.

2 Q And you recall that Mr. Frenkel's law firm issued a
3 report to the NRA Audit Committee in 2003; right?

4 A Yes.

5 Q So, can you take a look -- we're not going to put this
6 on the screen yet, but I'd like to you take a look, Mr. Coy, at
7 I believe it is Tab 3. It is PX 2467.

8 Mr. Coy, do you recognize that exhibit, Tab 3, to
9 be the report that Mr. Frenkel issued to the NRA's Audit
10 Committee?

11 A Yes.

12 Q And this report was also provided to
13 Pricewaterhousecoopers; right?

14 A Yes.

15 Q And, in fact, the NRA kept a copy of this report in its
16 files for years; right?

17 A I don't have personal knowledge of that.

18 Q Well, you do recall that in that memo of yours that we
19 looked at earlier that in 2007 you asked NRA staff to pull the
20 report and to see if the procedures that had been recommended
21 were followed; do you recall that?

22 A Yes, that is correct.

23 Q And, ultimately, you understand that this report was
24 produced in this litigation; right?

25 A Yes.

BP

2782

D. Coy - by Plaintiff - Direct/Mr. Shiffman

1 MR. SHIFFMAN: Your Honor, we move the admission of
2 PX 2467.

3 MS. ROGERS: No objection.

4 MR. CORRELL: No objection.

5 MR. FARBER: Objection, your Honor, it is all
6 hearsay.

7 THE COURT: Overruled.

8 MR. FARBER: And, your Honor, and to the extent
9 that it's coming in just for the fact that it was said, all
10 those facts have already been brought out.

11 MR. SHIFFMAN: It is a party admission, your Honor.
12 It's by the agent, an attorney of Ackerman the NRA retained
13 and it provided even to third party Pricewaterhousecoopers.
14 Clearly --

15 THE COURT: I've already overruled it.

16 MR. FARBER: Not as to Mr. Phillips, your Honor;
17 and if it is being admitted on that ground, we want an
18 instruction.

19 THE COURT: This was a report to the board in its
20 entirety?

21 MR. SHIFFMAN: From the very first page it says
22 report to the Audit Committee the board of directors. I
23 don't know if it went to the full board, but it certainly
24 went to the audit of the board of directors.

25 THE COURT: Again, this is being admitted not for

BP

2783

D. Coy - by Plaintiff - Direct/Mr. Shiffman

1 the underlying truth of the allegations in it as to anyone,
2 whether Mr. Phillips or anyone.

3 This is part of -- I think what it is being
4 admitted for, at least what I'm admitting it for, is for
5 things that the company or the board or the committee heard
6 over time.

7 MR. SHIFFMAN: Your Honor, it is non-hearsay. It
8 is a party admission. That means it should be admitted for
9 all purposes, certainly with respect to the NRA and the
10 other officers and directors.

11 MR. CORRELL: Your Honor, I would object on behalf
12 Mr. LaPierre for admission for that against him for that
13 purpose.

14 THE COURT: Yeah, I don't think this is a party
15 admission.

16 MR. SHIFFMAN: Your Honor, I can give you case
17 cites from the First Department that hold that an attorney's
18 statement that's within the authorized scope of their -- of
19 the authority is a party admission; particularly, in
20 circumstances where the report is then forwarded to a third
21 party. Here, that is Pricewaterhouse.

22 That's the same reason that this report has --

23 THE COURT: I'd be more interested in all that if
24 this case was about this, but this is being admitted for a
25 have a narrow purpose.

BP

2784

1 It is strictly speaking nonrelevant of the
2 underlying facts here. I'm admitting it for the fact that
3 these allegations were raised at an earlier point in time
4 and were reviewed; and it is only to the extent that the
5 jury considers it relevant, ultimately, to events that
6 happened during the period that is relevant to this lawsuit
7 for what the board did or the Audit Committee did at a later
8 point in time.

9 So, I'm going to stick with my ruling that it is
10 admissible for that purpose only. The only relevance to
11 this case is it's historical record. This jury is not being
12 asked to make findings about what did or didn't happen in
13 fact in 2003.

14 (Continued on next page)

15
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25

BP

2785

Coy - by Plaintiff - Direct/Mr. Shiffman

1 MS. ROGERS: Your Honor, on the hearsay
2 perspective, it's identical to the forensic accountant's
3 report which is also prepared by the NRA which the
4 government successfully, you know, did not let the jury see,
5 and the preparer of this report was not an eyewitness to the
6 underlying facts.

7 THE COURT: So what -- which side are you arguing
8 on this issue?

9 MS. ROGERS: Well, I think if the forensic
10 accountant report doesn't come in, then this report
11 shouldn't come in either.

12 MR. SHIFFMAN: Your Honor, there's a difference in
13 that.

14 THE COURT: I've already ruled. Okay. I'll
15 reconsider it if I decide that it's worth it. For now,
16 that's what I'm admitting it for.

17 MR. SHIFFMAN: Can I just give you the cite? I can
18 do it off the record.

19 THE COURT: You can do it later.

20 Q If we go to Page 5 to 6 of this exhibit, Mr. Coy, and
21 what I'm telling you, Mr. Coy -- sorry. When I'm referring to
22 Pages 5 and 6, I'm referring to the page numbers at the very
23 bottom of that page of 5 of 32, not to the pages of the report
24 itself that are a little bit higher up.

25 So if you look at Pages 5 to 6 of this exhibit, you see

KM

2786

Coy - by Plaintiff - Direct/Mr. Shiffman

1 that one of the reports findings was that the NRA had failed to
2 implement an adequate system of policies and controls governing
3 travel and expense reimbursement; correct?

4 A I want to make sure I'm on the proper page here.

5 Q So it's the ones with the numbers that say PX 2467, the
6 ones right next to that.

7 A 5 of 32 and 6 of 32. Let me find it.

8 Q Sure.

9 A At the very bottom; okay. And then over to Page 6.
10 All right.

11 Q Okay. And the question was you see that it says the
12 investigation certainly revealed a failure to implement an
13 adequate system of policies and controls governing travel and
14 expense reimbursement. Right?

15 A That is correct.

16 Q And if you go to Page 18 to the first full paragraph
17 there -- I'll give you a second to get there. The question --
18 part I'm going to ask you about is on the screen there.

19 Do you see, Mr. Coy, that Mr. Frenkel is reporting
20 about Pricewaterhouse finding the \$538,000 in charges from 2002;
21 correct?

22 A Yes.

23 Q Right. And there he found that -- strike that. There
24 they also found that there was approximately \$82,000 of expenses
25 that were not properly business expenses, 79,000 of which were

KM

2787

Coy - by Plaintiff - Direct/Mr. Shiffman

1 taxable to Hallow and another 3,000 in entirely personal
2 expenses.

3 Do you see that?

4 A Yes.

5 Q Then in 2001 there were similar findings with \$563,000
6 in charges, 76,000 in taxable to Ms. Hallow and 11,000 in
7 entirely personal expenses; right?

8 A Yes.

9 Q Okay. And if we go to the fourth sentence here, we see
10 that some of the -- I'm sorry. In the middle paragraph it says
11 the principle component of the expenses taxable to Hallow is
12 clothing.

13 Do you see that?

14 A Yes.

15 Q And if you go to Page 19 of this report, and we look at
16 lines 5 to 11 of the -- looking at lines 5 to 11 of the first
17 full paragraph, we see some of the charges that were personal.
18 So some of those charges included auto repair services, a down
19 comforter, Nordstrom charges for handbags and sleepwear.

20 Do you see that?

21 A Yes.

22 Q Okay. And one set of charges which is referred to on
23 Page 20 to 21 is a trip that Ms. Hallow charged to the NRA
24 for family trip to Puerto Rico; right?

25 A Yes.

KM

2788

Coy - by Plaintiff - Direct/Mr. Shiffman

1 Q Okay. And there she took her husband and her son and
2 her son's girlfriend?

3 A Yes.

4 Q Okay. And in this report Mr. Frenkel made a number of
5 recommendations.

6 Do you recall that?

7 A Yes, I do.

8 Q If we go to Page 22 of that exhibit, we will see where
9 they are, and the first recommendation there was that the NRA
10 needed to implement formal policies and procedures for
11 entertainment expenses and reimbursements; right?

12 A Yes.

13 Q Okay. And in fact, Mr. Frenkel recommended that these
14 policies be implemented urgently; isn't that correct?

15 A Yes.

16 Q And if we go to Page 23, the carryover paragraph in the
17 last sentence there, the report recommended that the policies
18 should have restrictions on what level of service could be used
19 for travel and that spouse travel should be restricted; correct?

20 A Yes.

21 Q Okay. If we go to number two on Page 23, please.
22 There Mr. Frenkel also recommended that all exceptions to the
23 policy be signed off in writing in advance; correct?

24 A Correct.

25 Q And if we go to Page 26 to number 10, finally. Mr.

KM

2789

Coy - by Plaintiff - Direct/Mr. Shiffman

1 Frenkel recommended -- sorry. I think I'm a little ahead of
2 you, Mr. Coy.

3 Page 26, recommendation number 10. There Mr. Frenkel
4 recommended that the Audit Committee should create in some form
5 an internal audit function. Isn't that right?

6 A Yes.

7 Q And in fact, for many years you have advocated that the
8 NRA adopt an internal audit function; isn't that correct?

9 A That is correct, sir.

10 Q And -- but as of the time that you were deposed at
11 least in June of 2022, the NRA had not implemented such an
12 internal audit function.

13 A No, we had not.

14 Q As of that time, the NRA had not appointed a compliance
15 monitor or other officer.

16 A Could you repeat that question?

17 Q Yes, sir.

18 As of that time in June of 2022, the NRA had not
19 appointed a compliance monitor or compliance officer either;
20 isn't that correct?

21 MS. ROGERS: Objection to the premise of the
22 question that the NRA could appoint a compliance monitor.

23 MR. SHIFFMAN: I can rephrase it to just a
24 compliance officer.

25 THE COURT: Why don't you do that.

KM

2790

Coy - by Plaintiff - Direct/Mr. Shiffman

1 Q Okay.

2 A Could I have the question repeated, please?

3 Q As of the time that you were deposed in 2022, the NRA
4 had not appointed a compliance officer; isn't that correct?

5 A No appointment had been made at that time.

6 MR. SHIFFMAN: Thank you, your Honor. We pass the
7 witness.

8 THE COURT: Okay. Just -- we are just about at our
9 break. So I'll -- if I can ask the witness to come back
10 after our lunch break to finish. We will reconvene at 2:15.
11 And during that time, you're effectively still on the stand,
12 so you shouldn't discuss the substance of your testimony
13 with anyone including any of the lawyers.

14 THE WITNESS: I understand, your Honor.

15 THE COURT: Thank you, sir. See you at 2:15.

16 THE COURT OFFICER: All rise. Jury exiting.

17 (Whereupon, at this time the jury exits
18 the courtroom.)

19 THE COURT: I'll take the cite if you'd like, but
20 I'm actually making a slightly different point. But why
21 don't you give me the cite you wanted to give me, Mr.
22 Shiffman.

23 MR. SHIFFMAN: Angiolillo versus Christie's, 185
24 A.D.3d 442 it's a First Department Case from 2020 and
25 DiCamillo versus City of New York, 245 A.D.2d 332 and just

KM

2791

Proceedings

1 also Prince Richardson on Evidence 8-2082.

2 THE COURT: Okay. Thank you.

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

5 * * *

6 A F T E R N O O N S E S S I O N

7 * * * * *

8 THE COURT: Let's deal with a couple of preliminary
9 issues. I looked at the cases that Mr. Shiffman pointed me
10 to. I'm adhering to my ruling on that -- that document.

11 I did recognize that in a different context the
12 statements by counsel can be binding on the client as an
13 admission, and as I mentioned on the record, if there were
14 -- if this was a case involving whether what counsel was
15 investigating and found actually happened and the NRA was
16 contesting it, certainly, the first case that was cited
17 would support the idea that counsel's finding could be held
18 against him. At least that's -- you could make that
19 argument. Whether it could be used against the individual
20 corporate employees that are referenced is much less clear
21 to me.

22 I'm solving for a different issue one step removed
23 in that, you know, whether the events in 2003 happened or
24 not is not the issue today. And so I'm in addition to
25 thinking about the agent principle issues, I have a

KM

2792

Proceedings

1 balancing of probative value and prejudice to consider as
2 well, and I can't recall exactly what I said about this
3 document in the in limine motions, but I'm learning more
4 about the case as the trial goes on, and it seems to me that
5 the main legitimate use of the Frenkel report and the facts
6 that we have been talking about, if there is any, and it
7 will be up to the jury to decide whether it has any
8 relevance is that these issues were brought up to the board,
9 some of whose members are still there and that
10 recommendations were made by counsel. And I think the jury
11 can consider that as part of this time series kind of
12 analysis that we've talked about where the NRA is pointing
13 to events that happened after the events at issue and the AG
14 is pointing to some extent to events before.

15 So all of that considered together, it seems to me
16 that letting the document in to show that the investigation
17 happened, what the subject matter was and what the
18 recommendations were is a fair use of it, but advising the
19 jury that they can't use it to make findings essentially
20 about Mr. Phillips or anyone else because on top of
21 everything else, there really is not a terribly effective
22 way to combat those factual allegations 20 years after the
23 fact. So anyway, I'm comfortable with my ruling on that,
24 but I appreciate the cites.

25 You know, the issue about the expert which I want

KM

2793

Proceedings

1 to talk about briefly, unfortunately, I left the
2 demonstrative here. When I came back to get it, the doors
3 were locked, so I haven't had a chance to look at it, but I
4 have a couple of questions.

5 First of all, I saw there was a letter from the NRA
6 I think in the last hour or so.

7 Does anything that's in the presentation differ
8 from whatever expert disclosures were made by this expert?

9 MS. CONNELL: Your Honor, there is some summary
10 evidence that we propose to put in by the expert.

11 THE COURT: But substantively. I mean, in other
12 words, did he disclose in his expert report the number was
13 1,000 and now you're saying it's 1,500?

14 MS. CONNELL: One second, your Honor. I just want
15 to confirm something.

16 Sorry, your Honor. I'm going to defer to Mr.
17 Lester.

18 MR. LESTER: So for Exhibits A through D, those are
19 separate summary evidence that we look to enter through Mr.
20 Hines. He and his team were working on that under his
21 supervision.

22 THE COURT: Those numbers that are in there, are
23 there new opinions that he's giving that were not in his
24 expert report?

25 MR. LESTER: No opinions. Those are being entered

KM

2794

Proceedings

1 as the summary evidence as they prepared it for us.

2 THE COURT: All right. So I don't know what
3 exactly his opinions are. But is he going to testify that
4 the total amount lost by the NRA was X number?

5 MS. CONNELL: No, your Honor. What he is going to
6 do is pure summary saying here's the amount that was paid to
7 Gayle Stanford over this period of time based on this.
8 Here's the amount that was paid to this person that went out
9 of the NRA to this person during this period of time.

10 THE COURT: So in what way is this an expert then?

11 MS. CONNELL: That's not. That's his summary
12 evidence testimony. His expert testimony is something
13 different, and that remains the same.

14 THE COURT: And what is he -- remind me again.

15 MS. CONNELL: He is a forensic accountant and
16 auditor, and so he looked at transactions within the NRA,
17 vendor relationships, payments to board members and former
18 employees, and he looked at compliance with the NRA's
19 internal controls.

20 THE COURT: What's the money shot at the end of it?
21 Is he opining that they should pay X amount back?

22 MS. CONNELL: No, your Honor, he is not saying
23 that. He is not saying that they should pay X amount back.
24 That's something the jury is going --

25 THE COURT: Well, sometimes there are damages

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Proceedings

1 experts that actually do render an opinion so -- but this
2 part of it is -- he is just a compiling tabulator.

3 MS. CONNELL: So I think for a lot of his -- for
4 the summary part, absolutely. For part of his expert
5 testimony, I think that's true as well, but he's also
6 analyzing some of the way these transactions occurred. He
7 is talking about, for example, the overly complex way some
8 of these transactions occurred and some of the things that
9 should have -- should have been acted as red flags to NRA
10 management.

11 THE COURT: Okay. So for this part of it, he is a
12 deliverer of just a sort of data management?

13 MS. CONNELL: Yes, your Honor.

14 THE COURT: So he's testifying about internal
15 controls also.

16 MS. CONNELL: Yes, your Honor. That was part of
17 his expert report, and we addressed this -- there was a
18 motion by Mr. Phillips to exclude him. You left him in and
19 recognized that this is the type of evidence that you would
20 traditionally expect an expert to opine on here.

21 He is looking over, you know, a lot of materials
22 and doing this sort of work that forensic accountants and
23 auditors traditionally do.

24 THE COURT: So I'm just looking and glancing at --
25 you know, Slide 28 is McKenzie Company Summary of Key

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Proceedings

1 Findings. And is this his just take on the evidence?
2 Because it says, "arrangements were characterized by
3 violations of NRA policies and fraud risk indicators.
4 Management fee increases lacked adequate documentation and
5 approvals and the like."

6 What role is he serving here?

7 MS. CONNELL: Your Honor, he is not going to -- he
8 is not going to serve as a factual narrator, and I think
9 that's something the Court was concerned about, and we were
10 concerned too, but he is going to talk about where
11 violations of internal controls occurred and what he saw
12 based on the record evidence and what -- what the result
13 was.

14 So for example, in the McKenzie relationship
15 between 2011 and 2020, you saw that they were paid and he
16 quantifies the amount over the contract amount and over the
17 amount that was in an approved version of the contract, and
18 he quantifies that amount too, and he talks about the
19 internal control overrides or these are violations that he
20 saw based upon that.

21 THE COURT: But the end here is key findings which
22 sounds kind of like a -- what a factual expert would say as
23 opposed to key opinions.

24 MS. CONNELL: We can certainly change wording
25 without a problem, your Honor.

KM

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Proceedings

1 THE COURT: But they actually are findings. You
2 know, it's summary of key findings. Gayle Stanford and he
3 just sort of tabulates various things he found from the
4 documents, I guess.

5 MS. CONNELL: He reviewed the NRA's general
6 ledgers. He reviewed the NRA's Amex and credit card
7 statements. He reviewed the NRA bank history and payments,
8 and he reviewed the deposition testimony, and you know --

9 THE COURT: Why isn't that being -- the way it's
10 described here anyway, why isn't he just being a factual
11 narrator?

12 MS. CONNELL: Your Honor, he is not going to just
13 be a fact narrator because he is applying his expertise to
14 these transactions. These are complex transactions, and
15 unless we had the jury go through and say well, let's look
16 at all these pages, how many payments were made, what did
17 they total and let's sit here and have a witness go through
18 invoice by invoice --

19 THE COURT: I get that there is a portion -- I
20 guess he is sort of a hybrid that I didn't fully understand,
21 so there may be part of it, but what I'm looking at, the
22 summary of key findings. Is that the compilation part of
23 his testimony or is that his expert testimony?

24 MS. CONNELL: That's part of his expert testimony,
25 your Honor, and we can yank that slide if the slide's a

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1 problem. I understand.

2 THE COURT: I'm just turning pages. I'm trying to
3 get a feel for what's coming. You know, I obviously didn't
4 strike him, and I think he has things to say. I'm just
5 trying to --

6 MR. CORRELL: Your Honor, if I may weigh in on this
7 as well.

8 I'm concerned that, for instance, on that slide the
9 suggestion that there are findings there that are undeclared
10 and unresolved conflicts of interest between LaPierre and
11 McKenzie. Sounds a lot like a fact finding. Sounds like a
12 conclusion of law.

13 And in the next bullet point they say they give
14 \$135 million figure payment to four companies controlled by
15 David McKenzie a friend of Wayne LaPierre suggesting
16 causation, and he is not a damages expert.

17 THE COURT: Yeah. I mean, look, the traditional
18 toll of an expert is they can have a bunch of assumed facts
19 saying, well, assume the jury finds the evidence is A, B, C,
20 D. And then maybe I would add in this idea, and for your
21 convenience, I've totaled up the invoices, so but if you
22 assume the following facts, here's my expert view on what
23 you -- on what you can glean from those facts. That's what
24 experts do.

25 And maybe I'm just getting skewed by just looking

KM

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Proceedings

1 at the slides which is different than the testimony, but
2 there are a number of them that just seems to be recitations
3 of factual use of the word "findings" which is kind of an
4 odd way to do it.

5 MS. CONNELL: Yeah, your Honor. What he is going
6 to testify to are sort of industry standards for internal
7 controls, what you look for for internal controls why they
8 are important, what happens when you see breakdowns, how you
9 can see breakdowns. And he looks at, and he is going to
10 testify his opinions on the internal control environment
11 within the NRA and that's really important.

12 THE COURT: And then he can say, and if you -- the
13 set of facts I assumed and if you find these, my view would
14 be these are internal control problems. That's the way
15 experts talk.

16 MS. CONNELL: Right. That's right, your Honor, and
17 that's what he will do.

18 THE COURT: These slides don't sound like that.

19 MS. CONNELL: I see the problem that you're
20 pointing at, and I think we can remedy that with the slides
21 and even cut back the slides.

22 MS. ROGERS: It's not just the slides. The expert
23 disclosure, and we are concerned with the testimony doesn't
24 just say these are the industry standards and if you find --

25 THE COURT: Well, we went through that at the in

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Proceedings

1 limine motion, and my assumption was that a lot of people,
2 right, expert reports that have a lot of stuff in them that
3 you're never going to be able to testify about because they
4 write a story and I did make it pretty clear that that part
5 is not what we're going to hear from this witness which is
6 fine, but I agree with you that some of this -- and again,
7 admittedly this is not a narrow reading because I haven't
8 had a chance to do that yet, but there is some of it that
9 kind of looks like it. So my concern -- my -- just my
10 direction is -- is that I'm just not going to let this
11 witness tell the jury facts. He can say that -- I don't
12 know. People do it in lots of different ways. I'm basing
13 my opinion on the following understanding or assumptions
14 provided, you know, but I don't know that we want to have
15 him say, Well, I looked at all the documents and I think
16 it's pretty persuasive that Mr. LaPierre had an improper
17 relationship with X, Y and Z. That's not going to happen;
18 right.

19 MS. ROGERS: And your Honor, a similar area of
20 concern is, for example, him saying I looked at the document
21 surrounding this contract or this vendor and I think these
22 are facts which we assume, and I'm narrating, support the
23 finding that there is fraud risk indicators on this
24 contract.

25 Well, that's only true if the jury agrees that the

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Proceedings

1 transactions were broken up that the invoices were altered.

2 These are --

3 THE COURT: Right; but an expert can say, you know,
4 based on my understanding of the facts that it was broken up
5 into this and this and this and this and this and this, all
6 of which the jury, good luck, can find or not find. If
7 that's true, these are risk indicators. That's an
8 appropriate --

9 MS. CONNELL: Exactly.

10 THE COURT: -- method.

11 MS. CONNELL: Exactly, your Honor.

12 THE COURT: I think you do need to tend to the
13 slides a little because, you know, they do tend to look
14 their eyes on the slides and will start seeing these things
15 as factual findings because it among other things says that
16 they are findings which is not his finding to make. It's
17 their finding to make.

18 MS. CONNELL: You're right, your Honor. We will
19 direct that.

20 MR. CORRELL: There is also a temporal concern. I
21 seen between 2011 and 2020 NRA paid over 135 million.
22 Throwing up a big number 135 million for a long time period
23 that's not even relevant to the case is inherently
24 prejudicial.

25 THE COURT: Again, I don't want -- I have started

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Proceedings

1 looking into Statute of Limitations thing which, you know,
2 is something that I'm certainly going to have to decide. I
3 don't know that I'm going to decide it definitively before
4 like tomorrow, for example. I do note -- I mean, having had
5 myself and my staff looking around for a while that the case
6 that I was most persuaded by back in the day was the Spitzer
7 versus Schussel case, S-C-H-U-S-S-E-L 67 Misc.3d 171 written
8 by Judge Richter formally of the First Department, and you
9 know, I think it -- it's not exactly the same kind of case.
10 It seemed to be more of a derivative kind of standing case
11 for the AG, but it -- to me, it does raise the issue that
12 that is a statutory cause of action. This is not a
13 common-law fiduciary duty cause of action. So a lot of
14 these principles that we have all been tossing around about
15 whether it's, you know, predominantly damages or
16 predominantly equitable has to be looked in a slightly
17 different way, and I think what she did is she said that the
18 relief sought in these claims is a mix of both equitable and
19 monetary remedies, but the gravamen is equitable in nature.

20 In this case the Attorney General saw equitable
21 remedies of an accounting removal of the Board and a bar to
22 their further service and rescission of certain votes about
23 the executive salary. And then she said although a number
24 of the claims at issue do seek monetary damages, those
25 remedies are ancillary to the primary relief sought which is

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Proceedings

1 equitable.

2 Here the Attorney General as guardian of the
3 ultimate charitable beneficiaries of the companies seeking
4 to recover funds which he contends were improperly handled
5 by defendants. The money damages are merely meant to make
6 the non-profit organization whole, and thus, are akin to an
7 equitable remedy. Thus, the complaint as a whole is
8 primarily equitable in nature and the longer six-year
9 statute of limitation should apply. And there are other
10 parts of the analysis which, you know, at least my current
11 view is that that's persuasive to me.

12 I think a lot of you are going to see things in the
13 instructions that you may not entirely expect because
14 everybody is throwing around the business judgment rule and
15 all these other common-law ideas.

16 What you're going to see in my draft instructions
17 are the business judgment rule that is in the statute. The
18 legislature drafted a business judgment rule purpose built
19 for this claim under the N-CPL. That's the one I think I
20 am -- I should be applying, and it may be there is some
21 education you can get from business judgment cases about how
22 you might apply it, but that's the business judgment rule
23 that governs this statutory cause of action under the
24 non-profit corporation law as well as the duty of care.

25 It's not this -- at least my view at this point, we

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Proceedings

1 don't have to go searching for what the duty of care is.
2 It's written in Section 717. I'm not going to get it
3 entirely right, but it's ordinary care under the
4 circumstances and there is a reference to good faith. There
5 is no reference to duty of loyalty and duty of obedience and
6 all of that. Those are common-law concepts, and for
7 whatever reason, the legislature chose to write out the --
8 both the statutory duty and the statutory business judgment
9 if you want to call it business judgment defense. So I
10 think we are all working a little too hard when we are
11 trying to graft on a bunch of other concepts.

12 Now maybe you will get my draft instructions and
13 you will think they don't work. I don't know, but my touch
14 stone is the statutes. You know, to the extent that the
15 legislature uses words like "good faith" and "ordinary
16 care," yes, normal statutory construction is that you
17 construe those consistent with ordinary meaning. So maybe
18 you look at case law to see what good faith means and
19 ordinary care means, but it doesn't mean we automatically
20 graft on to that what would be the case if you were suing in
21 a non-statutory claim a company officer. That's my view
22 having spent now quite a bit of time looking at this. So
23 you'll see all of that once I turn these back around to you,
24 but I think that also motivates me on the Statute of
25 Limitations thing, and I think Judge Richter seems to me --

KM

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Proceedings

1 is probably right that the Attorney General is suing in
2 essentially not quite *parens patriae* but a public service
3 kind of a role here. And you know, certainly, the first
4 couple of claims broadly are injunctive or at least
5 non-monetary, and the monetary relief is to make another
6 entity whole. That is the charitable -- the not-for-profit
7 corporation.

8 So I can see why applying that kind of a statutory
9 Statute of Limitations analysis makes more sense than if you
10 were a -- in a purely private action.

11 So I'm not getting into the fiduciary tolling
12 issues which I'll think about all of these things. I don't
13 have a very -- a lot of very directly on-point briefing
14 before me. The last things we were able to find were the
15 Powell summary judgment papers which was a long time ago by
16 a different entity, different person, but some of it was
17 relevant.

18 But anyway, I've kept the jury kind of waiting for
19 longer than I should.

20 MR. CORRELL: If I just may say there is some
21 subsequent case law, *Crisell*, Court of Appeals that informs
22 the Statute of Limitations analysis which we would be happy
23 to put before you.

24 THE COURT: I would be happy to have it put before
25 me.

KM

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Proceedings

1 MR. FARBER: Could I just offer one thought on the
2 opinion that your Honor referenced. I mean, I understand
3 the analysis that that Court -- the determination that that
4 judge made was based -- was one for the complaints as a
5 whole, and I don't think I would submit that's not the
6 proper way to do it.

7 THE COURT: But she is applying it to the -- in the
8 context of the damages quote claims against the individual
9 defendants.

10 MR. FARBER: I understand, and I understand the
11 reasoning there, but the decision is whether that's
12 persuasive authority, and I think the flaw -- one flaw in
13 that is it's analysis. She looks -- she looks at all of the
14 claims and says that's what the gravamen of the complaint
15 is, and I'd submit that the proper way to do a Statute of
16 Limitations analysis is on a claim by claim basis.

17 THE COURT: Maybe. I understand the point, but I
18 think Courts do -- do tend to look at what's primary, what's
19 ancillary in the action as a whole as opposed to having
20 different Statute of Limitations, and the view was that
21 the -- even though there is a money judgment, it really is a
22 restitutionary cause of action by the government as opposed
23 to a private cause of action for damages.

24 I'll look at whatever it is you put in front of me,
25 but you know, Judge Richter's pretty sharp, and but -- you

KM

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Proceedings

1 know, if there is subsequent authority, I'll certainly look
2 at it. So with that, let's get the jury. Why don't we have
3 the witness come up.

4 MS. CONNELL: I just wanted to inform you I believe
5 we are still waiting for Lieutenant Colonel Lee. I think
6 the NRA was going to update on that.

7 MS. ROGERS: Professor Coy is on now. With respect
8 to Lieutenant Colonel Lee, he is a Board member. He is
9 represented by separate counsel with whom we have been in
10 touch. And although we are currently assured he will arrive
11 shortly, that is the same assurance I received with respect
12 to his anticipated testimony this morning.

13 THE COURT: Well, I would ask someone to
14 communicate from me that while I want to be respectful of
15 whatever else is going on, we have a very substantial amount
16 of resources going into having this trial proceed in an
17 orderly way, and he is currently getting in the way of that,
18 and it's not helpful whatsoever. So I expect him to be here
19 when we need him, and that could be relatively soon.

20 MS. ROGERS: We understand.

21 THE COURT: So he is not in route. My
22 understanding is he was in midtown and unless he is walking,
23 he should be here by now.

24 MS. ROGERS: We understand, and we will convey
25 that. I don't know that I have the practical ability to

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Proceedings

1 produce him, but I certainly have the ability to convey your
2 Honor's message in all of it's gravity.

3 THE COURT: I'm not thrilled. Okay. All right.
4 If there is a personal thing that's going on, that's
5 something. I mean, there was a reference to that, but you
6 know, I'll be understanding about something that's going on
7 that's unavoidable, but this at the moment seems avoidable.

8 MS. CONNELL: I just wanted to inform your Honor
9 just in case because I know you like to know what's coming
10 up. I'm assuming that Colonel Lee's sprint from midtown
11 will end, and we will get to him shortly since he was
12 supposed to go on yesterday afternoon, but after this if he
13 is not here, we are going to go to Ms. Hallow's deposition
14 designations.

15 I wanted to just flag for you that part of hers is
16 going to be her photo with the document coming up with the
17 transcript underneath. And unfortunately because the video
18 was just not in a usable shape, part is going to have to be
19 read in.

20 THE COURT: Read in by who?

21 MS. CONNELL: Two attorneys from my office, if
22 that's okay with the Court. If not, I'll take any two
23 volunteers. I can get some acting students here.

24 THE COURT: No. You can do it that way.

25 THE COURT OFFICER: All rise. Jury entering.

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1 (Whereupon, at this time the jury entered the
2 courtroom.)

3 (Witness resumed the witness stand.)

4 THE COURT: Welcome back. Sorry for the short
5 shall -- for the delay. I try to have all of our legal
6 arguments happen while you guys are on break, so we don't
7 take too much time away from you but we were discussing
8 something so have a seat. Thank you very much.

9 MS. ROGERS: Good afternoon.

10 THE COURT: If you can just bring the mike closer
11 to you.

12 (Continued on the following page.)

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2810

D. Coy - by Plaintiff - Cross/Ms. Rogers

1 Q Good afternoon, Professor Coy. Before lunch, you were
2 asked questions by the Government about a document marked
3 PX 2467, which is Tab 3 in your binder.

4 Could you please turn to that.

5 A I'm there.

6 Q Now, you were asked before lunch by the Attorney
7 General about the number of years you served on the Audit
8 Committee when you received this report; is that right?

9 A Yes.

10 Q In addition to your years of service on the NRA Audit
11 Committee, do you have any other professional expertise or
12 credentials that informed how you analyzed this report?

13 A Yes, I do. I graduated from Adrian College in 1975, my
14 alma mater. I successfully passed the CPA exam in 1977, worked
15 in public accounting until 1979. Went to work for a local
16 hospital in Adrian as a financial analyst, became assistant
17 controller. Went with a healthcare company in Toledo as chief
18 financial officer.

19 In that time period, I came to know myself better; and
20 I accepted a teaching position back at Adrian College, alma
21 mater in 1988 and I retired from there in 2021 as professor of
22 accountancy. I have an MBA. I have a CMA, in addition to my
23 CPA.

24 Q Thank you. And when you were a professor of
25 accountancy, did you teach just the techniques of accounting or

BP

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D. Coy - by Plaintiff - Cross/Ms. Rogers

1 also the ethics of accounting?

2 A We certainly taught the ethics of accounting, as well.

3 Q Do you feel that that informs your service on the NRA
4 Audit Committee?

5 A Yes. The ethics of -- accountancy is a profession.
6 Like all professions, it has three tenants. It has a body of
7 technical knowledge, a code of ethics and most of all a
8 responsibility to society; and as I taught that to the students,
9 it was the latter that I really emphasized. You have to do the
10 right thing and you have to have integrity.

11 Q Now, Jacob Frenkel, who prepared this report, I think
12 you testified he was an outside lawyer that the NRA Audit
13 Committee hired to look into this matter; is that right?

14 A That is correct.

15 Q I think I heard the name Steve Shulman before. Who is
16 he?

17 A Steve Shulman was counsel to the NRA board of
18 directors, a very, very valuable advisor to the board. He
19 enjoyed the trust and confidence of virtually every board member
20 I ever had contact with.

21 Q And would it be accurate reflecting back on this
22 morning to say that you hired Mr. Frenkel to do this
23 investigation after Steve Shulman recommended him because
24 Pricewaterhousecoopers, the NRA's independent auditor, found an
25 apparent problem with one of the employee's expenses?

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2812

D. Coy - by Plaintiff - Cross/Ms. Rogers

1 A That is correct.

2 Q How many years, approximately, did
3 Pricewaterhousecoopers serve as the NRA outside auditors, if you
4 know?

5 A I can't speak to the period of time before I was Chair
6 of the Audit Committee. They served NRA as auditors. They
7 completed the audit for the 2007 year, obviously the period from
8 2001, 2002 forward to that time.

9 Q And while we're talking about the vintage of these
10 events, would it be accurate to say I think this report was
11 prepared twenty-one years ago?

12 A That is correct. It was prepared in 2003.

13 Q So, twenty-one years ago when your outside auditor
14 raised a concern about one employee's expenses, do you recall
15 whether they ever raised concerns about any other employees'
16 expenses?

17 A No, I don't recall that they ever raised concern. They
18 certainly -- it would have been customary for them to test it.
19 At this particular time in the evolution of the body of
20 knowledge for accounting, they were putting into place
21 procedures to protect fraud in specific. Prior to that,
22 accounts tried to take a pass on that and responsibility to
23 society mandated otherwise. Congress Dingell's inquiry into
24 that was very significant.

25 Q And can you describe, if you know, how the practice of

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D. Coy - by Plaintiff - Cross/Ms. Rogers

1 auditors evolves on that score between 20 -- or, sorry, strike
2 that.

3 Can you describe, if you know, how that practice
4 evolved between the time that report was prepared and now?

5 MR. SHIFFMAN: Objection, your Honor, outside the
6 scope and lay opinion testimony.

7 We're talking about one incident as your Honor --
8 the purpose for which your Honor has admitted the report is
9 just on notice. It is not on the full scope of the
10 accountancy and accounting rules over the time.

11 MS. ROGERS: Your Honor, it's a narrow question and
12 purpose of the report is in evidence because it suggests
13 that accusations were made in the past and how the NRA
14 reacts to it; and the witness just testified that
15 accountants view this sort of thing differently now than
16 they did then. So, I'm trying to give the jury context on
17 the direction in which that standard evolved, that
18 accountants become more vigilant about fraud or less.

19 MR. SHIFFMAN: And that's lay opinion, your Honor.

20 THE COURT: Overruled.

21 MR. SHIFFMAN: And outside the scope.

22 Q You can answer.

23 A Thank you.

24 Accounts certainly became more vigilant because society
25 demanded that they be accountable for that aspect of an audit.

BP

2814

D. Coy - by Plaintiff - Cross/Ms. Rogers

1 There was also an impression that audits guaranteed an
2 absence of fraud. They cannot make that guarantee absolutely;
3 but they did intensify the procedures that they had to do with
4 respect to fraud detection, and other things were evolving at
5 this time that made that a little bit easier and a little bit
6 harder.

7 The procedures are going to depend on the audit client.

8 Q During the years when the Audit Committee worked with
9 Pricewaterhousecoopers as the NRA's outside auditors, did you
10 form a view about the competence of Pricewaterhouse as an audit
11 firm?

12 THE COURT: Counsel, now, again the direct was
13 about this legal investigation, not about the audits.

14 MS. ROGERS: I understand.

15 Q You testified that this investigation was precipitated
16 by a call from Pricewaterhouse; right?

17 A Yes.

18 Q Did you ever get a similar call from Pricewaterhouse
19 about any other NRA employee apart from this assistant, Millie
20 Hallow?

21 A No.

22 Q Are you generally familiar with the allegations made by
23 the Government against the NRA in this case?

24 A I'm generally familiar with it. I've read the
25 complaint. I certainly can't recite chapter and verse on that

BP

2815

D. Coy - by Plaintiff - Cross/Ms. Rogers

1 but --

2 Q Looking back at this investigation, can you ever recall
3 getting a call from an auditor with respect to any of the other
4 issues raised by the Attorney General or just Millie Hallow?

5 MR. SHIFFMAN: Objection, your Honor, lack of
6 foundation, outside the scope.

7 THE COURT: Overruled.

8 MR. SHIFFMAN: He hasn't testified as to full
9 knowledge of the whole complaint.

10 THE COURT: Overruled.

11 Q You can answer.

12 A Could I have the question repeated, please?

13 Q Sure. So, I'm actually change it a little bit to make
14 the time period clearer.

15 You recall that the Attorney General sued the NRA in
16 2020; right?

17 A Yes.

18 Q And you served on the Audit Committee continuously
19 between the time this report was prepared in 2003 and the
20 present; right?

21 A There was one year where I was not on the board of
22 directors. I was not reelected during within that time period.

23 However, the president of NRA indicated -- and I don't
24 remember who it was at the time -- but they indicated that I
25 should continue to come to the meetings as a non-board member

BP

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D. Coy - by Plaintiff - Cross/Ms. Rogers

1 and provide advice to the committee.

2 Q And during all those years, do you ever recall
3 receiving a call from an auditor like this one about any of the
4 other issues in their lawsuit or just this assistant, Millie
5 Hallow?

6 A It was just this assistant.

7 Q Did you ever get a call from the auditors about the NRA
8 procurement or contracting policies?

9 A No, I did not.

10 Q Did you ever get a call from the auditors about
11 Ackerman McQueen?

12 MR. SHIFFMAN: Objection, leading.

13 THE COURT: Overruled.

14 MR. SHIFFMAN: Outside the scope.

15 A No, I did not get a call from them.

16 Q Did you ever get a call from the auditors about David
17 McKenzie or any company that he's a shareholder of?

18 A No, I did not get a call from the auditors.

19 Q Did you ever get a call from the auditors questioning
20 the loyalty or the expense practices of Wayne LaPierre?

21 A No, I did not get a call from the auditors on that.

22 Q Did you ever get a call from the auditors questioning
23 the qualifications of the General Counsel, Mr. Frazer?

24 A No, I did not.

25 Q Did you ever -- strike that. I think I'll move on from

BP

2817

D. Coy - by Plaintiff - Cross/Ms. Rogers

1 there.

2 Did you have an understanding as to whether -- when you
3 hired this lawyer in response to this call from these auditors
4 -- Mr. Frenkel conducted interviews of people besides Millie
5 Hallow?

6 A I'm sorry --

7 Q It's my fault. It was a long question.

8 A Okay.

9 Q So, Mr. Frenkel performed an investigation after the
10 auditors called you; right?

11 A Yes.

12 Q And do you have an understanding as to the scope and
13 robustness of that investigation?

14 A Yes, I do.

15 Q Let's flip to page 28 of the exhibit that's in front of
16 you.

17 Do you recognize this as a list of people and documents
18 interviewed and reviewed by the outside lawyer the Audit
19 Committee hired, and I think it should be the next page. The
20 jury is looking at the signature.

21 A Yes, I am familiar with this list.

22 Q So, did you form a view -- were you satisfied with the
23 scope and robustness of this investigation?

24 A I thought it was very, very appropriate. Yes, I was
25 personally satisfied and I believe the committee was satisfied,

BP

2818

D. Coy - by Plaintiff - Cross/Ms. Rogers

1 as well.

2 Q All right, I'd like to direct your attention to the
3 first paragraph on page 2 where there's a -- and I'll wait for
4 this to be up so the jury can follow us.

5 THE COURT: Are you referring to page 2 of the
6 document or the exhibit number?

7 MS. ROGERS: Page 2 of the document, and it ends
8 with Bates label 028, so it should be the next page.

9 MR. SHIFFMAN: I think yours must be cut off. Page
10 2?

11 MS. ROGERS: I don't have the PX numbers on mine,
12 but I have number page 2.

13 MR. SHIFFMAN: It is page 3 of the exhibit.

14 MS. ROGERS: I apologize for the confusion.

15 Q So, Professor Coy, I'd like to direct your attention to
16 that first long paragraph. There's a reference to
17 Pricewaterhouse requesting that the Audit Committee waive
18 attorney-client privilege as to this report.

19 Do you see that?

20 A Yes.

21 Q Now, I know you're not a lawyer, but do you have a
22 layman's understanding of what it means to waive attorney-client
23 privilege?

24 MR. SHIFFMAN: Objection, your Honor.

25 THE COURT: Overruled.

BP

2819

D. Coy - by Plaintiff - Cross/Ms. Rogers

1 A Yes, I do have a layman's understanding, a term I've
2 used to paraphrase that as protected work product.

3 Q Would it be fair to say that normally you're supposed
4 to keep the attorney's work confidential, but waiving it means
5 you can disclose it?

6 A Yes.

7 Q Can you recall in your decades of service on the Audit
8 Committee any other time that an auditor asked you to waive
9 attorney-client privilege?

10 A I'm not aware of any such request.

11 Q Only as to Millie Hallow; right?

12 A That is correct.

13 Q All right, I'd like to direct your attention now to
14 very next paragraph, the text that reads:

15 "None of the NRA, its officers, directors or
16 members of senior management or Hallow violated any
17 statutes."

18 Do you see that?

19 MR. SHIFFMAN: Objection, your Honor. I think
20 we're going into the content of this document for things
21 other than notice and the findings. I'm not sure what the
22 relevance of this particular statement is, given the use to
23 which the document has been admitted.

24 THE COURT: I'm not a hundred percent sure, but I
25 think you did the same so I'll let her do it.

BP

2820

D. Coy - by Plaintiff - Cross/Ms. Rogers

1 MS. ROGERS: Thank you, your Honor.

2 Q Professor Coy, do you recall reading the outside
3 lawyer's finding that "none of the NRA, its officers, directors,
4 or members of senior management or Millie Hallow violated any
5 statute?"

6 A I remember reading that, yes.

7 Q And how did you interpret that finding by the expert
8 you hired?

9 A I was pleased there was no violation of statute. I was
10 still dismayed that procedures had been laxed and that was not
11 acceptable.

12 Q I'd like to direct your attention now to the bottom of
13 the same paragraph where it says:

14 "Hallow had no intent to violate policies, let
15 alone violate any laws. In further applying a general
16 definition of fraud and theft, there was no evidence --"

17 THE COURT: Wait, I'm sorry. Counsel, I'm just
18 reading that -- well, I'll leave it to the Attorney General.
19 I'm not sure you read the whole sentence --

20 MS. ROGERS: I apologize, I'm happy to read the
21 whole sentence. I was reading the highlighted text.

22 Q All right, so, Professor Coy, if you read the
23 highlighted text on your screen at the end of that paragraph --

24 MR. SHIFFMAN: Objection. Please read the whole
25 sentence.

BP

2821

D. Coy - by Plaintiff - Cross/Ms. Rogers

1 THE COURT: No, I meant the other one about "None
2 of the NRA, its officers," the sentence goes on after
3 statute.

4 MS. ROGERS: Of course, I'm happy to complete that.

5 Q So, we talked about how your outside expert found that
6 "none of these senior people and Millie Hallow, none of them
7 violated any statute," and there also says "any statute reviewed
8 as potentially applicable to Hallow's use of the Am Ex card."

9 Do you see that?

10 A Yes, I do.

11 Q What did you interpret that to mean?

12 A I took it as a comfort that the American Express card
13 while it had been abused and I think clearly it had been, we
14 didn't have any violations of law with respect to the use of
15 that card.

16 I also inferred -- perhaps rightly, perhaps wrongly,
17 but I think rightly that the auditors would not have stopped
18 their examination at that point. If I were auditing, I
19 certainly would not have.

20 Q And when you say they wouldn't have stopped their
21 examination at that point, what do you mean?

22 A I mean, they would have looked into other employees.
23 They would have looked at other expense reports. They would
24 have been vigilant and in exploring whether or not these
25 practices were pervasive. This would have been the auditors and

BP

2822

D. Coy - by Plaintiff - Cross/Ms. Rogers

1 not Mr. Frenkel.

2 Q And you base that inference on your experience as an
3 auditor?

4 A Yes, I did.

5 Q And as your experience as a professor of accounting
6 ethics?

7 A Yes, I did.

8 Q I want to look now at the bottom of the same paragraph:

9 "To the extent that there were prevailing practices
10 which may be deemed policies, the evidence is consistent
11 that Hallow had to intent toe violate policies, let alone
12 violate any laws. In further applying a general definition
13 of fraud and theft, there was no evidence of any illegal act
14 or irregularity."

15 Do you see that?

16 A Yes, I do.

17 MR. SHIFFMAN: Objection, your Honor. I think,
18 again, for the purposes of the document it's being used for
19 something that goes beyond the scope for which it was
20 admitted.

21 THE COURT: Overruled.

22 Q Professor Coy, how did you interpret that finding?

23 A Again, I took some comfort in it. I was candidly
24 dismayed that we were in a position where we had prevailing
25 practices and that, again, there was laxness here and that was

BP

2823

D. Coy - by Plaintiff - Cross/Ms. Rogers

1 disturbing to me.

2 Q Let's turn to the page, the next page of this document
3 with Bates label ending 028, and I'm going to direct your
4 attention to --

5 MR. SHIFFMAN: I'm sorry, what page?

6 THE COURT: It is not 02 --

7 MS. ROGERS: They're all the same on every page.

8 MR. SHIFFMAN: The problem is your last digit is
9 cut off so every time you give it.

10 MS. ROGERS: I apologize for that. It is the very
11 next page, and it is on the screen now.

12 (Displayed)

13 MR. SHIFFMAN: Page 3?

14 MS. ROGERS: Yes. It is number page 3, which may
15 be a different PX page.

16 Q Professor Coy, I'm going to direct your attention to
17 the text that you should see -- you don't see highlighted in
18 front of you yet, so I'll read it aloud:

19 Your outside expert writes: "That Ms. Hallow
20 always intended and expected to provide the necessary
21 support for the charges to the Am Ex card and nor did anyone
22 interviewed believe otherwise."

23 Do you see that.

24 A Yes, I do.

25 Q How did you interpret that finding?

BP

2824

D. Coy - by Plaintiff - Cross/Ms. Rogers

1 A I accepted the assurance from Mr. Frenkel and from NRA
2 employees.

3 Q All right. Let's look at the facing page, which is
4 number 4 on your page and I'm going to direct your attention to
5 the full paragraph on that page.

6 All right, about a quarter of the way down, the expert
7 that you hired to look into this concern writes, quote:

8 "The evidence developed is that there was no
9 override of internal controls in connection with the use of
10 the cards."

11 Do you see that?

12 MR. SHIFFMAN: Could you read the whole sentence.

13 Q "There was no override of internal controls in
14 connection with the use of the card because a large part of the
15 nonexistence --" I'll make this simple.

16 What do you understand an override of internal controls
17 to mean?

18 A An override of internal controls normally happens when
19 someone higher on the food chain overrules a subordinate and
20 says, Ignore the control. Go ahead and pay it.

21 Q And do you recall reading this finding that there was
22 no override of internal controls here?

23 A Yes.

24 Q How did you interpret that finding?

25 A I was pleased to see it because that is an inherent

BP

2825

D. Coy - by Plaintiff - Cross/Ms. Rogers

1 weakness in the internal control system in any corporation or
2 organization.

3 Q All right, and a little further down in that paragraph
4 after the year ended December 31, 2002, the lawyer writes:

5 "That the office of the treasurer did adhere to
6 existing internal controls."

7 Do you see that?

8 A Yes.

9 Q How did you interpret that finding?

10 A Again, I was comforted by that.

11 Q The very final sentence of this paragraph says:

12 "As a result, there's no evidence that PwC --
13 Pricewaterhouse -- cannot rely on management's
14 representations."

15 Do you see that.

16 A Yes, I do.

17 Q Did you form a view as to what management
18 representations the accountants were talking about?

19 A There is a -- at the end of every audit there is a
20 letter the accountants sign and provide to the audit firm that
21 says, in essence, We've put everything on the table. We've held
22 nothing back, and the audit firm has to be able to rely on the
23 truth of that. And the work that Mr. Frenkel did, I believe in
24 this particular instance on this issue, allayed those fears and
25 it was proper that PwC did.

BP

2826

D. Coy - by Plaintiff - Cross/Ms. Rogers

1 Q Right, they wanted to make sure that they could trust
2 what the NRA's accountants were reporting to them; right?

3 MR. SHIFFMAN: Objection, hearsay and foundation.

4 A Yes.

5 THE COURT: Overruled.

6 Q And they concluded they could trust Mr. Phillips's,
7 office; right?

8 A Yes.

9 THE COURT: Who's the "they?"

10 MS. ROGERS: Pricewaterhouse -- I apologize,
11 Mr. Frenkel.

12 MR. SHIFFMAN: Same objection.

13 MS. ROGERS: The preparer of this report which
14 concludes there's no evidence PwC cannot rely.

15 THE COURT: That I'll accept.

16 Q So, the lawyer concluded that there was no reason not
17 to trust Mr. Phillip's accounting department and the
18 representations they made; right?

19 MR. SHIFFMAN: Objection, misstates --

20 THE COURT: Sustained.

21 Q The lawyer concluded that there was no evidence that
22 the accountants could not rely on Mr. Phillips office and
23 representations they made; right?

24 MR. SHIFFMAN: Same objection.

25 THE COURT: Overruled.

BP

2827

D. Coy - by Plaintiff - Cross/Ms. Rogers

1 A That is correct. That's what that statement means to
2 me.

3 Q Did you take that into consideration when your Audit
4 Committee continued to rely on those representations?

5 A Yes, I did.

6 Q Let's turn now to the page marked 6 with a Roman
7 numeral in the center saying "The Investigation," and I'm going
8 to direct your attention to the paragraph right above that Roman
9 numeral where the report concludes:

10 "Also noteworthy are the absence of concealment of
11 any Am Ex charges, her timely cooperation as well as NRA
12 staff cooperation."

13 Do you see that?

14 A Yes, I do.

15 Q Do you recall reading that finding?

16 A Yes, I do.

17 Q What did you interpret that to mean?

18 A It meant that there had been full disclosures a part of
19 this investigation.

20 Q And let's turn to the next page now marked 7. All
21 right, and I'm going to direct your attention to the paragraph
22 trailing on to the top of this page where it says -- where the
23 outside lawyer says:

24 "Accordingly, conclusions herein reflect
25 conclusions that may be drawn from the evidence and the

BP

2828

D. Coy - by Plaintiff - Cross/Ms. Rogers

1 recommendations are those in the writer's professional
2 judgment that warrant consideration and implementation, in
3 substance, to ensure an effective system of internal
4 controls and tighter corporate governance standards going
5 forward."

6 Do you see that?

7 A Yes, I do.

8 Q Would it be fair to say that Mr. Frenkel was telling
9 you, These are my conclusions, but what the NRA needs to do to
10 make sure it has an appropriate controls environment going
11 forward?

12 A Yes.

13 Q Okay. And let's look at what some of those conclusions
14 and recommendations were. I believe they begin on page marked
15 21 of this document. Please turn there.

16 Are you there?

17 A I'm there, yes.

18 Q We're waiting for the screen to get there.

19 (Displayed)

20 All right, Professor Coy, to your acknowledge after
21 receiving this report, did the Audit Committee adopt and
22 implement a formal policy as recommended here?

23 A To the best of our ability, yes. The National Rifle
24 Association -- and let's be clear, there were -- within the
25 scope of this report, there were prevailing practices, there

BP

2829

D. Coy - by Plaintiff - Cross/Ms. Rogers

1 were procedures and then there were formally adopted policies.

2 Prevailing practices and procedures really governed
3 travel and entertainment, and as a response to this the most --
4 in the travel and entertainment policy, the most recent one, was
5 placed into the Employee Handbook; but I can find -- as I looked
6 at minutes I could find no indication that it was ever formally
7 adopted by the board.

8 Q But to your knowledge, it was placed in the Employee
9 Handbook that was issued to employees; right?

10 A That's correct.

11 Q And that didn't happen just last year. That happened
12 back when you received this report, right?

13 A Correct. It happened as I recall in January of 2004,
14 which was shortly after receiving this report.

15 Q All right, and what about the second recommendation
16 about new travel policies discouraging exceptions; do you see
17 that?

18 A Yes.

19 Q To your recollection, did the new policy do that?

20 A Yes, it did. And when I went through board
21 orientation, this was what we were told we had to do as board
22 members. We needed to travel, for example, by normal airfare,
23 coach airfare; and if there were any exceptions, they would have
24 to be granted by the executive vice president.

25 Q Now, is it your understanding that exceptions are

BP

2830

D. Coy - by Plaintiff - Cross/Ms. Rogers

1 sometimes granted?

2 A Yes, they are.

3 Q And, in your view, is that consistent with the policies
4 that the committee put in place?

5 A They should be discouraged; but, yeah, if there's a
6 medical reason that someone needs a different seat in the
7 aircraft, they are volunteering for serving on the board,
8 uncompensated volunteers and I certainly think that's
9 reasonable.

10 Q And, obviously, there's no policy violation if someone
11 pays to upgrade himself to business class?

12 A That is correct.

13 MR. SHIFFMAN: Objection to scope.

14 Q We'll get back to the document. So, let's look at page
15 marked 22.

16 Is it your understanding that after receiving this
17 report, the NRA has trained employees in the requirements and
18 enforcement of the policy?

19 A Yes. I felt that this was going on in normal employee
20 orientation. The board orientation was not as robust as it is
21 now. Both processes have been significantly improved since this
22 time.

23 No one should have any doubt within the association
24 what the policies are for traveling entertainment. The most
25 recent of these policies was and this one was adopted by the

BP

2831

D. Coy - by Plaintiff - Cross/Ms. Rogers

1 board 2021 -- let me back up.

2 There was another iteration of it in 2011, but the 2021
3 policy absolutely was adopted by the board and it contained
4 three specific appendices that differentiated between employees,
5 employees of The Institute for Legislative Action and board
6 members. And all of them have different travel needs.

7 For example, the Institute for Legislative Action
8 employees are lobbyists; particularly, those in state local
9 might get an urgent request to be somewhere because of a hot
10 issue. So, they need to be able to go. And if there's no
11 flight, they may have to rent a car to get there, and it could
12 be an expense that would be outside the policy; but that,
13 nonetheless, would be consistent with the objectives in the best
14 interest of the National Rifle Association and our mission.

15 Q So, even if the policy doesn't contain an explicit
16 proviso, if you need to be somewhere for a political event in
17 twelve hours, you may rent a car; you would interpret the policy
18 as covering and accommodating that situation because it is in
19 the spirit of --

20 MR. SHIFFMAN: Objection, leading, scope.

21 THE COURT: Sustained.

22 Q You don't have to answer that.

23 Well, let's move on from the travel and entertainment
24 policy and get to the rest of this document.

25 On page number 23, there's a finding that "the Audit

BP

2832

1 Committee should direct the treasurer to resolve outstanding
2 issues relating to the Am Ex card."

3 Do you see that?

4 A Yes, I do.

5 Q Did the Audit Committee do that?

6 A Mr. LaPierre and Mr. Phillips were in the meeting when
7 we -- on April 24th when we discussed the Frenkel report. The
8 Frenkel report, quite frankly, called him on the carpet, and to
9 say he gave specific direction --

10 MR. FARBER: Objection, your Honor, and move to
11 strike that answer, your Honor.

12 THE COURT: Denied.

13 (Continued on next page)

14

15

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BP

2833

Coy - by Plaintiff - Cross/Ms. Rogers

1 THE COURT: You can continue.

2 A Thank you. I have to gather my thoughts up here, sir.
3 My apologies.

4 As I said, effectively, this called him on the carpet,
5 and you know, to say that we have got to direct them like they
6 are school boys and not senior executives, I mean, they knew
7 what they needed to do, and it's really as simple as that.

8 Q Does the Audit Committee ever issue directions?

9 A In a managerial sense, no. That is -- it would be the
10 job of the -- it is the job of the Audit Committee to promulgate
11 policy, recommend it to the entire board for adoption and then
12 management is expected to implement that and conform to the
13 policy.

14 When we pass a policy, they are expected to do that and
15 it's no different than any other organization.

16 Q Okay. Let's look at Page Number 24, recommendation
17 number seven at the bottom. "The facts developed during the
18 investigation do not give rise to a basis for finding of a
19 violation of law or policy. Accordingly, there is no
20 recommendation about discipline that may follow from the
21 investigation."

22 Do you see that?

23 A Yes.

24 Q Did this recommendation shape how the Audit Committee
25 reacted to the Frenkel reports's findings?

KM

2834

Coy - by Plaintiff - Cross/Ms. Rogers

1 A It was clear there needed to be some constraints placed
2 upon Ms. Hallow's behavior.

3 In terms of any discipline, that's beyond the scope of
4 the Audit Committee. That's a management decision. The
5 expectation is that HR policies would have been followed in this
6 regard, and it's not the place of the Board or any committee to
7 micro-manage that aspect of NRA operations. That's what the
8 executives are expected to do.

9 Q Around the time of these events, did you develop a
10 charter for the Audit Committee?

11 A Yes. The charter of the Audit Committee was actually
12 discussed throughout -- had been under discussion and was a
13 paramount in what we did in through the -- gave a prism through
14 which we viewed the Frenkel report.

15 We actually in advance of the Frenkel report final
16 issuance on May 12, on the 24th of April of that year, the Audit
17 Committee adopted a charter. Actually, I should say they
18 recommended a charter to the full Board of Directors, and it was
19 adopted at the April 28 board meeting.

20 Q Let's look at Plaintiff's Exhibit 5073 which is already
21 in evidence. It should be on your screen in a moment, Professor
22 Coy. And let's flip to the document. Not the email.

23 Is this the Audit Committee charter?

24 MR. SHIFFMAN: Objection. Scope.

25 THE COURT: Overruled.

KM

2835

Coy - by Plaintiff - Cross/Ms. Rogers

1 Q Is this the charter that you spoke about?

2 A I believe so. I would have to see one of the final
3 paragraphs to be absolutely certain.

4 Q Let's flip to the final page.

5 A This is the Audit Committee charter that was adopted by
6 the Board on April 28, 2003.

7 Q And I think you testified that this charter provided
8 the prism through which you viewed the Frenkel report; right?

9 A Yes.

10 Q And do you think sitting here today that the Audit
11 Committee handling of and responses to the Frenkel report were
12 consistent with this charter?

13 A Yes, I do.

14 Q All right. In addition to the Frenkel report which is
15 from 21 years ago, the Attorney General also asked you about an
16 anonymous letter that the Audit Committee received 17 years ago.
17 Do you recall that?

18 A Yes, I do.

19 Q And they said that that letter contained allegations
20 about Ms. Hallow whom Mr. Frenkel had investigated; right?

21 A Yes.

22 Q What did you do when the anonymous letter -- I'm sorry.
23 Strike that.

24 What did the Audit Committee do when the anonymous
25 letter made allegations about Ms. Hallow?

KM

2836

Coy - by Plaintiff - Cross/Ms. Rogers

1 A The letter was mailed to the entire Board of Directors.
2 The Audit Committee was -- let me back up here. The -- in order
3 to facilitate a structured discussion by the Audit Committee, I
4 took a look at this letter which frankly is a rant and
5 incredibly offensive to me based on some things that are said in
6 here and the way they were said, but I set that outrage aside
7 and crafted a series of questions that were consistent with the
8 Audit Committee charter. They focused on controls which is the
9 job of the Audit Committee.

10 Q Now, we will get to your outrage in a moment, but would
11 it be fair to say that even though the letter was a rant, you
12 took the allegations seriously?

13 A Absolutely.

14 Q All right. And so you crafted a series of questions.
15 And to whom were those questions put?

16 A I followed a chain of command. It was clear that the
17 Board wanted this looked at.

18 Past-president Froman I believe in one of her last acts
19 as president admonished the Audit Committee -- perhaps
20 "admonished" is a harsh word, but made it clear that we needed
21 to look at this.

22 John Sigler who is an attorney and a U.S. Navy veteran,
23 former law enforcement officer was then installed as president.
24 It was up to him to appoint an Audit Committee at that point.
25 We -- I sent the questions to him. I can not -- I went back.

KM

2837

Coy - by Plaintiff - Cross/Ms. Rogers

1 You know, again, this is 17 years ago, and I have gone
2 back to try to find other documentation on it in my papers. I
3 can't do it. I wish I did. So my memory is incomplete on this.
4 I wish it wasn't, but what I do know is we crafted the
5 questions.

6 Chairman -- or Chairman Sigler -- President Sigler was
7 away. I had crafted the questions. I requested a meeting.
8 That meeting request was not granted. However, none of the
9 Board -- since the entire Board received it, I received it, Mr.
10 Sigler received it, past-president Froman received it, there was
11 no way this was going to get swept under the rug.

12 We -- we got answers to the questions, and the fact
13 that I have no memory suggests that they were handled and we
14 moved on.

15 Q Do you have a memory of whether the allegations in the
16 letter turned out to be true or false?

17 A This was old news, a lot of this. A lot of it was
18 gossip that I had heard ever since I came on the Board. The
19 reference to Millie Hallow which is contained in this letter was
20 a rehash of what's in the Frenkel report. The numbers in there
21 are not accurate. They don't match up with the Frenkel report.
22 So --

23 Q In addition to the numbers in the letter being
24 inaccurate, were there other features of the letter that
25 outraged you or caused you to question the mindset of the person

KM

2838

Coy - by Plaintiff - Cross/Ms. Rogers

1 who wrote it?

2 A Yes, there was.

3 Q Can you describe that for the jury?

4 A In the -- on the second page of it, there is --

5 MR. FARBER: Objection.

6 Q Professor Coy, this document hasn't been admitted. I
7 don't want you to answer questions based on it. I only want you
8 to answer questions based on your memory.

9 A Yeah. There was --

10 MR. SHIFFMAN: Is he reading from the document or
11 is he basing it on his memory?

12 THE COURT: There was a little of both, but now he
13 is not, I guess. But he is --

14 A I will speak from my memory. The -- I don't have to
15 read the document at all.

16 The managing director of finance Rick Tedrick was
17 maligned in this letter. The letter calls him a homo. That is
18 his choice. That is his sexual preference.

19 To put that in a letter and take the letter seriously,
20 you know, that -- that's a stretch, and it colors everything
21 else in the letter, quite frankly. So -- but nonetheless, we
22 took it seriously.

23 Q You took the allegations seriously even though you felt
24 it held homophobic attacks on a NRA employee; right?

25 A Yes.

KM

2839

Coy - by Plaintiff - Cross/Mr. Correll

1 MS. ROGERS: Nothing further.

2 CROSS-EXAMINATION

3 BY MR. CORRELL:

4 Q Good afternoon, Professor Coy.

5 A Good afternoon.

6 Q I'm Kent Correll. I represent Wayne LaPierre.

7 A Yes, sir.

8 Q I'll try to be brief.

9 Can you give us a little bit -- well, you mentioned
10 Steve Shulman earlier.

11 A Yes.

12 Q Can you give us a little more background on your
13 knowledge of Steve Shulman at the time in question here around
14 the time this report was generated.

15 MR. SHIFFMAN: Objection. Scope.

16 THE COURT: Sustained.

17 Q You talked about Mr. Shulman being involved in this
18 process; correct?

19 Do you remember talking about that?

20 A Yes.

21 Q At that point what background knowledge did you have
22 about his competence and reliability?

23 MR. SHIFFMAN: Same objection and relevance.

24 MR. CORRELL: Your Honor, he testified to reliance
25 on a lawyer who was advising on this matter. I can

KM

2840

Coy - by Plaintiff - Cross/Mr. Correll

1 certainly explore that a little further.

2 THE COURT: Overruled.

3 Q What did you know about Steve Shulman at the time?

4 A Mr. Schulman's background was I believe he was teaching
5 at University of Michigan at the time I was born and he had an
6 expertise in taxation. He clerked for the tax court. He was
7 very adamant, insistent about making certain NRA towed the line
8 on practices that needed to be consistent with our
9 not-for-profit status. He was very concerned about that. And
10 as I mentioned, he enjoyed immense respect from all members of
11 Board of Directors.

12 Q Did he have a special relationship with your family
13 that caused you to rely on his expertise and confidence?

14 MR. SHIFFMAN: Objection.

15 THE COURT: Sustained.

16 A A special relationship --

17 THE COURT: Sustained.

18 MR. CORRELL: I'll move on.

19 THE COURT: Let's move on.

20 Q Let me direct your attention to the Frenkel report
21 again, please. That's Tab 3 in you're binder. I'd like you to
22 turn to Page 6 of 32, and let me know when you get there.

23 A I'm there.

24 Q I want to read just one portion that was skipped over
25 and ask you whether that informed your decision in any way as to

KM

2841

Coy - by Plaintiff - Cross/Mr. Correll

1 how to deal with the findings of this report, and I'm directing
2 your attention to Page 6 of 32, the last paragraph that starts
3 with the word "finally."

4 I'm going to read that to you if that's all right.
5 "Finally, the evidence developed was overwhelming and entirely
6 consistent in the benefit that Hallow has brought to the NRA
7 through the discharge of her duties. Wayne LaPierre defined as
8 LaPierre was effusive in his praise of Hallow's work an
9 accomplishment attributing to her efforts in large part the
10 movement and the perception of the NRA from an extremist
11 organization to the mainstream and the significant inroads the
12 organization has achieved in the past six to seven years with
13 conservative organizations, high donor circles and African
14 American and Hispanic groups. Interviewees acknowledged the
15 significant benefit to the NRA of Hallow's networking to help
16 realize the NRA's political and legislative goals."

17 And then I'd like to direct your attention to the top
18 of Page 7 of 32. I'd like to read just the one sentence that
19 preceded what Ms. Rogers had read earlier.

20 "During more than ten hours of interviews in this
21 investigation, Hallow articulated with clarity and specificity
22 her work in effecting new level of political and social access
23 for senior NAR officials and creating multiple media
24 opportunities as a result of LaPierre's radio show and her
25 extensive personal media connections."

KM

2842

Coy - by Plaintiff - Cross/Mr. Correll

1 Q Did that inform your decision in how to proceed with
2 Ms. Hallow?

3 A As I stated previously, matters of employment are not
4 within the scope of the Audit Committee. Hiring and firing
5 decisions need to be made by the executive, made by the
6 management. I think there is no question that she did add
7 value, but that really had no bearing on anything that -- any
8 decision that I would make.

9 This report as I mentioned called people on the carpet.
10 Millie was one of the ones that was called on the carpet for
11 this thing, and there is -- as an employee, there is an
12 expectation that rules are followed.

13 Q And is it fair to say that after doing that, that the
14 decision as to whether Millie Hallow should continue in the
15 employ of the NRA or be fired was left to senior management?

16 A Yes, and appropriately so. That's not the job of the
17 Board or any committee thereof.

18 MR. CORRELL: Thank you, Professor.

19 MR. FARBER: No questions, your Honor.

20 MR. FLEMING: No questions, your Honor.

21 THE COURT: Counsel.

22 MR. SHIFFMAN: Can I have one moment, your Honor.

23 THE COURT: Sure.

24 MR. SHIFFMAN: No questions, your Honor.

25 THE COURT: Okay. Sir, you're free to step down.

KM

2843

Coy - by Plaintiff - Cross/Mr. Correll

1 Thank you.

2 THE WITNESS: Thank you, sir.

3 THE COURT: Do we have our next witness available?

4 MS. CONNELL: I don't know, your Honor.

5 THE COURT: Officer, can you check and see if
6 Lieutenant Colonel Lee has arrived.

7 MS. EISENBERG: At 3:05 I received an email message
8 from the witness' counsel saying they were on their way
9 after I conveyed your message.

10 THE COURT: An officer is waiting outside for them.
11 We can take a short break, and we can get going. Let's try
12 to keep the break as short as possible, if at all possible,
13 but do what you need to do.

14 THE COURT OFFICER: All rise. Jury exiting.

15 (Whereupon, at this time the jury exits the
16 courtroom.)

17 (Whereupon, at this time there was a recess taken.)
18 Two.

19 THE COURT: We are still waiting for the witness
20 but in the meantime, Ms. Connell.

21 MS. CONNELL: I'm sorry to bother the Court with
22 this, but we subpoenaed Lieutenant Colonel Lee some time
23 ago. The NRA accepted the subpoena. We were told he would
24 be here yesterday. Then we were told he would be here this
25 morning. Now we understand -- we've heard a couple of

KM

2844

Coy - by Plaintiff - Cross/Mr. Correll

1 different things about where he is and what's going on.

2 What I don't want is for Lieutenant Colonel Lee to
3 get on the stand and testify as to some emergency or
4 something going on that we don't know about, we haven't
5 gotten information about. He shouldn't testify as to what
6 he's been doing or why he hasn't appeared earlier today as
7 scheduled without us getting some information about that.

8 For example, I heard that maybe he had a 100-year
9 old father who was sick or maybe it was an uncle or brother.
10 I just don't want to hear that kind of thing.

11 THE COURT: It shouldn't be -- I mean, he can tell
12 me. It shouldn't be in front of the jury.

13 MS. CONNELL: Exactly right. He can tell you
14 and --

15 THE COURT: I don't need to hear about it
16 unnecessarily, but yeah, I agree. We should get right to
17 it. We don't have time to waste on anything really. At
18 some point I would like to know but not at the cost of
19 delaying further and all the dead time this afternoon and
20 this -- to the extent there's been any dead time today, that
21 should be in your allocation of time apportioned to the --
22 whatever the NRA's share of the defendant's time is.

23 MS. ROGERS: Your Honor, I would just note that
24 after the NRA accepted the subpoena for Colonel Lee, he told
25 us he wanted separate counsel which we communicated to the

KM

2845

Coy - by Plaintiff - Cross/Mr. Correll

1 AG and from that point on, he's been separately represented.
2 It attests to our lack of control, our efforts throughout
3 the course of the day to locate and to produce Colonel Lee
4 and our inability to do that.

5 MS. CONNELL: And your Honor --

6 THE COURT: There is no need to argue this.

7 MS. CONNELL: Thank you, your Honor.

8 MR. LESTER: I just want to confirm you have the
9 binder in front of you. We placed it up there this morning.

10 THE COURT: All right. Let's get the jury.

11 Do you have an estimate of time for direct?

12 MR. LESTER: Our estimate is about 30 minutes, your
13 Honor.

14 THE COURT: Thank you.

15 THE COURT OFFICER: All rise. Jury entering.

16 (Whereupon, at this time the jury entered the
17 courtroom.)

18 THE COURT: All right. Welcome back everyone.
19 Please have a seat.

20 Is the State ready to call its next witness?

21 MS. CONNELL: Yes, your Honor. The State calls
22 Lieutenant Colonel Willes Lee, and with the Court's
23 permission, my colleague Jonathan Lester will take the
24 direct.

25 THE COURT: Yes.

KM

2846

Lee - by Plaintiff - Direct/Mr. Lester

1 (Witness takes the witness stand.)

2 THE CLERK: Raise your right hand. Do you solemnly
3 swear or affirm that the testimony you will give will be the
4 truth, the whole truth and nothing but the truth?

5 THE WITNESS: I do.

6 THE CLERK: State your name.

7 THE WITNESS: Willes Lee.

8 THE CLERK: Spell your last name.

9 THE WITNESS: L-E-E.

10 THE CLERK: Thank you. You may be seated.

11 THE COURT: Good afternoon. If you can just stay
12 close to the mike.

13 THE WITNESS: Yes, sir.

14 THE COURT: Mr. Lester, you may proceed.

15 MR. LESTER: Thank you, your Honor.

16 DIRECT EXAMINATION

17 BY MR. LESTER:

18 Q Hello, Lieutenant Colonel Lee. My name is Jonathan
19 Lester. I'm Assistant Attorney General of The Charities Bureau,
20 and I represent the People in this case.

21 You're appearing today because you received a subpoena
22 from the New York Office of the Attorney General; correct?

23 A Yes.

24 Q Okay. Now you first became a member of the NRA shortly
25 after you graduated from West Point; correct?

KM

2847

Lee - by Plaintiff - Direct/Mr. Lester

1 A Actually, I don't recall if it was just before or just
2 after, but yes.

3 Q Okay.

4 A In that timeframe.

5 Q And you're currently a director of the NRA; right?

6 A Yes.

7 Q And you have been a director since 2017; correct?

8 A Yes.

9 Q And you were elected and are nominated and elected as
10 second vice-president in 2019; is that correct, sir?

11 A Yes.

12 Q And you were nominated and elected as first
13 vice-president in 2021; correct?

14 A Yes.

15 Q Okay; and you served in that role as first
16 vice-president until 2023; correct?

17 A Correct.

18 Q And you believe in the mission of the NRA; correct?

19 A Yes.

20 Q All right.

21 Now you have a personal Facebook account and a separate
22 facing Facebook page; is that correct, sir?

23 A Yes.

24 Q I have a Facebook page, and then, you know -- then
25 another account. I'm not sure how Facebook calls it, but yes.

KM

2848

Lee - by Plaintiff - Direct/Mr. Lester

1 Q And the separate Facebook page is titled Willes Lee,
2 NRA Board of Directors; right?

3 A Yes.

4 Q And now you believe communication with NRA members is
5 very important; correct?

6 A Yes.

7 Q And you were the author of the post on that page NRA
8 Wills or -- excuse me -- Willes Lee, NRA Board of Directors;
9 correct?

10 A To the best of my knowledge, yes.

11 Q To the best of your knowledge, no one else authors
12 posts on that page.

13 A Correct.

14 Q And as such, as the author of those posts, you make
15 efforts to insure what you're posting on that page is accurate
16 to the best of your knowledge; correct?

17 A Yes.

18 MS. LESTER: Okay. Your Honor, I would -- we have
19 an Exhibit Tab 1 that's been premarked as PX 3361. I have
20 not received any objections to this exhibit, and I would
21 move it into evidence barring any.

22 THE COURT: Any objections?

23 MS. EISENBERG: Your Honor, we don't object to it
24 coming in for the fact that the statements were made, but we
25 do object to them coming in for their truth.

KM

2849

Lee - by Plaintiff - Direct/Mr. Lester

1 MR. CORRELL: Same objection, your Honor.

2 MR. LESTER: Your Honor, Lieutenant Colonel Lee is
3 a member of the Board of Directors. He is a director of the
4 NRA, and as such, he is a party opponent. He is making
5 statements about his time on the Board of Directors, on the
6 Special Litigation Committee and in addition, some of these
7 posts, he was first officer.

8 MS. EISENBERG: Your Honor --

9 THE COURT: Facebook posts, is that a statement
10 that's made in the course of his official role?

11 MS. EISENBERG: That's incorrect, your Honor.

12 THE COURT: I'm just asking.

13 MR. LESTER: Your Honor, as he just testified, he
14 believes communication with NRA members is important.

15 As a member of the Board of Directors, he is the --
16 this is important, and he is posting them on this public
17 facing Facebook page, and so they are within CPLR 4549 which
18 permits the introduction of opposing parties agents on a
19 matter within the scope of that relationship with the entity
20 and during the existence of that relationship.

21 MS. EISENBERG: Your Honor, if I may, at his
22 deposition I asked Lieutenant Colonel Lee specifically
23 whether any of these posts were made on behalf of any other
24 board member of the NRA or on behalf of the Board or on
25 behalf of any person or entity other than our witness, and

KM

2850

Lee - by Plaintiff - Direct/Mr. Lester

1 he testified that they were not.

2 THE COURT: I don't think that counts as party
3 admissions because they are -- they are -- not every
4 breathing moment of someone's life is in this scope of
5 employment. So I don't think it comes in through that
6 route.

7 MR. CORRELL: Your Honor, it certainly wouldn't be
8 binding on Mr. LaPierre.

9 THE COURT: Well, that's true too, but so -- what
10 other grounds would there be for -- I mean, you know
11 -- these are -- the facts that these are said, is that the
12 point?

13 MR. LESTER: Yes, your Honor. They can be admitted
14 for that. We do believe they are party admissions.

15 THE COURT: The point here is to get in factual
16 testimony based on personal observations. And if any of
17 these become relevant to, you know, the examination, that's
18 fine, but I don't think they just come in as party
19 admissions.

20 MR. LESTER: Okay. Thank you, your Honor, but I
21 would still move this into evidence for the purposes of that
22 he made these statements and that --

23 THE COURT: No, I didn't mean that. I -- you know,
24 it could be that you can ask him questions and that these
25 could then be used as, you know, prior statements he's made

KM

2851

Lee - by Plaintiff - Direct/Mr. Lester

1 in other forms even though not under oath.

2 MR. LESTER: That's all right. I can lay a
3 foundation for that, your Honor.

4 Q Lieutenant Colonel Lee, so again, just to confirm, you
5 make the post on the Willes Lee, NRA Board of Directors page;
6 correct?

7 A I'm sorry. I couldn't hear all of that.

8 Q Sorry. So you to the best of your knowledge make the
9 posts on the Willes Lee, NRA Board of Directors page; correct?

10 A Yes.

11 Q And that is a public facing page that anyone can view;
12 correct?

13 A To the best of my knowledge.

14 Q And so you have written before, haven't you, that
15 individuals have responsibilities when they are part of the
16 governance structure of non-profits; isn't that correct?

17 MR. CORRELL: Objection, your Honor.

18 THE COURT: I think the way to do it is to ask the
19 question whether that's his view and then you can go from
20 there.

21 Q Is it your view, Lieutenant Colonel Lee, that
22 individuals who are in charge of a non-profit organization have
23 responsibilities?

24 A Yes.

25 Q Okay. And you believe that -- or in your personal

KM

2852

Lee - by Plaintiff - Direct/Mr. Lester

1 belief, you believe that you were a voice on the NRA Board that
2 acted as a devil's advocate. Would you agree with that?

3 A Yes.

4 MR. LESTER: Okay. Your Honor, I would move for
5 admission of PX 3361.

6 One moment, your Honor.

7 MS. CONNELL: I'm sorry, your Honor.

8 Q Lieutenant Colonel Lee, can you look at Tab 1 in your
9 binder, please. Sorry. It's right there, sir. It will be
10 under Tab 1.

11 A That, I have, Counselor.

12 Q Okay. Do you recognize this document, Sir?

13 A Yes.

14 Q Okay. And what do you recognize it to be?

15 A A photocopy of a Facebook post.

16 Q And in -- you wrote this post; sir?

17 A Yes.

18 Q And to the best of your knowledge, this is a true and
19 accurate copy of that Facebook post?

20 A To the best of my knowledge, yes.

21 MR. LESTER: Your Honor, I would --

22 THE COURT: Look, we haven't had a chance to really
23 talk about this legally.

24 What's -- I don't know because I'm seeing this for
25 the first time. What's the law on just admitting Facebook

KM

2853

Lee - by Plaintiff - Direct/Mr. Lester

1 posts as substantive evidence? Is it an out-of-court
2 statement?

3 MR. LESTER: Yes, but it's an out-of-court
4 statement we would argue by a party opponent.

5 Also, it's relevant to the matters. Many of these
6 matters or all of these posts are relevant to the
7 relevant -- to the complaint.

8 THE COURT: There is a lot of out-of-court
9 statements that are relevant to things, but they still don't
10 come into court.

11 You have the human being right here to ask
12 questions to.

13 MR. LESTER: Yes, your Honor. So the non-hearsay
14 purpose of this, he is posting it publically so that there
15 is information being provided about Board activities that --

16 THE COURT: If an out-of-court statement is made
17 publically, it becomes not hearsay?

18 MS. ROGERS: We would disagree with that, and there
19 is another non-hearsay purpose for which they may intend to
20 offer this which Colonel Lee basically foreclosed in his
21 deposition.

22 MR. THOMPSON: The NRA's position has been that --
23 I'm sorry -- this is Stephen Thompson for the record.

24 The NRA's position has been that these were not
25 authorized by the NRA and that is no longer the test for

KM

2854

Lee - by Plaintiff - Direct/Mr. Lester

1 whether it's within the scope of that person's role within
2 the organization.

3 The CPL provision that Mr. Lester provided
4 specifically got rid of that requirement, and this is Mr.
5 Lee's public facing page for the purpose of communicating
6 with NRA members as a member of the NRA Board of Directors,
7 and we think that in that role he is authorized to manage
8 these statements and that they are party admissions for that
9 reason.

10 THE COURT: Yeah. Look, maybe it would be helpful
11 for me to have had a little advance notice of what this
12 evidentiary issue would be.

13 My initial reaction is not knowing anything more
14 than what I've seen in the last few minutes that this is
15 private communication.

16 I -- I would be happy to look at case law that
17 helps me get comfortable with this. I still don't know why
18 you don't sort of start by just asking him questions based
19 on him being here right now. And you know, I'll -- I don't
20 know whether we are going to finish today. I'll do the best
21 I can, but my initial reaction is against, but it's not a
22 crazy argument. I'm not suggesting it is because within --
23 it's -- it has to be within the scope of his employment;
24 right.

25 MR. THOMPSON: Yes, your Honor, within the scope.

KM

2855

1 THE COURT: So you're saying that a director of --
2 when they post on Facebook in their -- wherever they are,
3 everything they do is in the scope of their employment.

4 MR. THOMPSON: Not everything, your Honor. This is
5 as Mr. Lester elicited from Lieutenant Colonel Lee, he has a
6 personal Facebook page and then this separate page that is
7 Lieutenant Colonel Lee, NRA Board of directors.

8 MS. EISENBERG: That mischaracterizes the
9 testimony.

10 THE COURT: Well, I hate to waste all this time,
11 but why don't you ask him questions if it's designed -- I
12 mean, I don't want to lead the witness either, but if -- you
13 know, what the relevant fact finding is for it to be
14 something that would be admissible and then it would be
15 admissible only against one of the defendants. But why
16 don't you ask the predicate questions.

17 MR. LESTER: Okay.

18 Q Sorry about that, sir.

19 So Lieutenant Colonel Lee, do you believe board members
20 know that there are issues with the Board but remain silent?

21 A I don't know that.

22 Q Okay. I'd ask you to look at Tab 1 in your binder
23 again. And sorry, your Honor.

24 (Continued on the following page.)

25

KM

2856

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 A I have that, counselor.

2 Q I'd like to refresh your recollection about that. Can
3 you read starting from the fourth line from the bottom of the
4 text that's covering the picture, and can you not out loud, but
5 just read that to yourself.

6 (brief pause)

7 A Thank you, counselor.

8 Q Does that refresh your recollection?

9 MS. EISENBERG: About what?

10 Q About whether board members are aware -- excuse me --
11 why board members -- that board members remain silent even
12 though they have concerns?

13 MR. CORRELL: Objection, your Honor, calls for
14 speculation.

15 MR. LESTER: In your personal view.

16 THE COURT: Refresh his recollection that that's
17 his personal view?

18 MR. LESTER: And that he's made these statements
19 before, I guess.

20 MR. CORRELL: Unless he can lay the foundation that
21 he's a mind reader, I think it should be excluded, your
22 Honor.

23 THE COURT: I'm not sure this is working either.

24 I'll trying to stay within my role. I think
25 there's a way to get where you need to go. I'm just not

BP

2857

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 sure we're getting there yet because, again, at the moment,
2 without having an argument that I can fully embrace yet,
3 just the fact that it was said outside doesn't have any
4 independent significance.

5 If you want to probe his views as he sits here now
6 about whatever you want based on his experience as a
7 director, he's right here.

8 MR. LESTER: Yes, your Honor.

9 Q Sir, didn't you previously state that?

10 MS. EISENBERG: Your Honor, hearsay.

11 THE COURT: Well, we're still kind of missing each
12 other.

13 MS. CONNELL: Judge, can we have one minute to
14 speak to Mr. Lester?

15 THE COURT: Look, I understand. I haven't
16 confronted this particular evidence issue before, so there
17 may be an easy answer to it. I'm just giving you my
18 off-the-cuff reaction, which is unsure whether this is, in
19 fact, a something that is a statement made in the course of
20 his agency.

21 MS. CONNELL: I understand, your Honor. The
22 legislature loosened that test some years ago as
23 Mr. Thompson stated.

24 THE COURT: It doesn't have to be authorized, but
25 not every waking hour is in the course of his directorship

BP

2858

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 either.

2 MS. CONNELL: Certainly, but discussion of the
3 directorship we had suggested would be; but even given that
4 and even given the Court's ruling, if we could just have one
5 second to help Mr. Lester along here? And I would note,
6 your Honor, that we circulated these exhibits a few days ago
7 and didn't get objections thereto.

8 (Brief pause)

9 CONTINUING BY MR. LESTER:

10 Q Lieutenant Colonel Lee, now is your personal belief
11 that board members are aware of concerns, but there's silence
12 about those concerns?

13 MS. EISENBERG: Objection, asked and answered.

14 THE COURT: Overruled.

15 A I don't know that.

16 Q But you have made a Facebook post to that effect; isn't
17 that correct?

18 A My opinion, yes.

19 MR. LESTER: Your Honor, I'd like to show it to the
20 jury as impeachment evidence.

21 MR. CORRELL: Your Honor, I have an objection as
22 well. There are random posts by people who are not in court
23 apparently responding to this post, so it is a multiple --

24 THE COURT: You can show the portion written by the
25 witness if he acknowledges it was written by him.

BP

2859

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 MR. LESTER: Yes, your Honor.

2 Jesse, could you redact the comments and let me
3 know when that's complete.

4 Q Sir, so what you see on your screen, is this the
5 Facebook post we were just discussing?

6 (Displayed)

7 A Yes.

8 Q I want to direct your attention to the first line with
9 the text over the image.

10 MS. EISENBERG: Your Honor, it hasn't yet been
11 admitted, but it is being shown.

12 MS. ROGERS: How is it proper impeachment if he
13 testified consistently that he made a statement to that
14 effect?

15 Why does he need to be impeached?

16 MR. LESTER: Your Honor, he said in a Facebook post
17 after he said he didn't know.

18 MR. CORRELL: Your Honor, I would ask it be taken
19 off the screen until we resolve this issue. This is an
20 improper attempt to put material before the jury.

21 THE COURT: Look, I think a person's public --
22 again, this is sort of on the fly a bit here; but an
23 acknowledged public statement, you know, if you confirm that
24 this is his public statement, I think is -- look, I want to
25 make sure we don't make any pitfalls here. I'm going to

BP

2860

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 take a two-minute break to look at something. I'll be right
2 back.

3 MR. LESTER: Thank you, your Honor.

4 COURT OFFICER: All rise.

5 (Short pause in the proceedings)

6 Stay in please. Remain seated.

7 THE COURT: All right, have a seat.

8 Despite the internet being down, so I can't check a
9 lot of things.

10 Having thought this through a bit, I think my
11 judgment is there is a non-hearsay basis for showing this.

12 I think the fact that somebody is a member of the
13 board of directors of this entity, the very fact of making a
14 statement about the entity has independent significance in
15 just in terms of the NRA has -- you know, I think it is
16 clear that the board of directors, as a whole, is a relevant
17 entity and each director does -- is also important.

18 So, I think the jury can consider what any director
19 says; but really the evidentiary significance is only that
20 the director had that view or expressed that view publicly
21 in a forum that reached members.

22 So, it doesn't mean that you're accepting it that
23 whatever it says is factually accurate or whatever, and,
24 obviously, the witness is here so both parties can ask him
25 what he meant by it or what he believes now or whatever; but

BP

2861

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 I do think having had some time to think, that the very fact
2 that a member of the board of directors says something does
3 have a non-hearsay relevance.

4 So, with apologies for roasting you over the coals
5 for a few minutes, I think it is important that the jury
6 understand that it is very specific kind of a purpose; that
7 when members of the body take public positions, that has
8 independent significance.

9 So, all right, so you can continue your statement.
10 It is limited to his statements, though, and not whatever
11 detritus might be around it in terms of other statements;
12 okay?

13 MR. LESTER: Yes, your Honor. Just to clarify,
14 there are some posts that we'll get to where Lieutenant
15 Curly was making the comments below, and we're keeping those
16 comments and the one he's responding to in context.

17 MS. EISENBERG: Subject to foundation.

18 MR. LESTER: I'll just tell him to take the
19 comments, and that's it, by Lieutenant curly. I'll cut my
20 losses.

21 THE COURT: All right, so you were in the middle
22 of -- so you can put that back up, and this will be a
23 redacted version of PX 3361.

24 MR. LESTER: Yes, your Honor.

25 THE COURT: Okay.

BP

2862

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 Q Lieutenant Colonel Lee, I want to direct your attention
2 to the text that's on top of the image there at the very top.
3 It says -- you see where it says "NRA's Meadows."

4 Do you see that, sir?

5 A In the box, yes.

6 Q And it says "NRA's Meadows/Cotton/Lee/Coy officers
7 team, we adopted roles. I was the echo buster."

8 You wrote that, correct, sir?

9 A Yes.

10 Q And Meadows in this post is Carolyn Meadows; is that
11 correct?

12 A Yes.

13 Q And Cotton is Charles Cotton?

14 A Affirmative, yes.

15 Q And Lee is yourself?

16 A Yes.

17 Q And Coy is David Coy; correct?

18 A Yes.

19 Q And then I want to direct your attention to the last
20 four lines in the box. Now you wrote:

21 "Board members are aware that's why they're silent.
22 They see what happens, even officers when they speak."

23 Do you see that, sir?

24 A Yes.

25 Q And you wrote that on your public Facebook page; is

BP

2863

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 that correct?

2 A Correct.

3 Q Now, you were a member of the Special Litigation
4 Committee; correct?

5 A Yes.

6 Q And that's also known as the SLC. If I refer to them
7 as SLC, will you know what I'm referring to, sir?

8 A I will.

9 Q And the SLC was comprised of yourself, Carolyn Meadows
10 and Charles Cotton; correct?

11 A Yes.

12 Q But she resigned from the Special Litigation Committee
13 in April of last year; correct?

14 A I believe that's the timeframe, yes, counselor.

15 Q I'll direct your attention to Tab 2 in your binder.

16 MR. LESTER: Your Honor, this has been pre-marked
17 as PX 5115. I received no objections to this.

18 MS. EISENBERG: No objection, your Honor.

19 THE COURT: All right, it is admitted.

20 (Whereupon, at this time PX 5115 was admitted and
21 received into evidence.)

22 Q Now, Lieutenant Colonel Lee, you authored this
23 document; correct?

24 A Yes.

25 Q And this letter is dated April 12, 2023; correct?

BP

2864

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 A Yes.

2 Q And it is addressed to the President of the National
3 Rifle Association of America; correct?

4 A Yes.

5 Q And the president at that time was Charles Cotton;
6 correct?

7 A Correct.

8 Q And in this letter, you were resigning as a member of
9 the SLC; correct?

10 A Yes.

11 Q A committee you had served on for approximately two
12 years at that point?

13 A To the best of my knowledge based on what I wrote
14 there, yes.

15 Q And you resigned to maintain your integrity; correct?

16 A For multiple reasons, but, yes.

17 Q I'd like to go to Tab 3 in your binder, sir. This has
18 been pre-marked as PX 3350.

19 MR. LESTER: Subject to removing the comments
20 below, I would move this into evidence, your Honor.

21 THE COURT: Admitted for the same limited purpose.

22 (Whereupon, at this time PX 3350 was admitted and
23 received into evidence.)

24 Q So, at the top here you write that you're no longer an
25 NRA officer, that you resign from the Special Litigation

BP

2865

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 Committee and Relocation Committee to maintain your integrity;
2 isn't that correct?

3 A Yes.

4 Q And this is a post from April 28, 2023; correct?

5 A Yes.

6 Q Which was approximately two weeks after your letter
7 resigning from the SLC; correct?

8 A Yes.

9 Q After this resignation, you were confronted with what
10 you may call NRA attack dogs; correct?

11 A I -- no.

12 Q No, okay. Let's go to Tab 4 in your binder.

13 MR. LESTER: Your Honor, this has been pre-marked
14 as PX 3354. I would move it into evidence.

15 THE COURT: It is admitted subject to the same
16 instruction about the limited use.

17 (Whereupon, at this time PX 3354 was admitted and
18 received into evidence.)

19 Q So you see the second line of this post, you wrote:

20 "NRA attack dogs can chill."

21 Do you see that?

22 A Yes.

23 Q And you went on to write:

24 "Consider past four years as an NRA officer, did
25 much crucial cleanup and some disgusting things to save NRA,

BP

2866

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 the NRA y'all broke. Leading to Indy, was told to do things
2 to keep the real reason secret. Wouldn't support the edict
3 which, okay, made me a liability."

4 Do you see that, sir?

5 A I do.

6 Q When you say "leading to Indy," you are referring to
7 the annual meeting at which you resigned from the SLC; isn't
8 that correct, sir?

9 A The National Rifle Association annual meeting was in
10 Indianapolis that year, yes.

11 Q And then you continued to write:

12 "We promise to never repeat the bankruptcy secrecy
13 debacle. I won't, hence my Relocation and Special
14 Litigation resignations." Correct?

15 A Yes.

16 Q And did you in fact resign not only from SLC, but also
17 the Relocation Committee; correct?

18 A I'm sorry, I couldn't understand you.

19 Q I'm sorry. You did in fact resign from not only the
20 SLC, but the Relocation Committee, as well?

21 A Yes.

22 Q But Charles Cotton is still president of the NRA;
23 correct?

24 A Present day or are you saying at this time?

25 Q At that time, yes.

BP

2867

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 A Yes, yes.

2 Q Is he still the president of the NRA?

3 A To the best of my knowledge, yes.

4 Q And David Coy is second vice president of the NRA; is
5 that correct?

6 A Not to be -- I don't know if anything happened in the
7 last day or two; but, yes, to the best of my knowledge, the
8 officers are still there.

9 Q The most recent update you've gotten would be a couple
10 days ago; is that right, sir?

11 A Yes.

12 Q Let's go to Tab 5 in your binder.

13 MR. LESTER: Your Honor, this has been pre-marked
14 as PX 3356, and I would move into evidence subject to the
15 same instruction.

16 THE COURT: Admitted, same instruction.

17 (Whereupon, at this time PX 3356 was admitted and
18 received into evidence.)

19 Q And I apologize we get one in, and I need to back up on
20 you for just a second, sir.

21 MR. LESTER: Can we go back to Tab 3 for a second,
22 and this was PX 3350, Jesse.

23 Q When you said you resigned maintain your integrity,
24 what did you mean?

25 A Hang on, counselor. I'm looking at two different

BP

2868

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 things.

2 Q Oh, I'm sorry sir. It is Tab 3.

3 MR. LESTER: And, Jesse, it is PX 3350.

4 Q I apologize, sir?

5 A I have it. Thank you.

6 Q We're just going to zoom in.

7 A I'm sorry, your question, again, counselor?

8 Q It was you wrote in this post you resigned from the
9 SLC and Relocation Committee to maintain your integrity;
10 right?

11 A Yes.

12 Q What did you mean when you resigned to maintain your
13 integrity?

14 A I don't recall specifically at that time.

15 Q Let's go back to Tab 5 in your binder.

16 MR. LESTER: And, again, this was marked as PX
17 3356. Your Honor, I apologize, was that admitted?

18 THE COURT: Yes.

19 Q Sir, I want to direct your attention to the text that's
20 over the image, again, in the box here.

21 So, you wrote:

22 "Let me get this straight? To people leading NRA
23 during the admitted abuse, plus NYAG alleged corruption,
24 endorsed and reelected people watching the coop during the
25 alleged corruption and admitted abuse, so that those people

BP

2869

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 can lead NRA into the future free from abuse and alleged
2 corruption. Okay, got it."

3 Do you recall writing these words, sir?

4 A I don't. I'm not disagreeing that they're my words, I
5 just don't recall writing.

6 Q And I'm actually -- and the people leading the NRA
7 that you're discussing in this post include Wayne LaPierre;
8 correct?

9 A I don't recall specifically -- I would have to be
10 assuming that when I wrote that, but --

11 Q To the best of your recollection?

12 MS. EISENBERG: Calls for speculation.

13 THE COURT: Sustained.

14 MR. LESTER: I can move on, your Honor.

15 Q I'll direct to you Tab 6 in your binder, sir.

16 MR. LESTER: This has been pre-marked as PX 3364,
17 and I would move this into evidence, your Honor.

18 THE COURT: Admitted.

19 MS. EISENBERG: Subject to the same instruction,
20 your Honor?

21 THE COURT: Yes.

22 (Whereupon, at this time PX 3364 was admitted and
23 received into evidence.)

24 Q Lieutenant Colonel Lee, I direct your attention to the
25 very top of the post, right underwear it says "June 28th." You

BP

2870

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 wrote --

2 A I have that.

3 Q You see that, sir. Thank you.

4 You wrote: "That the same people that got us here
5 running the place now." Correct?

6 A Yes.

7 Q Then you continued in the box with the text over the
8 image, you wrote "NRA's WLPs week."

9 Do you see that, sir?

10 A Yes.

11 Q And WLP in this statement is Wayne LaPierre; correct?

12 A Yes.

13 Q And you continue to write:

14 "He grapples with many who come on the board to
15 take from NRA instead of giving. Not always for a direct \$,
16 his difficulty saying no. Many got their cake."

17 Do you see that, sir?

18 A I do.

19 Q And you wrote that, correct?

20 A Yes.

21 Q And then you continue to write:

22 "If no reason than appearances, there should be no
23 conflicts of interest approved by Audit Committee and never
24 after the fact, yet still same people would have been
25 approving or not knowing stuff for years what to do."

BP

2871

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 You wrote that, correct, sir?

2 A Yes.

3 Q Referring to individuals in charge of the NRA; correct,
4 sir?

5 A I don't know that.

6 Q Okay. Sir, in your opinion, who were the three guys
7 running the NRA?

8 MS. EISENBERG: Objection. The question is
9 unclear. Is Mr. Lester asking what Lieutenant Colonel meant
10 when he wrote it?

11 MR. LESTER: I haven't gotten to the writing yet.

12 THE COURT: You, also, haven't gotten to the time
13 period.

14 Q At the time between, let's say, in July of 2023, who
15 did you believe were the three guys running the NRA?

16 A I don't recall. It could be different people on
17 different days.

18 Q I direct you to Tab 7 in your binder, sir.

19 MR. LESTER: This has been pre-marked as PX 3507,
20 and I would move it into evidence.

21 THE COURT: Admitted, with the same instruction.

22 (Whereupon, at this time PX 3507 was admitted and
23 received into evidence.)

24 Q I'll direct your attention to the top of the post,
25 again, just under the date. Do you see where it writes -- where

BP

2872

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 you wrote:

2 "Glimpse of how the three guys running the NRA
3 think, this exchange was so telling."

4 Do you see that, sir?

5 A Yes.

6 Q You wrote this in July of 2023, correct?

7 A Yes, yes.

8 Q Who was leading the NRA when you wrote this?

9 A Wayne LaPierre and Charles Cotton.

10 Q Anyone else come to mind off the top of your head as a
11 leader of the NRA at that time?

12 A There could have been multiple leaders at the time, so.

13 Q Understood. But when you posted it, this was your
14 view; correct? That's why you posted it?

15 MS. EISENBERG: Compound, your Honor.

16 MR. LESTER: I can rephrase, sir.

17 THE COURT: Go ahead.

18 Q So, when you posted it, this was your view; correct?

19 A This -- this was my opinion, yes.

20 Q And that's why you posted it; correct?

21 A I don't know why I posted it now, but I must have felt
22 that way at the time, so, yes.

23 Q I'll direct your attention down to what would be the
24 third paragraph here that begins with "In one surreal exchange."

25 Do you see that?

BP

2873

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 A Yes.

2 Q And you wrote:

3 "In one surreal exchange a lawyer chided me, Willes
4 we all have to sacrifice, a lawyer, a lifelong lawyer in
5 business to make lots of \$\$\$ for himself. He does look at
6 me a now full-time volunteer with a long history of
7 defending our nation and tried the sacrifice card."

8 You wrote that, correct, sir?

9 A Yes.

10 Q And I want to direct your attention back up to the
11 second paragraph that begins with "Sacrifice."

12 Now, you wrote:

13 "Thrust into the NRA leadership with ten hours
14 notice prior to Ollie North's departure at the 2019 annual
15 meeting. I committed to six years as an officer to save the
16 NRA."

17 Do you see that, sir?

18 A Yes, I do, yes.

19 Q And by that, you meant two years as second vice
20 president, two years as first vice president and two years as
21 president; correct?

22 A I believe so.

23 Q Now, we discussed before you were nominated and elected
24 as second vice president in 2019; correct?

25 A Yes.

BP

2874

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 Q And then you were nominated and elected first vice
2 president in 2021; correct?

3 A Yes.

4 Q And you appeared before the Nominating Committee in an
5 effort to become NRA president in 2023; correct?

6 A Yes.

7 Q And if you were not selected as president, you asked to
8 be nominated as first vice president again; correct?

9 A Yes.

10 MS. EISENBERG: Objection, misstates facts. The
11 Committee does not select --

12 THE COURT: He's allowed to ask a question, and
13 this is a fact witness and you can cross.

14 A Sir, your question again, counselor?

15 Q Yes, sir. If you were not selected as president, you
16 asked to be nominated as first vice president again; correct?

17 A If I were not nominated as president, to be nominated
18 as first vice president, yes.

19 Q And then returning to the post, you wrote -- you
20 continued writing in this second paragraph:

21 "This year, Cotton pushed hard for me to propose
22 the Bylaws change suggesting that I wanted him to serve
23 another year or more as president. Nope. When told to
24 agree to this chicanery and to keep the real reason secret,
25 I declined."

BP

2875

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 Do you see that, sir?

2 A Yes, I do.

3 Q And you wrote that, correct?

4 A Yes.

5 Q And by "Cotton" here, you mean Charles Cotton; correct?

6 A Yes.

7 Q But you refused to support the Bylaws changes; correct?

8 MS. EISENBERG: Objection, unclear.

9 THE COURT: Overruled. You can answer.

10 A I'm sorry, ask that again, counselor?

11 Q You refused to support the Bylaws changes in the
12 April 2023 annual members meeting; correct?

13 A I did not support the Bylaw change.

14 Q And you were punished for refusing to agree to this
15 change, correct?

16 A I don't know that.

17 Q I'll direct your attention to Tab 8 in your binder.

18 MR. LESTER: This has been pre-marked as PX 3348,
19 and I would move it into evidence, your Honor, subject to
20 the same instruction.

21 THE COURT: It is admitted, same.

22 (Whereupon, at this time PX 3348 was admitted and
23 received into evidence.)

24 Q I want to direct your attention to the second paragraph
25 here that starts with "Got this slipped."

BP

2876

Lt. Col. Lee - by Plaintiff - Direct/Mr. Lester

1 Do you see that, sir?

2 A Yes.

3 Q Now you wrote:

4 "Got this slipped under the door tonight. Oh,
5 congratulations to the new team nominated to be officers.
6 No one told me they were in exec session."

7 Do you see that, sir?

8 A I do.

9 Q And then in the photo below that you posted, right
10 above "Nomination of Officers," you wrote -- the letter states
11 "The proceedings of the Nominating Committee took place in
12 executive session."

13 Isn't that correct, sir?

14 A It says that, yes.

15 Q And after that executive session, the nomination of
16 officers, "The Committee unanimously places in nomination the
17 following individuals to the indicated offices: President
18 Charles L. Cotton, First Vice President Bob Barr, Second Vice
19 President David G. Coy."

20 Is that correct, sir?

21 A It says that, yes.

22 Q And to the best of your knowledge, those three
23 individuals were elected to those and are still those positions
24 as board officers; is that correct?

25 A Yes.

BP

1 Q Now, Mr. Cotton was made president, even though his
2 two-year term as president had concluded; correct?

3 A No. Could I -- not to evade. We served typically a
4 past president to one-year term as opposed to two-year term.
5 So, yes, he served the two years, but not as a two-year term.

6 (Continued on next page)

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BP

2878

Lee - by Plaintiff - Direct/Mr. Lester

1 Q Absolutely, sir.

2 So he had served two one-year terms at that time?

3 A Yes.

4 Q And the bylaws permitted two one-year terms as
5 president; correct?

6 A Up to the bylaws changed at the Board of Directors
7 meeting.

8 Q And that was the bylaws changed that you refused to
9 support; correct? To allow Mr. Cotton --

10 A That's the change I did not support, yes.

11 Q Okay. And so you in fact were not nominated to be an
12 officer of the NRA at all as a result of that nominating
13 committee meeting; correct?

14 A Correct.

15 Q Okay. And then directing your attention to just above
16 the photo again and starting on the far right of the second to
17 last line, there is a parentheses. You write, P.S. I'm still in
18 Indianapolis. Inside joke.

19 Do you see that?

20 A Yes.

21 Q Okay. And the inside joke here is a reference to
22 Oliver North's departure from the 2019 annual meeting; correct?

23 A Yes.

24 MR. LESTER: Okay. I'd like to direct your
25 attention to Tab 9, sir. This has been premarked as PX

KM

2879

Lee - by Plaintiff - Direct/Mr. Lester

1 3349, and I would move it into evidence, your Honor.

2 THE COURT: It's admitted with the same
3 instruction.

4 Q All right. It's on the screen now, sir.

5 Now this post, it appears -- would you agree this is
6 reposting the prior post we just discussed? You're posting
7 yourself.

8 A Yes. Yes.

9 Q I want to direct your attention here to the text above
10 the photo again, but it begins with, Sad but best text.

11 Do you see that sir?

12 A Yes.

13 Q Now you received a text that stated, Oh, no. They
14 Ollied you at annual meeting in Indianapolis. LOL.

15 Do you see the text?

16 A I see the text here.

17 Q And then you write in reference to us dumping North
18 here in 2019.

19 Do you see that?

20 A Yes.

21 Q That's what you were referring to in your previous post
22 that we discussed. It's in Tab 8 if you want to reference it,
23 sir.

24 A Yes. Yes, but I wasn't -- that was a comment I got --
25 are you talking about "They Ollied you?"

KM

2880

Lee - by Plaintiff - Direct/Mr. Lester

1 Q Yes.

2 A That was some comment I got from somewhere.

3 Q But you wrote independent --

4 A I'm referencing that comment, yes.

5 Q And yes. But you independently wrote in a reference to
6 us dumping North here in 2019; correct?

7 A Yes.

8 Q That was your independent writing here, sir?

9 A Yes.

10 Q Now, Lieutenant Colonel North was not renominated as
11 NRA president at the 2019 meeting that was also held in
12 Indianapolis; correct?

13 A That's correct.

14 Q Okay. So switching topics a bit.

15 Board members are given committee assignments by the
16 NRA president; correct?

17 A They are. Yes, they are assigned by the president.

18 Q In 2023, those assignment were announced in June;
19 correct?

20 A I don't recall specifically.

21 Q Does that sound about like the right time?

22 A Typically sometime after the annual meeting, so it
23 would be May or June or July timeframe.

24 Q I'll direct your attention to Tab 10 in your binder,
25 sir. This has been premarked as PX 3363, and I would move it

KM

2881

Lee - by Plaintiff - Direct/Mr. Lester

1 into evidence subject to the same instruction.

2 THE COURT: So admitted.

3 Q I want to start with the text above the photo. In the
4 third line down on the far right side, you wrote, Last year on
5 right specifically assigned a bunch Chair of a handful.

6 Do you see that, sir?

7 A I do.

8 Q And then directing your attention to the photo down
9 below. Did you see on the right side of this photo a letter
10 listing committee assignments to you?

11 A Yes. For 22/23.

12 Q For July 12, 2022. Do you see that, sir?

13 A Yes.

14 Q And those were in fact your committee assignments for
15 2022, 2023; correct?

16 A Yes.

17 Q Now the Special Litigation Committee is on this list;
18 correct, sir?

19 MS. EISENBERG: Objection. Which list?

20 MR. LESTER: On the right. The one we are
21 discussing. Sorry, your Honor.

22 A Yes.

23 Q And then the Special Committee on Relocation is on this
24 list; correct?

25 A Yes.

KM

2882

Lee - by Plaintiff - Direct/Mr. Lester

1 Q And now you resigned from both of those; correct?

2 A Yes.

3 Q But you did not resign from any of these other
4 committees; correct?

5 A Correct.

6 Q Okay. And then directing your attention back to the
7 text above the photo, you continued writing, This year left got
8 one and elected separately to foundation. It's not punishment.
9 Nope.

10 Do you see that, sir?

11 A I do.

12 Q Then directing your attention to the photo down below.
13 Then there is a letter on the left that reflects appointment to
14 the Sports Shooting Committee and the NRA foundation.

15 Do you see that, sir?

16 A Yes.

17 Q Those are in fact your committee assignments for this
18 year; correct?

19 A I could explain, Counsel. Sports Shooting Committee is
20 the committee assignment. The NRA Foundation is a different
21 process that we use, but that is another part of the
22 organization that I'm a trustee.

23 Q So you only had one committee assignment this year;
24 correct?

25 A Yes.

KM

2883

Lee - by Plaintiff - Direct/Mr. Lester

1 Q Okay. Now you have previously written that board
2 members are afraid of being canceled. Is that correct, sir?

3 A I don't recall, but yeah -- I have a plethora of posts,
4 so I have no doubt that I may have and you may show it to me
5 right now.

6 Q Yes, sir. Tab 11, please.

7 MR. LESTER: This has been premarked as PX 3509.
8 And with the same instruction, your Honor, I would move it
9 into evidence.

10 THE COURT: So admitted.

11 Q I just want to direct your attention to the second line
12 here on the right side. There is a sentence that begins, Board
13 members want to do something but don't know what. Want to ask
14 questions but afraid of consequences. Heck, they see a first
15 vice-president get cancelled.

16 You wrote that; correct, sir?

17 A Yes.

18 Q So -- but you did hear from at least one board member
19 who was not happy with your post to Facebook during this time;
20 correct?

21 A Yes.

22 Q I'll direct your attention to Tab 12, sir.

23 MR. LESTER: This has been premarked as PX 3502 and
24 subject to the same instruction. I would move it into
25 evidence, your Honor.

KM

2884

Lee - by Plaintiff - Direct/Mr. Lester

1 THE COURT: So admitted.

2 Q Okay. Okay. So I'll direct your attention first to
3 the top of the page here.

4 Now you wrote -- you wrote, Old member of NRA Board of
5 directors email to order me off FB.

6 Does "FB" stand for Facebook?

7 A For me it does.

8 Q Then you continued. And called me a wimp. Really.
9 The sixties. A wimp. CC his old friend for support.

10 You wrote that; correct, sir?

11 A Yes.

12 Q And that's in reference to at least one NRA Board of
13 Directors who asked you to stop making these posts on Facebook;
14 correct?

15 MS. EISENBERG: Objection. Assumes facts not in
16 evidence.

17 THE COURT: Overruled. You can ask.

18 Q You can answer, sir.

19 A Yeah. Question again.

20 Q Yeah. So this statement here, this is a reference to
21 at least one board member asking or directing you to stop making
22 posts to Facebook like this; correct?

23 A Yes. I -- I don't -- I don't know if a peer can direct
24 me, but it's an email or some communication that said hey, stop
25 doing this.

KM

2885

Lee - by Plaintiff - Direct/Mr. Lester

1 Q Okay. You continued to write, He didn't claim the
2 facts were inaccurate or even biased.

3 Correct, sir?

4 A Correct.

5 Q And then finally down in the final paragraph you wrote,
6 We need to clean up NRA or we never regain trust.

7 You wrote that, sir?

8 A Yes.

9 MR. LESTER: One moment, your Honor.

10 Q Earlier we noted a post where you spoke publically
11 about chicanery within the NRA.

12 Do you remember that, sir?

13 A I don't.

14 Q I can direct you back to the post.

15 A Thank you.

16 Q It's Tab 7 in your binder, sir, and that is PX 3507.
17 And then it's the last sentence of the second big paragraph
18 there that begins, "When told."

19 Do you see that, sir?

20 A I do.

21 Q That's -- you recall discussing this post below before?

22 A You're highlighting a different sentence, but yes.

23 Q What did you mean by this -- by chicanery?

24 A I don't know. It was a fun word for me to use.

25 Q I'll just direct your attention to just before that.

KM

2886

Lee - by Plaintiff - Direct/Mr. Lester

1 It's discussing the bylaws change; is that correct, sir?

2 MS. EISENBERG: Objection. Unclear.

3 THE COURT: Overruled.

4 A Where are we again?

5 Q I'm sorry sir, so it's third line down in the second
6 paragraph on the right-hand side there. It was a sentence we
7 discussed earlier.

8 Do you see that it's referring to the bylaws changes?

9 A I don't know that.

10 Q Okay.

11 A I can make an assumption because of the Facebook post,
12 but I don't know that.

13 MR. LESTER: Okay. No further questions. I'll pass
14 the witness.

15 THE COURT: Okay. Are there going to be any
16 questions from the rest of you?

17 So we will have to pick it up in the morning.

18 We are going to reconvene at 9:30. See you
19 tomorrow.

20 THE COURT OFFICER: All rise.

21 THE COURT: Sir, while we are on break, you are
22 essentially still on the stand, so you shouldn't discuss the
23 substance of your testimony with anyone including counsel or
24 your own counsel. No discussions.

25 (Whereupon, at this time the jury exits

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the courtroom.)
(Whereupon at this time the trial was continued
until February 1, 2024.)

KM

2888

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

-----X
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against-

INDEX NO.
451625/20

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

Defendants.

JURY TRIAL
60 Centre Street
New York, New York
February 1, 2024

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

APPEARANCES:

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2889

Proceedings

1 THE COURT: Okay. Just a couple of quick things.
2 My post-court research into CPLR 4549 which I was going from
3 memory on largely I think confirmed my ruling on permitting
4 the Facebook posts to come in. And just because I didn't
5 put it in the record specifically, what the statute as
6 revised or as effective at the end of 2021 said is that
7 "Statements offered against an opposing party shall not be
8 excluded from evidence as hearsay if either authorized by
9 the party to make the statement or by the opposing party's
10 agent or employee on a matter within the scope of that
11 relationship and during the existence of that relationship."

12 So I have kind of conflated a couple of things to
13 suggest that the posting would have to be during part of his
14 job. And in fact, what the rule is is it has to be a matter
15 within the scope of the relationship. And obviously, if you
16 have a director talking about the organization and its
17 management, that's within the scope of the relationship, and
18 it occurred during the existence of the relationship.

19 I still have some trouble viewing this as an
20 admission when you have a board of 76 people to suggest that
21 any random statement by every director is deemed an
22 admission, particularly since they are likely going in all
23 different directions, but I think it does support the
24 principle that I ended up citing which is that there is
25 independent evidentiary significance to a member of the

KM

2890

Proceedings

1 supervisory board of the organization making statements or
2 comments about its management and oversight. So I'm
3 comfortable with where I came out. Again, I didn't describe
4 it to the jury as an admission because, again, I think it's
5 not a -- really a great fit, and frankly, there wasn't a lot
6 of factual content to it. It was mostly just his views on
7 the organization. But since one of the issues in this case
8 is board oversight of the NRA, I think it does have
9 independent significance what a director says about his view
10 on how things are going. So --

11 MS. EISENBERG: Your Honor, if I may chime in for
12 just one second.

13 THE COURT: I wasn't really looking for any
14 commentary.

15 MS. EISENBERG: I just wanted to reinforce that I
16 think that it's not an admission is further bolstered by the
17 fact that the statements he made relate to positions he held
18 in the past when he made those statements.

19 THE COURT: Yeah, I don't agree with that. He is a
20 member of the Board. He is still a member of the Board, and
21 that's the scope.

22 MS. EISENBERG: Understood.

23 THE COURT: That's during the existence of the
24 relationship. That's what that refers to, and I did see
25 today another letter about Statute of Limitations which is

KM

2891

Proceedings

1 interesting.

2 I had also been researching with my staff last
3 night, and I was going to ask the parties to look at this
4 issue of CPLR 214(2). The way the statute is set up, it
5 does provide for a default rule of three-year Statute of
6 Limitation for what it calls statutory violations. And on
7 the other hand, 213 Part VII has a six-year Statute of
8 Limitation for objections brought on or before a corporation
9 against officers and directors, and I think some of the
10 cases, certainly the Schussel case that I referenced
11 analyzed it in part under 213(7) as an action on or behalf
12 of an entity asserting claims against directors, and it is a
13 sort of an odd thing if it -- if it would turn out that, you
14 know, if the NRA itself were to sue its officers and
15 directors for breach of duty, they would get six years under
16 CPLR 213; but the argument, at least anyway, is that because
17 it's a statutory violation, the Attorney General making
18 effectively the same claims would only get three years. It
19 seems like an odd result, but I did want the Attorney
20 General in particular to respond. And now that I have Mr.
21 Correll's letter which specifically zeros in on cases
22 focused on CPLR 214, I do want to see your response about
23 how I balance these conflicting principles.

24 I think Judge Richter's opinion, I continue to
25 think makes sense to me, but as I read more and I saw the

KM

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Proceedings

1 back and forth between CPLR 214 and NRA 213, I just want
2 more guidance.

3 MS. CONNELL: Certainly.

4 MR. CORRELL: I was up first I believe on my feet.

5 I'd like to just clarify, your Honor, that Schussel
6 was pre-Grasso, and in Grasso, the Court of Appeals focused
7 on the distinction between statutory claims and common-law
8 claims. Also, in Schussel, Justice Richter incorrectly
9 characterized the claim as a derivative cause of action when
10 in fact the N-CPL 27(b) creates a direct cause of action for
11 the Attorney General. So she got it wrong, and that may
12 have influenced her decision whether to treat it as
13 equitable and strictly statutory or not. I think when you
14 go through those cases, those distinctions fall out.

15 The other point is, it's a slippery slope. If you
16 take the Attorney General's view, it's a six-year statute
17 with unlimited tolling, then there is no Statute of
18 Limitations for fiduciaries. And who in their right mind
19 would ever serve as a fiduciary because there's no Statute
20 of Limitations on them, and they can go back 50 years.

21 THE COURT: Well, I wasn't relying on the tolling
22 part. This is not the oral argument on this right now.
23 What I think would be more sensible is to get a responsive
24 letter from the AG, and then I'll at least have both sides.

25 MS. CONNELL: Thank you, your Honor. I think I was

KM

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Proceedings

1 up before you, Mr. Correll, but I don't want to foot fault
2 so.

3 THE COURT: I don't really care. I don't really
4 care who was standing up first, frankly, but respond. Fine.

5 I mean, my mind is on the jury instructions more
6 than, you know, what is put in necessarily in these -- the
7 -- in the experts because the jury is going to be given
8 instruction as to what they can consider and what they can't
9 once I conclude. So you know, I look -- what year was this
10 Schussel case?

11 MR. CORRELL: I believe 2005, your Honor.

12 THE COURT: Okay.

13 MR. CORRELL: And in fact, Justice Grasso in the --
14 Justice Ramos in the Grasso case distinguished Schussel and
15 pointed out that it was not a derivative action as Justice
16 Richter had indicated.

17 THE COURT: Right. Okay. So are we ready to
18 begin?

19 So again, we have Lieutenant Colonel Lee. And
20 remind me what's next after that.

21 MS. CONNELL: After Lee will be Ms. Hallow's depo
22 designation. Then Ms. Stanford's depo designation and then
23 Mr. Hines and then we are done.

24 THE COURT: All right. I saw there were revised
25 slides. I don't know whether there are any comments on

KM

2894

Lee - by Plaintiff - Cross/Ms. Eisenberg

1 those. We can deal with them before we get there. Let's --
2 is the jury ready? All right.

3 (Witness resumed the witness stand.)

4 THE COURT: Good morning. Have a seat.

5 THE COURT OFFICER: All rise. Jury entering.

6 (Whereupon, at this time the jury entered the
7 courtroom.)

8 THE COURT: Good morning, everyone. Have a seat,
9 please.

10 Okay. Good morning, Lieutenant Colonel Lee. Just
11 a reminder that you're still under oath from yesterday.

12 THE WITNESS: Yes, sir.

13 MS. EISENBERG: Thank you, your Honor.

14 THE COURT: Counsel.

15 MS. EISENBERG: Good morning. Can the members of
16 the jury hear me?

17 VOICES FROM THE JURY BOX: Yes.

18 MS. EISENBERG: Thank you very much.

19 CROSS-EXAMINATION

20 BY MS. EISENBERG:

21 Q Good morning, Lieutenant Colonel Lee.

22 A Good morning, Counselor. Thank you.

23 Q Under the NRA's bylaws, what is the process for the
24 election of the Second Vice-President?

25 A Thank you, Counselor. Can I just get through how we

KM

2895

Lee - by Plaintiff - Cross/Ms. Eisenberg

1 get to that point?

2 Q Absolutely.

3 A Board members of the NRA, the 76 are chosen by our
4 electors across the nation, Life Members of the NRA that once we
5 are on the Board, the members ourselves select the officers to
6 represent the NRA.

7 Q Does the nominating committee have a role in that
8 process?

9 A It does.

10 Q What role does it play in the selection/election of the
11 Second Vice-President?

12 A The nominating committee will take, you know, each of
13 the resumes, each of the applications for folks who want to run,
14 you know, vet those, interview the, you know, potential
15 vice-presidents and then recommend to the Board of Directors who
16 they believe is the best choice. Maybe more than one.

17 Q Once the nominating committee makes that
18 recommendation, what does the Board do with that?

19 A The nominations are placed on the floor at our Board
20 meetings, and the Board votes on that. If it's a contested
21 election, it's a secret election by secret ballot. If it's not
22 contested, then typically by acclamation.

23 Q Is it fair to say that in 2019 you were recommended by
24 the nominating committee for the Second Vice-President position?

25 A I'm sorry. What was the date on that, Counselor?

KM

2896

Lee - by Plaintiff - Cross/Ms. Eisenberg

1 Q Of course. 2019.

2 A Yes. Yes.

3 Q And what happened after the nominating committee
4 recommended you to the Board for the Second Vice-President
5 position?

6 A The -- the next day at the Board meeting the
7 nominations were presented to the entire Board of Directors and
8 we voted on that.

9 Q Is it fair to say that in 2023 this past year the
10 nominating committee nominated Professor Coy for the Second
11 Vice-President's slot?

12 A Yes. Yes. As I recall.

13 Q What did the Board do after he was recommended by the
14 nominating committee for that position?

15 A They elected him. He was raised to the Board as Second
16 Vice-President, and the Board elected him as Second
17 Vice-President.

18 Q So the process was the same as it was in 2019 with your
19 election. Would that be fair?

20 A Yes.

21 Q What about the First Vice-President? Is the process
22 for the selection/election of that position similar to what you
23 just described?

24 A Yes.

25 Q And is it fair to say that you were recommended by the

KM

2897

Lee - by Plaintiff - Cross/Ms. Eisenberg

1 nominating committee for the First Vice-President slot in or
2 around 2021?

3 A Yes.

4 Q What did the Board do after you were nominated for that
5 position?

6 A In 2021 the Board acted on that at our Board meeting,
7 and I was elected to the position of First Vice-President.

8 Q Did the nominating committee recommend someone for the
9 First Vice-President position in 2023?

10 A Yes.

11 Q Who did they recommend?

12 A Our Board member Mr. Barr. Bob Barr.

13 Q Can you tell members of the jury a little bit about
14 Congressman Barr and his background.

15 MR. LESTER: Objection. Outside the scope, your
16 Honor.

17 THE COURT: Overruled. You can answer.

18 A To the best of my knowledge, you know, Bob Barr is a
19 former Congressman who had run for president, a long-time board
20 member of the National Rifle Association. That's what I can
21 pull off the top of my head, Counselor.

22 Q Is he also an attorney?

23 A I believe so. I don't know that. I believe so. I
24 don't know that.

25 Q Understood. And based -- you have interacted with him

KM

2898

Lee - by Plaintiff - Cross/Ms. Eisenberg

1 in your capacity as a Board member of the NRA?

2 A Yes. We aren't close, but yeah. We are cordial.

3 Q If you would be so kind as to please turn to Tab 8 in
4 your binder. I believe it's open to that document. It's PX
5 3348 which was admitted yesterday in evidence subject to the
6 limiting instruction from his Honor.

7 A I have that.

8 Q Directing your attention to the image of the report of
9 the nominating committee. Does the report list the names of the
10 Board members who served on the nominating committee on or about
11 April 17, 2023?

12 A Yes.

13 Q Who does the report list?

14 A Give me a second. I think it's a little cut off on the
15 screen. Kayne Robinson, Chairman. It's cut off, but I believe
16 that's Janet Nyce, Vice-Chairman, Anthony Colandro, Carol
17 Frampton, Mitch O'Neal-Mitchell, Don Saba, Holly Turner, Robert
18 Wos, and John Frazer as committee secretary.

19 Q Thank you very much.

20 A I'm sorry, Counsel. One other. Committee member
21 Steven Plaster was unable to attend.

22 Q Thank you. You've interacted with Mr. Robinson; fair?

23 A With Kayne Robinson, yes.

24 Q Based on your interactions with Mr. Robinson, do you
25 have any reason to believe that when he voted on April -- in

KM

2899

Lee - by Plaintiff - Cross/Ms. Eisenberg

1 April of 2023 to nominate Professor Coy, Congressman Barr for
2 the First and Second Vice-President position, that he acted out
3 of anything other than the best interest of the NRA?

4 MR. LESTER: Objection, your Honor. Leading.

5 THE COURT: Sustained.

6 A I don't know. I'm sorry.

7 Q Do the bylaws of the NRA specify a process for the
8 amendment of the bylaws?

9 A Yes.

10 Q What is your understanding of that process in general
11 terms?

12 A First of all, there are two different portions of our
13 bylaws, and I'm not sure if they are purposely designated this
14 way, but within our bylaws, there are bold bylaws, and there are
15 not bold bylaws.

16 Those bylaws that are in bold must be changed by the
17 entire management attending at a annual meeting. The not-bold
18 items can be changed by the Board of Directors.

19 Q Was the bylaws changed in Spring of 2023?

20 A Yes.

21 Q Was the process the first method or the second method
22 that you described?

23 A The bylaw in question was a not-bold, so it could be
24 changed by the Board of Directors. Is that what you're
25 referring to, Counselor?

KM

2900

Lee - by Plaintiff - Cross/Ms. Eisenberg

1 Q Yes. Did the amendment mention Mr. Cotton?

2 A I don't recall the wording right now, but it -- it
3 involved Mr. Cotton, yes.

4 Q How did it involve him?

5 A The National Rifle Association has tremendous history,
6 151 years, and typically our officers are elected for two
7 one-year terms and it's capped at the two one-year terms as a
8 term limit.

9 This bylaw amendment was to allow Charles Cotton to
10 stay on for a third one-year term, and that's what the Board is
11 voting on at this annual meeting. The Board meeting following
12 the annual meeting.

13 Q Based on your knowledge of the history of the NRA, do
14 you know if he is the only person who has been permitted under
15 the bylaws to succeed himself for more than two years?

16 A I do.

17 Q What is the answer?

18 A There may have been others. The one that comes to mind
19 was at one point Charlton Heston the actor had been president of
20 the -- president of the NRA and stayed for several years as I
21 understand. I don't know how if they amended the bylaws. I
22 don't know what they did back then to keep him on, but he stayed
23 for more than two years.

24 Q Switching topics a little bit, do the bylaws specify
25 anything about committee assignments?

KM

2901

Lee - by Plaintiff - Cross/Ms. Eisenberg

1 A Yes.

2 Q What is your understanding as to how committee
3 assignments work under the bylaws?

4 A I'm not sure the question, Counselor, but let me see if
5 I can hit this.

6 We have 38 standing committees, now 39 and several
7 informal committees or appointed committees. The president
8 makes assignments to the committees and the committee officers.

9 Is that what you're referring to?

10 Q Yes. And in 2023, you were appointed to a committee.
11 Is that fair?

12 A Yes.

13 Q To what committee were you appointed?

14 A The Shooting Sports Committee.

15 Q Please tell us about that committee.

16 A Of the 39 committees, it covers all the aspects of the
17 National Rifle Association business. Several of them involve
18 the shooting sports competitive shooting, the -- well, so as an
19 example, small board shooting or shotgun shooting or pistol.

20 The Sports Shooting Committee dealt with the more
21 modern sports, what we call three gun competitions where you use
22 a shotgun, a rifle and a pistol to compete against each other.
23 So that -- that's what the Sports Shooting Committee was.

24 Q And what types of things have you done this year as
25 part of your membership on that committee?

KM

2902

Lee - by Plaintiff - Cross/Ms. Eisenberg

1 A Nothing. We haven't met.

2 Q You haven't met yet?

3 A Correct. For -- for several years, we haven't met.

4 Q Understood. And in 2019, when you were Second
5 Vice-President, did Ms. Meadows as president consult with you in
6 connection with her decision about committee assignments?

7 MR. LESTER: Objection. Leading, your Honor.

8 THE COURT: Overruled.

9 A In our process, the president makes the selections for
10 all the committee -- committee chairs. I don't know what
11 presidents did before, but I was very fortunate to work with the
12 presidents -- with Meadows and Cotton, Carolyn Meadows and
13 Charles Cotton, but they did ask me my opinion, and I was able
14 to give my opinion on committee assignments. I don't know who
15 else asked, but I appreciated that at least. I thought I was
16 part of that process.

17 Q And what did you consider in making those
18 recommendations?

19 A In what sense, Counselor?

20 Q Would it be fair to say that what you were guided by is
21 what in your mind is in the best interest of the NRA?

22 MR. LESTER: Objection leading.

23 THE COURT: Sustained. He's your director.

24 Q When you were making recommendations to Ms. Meadows in
25 2019, what, if anything, guided your decision?

KM

2903

Lee - by Plaintiff - Cross/Ms. Eisenberg

1 A One, it's always easier. You know, you're making a
2 recommendation. You are not the decision maker, but for me, and
3 I don't know how other people do this, it's always based on the
4 needs of the National Rifle Association and how the individuals
5 can be best assigned to help our mission.

6 Q Were there certain committees that you requested to be
7 appointed to in 2023 that you were not appointed to?

8 A To the best of my recollection, yes.

9 Q Do you remember any of the specific committees?

10 A I believe yes.

11 Q What are they?

12 A I believe Finance was one; although I don't recall the
13 others. I think though I have a -- we fill out forms that we
14 send in with our requests, so I'm sure that's on record
15 somewhere. I don't recall.

16 Q Was it Mr. Cotton who appointed members of the Finance
17 Committee in 2023?

18 A Yes. The president makes the appointments.

19 Q Pursuant to the bylaws; right?

20 A Pursuant to the bylaws.

21 Q And do you believe that he was guided by the needs of
22 the association in picking the Board members for that committee?

23 MR. LESTER: Objection. Leading, your Honor.

24 THE COURT: Sustained.

25 Q Is it fair to say that you're a Board of Trustee on the

KM

2904

Lee - by Plaintiff - Cross/Ms. Eisenberg

1 NRA foundation?

2 A Yes.

3 Q I'm sorry. A trustee on the Board of Trustees of the
4 NRA Foundation.

5 A Yes.

6 Q And fair to say that you were elected to that position?

7 A Yes.

8 Q And that happened before or after the social media
9 posts that Mr. Lester showed you yesterday?

10 A I was elected to the Board of Trustees prior to those
11 posts.

12 Q Sorry. Go ahead.

13 A I'm sorry. I'm trying to recollect. I do a lot of
14 social media, so of the posts that you're talking about, just
15 the ones that were presented yesterday?

16 Q Correct.

17 A Yes.

18 Q And after you posted the posts that Mr. Lester
19 discussed with you yesterday, did you continue to serve as a
20 trustee on the Board of Trustees at the Foundation?

21 A Yes.

22 Q Please tell us some of the things you've done in that
23 capacity this year.

24 MR. LESTER: Objection. Scope, your Honor.

25 THE COURT: Sustained.

KM

2905

1 Q There was a post in which you referred to yourself as
2 an "echo buster."

3 Do you recall that?

4 A Yes.

5 Q What did you mean when you -- is that something that
6 you -- have you referred to yourself as an "echo buster?"

7 A Yes.

8 Q And when you do that, what -- what are you getting at?

9 A Well, for me, obviously -- my opinion in every
10 organization, we tend to listen to or be more affiliated with
11 ideas that we agree with.

12 I believe every organization needs to be cautious that
13 they don't follow a path of setting up an echo chamber where we
14 all tell each other the same thing.

15 And in my case, my role in this team that I took on was
16 to be the devil's advocate, to bring up other options, other
17 ideas so that we would examine every aspect of an issue or
18 problem or situation rather than just all of us agreeing on
19 something.

20 (Continued on the following page.)

21

22

23

24

25

KM

2906

Lt. Col. Lee - by Plaintiff - Cross/Ms. Eisenberg

1 MS. EISENBERG: Thank you, your Honor.

2 Q Do you believe it is healthy to have an echo buster on
3 the committee?

4 A Yes.

5 Q Productive?

6 A I think it is important for every committee
7 organization or otherwise, yes.

8 Q Serves the best interest of NRA, wouldn't you agree.

9 MR. LESTER: Objection, leading your Honor.

10 THE COURT: Yes, just to move things along, you can
11 answer.

12 A Yes.

13 Q Switching topics a little bit. In one of the social
14 media posts that Mr. Lester showed you, there was a reference to
15 having done, quote, "disgusting things."

16 Do you recall that?

17 A Yes.

18 Q Can you please tell the members of the jury what
19 "disgusting things", end quote, you were referring to?

20 A Yes.

21 Q Please, go ahead.

22 A Without a doubt in the history of the National Rifle
23 Association, no vice president has spent this much time in
24 litigation. And so as I came to the NRA and became a board
25 member, became a vice president when I thought I would be

BP

2907

Lt. Col. Lee - by Plaintiff - Cross/Ms. Eisenberg

1 helping us to further gun safety or be concerned about crime and
2 rising crime, I found myself doing more litigation and less time
3 with members, with Americans trying to solve problems of either
4 gun control or gun safety. So, that was the most disgusting.

5 But, as an aside, I'll add involved in this is the
6 travel. Travel is tough these days anyway; but just simply
7 getting here from my home to New York and getting back, all of
8 this I just find disgusting, a disgusting distraction to what I
9 believe I should be doing for my not-for-profit, for the Rifle
10 Association.

11 So, those are the some of the types of disgusting
12 things I believe I've had to do during this process.

13 To be clear, your Honor, I'm not saying the Court is
14 disgusting. Just my role that I've had.

15 Q Understand. Switching topics a little bit.

16 Do you recall there was a social media post that
17 Mr. Lester showed you yesterday in which there was a reference
18 to an inside joke?

19 A Yes.

20 Q And what was that?

21 A Could I refer to the post?

22 Q Well, let me see if I can refresh your recollection.

23 A Please.

24 Q Do you recall saying in the social media post something
25 to the effect of, "I'm still in Indianapolis?"

BP

2908

Lt. Col. Lee - by Plaintiff - Cross/Ms. Eisenberg

1 A Yes.

2 Q And was that sort of a tongue-and-cheek reference to
3 Oliver North in 2019?

4 A Sort of. Could I explain, counselor, or?

5 Q Please.

6 A So, one of the leaders at the National Rifle
7 Association, I've spoken with a lot of staff; and in 2019 -- or
8 coming out of 2019 the going joke was we did not know the staff,
9 a lot of the board members that Colonel North was going to lead
10 the annual meeting and leave before the --

11 Q You can just restart perhaps.

12 A But, the staff started getting texts and e-mails,
13 apparently, from other of their peers who were at the airport
14 that said, Colonel North is at the airport. What's going on?

15 I had heard of that and so my inside joke was just to
16 let folks know I wasn't leaving early. I was attending the
17 board meeting. You wouldn't be seeing those texts and e-mails
18 as you had four years ago that I was at the airport on my way
19 out.

20 So, that's what that was in reference to.

21 Q Did you, in fact, stay for the board meeting in 2023?

22 A I did.

23 Q And did you, in fact, stay for the annual meeting of
24 the members in 2023?

25 A Yes, that preceded the board meeting.

BP

2909

Lt. Col. Lee - by Plaintiff - Cross/Ms. Eisenberg

1 Q In contrast back in 2019, what was your understanding
2 about whether or not Lieutenant Colonel North stayed for the
3 board meeting?

4 A I was there. I know he did not stay for the board
5 meeting.

6 Q Understood. Is it fair to say that in making the
7 social media posts that Mr. Lester showed you yesterday, you
8 were not posting content on behalf of any other NRA board
9 member?

10 MR. LESTER: Objection. Leading, your Honor.

11 THE COURT: Overruled.

12 A My -- the Facebook -- as I said, I'm prolific on social
13 media, Facebook, Twitter and Instagram; and I believe on each
14 account, but I know on that Facebook page it even notes -- and I
15 didn't ever think I'd have to do this, I thought it was just
16 normal behavior. It notes these are my opinions.

17 So, I think that's clear on the Facebook page that it
18 is my opinions. And even as an officer, I was cognizant of what
19 my opinions may mean, but clearly now as not an officer
20 representing the NRA. I don't believe there's any question that
21 these are my opinions, not those of anyone else, necessarily. I
22 don't know if other people feel the same way, but I'm not
23 writing on their behalf.

24 Q Is it fair to say that you're not writing on behalf of
25 the entire board, either?

BP

2910

Lt. Col. Lee - by Plaintiff - Cross/Ms. Eisenberg

1 A Absolutely fair in that aspect.

2 Q In other words, not on behalf of any other person or
3 entity other than yourself, Lieutenant Colonel Lee; fair?

4 A Others may share the same opinion, but -- and I don't
5 even know that, but, clearly, I am writing my opinion on those
6 Facebook pages.

7 Q Do you consider yourself to be a whistleblower?

8 MR. LESTER: Objection, scope, your Honor.

9 THE COURT: Sustained.

10 MS. EISENBERG: Your Honor, may I approach?

11 THE COURT: Approach me?

12 MS. EISENBERG: Yes.

13 THE COURT: Okay. On this objection?

14 MS. EISENBERG: Well, I think that the Government's
15 theory of the case is that Lieutenant Colonel Lee is a
16 whistleblower. So, I think that the NRA should be permitted
17 to ask him if he considers himself a whistleblower.

18 THE COURT: I don't think I've heard that.

19 MR. THOMPSON: We have not identified Lieutenant
20 Colonel Lee as a whistleblower.

21 MS. ROGERS: This is in their contention
22 interrogatory responses; but if the Government represents
23 that it is no longer alleging Colonel Lee as a
24 whistleblower, then, of course, we don't need to pursue the
25 questioning.

BP

2911

Lt. Col. Lee - by Plaintiff - Cross/Ms. Eisenberg

1 MR. THOMPSON: I guess I'll need to revisit our
2 contention interrogatories, your Honor.

3 THE COURT: I'll revisit my ruling then. I still
4 think it is a little outside the scope; but given that, you
5 can ask.

6 MS. EISENBERG: Thank you.

7 Q Let me ask again.

8 Do you consider yourself to be a whistleblower?

9 A No.

10 Q Has anyone at the NRA done anything that you believe to
11 be retaliation for your actions?

12 A At the NRA, the NRA is such a huge organization, so
13 could you narrow that, counselor?

14 Q Anyone on the board?

15 A No.

16 Q What about anyone in -- amongst the salaried officer
17 positions?

18 A No. Counselor, I have to -- this is my projection. I
19 believe that everybody in their own capacity believes in
20 whatever they're doing is in the best interest; and I have to
21 believe that each individual at the NRA, whether it is an
22 officer on the board or a staff are making decisions based on
23 the best -- what they believe is the best interest.

24 Q Best interest of the NRA?

25 A Of the National Rifle Association.

BP

2912

Lt. Col. Lee - by Plaintiff - Cross/Ms. Eisenberg

1 Q Thank you very much.

2 MS. EISENBERG: I'll pass the witness.

3 THE COURT: Any questions?

4 MR. CORRELL: No questions.

5 MS. COUTU: No questions, your Honor.

6 MR. FLEMING: None from me, either.

7 THE COURT: Anything further, Mr. Lester?

8 MR. LESTER: Nothing further, your Honor.

9 THE COURT: Lieutenant Colonel Lee, you're free to
10 step down.

11 THE WITNESS: Thank you, your Honor.

12 (Whereupon, at this time the witness was then
13 excused.)

14 THE COURT: What's next from the State?

15 MR. THOMPSON: Next, your Honor, is the designation
16 of Mildred Hallow.

17 THE COURT: And Ms. Hallow is not available to be
18 here, correct?

19 MR. THOMPSON: Correct, your Honor.

20 THE COURT: All right. So, this is going to be a
21 deposition replay, and I think some parts of it are going to
22 be audiovisual and -- is that right?

23 MR. THOMPSON: It is all audiovisual. Some part of
24 it will be video, and some of it will be audio only.

25 THE COURT: So, there's no readings that we're

BP

2913

Lt. Col. Lee - by Plaintiff - Cross/Ms. Eisenberg

1 doing?

2 MR. THOMPSON: Correct, your Honor.

3 THE COURT: So, back to the videotape.

4 (Whereupon, the video was then played.)

5 THE COURT: That's the end?

6 MR. THOMPSON: Yes, your Honor.

7 THE COURT: Next witness.

8 MR. THOMPSON: Next, your Honor, the People will be
9 calling Gayle Stanford who's unavailable, and this will be
10 half read into the record and half audio.

11 THE COURT: So, which is going first, the audio?

12 MR. THOMPSON: The reading in will be first, your
13 Honor. It is approximately twenty minutes.

14 THE COURT: Okay. So, this may seem a little odd.
15 Well, in the old days we did all depositions, just the
16 transcripts. So that when they were going to be given to a
17 jury at trial, lawyers will play the roles of the questioner
18 and the witness without acting in any overt way; right?

19 MR. THOMPSON: Yes, your Honor.

20 THE COURT: Just to convey the information to you
21 because they don't have the video and the audio linked up
22 for part of this or maybe the quality wasn't good enough.
23 There was some issue with the audio.

24 So, we're going to do it two different ways. Part
25 of it is going to be read to you by lawyers and part of it

BP

2914

Lt. Col. Lee - by Plaintiff - Cross/Ms. Eisenberg

1 is going to be video.

2 JUROR: Do we get to see a picture of the witness?

3 THE COURT: Do you have a picture of the witness?

4 MR. THOMPSON: We don't have one for this first
5 part, your Honor; but the second one will be a full video of
6 the witness that they're going to see.

7 THE COURT: Can we put the witness's picture up on
8 the screen, what the intro picture will be, if that's
9 helpful just to have her there?

10 (Displayed)

11 All right, proceed.

12 MS. KANDEL: Can I take the witness stand as the
13 witness or is that too weird?

14 THE COURT: I think that's the way we've normally
15 done it, yes. I won't swear you in.

16 MS. KANDEL: Please don't.

17 THE COURT: Again, Ms. Kandel is literally just
18 reading the transcript so you don't have to read it yourself
19 at this point, but the transcript will be available for you
20 as an exhibit if you need it.

21 MR. THOMPSON: Just testing. Is that working at
22 all?

23 THE COURT: It is. It's not bad.

24 MR. THOMPSON: Steven Thompson playing the role of
25 Jonathan Conley.

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1 THE COURT: Mr. Conley was not available to play
2 that role?

3 (Deposition Readings:)

4 "QUESTION: Okay, Ms. Stanford, would you please
5 tell us your full name?"

6 "ANSWER: Gayle Nancy Stanford."

7 QUESTION: While that's getting loaded, Ms.
8 Stanford, are you currently employed?"

9 "ANSWER: No."

10 "QUESTION: Are you retired?"

11 "ANSWER: Yes."

12 "QUESTION: Before your retirement, what was your
13 occupation?"

14 "ANSWER: I did travel for the NRA."

15 "QUESTION: And when did you first begin providing
16 travel services?"

17 "ANSWER: I think about 1993, '94."

18 "QUESTION: And that's when you began providing
19 travel services to the NRA?"

20 "ANSWER: Yes."

21 "QUESTION: Did you have experience as a travel
22 agent prior to that?"

23 "ANSWER: Yes. Starting in 1968."

24 "QUESTION: And when you first started working as a
25 travel agent, where did you work?"

BP

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Proceedings

1 "ANSWER: First, at Scariano Travel in Beverly
2 Hills, California. And I worked there for about
3 fifteen years, maybe a little longer. And then another
4 small travel agency a year or two. And then another one I
5 managed for a couple years, and then I stopped."

6 "QUESTION: Okay. And you testified that you
7 started providing travel services to the NRA in the early
8 1990s?"

9 "ANSWER: Yes."

10 "QUESTION: How did that come about?"

11 "ANSWER: Charlton Heston was -- had been my client
12 for many years. He introduced me to Tony Makris. I did
13 some travel for Tony Makris, and then he introduced me to
14 Wayne LaPierre on the phone."

15 "QUESTION: And who hired you to provide travel
16 services to the NRA?"

17 "ANSWER: I just spoke to Wayne."

18 "QUESTION: Wayne LaPierre?"

19 "ANSWER: Yes."

20 "QUESTION: And when you started providing travel
21 services for Mr. LaPierre, what type of services did you
22 provide?"

23 "ANSWER: Air travel, hotels, rental cars, car and
24 driver."

25 "QUESTION: And were you providing travel services

BP

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Proceedings

1 just for Wayne LaPierre or others in the NRA?"

2 "ANSWER: At the beginning, it was, I think, just
3 Wayne, and then people that would travel with him and --
4 yeah, at the beginning."

5 "QUESTION: And did that change over time?"

6 "ANSWER: Yes. Yes."

7 "QUESTION: And how did it change?"

8 "ANSWER: Then I started providing travel for a
9 number of other people who worked at the NRA."

10 "QUESTION: Is it fair to say that you provided
11 travel services to the NRA and Mr. LaPierre from
12 approximately 1993 until November of 2020?"

13 "ANSWER: Yes."

14 "QUESTION: And you testified that over time you
15 started providing travel services to people other than
16 Mr. LaPierre at the NRA. Who would you make travel
17 arrangements for?"

18 "ANSWER: Millie Hallow, Tyler Schropp, Chris Cox,
19 David Lehrman, Jason Quimet. I did a little for Wilson
20 Phillips, Andra Fischer, Chris's secretary, Deb Sargol and
21 anybody that might travel with Wayne."

22 "QUESTION: Is it fair to say in terms of the
23 services that you provided the NRA, that your primary focus
24 was arranging Mr. LaPierre's travel?"

25 "ANSWER: Yes."

BP

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Proceedings

1 "QUESTION: Who was your primary contact at the
2 NRA?"

3 "ANSWER: At the beginning, I spoke to Andra
4 Fischer, and then I spoke mainly to Wayne LaPierre."

5 "QUESTION: Who is Andra Fischer?"

6 "ANSWER: "Wayne secretary."

7 "QUESTION: When you're providing travel services
8 to Mr. LaPierre, roughly how often would you speak to
9 him?"

10 "ANSWER: At the beginning, not very much because I
11 spoke to Andra. After that, it depended on what his travel
12 needs were. If he was traveling often, then possibly once a
13 week. It really depended on his schedule."

14 "QUESTION: And what guidelines or requirements
15 were you told you had to follow?"

16 "ANSWER: On primarily private flights, not to
17 put -- or what to put on the flights, not necessarily who
18 was -- who was on the flight."

19 "QUESTION: Okay. So, in invoicing private
20 flights, you were directed not to include passenger
21 information?"

22 "ANSWER: Yes."

23 "QUESTION: And who instructed you not to include
24 passenger information?"

25 "ANSWER: Lisa Supernaugh."

BP

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Proceedings

1 "QUESTION: When Mr. LaPierre traveled by aircraft,
2 did he always fly by private charter?"

3 "ANSWER: If it was international, then he flew
4 commercial airlines. If it was -- there was a time he went
5 to Alaska where it was far, he took commercial there.
6 Otherwise, domestically was definitely private."

7 "QUESTION: Was that true during your entire tenure
8 providing travel services to Mr. LaPierre or did it
9 change?"

10 "ANSWER: It changed. Originally it was
11 commercial."

12 "QUESTION: And when did it change to private?"

13 "ANSWER: I don't recall when."

14 "QUESTION: Can you provide an estimate?"

15 "ANSWER: I would say around 2000, 2001,
16 approximately."

17 "QUESTION: In, let's say, the last ten years that
18 you provided travel services to Mr. LaPierre, so from 2010
19 to 2020, did he fly exclusively by private charter for
20 domestic flights?"

21 "ANSWER: Yes, other than the one Alaska."

22 "QUESTION: Did you ever discuss with Mr. LaPierre
23 his reasons for flying by private charter?"

24 "ANSWER: Yes. There were some security issues."

25 "QUESTION: What security issues were those?"

BP

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Proceedings

1 "ANSWER: I believe there were a number of threats
2 and he was told to do that."

3 "QUESTION: And did Mr. LaPierre tell you who told
4 him to fly by private charter?"

5 "ANSWER: Security -- the security people
6 primarily, I think."

7 "QUESTION: The security people at the NRA?"

8 "ANSWER: Yes."

9 "QUESTION: And this was back in 2001?"

10 "ANSWER: Around that date."

11 "QUESTION: Were you ever directed by anyone at the
12 NRA to follow certain security protocols with respect to
13 Mr. LaPierre's travel?"

14 "ANSWER: No."

15 "QUESTION: When you provided travel services for
16 Mr. LaPierre, did he reside in the DC area?"

17 "ANSWER: Yes."

18 "QUESTION: To your knowledge, did Mr. LaPierre
19 have security personnel travel with him when he traveled
20 outside the DC area?"

21 "ANSWER: Yes."

22 "QUESTION: Was that always the case?"

23 "ANSWER: No. It depended on why he was traveling,
24 where he was going."

25 "QUESTION: So in what circumstances would he have

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1 security with him?"

2 "ANSWER: If it was known that he was going
3 somewhere for a meeting, an appearance where people knew he
4 was going to be there, where it was public or publicized,
5 then he would always have security."

6 "QUESTION: If Mr. LaPierre was traveling for
7 personal reasons, would he have security accompany him?"

8 "ANSWER: No."

9 "QUESTION: So, for example, if Mr. LaPierre were
10 to go on vacation, would he have security personnel
11 accompany him?"

12 "ANSWER: No."

13 "QUESTION: Do you have any personal knowledge of
14 anyone of the NRA having security personnel vet the charter
15 companies that were used to arrange Mr. LaPierre's private
16 flights?"

17 "ANSWER: No."

18 "QUESTION: Do you have any personal knowledge of
19 the NRA having security personnel vet the drivers of the
20 cars that you arranged for Mr. LaPierre?"

21 "ANSWER: No."

22 "QUESTION: Were there any security protocols or
23 requirements that you were instructed to follow for
24 Mr. LaPierre's travel?"

25 "ANSWER: No."

BP

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Proceedings

1 "QUESTION: Are you familiar with Jim Staples?"

2 "ANSWER: Yes."

3 "QUESTION: How are you familiar with him?"

4 "ANSWER: We would work together when -- he was
5 head of security, I believe, and we would work together on
6 trips that Wayne took where it was publicized and we would
7 talk about what was needed."

8 "QUESTION: When you arranged private flights for
9 Mr. LaPierre, was it your practice to send the itinerary
10 information to Mr. Staples?"

11 "ANSWER: I would send him information if his
12 security people were also going to be involved either
13 meeting him, picking him up, going to the hotel. Wherever
14 they would be involved, then, yes, he would have that
15 information."

16 "QUESTION: In the normal course of your business
17 when you were booking private charter for Mr. LaPierre,
18 would you provide the itinerary information where
19 Mr. LaPierre would be located to any staff at the NRA?"

20 "ANSWER: Rarely. It -- if they needed to know for
21 whatever reason and -- then I would, but that would be the
22 only reason."

23 "QUESTION: Who at the NRA was authorized to book
24 travel through you?"

25 "ANSWER: I don't know who was authorized and who

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Proceedings

1 wasn't authorized. I can only say who called me and asked
2 me for travel information."

3 "QUESTION: Was it your understanding that anyone
4 at the NRA who contacted you to book travel was authorized
5 to do so?"

6 "ANSWER: I assumed so."

7 "QUESTION: Were you -- let me rephrase that. Did
8 anyone at the NRA ever communicate to you that you should
9 not book travel for certain individuals?"

10 "ANSWER: Not that I recall."

11 "QUESTION: Were you ever instructed to confirm
12 certain travel requests where authorized by Mr. LaPierre or
13 anyone else at the NRA before processing them?"

14 "ANSWER: Not that I recall."

15 "QUESTION: You're the owner of a company called
16 Inventive Incentives and Insurance Services, Incorporated?"

17 "ANSWER: Yes."

18 "QUESTION: If I refer to the company as I.I. and
19 I.S., would you understand that I'm referring to Inventive
20 Incentives and Insurance Services, Incorporated?"

21 "ANSWER: Yes."

22 "QUESTION: What services did you provide through
23 I.I. and I.S.?"

24 "ANSWER: All the travel for the NRA, whatever
25 travel I did for Ackerman McQueen, anyone that was

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Proceedings

1 affiliated, even if it might have been a personal trip, not
2 necessarily NRA, but on a personal trip for someone --
3 someone working there."

4 "QUESTION: Has I.I. and I.S. ever had any other
5 employees?"

6 "ANSWER: No."

7 "QUESTION: When you provided services to the NRA
8 after the incorporation have I.I. and I.S., did you bill the
9 NRA through that company?"

10 "ANSWER: Yes."

11 "QUESTION: Several years after incorporating I.I.
12 and I.S., you started billing the NRA through a company
13 name; correct?"

14 "ANSWER: Yes."

15 "QUESTION: And what is that company name?"

16 "ANSWER: GS2."

17 "QUESTION: Okay. And is GS2 a d/b/a of I.I. and
18 I.S., Incorporated?"

19 "ANSWER: It is."

20 "QUESTION: So other than the name, I.I. and I.S.
21 and GS2 Enterprises are the same entity?"

22 "ANSWER: Yes."

23 "QUESTION: Okay. And why did you start billing
24 the NRA through GS2 Enterprises?"

25 "ANSWER: I was told to use another name."

BP

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1 "QUESTION: And who told you to use another name?"

2 "ANSWER: Wilson Phillips."

3 "QUESTION: During the period of time when you were
4 providing travel services to the NRA, did you receive a flat
5 fee for the services you provided?"

6 "ANSWER: I did."

7 MR. FARBER: Judge, your ruling on this, you had an
8 instruction you were going to give with respect to that last
9 question. Can I hand up the page, your Honor?

10 THE COURT: Yes.

11 (Handed up to the Court)

12 THE COURT: Actually, that was my law clerk's note
13 to me. The point is that the witness -- the actual witness
14 is testifying simply of what she heard, but so she is an
15 eyewitness to testifying that -- at least her testimony is
16 that Wilson Phillips told her that. Whether ultimately
17 that's underlying true is not for that witness to have
18 firsthand knowledge of.

19 MR. FARBER: Thank you, your Honor.

20 (Continued on next page)

21

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1 "QUESTION: Did you ever have any negotiations or
2 discussions with anyone at the NRA regarding the fee that
3 you received?

4 ANSWER: When it was these where it was the monthly
5 fees, no. They would just switch it. I can not remember
6 ever asking. I think it would just occur.

7 QUESTION: Okay. So you do not remember having any
8 conversations or negotiations with anyone at the NRA
9 regarding the amount of the monthly fee that you would
10 receive.

11 ANSWER: No, not that I recall.

12 QUESTION: But you did receive a fee on a monthly
13 basis.

14 ANSWER: Yes.

15 QUESTION: Okay. And was this fee paid pursuant to
16 a verbal or written agreement.

17 ANSWER: Verbal.

18 QUESTION: Did you at any point in time during the
19 time during at any point in time when you were providing
20 travel services to the NRA, did you have a written contract
21 with the NRA.

22 ANSWER: 2019.

23 QUESTION: And what brought about that agreement.

24 ANSWER: Lisa Supernaugh said that I would need to
25 sign a contract and she sent one over.

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1 QUESTION: Jim, can I please mark Tab 2 as
2 Exhibit 5, and for the record, this is -- this was
3 Exhibit 366.

4 Is that your signature on Page 5 of the agreement
5 or 10 of the PDF?

6 ANSWER: Yes, it is.

7 QUESTION: And this is the contract that you were
8 referring to that you entered into with the NRA in 2019.

9 ANSWER: Yes, it is.

10 QUESTION: And is this contract as reflected in
11 Exhibit 5 the first written agreement that you had with the
12 NRA.

13 ANSWER: It is.

14 QUESTION: Before 2019, you never had a written
15 agreement with the NRA.

16 ANSWER: Right.

17 QUESTION: So as a general matter when it came to
18 the fees that you received, you primarily had those
19 discussions with Wilson Phillips.

20 ANSWER: Yes.

21 QUESTION: Before 2019, the fees that you received
22 and services you provided were never memorialized in a
23 written contract.

24 ANSWER: Correct.

25 QUESTION: Would it be accurate to say that prior

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1 to this written agreement in exhibit -- reflected in
2 Exhibit 5, the fees you charged and the terms of your
3 business relationship were based on verbal agreements
4 between you and Mr. Phillips.

5 ANSWER: Yes.

6 QUESTION: Okay. I do want to explore that a bit
7 further in a moment, but just so that I understand the
8 process for how you would bill the NRA for your flat monthly
9 fee, you -- is it accurate that you would generally send
10 those invoices to Lisa Supernaugh by email.

11 ANSWER: Yes.

12 QUESTION: Who directed you to send the invoice to
13 Ms. Supernaugh.

14 ANSWER: It would have either been Wilson Phillips
15 or Lisa.

16 QUESTION: Ms. Stanford, what's been marked as
17 Exhibit 6 a document marked by the NRA and this is
18 Plaintiff's Exhibit 740, first page is bate stamped NRA NYAG
19 COMMDIV 257235. This document appears to be an email sent
20 from you to Lisa Supernaugh on April 30, 2015 with two
21 attachments titled "NRA fee" and "ILA fee."

22 Are you able to -- do you see the exhibit?

23 ANSWER: I do.

24 QUESTION: Okay. If you could scroll down to the
25 attachments on Page 2 and 3, you'll see two invoices both

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1 dated May 1, 2015, one to the NRA for \$10,000 and the other
2 to NRA-ILA for 5,000.

3 Do you see that?

4 ANSWER: I do.

5 QUESTION: Is this an example of how you would bill
6 the NRA for your flat monthly fee.

7 ANSWER: Yes.

8 QUESTION: Why did you send separate invoices to
9 NRA and NRA-ILA.

10 ANSWER: That's what I was told to do.

11 QUESTION: So you do not remember having any
12 specific conversation with Ms. Supernaugh regarding this
13 billing procedure, but you were -- you're confident that
14 someone directed you to send these invoices separately.

15 ANSWER: Yes.

16 QUESTION: And why is that.

17 ANSWER: Yeah. Just to know how they wanted me to
18 -- you know, how they wanted me to write it.

19 QUESTION: Do you recall having any conversation
20 with anyone at the NRA regarding how to allocate your
21 monthly fee between NRA and NRA-ILA.

22 ANSWER: No. I was just told which amount and how
23 to do it.

24 QUESTION: But you don't remember -- you don't
25 recall specifically who told you to do that.

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1 ANSWER: No, I don't.

2 QUESTION: From 2002 to 2019, your monthly fee
3 increased a number of times; correct.

4 ANSWER: Correct.

5 QUESTION: For several years in addition to your
6 fees from the NRA, you also received a fee from Ackerman
7 McQueen; correct.

8 ANSWER: Correct.

9 QUESTION: How did this come about.

10 ANSWER: I was told to invoice them for that
11 amount.

12 QUESTION: And who told you to invoice them.

13 ANSWER: Again, it would have either been Wilson
14 Phillips or Lisa Supernaugh.

15 QUESTION: Were you given a reason why to invoice
16 Ackerman McQueen.

17 ANSWER: No.

18 QUESTION: Do you recall when you were directed to
19 invoice Ackerman McQueen.

20 ANSWER: No, I absolutely don't.

21 QUESTION: When you started billing the NRA through
22 GS2 Enterprises instead of II and IS Incorporated, were you
23 billing Ackerman McQueen on a monthly basis.

24 ANSWER: Yes.

25 QUESTION: So the practice of billing Ackerman

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1 McQueen on a monthly base predated setting up a d/b/a with
2 GS2.

3 ANSWER: I believe so.

4 QUESTION: What is your understanding that the --
5 I'm sorry.

6 Was it your understanding that the monthly fee you
7 were charging Ackerman McQueen was connected to the services
8 you were providing to the NRA?

9 ANSWER: Yes.

10 QUESTION: And what was the basis of that
11 understanding.

12 ANSWER: There were -- there was travel by Ackerman
13 employees, so it was not -- I was not told what it was, why
14 I -- why I was billing them, but there were often Ackerman
15 McQueen people that were traveling.

16 QUESTION: But it was either -- I believe you
17 testified that either Lisa Supernaugh or Woody Phillips
18 directed you to bill Ackerman McQueen, not anyone at
19 Ackerman McQueen; correct.

20 ANSWER: Correct.

21 QUESTION: Did you ever discuss this monthly fee
22 you were charging Ackerman McQueen with anyone at Ackerman
23 McQueen.

24 ANSWER: No.

25 QUESTION: In addition to your monthly fee, did you

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1 receive any other compensation from the NRA for the services
2 that you arranged.

3 ANSWER: Yes.

4 QUESTION: What was that compensation.

5 ANSWER: I don't remember what the date was, but I
6 had a conversation with Wilson Phillips that I had worked
7 there quite a while and that I was getting older and I would
8 like to -- like to -- either like to have my medical
9 insurance paid for and be on their -- be part of their
10 pension policy, and he explained that since I was not a --
11 that I didn't work for the company, that I was not an
12 employee, that that was not possible, but that I could add
13 some money to the invoices.

14 QUESTION: And did he tell you how to add the money
15 to the invoices.

16 ANSWER: He just said to add them to the invoices
17 and that -- and then I explained, you know, how much travel
18 agencies will charge on certain things, and he said that was
19 fine.

20 I didn't add it to the -- to commercial flights or
21 hotels or rental cars, but I added to the private planes and
22 car and driver.

23 QUESTION: And how much would you add.

24 ANSWER: An average of ten percent.

25 QUESTION: And do you remember roughly when this

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1 conversation with Mr. Phillips occurred.

2 ANSWER: No, I don't.

3 QUESTION: Do you recall if it was before or after
4 you set up a d/b/a or GS2.

5 ANSWER: No, I don't.

6 QUESTION: Was it one conversation or multiple
7 conversations.

8 ANSWER: One conversation.

9 QUESTION: Did Mr. Phillips give any instruction on
10 how to incorporate this fee into the invoices that you sent
11 to NRA.

12 ANSWER: No.

13 QUESTION: Was this agreement ever memorialized in
14 writing.

15 ANSWER: No.

16 QUESTION: It was a verbal agreement.

17 ANSWER: Yes.

18 QUESTION: Did you ever discuss this fee with
19 anyone else at the NRA.

20 ANSWER: No, I didn't.

21 QUESTION: To your knowledge, was anyone else at
22 the NRA aware of this fee arrangement.

23 ANSWER: I don't know.

24 QUESTION: How would this additional ten percent --
25 approximately ten percent fee be reflected in the invoices

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1 you sent to NRA.

2 ANSWER: It was just as the total.

3 QUESTION: So for private flights and black car
4 services you arranged, you would add the fee into the line
5 item -- you would add the fee into the line item on the
6 invoice for those services.

7 ANSWER: Correct.

8 QUESTION: Why didn't you list the fee as a
9 separate line item on the invoices.

10 ANSWER: I believe Wilson Phillips told me just to
11 do it that way, to include it and not break it out.

12 QUESTION: So Mr. Phillips directed you to include
13 the fee and the line item and not to list it separately.

14 ANSWER: Yes.

15 QUESTION: When Mr. LaPierre would contact you to
16 arrange a private flight for him, what steps would you take
17 to make those arrangements and bill that flight.

18 ANSWER: I needed exactly what his itinerary was;
19 what time he needed to be in each place; what time he could
20 leave each place; how many people would be on the plane;
21 security-wise, what was going on; where he was going so that
22 I would know.

23 I would check in different airports. If it was
24 somewhere where there were -- where it was huge where there
25 were thousands of people, I would not want him arriving at

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1 the airport when lots of other people would. So I would
2 check other airports in the area or not too far that so that
3 he would have more -- so security wouldn't be as much -- you
4 know, as difficult if it was a large amount of people. Cars
5 and drivers, where were your meetings, what time are your
6 meetings, how many people in the car, how -- where else were
7 you going. I needed the whole itinerary.

8 Do you need hotel stuff too or are you just talking
9 about --

10 QUESTION: Oh, yeah. Please. Continue.

11 ANSWER: Okay. Same thing with hotels. What are
12 you going for? I would primarily not have him stay in any
13 hotel -- if it was a large meeting, I would have him stay at
14 a different hotel away from people for total security. The
15 hotels I would put him in, I needed to know where other
16 doors were, not only the front door but other doors.

17 His security person would usually go a couple of
18 days or maybe earlier to check out everything. I made sure
19 that I knew where his room was, on what floor, how far from
20 the elevator, how close I could get his security people.

21 There were lots of security issues -- primarily
22 security issues, where he was going. If it was a meeting in
23 a hotel -- in a building, I needed to -- I needed to know
24 what the security issues -- what the doors were, what the
25 security issues were there, whether it was a large theater

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1 or even a small room. I don't want him walking up there
2 alone. So security was the main thing, but there was a lot
3 to look at.

4 QUESTION: And would Mr. LaPierre tell you what the
5 purpose of the trip was for.

6 ANSWER: If it was something where security was
7 really involved, yes. If not, I didn't need to know. I
8 needed to know primarily if it was -- if security was
9 involved. So I didn't need to know why he was going
10 somewhere, just where it was, how many people. And then I
11 would go through, you know, the other things about the
12 airport, who is meeting him at the airport, the size of the
13 plane depended on how many people were on it, how long of a
14 flight it was.

15 There were some times where I used a plane that
16 would actually make a stop because it was significantly
17 lower in price than the nonstop depending on where,
18 depending on how busy the time it was. If it was a holiday,
19 near a holiday, their prices went up depending on fuel. So
20 occasionally, he was okay with stopping."

21 MR. THOMPSON: That's the end of the read-in.

22 THE COURT: Can you also just give you the court
23 reporters a copy of the transcript so they don't have to ask
24 you for spellings.

25 MR. THOMPSON: Of course. And for planning

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1 purposes, your Honor, the video was approximately
2 40 minutes.

3 THE COURT: Why don't we take our break first
4 before we settle in to that.

5 THE COURT OFFICER: All rise. Jury exiting.

6 (Whereupon, at this time the jury exits
7 the courtroom.)

8 THE COURT: We will see you in a few minutes.

9 (Whereupon at this time there was a recess taken.)

10 THE COURT: So before the jury comes in, just to
11 confirm, the expert that's coming in, this is not a damages
12 expert who is going to be -- this is not a damages expert;
13 right?

14 MR. THOMPSON: Mr. Hines will be like tabulating
15 the amount of monies involved.

16 THE COURT: Right; but -- the only reason I'm
17 asking is this question of whether it's three years or
18 six years is still being decided. So again, I don't have an
19 issue with the compilation summaries.

20 What -- if you had a damages expert who is going to
21 say we are going to ask you for X, then you would want to be
22 careful to not lock yourself into six years, for example, if
23 I conclude that it's three years, but I don't think that's
24 an issue. Ultimately, when you are arguing, you will know
25 whether it's three years or six years so.

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1 MR. CORRELL: Your Honor, just to answer your
2 question, he is not a damages expert. He was not disclosed
3 as a damages expert, and I believe I asked him, Are you a
4 damages expert, and he said, No.

5 THE COURT: Yeah, and they have confirmed that.
6 It's the compilation witness part of what he's doing is
7 going to be, you know, just tabulating or at least providing
8 summaries of these invoices. But you know, ultimately -- so
9 the argument for damages will just be during closing.

10 MS. STERN: Yes, your Honor, and I believe that
11 you'll see in Mr. Hines's testimony that he does discuss
12 with these sort of -- the economic impact of the conduct,
13 and it is presented in a manner where you can sort of see
14 year by year by year, so I think it offers an option if --

15 THE COURT: Is this the part of the testimony where
16 he is -- the compilation evidence part of the testimony or
17 is this part of his expert testimony?

18 MS. STERN: It's I'd say both really, your Honor,
19 and there is various charts. They are included in the
20 commentary stuff.

21 THE COURT: When you say "impact," you mean dollar
22 impact?

23 MS. STERN: Yes.

24 MR. CORRELL: Your Honor, he was not disclosed as
25 an economist. He's got no qualification as an economist.

KM

2939

Proceedings

1 He didn't say anything about economic impact in his
2 disclosure. That's objectionable, and it's irrelevant.

3 MS. STERN: Let me rephrase. What I mean is
4 financial impact, the impact on the finances of the NRA, the
5 expenditures that were involved under contracts that we
6 contend were not consistent with a policy or legal
7 standards. It's all in great detail in his report, and it
8 is the subject of discovery.

9 MR. CORRELL: Your Honor, he was not disclosed as
10 an expert on loss causation.

11 THE COURT: What I'm hearing, he is not testifying
12 about loss causation.

13 MS. STERN: He is not.

14 THE COURT: By economic impact, what's the
15 difference between that?

16 MS. STERN: Sorry, your Honor. I mean, financial
17 impact.

18 So in other words, if you're operating under a
19 contract where you're paying outside the terms of the
20 contract, you're making payments that are not consistent
21 with the financial terms of the contract, how much money are
22 we talking about was paid then.

23 THE COURT: Well, in this case though, are you --
24 is any part of what you'll be seeking in monetary remedies
25 going to be that delta between what the contract provided

KM

2940

Proceedings

1 for and what NRA paid? Are you seeking any of the
2 defendants to compensate the NRA for that delta?

3 MS. STERN: Yes, your Honor.

4 MR. CORRELL: We have a problem with that, your
5 Honor. Particularly, that goes back beyond three years.
6 Throwing numbers up for past years is just going to confuse
7 the jury and hopelessly prejudice them against us.

8 THE COURT: Yeah. Look, like I said, I -- I'm
9 going to have to look at the -- the slides I guess maybe to
10 see exactly what you're talking about, but you know, if it's
11 all stuff that's in the report --

12 MS. STERN: It's 100 percent in the report, your
13 Honor.

14 THE COURT: And so that was disclosed, and you
15 know, my ruling on it didn't limit -- I made some comment in
16 my ruling that he -- all right. Well, I'll take a look and
17 see if I can get a better sense of what you're talking
18 about.

19 I am having a little trouble distinguishing the
20 economic impact and how you're going to argue what numbers
21 the jury should award.

22 MR. WERBNER: There is a fatal flaw in their damage
23 model because they really don't have a damage model. They
24 don't have a witness to establish damages.

25 I'm concerned by his testimony and the slides that

KM

2941

Proceedings

1 the jury is going to get the impression, and they make take
2 notes about these figures, and they go back even before the
3 six-year statute in many instances. So we are going to want
4 to have a running objection unless the Court rules in our
5 favor that they shouldn't -- anything before the certain
6 Statute of Limitations cutoff which we maintain is August 6
7 of 2017 --

8 THE COURT: Well, before he comes on, I'm going to
9 want a slightly more granular understanding of what he's
10 going to be walked through.

11 I mean, I did think about this a lot during the in
12 limine motion, and I wasn't troubled by it, and I just want
13 to make sure I understand how it's going to play out. I
14 think we can -- maybe it will be after lunch when this guy
15 is going to testify. We will have some time to go through
16 it in some detail.

17 MS. STERN: Certainly, your Honor.

18 THE COURT: If he is consistent with the report and
19 what was argued in the in limine, I don't anticipate having
20 any problem with it. If there's something that's changed
21 since we argued the motion in limine, then I would want you
22 to highlight that for me. So you can think about that
23 before you answer, if you want.

24 MS. STERN: Certainly, your Honor. He is
25 consistent with his report. It's fully disclosed, but I

KM

2942

Proceedings

1 think it makes sense to talk about it.

2 THE COURT: So he is not going beyond any opinions
3 that he flagged in his report and that were -- right?

4 MS. STERN: That's right, and the summary evidence
5 thing is a separate issue which we have talked about, and I
6 think that it will be less maybe perhaps confusing if we
7 talk about it.

8 THE COURT: In the summary evidence part which is
9 new, it's not something we talked about before. He is just
10 providing those charts to sort of show how that thing adds
11 up to.

12 MS. STERN: Correct, your Honor.

13 THE COURT: But that's not the economic impact part
14 that you're talking about. That's a different part.
15 Your -- the testimony about the economic action of various
16 things that you said was in his report.

17 MS. STERN: I want to just withdraw the word
18 "economic" because the defendants have an economist on their
19 list of experts who talks about sort of economic principles
20 and theories. That is not Mr. Hines. He is the forensic
21 accountant and --

22 THE COURT: That's what I thought.

23 MS. STERN: He looked at internal controls,
24 standards for internal controls in organizations to oversee
25 and insure prudent administration of financial matters.

KM

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1 THE COURT: Well, if he stays within what is
2 disclosed in the expert report which I vetted and looked at
3 as part of the motion in limine, I don't anticipate a
4 problem.

5 MS. STERN: Thank you, your Honor.

6 THE COURT: All right.

7 THE COURT OFFICER: All rise. Jury entering.

8 (Whereupon, at this time the jury entered the
9 courtroom.)

10 THE COURT: Okay. Have a seat, everyone. Okay.

11 So Counsel, now we are going to play the remainder
12 of the deposition transcript excerpts.

13 MR. THOMPSON: Correct, your Honor.

14 THE COURT: And this will be on audio and video?

15 MR. THOMPSON: Yes, your Honor.

16 THE COURT: Okay. You can play them.

17 (Gayle Stanford video played.)

18 (Continued on the following page.)
19
20
21
22
23
24
25

KM

2944

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

1

2

THE COURT: So, the next witness is the expert?

3

4

MS. CONNELL: Yes, your Honor. The State calls Eric Hines, expert witness.

5

6

7

8

9

THE COURT: Before we get started, I have looked through the materials. I'm comfortable that this witness is not -- at least from what's in here -- offering any damages testimony. We'll monitor as things go, but it seems consistent with what I recalled.

10

11

So, I guess, do you want to get started and get part of it out of the way so we don't waste time?

12

13

14

MS. CONNELL: I do, your Honor. I hate to not give the jury a break, but I think the more evidence we take, the more we get closer to the end.

15

16

THE COURT: No, we've had a break. Let's get started, at least we can introduce the witness.

17

18

MS. CONNELL: Thank you. I believe the court officer is getting the witness now.

19

Thank you, your Honor.

20

21

22

23

THE COURT: I'm saying I'm not saying that the defendants can't object to individual questions or things that come up; but I just wanted to flip through the chart to make sure I was comfortable as the high level.

24

25

MR. FARBER: Judge, I do believe there are some unresolved objections to slides.

BP

2945

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

1 THE COURT: These have been revised from the ones
2 that I had specific objections to, and I'm not aware of any
3 specific objections to the revised ones; but if there are
4 any, let me know and if we have to take a break, we will.

5 As well, we're probably not going to get deep into
6 the slides before lunch, so we can have a short period
7 before the jury comes back after lunch to talk about
8 anything specific.

9 Good afternoon, sir.

10 E R I C H I N E

11 called as a witness in behalf of the Plaintiff,
12 and after having been first duly sworn/affirmed by the
13 Clerk of the Court, took the witness stand and testified as
14 follows:)

15 THE CLERK: State your name.

16 THE WITNESS: Eric Hines.

17 THE CLERK: Spell your name.

18 THE WITNESS: H-I-N-E-S.

19 THE CLERK: Thank you. You may be seated.

20 THE WITNESS: Thank you.

21 MS. CONNELL: May I begin, your Honor?

22 THE COURT: Yes, please.

23 MS. CONNELL: Can the jury hear me?

24 (Continued on next page)

25

BP

2946

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

1

2 DIRECT-EXAMINATION

3 BY MS. CONNELL:

4 Q Good afternoon, Mr. Hines.

5 A Good afternoon.

6 Q Mr. Hines, in connection -- well, first of all, would
7 you introduce yourself to the jury.

8 A Hi, my name is Eric Hines.

9 THE COURT: If you can sit real close to the
10 microphone. It's a little weak.

11 A Eric Hines.

12 Q Mr. Hines, in connection with this case, were you
13 engaged by the People of the State of New York through the
14 Office of the Attorney General to perform an analysis of certain
15 transactions within the NRA?

16 A Yes, I was.

17 Q And were up -- if you can please take a look at the
18 slides on the screen. I'd like to walk you through your
19 qualifications, background and summary of opinions first.20 MR. WERBNER: Your Honor, excuse me for
21 interrupting; but I do have an objection to number four
22 because there is not a claim for fraud in the case and I
23 think this is going to be confusing, and I would object to
24 all the references to the items listed in number four.

25 THE COURT: Overruled.

BP

2947

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

1 MR. CORRELL: I join in the objection, your Honor.

2 THE COURT: Overruled. Just one quick point for
3 the jury. This slide deck is what we call a demonstrative.
4 It is not evidence.

5 It is designed to help organize when some witnesses
6 come up, so this is entirely as a demonstration tool, but
7 nothing that's on here is admissible evidence. It may refer
8 to evidence that you've seen, but the evidence from the
9 witnesses -- frankly, what comes out of his mouth here, not
10 what's written on these slides.

11 MR. WERBNER: Your Honor, may I have a running
12 objection to the point I made so I don't have to interrupt
13 on each slide?

14 THE COURT: Yes, you can.

15 MR. CORRELL: Join in that request, your Honor.

16 THE COURT: You, too. Okay.

17 MS. CONNELL: Thank you, your Honor.

18 Q Mr. Hines, I'd like to walk you through your
19 qualifications first.

20 Can you please describe your educational background for
21 the jury?

22 A I'd be happy to. I have a Bachelor's degree with focus
23 in accounting from the University of Massachusetts, Amherst.

24 Q Where do you currently work?

25 A I work at a firm called Stone Turn.

BP

2948

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

1 Q And what is Stone Turn?

2 A Stone turn is a global risk and advisory firm that
3 specializes in forensic accounting, risk and compliance
4 consulting.

5 Q And what kind of work do you do at Stone Turn?

6 A I'm a forensic accountant.

7 Q And what is forensic accountant -- accounting, excuse
8 me?

9 A Well, forensic accounting is a specialized area of
10 accounting that involves using special procedures to evaluate
11 information, evidence, financial transactions, that sort of
12 thing.

13 Q How long have you been working at Stone Turn?

14 A About seventeen years.

15 Q And what was your professional experience before you
16 joined Stone Turn?

17 A Before I joined Stone Turn, I first worked at a firm
18 call Arthur Anderson, where I was an auditor for the first few
19 years out of school. Then I went to work Deloitte -- which is
20 another major accounting firm -- in the forensic accounting
21 practice and I spent about five or so years there. And then I
22 joined Stone Turn in 2006. During some of that time period, I
23 was a part-time instructor of forensic accounting at
24 Northeastern University in Boston.

25 Q Do you have any professional credentials related to

BP

2949

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

1 your work as a forensic accountant, auditor and consultant?

2 A I do.

3 Q Can you describe those for the jury?

4 A Sure. I'm a CPA licensed in the Commonwealth of
5 Massachusetts. I have a certification in -- I'm certified in
6 financial forensics, which is a credential from The American
7 institute of Certified Public Accountants. And I, also, have a
8 credential where I'm certified in healthcare compliance, as
9 well.

10 Q Mr. Hines, in total, how many years experience do you
11 have as a forensic accountant, auditor and consultant?

12 A Over twenty-three years.

13 Q Approximately, how many forensic accounting engagements
14 have you worked on?

15 A It's been hundreds over that course of my career.

16 Q Can you please describe for the jury some of the types
17 of forensic engagements you have done during that time?

18 A Sure. I worked on a number of internal investigations
19 for accounting-related investigations. I do compliance
20 consulting. I work on matters that require the evaluation of
21 internal controls, and I've worked on corporate monitorships
22 where it requires a compliance and controls testing expertise,
23 and I've worked on a number of litigation consulting matters,
24 providing expert services or consulting services with respect to
25 complex financial arrangements and transactions, and those are

BP

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

1 some examples.

2 Q Is the valuation of internal controls a normal part of
3 your work as a forensic accountant, auditor and consultant?

4 A Yes, it is.

5 Q And do you have any experience evaluating an
6 organization's risk of waste, abuse and violation of internal
7 controls?

8 A Yes, I do.

9 Q Is identifying fraud risk indicators part of your
10 normal work as a forensic accountant, auditor and consultant?

11 A Yes, it is.

12 Q Prior to this case, have you ever served as an expert
13 witness?

14 A Yes.

15 Q How many times?

16 A Approximately a dozen or so.

17 Q Has the court ever qualified you as an expert witness
18 at trial?

19 A Yes.

20 Q How many times?

21 A Three.

22 Q Okay. In what -- well, actually strike that.

23 Has the court ever refused to qualify you as an expert
24 witness?

25 A No.

BP

2951

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

1 Q You stated that in connection with this case you're
2 engaged by the People of the State of New York through the
3 Attorneys General's Office; correct?

4 A Correct.

5 Q What type of analysis were you asked to perform?

6 A I was asked to analyze whether the NRA and individual
7 defendants adhered to policies and procedures and the
8 established internal controls.

9 I was, also, asked to quantitatively analyze a number
10 of transactions that are at issue in this matter, and I was
11 asked to evaluate whether I identified fraud risk indicators.

12 MS. CONNELL: Your Honor, we tender Mr. Hines as an
13 expert in forensic accounting and internal controls.

14 MR. WERBNER: While we disagree with his opinions,
15 we do not challenge his expertise.

16 MS. ROGERS: Same.

17 MR. CORRELL: Same, your Honor.

18 MR. FLEMING: And same for me, too.

19 THE COURT: He's admitted. As I told you before,
20 some witnesses are permitted to testify to provide opinion
21 testimony as opposed to fact witnesses. So, he's not here
22 to testify about facts or tell you what facts you should
23 find; but based on his background, he's permitted by being
24 admitted as an expert to give opinion testimony.

25 I'll give you more instructions at the end of the

BP

2952

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

1 case about the evaluation of opinion testimony.

2 MS. CONNELL: Thank you, your Honor.

3 Q Mr. Hines, in conducting your work in this case, did
4 you apply any particular standards and methodologies?

5 A I did.

6 Q Can you describe those for the jury?

7 A I followed the standards for forensic services, which
8 are part of the AICPA standards for CPAs that specialize in
9 forensic accounting, and I have used different methodologies
10 that are common in my practice.

11 Q And are the standards of methodologies you applied here
12 subject to review by your peers?

13 A Yes.

14 Q And are they standard in your field of practice?

15 A They are.

16 Q Mr. Hines, as part of your analysis here, did you
17 review any financial transactions within the NRA?

18 A Yes, I did.

19 Q Can you please describe for the jury the types of
20 financial transactions generally that you reviewed?

21 A I'd be happy to. So, I looked at expenditures and
22 arrangements with vendors. I looked at reimbursement
23 arrangements with respect to goods and services, including
24 travel and entertainment and reimbursable business expenses.

25 I looked at disclosures with respect to

BP

2953

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

1 conflict-of-interest issues. I, also, looked at expenditures
2 having to do with former employee arrangements and board member
3 paid arrangements, as well.

4 Q What period of time did these financial transactions
5 cover that you considered?

6 A The majority were in the area -- I can say 2010-ish
7 through 2022, and I looked at some documents and records that
8 went as far back as the nineties.

9 Q Why did you review documents that went as far back as
10 the nineties?

11 A They informed my opinions with respect to the internal
12 control environment at the NRA.

13 Q As part of your work here, did you review any
14 particular documents?

15 A Yes.

16 Q Can you describe for the jury the types of documents
17 and information you reviewed?

18 A Sure. There was quite a few. I looked at policies and
19 procedures and internal control documentation for the
20 organization. I looked at contracts. I looked at invoices,
21 internal control documentation that was intended to support
22 evidence of certain steps being taken.

23 I looked at general ledger information, which is the
24 accounting data from the NRA's financial systems. I looked at
25 bank records, e-mails, memos. I looked at a number of meeting

BP

2954

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

1 minutes. I read deposition and testimony for sworn depositions.

2 I also referred to guidance that I commonly use in my
3 profession with respect to forensic accounting procedures.

4 MR. WERNER: Your Honor, I would object to him
5 reading from the slides. I think the proper way is to have
6 him give his testimony and then use the slides to summarize
7 or reflect his testimony.

8 MS. CONNELL: Your Honor -- sorry.

9 THE COURT: Yes?

10 MS. CONNELL: Your Honor, the slides are just being
11 used to help demonstrate for the jury. When there's a large
12 description of amount of information, it just helps to give
13 them some touch points.

14 THE COURT: Yeah, I'm not that concerned about it
15 in the background section; but to some extent, slides can
16 take the form of leading questions.

17 MS. CONNELL: I agree.

18 THE COURT: So, I -- it is going to be more
19 effective if the witness answers your questions rather than
20 reading from the slides.

21 MS. CONNELL: I thought this would help us get
22 through the background section a little more quickly, your
23 Honor. Thank you.

24 Q Mr. Hines, are these the type of documents that a
25 forensic accountant would generally rely upon in performing his

BP

2955

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

1 work?

2 A Yes.

3 Q In performing your work here, did you independently
4 request from the Office of the Attorney General information?

5 A Yes, I did.

6 Q You didn't just rely upon information that was given to
7 you?

8 A No.

9 Q And did the Office of the Attorney General provide you
10 with any information that you requested?

11 A Yes.

12 Q And did the Office of the Attorney General ever
13 refuse to provide you with documents or information that you
14 requested?

15 A No.

16 Q Mr. Hines, could you summarize for the jury some of the
17 key opinions that you formed as a result of your work in this
18 case?

19 A I certainly can.

20 Q Without reading off the slide.

21 A I don't have to. So, I found that the NRA had an
22 effective control environment with respect to internal controls
23 that was primarily driven by poor tone at the top, which was
24 really kind of cultural mindset towards controls. And a number
25 of consistent control and policy violations and that went over a

BP

2956

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

1 long period of time.

2 MR. WERBNER: Your Honor, I'm going to have to
3 object. It seems to me the witness is reading the slides.

4 THE COURT: This is not an uncommon approach.

5 I'm going to overrule that objection. It is a way
6 of organizing a long testimony. I'm sure once we get
7 rolling, it is going to be more free flowing than this.

8 MS. CONNELL: Yes. I'm sorry, yes. Thank you.

9 Q Mr. Hines, if you could continue.

10 A I had also identified fraud risk indicators in the
11 transactions that I looked at.

12 Q Mr. Hines, you mentioned the concept of internal
13 controls; correct?

14 A Yes.

15 Q What are the internal controls?

16 A Well, internal controls are really the system of
17 processes and procedures that service kind of the guidelines for
18 the way the processes and transactions are recorded and
19 arrangements are entered into for an organization, and I
20 sometimes refer to those as the guardrails.

21 Q Can you give the jury some examples of internal
22 controls?

23 A Sure. So, it would be requiring a specific signature
24 of certain individuals before a check goes out the door, or it
25 could be requiring certain approvals for a contract before it

BP

2957

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

1 gets signed. It could be requiring the approval of an expense
2 report before somebody submits travel and reimbursable expenses,
3 those kind of things.

4 Q Are internal controls important within an organization?

5 A Extremely, yes.

6 Q Can you explain to the jury why internal controls are
7 important within an organization?

8 A Well, they really instill disciplinary around business
9 processes. With respect to financial transactions and
10 compliance and operational transactions, they have a broad range
11 of uses. And really controls kind of are ensured to help an
12 organization meet its objectives, whether that's appropriate
13 spending or certain business operational activities.

14 But, in the situation where it involves financial
15 transactions, it's really designed -- internal controls are
16 really system of checks and balances that ensure that the --
17 there's limitations on the possibility for risk, for fraud,
18 waste, abuse, inefficiencies, that kind of thing.

19 Q Are you familiar with or as part of your engagement
20 here, did you become familiar with the internal controls
21 framework -- strike that, I'm sorry.

22 MR. CORRELL: Your Honor, I want to just emphasize
23 that maybe a better way to proceed is let him testify and
24 then put the slide up because he really is -- basically,
25 this is leading testimony. It is testimony being published

BP

2958

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

1 to the jury and then the witness is, basically, conforming
2 his testimony to what is on the screen.

3 THE COURT: Overruled.

4 MS. CONNELL: Thank you.

5 Q Mr. Hines, are you familiar with the COSO framework,
6 the framework recommended by the Committee of Sponsoring
7 Organizations?

8 A I am.

9 Q If I refer to that as a COSO framework, you'll
10 understand what I mean?

11 A Yes.

12 Q And if I shout over the sirens, you can hear me?

13 A I can certainly hear you. I'll try to shout, too.

14 Q Thank you.

15 A I don't need to read the slides, so...

16 Q Can you briefly explain to the jury what the COSO
17 framework is?

18 A The COSO framework is pretty much the standard
19 principles around internal controls, how they should work and
20 it's an entire framework that lays out what the common
21 components of what controls are and how they should operate.

22 Q Thank you. Did your analysis in this case make use of
23 the COSO framework?

24 A Yes.

25 Q In what ways?

BP

2959

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

1 A I considered the different elements of the COSO
2 framework. As the slide shows, there's certain components that
3 are important to my analysis here, and those are -- I won't go
4 through those on the slide, but I considered certain elements of
5 the framework with respect to the internal control analysis that
6 I performed at the NRA, including risk, the control activities
7 that were performed and how the overall control environment
8 operated.

9 Q I'd like to ask you about one particular aspect of the
10 COSO framework, something known as tone at the top. Are you
11 familiar with that?

12 A Yes.

13 Q Can you explain to the jury what "tone at the top"
14 means?

15 A Sure. So, within the principles of COSO that have to
16 do with the overall concept of the control environment, it is
17 really the kind of the underpinning for an internal control
18 system, is a concept that management must -- to have an adequate
19 internal control system, management should have appropriate tone
20 at the top. And that's really the cultural mindset and the
21 attitude and the commitment towards internal controls, and it
22 really sets the foundation for how effective any control
23 environment is going to be.

24 Q So, we're using a lot of technical accounting terms
25 like the adequacy of the internal control environment and the

BP

2960

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

1 underpinning for the internal control system; but is tone at the
2 top really that -- the example of the importance of internal
3 controls must be set at the highest levels of an organization?

4 MS. ROGERS: Objection, leading.

5 THE COURT: Sustained.

6 Q In layman's terms, can you describe the importance of
7 tone at the top?

8 A It is really the idea of that what's acceptable and
9 what standards are appropriate with respect to internal
10 controls. Needs to be pushed down the organization from board
11 and senior executives down to middle management throughout the
12 organization.

13 Q Thank you. As part of your analysis, did you review
14 specific internal controls within the NRA?

15 A I did, yes.

16 Q And can you describe the internal controls that you
17 looked at?

18 A I looked at a number of different policies and
19 procedures, which are part of the internal control structure,
20 including Bylaws.

21 I looked at procurement and contracting, policies,
22 travel and reimbursable expenses, conflicts of interest,
23 statement of ethics policies and some others.

24 Q And were these the internal controls that were most
25 relevant to your review?

BP

2961

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

1 A Yes.

2 Q Mr. Hines, you mentioned earlier that part of your
3 analysis referred to fraud risk -- included fraud risk
4 indicators; correct?

5 A Correct.

6 Q Can you explain to the jury what a fraud risk indicator
7 is?

8 A So, a fraud risk indicator in my world as a forensic
9 accountant is really an indicia of higher risk transactions.
10 They're sometimes referred to as red flags or where there's
11 indicia of fraud, and really it's where there's a fact or
12 circumstance or attribute of an arrangement, a payment, a
13 relationship, a business circumstance that indicates a
14 heightened risk of fraud, waste, abuse, diversion or other
15 items.

16 Q Are identifying fraud risk indicators an established
17 part of forensic accounting practice?

18 A Yes.

19 Q And how would a forensic accountant generally identify
20 the presence of a fraud risk indicator?

21 A Well, it involves an in-depth analysis of facts and
22 information with respect to financial transactions, for example.
23 It requires professional experience as a forensic accountant in
24 doing this kind of work.

25 Over the course of my career, I've seen a number of

BP

2962

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

1 instances of issues where there's fraud risk indicators in
2 financial improprieties, for example.

3 And then also, typically, refer to there's lots of
4 reference materials out there which are commonly accepted in my
5 practice, so I -- forensic accountants take from the audit
6 standards, they take from other reference documents that,
7 essentially, catalogue what are common attributes of fraud,
8 waste and abuse.

9 Q I want to be clear, Mr. Hines, is identifying a fraud
10 risk indicator the same thing as an identifying fraud?

11 A No, absolutely not.

12 Q Why not?

13 A The conclusion about fraud is a legal conclusion, and
14 it is explicitly not a determination or a conclusion that fraud
15 existed. It's really a list of showing other patterns that
16 indicate signals of potential fraud, waste, abuse, diversion.

17 Q In connection with this, your engagement in this case,
18 were you asked to identify whether any fraud had occurred here?

19 A No.

20 Q Okay. And could you have made that determination had
21 you been asked?

22 A No. It is actually prohibited by professional
23 standards.

24 Q In performing your analysis here, did you identify the
25 presence of any fraud risk indicators?

BP

2963

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

1 A I did.

2 Q Can you please give the jury a general sense of the
3 fraud risk indicators you identified overall?

4 A Sure. A number of violations of policies and
5 procedures are typically fraud risk indicators. Overly complex
6 arrangements in transactions can be an indicator of a heightened
7 risk of fraud, waste or abuse, problems with documentations.

8 So, inadequate documentation, missing documentation,
9 modified, altered, falsified documentation, those are critical
10 fraud risk indicators that are always considered in my
11 profession.

12 Conflict-of-interest disclosure issues are fraud risk
13 indicators that are common and called out in many of the
14 reference materials; and I'm sure there's others, but those are
15 generally the types of indicators that I've observed here.

16 THE COURT: All right, counsel, I think we've
17 reached our lunch break. We're going to take a break and
18 reconvene at 2:15.

19 During the break, I would just ask the witness,
20 you're still essentially on the stand, so you shouldn't
21 discuss the substance of your testimony with anyone,
22 including counsel.

23 THE WITNESS: Thank you, your Honor.

24 COURT OFFICER: All rise, jury exiting.

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(Whereupon, at this time the jury then left the courtroom.)

(Whereupon, at this time the case was then recessed for lunch.)

(Continued on next page)

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Proceedings

1 A F T E R N O O N S E S S I O N

2 * * * * *

3 THE COURT: Okay. So is there anything we need to
4 address specifically on this witness right now?

5 MR. WERBNER: Yes, your Honor. May I?

6 THE COURT: Yes.

7 MR. WERBNER: Well, first of all, it relates to the
8 Statute of Limitations. I want to make clear for the record
9 that we maintain it's a three-year statute and that we
10 object both to his testimony and slides that have dollar
11 amounts prior to August 6 of 2017. We think that the jury
12 are going to see these numbers -- even some of them go
13 before the six-year statute. The jury is going to see these
14 numbers and think that those are the applicable years and
15 dollar amounts.

16 THE COURT: What in particular are you talking about
17 because a lot of it is just financial impact of categories
18 of conduct and not, you know, this is what Mr. Phillips, for
19 example, your client should pay.

20 What is it that you're really focused on?

21 MR. WERBNER: Well, I can't give you a specific
22 slide. I could point to Page 29 where he presents a graphic
23 with a lot of dollar amounts that starts with the 2012 and
24 includes data from 2013, 2014 and etc.

25 THE COURT: Right. Well, first of all, I -- well, I

KM

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Proceedings

1 don't know whether there is any particular claim arising out
2 of this testimony. I think this is -- seemed to me
3 anyway -- a broader point about the overall impact than a
4 particular damages number.

5 MR. WERBNER: I agree with you, but the problem is
6 given the absence of some statement that's here's the
7 damages we are seeking for Mr. Phillips, the jury is just
8 left with no guidance other than these numbers that are
9 really just general kind of background information. So I
10 think there is a risk that the jury may go back and
11 deliberate and use these numbers that are not being admitted
12 for that purpose to do some kind of damage calculation.
13 That's my concern, and I'd like to have -- I know the Court
14 hadn't ruled on the Statute of Limitations, but I'd like to
15 have a running objection to his testimony and the slides
16 that have any alleged losses prior to August 6 of 2017.

17 THE COURT: Understood. Again, these aren't cast
18 as losses. They are just describing the difference between
19 what the contract required and what they -- actually was
20 paid which is at the moment not a specific claim here.
21 Right. There is -- that's -- it may go more to the -- maybe
22 the broader claim against the NRA in terms of
23 administration, I suppose, but it's -- I don't view this one
24 as raising that concern in particular, but Ms. Rogers.

25 MS. ROGERS: Well, I had two points. One was

KM

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Proceedings

1 Statute of Limitation related.

2 So even assuming the improper administration claim
3 against the NRA, that all of this sweeps into it, and even
4 assuming that's the six-year equitable statute, we are still
5 going back much further than that in some of these
6 instances.

7 So if the jury is going to see these slides,
8 perhaps there could be some kind of clarifying instruction
9 that these dollars amounts do not purport to represent
10 amounts that were misspent or that anyone owes.

11 THE COURT: Whatever this witness -- I -- at least
12 the representation I have and everything I saw in the in
13 limine motion, those words aren't going to come out of this
14 witness' mouth about what anybody should pay or whatever.
15 So it's -- I -- you know, I knew and we all knew that these
16 were part of his findings back at the in limine stage, and I
17 denied the motion at that time. So I'm not -- I don't -- I
18 understand the point. And certainly -- you certainly can
19 put your objections for the record.

20 I think that this broad view of is -- I don't think
21 there is a real risk. If I feel like there is a need during
22 the course of it to make it clear that this isn't, you know,
23 numbers that they are seeking the jury to award in this
24 case, again, that's -- that shouldn't be the NRA's issue
25 because the NRA isn't paying any of this.

KM

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Proceedings

1 MS. ROGERS: I am more focused on this general idea
2 of improper administration.

3 Are we going to hear summations, look at all of the
4 money that improperly leaked out of the NRA? This shows how
5 improperly administered the NRA was, and that shouldn't go
6 beyond the statute.

7 THE COURT: That's sort of a more -- a broader and
8 interesting question about what -- what about the relevance
9 of the Statute of Limitations is because I think it may be
10 more relevant to phase two of the trial rather than phase
11 one. But all right. I understand the point, Mr. Correll.

12 MS. ROGERS: I had one distinct point from that.

13 So some of these slides, your Honor's guidance
14 yesterday was that the witness can't purport to make or
15 present factual findings. He can't narrate the facts or
16 what they say. Some of these slides are the same ones that
17 gave rise to that objection. They have just been relabeled.
18 And instead of "finding," they say "opinions," but they
19 still narrate the facts and purport to apply standard or law
20 to them.

21 So for example, if we go to slide 72 and look at
22 the slides after that, these slides purport to narrate
23 transactions that happened, who received what payments,
24 whether there was a written approval or not. This doesn't
25 seem like positing to the jury that if they find such

KM

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Proceedings

1 transactions occurred, it would be a fraud risk indicator.
2 This seems like a narration to the jury of what the expert
3 thinks the documents show.

4 THE COURT: I want to just read what I said on the
5 record when I denied this motion which is in part agree with
6 what you said and in part to clarify. I said at Page 78 or
7 Page 65 or -- well, I'm trying -- I'm not sure exactly what
8 page it's on, but "I'm going to deny this motion. Again,
9 this is a motion basically to exclude the testimony. At
10 least that's the way I read it. The question is whether
11 this witness can assist the fact finder in evaluating the
12 evidence. And I think this is a much more traditional
13 expert than for example, Mr. Tenenbaum.

14 You know, this is not the type of stuff jurors
15 likely confront in their day-to-day experience, and the way
16 experts typically describe it is that if the jury finds the
17 facts to show X, Y and Z, then he concludes that that would
18 indicate A, B and C. I think he is the traditional kind of
19 expert witness. In doing so, he's certainly permitted to
20 cite the record evidence that he believes supports his
21 conclusions.

22 So recognizing that there is always a possibility
23 of some objections to specific questions at trial, I don't
24 think there is a categorical basis for excluding his
25 proposed opinions or his testimony." So I denied the motion

KM

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1 on that ground.

2 And so again, if the testimony starts coming in as,
3 you know, I find this happened, I conclude this X, Y and Z,
4 I think, you know, that might be objectionable. I'm telling
5 you, Jury, you should conclude that on this day, this
6 occurred as opposed to him saying, you know, I'm citing to
7 evidence I have seen.

8 And so in -- and this supports a conclusion that --
9 it's subtle, but it's different. He is not a fact witness.
10 He shouldn't be telling the jury this is what you should
11 find are the facts, but he can cite evidence in the record
12 that supports what he is basing his evaluation on.

13 MS. ROGERS: Thank you, your Honor.

14 MR. CORRELL: Your Honor, I join in all of these
15 objections, and I have two concerns. One is what's
16 happening now, what the other -- what is going to happen in
17 closing.

18 Since the Attorney General will be allowed to have
19 the last word, I think this is really dangerous because I
20 think the Attorney General may say things during her closing
21 which suggests to the jury that these numbers that were
22 thrown out should be the measure of damages, and that's my
23 concern. I think this is highly prejudicial. I think it
24 may be the basis for a mistrial, and I think that we should
25 be very careful how we proceed here.

KM

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Proceedings

1 There is an example of irrelevant information that
2 is highly prejudicial, hair and market service, \$62,000
3 outside the limitations period. Why is this expert --

4 THE COURT: What page are you on?

5 MR. CORRELL: Pardon.

6 THE COURT: What page?

7 MR. CORRELL: Page 47. What is this forensic
8 accountant doing talking about hair and makeup from outside
9 the limitation period if not to prejudice the jury and throw
10 these facts with some sort of fodder from some sort of
11 claimed expert?

12 I think this is very serious. We have come a long
13 way in this trial. I think this threatens to upset the
14 apple cart, and I want to make it very clear on the record
15 that I have an objection, and I don't think this is going to
16 resolve it.

17 THE COURT: So what is the issue? Just Ms.
18 Connell, you know, why the time period? And has any
19 discipline gone in to figuring out which sets of figures
20 this witness can rely upon?

21 MS. CONNELL: Yes, your Honor. There has been
22 quite a bit of discipline and also in assessing the control
23 environment within the NRA and how long violations of
24 that -- the NRA's internal controls have been occurring and
25 how long the NRA has an ineffective control environment.

KM

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Proceedings

1 Mr. Hines has looked at some historical data, and sometimes
2 it was necessary -- for example, the jury's already heard
3 that the NRA signed a services agreement with Ackerman I
4 believe in 1999, and that agreement remained in effect until
5 2017.

6 So Mr. Hines of course had to look back at 1999 and
7 then what with, look at what occurred in that arrangement
8 moving forward.

9 That's not to say that at closing and before
10 closing we can't make sure that we are not saying the wrong
11 thing in regard to damages, that no party is, but that's
12 necessary. It gives necessary background. It goes to --
13 for the individual defendants -- negate any defense of good
14 faith, that they didn't know about certain things, that they
15 were unaware of things, that they shouldn't have realized
16 it. It shows that the lack of proper oversight of the NRA's
17 assets was ongoing for some period of time.

18 And in regard to this particular slide, I can
19 explain the background. The jury has heard quite a bit
20 about out-of-pocket expenses from Ackerman McQueen, and Mr.
21 Hines not only looked at those expenses to ascertain whether
22 they were a violation of the NRA's internal controls but
23 also whether there were forensic risk indicators present in
24 that arrangement based on what he saw, and he is going to
25 couch everything like that. He is not going to narrate to

KM

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Proceedings

1 the jury or dictate to the jury what they should find.

2 He did look at in furtherance of his inquiry a
3 subset of the out-of-pocket expenses.

4 THE COURT: What's the relevance of a financial
5 analysis?

6 Again, I don't know exactly what period of time
7 this chart on Page 47 covers. Assuming it goes back
8 20 years or whatever it is, longer than anyone believes the
9 Statute of Limitations is, what is the evidentiary relevance
10 of putting the numbers in for a period that goes beyond the
11 Statute of Limitations? Because I think I understand your
12 philosophical point which is yes, the jury is going to be
13 asked whether there was a violation of the statute from
14 let's say 2014 to 2020, and so that's really all you're
15 going to be asked to do.

16 And as I've done to some extent with -- on both
17 sides, there could be relevance to things that happened
18 before the date and after in making that evaluation in some
19 situations. I kind of get that, but their point -- one of
20 their points is that when you start bringing numbers in
21 without regard to when the beginning and end date is, does
22 that become confusing.

23 MS. CONNELL: Your Honor, I don't think it does
24 become confusing.

25 The Attorney General is trying to admit some

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Proceedings

1 summary evidence, as you know, and I was about to give you a
2 binder with that. These includes charts that have years on
3 them. And so for example, it would be very easy for the
4 jury to look and say, okay, this is how much was spent in a
5 given year. And if we -- you instruct the jury -- now, I
6 think we are going to submit a letter tomorrow. The Statute
7 of Limitations here is six years not including the fiduciary
8 tolling. But even if you were to find it were three years,
9 you can instruct the jury the relevant period of time for
10 anything that you're going to consider. And I'm not even
11 saying they should look at this -- look at this year
12 forward. That's your instruction, and it's very clear from
13 the chart, but I think it's important that the jury have
14 more information than that. Because we have heard a lot of
15 evidence, and you know, the Attorney General's objections to
16 the course correction and more recent actions, you know,
17 that we haven't gotten discovery. You know, a lot of it's
18 been foreclosed from us. The jury has heard a lot of that,
19 and we have heard some evidence that there were foot falls
20 or failure to dot the I's and cross the T's or as soon as
21 the Attorney General's leadership -- I mean, the NRA's
22 leadership became aware of a problem, they acted on it. But
23 when you see that a contract was signed in 1999 and another
24 noncompliant contract was signed in 2011, and this is all
25 stuff that's already admitted, by the way, and then you see

KM

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Proceedings

1 that these are in serious internal control problems and that
2 they are red flags and they should -- you know, they have
3 serious meaning.

4 THE COURT: Well, look. I -- and in agreeing that
5 you should be able to go back to some extent in the past, I
6 agree with you that if the -- if the part of the defense is
7 going to be that subsequent events are relevant because, oh,
8 my gosh, as soon as we realized that these things were going
9 on, we corrected the course. And you know, this is the kind
10 of as Judge Learned Hand -- I think that's the judge -- that
11 it bears on your good faith at the time because, you know,
12 you realized the mistake and quickly resolved.

13 I think the length of time that it's going on is
14 relevant to rebutting that kind of a defense. It's -- it --
15 I'm not saying it does rebut it, but it is at least relevant
16 to rebutting it that this was not a momentary hiccup that
17 was then fixed if it's something that goes on longer and
18 longer.

19 But so I think in principle, I understand -- and
20 that's the reason why I think there shouldn't be a sort of a
21 black box for everything that happened before 2014 or 2017
22 even. But again -- so the question is how do we avoid any
23 inadvertent spillover.

24 I tend to agree that in the end of the day, when it
25 gets down to the instructions, they will be told what time

KM

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Proceedings

1 period is relevant. And when they say is Defendant A
2 liable, that is based on conduct that occurred during the
3 relevant period.

4 And I think, you know, there is the same issue on
5 their course correction stuff that there is a possibility of
6 the jury gets confused and starts figuring out that maybe I
7 should think about what happened six years after the
8 violation. And so the instructions are designed to try to
9 get at that from both ends.

10 So the question is -- is, you know, whether at
11 appropriate point during this testimony -- I'm not striking
12 it. I don't think there is sort of the -- you know, the
13 grave issue that has been suggested, but I do think it's
14 important that the jury understand whether from me or from
15 however you do this -- this questioning that some of this is
16 background and that what the case is about is a period of
17 time that the judge will tell you is relevant to assessing
18 these claims, and I'm happy to do that without giving them
19 the actual date yet.

20 MS. CONNELL: Judge, I would just ask you to hold
21 off on that because there was something I had wanted to
22 raise with you in regard to instructions.

23 There was an instruction you gave I think yesterday
24 about -- and I wanted to pull the language from the
25 transcript. It might have been the day before. Time has

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Proceedings

1 ceased to have meaning for me personally, but about things
2 that occurred in the past and not being relevant or
3 something like that. And I thought I got the point you were
4 trying to make, but I thought that there should be a
5 corresponding discussion about more recent events, and I
6 think, your Honor, I just --

7 THE COURT: I don't remember that at all.

8 MS. CONNELL: Right. That's why I want to find the
9 language. I don't want to misrepresent.

10 Before you say some instruction that this -- all of
11 this evidence or any evidence before certain date is not
12 relevant --

13 THE COURT: No. No. No. I -- the point is is
14 that to tell them at the end of the day I will give you a
15 time period, that your verdict is going to be asked to
16 determine whether there were violations during a particular
17 time period, and you may hear evidence from things that
18 happened before and things that happened after, and the
19 question you will ultimately decide is the relevance of
20 those -- of all the evidence you hear to determine
21 liability, and you know, damages during a period that I will
22 describe to you in the instructions.

23 MS. CONNELL: Your Honor, I don't in principle like
24 object to that. Obviously, it's your choice. It's not
25 mine, but I just want to avoid -- I note for the record that

KM

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Proceedings

1 I don't think this is apples and oranges.

2 These documents that Mr. Hines opines from and the
3 information he opines upon is regards from the NRA from the
4 NRA's vendors. It's information they have had for years.
5 The defendants have had for years. His report was issued in
6 September --

7 THE COURT: They are not raising a surprise issue.
8 They are raising a jury confusion or prejudice issue.

9 MS. CONNELL: Yeah. No. My point was going to be
10 apples and oranges with what happened in the past versus
11 what's happened in the NRA right now for which we don't have
12 discovery, and there is a surprise issue, and there is sort
13 of a trial ambush.

14 THE COURT: I'll give you a hypothetical; right.
15 Let's assume there was a related-party transaction in 1995
16 that you allege cost the company \$100 million, and it's the
17 worst thing that's ever happened.

18 MS. CONNELL: Right.

19 THE COURT: Dropping that into the middle of sort
20 of background, could -- the argument would be made could
21 prejudice the jury saying, well, you know, we better hit
22 them now because look at all these horrible stuff that
23 happened before. I think that's an unusual example.

24 So the only relevance, and the only reason you
25 should be using things going back in time before even the

KM

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Proceedings

1 farthest Statute of Limitations, it really has to be
2 tethered to the relevant period, and it has to be, you
3 know -- so him finding that there were, you know -- giving
4 evidence about transactions and occurrences that happened in
5 the distant past, I have to understand how does -- how does
6 that tether back to the relevant period. And if I feel like
7 it's, you know, not tethered, then I will restrain.

8 MS. CONNELL: Okay. That's fine, your Honor.

9 THE COURT: But let me ask you that question on the
10 slide that we were just looking at.

11 You know, there is --

12 MS. CONNELL: Sorry, your Honor. I'm getting
13 instructions. Go ahead. I don't want to interrupt.

14 THE COURT: The slide we were just talking about
15 has a bunch of undifferentiated expense which I'm assuming
16 from the objections I am hearing cover a long period of
17 time.

18 MS. CONNELL: It talks about -- sorry -- the
19 out-of-pocket expenses. But actually, the out-of-pocket
20 expenses that Mr. Hines looks at and focused on are only
21 from 2015 through 2019, so that's what he gives numbers for.
22 That's what he is talking about.

23 THE COURT: So the numbers on this page I thought
24 Mr. Correll said like hair and makeup services, that goes
25 back before 2014. Is that right?

KM

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Proceedings

1 MR. CORRELL: 2017.

2 THE COURT: So that's the three-year, six-year
3 thing which we are not at this point -- I haven't made a
4 ruling on it. So --

5 MS. CONNELL: And your Honor, this is an example of
6 the types of invoices he found in the category in
7 out-of-pocket expenses for which there was some sort of
8 substantiation. He is just talking about his analysis.

9 THE COURT: Well, look. I'm not going to start out
10 with this instruction, but I -- I am not persuaded by the
11 broad-based defense objections that this witness can't have
12 a -- an analysis that spans a period before the Statute of
13 Limitations period to explain his conclusions about internal
14 controls and everything else during the relevant period.
15 The -- and that's the only relevance of that prior period.
16 And if -- I haven't looked at every single one of these
17 slides, and I can't micromanage everything upfront. But you
18 know, anything that strikes me as a gratuitous reference to
19 very old -- to older transactions where I think it's
20 slipping over from just providing, you know, background to
21 understand that this is not a new phenomenon is going to
22 be -- going to be restrained.

23 MS. CONNELL: We don't want to waste the Court or
24 jury's time on that.

25 In regard to the concerns for fraud, I tried to

KM

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1 right out of the gate to take that off the table.

2 THE COURT: So Mr. Correll --

3 MR. CORRELL: Yes, your Honor. How in the world is
4 the jury going to get these huge numbers out of it's head?
5 And if you give them a cut-off period, it would take Mr.
6 Hines to come back in and explain to them what those numbers
7 would be if he cabined them to the appropriate time period.

8 I don't know if these jurors are taking notes. If
9 they write these numbers down, it's going to be very hard to
10 remove that prejudice in the deliberations.

11 THE COURT: Again, the numbers that we are talking
12 about now are not damages numbers. They are impact numbers
13 from internal control with failures that they are alleging.

14 So yeah, I get it, but the liability questions that
15 I think that are impacted by this are not the ones that go I
16 think to your client so much, but I understand your point.
17 I -- I disagree with the point that these financial impact
18 opinions are prejudicial and -- but you've made your record.
19 I understand it.

20 MR. CORRELL: Thank you, your Honor.

21 MR. FLEMING: Your Honor, I just had a quick point,
22 and I apologize. I know we are trying to get to the jury.

23 One of the slides I wanted to talk about was what I
24 will call the related-party transactions slides which says
25 there is lack of advance for authorization.

KM

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Proceedings

1 THE COURT: What's the -- what number?

2 MS. ROGERS: slide 71.

3 MR. FLEMING: 72.

4 MS. ROGERS: There is a few more.

5 MR. FLEMING: My only point on this is this.

6 Mr. Frazer is in a little bit different position.

7 He wasn't here in '99 or 2010. We have gone through the
8 evidence about how he made attempts, precourse correction to
9 course correct and bring into compliance. And as you
10 recall, the government had exhibits on their exhibit list
11 that I painfully tried to get in. I was --- they objected
12 vociferously.

13 The reason to get those documents in was because
14 witnesses were going to testify that this was exactly that.
15 It was board advance authorization. Those documents are
16 out. That's fine for the time being, but now all of a
17 sudden, we have a witness coming in saying there is no board
18 advance authorization.

19 So it just strikes me -- what I worry about is
20 creating a sort of a counter-factual world that the jury
21 will be confused by.

22 THE COURT: Okay.

23 MR. WERBNER: If I could just take -- it's slide 66
24 that's pertained to Mr. Phillips specifically, and this
25 slide does have some summary of testimony.

KM

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1 I understand the Court's distinction, but if you
2 look at the three red X's, he is summarizing the testimony.

3 THE COURT: But this is exactly what the
4 instructions to juries about expert witnesses say. I had
5 that pulled up before. The -- the instructions will say --
6 the instructions to jurors on expert witnesses. You may
7 reject any opinion if you find the facts to be different
8 from the facts that form the basis for the opinion.

9 So this is sort of classic cross-examination. And
10 you know, experts all the time base their opinions on an
11 assumed set of facts or facts that they contend or whatever
12 it is, and one of the best ways to cross-examine and argue
13 against is to say, well, your facts are wrong.

14 So you know, seems like this is one of those slides
15 that you would want to use and say, they put a check mark
16 here. That's wrong. They put a check mark here. That's
17 wrong. So you can ignore this guy because he's just a paid
18 expert coming in here to testify on facts that are wrong.
19 That's cross-examination. That's not striking it.

20 I think him putting the factual premise on which is
21 opinions, and in fact, he calls these the bases for his
22 opinions, chip away at him. That's the plan. Okay.

23 (Continued on the following page.)
24
25

KM

2984

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

1 MS. CONNELL: Your Honor, at some point we need to
2 put in the clip reports for the deposition designations
3 since the court reporters don't transcribe. I understand
4 the clip reports --

5 THE COURT: You need to enter them into evidence?

6 MS. CONNELL: Yes, please.

7 THE COURT: Absolutely. So, that would be before
8 you close up. Are you giving exhibit numbers to them?

9 MS. CONNELL: Yes, your Honor. Go ahead, Mr.
10 Thompson.

11 MR. THOMPSON: These will be Court Exhibits III
12 through VII, your Honor, and we pre-marked them as such.

13 THE COURT: Well, let's get the jury in. We'll do
14 this before you close. Get the witness and the jury.

15 Those are the -- Mr. Thompson, those are the actual
16 transcripts that were played?

17 MR. THOMPSON: Yes, your Honor, and nothing more.

18 THE COURT: Has the other side seen them and able
19 to review them?

20 MR. THOMPSON: We did provide an electronic copy,
21 but it was yesterday evening so they may not have had an
22 opportunity to review them yet.

23 MR. WERBNER: Those are Court Exhibit only, right?
24 They're not going to the jury, the transcript, any kind --

25 MS. CONNELL: My understanding is if they ask for a

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

1 read-back, then it is read to them because there's no
2 transcription.

3 MR. WERBNER: But it's a Court Exhibit for the time
4 being.

5 THE COURT: In other words, if they want a
6 read-back, they have to watch it again?

7 MS. CONNELL: Or that someone can read back from
8 that clip report.

9 MR. WERBNER: All the exhibits at the end of the
10 case go to the jury these, will not be included.

11 THE COURT: We wouldn't typically send them all.
12 We'll send them whatever they ask for.

13 I think there should be something in the court
14 record because the video is not going to be in it. So, if
15 calling it Court Exhibits for now is fine. It should be
16 part of the trial record one way or the other. It was
17 played in open court.

18 So, I'm not sure I necessarily agree that it's
19 not -- well, Court Exhibit will be part of the trial record
20 so I'm not going to spend too many brain cells trying to
21 figure out if it's a Court Exhibit or trial exhibit, but
22 should be an exhibit.

23 So, if the defendants can -- I'm going to assume
24 that the transcripts are faithfully transcribed and are
25 exactly what was played and I'll admit them, subject to

BP

2986

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

1 hearing some -- something from the defendants that rebuts
2 that. But, if based on the representation that this is
3 exactly what was played in open court, I will admit those as
4 Court Exhibits --

5 MR. THOMPSON: III through VII, your Honor.

6 THE COURT: III through VII, provisionally, subject
7 to any objections that the defendants have upon reviewing it
8 and finding any errors.

9 MS. CONNELL: Thank you, your Honor.

10 MR. THOMPSON: Thank you.

11 THE COURT: You guys keep things lively, I will
12 give you that.

13 (Whereupon, at this time the witness,
14 ERIC HINES, having been previously duly sworn/affirmed by
15 the Clerk of the Court, resumed the witness stand and
16 testified as follows:)

17 MS. CONNELL: Your Honor, I have the summary of
18 exhibits to hand up.

19 COURT OFFICER: Court ready to receive the jury,
20 your Honor.

21 All rise, jury entering.

22 (Whereupon, at this time the jury then entered the
23 courtroom.)

24 THE COURT: Please have a seat. Sorry for the
25 short delay. You leave this many lawyers alone for too long

BP

2987

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

1 and we're going to start arguing about things. So we had
2 some discussions about some issues. Hopefully, that will
3 help smooth things going forward.

4 We tried to make the room a little less cold; and
5 when I say "we," I mean Sharon yelling at people and I only
6 hope it doesn't become a hundred degrees in here before we
7 have to call them again.

8 Anyway, welcome back. Counselor, you may continue.

9 MS. CONNELL: Thank you, your Honor.

10 DIRECT-EXAMINATION

11 BY MS. CONNELL: (Continuing)

12 Q Mr. Hines, are you ready to resume questioning?

13 A Yes, I am.

14 Q Thank you. I think when we left off, Mr. Hines, we
15 were discussing fraud risk indicators; if you recall that?

16 A I do.

17 Q And I think you were talking about some types of fraud
18 risk indicators like overly complex transactions.

19 Can you explain briefly to the jury what you mean by
20 that as a fraud risk indicator?

21 A Sure. So, an example of an overly complex transaction
22 would be, for example, if there's one arrangement that's split
23 into multiple pieces, or payment structures or arrangements that
24 are indirect, that would be an example of complex transactions.

25 So, that's what that would include, among other

BP

2988

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

1 things.

2 Q And why would the examples you give be a fraud risk
3 indicator?

4 A Well, fraud risk indicators are as they suggest, kind
5 of steer towards heightened risk of fraud, waste and abuse.

6 So, in my profession we look for fraud risk indicators
7 as an indicator that there may be control deficiencies and other
8 issues that need to be addressed.

9 Q Mr. Hines, actually, there's something I omitted doing
10 in the beginning of this case when I started questioning you.

11 We're showing the jury and the Court slides, correct?

12 A Yes.

13 Q Do you recognize these slides?

14 A Yes.

15 Q Did you help prepare these slides?

16 A Yes, I did.

17 Q Why did you do that?

18 A To help assist in my testimony and make sure that it is
19 accurate and truthful.

20 Q Mr. Hines, I would like to ask in performing your
21 analysis here, did you identify as a forensic accountant the
22 presence of any fraud risk indicators in the transactions you
23 reviewed?

24 A Yes, I did.

25 Q Can you describe for the jury the types of fraud risk

BP

2989

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

1 indicators you observed?

2 A Complex transactions, numerous violations of policies
3 and procedures and internal controls. Some of the contract
4 awarding steps did not follow policies, and I saw that a number
5 of times which is also a fraud risk indicator. Missing
6 documents, altered documents, modified documents and also
7 conflict-of-interest items that are not disclosed.

8 THE COURT: I give one caution to the jury. I've
9 done this with other experts.

10 The witness is going to give his opinions based on
11 his certain assessment of things. The ultimate questions of
12 fact that are embedded in what he's just described is for
13 you to decide, and he's not a fact witness on those. And.

14 I'll give you advice at the end for all the experts
15 that you can evaluate the facts upon which expert opinions
16 are based. If you don't agree with the facts on which
17 they're based, you can take that into account in evaluating
18 the expert's testimony.

19 Again, not a fact witness, but he's allowed to talk
20 to you about evidence in the record and then his opinions
21 based on that.

22 Okay, all right.

23 MS. CONNELL: Thank you, your Honor.

24 Q Mr. Hines, I would like to move on to discussing
25 specific work you did in relation to the NRA.

BP

2990

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

1 As part of your work on this case, did you analyze the
2 NRA's relationship with certain vendors?

3 A Yes, I did.

4 Q And was that analysis based upon your experience,
5 education and training as a forensic accountant?

6 A Yes, it certainly was.

7 Q And in connection with that analysis, did you form
8 opinions on whether the relationships that you looked at
9 reflected the presence of internal control failures?

10 A Yes, I did.

11 Q And did you also form opinions on whether the vendor
12 relationships you looked at reflected the presence of fraud risk
13 indicators?

14 A Yes.

15 Q As part of your analysis, did you look at the NRA's
16 relationship with several entities under the control of David
17 McKenzie?

18 A Yes, I did.

19 Q And do you know what those entities -- what entities
20 those were?

21 A My understanding is that those include Membership
22 Marketing Partners, Concord, Allegiance Creative Group and
23 Associated Television International.

24 Q And the jury has heard some testimony about them; but
25 if I refer to Membership Marketing Partners as MMP, will you

BP

2991

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

1 understand what I'm referring to?

2 A Yes, I will.

3 Q And if I refer to Membership Marketing Partners
4 together with Concord and Allegiance as the MMP entities, will
5 you understand what I'm referring to?

6 A Yes.

7 Q Thank you. Mr. Hines, in analyzing the NRA's
8 relationship with the MMP entities, did you form an opinion on
9 whether the relationship reflected the presence of internal
10 control failures?

11 A Yes.

12 Q And what was that opinion?

13 A I found that there were a number of internal control
14 failures.

15 Q First, just to take a step back for a second, we're
16 referring to the MMP entities as three entities grouped
17 together.

18 What was your understanding about the relationship
19 between those three entities, if you had one?

20 A I understand that they were under common ownership or
21 control, located at the same location with the same or similar
22 employees and provided similar services. That's my
23 understanding.

24 Q Was that significant to you as a forensic accountant?

25 A It was.

BP

2992

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

1 Q Can you explain to the jury why?

2 A I considered that in evaluating the nature of the
3 arrangements. There were three separate agreements in
4 consideration of the controls related to those and with respect
5 to evaluation of potential fraud risk indicators.

6 Q When you were looking at the NRA's relationship with
7 MMP entities, did you review any documents?

8 A Yes.

9 Q What types of documents or information did you review?

10 A I reviewed contracts with those respective entities. I
11 reviewed accounting information from the NRA's general ledger,
12 and I reviewed supporting documents related to the fees with
13 respect to that -- those three arrangements. I reviewed
14 correspondence, deposition testimony and some other things, as
15 well.

16 Q Are those the types of information that a forensic
17 accountant would normally perform or rely -- excuse me -- rely
18 upon in rendering opinions on internal control failures?

19 A Certainly, yes.

20 Q And the type of information a forensic accountant would
21 rely upon in rendering opinions on fraud risk indicators?

22 A Yes.

23 Q Mr. Hines, can you please summarize for the jury your
24 main opinions regarding the NRA's relationships with the MMP
25 entities?

BP

2993

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

1 A Sure. So, I found that the relationship -- are you
2 asking about the specific relationships or my opinions?

3 Q Your opinions, sir.

4 A Okay. I found -- my opinions were that the contracts
5 with those respective entities did not adhere to the NRA's
6 internal controls, that they were entered into without the
7 appropriate review and approval.

8 I found that there were -- based on my understanding of
9 the documents, I found that there were disclosure problems with
10 respect to potential conflicts of interest.

11 I found indicators that with respect to certain fees
12 that were increased on those arrangements, they were
13 undocumented based on my review of the documents.

14 I also found indicators of poor tone at the top with
15 respect to changes to those respective fees, again, based on my
16 understanding of the information.

17 THE COURT: Just, again, not to harp on this, but
18 to be careful; some of the things you described as your
19 opinions at least sounded to me like facts that you were
20 assuming in rendering your opinions. Is that accurate?

21 THE WITNESS: I'm really articulating that I found
22 a number of internal control failures and fraud risk
23 indicators. Some of these items are the specific bases for
24 those opinions.

25 THE COURT: But those are -- a number of the things

BP

2994

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

1 you said are facts that you are basing your opinions on.

2 So, if I can ask you as you answer Ms. Connell's
3 questions, to try to distinguish between facts that you are
4 assuming to be true or that your opinions are based on from
5 your opinions, that would be helpful. Because, again, the
6 jury is going to decide whether certain things were or were
7 not approved or -- or all the underlying facts; okay?

8 THE WITNESS: Understood.

9 Q So, Mr. Hines, I'll try and be clear when I'm asking
10 you to state your opinions, and then I'll ask you what bases
11 there are and you'll describe your understanding of the facts;
12 okay?

13 A Sounds good.

14 Q If I'm following the Judge's instructions correctly.

15 I think you said you looked at the contractual
16 relationship between the NRA and the MMP entities; is that
17 correct?

18 A That's correct.

19 Q Did you look particularly at -- did any particular --
20 strike that.

21 In deciding that -- excuse me.

22 In forming the opinion that the NRA's relationship with
23 the MMP entities demonstrated internal control failures, on what
24 did you base that opinion?

25 A I based that opinion based on my understanding and

BP

2995

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

1 review of certain documents and review of certain accounting
2 information.

3 Q Did you look at -- did any particular document inform
4 your opinion?

5 A Yes.

6 Q And what document is that?

7 A In particular, the initial contracts with those
8 entities and related -- internal controls documentation.

9 Q So, are you referring to the 2011 NRA contracts with
10 the MMP entities?

11 A Yes.

12 Q Could we take a look at the 2011 NRA contract with
13 MMP.

14 A Sure.

15 Q Did you analyze that contract as part of your work in
16 this case?

17 A I did.

18 MR. CORRELL: Objection, your Honor, relevance.

19 THE COURT: Overruled.

20 Q Did you form any opinion about whether the contractual
21 relationship complied with the NRA's internal controls?

22 A I did.

23 Q And what was that opinion?

24 A My opinion was that it did not comply with internal
25 controls.

BP

2996

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

1 Q And what's the basis for that opinion?

2 A The basis for that is my review of the related
3 documentation and my understanding of that documentation, that I
4 observed that the control process was not followed.

5 Q And can you explain in what way you found or you
6 believed the internal controls were not followed?

7 A Yes. So, based on my experience and education and
8 training, typically in evaluation of controls involves looking
9 at evidence with respect to that control being performed, and in
10 this particular instance I observed that a review set of
11 paperwork evidencing the review of that particular contract was
12 dated at a date after the contract had actually been executed,
13 again, based on my understanding of the information.

14 So, assuming those records reflect what they read, then
15 it would indicate to me that the control was not followed due to
16 the fact that the contract was executed before it was actually
17 subject to a full review.

18 Q So, Mr. Hines, am I correct in understanding that based
19 upon your review, the NRA -- the NRA's contract with MMP was
20 entered into and signed before it was subject to review and
21 approval?

22 A Yes.

23 Q And is that significant to you as a forensic
24 accountant?

25 A Yes, it is.

BP

2997

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

1 Q Why?

2 A Because it speaks to the effectiveness or lack thereof
3 of the control environment, and it speaks to the tone at the top
4 with respect to the control environment of the organization and
5 general view of controls.

6 Q Why would it speak to the tone at the top?

7 A Well, in this particular instance, my understanding of
8 the facts is that Mr. LaPierre and Mr. Phillips executed that
9 contract.

10 MR. CORRELL: Your Honor, objection. He's
11 testifying as to facts.

12 MS. CONNELL: Your Honor, he's testifying as to the
13 basis of how he observed an internal control failure. He's
14 not going to walk through every failure that he observed in
15 this case, but this is a key example.

16 THE COURT: Again, it is not a finding of fact. It
17 is the -- his assumed facts leading to his opinion. It is
18 up to the jury to decide the facts.

19 MS. CONNELL: I'm sorry, can we have that last
20 question read back?

21 (Whereupon, at this time the court reporter read
22 back the requested portion.)

23 Q And is that significant to you as a forensic
24 accountant?

25 A Yes, it is.

BP

2998

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

1 Q Why?

2 A Well, in my experience as a forensic accountant
3 evaluating internal control processes, the involvement of senior
4 management or executives in the control process is an important
5 concept. As we spoke about tone at the top, setting that kind
6 of cultural example of commitment to controls is important.

7 So, based on my experience and my profession, it
8 certainly is relevant to consider the individuals that were
9 involved in executing a particular arrangement that based on my
10 understanding and assumptions of the facts, that it did not
11 comply with the policy.

12 Q Were there any other aspects of the NRA's execution of
13 this 2011 agreement that struck you as significant?

14 A Yes.

15 Q What were those?

16 A Again, based on my understanding of the documents and
17 the facts, the contract as executed has different terms in the
18 contract that was reviewed.

19 Q And what were the terms that were different?

20 A Specifically, with respect to the inclusion as I
21 understand it of a ten-percent cap on the annual increases to
22 fees under that contract.

23 Q So, Mr. Hines, if we look at the slide that's currently
24 up and is displaying PX 1695 or portions of PX 1695 and PX 1725,
25 would I be correct in understanding that the reviewed version of

BP

2999

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

1 the contract contained a term that was not in the contract that
2 had previously been signed by the NRA?

3 A That is my understanding.

4 Q What is the significance of the difference in terms?

5 A My understanding is the difference would result in one
6 contract not having a cap on the increases to fees and one
7 contract would have a cap and limit the amount of those fees
8 could go up over the years.

9 Q Which contract had a cap that would limit the fees?

10 A The contract subject to review based on my
11 understanding of that document.

12 Q So, the contract executed in December 16, 2011, if
13 that's what occurred did not have a ten-percent cap; is that
14 right?

15 A That is my understanding based on my review, yes.

16 Q And when it was subsequently approved in February 2012,
17 the version that was given for review contained a ten-percent
18 cap; is that right?

19 A Yes.

20 Q And why is that significant to you?

21 A It is significant to me based on my experience as a
22 forensic accountant because it indicates a failure of the
23 control. In particular, assuming the facts here to be true,
24 that it indicates that the control process broke down because
25 the reviewers that were reviewing that particular arrangement

BP

3000

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

1 didn't have the accurate information, so the contract had
2 already been executed based on my understanding and at different
3 terms.

4 It's also significant to me because I think that
5 particular control breakdown is a strong fraud risk indicator
6 with respect to having different terms in those contracts.

7 Q We've been talking about a cap on the management fee.
8 Is the management fee in the MMP contract the primary means of
9 compensation under the contract?

10 A Yes, that's my understanding.

11 Q And did you analyze -- as part of your work in this
12 case, did you analyze the management fees the NRA paid to MMP
13 over the course of its vendor relationship with MMP?

14 A Yes.

15 Q Can you describe to the jury what you did to analyze
16 those management fees?

17 A My analysis including -- included looking at the
18 contractual rates and supporting documents and accounting
19 records and determining and calculating what those particular
20 fees were as they occurred over the course of time from
21 approximately 2011 to 2021.

22 Q So, was there a contractual -- or what was the
23 contractual rate in the 2011 contract that was executed between
24 NRA and MMP, just the single MMP unit?

25 A My understanding based on review of that document is

BP

3001

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

1 that it was \$400,000 per month.

2 Q And did you find that the amounts actually paid to the
3 MMP by the NRA over time were larger than that?

4 A Yes.

5 Q What -- what were your findings in that regard?

6 A My findings based on my understanding and review of the
7 documents and underlying data indicates that the fee increased
8 approximately 140 percent over the next ten or so years, going
9 from \$400,000 a month to 962,000 approximately.

10 Q Mr. Hines, did you create this table that's displayed
11 on the slide?

12 A Yes.

13 Q What did you use to create this table?

14 A This would be based on my review of the contracts and
15 also looking at general ledger information from the NRA.

16 Q Okay, and can you describe very briefly for the jury
17 what this table reflects?

18 A This table reflects my understanding of the MMP
19 specific contract and the management fees with respect to those
20 contracts or that contract, the period of those fees were
21 effective and the changes in each respective year. And the
22 columns at the right both represent dollar change and a
23 percentage change in those contracted rates.

24 Q So, in some years is it fair to say the increase in the
25 contract rate was greater than ten percent?

BP

3002

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

1 A Yes, that's what I calculated.

2 Q And is that reflected in the column to the far right?

3 A It is.

4 Q Okay. Mr. Hines, did your analysis of the MMP
5 contract, did you do a further analysis of the NRA's payments to
6 MMP under the 2011 contract?

7 A Yes, I did.

8 Q And can you describe the analysis that you did --
9 actually let me stop for a second.

10 Does this slide reflect tables that you prepared?

11 A Yes.

12 Q And can you describe to the jury what you did to
13 prepare these tables?

14 A Sure. So, my analysis was to evaluate what the amount
15 would have been paid by the NRA under two different scenarios,
16 making certain assumptions.

17 The first one was if it was assumed that the stated
18 contractual rate in the MMP contract as executed in 2011 had
19 been paid for the rest of that contract period or the rest of
20 the period covering December 11th through December of 2021, I've
21 calculated what that annual amount would have been.

22 Q What would that annual amount have been?

23 A \$48.4 million.

24 Q Is that's what's reflected in table MMP 8, Scenario 1?

25 A Yes.

BP

3003

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

1 Q Can you describe what other analysis you did?

2 A So, the second scenario that I looked at, again, using
3 the assumption that a potential fee increase of ten percent per
4 year is contemplated in the contract version that was subject to
5 a review process; if that fee increase had been in place, I
6 calculated what the annual amount that would have been paid to
7 the MMP entity was over that period of time and in the
8 aggregate.

9 Q And what did you find that amount would have been?

10 A I found that amount was approximately \$77.5 million.

11 Q And in calculating these amounts, what documents did
12 you -- sorry, strike that.

13 In calculating the amount that the NRA would have paid
14 under the contract if it had been enforced -- if we can go back
15 to the last slide -- if it had been enforced as written, what
16 did you rely upon to make that calculation?

17 A Two things: So, for the scenario one calculation, that
18 assumes the stated contract rate of \$400,000 per month from the
19 2011 contract that I understand -- at least in my review -- was
20 executed, it assumes that rate was -- would have continued.

21 So, that was -- that particular figure is based on that
22 executed contract amount.

23 And for the second scenario, the ten percent annual
24 increase in management fees was based on my understanding that
25 the reviewed version had that ten percent language in it, so it

BP

3004

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

1 would come from that underlying reviewed contract.

2 Q Mr. Hines, is it your opinion based upon the records
3 that you reviewed that the NRA actually paid MMP more than
4 either of these amounts under either scenario?

5 A Yes.

6 MR. CONNELL: And if we can move on to the next
7 slide, please, Jonathan.

8 (Displayed)

9 Q Mr. Hines what is this?

10 A This is a graphical representation of those
11 calculations I just described.

12 Q Did you prepare this?

13 A Yes.

14 Q And does this reflect at least some of the data from
15 the previous slide?

16 A Yes.

17 Q And what information did you rely upon in preparing
18 this graph?

19 A It would also be the same information with respect to
20 the contracted rates and my understanding of those contracted
21 rates. It would also be other underlying documents that I
22 reviewed and accounting data that indicated that those
23 particular contracted rates were, were -- that supported those
24 contracted rates and the actual rates that were paid.

25 So, I also looked at information with respect to what

BP

3005

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

1 rates I understand were paid over time.

2 Q So, can you explain to the jury what's reflected in
3 green, the pink and the orange portions of this chart?

4 A Sure. So, looking at this graph, the very top line
5 represents the amount, and it is a line chart that goes across
6 and represents per year the total amount paid in the MMP
7 contract, so that's the actual figures paid based on the
8 management fees that I identified.

9 The second line down represents what the -- just above
10 the light pink section there represents the management fees.
11 Had they been capped at that ten percent amount, that my
12 understanding is was subject to the review and approval process.

13 And the third line just above the green, represents the
14 management fee over time as it would have been in as I
15 understand it, the stated contract rate, specifically in the
16 executed contract.

17 Q How -- what amount did you determine NRA actually paid
18 to the NRA over this time period?

19 A The --

20 Q I'm sorry the NRA actually paid to MMP over this time
21 period?

22 A Based on my analysis and understanding of the record,
23 it was approximately 93.2 million.

24 Q And what information did you look at to come to that
25 conclusion?

BP

3006

1 A Again, that was information supporting the management
2 fees in each particular year and used underlying documents and
3 corroborated that with accounting information.

4 Q Is that the type of analysis a forensic accountant
5 would normally perform?

6 A Yes.

7 Q And did you rely on the type of information a forensic
8 accountant would normally rely upon?

9 A Yes, I did.

10 Q Am I correct in understanding that if the 2011 MMP
11 contract had been enforced, the amount the NRA would have paid
12 over this period of time was 48.4 million?

13 A That would be the amount that reflects the stated rate
14 in the MMP contract based on my review of that document and
15 understanding of it, yes.

16 (Continued on next page)

17

18

19

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21

22

23

24

25

BP

3007

Hines - by Plaintiff - Direct/Ms. Connell

1 Q Okay. And am I correct in understanding based upon
2 your review, your opinion is that the actual amount paid to MMP
3 by the NRA over the same period was actually 93.2 million?

4 A Yes.

5 Q Okay. In your view, why are these calculations
6 significant?

7 A They are important to my opinions about the internal
8 controls and my opinions with respect to forensic risk
9 indicators.

10 I believe -- look, in my experience, a difference
11 between -- it shows the difference between the approved amounts
12 or potentially approved amounts -- executed amounts of those
13 contracts based on my understanding of those contracts and the
14 actual amount that I identified, and I think it is impactful and
15 important because it reflects the potential spend differential
16 between the reviewed and approved versions as I understand it
17 which has a direct impact on my internal controls opinion
18 because I think it shows that where I have identified a control
19 deficiency, there is an impact in dollars going out of the NRA.

20 A Yes.

21 Q As part of your work in this case, did you analyze
22 the management fees the NRA paid to the other two MMP entities
23 Concord and Allegiance?

24 A Yes, I did.

25 Q Did you perform the same type of analyses?

KM

3008

Hines - by Plaintiff - Direct/Ms. Connell

1 A I did.

2 Q And not going through the whole graph process again,
3 but what did your analyses show?

4 A My analyses showed that for the other two contracts
5 for Concord and Allegiance, that there were -- the -- that my
6 understanding of the information I reviewed, that the rates
7 increased also over the course of those ten years from 135,000 a
8 month for Concord to approximately 373, and the Allegiance
9 contract also increased from 40,000 to 90 by end of 2021.

10 Q And did you have similar concerns about internal
11 failures with regard to Concord and Allegiance?

12 A Yes.

13 Q And did you have similar concerns with regard to --
14 well, strike that.

15 Mr. Hines, I'm showing you a slide. Have you -- do you
16 know what this is?

17 A Yes, I do.

18 Q What is it?

19 A This is a combined chart that shows the management
20 fees for each of the three entities by year.

21 Q So the first three columns show those management fees
22 for each year and each contract and then the fourth column
23 labeled "Total MMP Entity Management Fee" is the aggregate of
24 those three and the total change, and total change is a
25 percentage column or represent those dollar changes and

KM

3009

Hines - by Plaintiff - Direct/Ms. Connell

1 percentage changes by year.

2 Q And Mr. Hines, in relying upon -- strike that. In
3 preparing this table, did you perform the type of analysis a
4 forensic accountant would normally perform?

5 A Yes.

6 Q And did you rely on the type of materials a forensic
7 accountant would rely upon to make these calculations?

8 A Yes.

9 Q What did that information consists of?

10 A It consisted similar to what we discussed before.
11 Based on my review and understanding of the underlying contract
12 documents, supporting information that indicated those fees were
13 in fact the fees paid and review of accounting data.

14 MS. CONNELL: Your Honor, that table itself at Tab
15 1 of the thin binder in front of you, this is part of the
16 summary evidence we had circulated and filed notice of
17 summary evidence, and I would ask that it be moved into
18 admission.

19 MS. ROGERS: Since we don't have the binder, which
20 exhibit is this?

21 MS. CONNELL: PX 5122, and it was attached as part
22 of our previous -- we previously provided it, but I can
23 certainly -- I'm sorry.

24 THE COURT: The binder itself.

25 MS. CONNELL: I did make a binder. We previously

KM

3010

Hines - by Plaintiff - Direct/Ms. Connell

1 provided it.

2 THE COURT: Okay. I have previously reviewed
3 these, and so it's admissible.

4 MS. CONNELL: Thank you, your Honor. We can move
5 on to the next chart please, Jonathan.

6 THE COURT: Again, folks, this is a specific kind
7 of exhibit that we permit. It summarizes evidence that has
8 already been admissible, so it's -- sometimes it's called a
9 compilation.

10 So although it's in an unusual form when there is a
11 huge volume of information, Courts have permitted parties to
12 submit a compilation prepared by somebody based solely on
13 admissible evidence, and you know, subject to people asking
14 questions about how you put it together, but it's designed
15 to -- for situations where there is just so much volume that
16 it would be overwhelming for a jury to try to hold hundreds
17 of invoices together. So it's admitted for that purpose.
18 It's not itself evidence, but it summarizes evidence that
19 has been admitted.

20 Okay. So the other side can ask questions about
21 how we put it together and all of that. So that's the basis
22 upon which this has been admitted.

23 MS. CONNELL: Thank you, your Honor.

24 Q Mr. Hines, do you see what's on the screen right now?

25 A Yes, I do.

KM

3011

Hines - by Plaintiff - Direct/Ms. Connell

1 Q Can you -- did you prepare this table?

2 A Yes.

3 Q And can you describe to the jury what this table
4 shows?

5 A Yes. This is a graphical representation of the
6 table -- the previous table which shows the management fees paid
7 to each respective entity and in the aggregate by year from 2011
8 through 2021.

9 Q Is it fair to say this table shows that the
10 management fees paid for these entity increased over time?

11 A Yes, it is.

12 Q Did you as a forensic accountant identify any issues
13 with regard to these increased payments?

14 A Yes.

15 Q Can you describe to the jury what you found, what you
16 opined about?

17 A Well, in my opinion, based on my experience and
18 training as a forensic accountant, I concluded that there were
19 internal control failures with respect to those fee increases.

20 Q And what were those internal control failures with
21 respect to the fee increases?

22 A That they were almost entirely undocumented and not
23 formally memorialized in the amendment to the contract or
24 arrangement.

25 Q In your experience, would you have expected the fee

KM

3012

Hines - by Plaintiff - Direct/Ms. Connell

1 increases to have been formally and approved in writing?

2 A Yes.

3 Q Why is that?

4 A Well, based on my experience as an accountant, and a
5 forensic accountant documentation of arrangements is critical as
6 an audit trail and in order to support what's expected of one
7 entity or another with respect to an arrangement, and it's an
8 important part of the internal control process.

9 Q You just used the term "audit trail." Can you tell the
10 jury what that means.

11 A Sure. By audit trail, I'm referring to the various
12 pieces of information, documentation and evidence or support for
13 what actually occurred with respect to financial transactions or
14 operational transactions is the way I would describe it.

15 Q Okay, Mr. Hines. I'd like to try and close out the
16 discussion of MMP. But based on your understanding, was the
17 NRA's contractual arrangement with MMP entities ever
18 restructured?

19 A Yes.

20 Q And as you understand it, how was that arrangement
21 restructured?

22 A My understanding of the restructure was that it was
23 -- it consolidated those three arrangements into one, and that
24 -- it reduced the fees.

25 Q And so it's your understanding that that

KM

3013

Hines - by Plaintiff - Direct/Ms. Connell

1 restructuring had an impact on the fees the NRA was paying to
2 the MMP entities; correct?

3 A Yes.

4 Q Does that change your opinions that there were
5 internal control failures with regard to MMP?

6 A No.

7 Q Why not?

8 A Well, for one, based on my review of the documents
9 and my understanding of the record, I identified what I believed
10 to be additional internal control failures with respect to that.

11 Q All right. Do you know when that restructuring
12 occurred?

13 A I believe it was the Summer of 2022.

14 Q Okay. What internal control failures do you believe
15 occurred at that time?

16 A Based on my review and understanding of the
17 documents, in particular the execution of a Memorandum of
18 Understanding, I didn't identify a fully signed review sheet for
19 that.

20 And again, my understanding is also that given
21 conflict-of-interest issues with respect to that particular
22 arrangement, that it would have required separate approval by a
23 majority of the Audit Committee. And in my experience as an
24 accountant looking at that, I did not see that.

25 Q And why is that a problem?

KM

3014

Hines - by Plaintiff - Direct/Ms. Connell

1 A Well, it indicates another potential control
2 deficiency, another actual control deficiency.

3 Q And I think you said you looked at the -- how the
4 restructuring affected the fees the NRA paid to MMP; is that
5 correct?

6 A I did, yes.

7 Q And how did it effect them?

8 A The fees were reduced by about 46 percent and
9 -- approximately.

10 Q And as a forensic accountant, did you form any
11 opinion about that reduction in management fees?

12 A I did.

13 Q And what is that opinion?

14 A One I found as we talked about the complexity, the
15 arrangement is restructuring the contract seemed to reduce the
16 complexity.

17 Second, I also found that the fee reduction seemed to
18 call into question the prior fees.

19 Q You said reduce that complexity.

20 How did the 2022 restructuring reduce that complexity
21 from what you observed?

22 A Well, the contracts as I understand them were three
23 separate segregated contracts and consolidated to one.

24 Q One under the name Allegiance; right?

25 A Correct.

KM

3015

Hines - by Plaintiff - Direct/Ms. Connell

1 Q And I think you said you had an opinion about the fee
2 reduction as well; right?

3 A Yes.

4 Q What's your opinion about the fee reduction?

5 A Specifically, that I think it -- given there was a
6 conflict-of-interest issue based on my understanding, that it --
7 and that the prior fees as I understand those were undocumented
8 and formal arrangements and had internal control deficiencies,
9 the fee puts into question whether the initial fees or the
10 previous fees were appropriate.

11 Q Mr. Hines, using your experience, education and
12 training as a forensic accountant, did you identify the presence
13 of any fraud risk indicators in the NRA's relationship with MMP?

14 A Yes.

15 Q Can you describe to the jury the specific fraud risk
16 indicators you identified in this one vendor relationship?

17 A Sure. So there is a number of forensic risk indicators
18 that I identified. The first would be overly complex
19 transactions specifically, with respect to the fact that
20 arrangements were desegregated.

21 The second would be the number of review and approval
22 processes and the issues with respect to the initial contract
23 having my understanding having contradictory terms between what
24 was reviewed and approved.

25 I also concluded that the inadequate and missing

KM

3016

Hines - by Plaintiff - Direct/Ms. Connell

1 documentation with respect to lack of support with respect to
2 the management fee increases is a forensic risk indicator.

3 In addition, my understanding of the NRA's policies
4 analysis that where there is not a competitive bidding
5 situation, typically, there is an evaluation of the goods and
6 services provided, and I did not see that with respect to cost.
7 And the last would be forensic risk indicator with respect to
8 conflicts of interest, and my understanding that there were
9 undisclosed conflicts of interest.

10 THE COURT: It's time for our afternoon break. We
11 will take a short break.

12 THE COURT OFFICER: All rise. Jury exiting.
13 (Whereupon, at this time the jury exits
14 the courtroom.)

15 THE COURT: Counsel, can I get a -- do we have an
16 hours count as between the two sides as we are heading
17 toward the end of the plaintiff's case?

18 MR. FARBER: Do you want the witness here, your
19 Honor?

20 THE COURT: No. There is nothing prejudicial about
21 it.

22 MS. CONNELL: Sure. Can I just check my --

23 THE COURT: Yes.

24 MS. ROGERS: Your Honor, by our count, the Attorney
25 General has taken 40 hours and 51 minutes and the defendants

KM

3017

Hines - by Plaintiff - Direct/Ms. Connell

1 have taken -- what is it; 22 minutes -- 22 hours and
2 39 minutes.

3 THE COURT: Does that sound roughly correct?

4 MS. CONNELL: I don't even want to say, your Honor.
5 I just want to check.

6 THE COURT: The troops are working on it.

7 MS. CONNELL: We have a designated timekeeper, but
8 he is not in the courtroom. If you just give me a minute.

9 MS. ROGERS: In the past I think that our times
10 have aligned pretty well.

11 THE COURT: Well, my only observation is, you know,
12 the -- there is going to be a need for a sense of urgency to
13 get through all of this and everything is proceeding at a
14 deliberate pace, and that's been true on both sides,
15 frankly. The cross-examinations have been long and to some
16 extent duplicative, and the direct exams are, you know,
17 deliberate, and I'm -- I have made the ground rules for this
18 trial clear for a number of months. And you know, it will
19 become much more clear in the next two weeks as you have
20 less and less time to continue to budget and allocate and
21 from the -- certainly, the plaintiff's perspective, this
22 will have implications in terms of how much time you have to
23 cross the defense witnesses. And you know, my view is I'm
24 going to keep reminding you all about this because I -- as I
25 said a number of times, I am -- I really am not interested

KM

3018

Hines - by Plaintiff - Direct/Ms. Connell

1 in hearing during the last week that it's outrageous and
2 unfair because this is all about allocation decisions that
3 have been made along the way, and I don't question them.
4 Because, you know, everybody makes their own judgments as to
5 whether it takes -- it's worth doing extensive
6 cross-examination of witnesses, even if it may duplicate
7 some things that others have already done. And on the other
8 side, this examination that we are in the middle now, if it
9 proceeds at this pace will go deep into Monday, a fifth
10 week.

11 MS. CONNELL: That was the biggest unit, your
12 Honor, and I was hoping to pick up some speed.

13 THE COURT: I'm just looking at the slide deck. So
14 next week is the fifth week. So I just -- my role in this
15 is to oversee the process and make sure it's fair to both
16 sides, but every decision you all make in terms of time you
17 spend -- just you just have to keep it in mind because the
18 alternative is to have this jury be here forever.

19 MS. ROGERS: We understand, your Honor, and we are
20 very mindful of the chess clock and as plaintiff's case has
21 proceeded perhaps longer than we expected, you know, we have
22 relied on that clock to be enforced. By our count, they
23 have about four hours left including cross and including
24 closing.

25 THE COURT: Well, we also have to include your

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3019

Hines - by Plaintiff - Direct/Ms. Connell

1 closing.

2 MS. ROGERS: I think we have included closing in
3 that calculation. So we intend at least speaking for the
4 NRA, we know that our case will role out as a narrower
5 stance than theirs, but of course, there will be four hours
6 including cross-examination and closing.

7 THE COURT: There is also three less people doing
8 cross, but they only have one. So I don't expect their
9 cross to have to be quite as drawn out. But yeah. No.
10 That's kind of the reason why I wanted to do this analysis.
11 And again, I'm not making any judgments about anyone, but
12 you know, we just have a finite amount of time, and I think
13 its been a reasonable amount of time, if properly used. So
14 let's reconvene when the jury's back.

15 MS. CONNELL: I will just say our calculation is
16 38 hours.

17 MR. FLEMING: Does that include today?

18 MS. CONNELL: Our calculation is 38 hours
19 12 minutes for us and 23 hours and 8 minutes for defendants.

20 THE COURT: Well, why don't you all not do this
21 live on the record. Why don't you -- whoever is doing this,
22 try to see if we can reconcile. It might have had something
23 to do with Mr. Lee's time yesterday. I don't know.

24 All right. I'll see you soon.

25 MS. CONNELL: Thank you, your Honor.

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3020

Hines - by Plaintiff - Direct/Ms. Connell

1 (Whereupon at this time there was a recess taken.)

2 (Witness resumed the witness stand.)

3 THE COURT OFFICER: All rise. Jury entering.

4 (Whereupon, at this time the jury entered the
5 courtroom.)

6 THE COURT: Please have a seat.

7 MS. CONNELL: Thank you, your Honor.

8 CONTINUED DIRECT EXAMINATION

9 BY MS. CONNELL:

10 Q Mr. Hines, I'd like to move on to a different topic.

11 As part of your work in this case, did you analyze the
12 NRA's relationship with its vendor Ackerman McQueen and Mercury
13 Group?

14 A Yes.

15 Q And did you form any opinions with regard to that
16 relationship?

17 A Yes, I did.

18 Q And what were those opinions?

19 A I found the presence of internal controls failures with
20 respect to that relationship, and I also found the presence of
21 forensic risk indicators.

22 Q What was the basis of your opinion that there were
23 internal control violations?

24 A Based on my review of documents and my understanding, I
25 identified instances where policies were not followed. In

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3021

Hines - by Plaintiff - Direct/Ms. Connell

1 particular, with respect to services contracts that were entered
2 into.

3 I also identified instances with respect to what I
4 understand the out-of-pocket expense arrangement, and my
5 conclusion was that that circumvented internal controls with
6 respect to the billing practices and the travel and
7 reimbursement policy.

8 Q You referenced to services agreements; is that right?

9 A Yes.

10 Q Did you look at the NRA's -- excuse me. Ackerman's
11 services agreements with the NRA --

12 A Yes.

13 Q -- as part of your work?

14 And is it accurate or can you describe what internal
15 control violations you observed with regard to those services
16 agreements?

17 A I can. So based on my understanding of the NRA's
18 policy for procurement and contracting, and based on my review
19 and understanding of the services agreements, they required
20 specific sign-offs and authorization to be evidenced in a
21 signature review sheet, and they required separate analyses of
22 the business case with respect to those, and I did not identify
23 that that occurred.

24 Q Okay. And did you review a 1999 services agreement
25 between Ackerman and the NRA?

KM

3022

Hines - by Plaintiff - Direct/Ms. Connell

1 A Yes.

2 Q And was there anything significant about that that
3 struck you as a forensic accountant?

4 A Yes, there was.

5 Q What was significant about that?

6 A Well, in addition to my opinion that there were
7 internal control failures, I found it significant that the
8 agreement was only signed by Mr. LaPierre.

9 Q And why would that be significant?

10 A As I spoke to before with respect to internal controls
11 and the concept of tone at the top, the involvement of the
12 executive vice-president in a contract that didn't in my opinion
13 follow policy is a significant finding.

14 Q And did that contract as far as you understand it
15 remain in place until a new services agreement was signed in
16 2017?

17 A Yes.

18 Q Okay. I'd like to move on. I think you mentioned
19 out-of-pocket expenses. Is that correct?

20 A Yes.

21 Q And can you explain to the jury -- I think they have
22 heard a lot about out-of-pocket expenses, but what you
23 understand them to be.

24 A Okay. My understanding is the out-of-pocket expenses
25 with Ackerman McQueen included reimbursement and other general

KM

3023

Hines - by Plaintiff - Direct/Ms. Connell

1 business expenses of various sorts that were billed through
2 Ackerman McQueen so paid for by Ackerman and then reimbursed by
3 the NRA, and that process as I understand it was done using
4 essentially lump sum invoices, and I understand that the NRA did
5 not receive supporting documents behind that.

6 Q And is this an example of the type of invoice you're
7 talking about?

8 A Yes.

9 Q And did you review invoices sent between Ackerman
10 McQueen -- sent by Ackerman McQueen to the NRA?

11 A Yes, I did.

12 Q And did you review other documentation or information
13 as part of your analysis of the out-of-pocket expense
14 reimbursement arrangement?

15 A Yes, I did.

16 Q And what information did you review?

17 A I reviewed the general ledger information for the NRA.
18 In particular, with respect to disbursements and transactions
19 with Ackerman McQueen, I looked for and identified a number of
20 transactions that were labeled as out-of-pocket expenses and
21 quantified that amount, and that was a total of \$4.3 million
22 that I identified from 2015 to 2019. I also wanted to
23 understand what was underneath those expenses.

24 You know, typical for my practice and my business would
25 be wanting to understand the nature of the underlying expenses

KM

3024

Hines - by Plaintiff - Direct/Ms. Connell

1 that went through that expense arrangement, and I identified
2 that while the NRA did not in the normal course as I understand
3 it receive supporting documents behind those expenses, that
4 Ackerman McQueen had retained documentation, and I understand
5 that that was produced in litigation matters. So I reviewed
6 those invoices from Ackerman McQueen with underlying supporting
7 documents in order to understand the nature of those expenses
8 and what was included in the out-of-pocket expense category.

9 Q So Mr. Hines, you found \$4.3 million of out-of-pocket
10 expense invoices were paid by the NRA between 2015 and 2019?

11 A Yes.

12 Q Would I be correct in understanding that you had
13 supporting documentation for a smaller subset of those that you
14 obtained to review?

15 A That's correct. So I was able to locate invoices for
16 2016 through 2018 that totaled approximately \$2.8 million.

17 Q And did you take a look at those invoices to see --
18 well, let me ask you. What did you do in regard to those
19 invoices for which you had substantiation or were able to get
20 substantiation?

21 A I reviewed those invoices and the underlying support
22 that was attached to those invoices, and that included receipts,
23 underlying invoices from vendors that were billed through the
24 out-of-pocket expense category.

25 I cataloged all those expenses on a line-by-line basis,

KM

3025

Hines - by Plaintiff - Direct/Ms. Connell

1 and then I put those into various kind of account categories or
2 buckets so I could understand what was included in those which
3 is what is presented here.

4 Q I would like to draw your attention to the table on the
5 left.

6 Did you prepare that table?

7 A Yes, I did.

8 Q And what does it reflect?

9 A That reflects the categorization of the \$2.8 million in
10 Ackerman McQueen supporting documents related to out-of-pocket
11 expenses that I identified.

12 Q I'd like to look at just a few examples of them.

13 MS. CONNELL: If we can go to slide 43, please,
14 Jonathan.

15 Q You categorized -- is this correct \$240,106 over that
16 time period for Tyler Schropp credit card expenses?

17 A Yes.

18 Q And is this invoice to the right an example of one of
19 the invoices you looked at?

20 A This is an example of one of those invoices, and as you
21 can see, this is included in the out-of-pocket expense support
22 for this particular month, and I identified -- this is one
23 example. It's a \$4,685 hotel stay over two nights at the
24 Beverly Hills Hotel.

25 Q Did you find this significant as a forensic accountant?

KM

3026

1 A Yes, I did.

2 Q Why?

3 A Well, in my experience and based on my education and
4 training, I would say the entire out-of-pocket expense
5 arrangement was high risk and susceptible to fraud, waste and
6 abuse and circumvented internal controls and reimbursement
7 expense.

8 So for one, I think it's significant just for -- not
9 just, but primarily for that reason. I also found it
10 significant, the nature of some of the charges that were
11 included which in my experience indicated that there were
12 charges for higher cost items which I find to be associated with
13 higher risk of fraud, waste and abuse as well.

14 (Continued on the following page.)

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

1

2 Q I think you said they circumvented review and approval,
3 something to that effect?

4 A Yes.

5 Q Can you explain to the jury what you meant by that?

6 A Sure. So, in a -- if these were business expenses that
7 would be potentially reimbursed, including with respect to the
8 NRA policies as I understand it for travel and entertainment,
9 they would have to be submitted to the organization,
10 appropriately reviewed and compared to policy requirements to
11 determine if the charges met those policy requirements, and by
12 virtue of these expenses being passed through Ackerman McQueen
13 indirectly, and the NRA as I understand it not seeing that
14 supporting documentation when it paid invoices, it effectively
15 circumvented the control process, which would be a review and
16 approval of expenses.

17 Q Is it your understanding that the NRA from time to time
18 went to Ackerman McQueen to look at information maintained by
19 Ackerman McQueen?

20 A Yes.

21 Q And does that change your opinion as to whether the
22 out-of-pocket expense reimbursement process ended any internal
23 controls concerns?

24 A No.

25 Q Why not?

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3028

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

1 A The expenses for NRA employees still went through a
2 process that didn't -- didn't involve the review of travel and
3 reimbursable expenses. Based on my analysis and review of
4 documents, my understanding is that those initial reviews of
5 some of the out-of-pocket expenditures identified some of the
6 same concerns that I have as a forensic accountant, which were
7 expenses that were questionable.

8 MS. CONNELL: I'd like to take a look at slide 46
9 if we could jump to that one please, Jonathan.

10 (Displayed)

11 Q This is another category you had for car services over
12 that time period in the subset OOP invoices. You found that
13 \$67,000 approximately was used on black car services; right?

14 A That's correct.

15 Q And is this an example of the type of invoices you
16 looked at?

17 A This is one, yes.

18 Q And did this -- did this invoice or these types of
19 expenditures support your -- support your opinion that the OOP
20 arrangement represented a failure of internal controls?

21 A It did.

22 Q Why?

23 A It also went through the same indirect process to be
24 billed through Ackerman McQueen, which would essentially avoid
25 the review of travel and entertainment expenses; and based on my

BP

3029

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

1 review of the NRA's policy, I'm also aware that the travel
2 entertainment policy or business reimbursable expense policy
3 indicates that car services and travel should be at the least
4 expensive way possible to get from one place to a place.

5 So, for those reasons I thought it was clearly a risk
6 indicator and, also, indicative of the internal controls
7 failures.

8 MS. CONNELL: If we could jump ahead to slide 47,
9 please, Jonathan.

10 (Displayed)

11 Q You found that approximately \$62,000 was spent on hair
12 and makeup services; is that right?

13 A Yes.

14 Q Including this invoice, right?

15 A Yes.

16 Q And this also supported your conclusion that there was
17 a internal control failure; right?

18 A It did.

19 Q Mr. Hines, you have a category here on your table to
20 the left of "Missing Supporting Detail."

21 Do you see that?

22 A Yes.

23 Q What did you mean by that?

24 A Those are dollars that were billed through the
25 out-of-pocket expense arrangement that I did not find supporting

BP

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

1 documents for.

2 MS. CONNELL: Your Honor, the table on the left
3 is -- has been previously marked as PX 5123. It is at Tab 2
4 of the binder.

5 This is summary evidence, and I would move for its
6 admission.

7 THE COURT: Okay, previously reviewed that and I've
8 concluded that, again, this is another one of these
9 compilation exhibits. So, my point about those is so far
10 just it is this exhibit and the one before it. I did not
11 mean to include all these charts that are in this slide
12 deck.

13 Unless you hear me say it is admitted, which now
14 that chart on the left is as a separate exhibit; and the
15 other one, it is not in evidence. But, yes, this one is in
16 evidence.

17 MS. CONNELL: Thank you.

18 (Whereupon, at this time Plaintiff's Exhibit 5123
19 was admitted and received into evidence.)

20 Q Mr. Hines, using your experience, education and
21 training as a forensic accountant, did you identify the presence
22 of fraud risk indicators with the NRA'S relationship with
23 Ackerman McQueen?

24 A Yes, I did.

25 Q Can you briefly state to the jury what fraud risk

BP

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

1 indicators you found?

2 A Sure. So, I found another example of an overly complex
3 transaction arrangement. In particular, given the out-of-pocket
4 expenses were a passthrough indirectly and paid by the NRA
5 through Ackerman McQueen, missing documents and unsupported
6 transactions. In my experience, the invoices that were paid by
7 the NRA which showed just lump sum amounts without reviewing
8 underlying support, fits that fraud risk indicator category.

9 In addition, where transactions are not timely recorded
10 or properly recorded, I think the fact that expenses for NRA
11 employees circumvented the travel and entertainment business
12 expense review process is also a fraud risk indicator. And I
13 also concluded that just poor documentation with respect to the
14 award of the contracts, themselves, lack of evidence of the
15 appropriate signatures and in review processes and the fact that
16 the out-of-pocket arrangement was largely undocumented except
17 for individual invoices fit the risk category for a fraud risk
18 indicator.

19 Q Thank you. Mr. Hines, I'd like to move on to another
20 vendor that you looked at, Under Wild Skies. Are you familiar
21 with that NRA vendor?

22 A Yes.

23 Q Did you perform an analysis as a forensic accountant
24 with respect with regard to the NRA transactions with Under Wild
25 Skies?

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3032

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

1 A Yes, I did.

2 Q Did you also conclude that there were fraud risk
3 indicators and internal control violations with regard to this
4 relationship?

5 A Yes.

6 Q Mr. Hines, do you know whether Under Wild Skies had any
7 connection with Ackerman McQueen?

8 A I believe there's some connection, yes.

9 Q And what's that belief based upon?

10 A My review of documents and understanding from the
11 record.

12 Q What was the connection, as you understand it?

13 A As I understand it, Under Wild Skies -- the president
14 of Under Wild Skies, Tony Makris, who's also the president of
15 the Mercury Group, a subsidiary of Ackerman McQueen.

16 Q And, Mr. Hines, did you look at or what type of
17 analysis did you perform in regard to the NRA's relationship
18 with Under Wild Skies?

19 A I reviewed the underlying contract information,
20 supporting documents, such as invoices. I reviewed accounting
21 data and deposition testimony, as well.

22 Q And did you find internal control violations?

23 A Yes, I did.

24 Q And what's that based on?

25 A It's based on my understanding and review of documents

BP

3033

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

1 that indicated that the contracts with Under Wild Skies were not
2 properly authorized in accordance with policy, and my
3 understanding that in at least some instances payments were made
4 absent a contract altogether.

5 Q Did you attempt to quantify the amount of money that
6 was paid to Under Wild Skies by the NRA, both under a contract
7 and not under a contract?

8 A Yes.

9 Q Okay. We'd like to -- I'd like you to take a look at
10 the table that's on the screen, on the screen right now.

11 (Displayed)

12 Did you prepare this table?

13 A Yes, I did.

14 Q What does this table reflect?

15 A This table reflects my analysis of information included
16 in the NRA's general ledger, and it categorizes different types
17 of expenses that I observed in that general ledger, including
18 some related to advertising and sponsorship fees and some that
19 are just based on the underlying invoices described as
20 supplemental income, and a few other categories that I saw in
21 that population.

22 Q What's the total amount you found was paid to Under
23 Wild Skies by the NRA between 2015 and 2019?

24 A \$12,375,000.

25 Q And, Mr. Hines, did you do any further analysis with

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3034

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

1 regard to those -- those amounts paid?

2 A Yes.

3 Q And what was that analysis?

4 A I looked to see how many of -- what portion of those
5 dollars I could tie to a contract that was in place, even if it
6 had not been properly reviewed and approved.

7 And this table here, I broke that amount down between
8 the amounts I could tie to a contract and the amounts I was
9 unable to tie to a formal arrangement.

10 Q So, what amount were you able to tie to at least to a
11 signed contract?

12 A It was \$8,075,000.

13 Q And that was through advertising contracts and
14 sponsorship contracts?

15 A Yes.

16 Q What amount did you find was paid to Under Wild Skies
17 with no supporting contract?

18 A That would be \$4.3 million.

19 Q So, Mr. Hines, is it your testimony that the \$8,075,000
20 paid in connection with contracts complied with the NRA's
21 internal controls?

22 A Can you ask it again?

23 Q Are you saying that the \$8 million in payments
24 supported by agreements complied with the internal controls; is
25 that your opinion?

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

1 A No.

2 Q Why not?

3 A It's \$8 million I found it had an underlying agreement
4 that was executed by the NRA; but that amount based on the
5 contracts I reviewed did not have the appropriate supporting
6 documentation evidencing the review and approval processes that
7 occurred.

8 Q Okay. I'd like to talk --

9 MS. CONNELL: You can move on to the next slide,
10 please, Jonathan.

11 Q I think you identified payments that were for
12 supplemental invoices; is that correct?

13 A Yes.

14 Q What did you understand the supplemental payments to
15 be?

16 A Well, they're not defined or are articulated in terms
17 of what those services actually are on the documents I reviewed.

18 My understanding, based on review of testimony, is that
19 they were for donor -- seeking donor cultivation is what I
20 recall.

21 Q Is that how they were reflected in the NRA's general
22 ledgers?

23 A No.

24 Q How were they reflected in the NRA's general ledger?

25 A I believe they were categorized in an account that

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

1 referenced production or production costs.

2 Q Mr. Hines, did you prepare the table that's currently
3 on the screen?

4 A Yes, I did.

5 Q What does this table reflect?

6 A This table reflects the payments I was able to identify
7 related to the supplemental income arrangement, and it shows by
8 year that they were approximately six payments per year, exactly
9 six payments per year, so one every other month for an amount
10 that I believe was 97,500 every other month.

11 Q And what was the total amount of payments?

12 A \$2,340,000.

13 MS. CONNELL: Your Honor, this is a summary
14 evidence exhibit that's at Tab 4 of the binder and it is
15 PX 5126.

16 I would ask that it be moved into admission -- be
17 admitted into evidence.

18 THE COURT: Admitted for the same purposes.

19 (Whereupon, at this time Plaintiff's Exhibit 5126
20 was admitted and received into evidence.)

21 THE COURT: You had also identified Tab 3 earlier
22 on. Did you mean to include that?

23 MS. CONNELL: I did. I thought I had moved that
24 into evidence, but may I please move that into evidence?

25 THE COURT: I don't recall you doing that, but if

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

1 you want to.

2 MS. CONNELL: I'm sure you're right. It is
3 PX 5124.

4 THE COURT: That's the payments by category, right?

5 MS. CONNELL: Yes.

6 THE COURT: That's admitted as well, as a
7 compilation exhibit.

8 (Whereupon, at this time Plaintiff's Exhibit 5124
9 was admitted and received into evidence.)

10 MS. CONNELL: Thank you, your Honor.

11 Q Mr. Hines, moving to the next slide. Is this an
12 example of the supplemental invoices that -- an example of the
13 type of supplemental invoices that the NRA received from Under
14 Wild Skies?

15 A Yes.

16 Q And as a forensic accountant, did this raise concerns
17 for you?

18 A Yes, it did.

19 Q Why?

20 A In my concerns where invoices, in particular, ones
21 where I haven't identified an existing underlying contract or
22 arrangement, have nondescript or generic terms and don't
23 actually define what the services being paid for are, it's
24 consistent with a fraud risk indicator.

25 Q Why is it important for the contract to set out what

BP

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

1 the services are being paid for?

2 A Well, in this case, I didn't identify a contract; but
3 it is important for a contract to articulate as an internal
4 control manner what the parties understood the deliverables are,
5 how those will be priced and what other terms the arrangement
6 might be important to the parties as a business matter.

7 Q Would that same reasoning apply to invoices where there
8 is no contract?

9 A Yes.

10 Q Mr. Hines, based upon your experience and expertise and
11 training as a forensic accountant, did you find fraud risk
12 indicators in the NRA's relationship with Under Wild Skies?

13 A Yes, I did.

14 Q And what were they?

15 A I found that, again, overly complex transactions. So,
16 there were multiple agreements with Under Wild Skies for
17 different items, and that's consistent with a fraud risk
18 indicator, including one arrangement that was not formalized in
19 any sort of contract.

20 Missing documentation and unsupported transactions
21 would refer to the supplemental invoices, which have just the
22 generic description of supplemental invoice and the fact that
23 the NRA's ledger categorized those as production with the rest
24 of the Under Wild Skies charges. The poor documentation
25 specifically relates to the fact that there were no supporting

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

1 contracts for the supplemental payments.

2 And I also noted that the sponsorship contracts and
3 advertising contracts that did not follow the authorization
4 procedures fall into that category.

5 And I also based on my understanding that there were
6 conflict-of-interest items that required disclosure, I did not
7 see disclosure of that with respect to Mr. LaPierre for the
8 Under Wild Skies arrangement and relationship with the
9 principal.

10 Q Thank you, Mr. Hines. I'd like to move on to another
11 topic.

12 Mr Hines, as part of your engagement in this case, did
13 you look at NRA payments to former NRA employees?

14 A Yes, I did.

15 Q I'd like to focus your attention right now just on
16 three of them, if that's acceptable to you?

17 A Sure.

18 Q In specific, specifically, I would like to talk about
19 Wilson Woody Phillips, Robert Weaver and Mark Marcellin.

20 Did you analyze part of your work payments by the NRA
21 to these three gentlemen?

22 A Yes.

23 Q Can you describe for the jury what, generally, you did
24 in -- as part of this analysis?

25 A I'd be happy to. So, I looked at the corresponding

BP

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

1 contract and documentation. I look the at where there was
2 supporting information and accounting records, those underlying
3 records. I reviewed deposition, sworn testimony, and financial
4 data as well. So, information on those payments.

5 Q And that's the type of information a forensic
6 accountant would normally look at?

7 A Absolutely, yes.

8 Q And the type of analysis a forensic accountant would
9 normally do in the course of this?

10 A Yes, everyday.

11 Q Did you form opinions about whether these payments to
12 these former employers complied with the NRA's internal
13 controls?

14 A Yes.

15 Q And what was that opinion?

16 A That they did not comply with the NRA's internal
17 controls.

18 Q Why didn't they comply with the NRA -- what do you base
19 your opinion on that it didn't comply with the NRA internal
20 controls?

21 A I base that opinion on the fact that the arrangements
22 didn't follow the review and approval processes as required, in
23 terms of proper authorization and signatures of those and having
24 supporting analyses that describe the business purpose of those
25 arrangements. And I also noted that there were, typically, a

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

1 lack of supporting information regarding what those services
2 would be.

3 And, at least in one instance, I identified what I
4 understand to be an indirect payment between the NRA and one of
5 the former employees that I would consider a fraud risk
6 indicator in a high-risk transaction.

7 Q I'm talking about Mr. Phillips first.

8 Did you identify any internal control failures or is it
9 your opinion that there were internal control failures with
10 regard to payments made to Mr. Phillips?

11 A Yes.

12 Q And what's if the basis for your opinion?

13 A The basis for that is my understanding and based on my
14 review of the documentation that it was not the proper sign-offs
15 required for his post-employment contract.

16 Q Did you quantify the amounts paid to Mr. Phillips under
17 that contract?

18 A Yes.

19 MS. CONNELL: Your Honor, I would like to seek the
20 admission of Tab 6. It is marked PX 5137. This is the
21 computation of payments made for the consulting agreement
22 with Mr. Phillips.

23 THE COURT: Do you want to put anything on the
24 screen or --

25 MS. CONNELL: Yes. I believe -- actually, Jesse,

BP

3042

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

1 can we pull up PX 5137 if that's possible.

2 (Displayed)

3 Q Mr. Hines, did you prepare this table?

4 A Yes.

5 Q How did you prepare this table?

6 A I prepared it using the underlying accounting records
7 for the NRA.

8 Q And did you use the methodologies that are standard in
9 your field?

10 A Yes.

11 Q Is it accurate to the best of your knowledge?

12 A Yes.

13 MS. CONNELL: Your Honor, I ask for the admission
14 of this exhibit.

15 MR. WERBNER: No objection.

16 THE COURT: It's admitted.

17 (Whereupon, at this time Plaintiff's Exhibit 5137
18 was admitted and received into evidence.)

19 Q Mr. Hines, did you also look at the NRA's arrangement
20 with Robert K. Weaver?

21 A Yes, I did.

22 Q And can you find that that Weaver -- excuse me, Mr.
23 Weaver, did you find that that arrangement violated the NRA's
24 internal controls?

25 A Yes.

BP

3043

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

1 Q In what way did it violate NRA's internal controls?

2 A My --

3 Q Based on your understanding of the facts?

4 A Based on my understanding of the facts and my review of
5 the documentation, I did not see evidence that that contract was
6 properly authorized in accordance with NRA procurement contract
7 and policies.

8 Q Did you calculate the amount paid to Mr. Weaver after
9 he left the NRA employ under that agreement?

10 A Yes.

11 Q What was that amount?

12 A I identified it \$1,680,000.

13 Q And moving on to the final one that we're going to talk
14 about today, Mr. Marcellin. Did you analyze the NRA's payment
15 arrangement with Mr. Marcellin?

16 A Yes, I did.

17 Q And did you find that that payment arrangement violated
18 the NRA internal controls?

19 A Yes.

20 Q And what's the basis for that opinion?

21 A Based on my understanding of the documents that I
22 reviewed, the contracts for his post-employment compensation
23 were not properly reviewed and approved or evidenced as they
24 would be required to be evidenced within internal control
25 documentation.

BP

3044

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

1 Q Was -- were there any other concerns with regard to Mr.
2 Marcellin's agreement that you recall?

3 A Yes. In particular, what really stood out to me, given
4 my experience as a forensic accountant, was the way
5 Mr. Marcellin was paid which involved, again, based on my review
6 of the documents and understanding of the facts, payments being
7 made not directly by the NRA, but by a third party that,
8 essentially, made Mr. Marcellin's compensation arrangement not
9 be paid on the NRA's side of the house and books.

10 Q So, if I understand you correctly, that other third
11 party paid Mr. Marcellin and then the NRA paid that amount to
12 that third party; correct?

13 A Yeah, I don't know if it was a -- the NRA paid, it was
14 a royalty. My understanding of the facts is is that the NRA was
15 owed royalties and I believe it was short paid from that.

16 Q When you say "short paid," what do you mean?

17 A That the third party paid Mr. Marcellin, and the NRA
18 presumably received less royalties.

19 Q As a forensic accountant, does that raise concerns to
20 you?

21 A It does.

22 Q Why?

23 A Well, for one, the arrangement was with the NRA and
24 Mr. Marcellin, and he was paid essentially in a way that kept it
25 off of the ledger of the NRA. And I think it created or it was

BP

3045

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

1 in fact a high-risk transaction that was susceptible to fraud,
2 waste and abuse.

3 THE COURT: Counsel, can I ask you, can you confirm
4 that the information underlying this is all based on
5 admissible evidence that's been admitted so far in the
6 trial?

7 MS. CONNELL: Yes, I believe, your Honor, it was --
8 well, I can ask.

9 THE COURT: I'm trying to remember everything, but
10 I just didn't remember this name.

11 MS. CONNELL: Yes, your Honor, I believe it was
12 based upon the NRA general ledgers. I think we got
13 Mr. Marcellin's agreement in.

14 MS. ROGERS: The general ledgers are not in.

15 MS. CONNELL: Well, the general ledgers are not in
16 because the NRA objected to them as being too large. We
17 broke them into smaller, but they admitted that there's a
18 ledger admissible.

19 THE COURT: Again, my question still stands is this
20 transaction in the record at this point?

21 MS. CONNELL: You know, your Honor, for everything
22 else we tried to put the admitted exhibit at the bottom. I
23 don't see it here, so maybe I'll move on and you can
24 instruct the jury to disregard this until I straighten this
25 out.

BP

3046

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

1 THE COURT: Again, this witness can only testify
2 based on evidence that's either in the record or shortly
3 will be during plaintiff's case; and at this point, I'm not
4 sure -- counselor's not sure so this entire section about
5 payments to Mr. Marcellin, you should -- I'm going to strike
6 that for now.

7 I may be wrong. I just don't remember this
8 particular this.

9 MS. CONNELL: We tried to be very careful only to
10 used admitted evidence, your Honor. I'm sorry there's not a
11 citation at the bottom of that screen.

12 Q Mr. Hines, in looking at the payments to the NRA's
13 former employees, did you find fraud risk indicators present?

14 A Yes.

15 Q And for the moment, can you exclude Mr. Marcellin from
16 your consideration?

17 A Certainly.

18 Q What fraud risk indicators did you find?

19 A I saw missing documentation or lack of supporting
20 evidence that based upon my understanding, some of those
21 consulting services attached to those arrangements were actually
22 provided; and where the arrangements were not properly reviewed
23 and approved, that would fall under the fraud risk indicator
24 report documentation supporting the award of contracts.

25 Q Thank you. I'd like to move on to payments to board

BP

3047

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

1 members by the NRA, if that's okay with you?

2 A Sure.

3 Q Mr. Hines, as part of your work in this case, did you
4 look at payments to NRA board members?

5 A Yes.

6 Q By the NRA?

7 A I did.

8 Q And did you form opinions on these payments?

9 A Yes, I did.

10 Q And at a high level, what were those opinions?

11 A That there were a number of internal control failures,
12 and that there were fraud risk indicators with respect to those
13 payments.

14 Q For the purposes of our discussions today, I'd like to
15 focus on four board members: Marion Hammer, Dave Butz, David
16 Keene and Sandra Froman, if that's okay with you?

17 A Sure.

18 Q Can you describe for the jury what type of analysis you
19 did with regard to payments to these four board members?

20 A I reviewed accounting information such as ledger data
21 and other documents with respect to payment information. I also
22 reviewed where they existed certain contracts with those
23 individuals.

24 I also reviewed meeting minutes of the board and Audit
25 Committee meeting minutes, deposition and sworn testimony.

BP

3048

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

1 Q Starting with Ms. Hammer, did you look at NRA payments
2 to Ms. Hammer?

3 A Yes.

4 Q And did you find -- did you form any opinions as to
5 whether they were violations of the -- they violated the NRA
6 internal controls?

7 A Yes, I did.

8 Q What was the basis of those opinions?

9 A The basis of that opinion that there were internal
10 control violations is my understanding based on review of
11 documents that there were payments made to Ms. Hammer from the
12 ILA for a number of years without a contract in place at all.
13 That there were also payments made to Ms. Hammer with respect to
14 contracts with the NRA directly, which based on my understanding
15 were also not properly authorized and approved in accordance
16 with policy.

17 And I also saw a -- the fact that given these are board
18 member payments, they would require separate authorization from
19 the board or the Audit Committee, and I saw evidence that that
20 did not occur typically.

21 Q Mr. Hines, did you do any work to quantify the amounts
22 that the NRA paid to Ms. Hammer?

23 A Yes.

24 MS. CONNELL: And I'd like to bring up PX 5142,
25 your Honor.

BP

3049

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

1 This is a summary evidence exhibit that we seek
2 admission of. It totals NRA ILA payments to Ms. Hammer.

3 Can we bring it up on the screen?

4 (Displayed)

5 Q Mr. Hines, did you prepare this chart?

6 A Yes.

7 Q How did you prepare this chart?

8 A I prepared it from underlying records of the NRA,
9 including general ledger and other financial data.

10 Q And is this chart true and accurate to the best of your
11 knowledge?

12 A Yes.

13 MS. CONNELL: Your Honor, I ask this be moved into
14 admission.

15 THE COURT: Again, the assumption is I don't know
16 exactly what your conversation was about the general ledger,
17 but this is going to be moved into evidence before the close
18 of the plaintiff's case?

19 MS. CONNELL: I believe, your Honor, that it could
20 be moved into evidence now. Again, we spoke about the
21 general ledger, if we were to print it out and admit it,
22 would be wheel barrels of documents, of pages.

23 There's no contest -- there's no question it came
24 to us from the NRA. It was produced by them. Mr. Hines
25 examined it. They have had the general ledgers. They were

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

1 produced the segments that --

2 THE COURT: So, if it is admissible evidence --

3 MS. CONNELL: Exactly.

4 THE COURT: It hasn't been admitted in its native
5 form because it is not practical to do so?

6 MS. CONNELL: Exactly, this is the type voluminous
7 papers --

8 THE COURT: All right, so sometimes you have the
9 evidence in the record itself.

10 MS. CONNELL: Right.

11 THE COURT: So, the NRA disagree that the evidence
12 would be admissible if we had enough wheel barrels?

13 MS. ROGERS: Well, there are general ledger
14 excerpts that were generated for purpose of litigation
15 rather than the ordinary course; and if there's a particular
16 page or entry from that that the plaintiff wants to admit,
17 we'd be happy to review that.

18 We haven't had that discussion thus far. And based
19 on some of the issues raised in our letters regarding
20 witness summary evidence and the accuracy of the same, I'm
21 hesitant to just say that sure, whatever is underlying this
22 is admissible.

23 THE COURT: Well, the specific question I had is if
24 we had enough space, is there any objection -- any question
25 that the general ledger wall of documents would be

BP

3051

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

1 admissible as a business record?

2 MS. ROGERS: I think there exists some documents
3 fitting a description that would be admissible as a business
4 record. I just don't know which document in the record
5 they're using here.

6 MS. CONNELL: Your Honor, I'm just going to say
7 this came up in the bankruptcy and came up again in this
8 case.

9 The NRA fought us giving their entire general
10 ledger because it contained donor information. We
11 negotiated and agreed to excepts which they produced, which
12 are also exceedingly large. I'm happy to have those
13 admitted as business records --

14 THE COURT: I don't want to overcomplicate it, but
15 your point is this witness was able to view NRA produced
16 financial and accounting records that are the basis for
17 these calculations, right?

18 MS. CONNELL: That's exactly right, your Honor.

19 THE COURT: So, whatever their disagreement was
20 about some things you could or couldn't get, this you were
21 able to receive?

22 MS. CONNELL: Yes, your Honor.

23 THE COURT: Do you still have it in your
24 possession?

25 MS. CONNELL: Yes, your Honor, we still have it in

BP

1 our possession.

2 THE COURT: So your point is that you actually did
3 receive information, you used that information to provide
4 this witness and that is the basis for these calculations?

5 (Continued on next page)

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Hines - by Plaintiff - Direct/Ms. Connell

1 MS. CONNELL: That's exactly right.

2 THE COURT: And that same information has been
3 available to the defendants the entire time as well.

4 MS. CONNELL: That's exactly right.

5 MS. ROGERS: Do we have a Bates number, what
6 document was used, which excerpts, which ledger?

7 MS. CONNELL: Your Honor, we put on the slides and
8 we put in Mr. Hines' report the exact citations to the Bates
9 numbers. They have had it since September.

10 THE COURT: I'm admitting -- I just want to make
11 sure the record is clear. I guess I understand what you're
12 saying now is this is admissible evidence, but because of
13 the unusual circumstances that even if we wanted to admit
14 it, it would be extraordinarily impractical to do it.

15 MS. CONNELL: Yes, and --

16 THE COURT: So as long as they had the ability to
17 cross-examine.

18 What I want to make sure is clear is that they have
19 enough information. I mean, I guess they deposed him,
20 although not necessarily on these charts because these
21 charts were done for trial as opposed to in his expert
22 report.

23 MS. CONNELL: Well, this information I believe was
24 in his -- I want to just check if it was in his expert
25 report, but we cited to the general ledgers in the motion

KM

3054

Hines - by Plaintiff - Direct/Ms. Connell

1 practice. It's cited in Mr. Hines' report. He relied upon
2 it.

3 THE COURT: Right. I'm not second guessing that.
4 I'm just saying as long as they have -- they know the source
5 documents that lead to this and they can say, well, no, it's
6 not this number, it's that number, you added it wrong or
7 something. As long as it's not a black box.

8 MS. CONNELL: It's 100 percent not a black box.
9 It's the NRA's own document, their own general ledger of
10 information they have, monies they paid out.

11 THE COURT: All right. I'll admit it.

12 MS. CONNELL: Similarly, your Honor, we'd seek the
13 admission of what is in the binder of Tab 10 PX 5143.

14 Q Mr. Hines, did you prepare this chart?

15 A Yes.

16 Q And what does that chart reflect it?

17 A Reflects ledger payments to Ms. Hammer of the NRA.

18 Q Separate from the previous chart which is NRA-ILA
19 payments; right?

20 A Yes.

21 Q And did you gather this information from the NRA's
22 general ledgers?

23 A Yes.

24 MS. CONNELL: Your Honor, we move for its
25 admission.

KM

3055

Hines - by Plaintiff - Direct/Ms. Connell

1 THE COURT: And all the same questions and answers
2 apply to this as well?

3 MS. CONNELL: Exactly.

4 MS. ROGERS: Yes, your Honor, and I have located
5 the Bates number cite for this, so we have no objection at
6 the moment.

7 THE COURT: I'm sorry.

8 MS. ROGERS: Yes.

9 THE COURT: All right. It's admitted.

10 MS. CONNELL: Thank you, your Honor.

11 Q Mr. Hines, moving on to Dave Butz. Did you look at NRA
12 payments to Board member Dave Butz?

13 A Yes, I did.

14 Q And did you form any opinion as to whether those
15 payments were in compliance with the NRA's internal controls?

16 A I did.

17 Q And what opinions did you form?

18 A I found that the arrangements were not in compliance.

19 Q And why not?

20 A Well, Mr. -- based on my understanding of the facts,
21 Mr. Butz received payments in years without any contract in
22 place and certain years without properly approved contract and
23 Board authorization.

24 Q Did you quantify the amount of money that the NRA paid
25 to Mr. Butz?

KM

3056

Hines - by Plaintiff - Direct/Ms. Connell

1 A I did.

2 Q And how much money did you find that it paid to him and
3 for what years?

4 A It was \$897,432 from 2013 to 2020.

5 MS. ROGERS: Objection to the witness making
6 findings about payments.

7 Q What was your understanding about the amount of money
8 paid to Mr. Butz by the NRA?

9 A My understanding the amount?

10 Q Yes.

11 A I quantified it was \$897,432 based on --

12 Q What was that based on?

13 A Based on my review of the financial information from
14 the general ledger.

15 Q Thank you.

16 And moving on to Mr. Keene, you also looked at the
17 NRA's payments to NRA Board member Mr. Keene; correct?

18 A Correct.

19 Q And did you find -- do you have an opinion as to
20 whether those payments violated the NRA's internal controls?

21 A Yes.

22 Q And what's your opinion?

23 A That they were internal control failures.

24 Q What were the internal control failures?

25 A Specifically, based on my understanding of the facts

KM

3057

Hines - by Plaintiff - Direct/Ms. Connell

1 that Mr. Keene received payments without a contract in place
2 from at least 2017 through the end of 2019.

3 Q Do you know whether Mr. Keene ever had a contract in
4 place?

5 A I believe so.

6 Q At some point?

7 A Yes.

8 Q Okay. But is it your opinion that at -- that payments
9 to him that you identified still violated the NRA's internal
10 controls?

11 A There were payments made that certainly violated
12 internal controls, yes.

13 Q And did you total payments made to Mr. Keene?

14 A I totaled those payments, yes.

15 Q What did they -- what -- how much did you find that the
16 NRA paid Mr. Keene based upon your understanding of the NRA's
17 financial records?

18 A Based on my understanding, \$153,305.

19 Q Over what time period?

20 A 2015 through 2020.

21 Q And finally, Mr. Hines, did you look at NRA payments to
22 Board member Sandra Froman?

23 A Yes.

24 Q And did you form an opinion as to whether those
25 payments violated the NRA's internal controls?

KM

3058

Hines - by Plaintiff - Direct/Ms. Connell

1 A Yes, I did.

2 Q And what was your opinion?

3 A My opinion was that they did violate the internal
4 controls, and the basis for that opinion is my understanding
5 that Ms. Froman -- I did not identify any contract in place with
6 her.

7 Q Did you endeavor to quantify the amount paid by the NRA
8 to Ms. Froman?

9 A Yes.

10 Q And what amount did you find the NRA paid Ms. Froman?

11 A My total was \$216,545.

12 Q This is also over what time period?

13 A 2013 to 2018.

14 Q What's that based upon?

15 A I believe that's based upon a review of ACH or form of
16 electronic wire transaction information.

17 Q And did you summarize your findings in a table?

18 A Yes.

19 MS. CONNELL: Your Honor, I would ask that PX 5141
20 which is Tab 12 in you're binder be admitted as an exhibit.

21 THE COURT: Okay. It's admitted. And did you -- I
22 can't recall.

23 MS. CONNELL: We did not have one for Mr. Butz.

24 Yeah, I don't know why.

25 THE COURT: For Keene or Mr. Butz?

KM

3059

Hines - by Plaintiff - Direct/Ms. Connell

1 MS. CONNELL: Actually, I do have one for Mr.
2 Keene.

3 THE COURT: And Mr. -- is Tab ten.

4 MS. CONNELL: Yes. Actually, I'm seeing that. I
5 didn't put it in my outline.

6 Jesse, can we bring up PX 5143. That one is
7 already admitted.

8 THE COURT: The next page should be another Tab
9 number. 5138, I think.

10 MS. CONNELL: Well, let's go to Mr. Keene first
11 which is Tab 11.

12 Jesse, can you bring up 5140. Never mind.

13 Well, we have Butz up. Let's deal with Butz.

14 Q Mr. Hines, did you prepare this table?

15 A Yes.

16 Q And how did you prepare this data? I mean, this table.

17 A I believe this is from wire transfer documents and data
18 that we received.

19 Q Okay. And did you calculate it using methodology that
20 are accepted in your field?

21 A Yes.

22 Q And is this a true and accurate representation of
23 monies you found from NRA records to have been paid to Mr.
24 Keene?

25 A I believe so, yes.

KM

3060

Hines - by Plaintiff - Direct/Ms. Connell

1 MS. CONNELL: Your Honor, I ask that that be
2 admitted.

3 THE COURT: Well, the true an accurate part, I
4 mean, you are saying that he faithfully transferred it over
5 from what he -- from what he read in the -- in the records
6 into this chart?

7 MS. CONNELL: Yes, your Honor. That's frequently a
8 question for summary evidence. I'm happy to withdraw it.

9 THE COURT: The way you phrased it was him
10 testifying that it was truly and accurately paid.

11 MS. CONNELL: Got it.

12 THE COURT: You are saying this is what the
13 accounting records show.

14 MS. CONNELL: That's right.

15 Q Mr. Hines, is this what -- is this an accurate
16 representation of what you found the accounting records to show?

17 A Yes.

18 MS. CONNELL: Your Honor, I ask that PX 5140 be
19 admitted.

20 THE COURT: It's admitted.

21 MR. FARBER: There is a mis-match between what's on
22 the screen and what we are talking about.

23 THE COURT: What's on the screen is Mr. Butz. I'm
24 not sure which one.

25 MR. FARBER: The questions were about Mr. Keene.

KM

3061

Hines - by Plaintiff - Direct/Ms. Connell

1 MR. FLEMING: The document is 5138.

2 MS. CONNELL: 5138 be admitted.

3 THE COURT: All right.

4 MS. CONNELL: Mr. Butz is 5138.

5 THE COURT: The questions you asked him, were they
6 about Mr. Butz or Mr. Keene? They were --

7 Why don't we tie that up.

8 MS. CONNELL: I think I just cross-referenced them.
9 Let's just make it clean.

10 Can we please bring up 5138 which relates to Mr.
11 Butz.

12 THE COURT: We can.

13 MS. CONNELL: Your Honor, I ask that this table be
14 admitted.

15 THE COURT: Has the witness confirmed that this is
16 a true and accurate reflection of what you found in the
17 corporate records?

18 Q Mr. Hines --

19 THE WITNESS: Yes, your Honor.

20 MS. CONNELL: Thank you.

21 THE COURT: It's admitted.

22 MS. CONNELL: Thank you.

23 THE COURT: We are getting to the end of our day.

24 MS. CONNELL: Jesse, can you please bring up 5140.

25 Q Mr. Hines, what is this table?

KM

3062

Hines - by Plaintiff - Direct/Ms. Connell

1 A This is a summary of payments to Mr. Keene.

2 Q And what did you base this summary upon?

3 A NRA financial data.

4 Q And is this table a true and accurate reflection of
5 what you believe NRA financial data reflects regarding payments
6 to Mr. Keene?

7 A Yes.

8 MS. CONNELL: Your Honor, I ask that this table be
9 admitted. That's PX 5140.

10 THE COURT: It's admitted, and that will close us
11 for the day.

12 So you're going to not see us for a whole three
13 days now. We will see you on Monday morning at 9:30. Have
14 a good weekend. Relax and remember the instructions about
15 not discussing the case, not doing any research. I will see
16 you then.

17 THE COURT OFFICER: All rise. Jury exiting.

18 (Whereupon, at this time the jury exits
19 the courtroom.)

20 THE COURT: Just before we leave, Counsel, do you
21 have an estimate how much longer on direct.

22 MS. CONNELL: 15 minutes.

23 THE COURT: I figured you were closing in.

24 Any estimate at this point now on the cross or is
25 this --

KM

3063

Hines - by Plaintiff - Direct/Ms. Connell

1 MS. ROGERS: I expect about 30 minutes of cross.

2 MR. CORRELL: Depends on what she does.

3 MR. FARBER: About 15 minutes.

4 MR. FLEMING: I would say 15.

5 THE COURT: Hopefully, we will consolidate. As far
6 as I'm aware, is there anything else that you are going to
7 need to move into evidence or is that going to be likely the
8 end of the plaintiff's case?

9 MS. CONNELL: That's going to be the end of
10 plaintiff's case in chief.

11 THE COURT: Okay. So we will -- if there are any
12 motions to be made at that point, I will, you know, dismiss
13 the jury briefly -- well, for as long as it takes, but I do
14 want you to use the time between now and then to just hone
15 in, and let's just try to make the presentations as tight as
16 we can to the extent possible if you can coordinate so that
17 you don't have to duplicate each other. I'd very much
18 appreciate it because as much time as we are all trying to
19 preserve -- roughly I think I calculated 96 or so hours
20 total. You know, let's just try to use the time wisely, and
21 I'd like to cap it as -- well, I -- whatever number I give
22 you, it may be longer than you were thinking, so I won't
23 tell you what the number is, but it's not longer than an
24 hour.

25 MS. CONNELL: The defendants have identified two

KM

3064

1 witnesses Sandra Froman and Lisa Supernaugh as their first
2 two witnesses which they thought would not take a whole day.

3 Because of the length of the Defense exhibit list,
4 I would just ask for notice of a couple of more witnesses
5 past that.

6 THE COURT: I would -- I think that makes sense
7 because we don't know how fast we are going to get through
8 all this, and we are giving document exhibit notice 24 hours
9 as we've --

10 MS. ROGERS: 24 hours in advance, your Honor, and I
11 think we've had to adjust the witness order as things have
12 gone longer than expected, and I think one witness might
13 have a conflict, and over the weekend, we will produce an
14 updated order and exhibit list.

15 THE COURT: If you can let us know. All right.
16 Have a good weekend.

17 (Whereupon at this time the trial was continued
18 until February 5, 2024.)

19
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21
22
23
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25

KM

3065

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

-----X
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against-

INDEX NO.
451625/20

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

Defendants.

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

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

APPEARANCES:

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SARAH B. ROGERS, ESQ.
NOAH PETERS, ESQ.

3066

Proceedings

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

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

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

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

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

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

BP

3067

Proceedings

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

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

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

13 THE COURT: Yes, that was my recollection, as well.

14 I think there's still things in his testimony that
15 are not in evidence, so I'm going to keep it -- unless,
16 unless any of those exhibits and they haven't been admitted
17 at the moment, I'm not inclined to have this last witness be
18 the one who brings that in.

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

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

BP

3068

Proceedings

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

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

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

15 MS. CONNELL: I understand.

16 MR. FLEMING: Your Honor, just to be clear, no need
17 to cross-examine him on that; right?

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

20 MS. CONNELL: I believe you did, your Honor.

21 THE COURT: So it is out.

22 MS. ROGERS: And so that slide in the demonstrative
23 won't be shown then?

24 MS. CONNELL: No, your Honor.

25 THE COURT: Well, it may have been shown, but it

BP

3069

Proceedings

1 can't be shown again.

2 Okay, let's get the witness and the jury. It was a
3 busy letter writing weekend even for you guys. I don't
4 really want to discourage it because they are useful, but
5 it's gone a little bit unstructured where everybody just
6 feels like they can just -- we're all close, but we're not
7 pen pals at this point. I do have to have some sort of a
8 limit on how this stuff comes in, but they were very
9 helpful. Thank you.

10 (Whereupon, at this time the witness,
11 ERIC HINES, having been previously duly sworn/affirmed by
12 the Clerk of the Court, resumed the witness stand and
13 testified as follows:)

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

16 Have you all worked out the time allocation issues?

17 MS. ROGERS: So, your Honor, we've reconciled our
18 minutes and hour counts, and I think we're almost exactly
19 synchronized. We had a difference of three minutes, which I
20 think we can further work out.

21 THE COURT: What do you have?

22 MS. ROGERS: Our account, the defendants are about
23 20 hours behind plaintiffs.

24 THE COURT: Give the numbers.

25 MS. ROGERS: I can bring up the exact numbers.

BP

3070

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

1

2

THE COURT: We can do that at a break. I think once we have that and once the State rests, you'll be able to figure the math out exactly of each minute of defense case, what's the ratio of government case, if they want to try to keep track.

6

7

Anyway, we'll figure that out, but I would like to hear the numbers once we have a break.

8

9

COURT OFFICER: All rise, jury entering.

10

(Whereupon, at this time the jury then entered the courtroom.)

11

12

THE COURT: Good morning, everyone. Please have a seat. Welcome back, everyone.

13

14

We're going to continue with the State's expert witness. Ms. Connell, are you ready?

15

16

MS. CONNELL: I am.

17

THE COURT: The is witness ready and you understand you're still under oath?

18

19

THE WITNESS: I do, your Honor.

20

THE COURT: Please, proceed.

21

MS. CONNELL: Thank you, your Honor.

22

DIRECT-EXAMINATION

23

BY MS. CONNELL: (Continuing)

24

Q Good morning, Mr. Hines.

25

A Good morning.

BP

3071

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

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

3 A Yes, I did.

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

5 A It is a form of electronic wire transfer, which is a
6 bank-to-bank transfer that goes through a clearinghouse.

7 Q Okay.

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

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

12 A Yes.

13 Q And, Mr. Hines, if I can direct your attention to Tab
14 13 which is PX 5120 in the binder?

15 A Yes.

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

18 Q Mr. Hines, can you describe is reflected in this table?

19 A Sure. So, this table reflects by year from 2013
20 through 2020 the total of the ACH transfers or wire transactions
21 from Wells Fargo, the NRA's bank and it's presented by entity.

22 Q Did you prepare this table?

23 A Yes.

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

BP

3072

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

1 A Yes.

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

3 THE COURT: Okay, it is admitted.

4 MS. CONNELL: Thank you.

5 (Whereupon, at this time Plaintiff's Exhibit 5120
6 was admitted and received into evidence.)

7 THE COURT: Bonnie, we're not getting the realtime.

8 (Brief pause)

9 Q Mr. Hines, continuing --

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

12 Q Mr. Hines, as part of your work in this case did you
13 look at the NRA's arrangement with an individual named Gayle
14 Stanford?

15 A Yes.

16 Q And can you give the jury a brief overview of the type
17 of analysis you did with regard to Ms. Stanford?

18 A Sure. I reviewed transactions with Ms. Stanford,
19 documented in invoices sent to the NRA. I reviewed underlying
20 supporting information. With respect to those invoices where it
21 existed, I also reviewed deposition sworn testimony, and I
22 reviewed financial transactions on the NRA's general ledger and
23 the ACH transactions we just spoke about and some other
24 supporting information on the financial transactions.

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

BP

3073

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

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

2 A Yes.

3 Q And in regard to those transactions, did you identify
4 fraud risk indicators?

5 A I did.

6 Q Mr. Hines, did you -- well, can you describe for the
7 jury briefly what you observed that constituted fraud risk
8 indicators or violations of the NRA's internal controls?

9 A I'd be happy to. So, with respect to the internal
10 control failures, I concluded that there were -- well, based on
11 my understanding of the facts, there were no contracts in place
12 with Ms. Stanford over the better part of over two decades, I
13 believe and that is inconsistent with the NRA's requirement to
14 have contracts and appropriate review and approval procedures.

15 So, I identified that as an internal control breakdown.

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

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

BP

3074

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

1 and documentation with respect to those particular invoices as
2 well.

3 Q As part of your work, did you quantify amounts of money
4 paid to Ms. Stanford by the NRA directly or indirectly?

5 A Yes, I did.

6 Q Mr. Hines, I'd like to direct your attention to Tab 15
7 of your binder. This is PX 5127.

8

9 A Okay.

10 Q Mr. Hines, can you -- did you prepare this table?

11 A Yes.

12 Q Can you describe what it reflects?

13 A It reflects a summary of the monthly fees paid to
14 Ms. Stanford over the course of the period from 2015 through
15 2019.

16 Q Ms. Stanford had been paid by the NRA for longer
17 periods than that, is that right?

18 A Yes.

19 Q But this just reflects those years?

20 A It does.

21 Q What did you find in regard to the total amounts paid?

22 A I found and quantified a total of monthly management
23 fees of \$1,159,159.

24 Q Thank you.

25 MS. CONNELL: Your Honor, I'd ask PX 5127 be moved

BP

3075

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

1 into evidence.

2 THE COURT: It is admitted.

3 (Whereupon, at this time Plaintiff's Exhibit 5127
4 was admitted and received into evidence.)

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

7 Did you prepare this table?

8 A Yes, I did.

9 Q And what does this table reflect?

10 A This table reflects payments to Ms. Stanford for what
11 were referred to as retroactive fees, so amounts that were paid
12 typically early in the year following services that they were
13 reported to be related to.

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

16 THE COURT: It is admitted.

17 (Whereupon, at this time Plaintiff's Exhibit 5128
18 was admitted and received into evidence.)

19 Q So, Mr. Hines, if I understand correctly, Ms. Stanford
20 was paid in January this retroactive fee in addition to the
21 monthly fee we just looked at; right?

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

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

24 Did you prepare this table, Mr. Hines?

25 A Yes.

BP

3076

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

1 Q And what is it?

2 A This table represent fees paid to Ms. Stanford via
3 Ackerman McQueen primarily through the out-of-pocket expense
4 arrangement.

5 Q And did you -- is this an accurate reflection of the
6 records you reviewed?

7 A Yes.

8 Q Is this the type of analysis someone in your field
9 would normally pursue?

10 A Yes, it is.

11 MS. CONNELL: Your Honor, I move that this be
12 admitted into evidence, PX 5129.

13 THE COURT: It is admitted.

14 (Whereupon, at this time Plaintiff's Exhibit 5129
15 was admitted and received into evidence.)

16 Q And this was paid in addition to the two other -- the
17 retroactive fee and the monthly fee that we previously saw?

18 A That's correct.

19 Q Mr. Hines, going back?

20 MS. CONNELL: If we can go to Tab 81, please
21 Jonathan.

22 Q Did you calculate the amounts that the NRA paid
23 Ms. Stanford overall from January 2015 through February 2020?

24 A Yes.

25 Q And what did you find?

BP

3077

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

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

2 Q And that's just for services?

3 A Yes.

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

5 A That is correct.

6 Q Did you -- as part of your analysis, did you take a
7 look at Ms. Stanford's or the billing practices between the NRA
8 and Ms. Stanford?

9 A Yes, I did.

10 Q And what did you find?

11 A I found there were a number of billing anomalies that
12 in my professional education and training would be consistent
13 with fraud risk indicators.

14 Q What type of anomalies are you talking about?

15 A Invoices that were changed from draft to draft,
16 including removing information with respect to destinations,
17 passengers, and invoices that lacked supporting information
18 provided with that when they were actually submitted for
19 payment.

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

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

BP

3078

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

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

3 If you look at the screen right now, is this an example
4 of one of what you're talking about?

5 A Yes.

6 Q Can you explain to the jury what's on the screen?

7 A I'd be happy to. So, on this left-hand side is a
8 version of an invoice for charter air flight services, and that
9 is the invoice that would be initially sent to Ms. Stanford
10 based on --

11 Q Could I stop you there one second. "CAA invoices to
12 Ms. Stanford," can you explain what that means?

13 A Sure. So, Ms. Stanford is the travel consultant for
14 Mr. LaPierre primarily, would arrange for charter flights; and
15 my understanding is that the vendor for those charter flights
16 was, typically, Corporate America Aviation. They would invoice
17 Ms. Stanford. Ms. Stanford would then bill that through for the
18 underlying services to the NRA by adding a markup.

19 So, the invoice on the left-hand side here is the
20 actual invoice from that vendor that provided the air charter
21 services to Ms. Stanford.

22 Q So, in addition to the monthly fees, she was paid --
23 Ms. Stanford got a markup on the travel charges she booked?

24 A That's correct.

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

BP

3079

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

1 right?

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

7 Q And did this altered billing have significance to you
8 as a forensic accountant?

9 A Yes, it did.

10 Q Can you explain to the jury what that significance is?

11 A Well, the significance, first off, is that the
12 information, the underlying itineraries was modified from the
13 underlying details on the Corporate America Aviation document.

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

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

21 And the final column with the invoice actually provided
22 to the Financial Services Division to process for payment
23 removed the destinations altogether, so that it is significant
24 in my experience as a forensic accountant because it,
25 essentially, makes the audit trail -- the ability to follow the

BP

3080

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

1 documentation record, it makes it opaque unless obvious as to
2 what the actual flight is for and what the NRA was paying for.

3 Q I think you also said larger invoices were sometimes
4 broken up; is that accurate?

5 A Correct.

6 Q Can you explain why that's significant?

7 A It is significant because, one, it indicates that based
8 on my review of the underlying records and awareness that the
9 larger dollar value invoices would have required separate
10 approval and signoff; and by those larger dollar amounts being
11 slid into smaller components, it essentially bypasses separate
12 signoff for checks that were disbursed.

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

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

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

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

BP

3081

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

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

3 Q Thank you. Mr. Hines, a second ago we referenced CAA
4 as providing invoices to Ms. Stanford; correct?

5 A Correct.

6 Q Did you do any analysis of CAA invoices and
7 Ms. Stanford's invoices?

8 A Yes, I did.

9 Q If you could turn, please, to Tab 19 of your binder.
10 It is PX 5116.

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

13 MS. CONNELL: I know. I'm sorry, your Honor. It
14 is a lot of information, so it was more pages or smaller
15 type.

16 Q Mr. Hines, did you prepare this table?

17 A Yes.

18 Q And can you describe what it is?

19 A It is a summary of invoices related to the Corporate
20 America Aviation vendor for charter flights; and it summarizes
21 the invoice number, invoice date, the date of the trip or the
22 itinerary, the passengers that were described on those invoices,
23 the itinerary destinations and the amount indicated as the total
24 due for that charter and it does that for, I believe, it is
25 approximately 180 invoices.

BP

3082

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

1 MS. CONNELL: Your Honor, I'd ask this be moved
2 into evidence.

3 MS. ROGERS: The NRA reiterates its previous
4 objections to this summary, but has no others.

5 THE COURT: It is admitted.

6 If it is possible to make one with larger type even
7 if it doubles the number of pages, it's only three pages.
8 I think that would be useful, but substantively it is
9 admitted.

10 MS. CONNELL: We'll circulate one with larger type,
11 your Honor, and ask that it be admitted in that fashion; but
12 for the time being --

13 THE COURT: Yes, if the only thing that you do is
14 make it bigger, you can just remark this as PX 5116 and you
15 don't have to seek to have it readmitted.

16 MS. CONNELL: Thank you, your Honor.

17 Q Mr. Hines, while we have the book open, can you please
18 look at Tab 18.

19 A Okay.

20 Q Did you prepare this table?

21 A Yes.

22 Q What does this table reflect?

23 A This table reflects a summary of those Corporate
24 America Aviation invoices, and it categorizes various attributes
25 with respect to those invoices, including grouping them by

BP

3083

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

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

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

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

13 Q Did you ever summarize the results of this --

14 MS. CONNELL: Your Honor, I move this into
15 evidence.

16 THE COURT: 5117?

17 MS. CONNELL: I believe this is 5116. I think I
18 made a mistake. I think I switched the order.

19 THE COURT: Well, Tab 18 is 5117; isn't it? Is
20 that the one you were on?

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

23 THE COURT: Okay.

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

25 THE COURT: Wait, 5116 is the small one.

BP

3084

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

1 MS. CONNELL: That's right.

2 THE COURT: 5117 is the one that's Tab 18. That's
3 admitted.

4 (Whereupon, at this time Plaintiff's Exhibit 5117
5 was admitted and received into evidence.)

6 MS. CONNELL: That's right.

7 Q So, Mr. Hines, did you prepare this table that's at
8 5117, PX 5117?

9 A Yes, this is the one I just described. You may have
10 been off.

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

13 THE COURT: I'll move again if you want.

14 MS. CONNELL: I do want that. Thank you, your
15 Honor.

16 Q Mr. Hines, can you describe for the jury again just
17 briefly what this reflects?

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

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

BP

3085

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

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

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

8 Q So, you found flights that the invoices reflected
9 flights that Mr. LaPierre was not even on and you totalled
10 those?

11 A Yes.

12 Q And you found flights where the Sterners were on
13 without Mr. LaPierre?

14 A Yes.

15 Q And Mr. Sterners are Mr. LaPierre's niece and her
16 family?

17 A That is my understanding.

18 Q And you totalled them up, and that's reflected in this
19 chart?

20 A Yes.

21 Q And flights -- can you tell the jury how much you found
22 for flights that on which Wayne LaPierre was not even a
23 passenger?

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

BP

1 believe, it is 8. -- or 870,000 so it would be the total of the
2 column Wayne LaPierre excluded and Sterners included and then
3 Wayne LaPierre excluded. So, it would be the total of those
4 dollars.

5 (Continued on next page)

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3087

Hines - by Plaintiff - Direct/Ms. Connell

1 MS. CONNELL: Jonathan, if we can go back to slide
2 84 please.

3 Q Mr. Hines, did you find any other billing practices
4 that you deemed problematic with regard to the NRA's payments to
5 Ms. Stanford?

6 A Yes, I did.

7 Q And what were they?

8 A I noted a number of instances where the charges from
9 Ms. Stanford didn't include detailed descriptions. This table
10 on the slide presented, it showed some examples of that where it
11 would just list gratuities or charges with a city destination
12 name and lack of detailed description with respect to what
13 underlied those particular expenses.

14 Q And Mr. Hines, did you also look at black car
15 services retained or used by -- booked by Ms. Stanford for the
16 NRA executives?

17 A Yes.

18 Q And did you endeavor to quantify the amount spent on
19 that?

20 A I believe so.

21 MS. CONNELL: Actually, before we move on to black
22 car services, if we can go to slide 86, please, Jonathan.

23 Q Does this total your analysis of CAA invoices regarding
24 the flights that we talked about just before?

25 A Yes.

KM

3088

Hines - by Plaintiff - Direct/Ms. Connell

1 Q And so can you describe for the jury the total amounts
2 that you found?

3 A Yes, I can. So across a population of 188 invoices
4 from May of 2015 through September of 2019, the total was
5 approximately 6.6 million.

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

8 I also identified 41 invoices totalling \$872,000, and
9 these amounts don't include Ms. Stanford's markup. I should
10 mention that. But that \$872,000 did not include Mr. LaPierre as
11 a passenger and also identified 19 invoices for 686,000 where a
12 member of the Sterner family was listed as a passenger.

13 Q Mr. Hines, I'd like you to take a look at Tab 20 in
14 your book. This is PX 5119.

15 A Okay.

16 Q Actually, let's first look at Tab 21 which is PX 5118.
17 Did you prepare this table?

18 A Yes.

19 Q Can you describe to the jury what's in this table?

20 A This table represents the line item invoices that were
21 sent to the National Rifle Association for Ms. Stanford which
22 covered the period from late 2011 through October of 2019 and
23 includes each invoice that I was able to identify from
24 remittance information which is essentially a form of support
25 that the invoices were paid, and I've categorized those with the

KM

3089

Hines - by Plaintiff - Direct/Ms. Connell

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

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

7 THE COURT: It's admitted.

8 Q Mr. Hines, did you endeavor to take the information
9 reflected on PX 5118 analyze it in a different form?

10 A Yes.

11 Q I direct your attention to Tab 20 in your book which
12 is PX 5119.

13 A Okay.

14 Q Can you describe to the jury what this reflects.

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

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

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

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

KM

3090

Hines - by Plaintiff - Direct/Ms. Connell

1 understood he is talking about a different thing.

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

4 Q So Mr. Hines, did you prepare those graphics?

5 A Yes. I think they are not on the screen if that --

6 Q Right. The ones that we are looking at, PX 5119 --

7 A Correct.

8 Q -- in preparing them, did you use the type of
9 methodology that would normally be used by a forensic
10 accountant?

11 A Yes.

12 MS. CONNELL: I would move PX 5119 into evidence.

13 THE COURT: It's admitted. Now you can put it up
14 so they can see what you were talking about.

15 Q So now Mr. Hines, can you describe to the jury what's
16 reflected in these charts?

17 A I can. So the first pie chart here shows a breakdown
18 of the invoices paid by the NRA to GS2 which is Ms. Stanford --
19 one of her business entity names from December '11 to October of
20 '19. It showed those invoices that included air transportation
21 and those without air transportation, an account of those
22 invoices.

23 Q And if we move to the second chart. Can you describe
24 that breakdown.

25 A So this takes the same population of invoices and

KM

3091

Hines - by Plaintiff - Direct/Ms. Connell

1 breaks it down between the cost. So the red represents the air
2 transportation cost identified from those invoices and the gray
3 area represents the non-air transportation cost itemized in
4 those invoices.

5 Q So --

6 A Go ahead.

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

10 A Yes.

11 Q And about \$4.6 million in non-air related costs booked
12 through Ms. Stanford?

13 A Yes.

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

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

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

24 A Yes.

25 Q And again, can you quickly walk the jury through what

KM

3092

Hines - by Plaintiff - Direct/Ms. Connell

1 those were.

2 A Sure. So there were a number of fraud risk indicators
3 that I identified. Specifically the complexity of the
4 transaction.

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

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

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

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

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

KM

3093

Hines - by Plaintiff - Direct/Ms. Connell

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

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

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

9 MS. CONNELL: Thank you, your Honor.

10 MR. CORRELL: Thank you, your Honor.

11 Q Were you finished walking through the fraud risk
12 indicators?

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

15 Q Very quickly, please.

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

24 Q Mr. Hines, would I be correct in understanding that
25 based upon the review you performed and in your experience,

KM

3094

Hines - by Plaintiff - Direct/Ms. Connell

1 education and training as a forensic accountant, you identified
2 internal control failures in every vendor relationship that you
3 looked at?

4 A Correct.

5 MR. CORRELL: Leading, your Honor. I move to
6 strike.

7 THE COURT: That was leading.

8 MS. CONNELL: It was leading, your Honor. I'm
9 sorry. Just trying to move things along, but I can ask.

10 Q Mr. Hines, how would you describe the results of your
11 review of the NRA's relationship with its vendors that you
12 reviewed?

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

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

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

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

23 A I did.

24 Q What was that opinion?

25 A My opinion that it did not. Was that it did not.

KM

3095

Hines - by Plaintiff - Cross/Ms. Rogers

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

3 THE COURT: Okay.

4 CROSS-EXAMINATION

5 BY MS. ROGERS:

6 Q Good morning, Mr. Hines. Can you hear me?

7 A Yes.

8 MS. ROGERS: Can the jury hear me? Okay.

9 Q My name is Sarah Rogers. I represent the NRA.

10 Mr. Hines, before you joined us Friday, did you observe
11 any testimony by any other witnesses in this case?

12 A No.

13 Q Did you review transcript of any testimony by any other
14 witnesses in this case?

15 A I did not.

16 Q You're being paid as you sit here testifying; right?

17 A Correct.

18 Q When you gave a deposition earlier in this case, I
19 think you estimated that the Government would pay between 1.1
20 and \$1.2 million to your firm for your testimony.

21 Do you recall that?

22 A I do.

23 Q Have you gotten the million dollars yet?

24 A I believe we have been paid about a million or
25 somewhere thereabouts.

KM

3096

Hines - by Plaintiff - Cross/Ms. Rogers

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

4 You recall that; right?

5 A I do.

6 Q What percentage of the NRA's vendor relationships did
7 you look at?

8 A I don't know the total as a percentage of either vendor
9 count. I know in dollar basis it was quite large.

10 Q And the Government told you which vendor relationships
11 they wanted you to look at.

12 A They were the ones that were alleged to have been
13 improper in the complaint, so that was the scope of my analysis,
14 yes.

15 Q If I were to represent to you that you looked at less
16 than one percent of vendors by vendor count, would you have any
17 knowledge inconsistent with that?

18 A No, but I would say that dollars are more relevant than
19 vendor count in my experience.

20 Q We will talk about dollars later.

21 Now, these fraud risk indicators, I'm going to call
22 them FRIs for short.

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

KM

3097

Hines - by Plaintiff - Cross/Ms. Rogers

1 correct?

2 Q Right. And it's not -- setting aside fraud finding, an
3 FRI or risk indicator doesn't mean that you found actual waste
4 of corporate assets either; right?

5 A It's an indicator of fraud, waste and abuse

6 Q An indicator for?

7 A Correct.

8 Q But not actual fraud, waste or abuse?

9 A It's an indicator, so yes.

10 Q In fact, a transaction could have multiple risk
11 indicators and not contain any fraud, any waste or any abuse.

12 A That is possible

13 Q You're certainly not telling the jury that anybody
14 broke any law.

15 A I'm not reaching a legal conclusion, no.

16 Q You're not telling them that anyone at the NRA broke
17 any law concerning related-party transactions; right?

18 A Again, I'm not reaching any legal conclusions.

19 Q Right. And you haven't reached the conclusion that
20 anyone broke any law regarding the administration of charitable
21 dollars; right?

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

24 THE COURT: She can ask.

25 Q You are not giving a legal conclusion that anyone at

KM

3098

Hines - by Plaintiff - Cross/Ms. Rogers

1 the NRA broke any law governing the administration of charitable
2 dollars; right?

3 A That's correct.

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

8 MS. CONNELL: Objection, your Honor.

9 A I don't know the answer to that question.

10 MS. CONNELL: One second. This gets into a legal
11 issue that we spoke about previously about the 501(c)(3)
12 versus (c)(4) and the charity and whether the NRA is a
13 charity which it is under New York.

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

16 THE COURT: Overruled.

17 Q Did you consider whether any of those dollars were
18 important, the dollars that you were phrasing -- did you look at
19 whether they came from tax deductible charitable donations or
20 from the NRA's general funds?

21 A I did not perform analysis.

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

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

KM

3099

Hines - by Plaintiff - Cross/Ms. Rogers

1 Q Now, isn't it true that a transaction bearing a risk
2 indicator can still be a great deal for the company?

3 A Hypothetically, that's possibly, yes.

4 Q Right. Like under internal controls, the contract
5 should have four signatures. It has three, but it's entirely
6 possible that that contract could make a ton of money for the
7 company; right?

8 A Theoretically possible, yes.

9 Q And you'd also agree with me that any organization no
10 matter how good the control environment, there is also some risk
11 of fraud.

12 A Correct.

13 Q In fact, there was a major fraud at your former firm
14 Arthur Anderson; right?

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

18 Q You worked at Arthur Anderson in 2001; right?

19 A 2001 to 2002.

20 Q And that was the year that the Enron fraud came out --

21 A Yes.

22 Q -- that Arthur Anderson worked on.

23 A Yes.

24 Q So even if you can't reach a legal conclusion, as a
25 layman, do you have a conclusion as to whether that Enron action

KM

3100

Hines - by Plaintiff - Cross/Ms. Rogers

1 was a pretty big fraud?

2 A I would agree it's a pretty big fraud.

3 MS. CONNELL: Objection.

4 THE COURT: On what grounds?

5 MS. CONNELL: She is asking for a legal conclusion
6 about Enron. It's collateral.

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

10 THE COURT: I'm failing to understand. Did this
11 witness have anything to do with that engagement?

12 Q Well, you were at Arthur Anderson at this time.

13 A I was at Arthur Anderson in a completely different
14 office. Never touched Enron.

15 THE COURT: I will sustain the objection. This has
16 nothing to do with this witness.

17 Q But you would agree that even a good company, even a
18 company committed to controls can end up in a transaction that
19 bears fraud risk indicators.

20 A That's possible.

21 Q Okay. Now a risk indicator can be remediated; right.

22 A It could be, yes.

23 Q Okay. But you didn't offer the jury an opinion about
24 whether or when any of the risk indicators you identified were
25 fixed by the NRA?

KM

3101

Hines - by Plaintiff - Cross/Ms. Rogers

1 A I did not observe that, but that is not part of my
2 opinion.

3 Q Okay. All right. I want to put up a demonstrative we
4 made last Friday while you were testifying, and it's just an
5 image of one of your slides.

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

8 The McKenzie companies. Can you list for the jury what
9 the McKenzie companies are?

10 A That would be Concord Allegiance MMP and also
11 Associated Television International.

12 Q Right. Now, is it your understanding that David
13 McKenzie controls each of those companies or is he just a
14 shareholder?

15 A I understand he's got control of those entities and is
16 also a shareholder.

17 Q In the context of corporations, have you ever heard the
18 term "alterego?"

19 A I have, yes.

20 Q Would be fair to say that an alterego is a shell
21 company different on paper from the person or entity that
22 controls it but really the money is going to the same place?

23 MS. CONNELL: Objection, your Honor.

24 THE COURT: Sustained.

25 A I don't know.

KM

3102

Hines - by Plaintiff - Cross/Ms. Rogers

1 THE COURT: When there is an objection -- I'm not
2 sure exactly where you're going. That's a complicated
3 question even for lawyers.

4 MS. ROGERS: All right. Well, I'll ask this.

5 Q You did not reach a conclusion that any of these
6 McKenzie companies were alteregos of David McKenzie; right?

7 MS. CONNELL: Objection, your Honor.

8 THE COURT: Did you address that question?

9 THE WITNESS: No.

10 Q Okay. You did not address or conclude whether these
11 companies were alteregos of each other; right?

12 MS. CONNELL: Objection, your Honor.

13 THE COURT: Overruled. You can answer.

14 A No.

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

17 A Well, I would believe that -- the fact there were
18 internal control failures with respect to all of the entities
19 would be consistent with the fraud risk indicator, and
20 my observation that the arrangements were less given the
21 multiple contracts with those multiple companies I think if too
22 would apply to those all of those.

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

25 A I don't recall the specific date.

KM

3103

Hines - by Plaintiff - Cross/Ms. Rogers

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

3 A I believe that's in my schedules, yes. I just don't
4 recall as I sit here right now.

5 Q If I were to represent to you that the NRA stopped
6 paying Associated Television six years ago, would you have any
7 knowledge inconsistent with that?

8 A No.

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

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

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

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

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

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

25 A Could you define "too much?"

KM

3104

Hines - by Plaintiff - Cross/Ms. Rogers

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

2 A I didn't do a fair market value analysis. This
3 calculates the difference between the contract it actually
4 signed, the contract that was reviewed and approved and what was
5 actually paid.

6 Q Right. And you didn't do any analysis on whether
7 during these years MMP brought in more money than MMP was paid.

8 A No.

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

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

12 Q The earlier version of the contract, the one that was
13 reviewed had a ten percent cost increase allowance; right?

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

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

19 A I did not.

20 Q And you performed no analysis on whether the money
21 brought in by MMP increased by more than ten percent during
22 those years.

23 A No.

24 Q All right. Now the scarlet segment of this graph is
25 what the NRA actually paid under the contract that was actually

KM

3105

Hines - by Plaintiff - Cross/Ms. Rogers

1 signed; right?

2 A Can you say that one more time?

3 Q Sure. The scarlet red segment of this graph is what
4 the NRA actually paid under this contract, what it actually
5 signed; right.

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

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

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

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

17 A That's correct.

18 Q And you would also agree with me that by 2021, the
19 amount paid under the actual contract had pretty much converged
20 with what your version of the contract would have allowed;
21 right?

22 A In terms of the annual amount?

23 Q Yes.

24 A They are approximately in the same vicinity.

25 Q Okay. Let's look at your -- well, actually, I have one

KM

3106

Hines - by Plaintiff - Cross/Ms. Rogers

1 more question about this graph.

2 In forming your expert opinions, did you do any work to
3 match these trend lines with trends in the NRA's membership
4 count or fundraising volume?

5 A No. It wasn't relative to my analysis given I'm
6 looking at the contract rates and reviewed rates and what was
7 actually paid.

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

11 A That's correct.

12 Q Mr. Okay. All right. Now, let's look at your slide
13 35.

14 Are you telling the jury that the NRA was wrong to
15 renegotiate the MMP contract at a better price in 2022?

16 A No.

17 Q Okay. And in forming the view that this renegotiation
18 reflected a fraud risk indicator, did you do any assessment of
19 whether the services provided by MMP actually changed?

20 A I didn't come to a specific analysis of each service,
21 but based on my review of the record, my recollection and
22 understanding was that the NRA employees internally themselves
23 described that the contracts were for similar services and that
24 there were -- it was more market rate and that they were
25 favorable terms for the new contract.

KM

3107

Hines - by Plaintiff - Cross/Ms. Rogers

1 Q In forming the view that the NRA striking a better deal
2 in 2022 reflected a fraud risk indicator, did you analyze
3 whether MMP fundraising volume changed?

4 A I did not.

5 Q All right. Let's go back to go our demonstrative with
6 the four buckets on it.

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

10 A Correct.

11 Q The NRA stopped paying Ackerman and sued Ackerman in
12 2019; right?

13 A That is my understanding.

14 Q Same for Mercury Group?

15 A I believe that's correct.

16 Q And the NRA also stopped paying Under Wild Skies and
17 sued Under Wild Skies.

18 A I believe that's accurate.

19 Q Ackerman broke the promise it made in the contract to
20 the NRA?

21 MS. CONNELL: Objection, your Honor.

22 A I have no opinion on that.

23 THE COURT: Hang on when there is an objection.

24 What's the objection?

25 MS. CONNELL: It calls for a legal conclusion about

KM

3108

Hines - by Plaintiff - Cross/Ms. Rogers

1 the contract, what was required by the contract and whether
2 they were breached, and that was the subject of lawsuits
3 which were settled as we know.

4 THE COURT: He can give his understanding. You can
5 answer.

6 A Can you ask the question again.

7 Q Would you agree with me that Ackerman broke the
8 promises it made to the NRA in those contracts?

9 A I would say I have not done a legal analysis nor would
10 I be -- I'm not a lawyer, so I don't know the answer to that
11 question.

12 Q So in analyzing whether the contract bore a fraud risk
13 indicator, you didn't analyze whether Ackerman breached the
14 contract?

15 A Again, it calls for a legal conclusion. That is not
16 the scope of my analysis.

17 Q Well, did you read the provisions of the contract
18 dealing with travel and entertainment expenses?

19 A I read the contracts, yes.

20 Q Even as a non-lawyer, you would understand that that
21 contract required for Ackerman to follow NRA policy with respect
22 to the expenses it invoiced; right?

23 A That is -- I don't recall the specific language, and I
24 also understand the contracts specifically stated that they
25 couldn't operate or act without Mr. LaPierre's direction. Those

KM

3109

Hines - by Plaintiff - Cross/Ms. Rogers

1 two things should be considered together.

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

5 A I don't recall the explicit language in the contract.

6 Q Now, let's talk about direction given by Mr. LaPierre
7 and what the record shows and what you looked at.

8 Have you heard of a firm called Forensic Risk Alliance?

9 A Yes.

10 Q They are a forensic accounting firm; right?

11 A Yes.

12 Q Would you say they have a good reputation in the
13 forensic accounting field?

14 A I think it's a fine one. I don't have a specific
15 opinion one way or another.

16 Q You testified earlier fraud risk indicators can be
17 fixed. Do you remember that?

18 A They can be in certain circumstances with the
19 appropriate diligence and processes.

20 Q And one example of an appropriate policy might be to
21 hire a forensic firm like Forensic Risk Alliance to look at the
22 subject expense; right?

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

KM

3110

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

3 MS. CONNELL: Objection, your Honor.

4 Q Do you understand that?

5 MS. CONNELL: Your Honor, may we approach. This
6 addresses an evidentiary issue.

7 MS. ROGERS: It's in his report.

8 THE COURT: Yeah. Overruled.

9 A Can you repeat the question?

10 Q Sure. You understand the NRA hired a forensic
11 accounting firm FRA to look at Ackerman's out-of-pocket
12 expenses; right?

13 A I am aware that they hired FRA.

14 Q In fact, FRA generated a voluminous spreadsheet of its
15 findings.

16 Do you remember that?

17 A I recall they had spreadsheets. I don't recall how
18 voluminous.

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

21 A I reviewed it and considered it, and my recollection is
22 I recall findings being similar and having observations with
23 respect to the issues with the out-of-pocket expense arrangement
24 that were available.

25 (Continued on the following page.)

KM

3111

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

1

2

MS. ROGERS: I'd like to show the witness for identification Plaintiff's Exhibit 2333. This is the spreadsheet.

4

5

MS. CONNELL: Your Honor, objection.

6

THE COURT: So, let me just see what it is first. Can you just turn the screens off.

7

8

MS. ROGERS: I have paper copies, if that's convenient.

9

10

THE COURT: Okay.

11

MS. ROGERS: Paper copy for plaintiff, for the Court and I've got one for the witness, if he'd like.

12

13

THE COURT: Thank you.

14

(Handed)

15

MR. CORRELL: Is there a copy for us?

16

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

17

18

Q Mr. Hines, do you recognize this as the Forensic Risk Alliance report that you considered when you formed your expert opinions?

20

21

A Looks to be that document.

22

MS. ROGERS: I move for its admission.

23

MS. CONNELL: Your Honor, objection, and I would -- I can state the objection on the record, but I prefer to approach the bench.

24

25

BP

3112

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

1 THE COURT: Okay, why don't you come forward.

2 (Whereupon, the following ensued at side bar on the
3 record with the Court and all counsel as follows:)

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

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

25 MS. ROGERS: Mr. Hines said his conclusions were

BP

3113

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

1 similar to the ones -- I want to ask the expert questions
2 about how he considered and interpreted this.

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

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

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

16 THE COURT: Which expert?

17 MS. ROGERS: This expert just now.

18 THE COURT: Again, it still -- if you want to -- if
19 you want to impeach him or something about what his
20 testimony, that's okay with this; but putting it in as
21 substantive evidence without -- you can in your case if you
22 can lay a foundation for an FRA report that was shown to the
23 company as part of your defense, that's fine.

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

BP

3114

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

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

6 MS. ROGERS: I'm content to question the witness
7 from the document, reserving rights to admit it later.

8 THE COURT: Yes, and during your case if you can
9 admit something like this, that's fine.

10 MS. CONNELL: Thank you, your Honor.

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

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

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

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

22 MS. ROGERS: Thank you, your Honor.

23 BY MS. ROGERS: (Continuing)

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

BP

3115

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

1 A Okay.

2 Q I questioned you before about your understanding of the
3 provisions of the Ackerman McQueen contract you analyzed. Do
4 you recall that?

5 A Yes.

6 Q And I asked you whether it was your understanding that
7 Ackerman adhered to NRA policies; right?

8 A That was your representation, yes.

9 Q Would you agree that representation was consistent with
10 what the other forensic accountants wrote in that first cell of
11 that spreadsheet?

12 A I'd like to read it.

13 Q Of course. You would agree with me what I said about
14 the contract that Ackerman had to adhere to written procedures
15 established by the NRA vis-à-vis its expenses. That
16 representation is consistent with what the other forensic
17 accountants observed; right?

18 A That language appears to be generally consistent;
19 although, I haven't analyzed it against the specific contract
20 with this document that I'm seeing here, but...

21 Q Okay. Now, when I made that representation to you
22 before, you noted that Ackerman was only authorized under the
23 contract to take direction from the executive vice president who
24 was Wayne LaPierre.

25 Do you recall that discussion we had?

BP

3116

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

1 A Yes.

2 Q I'd like to direct your attention now to cell four of
3 the spread from the other accountants that you reviewed. I'm
4 going to read a sentence to you and you tell me if you have any
5 knowledge inconsistent with it.

6 MS. CONNELL: Objection, your Honor.

7 THE COURT: Sustained. That's the same thing as
8 admitting the document.

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

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

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

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

20 A I don't recall.

21 Q Okay. And when you say you don't recall, do you mean
22 you don't recall whether you saw any; or sitting here today, you
23 have no current specific recollection of seeing any document in
24 the record evidencing a written approval by Mr. LaPierre of
25 these expenses, which you've opined were fraud risk indicators?

BP

3117

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

1 A I don't recall specifically whether that exists or not.
2 I do recall testimony that indicated that the individuals at the
3 NRA were aware of the arrangement, the out-of-pocket expense
4 arrangement given this is what we're talking about. I don't
5 recall specifically if there's a signed document or not.

6 MR. CORRELL: Your Honor, objection to the
7 characterization of the testimony and move to strike.

8 THE COURT: Denied.

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

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

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

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

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

20 MR. CORRELL: Thank you, your Honor.

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

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

24 A Not as I sit here right now.

25 Q In forming your expert opinions about the Ackerman

BP

3118

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

1 relationship, one relevant fact you considered was that Tony
2 Makris was friends with Wayne LaPierre; right?

3 A I think that is a relevant piece of information.

4 THE COURT: Is a relevant or irrelevant?

5 THE WITNESS: One relevant piece of information,
6 yes.

7 Q I wasn't clear from your earlier testimony, do you
8 think that a friendship poses a conflict of interest for
9 internal controls or not?

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

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

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

BP

3119

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

1 I think it would certainly warrant consideration for a
2 disclosure.

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

7 MS. CONNELL: Objection, mischaracterizes his
8 testimony.

9 THE COURT: Hang on. I sitting here can't remember
10 exactly what the witness said, so why don't you just ask the
11 question of this witness.

12 Q Well, I'll move on, because we'll revisit that later.

13 You would agree with me that if a personal connection
14 between Mr. LaPierre and Mr. Makris is relevant to your
15 analysis, it would also be relevant, wouldn't it, to consider
16 whether Ackerman engaged in the same expense misconduct with
17 respect to other clients who had nothing to do with Wayne
18 LaPierre and where there was no personal friendship with the
19 CEO?

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

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

BP

3120

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

1 it had with the NRA. As far as you're concerned, Ackerman might
2 have expensed every single client the exact same way?

3 A I have no basis to even take a guess at what Ackerman
4 did with its other clients.

5 Q Did you ask the attorney general whether there were any
6 other Ackerman clients that testified in the cases in which you
7 reviewed testimony?

8 A I did not specifically do that, no.

9 Q And they didn't tell you?

10 A Not that I recall.

11 Q All right, let's go back to the four buckets, our
12 demonstrative.

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

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

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

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

24 A I was generally aware there was a contract, yes.

25 Q Did you omit this from your analysis because Colonel

BP

3121

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

1 North agreed to testify for the Government?

2 A No.

3 Q You omitted it from your analysis because they didn't
4 ask you to include it?

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

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

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

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

15 A As a fair value issue?

16 Q Did you analyze the value provided under these
17 contracts from any perspective?

18 A That would be from what I understand your question to
19 be is a fair-market value analysis, and no.

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

22 A That was not part of the scope of my analysis.

23 Q All right, so as far as you know, each of those
24 contracts was a fantastic deal for the NRA's members; right?

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

BP

3122

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

1 Q You have no idea?

2 A I have not done that analysis, no.

3 Q And except for Marion Hammer who's a gun lobbyist,
4 every single one of the contracts you looked at ended years ago;
5 right?

6 A I don't know -- well, what do you mean by "years ago?"

7 Q Well, let's talk about them. You looked at a contract
8 with David Keene; right?

9 A Yes.

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

13 A No. I believe that sounds correct.

14 Q And you looked at one with Dave Butz, do you recall
15 that?

16 A Yes.

17 Q If I represent to you that that contract ended in 2019
18 which was five years ago, you'd have no knowledge inconsistent
19 with that; right?

20 A I believe that's correct.

21 Q You looked at a brief contract with Mr. Phillips. If I
22 were to represent to you that that contract had also ended five
23 years ago, you'd have no knowledge inconsistent with that;
24 right?

25 A No.

BP

3123

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

1 Q You looked at a contract with Mike Marcellin. Do you
2 recall that?

3 A Yes.

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

6 A I believe that is approximately correct.

7 Q Okay, and then there was -- if I represent to you that
8 there was any lawsuit with Mr. Marcellin that settled, would
9 that be consistent with your review of the record?

10 A Generally, yes.

11 Q Okay. And you looked at a contract with a board member
12 named Sandra Froman. If I represent to you that that contract
13 ended six years ago, you'd have no inconsistent knowledge;
14 right?

15 A I don't recall the specific timing, but, no.

16 Q Okay. All right, now, let's talk about the travel
17 consultant. One best practice in response -- with respect to
18 a business relationship like this would be to shut it down;
19 right?

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

22 Q Do you think the NRA should have continued doing
23 business with Gayle Stanford?

24 A I did not say that.

25 Q You'd agree with me that it is probably a good thing

BP

3124

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

1 that the NRA stopped doing business with her; right?

2 A I don't know if it is a good or bad thing -- well, what
3 I would say is the undocumented nature of the arrangement
4 certainly is a bad thing. It is an internal controls issue, a
5 significant one from my perspective.

6 Q And the fact that the invoices were altered, that's a
7 bad thing; right?

8 A In my experience, those are consistent with fraud risk
9 indicators, and I would not call them a good thing for sure.

10 Q The fact there were surcharges added to the invoices
11 which weren't reflected on them, the ten percent, that's a bad
12 thing; right?

13 A There you're referring to the lack of documentation
14 with respect to the commission?

15 Q Right. I'm referring to the fact that a private jet
16 invoice would come in for 10,000 dollars and Ms. Stanford would
17 charge the NRA an extra ten percent on top of it. That's a bad
18 thing; right?

19 A I don't believe I have an opinion that the fact that
20 there's a markup specifically is a bad thing. The undocumented
21 nature of it is something that I would view as a fraud risk
22 indicator certainly.

23 Q Do you think it is suspicious at all that the markup
24 only appeared on charges like the charges for private aviation
25 where the price wasn't publicly verifiable and Ms. Stanford

BP

3125

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

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

4 MS. CONNELL: Objection, your Honor.

5 THE COURT: Overruled.

6 A Your question kind of lost me. Was-- was what
7 suspicious?

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

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

18 Did that stand out to you at all?

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

BP

3126

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

1 things that really stood out to me.

2 Q Did it stand out to you that the ten-percent markup was
3 never itemized or disclosed on any of the invoices?

4 A I believe I did mention that point, and I think that it
5 is significant that the markup was not specifically itemized or
6 called out by contract or disclosed.

7 Q Would you say it is generally a good practice to run a
8 bidding process for a new vendor contract?

9 A Yes.

10 Q And you understand that the NRA stopped paying Gayle
11 Stanford and ran a bidding process for travel consultancy about
12 four years ago?

13 A I don't recall the specifics, but my understanding was
14 the NRA had a travel agent even during the period it was using
15 Ms. Stanford, as well.

16 Q If I represent to you that the NRA stopped doing
17 business with Ms. Stanford four years ago and ran a request for
18 a proposal or RFP bidding process to replace her, would you have
19 any knowledge inconsistent with that?

20 A I don't know the answer to that one way or another.

21 Q And you didn't consider whether the NRA fired or placed
22 and ran a bidding process for replacement of Ms. Stanford; you
23 didn't consider that in forming any of your expert opinions,
24 right?

25 A They would not have had any impact on my conclusions

BP

3127

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

1 related to Ms. Stanford or the other control violations I
2 observed.

3 Q All right. We talked before about how possible to fix
4 control violations or address risk indicators; and I want to run
5 some things by you, and I want you to tell me whether these are
6 things a company might properly do to address risk indicators.

7 MS. CONNELL: Objection, your Honor.

8 MS. ROGERS: I was interrupted by the microphone.

9 Let make the record clear.

10 Q I'm going to run a few things by you, and I want you to
11 tell me whether in your expert opinion these are things a
12 company might reasonably do to address fraud risk indicators.
13 Does that make sense?

14 A Yes.

15 MS. CONNELL: Objection, your Honor. This goes to
16 the post talk remedial discussion we've had. This goes to
17 whether that excuses the violations in the past. This is
18 plaintiff's point. You gave the --

19 MS. ROGERS: Object to speaking objections.

20 THE COURT: Yeah, look, I'll instruct the jury at
21 the appropriate time the relevance or potential relevance of
22 these subsequent efforts, but I'm not going to preclude the
23 defense from asking.

24 So, overruled.

25 Q All right, what about doing a risk assessment, that's

BP

3128

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

1 something a company might reasonably do in the presence of fraud
2 risk indicators; right?

3 A I just want to make sure I understand the question. Is
4 it specific fraud risk indicators or is it internal control
5 failures or both?

6 Q Well, let me ask you said you disapproved of the NRA
7 internal control environment. That's a fair summary of your
8 testimony; right?

9 MS. CONNELL: Objection.

10 A I believe I said --

11 THE COURT: Hang on. I think -- overruled on that.
12 You can answer.

13 Q You disapproved of the NRA internal control
14 environment; right?

15 A I believe my conclusion I found it was ineffective due
16 to poor tone at the top.

17 Q A company desiring a more effective control environment
18 might perform a risk assessment within the meaning of COSO;
19 right?

20 A That would certainly be one potential step and one that
21 is typical, yes.

22 Q And special procedures by the auditors, those might
23 help improve the control environment; right?

24 A I would not agree with that. Your auditors are not a
25 function -- outside auditors do not serve as an internal control

BP

3129

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

1 for the organization. So, it would be what the organization
2 does, not what its auditors do as part of their standard
3 procedures.

4 Q If auditors do special procedures specifically focused
5 on internal controls, is that something you'd even consider when
6 you're forming a view of the NRA control environment?

7 A It would be a relevant data point, but not in and of
8 itself evidence that the organization has addressed or
9 remediated internal controls.

10 Q Is it a data point you considered here?

11 A I believe I did consider it with respect to my reports.

12 Q Which special procedures did you consider?

13 A My recollection is the ones that were performed at some
14 point in 2020 or '21. I don't recall the specifics.

15 Q In forming your expert opinions, did you -- did you
16 develop a view of what -- whether the special procedures
17 revealed any control problems?

18 A I believe in my report, my rebuttal report I did
19 address some of those in response to NRA witnesses.

20 Q Sitting here today, can you think of any allegations
21 made by the Government that Aronson does not address in its
22 special procedures?

23 A I don't recall specifically what special procedure
24 document itemized. I do recall that some of the individual
25 transactions they looked at in my view didn't identify or look

BP

3130

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

1 at some of the same issues with respect to those contracts that
2 I identified in my analysis, and I don't recall, like, each
3 itemized issue that they particularly focused on.

4 Q Well, let's talk about the specific issues you focused
5 on in your analysis and I want to look at your slide 42.

6 All right, this -- on the left side of slide 42 is one
7 of the summary charts you prepared; right?

8 A Yes.

9 Q And I'll represent to you this is the same chart
10 admitted into evidence Friday as PX 05123. You were here to
11 testify as to the accuracy of the summary; right.

12 A Correct.

13 Q And you would agree accuracy is very important in the
14 profession of forensic accounting?

15 A Sure.

16 Q Precision is important; right?

17 A Sure.

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

22 Do you see that?

23 A Yes.

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

BP

3131

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

1 A I believe that's accurate.

2 Q Let's look at that exhibit, PX 03151, and I'm going to
3 direct the witness to page 127, which I believe is where he got
4 the excerpt he put in his slide.

5 Let's zoom in.

6 (Displayed)

7 All right, this is the source for your PowerPoint
8 slide; right?

9 A It may be.

10 Q This is a purchase of three airline tickets for
11 Mr. LaPierre, Mrs. LaPierre and Tony Makris for \$14,000 a piece
12 totalling about \$42,000; right?

13 A Yes.

14 Q And that's what you show on your slide?

15 A Yes.

16 Q But you don't show that the tickets for the LaPierres
17 were cancelled and credited back to the NRA, not debited from
18 the NRA?

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

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

23 A Of this particular schedule?

24 Q Of this Plaintiff's Exhibit which is the source for
25 your schedule, I believe.

BP

3132

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

1 All right, do you see where it says at the very bottom,
2 "Credit Air for WLP," and it credits the NRA negative \$14,303?
3 Do you see where it says, "Credit Air WLP could not make the
4 trip"; and you would agree with me that that cost of negative
5 \$14,000, that's a credit back, right?

6 A It looks like it might be, yes.

7 Q Did you in developing your summary consider whether any
8 of the expenses you added up were credited back?

9 A I believe we did in looking at what was actually paid,
10 yes.

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

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

18 A Yes.

19 Q And the reason you amended it is because we found
20 that you had double counted several flights in your analysis;
21 right?

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

25 Q Agree or disagree with the following statement:

BP

3133

1 When a careful professional sees red flags, he looks
2 closer?

3 A I would generally agree.

4 Q Okay. Would you agree with me that it is a red flag
5 when opposing counsel alerts you that there are several invoices
6 in your summary chart, which may or may not ever have occurred
7 or been paid?

8 A Yes, we removed those from this particular invoice.

9 Q And a careful accountant would then look at the other
10 invoices to make sure those were real and actually paid;
11 right?

12 A That's what we did.

13 (Continued on next page)

14

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BP

3134

Hines - by Plaintiff - Cross/Ms. Rogers

1 Q And this is the analysis that you put before the jury
2 after you were careful and looked at all the other charges;
3 right?

4 A Yeah. I don't -- this looks to be that schedule, yes.

5 Q Okay. I know that you're here testifying as an expert
6 on accounting and not physics, but can you explain to me how
7 it's possible to fly from California to Washington DC twice in
8 the same day on the same plane as indicated here?

9 A I'd actually like to look at the exhibit.

10 Q This is Page 2.

11 MS. CONNELL: Can you tell me which exhibit?

12 MS. ROGERS: Exhibit A to --

13 MS. CONNELL: This is the exhibit that was admitted
14 earlier today.

15 MS. ROGERS: I think it's Exhibit A. It's -- it's
16 your amended Exhibit A. It's NYSCEF -- well, you put it in
17 as 5116.

18 THE COURT: 5116 that's what you're looking for,
19 Ms. Connell.

20 MS. CONNELL: Right. My 5116 comes up something
21 different.

22 MS. ROGERS: It says Exhibit A. It's the same
23 document.

24 A I believe there was an unfiltered version that was
25 inadvertently sent by counsel.

KM

3135

Hines - by Plaintiff - Cross/Ms. Rogers

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

3 MS. ROGERS: I was working with the version
4 Plaintiff sent us.

5 Q Well, let me just ask Mr. Hines. When you say there
6 was an unfiltered version that was the inadvertently sent, what
7 do you mean?

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

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

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

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

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

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

KM

3136

Hines - by Plaintiff - Cross/Ms. Rogers

1 Q Mr. Hines, do you have an understanding as to how those
2 duplicates got into your chart in the first place?

3 A I believe there was certain flights that had certain
4 drafts -- drafted those invoices, and some of them had different
5 dates and some of them had different itineraries and different
6 planes and so they were included with duplicates that appeared
7 to have happened.

8 Q Right. And so sometimes an invoice would be issued and
9 then the flight would be rescheduled or cancelled and that copy
10 of the invoice would still be sitting in the travel consultant's
11 computer; right?

12 A There were some of those; right.

13 Q But what if a flight was canceled and never
14 rescheduled. Then there would just be one copy, no duplicate,
15 and you would have no way of knowing whether the flight was real
16 or fake.

17 A Based on my analysis, we also looked for whether they
18 were credited. It looked for credits for this duplicates,
19 looked for other potential indicators that the flight didn't
20 happen, but I'm obviously placing it on those invoice.

21 Q Sir, did you compare these to the ACH banking records
22 that you looked at?

23 A These are not paid by ACH banking records because they
24 go through a -- it's part of the challenge with these invoices
25 as going from -- Ms. Stanford marks them up, takes off

KM

3137

Hines - by Plaintiff - Cross/Ms. Rogers

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

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

6 MS. ROGERS: I have like two more things and then
7 you're done.

8 Q You've seen numerous cases, right, Mr. Hines, where a
9 later reconsideration of the transaction leads to a different
10 accounting result.

11 A That can happen.

12 Q And looking at something in hindsight can lend a better
13 perspective due to the passage of time?

14 A Potentially.

15 Q So the fact that a company restates or changes
16 something does not mean their judgment was inadequate in the
17 first place; right?

18 A Potentially.

19 Q Well, potential. That's in fact testimony that you
20 gave verbatim in another case last year; right?

21 A I don't recall specifically those exact words.

22 Q If I tell you that the case is SEC v Rosenberger,
23 22cv4736 in the Southern District of New York, would go that
24 refresh your recollection?

25 MS. CONNELL: Your Honor, if she's going to

KM

3138

Hines - by Plaintiff - Cross/Ms. Rogers

1 impeach, he should be shown the testimony, the
2 question/answer content.

3 THE COURT: We haven't gotten there yet.

4 A What was the question?

5 Q I'm just asking if you agree with this statement that
6 the fact that a company restates or changes something doesn't
7 mean their judgment was wrong in the first place; right?

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

11 Q Would you agree in contrast to a hindsight
12 investigation, business decision that occurs in real time during
13 the normal course are limited by what information is available
14 at the time; right?

15 A That can be the case; right.

16 Q And those real time business decisions are limited by
17 the expertise and experience of the individuals involved; right?

18 A Say that one more time.

19 Q Those real time business decisions, these real time
20 business judgments, they are limited by the expertise and
21 experience of the individuals involved; right?

22 A It can be.

23 Q Okay. In forming your expert opinions, did you even
24 ask to speak to any of the people at the NRA making these
25 decisions?

KM

3139

Hines - by Plaintiff - Cross/Ms. Rogers

1 A I did not have such access.

2 Q And you didn't speak with anyone at the NRA who made
3 any of these decisions; right?

4 A No, not directly. Reviewing evidence.

5 THE COURT: We will take our morning break. We
6 will be back shortly.

7 THE COURT OFFICER: All rise. Jury exiting.

8 (Whereupon, at this time the jury exits
9 the courtroom.)

10 (Whereupon at this time there was a recess taken.)

11 THE COURT: Just a brief update on the jury issues
12 we discussed.

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

20 The second juror who has an issue beginning
21 apparently after -- at end of business on the 20th, so --
22 and potentially can push off what is the conflict even into
23 the 21st, so the issue with that one is, you know, we are
24 all making assumptions as to when the case is going to be
25 given to the jurors for deliberations. What we can't know

KM

3140

Hines - by Plaintiff - Cross/Ms. Rogers

1 is how long the jurors will deliberate. And I explained
2 briefly that I don't want to be in a situation where if
3 we're into deliberations past the 20th, we lose one of our
4 six jurors. So we don't have to make a decision on that
5 juror right now because we don't know what's going to happen
6 between now and then.

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

13 I would -- one hopes that's enough, but we can't be
14 sure. So I'd like you to at least think about how we deal
15 with that risk of at least one juror who is already saying
16 in advance that they might not be able to be here past the
17 21st or something along those lines. So I don't think we
18 have to make any decisions on that. Obviously, we still
19 have extra jurors, so we are not losing -- we are not in any
20 danger of going below six, but that's an update.

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

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

KM

3141

Hines - by Plaintiff - Cross/Ms. Rogers

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

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

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

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

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

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

KM

3142

Hines - by Plaintiff - Cross/Ms. Rogers

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

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

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

KM

3143

Hines - by Plaintiff - Cross/Ms. Rogers

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

3 MS. ROGERS: So after today I think there is like
4 28 hours left of trial time basically.

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

7 MS. ROGERS: 24. Oh, because of Monday.

8 THE COURT: Okay. Is the jury ready?

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

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

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

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3144

Hines - by Plaintiff - Cross/Ms. Rogers

1 as Court Exhibit VIII

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

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

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

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

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

21 (Witness resumed the witness stand.)

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

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3145

Hines - by Plaintiff - Cross/Ms. Rogers

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

2 MR. CORRELL: I'll be quick.

3 THE COURT OFFICER: All rise. Jury entering.

4 (Whereupon, at this time the jury entered the
5 courtroom.)

6 THE COURT: Please have a seat.

7 MR. CORRELL: May I proceed, your Honor?

8 THE COURT: Mr. Correll.

9 CROSS-EXAMINATION

10 BY MR. CORRELL:

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

13 A Good morning.

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

18 MS. CONNELL: Objection, your Honor.

19 A I don't recall.

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

22 MR. CORRELL: I don't believe so, your Honor.

23 MS. CONNELL: Your Honor, this is what we discussed
24 before the jury came in this morning as to whether we would
25 revisit the Marcellin. That's what you struck the other

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3146

Hines - by Plaintiff - Cross/Ms. Rogers

1 day.

2 THE COURT: Well, there was a slide that came up,
3 and it turned out that it was based on some -- the exhibits
4 that are referenced weren't admitted into evidence, so I
5 struck the portion of that testimony. If there was
6 subsequent testimony and there was a little bit and just in
7 the last round, you can ask about that.

8 MR. CORRELL: Yes, your Honor.

9 Q You indicated that Wayne LaPierre had some knowledge of
10 the Marcellin contract earlier in your testimony; correct?

11 MS. CONNELL: Objection. Misrepresenting the
12 testimony.

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

15 THE COURT: Overruled.

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

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

19 Q Do you recall saying earlier today that Mr. LaPierre
20 knew about the indirect payments to Marcellin?

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

23 Q It was your understanding of the facts that he -- that
24 Mr. LaPierre knew about the indirect payments to Marcellin.

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

KM

3147

Hines - by Plaintiff - Cross/Ms. Rogers

1 that exact point but --

2 Q So let me make it easier for you. Do you have as you
3 sit here today any knowledge that Wayne LaPierre knew about
4 these indirect payments to Mr. Marcellin that you say you saw
5 evidence of in the documents?

6 A Not that I recall as I sit here right at this moment.
7 Maybe we were referring to specific testimony that I reviewed
8 before.

9 Q I'm getting to just your testimony as you sit here
10 right now.

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

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

14 Q Do you have any knowledge -- personal knowledge as to
15 whether Mr. LaPierre knew that Gayle Stanford was marking up
16 invoices?

17 A Can you ask the question one more.

18 Q Do you have any personal knowledge as to whether Mr.
19 LaPierre knew that Gayle Stanford was marking up invoices?

20 A Personal knowledge as in my own direct experience with
21 the individuals?

22 Q Yes or by looking at documents.

23 THE COURT: Yeah. I think it would be helpful to
24 be clear about that.

25 Just so the jury is clear, the witness doesn't have

KM

3148

Hines - by Plaintiff - Cross/Ms. Rogers

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

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

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

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

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

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

16 A No, sir.

17 Q You have looked at some documents; correct?

18 A More than some. Quite a few.

19 Q And you have said things that are based on your looking
20 at documents; correct?

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

24 A What do you mean by marking up? Are you talking about
25 adding a percentage on top of invoices or adjusting the

KM

3149

Hines - by Plaintiff - Cross/Ms. Rogers

1 descriptions.

2 Q I am talking about adding a cost, a charge to an
3 invoice.

4 A I don't recall specifically anything that indicated Mr.
5 LaPierre's knowledge of that as I sit here today.

6 Q And you didn't see anything that indicated that any of
7 those invoices were sent to Wayne LaPierre; correct?

8 A I don't believe so.

9 Q Okay. So as you sit here today, you can't say that Mr.
10 LaPierre was aware of -- that those -- that Gayle Stanford was
11 doing anything to these invoices; correct?

12 MS. CONNELL: Objection.

13 Q I'll withdraw the question and go to the next one.

14 Q Do you know whether Wayne LaPierre has paid for any of
15 the flights that you included in your summary?

16 A I'm generally aware that there's been some
17 reimbursements, but I don't know specifically.

18 Q But you didn't include those in your summaries?

19 A No. Those are summaries of the invoices that were
20 submitted to Ms. Stanford.

21 Q Okay. And if you had knowledge that Mr. LaPierre had
22 paid for flights, would you have adjusted your charts to reduce
23 the figures?

24 A It would not have changed those summary of invoices
25 that were sent to Ms. Stanford from CAA.

KM

3150

Hines - by Plaintiff - Cross/Ms. Rogers

1 Q And so the numbers that you put in your demonstratives,
2 in your power point wouldn't have changed if some of those
3 flights had been paid for by Mr. LaPierre?

4 A Well, I would view the initial invoicing and billing as
5 separate and apart from any potential reimbursement. So my
6 analysis was to summarize the amount of the private charter
7 invoices and the GS2 invoices billed to the NRA.

8 Q But you didn't give Mr. LaPierre credit for any
9 payments he might have made for any of those flights; correct?

10 A Again, it was summary evidence. There is nothing to
11 credit for. I was actually just summarizing, but those
12 schedules summarized those CAA invoices and GS2 invoice.

13 Q Sir, did you see any evidence of a change in work flow
14 with respect to the MMP company during the time period you
15 looked at?

16 A Can you define change in work flow?

17 Q More services provided.

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

19 Q Did you look to see whether any additional revenue was
20 coming in?

21 A I observed additional management fees over the course
22 of a number of years, certainly.

23 Q Did you see additional revenue coming to the NRA from
24 MMP?

25 MS. CONNELL: Objection.

KM

3151

Hines - by Plaintiff - Cross/Ms. Rogers

1 A What do you mean revenue? Sorry.

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

3 A My analysis was on the contract and the expenditure
4 portion of that, not the revenue related to the NRA or donations
5 and inflow.

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

8 MS. CONNELL: Objection, your Honor. No foundation
9 in evidence.

10 THE COURT: Sustained.

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

13 Q So fair to say that you really didn't care about how
14 much money MMP was bringing in. You only cared about how much
15 money the NRA was paying MMP when you did your analysis.

16 A I would say my analysis was focused on the specific
17 expenditures and the controls related to those expenditures
18 which is separate and apart from the receipt of donations and
19 funds. So as in a financial matter, as a controls matter, they
20 are separate.

21 Q And you are an accountant; right?

22 A I am.

23 Q You know what materiality means?

24 A Yes.

25 Q Did you make any attempt to make a materiality

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3152

Hines - by Plaintiff - Cross/Ms. Rogers

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

3 MS. CONNELL: Objection, your Honor.

4 THE COURT: Overruled.

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

9 In my experience, it's not how materiality is done, and
10 it would consider both the quantitative and qualitative factors
11 with respect to the arrangement.

12 Q Let's talk about quantitative.

13 What would be a typical range of materiality in terms
14 of percentage in your view?

15 A Materiality of what?

16 Q Of forensic risk analysis looking for fraud risk
17 indicators.

18 A Well, typically, materiality is in reference to either
19 financial statements or internal controls.

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

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

KM

3153

Hines - by Plaintiff - Cross/Ms. Rogers

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

4 It's purely facts and circumstances based, but you
5 would consider the magnitude of the dollars. You would consider
6 other factors qualitative.

7 Q So as you sit here right now, you can't give us a range
8 of one percent to ten percent or anything in between that might
9 be -- kind of bracket your analysis in terms of materiality with
10 respect to the -- this assignment? This particular assignment.

11 A Well, again, there is different benchmarks for
12 materiality, some based on a percentage of revenue or a
13 percentage of change in assets. So obviously, it's highly
14 dependent on the particular facts and each particular
15 materiality assessment.

16 Q What is your hourly rate?

17 A In this matter \$520 an hour.

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

19 A Hundreds. I don't know exact number.

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

22 A Yes. We have a contract with the State -- the Attorney
23 General's Office.

24 Q Did you sign the contract?

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

KM

1 all the contracting processes.

2 Q Did anyone else sign the contract for your firm?

3 A I honestly don't recall.

4 Q How many people signed the contract for the AG?

5 A I don't recall.

6 MS. CONNELL: Objection, your Honor.

7 Q Who signed the contract for the AG?

8 A I don't recall.

9 Q Did you see any fraud risk indicators for that
10 contract?

11 A No.

12 (Continued on the following page.)

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3155

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

1 Q How much have you been paid so far?

2 A My firm?

3 Q Yes.

4 A I believe it is just under or above \$1 million.

5 Q How much more do you expect to be paid for your work in
6 this case?

7 A I don't know the exact figures, but I believe our
8 estimate and we're somewhere around 1.2.

9 Q And you think you'll come in under 1.2 or do you think
10 you could go over 1.2?

11 A I don't know. I haven't looked at it over the last
12 month.

13 Q And that's taxpayer money that you're being paid?

14 MS. CONNELL: Objection, your Honor.

15 THE COURT: Sustained.

16 Q Who writes you the check?

17 MS. CONNELL: Objection, your Honor.

18 THE COURT: He can ask.

19 A I'm not sure if it comes from the State controller's
20 office. I don't recall. I don't process our incoming checks
21 because we have segregation of duties for that.

22 Q Have you ever developed a friendship through a working
23 relationship?

24 A Yes.

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

BP

3156

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

1 risk indicator?

2 A Not that I can recall.

3 Q Did you ever disclose to your firm that you had develop
4 a friendship through someone that you developed a relationship
5 through your work for the firm?

6 A I may have. I don't recall.

7 Q But you would agree that developing a friendship
8 through a business relationship doesn't necessarily turn into a
9 fraud risk indicator; correct?

10 A I would agree with that, not necessarily. It could.

11 Q Do you know who Pete Ricketts is?

12 A No.

13 Q Governor of Nebraska?

14 A No.

15 Q You tabulated a bunch of flights to Nebraska. Why did
16 you pick Nebraska?

17 A I was asked by the Attorney General's office to include
18 that as one of the categories.

19 Q And did they tell you why they asked you to include
20 that?

21 A I -- my understanding is that it was a destination that
22 they found was related to Mr. LaPierre's flights.

23 Q Did they tell you why they found it of interest?

24 A I understand it is where certain family members live.

25 Q And it is also where Governor Pete Ricketts lives,

BP

3157

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

1 correct?

2 A It may be.

3 Q Did you see any indication that Mr. LaPierre traveled
4 there to meet with Governor Ricketts?

5 A That's not information that's available on the
6 itineraries.

7 Q Did you see any indication in the documentation that
8 there were gun shows in Nebraska?

9 A Again, that's not on the --

10 Q So, Mr. LaPierre could have been traveling there for
11 gun shows; correct?

12 A It is possible.

13 Q Did you see any indication that there were friends
14 dinners, friends of the NRA dinners that were held in Nebraska?

15 A Again, that's not on the itineraries or the Stanford
16 invoices.

17 Q And the attorney general didn't tell you that any
18 friends dinners were held in Nebraska; correct?

19 MS. CONNELL: Objection, your Honor.

20 MR. CORRELL: Your Honor, it is fair enough. They
21 picked Nebraska.

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

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

BP

3158

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

1 he comes on in the case in direct.

2 THE COURT: Overruled.

3 Q Do you know whether pheasant hunts are held in Nebraska
4 for NRA members and supporters?

5 A No.

6 Q So, when you did what the AG told you and just added up
7 trips to Nebraska, were you trying to get the jury to believe
8 that these were all trips to see his family in Nebraska?

9 A I was not trying to get the jury to believe anything.
10 I was preparing summary evidence and summarizing information in
11 the format I was asked to summarize it, yes.

12 Q Based on the AG's request; correct?

13 A Based on my discussions with counsel about the
14 schedules, yes.

15 Q And were you asked to segregate out the flights that
16 landed in Kearney, Nebraska, versus the flights that landed in
17 Kearney, Nebraska, versus the flights that landed in Omaha
18 versus the flights that landed in Rapid City?

19 A No, but that detail was all included in the summary
20 evidence prepared.

21 Q Assuming the itinerary is properly or do include the
22 destination cities you just mentioned, did the AG also ask you
23 just to hone in on flights to the Bahamas?

24 A No. It was one of the categories; but, obviously,
25 there's a schedule that had every single invoice included in

BP

3159

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

1 that particular supporting information.

2 Q Well, did you come up with the idea of focussing on the
3 Bahamas on your own or was that something the AG gave to you?

4 A No, it was in discussion with the AG and, also, in
5 understanding certain allegations in the case.

6 Q Did they tell that you Mr. LaPierre went to the Bahamas
7 every year for a celebrity retreat to try and develop
8 relationships with celebrities to benefit the NRA?

9 A I understand that's one of the concepts. I don't have
10 specific -- it's not certainly something that was told to me. I
11 recall reading that certain information.

12 Q But you didn't separate out the data for those trips
13 from any other trips Mr. LaPierre took to the Bahamas; correct?

14 A I'm not sure how I would do that, but --

15 Q Well, how about by date? Do you know the celebrity
16 retreat was held each year in December?

17 A That's possible. I don't know that.

18 Q And do you know that the allegations that Mr. LaPierre
19 traveled to the Bahamas during off season in the summer where he
20 stayed on David McKenzie's yacht?

21 MS. CONNELL: Objection, your Honor.

22 THE COURT: Well, the objection is overruled. You
23 said, Yes, I am aware of that?

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

BP

3160

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

1 were in the Bahamas.

2 Q So, you could have segregated out the flights in
3 December from the flights in the summer; correct?

4 A Again, they're all included in the same detailed
5 schedules, but that same information in it so it's in there.

6 Q But the AG didn't ask you to filter the data in that
7 fashion; correct?

8 A No. Again, it is summary evidence, summarizing the
9 information across the population of invoices, which is what I
10 do.

11 Q Do you know who Larry the Cable Guy is?

12 A I heard of him, yeah.

13 Q Do you know where he lives?

14 A I don't.

15 Q Nebraska. I'll represent to you he lives in Nebraska.
16 Do you know that he's an NRA supporter?

17 A No.

18 Q Do you know whether Wayne flew to Nebraska to meet with
19 Larry the Cable Guy?

20 A I do not.

21 Q Do you of any basis for suggesting that Wayne LaPierre
22 knew about any flights taken by Tony Makris when he wasn't
23 present?

24 A Can you ask the question again?

25 Q Yes. Do you have any basis for suggesting to the jury

BP

3161

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

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

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

5 Q Let me ask it another way. Did you include flights or
6 invoices for flights listing Makris as a passenger when Wayne
7 LaPierre was not listed as a passenger?

8 A I believe so.

9 Q And do you have any idea whether Wayne LaPierre was
10 aware that Tony Makris had taken those flights?

11 A I don't have any direct personal knowledge about that.

12 Q So, to the extent that your data might have suggested
13 that Wayne knew, that is pure supposition; that would be pure
14 supposition on your part, correct?

15 MS. CONNELL: Objection, your Honor.

16 THE COURT: Overruled.

17 A I'm not sure it suggests one way or another.
18 Obviously, the information summarizes those CAA invoices given
19 the attributes and facts included on them.

20 Q In the course of your work, your millions of dollars of
21 work, did you see any documents showing payments from the NRA to
22 vendors for security purposes?

23 MS. CONNELL: Objection, your Honor.

24 THE COURT: The millions of dollars?

25 MR. CORRELL: I'll put it another way.

BP

3162

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

1 Q In the course of your work, did you see any documents
2 showing payments for security for Wayne LaPierre?

3 A Not that I recall. There may have been. I just don't
4 recall as I sit here.

5 Q Did you make an attempt to sort invoices according to
6 whether they were -- whether they were for air travel expenses
7 incurred for security purposes?

8 A No, not specifically to that particular point.

9 MR. CORRELL: Pass witness, your Honor.

10 CROSS-EXAMINATION

11 BY MR. WERBNER:

12 Q You can't say what damages, if any, Woody caused the
13 NRA to lose; can you?

14 A My analysis --

15 Q Sir, can you tell us what damages, if any, were caused
16 by Woody Phillips; yes or no?

17 A I have not calculated damages.

18 Q And, therefore, you can't say what damages, if any,
19 Woody Phillips caused the NRA; correct?

20 A Again, I haven't calculated.

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

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

23 Q All right. And you're not offering any specific
24 opinion about what intent Woody Phillips had; are you?

25 A No.

BP

3163

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

1 Q Okay --

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

4 Q So, you're not saying that Woody had any bad intent or
5 did anything wrong; are you?

6 MS. CONNELL: Objection, your Honor.

7 THE COURT: Overruled.

8 A Again, no, my understanding --

9 Q Okay, I don't want your understanding.

10 Are you able -- have you formed an opinion, have you
11 formed an opinion about Mr. Phillips' intent?

12 A No.

13 Q And, therefore, you can't say whether he's done
14 anything wrong with intent; isn't that true?

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

17 THE COURT: Overruled. You can answer.

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

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

22 Q That you're not saying that Woody Phillips acted with
23 intent knowing something he did was wrong; are you?

24 A No.

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

BP

3164

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

1 caused by Woody Phillips; have you?

2 A No.

3 MS. CONNELL: Objection.

4 Q You said earlier that you didn't interview any
5 witnesses; is that correct?

6 A Correct.

7 Q Did you ask, yes or no?

8 A No.

9 Q I assume you've read all the trial transcripts in the
10 last four, five weeks that we've been here; is that right?

11 A Not a single one.

12 Q With your 1.1 to 1.2 million dollars you didn't think
13 it was necessary to review the people who have testified based
14 on the available transcripts here?

15 A No, I didn't want to potentially have any impact on my
16 opinions that I've already reached given in my analysis.

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

19 MS. CONNELL: Objection, your Honor. There's
20 contradictory testimony on that point.

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

24 Q So, you don't know one way or the other what Mr. Wayne
25 LaPierre said to this jury when he testified; do you?

BP

3165

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

1 A No.

2 Q And you don't know what Mr. Erstling or Ms. Rowling
3 testified about the MMP contract; do you?

4 A No.

5 Q You don't know if Woody was even asked to do something
6 under his agreement that he failed or refused to do; do you?

7 A Well, based on my review of the record evidence, I'm
8 aware of just based on my understanding of testimony outside of
9 the trial from deposition transcripts that individuals were not
10 aware of his services. But if you're asking specifically about
11 trial testimony, then I'm not aware of that.

12 Q Doesn't that leave a pretty big hole in your
13 understanding if you haven't read any of the testimony from over
14 four or five weeks?

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

17 Q Who told you that you should not read transcripts that
18 the jury has heard for the last four, five weeks?

19 A Based on my understanding.

20 Q Who told you?

21 MS. CONNELL: Objection, your Honor.

22 THE COURT: Let him answer.

23 A My understanding in discussion with counsel.

24 Q What counsel?

25 A The attorney generals.

BP

3166

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

1 Q They told you it wasn't necessary to read what's been
2 going on in the trial so you would know what people have
3 testified to?

4 A No, not that it wasn't necessary; but that given I'm a
5 witness in the trial, I should be cautious about reviewing
6 information, about things what happened.

7 Q You think it's careful to give opinions without
8 considering what people have said about the facts in the case?

9 A I prepared my opinion based on extensive review of the
10 facts in the case.

11 Q You think that's careful work to leave out all of the
12 testimony that the jury has heard; is that a yes or no?

13 A I do think it is careful work, and I do think it
14 considers the guidance and my extensive review of the documents
15 that I analyzed.

16 Q How much money from your understanding of the facts did
17 the NRA pay to Woody Phillips?

18 A Can you be specific about a period of time or --

19 Q You know for the ten years -- let's just take ten years
20 from 2011 to 2024. That's even more than ten years. Everything
21 that you reviewed, some of that went back to 2010 or 2011;
22 correct?

23 A Correct.

24 Q From all that ten-plus years, can you tell the jury how
25 much Woody Phillips received from the NRA?

BP

3167

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

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

3 Q Is there some reason you're dancing around with this
4 question?

5 A It is not a specific question.

6 Q It is a specific question. The question is based on
7 all the work that you've done for which you've charged over a
8 million dollars, can you tell the jury -- yes or no --- how much
9 money Woody Phillips received from the NRA? Can you do that or
10 can you not do that?

11 MS. CONNELL: Objection, your Honor.

12 THE COURT: Well, it's a fair question, whether the
13 witness has that number.

14 A I do not have payroll information, so I don't know the
15 answer to his specific paycheck and payroll; but what my
16 analysis did calculate was the amount received post his
17 employment.

18 Q And that was \$170,000; right?

19 A Correct.

20 Q So, Woody Phillips received \$170,000 and you've gotten
21 over a million pursuant to your contract; correct?

22 A That would be factually accurate.

23 Q All right. Now, you know Woody Phillips retired five
24 years ago; don't you?

25 A Yes.

BP

3168

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

1 Q And I think in your chart that dealt with Woody
2 Phillips, you said that he hadn't gotten any written approval
3 from the appropriate parties; correct?

4 A I'm not sure that's the exact words, but -- but that
5 the agreement with the Mr. Phillips was not subject to proper
6 review and approval.

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

9 A I believe that's true.

10 Q And it was signed by the first vice president of the
11 NRA; right?

12 A I believe there's a signature at the bottom.

13 Q So, isn't -- aren't those two signatures appropriate?

14 A They're part of the population of individuals that
15 would have to sign that contract, but not all of those.

16 Q Are you just nitpicking there?

17 MS. CONNELL: Objection, your Honor.

18 THE COURT: Overruled.

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

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

BP

3169

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

1 A I do not view that as nitpicking. I view those as
2 crucial controls with respect to the expenditures of the
3 organization.

4 Q Do you make room for the possibility that it was an
5 honest mistake to get the president of the association and the
6 first vice president to sign it; that that wouldn't be
7 sufficient, do you make room for that possibility that that was
8 a good-faith error? Do you make room for that possibility?

9 A Is it possible that it was --

10 Q In your mind --

11 A I'm not sure what the question is.

12 Q You're not sure of the question?

13 A No.

14 Q What don't you understand about the question? Let me
15 repeat it.

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

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

22 Q So, you don't know if he acted in good faith or not?

23 MS. CONNELL: Objection, your Honor.

24 THE COURT: Sustained.

25 Q You had a chart that showed the out-of-pocket expenses

BP

3170

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

1 from Ackerman McQueen.

2 Do you remember that?

3 A Yes.

4 Q Let's put that up. I think that's slide 42. You see
5 this slide that has the \$2.7 million broken out that came from
6 the out-of-pocket expenses.

7 Do you remember that?

8 A Yes.

9 Q Out of that \$2,758,189, that 2.7 million, how much of
10 that money from the out-of-pocket expenses went into Woody
11 Phillips' pocket?

12 A I believe it was a small amount related to parking.

13 Q Tell the jury out of the 2.7 million from the Ackerman
14 McQueen out-of-pocket expenses, out of that 2.7 million, how
15 much went into the pocket of Woody Phillips?

16 A I don't recall the precise number. I believe it was a
17 few thousand dollars that I could identify.

18 Q Was it about \$2,000 for parking?

19 A I don't recall the exact number, but --

20 Q Well, I'm not asking you for an exact number. You said
21 it was a small number, and I want the jury having the benefit of
22 your million dollar work. How much went in the out-of-pocket to
23 Woody Phillips?

24 A Through this particular arrangement, I believe from
25 what I could identify it was 2 or 3,000 dollars is my

BP

3171

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

1 recollection.

2 Q For parking at Ackerman McQueen? Do you find anything
3 wrong with Woody Phillip getting parking when he went to
4 Ackerman McQueen offices?

5 A Other than the fact that --

6 Q Do you find anything wrong with that; yes or no?

7 MS. CONNELL: Objection, your Honor. The witness
8 was answering. He should be permitted to answer.

9 THE COURT: Agreed.

10 Q Do you find anything wrong with him getting parking at
11 Ackerman McQueen?

12 A I find given its part of the out-of-pocket expense
13 billing scheme which I do find, I do have a problem with and I
14 do think is an internal control example of internal control
15 failure.

16 Q Right --

17 THE COURT: Let him finish, please. Hang on. Are
18 you done with your answer?

19 THE WITNESS: I kind of lost my train of thought.

20 Q Let me repeat the question for you.

21 We know that you don't like the out-of-pocket
22 arrangement at Ackerman McQueen. We know that.

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

BP

3172

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

1 parking paid for when he went to Ackerman McQueen; yes or no?

2 A Yes, I think it is wrong given it was not through the
3 proper overview and approval processes.

4 Q So, you fault him for the parking at Ackerman McQueen
5 in the way that it was paid; yes?

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

8 Q Right, but not to repeat the point you itemize that
9 based on your work at \$2.7 million; correct?

10 A Yes.

11 Q And there's this tiny, tiny fraction of the benefit
12 that Woody Phillips got; isn't that true?

13 A It is.

14 Q You said that you've been paid at the time of your
15 deposition between 1.1 million and 1.2 million; correct?

16 A I don't believe I said that.

17 Q What did you say?

18 A At my deposition?

19 Q As of the time of your deposition, how much had you
20 been paid?

21 A I believe it was much less than that, and the question
22 I was asked about my estimate for this case.

23 Q Oh, so have you put that much more work into it since
24 your deposition?

25 MS. CONNELL: Objection.

BP

3173

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

1 THE COURT: Overruled.

2 A Certainly worked in prepping for trial over the last
3 month and a half.

4 Q Hundreds of thousands of dollars?

5 A I don't know the precise amount.

6 Q Meeting with the attorney general staff?

7 A Yes, we've met.

8 Q How much have you met?

9 A If I had to guess, several days, maybe 24, 28. I don't
10 know the exact number.

11 Q Did they help you do your slides?

12 A We prepared slides --

13 Q Did they help you do your slides?

14 THE COURT: Let him answer.

15 Q Did they help you do your slides?

16 A We did have assistance with the slides through trial
17 graphics folks that they engaged.

18 Q So, the slides aren't all your work; are they?

19 A It's certainly --

20 Q Excuse me, your Honor --

21 THE COURT: No, I think I know what he's -- I'd
22 like to let him answer.

23 A It is my work, summary of my work and my findings and
24 my opinions based on my professional education, experience and
25 training.

BP

3174

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

1 Q But you had a little help?

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

4 Q And that was given to you by the AG's lawyers?

5 A Trial graphics individuals and the attorney general's
6 office had insight as how to make it accurate and
7 understandable.

8 Q You needed help from them on how to make it accurate?

9 A Help ensure that it was easily digestible by the fine
10 folks of the jury here.

11 Q Presented in a certain way?

12 A Just --

13 Q Presented in a certain way?

14 A Sure.

15 MR. WERBNER: Pass the witness.

16 CROSS-EXAMINATION

17 BY MR. FLEMING:

18 Q Hello, Mr. Hines.

19 A Hi.

20 Q You testified last week that you were engaged by the
21 attorney general to analyze whether the defendants adhered to
22 policies, procedures and internal controls; is that correct?

23 A Yes, as part of my engagement.

24 Q Part of your work you familiarized yourself with the
25 policies of the National Rifle Association?

BP

3175

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

1 A Yes.

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

5 A Yes.

6 Q Were you aware that it was adopted by the board in
7 January 2016?

8 A The current version of the policy you're referring to?

9 Q Yes.

10 A I don't have the exact date, but that sounds consistent
11 with my memory.

12 Q Okay. And you know that Mr. Frazer led the effort to
13 have the organization adopt that policy in January 2016; right?

14 A I don't know that detail.

15 Q Okay. Well, do you know that your client, the attorney
16 general, has characterized that policy as comprehensive?

17 MS. CONNELL: Objection, your Honor.

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

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

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

BP

3176

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

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

3 MR. FLEMING: It is a judicial admission.

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

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

8 THE COURT: Go ahead.

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

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

12 Q Are you also aware that they have characterized that
13 the policy defines conflict of interest more broadly than
14 required by New York law?

15 A I don't recall that specifically.

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

18 A I don't -- I believe I have a recollection that that is
19 the case, but I don't recall the specific document as I sit
20 here.

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

23 A Yes.

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

25 A I would agree.

BP

3177

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

1 Q Now, you reviewed a lot of e-mails as part of your
2 work?

3 A Yes.

4 Q Now, did you know that Mr. Frazer from these e-mails
5 worked with the NRA's Financial Services Division accountants to
6 crosscheck to determine whether any payments were made to board
7 members?

8 A I don't recall that specifically from e-mails.

9 Q Okay. Well, if that happened as a way of detecting
10 whether a payment was made to a board member who had not
11 disclosed a conflict of interest or related-party transaction,
12 that would be an additional measure that you would consider
13 good; is that right?

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

17 Q Well, if they look at the accounts payable function to
18 see if payments were made to known directors, that would be what
19 you're talking about?

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

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

25 A No.

BP

3178

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

5 MS. CONNELL: Objection, your Honor.

6 THE COURT: Scope or what?

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

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

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

13 A Some, yes.

14 (Continued on next page)

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BP

3179

Hines - by Plaintiff - Cross/Mr. Fleming

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

3 THE COURT: That's not in evidence.

4 MR. FLEMING: But he reviewed it. I'm asking him if
5 he reviewed it?

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

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

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

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

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

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

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

23 THE COURT: Well, look. If what you're talking
24 about in your view undermines the facts that he testified he
25 is basing his opinion, then I'm happy to have you -- you can

KM

3180

Hines - by Plaintiff - Cross/Mr. Fleming

1 do that. But if it's separate things that he hasn't talked
2 about the fact related to, then that's beyond the scope. If
3 you think it goes to the facts that he testified to -- many
4 times he was assuming or based on his understanding, and if
5 these are facts that go to his things that he told the jury
6 he was basing his opinion on, that's fine.

7 Q Mr. Hines, you testified, did you not -- correct me if
8 I'm wrong, that related-party transactions were not approved by
9 the NRA until late 2018, 2019. Isn't that what your testimony
10 was?

11 MS. CONNELL: Objection.

12 THE COURT: Overruled.

13 A I think it sort of mischaracterizes.

14 Q How? Tell me how it does.

15 A I believe my testimony reflected that the transactions
16 with related parties included board members typically were
17 not -- prior -- did not receive prior approval from the Board or
18 Audit Committee and lacked written contracts or properly
19 authorized contracts.

20 I don't recall specifically addressing the timing or
21 minutes that you just referred to.

22 Q But you reviewed minutes, right, by the Audit
23 Committee?

24 A I have reviewed certain minutes, yes.

25 Q And you saw that those minutes at least reflected that

KM

3181

Hines - by Plaintiff - Cross/Mr. Fleming

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

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

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

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

13 Q Okay. If it was unclear, that's fine, but I'm asking
14 you a separate question. I'm asking you whether the minutes
15 showed correctly or incorrectly that the Audit Committee
16 addressed related-party transactions in 2016.

17 MS. CONNELL: Objection, your Honor.

18 THE COURT: Overruled.

19 A I don't -- my recollection is that there is a reference
20 to a discussion of related-party transactions. I don't know
21 what you mean by the Board addressed in this particular
22 instance, but there is a reference to that term. But again, I'm
23 going to minutes. I don't have the minutes committed to memory
24 as I sit here.

25 Q You talked about four board members; right?

KM

3182

Hines - by Plaintiff - Cross/Mr. Fleming

1 A Yes.

2 Q David Butz, Sandra Froman, Marion Hammer, David Keene;
3 correct?

4 A Correct.

5 Q And in September of 2016, you saw minutes that showed
6 that Mr. Butz's arrangement, Ms. Froman's arrangement and Ms.
7 Hammer's arrangement were discussed in minutes by the Audit
8 Committee; right?

9 MS. CONNELL: Objection, your Honor. Move to
10 strike.

11 THE COURT: That's overruled.

12 A I don't recall specifically what the minutes
13 referenced, but I do recall those minutes that discussed those
14 individuals, and I can't recall if it's specific to discussion
15 about the existence of some of those arrangements or approvals
16 or not. It's --

17 Q Well, you asked me what I meant by "addressed."

18 You saw those minutes that the Audit Committee voted
19 that those transactions were fair, reasonable and in the best
20 interest of the NRA; did you not?

21 MS. CONNELL: Objection, your Honor.

22 THE COURT: Are we referring to the document that I
23 didn't admit?

24 MS. CONNELL: Yes, your Honor. I think that's --

25 THE COURT: Well, no. The problem with this is

KM

3183

Hines - by Plaintiff - Cross/Mr. Fleming

1 that there is a lot of different documents -- there is one
2 set of notes that you went through that I didn't admit, but
3 there is also Audit Committee minutes where there are
4 indications of committee review. I just don't know --

5 MS. CONNELL: We don't know the time. It's very
6 unclear what timing we are specifically speaking about with
7 some of those questions, and we are I think getting into --

8 THE COURT: No. It's hard for us to keep in our
9 heads all of the -- are you referring to admitted exhibits?

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

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

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

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

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

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

KM

3184

Hines - by Plaintiff - Cross/Mr. Fleming

1 there, but the only reason this becomes important is because
2 the Attorney General is creating a -- presenting a position
3 that these -- those approvals didn't occur until much later.

4 THE COURT: Well, the jury has heard all of the
5 evidence about it so -- and you can argue to the jury based
6 on the evidence that's coming in what was reviewed at
7 various times. So I'm not sure -- it's difficult to -- the
8 way you're questioning the witness without a specific
9 document is a little vague.

10 MR. FLEMING: I agree. It's part of the difficulty
11 I wrote your Honor about but --

12 THE COURT: Well, some documents are exhibits and
13 some are not.

14 Q Now, Mr. Butz's arrangement started in 2002; correct?

15 A I believe that's correct, yes.

16 Q Okay; and Ms. Froman's started in 2013; is that right?

17 A That sounds correct; yes.

18 Q And Ms. Hammer's started in or about 2004; right?

19 A As far as I'm aware.

20 Q And Mr. Frazer started in his position in 2015; is that
21 correct?

22 A I don't recall the exact date, but that sounds correct.

23 Q Do you recall that he started in those positions after
24 those arrangement were entered into by -- with those board
25 members?

KM

3185

Hines - by Plaintiff - Cross/Mr. Fleming

1 A That sounds correct; yes.

2 Q Now, do you have any dispute with the fact the Audit
3 Committee putting aside the time period ratified each of those
4 transactions?

5 A I believe there is -- my recollection is there is some
6 ratification at some point.

7 Q And you understand when the Audit Committee ratifies a
8 transaction they are saying that that transaction is fair,
9 reasonable and in the best interest of the NRA; right?

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

12 MR. FLEMING: It's fact.

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

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

17 MS. CONNELL: Your Honor --

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

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

22 THE COURT: That's what you're referring to.

23 MR. FLEMING: That's right.

24 Q Did you answer?

25 A I lost the question.

KM

3186

Hines - by Plaintiff - Cross/Mr. Fleming

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

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

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

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

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

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

20 Go ahead.

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

23 With respect to the transactions that I discussed, in
24 some cases without specific details about the arrangements is my
25 recollection.

KM

3187

Hines - by Plaintiff - Cross/Mr. Fleming

1 Again, I don't recall the specific timing for those
2 after-the-fact Audit Committee ratifications. Obviously, I'm
3 not rendering any opinion on the legal appropriateness of that,
4 but that's my general recollection is those words were used for
5 certain individuals.

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

8 Do you recall the testimony?

9 A Yes.

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

13 Do you remember that?

14 A Vaguely, yes.

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

16 A Yes.

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

18 A Yes.

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

20 A I certainly looked at some of those, yes.

21 Q So when you looked in those 990s, you saw, did you not,
22 that each one of those related-party transactions and the
23 contract amounts and the amounts paid to those Board of
24 Directors -- these directors were disclosed in the Form 990
25 isn't; is that right?

KM

3188

Hines - by Plaintiff - Cross/Mr. Fleming

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

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

7 MR. FLEMING: It's hard to -- I can bring in all
8 the documents and show him, but right now, that's the
9 question.

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

13 MS. CONNELL: I'm going to note my objection.

14 THE COURT: When you say "the 990s", you mean all
15 of them?

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

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

21 THE COURT: Counsel, we are going to have to --

22 MR. FLEMING: One question, your Honor. Seriously,
23 this time. One question.

24 THE COURT: I hope it's a good one.

25 Q Do you dispute that those amounts paid to Mr. Butz,

KM

3189

Hines - by Plaintiff - Cross/Mr. Fleming

1 paid to Ms. Froman, paid to Ms. Hammer and then ultimately
2 starting in 2017 paid to Mr. Keene were disclosed in each 990,
3 2015, 2016, 2017, 2018 forward?

4 MS. CONNELL: Objection, your Honor.

5 Q Do you dispute it?

6 THE COURT: Overruled.

7 A Again, I have not committed to memory each one of those
8 disclosures, so I don't know the answer to that question as I
9 sit here right now.

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

12 MS. CONNELL: Objection, your Honor.

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

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

16 THE COURT: We will pick this back up at 2:15.

17 Again, the same instructions. You are going to be
18 still on the stand during the break.

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

20 THE COURT OFFICER: All rise. Jury exiting.

21 (Whereupon, at this time the jury exits
22 the courtroom.)

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

25 * * *

KM

3190

Hines - by Plaintiff - Cross/Mr. Fleming

1 A F T E R N O O N S E S S I O N

2 * * * * *

3 (Witness resumed the witness stand.)

4 THE COURT: Just so we don't have to take a break
5 after the last witness, the State is planning to rest after
6 this last witness?

7 MS. CONNELL: That's correct.

8 THE COURT: You want to do that on the record.

9 Am I correct that there is going to be some motion
10 made by somebody? All right. So I'll excuse the jurors
11 after I do that so they don't have to hear that there is a
12 motion. If so, by who.

13 THE COURT OFFICER: All rise. Jury entering.

14 (Whereupon, at this time the jury entered the
15 courtroom.)16 THE COURT: Welcome back, everyone. Please have a
17 seat.

18 CONTINUED CROSS-EXAMINATION

19 BY MR. FLEMING:

20 THE COURT: Okay. Mr. Fleming, you may continue.

21 MR. FLEMING: Thank you, your Honor.

22 Q I'm going to mercifully get you off this witness stand
23 soon, but I do have to show a couple of documents. So I would
24 like to go call up JFX39 for identification. It is a 990. It
25 is in evidence I don't know which document is in evidence, so

KM

3191

Hines - by Plaintiff - Cross/Mr. Fleming

1 that's why I'm putting up this version.

2 THE COURT: So this document you know is in
3 evidence, but you're not sure if this version is.

4 MR. FLEMING: Right. The 990 is in evidence. I
5 just don't know what the document exhibit number is.

6 THE COURT: I imagine that someone in this grand
7 room knows. If you say the year of the 990, they will know
8 what number it is.

9 MR. FLEMING: 2016.

10 MS. CONNELL: I don't know if it's in under this
11 number.

12 THE COURT: I would much prefer to not have the
13 multiple exhibits which cover the same thing.

14 MS. CONNELL: It's in under PX 3565, your Honor.

15 THE COURT: I knew it.

16 MR. FLEMING: Thank you.

17 THE COURT: Does that sound right?

18 Q So Mr. Hines, as part of your work, did you review this
19 2016 NRA 990?

20 A I believe so.

21 Q Okay. If I could turn to Part VII. Thank you. And in
22 particular, the lines we talked about.

23 So Mr. Hines, are you familiar with Part VII of the
24 990?

25 A Generally, yes.

KM

3192

Hines - by Plaintiff - Cross/Mr. Fleming

1 Q Okay. What is Part VII?

2 A I believe it's disclosure related to compensation.

3 Q Okay. And I'm going to ask you to draw your attention
4 to the highlighted portions and tell me if this refreshes any
5 recollection that payments made to Ms. Froman and Ms. Hammer
6 were disclosed in the 2016 990?

7 A It would appear so.

8 Q If I can just do one more to Mr. Butz.

9 THE COURT: In the same document?

10 MR. FLEMING: It's Page 18 I believe of the same
11 document.

12 Q Mr. Hines, do you see this as well?

13 A Yes.

14 Q Okay. And you recall that this was disclosed in the
15 2016 990?

16 A It would appear so based on this. I don't recall
17 specifically just based on my memory, but yes.

18 Q Okay. And these amounts that you just seen roughly
19 accord to the amounts that you determined from the general
20 ledger; isn't that right?

21 A I they seem like they are directionally correct.

22 Q I'm certainly not testing your memory. I'm just trying
23 to avoid having to go into documents.

24 So are you familiar with the NRA's secretary's reports?

25 A Generally speaking. But are you talking about with

KM

3193

Hines - by Plaintiff - Cross/Mr. Fleming

1 respect to the Board?

2 Q Well, the report of the secretary of the NRA to the
3 Board of Directors.

4 A As part of the overall Board minutes.

5 Q That's right.

6 A Generally speaking, yes.

7 Q Okay. And did you review secretary's reports as part
8 of your work?

9 A I don't recall specifically. I may have.

10 Q Okay. Well, I'll ask the question anyway. Do you
11 recall that these amounts paid to these directors were disclosed
12 in the secretary's reports as well?

13 A I do recall some instances where there were disclosures
14 about some of these items.

15 Q Okay. I will spare showing you those.

16 Now you testified last week about something called the
17 "COSO framework."

18 Do you recall that?

19 A Yes.

20 Q And I believe you said it was the standard for internal
21 controls principles; is that right?

22 A It's a framework and provides internal control
23 guidelines and principles, yes.

24 Q Now, the COSO framework though is not law; isn't that
25 right?

KM

3194

Hines - by Plaintiff - Cross/Mr. Fleming

1 A As far as I know, yes, you're correct.

2 Q And to your understanding, the COSO framework is not
3 mentioned in the New York not-for-profit corporation law; is
4 that right?

5 A I don't know the answer to that.

6 Q Okay. Do you know whether it's mentioned in New York's
7 Estate Powers and Trusts Law?

8 A I don't.

9 Q Last question. Do you know whether it's mentioned in
10 New York's Executive Law?

11 A I don't.

12 Q Now you were also asked questions last week about the
13 NRA's vendors.

14 Do you recall the questions?

15 A Yes.

16 Q All right. Can I call up the demonstrative. Page 31,
17 I think it is. I'm going to copy Ms. Rogers if you will allow
18 me. I've learned something.

19 So you recall this demonstrative?

20 A Yes.

21 Q All right. Now, this shows -- well, before I get to
22 this, Ackerman McQueen, that was one of the vendors you were
23 asked about; right?

24 A Yes.

25 Q You're aware -- are you aware of the events of

KM

3195

Hines - by Plaintiff - Cross/Mr. Fleming

1 whistleblowers from the NRA's Financial Services Division coming
2 forward in July of 2018?

3 A Yes.

4 Q And do you recall that soon thereafter began a sequence
5 of events which resulted in the termination of Ackerman McQueen
6 as a vendor relationship?

7 A Generally speaking, yes. I don't know the exact
8 characterization, but I'm aware that Ackerman was no longer a
9 vendor.

10 Q Okay. And you understand or maybe you don't that that
11 sort of flowed from the whistleblowers' expression of Top
12 Concerns; right?

13 A My understanding is there is some relation there. I
14 don't know if that's the only driver.

15 Q And this chart talks about MMP; is that right?

16 A Correct.

17 Q Okay. Now in 2018, I'll just direct your attention to
18 the last column here where you talk about total change in
19 percentage; right?

20 A Yes.

21 Q And there is some numbers here that, you know, however
22 you want to characterize them, but in 2018, the numbers go
23 downward; isn't that right?

24 A Are you talking about the percentage change amounts?

25 Q Right.

KM

3196

Hines - by Plaintiff - Cross/Mr. Fleming

1 A They do in 2019.

2 Q Well, in 2018 which is the first 5.9 percent; right?

3 A Correct.

4 Q That's a reduction obviously from the 14 and a half
5 percent change that had occurred the prior year.

6 A That was a reduction in the increase.

7 Q Reduction in the increase?

8 A It's not a reduction in the fee. That is the amount
9 grew but by a smaller amount.

10 Q I didn't mean to imply otherwise, but it's a reduction
11 in the increase?

12 A Correct.

13 Q After that you see a change upwards. An increase,
14 nevertheless, of 0.2 percent; right?

15 A Yes.

16 Q And then this flat lines after that, so there is no
17 increases.

18 A Yes.

19 Q And your chart ends in 2021; right?

20 A It does.

21 Q And in 2022, you testified there was a renegotiation of
22 the MMP contract; right?

23 A Yes.

24 Q And a substantial reduction in the overall cost; is
25 that fair?

KM

3197

Hines - by Plaintiff - Cross/Mr. Fleming

1 A Yes.

2 Q And so in 2022, would you expect this percentage change
3 would go into negative territory?

4 A Across all three, yes.

5 Q All right. And so starting in 2018, there is a
6 definite trajectory of getting MMP under control. Isn't that
7 fair?

8 MS. CONNELL: Objection.

9 THE COURT: Overruled.

10 A I don't know about your characterization of getting it
11 under control.

12 My understanding is during that entire time period,
13 there was still contracts that had not -- contracts that had not
14 been properly authorized and no documentation for the fee
15 increases. Maybe you could clarify what you mean by "under
16 control."

17 Q Well, certainly the total change goes from -- reduces;
18 correct?

19 A The change in fee from year to year reduces.

20 Q Right. And then it goes down to zero, so there is no
21 increase; right?

22 A Correct.

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

KM

3198

Hines - by Plaintiff - Redirect/Ms. Connell

1 MMP; right?

2 A I believe that would be the case assuming the 2022
3 contract was adhered to, yes.

4 MR. FLEMING: I have nothing further. Thank you.

5 THE COURT: Okay. Anything further from the State?

6 MS. CONNELL: Famous last words, but very, very
7 brief, your Honor.

8 REDIRECT EXAMINATION

9 BY MS. CONNELL:

10 Q Could we please bring up PX 3565. Could we please go
11 to Page 5 of 55.

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

14 Would you like to see the first page to make sure?

15 A No. I can see it here.

16 Q Okay. Could I please direct your attention to question
17 28.

18 Do you see that?

19 A Yes.

20 Q And that question asks whether the organization that's
21 filing this was a party to a business transaction with one of
22 the following parties, and it says a current or former officer,
23 director, trustee or key employee.

24 Do you see that?

25 A Yes.

KM

3199

Hines - by Plaintiff - Redirect/Ms. Connell

1 Q What did the NRA check off?

2 A "No."

3 Q Thank you. You can take that down.

4 Mr. Hines, to your knowledge, is disclosing amounts
5 made in someplace else within this 990 the same as having the
6 NRA's Audit Committee approve a related-party transaction in
7 advance?

8 MS. ROGERS: Objection.

9 MR. FLEMING: Objection.

10 THE COURT: Overruled.

11 A Based on my understanding, no.

12 Q Okay. Mr. Hines, you were asked about the NRA's
13 relationship with MMP; right?

14 A Yes, I was.

15 Q And you were asked whether the MMP had given any value
16 to the NRA, and you said that you hadn't specifically looked at
17 that; correct?

18 A Correct.

19 THE COURT: Leading being.

20 MS. CONNELL: I'm setting it up for a question.

21 THE COURT: Still leading.

22 MS. CONNELL: I apologize, your Honor.

23 Q Why -- would the answer to that question affect your
24 opinions in this case?

25 A Whether I looked at the fair market value.

KM

3200

Hines - by Plaintiff - Redirect/Ms. Connell

1 Q Yes.

2 A No.

3 Q Why not?

4 A Because my analysis was whether the NRA followed its
5 own policies and procedures and internal control structure, and
6 that doesn't depend on the market value of the service.

7 Q What finding, if any, did you make about that?

8 A That they were -- there were internal control
9 violations.

10 Q You were asked about the relationship -- the NRA's
11 relationship to Ackerman McQueen; correct?

12 A Yes.

13 Q How long was the NRA's relationship with Ackerman
14 McQueen ongoing that you know of?

15 A I believe it was 30 or 40 years sticks out in my head
16 for some reason.

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

19 A I believe it was Mr. LaPierre.

20 Q Okay. And do you know how long the out-of-pocket
21 expense reimbursement process was ongoing within the NRA?

22 A Based on the record I read and I've seen it and my
23 understanding of that evidence, I believe it was at least early
24 2000.

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

KM

3201

Hines - by Plaintiff - Recross/Ms. Rogers

1 those years that just said "out-of-pocket expenses?"

2 A Yes.

3 Q You testified that in 2022, the NRA tried to
4 renegotiate a deal and you were just asked about that.

5 Do you recall that?

6 A Yes.

7 Q Did you form any opinions about that renegotiation?

8 A Yes.

9 Q And what were those opinions?

10 A That the renegotiated contracts reduced the three
11 contracts to one eliminating some of that complexity, and that
12 in my view, it called into question the reasonableness of the
13 fees and in periods prior to that under the fee arrangements
14 given what I saw and based on my understanding of the facts
15 there was fee increases were not documented and authorized and
16 concurrent with what I understand to be conflict of interest
17 issues.

18 MS. CONNELL: Thank you, Mr. Hines.

19 THE COURT: Anything further, Ms. Rogers?

20 MS. ROGERS: Very -- just very briefly.

21 RECROSS-EXAMINATION

22 BY MS. ROGERS:

23 Q Mr. Hines, I questioned you earlier about a version of
24 your flight invoice summary, and there was a little confusion
25 because the Government's lawyers gave me a different version

KM

3202

Hines - by Plaintiff - Recross/Ms. Rogers

1 than they gave you as an exhibit.

2 MS. CONNELL: Objection, your Honor. That's an
3 unfair characterization.

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

6 I want to ask you some questions about the other
7 version, and they are not going to be substantive questions.
8 It's sort of a process question.

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

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

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

18 THE COURT: The incorrect version?

19 MS. ROGERS: Correct, the version that he said was
20 filtered to create today's version.

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

KM

1 THE COURT: I agree.

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

4 THE COURT: Sustained.

5 MS. CONNELL: Thank you.

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

10 A Yes.

11 (Continued on the following page.)

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3204

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

1 Q Now, the corrected version that you filtered is three
2 pages long; right?

3 A I believe that's correct.

4 Q Do you recall how long the version of the spreadsheet
5 was that was provided by your counsel before you corrected it?

6 MS. CONNELL: Objection, your Honor.

7 THE COURT: Overruled.

8 A No.

9 Q If I represent to you that the spreadsheet was six
10 pages before you took out the entries that were wrong, would
11 that sound right to you?

12 MS. CONNELL: Objection, your Honor.

13 THE COURT: Overruled.

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

18 Q What about characterized the spread sheet shrunk in
19 half from six to three pages when you took out the entries that
20 were duplicates or were cancelled?

21 A I would say those individual items that were duplicates
22 were -- shouldn't have been in that spreadsheet in the first
23 place. So, shrinking by half, I don't necessarily
24 mathematically between those two pages that's correct; but the
25 final version reflects the invoices that are included on the

BP

3205

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

1 summary evidence sheet prepared.

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

4 One more thing. In the course of the documents and
5 testimony that you've reviewed, from an internal control
6 perspective, do you think the NRA did anything right?

7 A Well, I have certainly seen some instances of contracts
8 that did have signatures and review sheets and certainly things
9 along the way.

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

13 A I don't have an opinion.

14 MS. CONNELL: Objection, your Honor.

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

17 MS. CONNELL: Objection, your Honor.

18 THE COURT: Overruled.

19 Q You can answer.

20 A I was not asked to give an opinion on that.

21 Q And the Government didn't ask you to tell the jury
22 whether it was right or wrong to get rid of the Mercury Group;
23 right?

24 A No.

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

BP

3206

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

1 whether it was right or wrong to use a bidding process for
2 flights instead of using Gayle Stanford; right?

3 A No.

4 Q And the Government didn't ask you to tell the jury
5 whether it was right or wrong to appoint a new CFO who had been
6 a whistleblower who in a Federal Court described as a champion
7 of compliance?

8 MS. CONNELL: Your Honor, outside the scope. It's
9 incorporating hearsay statements that are not before the
10 jury, and the question of whether we were supposed to have
11 an expert opine on right and wrong is --

12 THE COURT: Overruled.

13 MS. ROGERS: Your Honor, they can't use speaking
14 objections to get more time.

15 THE COURT: Overruled.

16 A What was the question?

17 Q The Government didn't ask you to tell the jury whether
18 it was right or wrong to appoint a whistleblower, Sonya Rowling,
19 as CFO; right?

20 A That was not in the scope of my analysis.

21 Q The Government didn't tell you that a Federal Court
22 described her as a champion of compliance; right?

23 MS. CONNELL: Objection, your Honor.

24 THE COURT: Sustained.

25 Q So, as far as you're concerned, none of those

BP

3207

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

1 constitute the NRA doing anything right; right?

2 A I didn't say that one way or another. I just said --
3 your question was was I asked specifically to opine on that as
4 your question was right and wrong, no.

5 MS. ROGERS: All right, pass the witness.

6 MR. CORRELL: Pass the witness.

7 RECROSS-EXAMINATION

8 BY MR. FLEMING:

9 MR. FLEMING: Can I call up JX 52 in evidence.

10 Can we turn to the report of the meeting and it's
11 dated May of 2016.

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

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

16 THE COURT: That's what I meant.

17 MS. CONNELL: Objection on scope, your Honor.

18 THE COURT: Well, that's what I was asking, but
19 I'll let --

20 MS. CONNELL: I know, I'm just --

21 (Displayed)

22 Q Mr. Hines, I direct your attention to a report of the
23 Audit Committee dated May 23rd through 24 of 2016.

24 Have you ever seen this document before?

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

BP

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

1 a couple seconds, but it is possible.

2 Q Okay, and the first sentence it says: "The Audit
3 Committee met on March 8, 2016."

4 Do you see that?

5 A Yes.

6 Q And I would like to draw your attention to the
7 "Disclosure of Financial Interests" paragraph and have you read
8 that to yourself.

9 A Okay.

10 Q Do you recall reading either this document or any other
11 document which indicated that the Audit Committee considered
12 related-party transactions at its March 8, 2016, meeting and
13 deferred consideration or further evaluation of the more
14 substantial related-party transactions until its meeting in
15 September?

16 MS. CONNELL: Objection, your Honor.

17 THE COURT: You asked him about a box check in 990,
18 so I think this is in the scope.

19 A I do recall reading. I'm not sure if it was this
20 document exactly or one like it, but I would like to see if
21 these are signed minutes or not because I just for my own
22 clarification.

23 MR. FLEMING: Could you show the witness?

24 (Displayed)

25 MR. FLEMING: Can I call up for identification only

BP

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

1 not for the jury, PX 1674. If we could scroll to the second
2 page, please.

3 Q Mr. Hines, have you ever seen the document that's in
4 front of you right now?

5 MS. CONNELL: Objection, your Honor.

6 THE COURT: Well, he hasn't done anything with it
7 yet except ask the witness if he's seen it.

8 MS. CONNELL: I understand, your Honor. I'm
9 lodging an objection from earlier, preserving the objection.

10 THE COURT: Just getting warmed up?

11 MS. CONNELL: I'm getting warmed up, your Honor,
12 just getting warmed up.

13 A I may have seen this document. I've seen versions of
14 documents like this, draft versions. I can't recall if it is
15 this exact version that I'm looking at right here.

16 Q And Ms. Connell asked you a question just a moment ago
17 about how it's different -- I'm paraphrasing, so if I get it
18 wrong you correct me -- how it's different to list the amounts
19 that directors get on a 990, how that's different from an Audit
20 Committee voting to approve related-party transactions. Do you
21 recall the question?

22 A Yes.

23 Q Did I get it correctly?

24 A Generally speaking, yes.

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

BP

3210

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

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

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

7 I just don't recall the specific difference for that
8 particular meeting.

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

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

16 MR. FLEMING: Nothing further.

17 THE COURT: Anything else?

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

20 THE WITNESS: Thank you, your Honor.

21 THE COURT: Thank you.

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

24 THE COURT: Anything further from the plaintiff?

25 MS. CONNELL: No, your Honor. The State rests.

BP

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Proceedings

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

6 COURT OFFICER: All rise, jury exiting.

7 THE COURT: And the break may be a little longer
8 than usual, so.

9 (Whereupon, at this time the jury then left the
10 courtroom.)

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

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

19 THE COURT: Anybody else?

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

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Proceedings

1 officer. No proof has been adduced that Mr. LaPierre is
2 still a director or officer, so that cause of action or that
3 part of the cause of action is moot.

4 With regard to the rest of that cause of action, I
5 raise an issue that's been raised before which is the
6 question of whether the attorney general lacks authority to
7 seek relief beyond the relief provided in Section 720.
8 Particularly with respect to 720(a)(1), it is Mr. LaPierre's
9 position that the attorney general lacks authority to seek
10 monetary relief. That if the attorney general had wanted to
11 seek monetary relief, she should have sought it under 720
12 (a)(2) which requires a showing of an unlawful transfer with
13 knowledge of its unlawfulness.

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

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

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

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Proceedings

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

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

17 THE COURT: Thank you.

18 Anything from Mr. Phillips?

19 MR. CORRELL: Excuse me. One more, your Honor.

20 Mr. LaPierre takes the position that the three-year
21 statute of limitations in CPLR 214 (2) applies; and he is
22 entitled to judgment as a matter of law in dismissing all
23 claims based on any act or omission that occurred before
24 August 6, 2017.

25 MR. FARBER: The arguments that Mr. Correll made

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Proceedings

1 with respect to the EPTL claim against Mr. LaPierre and the
2 related-party claim against Mr. LaPierre, we'd adopt those
3 for the claims against Mr. Phillips, but I won't repeat
4 them.

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

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

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

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

24 We adopt, of course, many of the arguments of the
25 other defendants which apply equally. I'll just add on the

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Proceedings

1 EPTL claim, to the extent Mr. Correll didn't address it, it
2 has been litigated for a long time that the definition of
3 trustee under the EPTL 8-1.4(a) is for an individual. They
4 have to act pursuant to a will, trust, instrument and so
5 forth, whatever the statutory language is.

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

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

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

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

25 In fact, I would argue that the evidence has been

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Proceedings

1 entirely to the contrary about how about Mr. Frazer from the
2 moment he started devoted the entirety of his good faith and
3 good efforts to try to improve the organization. The
4 testimony has been uncontradicted in that respect.

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

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

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

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Proceedings

1 conflict available to him and nothing was done of that.

2 So, I view that testimony to be not -- does not --
3 is not proof of liability in this case.

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

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

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

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

24 We had testimony that the people advising on that
25 issue were -- one word was legends. The other word was

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Proceedings

1 supreme reputation is the best in the world at this.

2 And, further, we showed the travel policy, itself,
3 which said in the language that this policy cannot cover all
4 situations. You have to use business judgment and common
5 sense in determining whether it is permitted; and our
6 argument has been all along throughout the entirety of this
7 case that it is commonsensical and good business judgment to
8 make sure that the executive vice president of the
9 organization arrived at his destination alive. And I don't
10 mean to be flip, but there's been lots of testimony about
11 severe security issues.

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

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

25 So, I think in these circumstances and those are

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Proceedings

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

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

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

10 Thank you.

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

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

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

22 THE COURT: Okay.

23 So, traditionally, I have exercised my discretion
24 most of the time, and I think some of the Appellate courts
25 agree with this to defer ruling on directed verdict motions,

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Proceedings

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

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

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

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

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

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

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Proceedings

1 statutory scheme that they are governed by.

2 The EPTL by contrast or a little interestingly has
3 a number of similar provisions. It has a related-party
4 transaction provision. It has a whistleblower provision,
5 but the focus of the EPTL is on a person called a trustee.
6 It doesn't talk about officers and directors of
7 not-for-profit corporations.

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

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

20 But then the other point that the defendants make
21 is where is the evidence that they are trustees under the
22 statute? They point out that the -- the definition of
23 trustee in addition to one subparagraph that is right
24 between the eyes the NRA, specifically says a trustee is any
25 nonprofit corporation organized under the laws of this state

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Proceedings

1 for charitable purposes. I think we've talked about the
2 fact that charitable purposes is described fairly broadly
3 including educational and other beneficial purposes in terms
4 of charitable property and trusts.

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

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

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

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1 general deems appropriate."

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

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

15 (Continued on next page)

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

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Proceedings

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

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

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

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

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

2 MR. FARBER: Your Honor, I think I can answer that.

3 Their cause of action for related-party transaction
4 alleges only one related-party transaction as to Phillips,
5 and that's his post-employment consulting agreement.

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

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

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

17 THE COURT: Okay.

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

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

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1 outside the scope of that definition. So I would urge the
2 Court to apply that definition to her as well as to the
3 extent that the AG is planning to argue to the jury that any
4 contract with her was a related-party transaction.

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

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

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

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1 I'm less sure about that with respect to the N-PCL
2 717 and 720 claims because I think there is a much more
3 robust argument that those are claims that were codified but
4 which existed at common-law. And unlike the Credit Suisse
5 case in which the Court found that the legislature's
6 adoption of a statutory claim under the Martin Act would
7 punish behavior that would not be punishable at common-law,
8 here, I don't see that same argument. And so I think it is
9 much more similar to the common-law breach of fiduciary
10 duty. And if anything, maybe even a bit friendlier to the
11 defense than the common-law might be.

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

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

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

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

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1 Limitations.

2 I don't really want to argue this. I'm just
3 telling you the various things I am mulling in trying to
4 figure this out.

5 So with all that, and I'm sorry for this long
6 soliloquy, but I very much want to talk to the State about
7 the EPTL.

8 MS. CONNELL: Thank you, your Honor.

9 First, I want to say, your Honor, that I have no
10 doubt that you had trouble finding sort of jury charges or
11 model jury charges for the EPTL because it's an equitable
12 statute. And pursuant to EPTL 8-1.4(n), it's supposed to be
13 broadly interpreted to effectuate remedial purpose.

14 I'll note that you said --

15 THE COURT: Have they ever been listed as trustees
16 in any register that the Attorney General's put together.

17 MS. CONNELL: No, and I'll tell you why, your
18 Honor.

19 I would point you to 8-1.4(b)(9), and we believe
20 they fall under that exception. But as you know, the NRA,
21 it has filed under the EPTL every year for --

22 THE COURT: The NRA has. The NRA is is trustee. I
23 have no doubt.

24 MS. CONNELL: But your Honor, what I just pointed
25 you to is an exception to the reporting and registration

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1 requirement that we think is applicable here.

2 THE COURT: Okay.

3 MS. CONNELL: And that's why there is no
4 registration that would apply to them, your Honor.

5 THE COURT: What's the cite?

6 MS. CONNELL: 8-1.4(b)(9).

7 THE COURT: Okay.

8 MS. CONNELL: It says, your Honor, "Any person who
9 in his or her capacity as an officer, director or trustee of
10 any corporation or organization mentioned in this paragraph
11 hold property for the religious educational or charitable
12 purposes of such corporation or organization so long as such
13 corporation or organization is registered with the Attorney
14 General pursuant to the section."

15 In that case, if they qualify under that, they need
16 not register. And I would say, your Honor, or that the EPTL
17 plays a special role in regard to supervising and the
18 Attorney General's oversight of charitable entities.

19 As you know the N-PCL applies to charitable and
20 non-charitable entities. The EPTL broader relief applies to
21 charitable entities, and it effectuates that purpose
22 accordingly. And your Honor, other Courts have applied the
23 definition of "trustee." You are not the first Court -- to;
24 individuals who oversee a charitable entity. You are not
25 the first Court --

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1 THE COURT: I am seeing the Trump case and others,
2 you know, where the -- it's a charitable foundation where he
3 said lead director and essentially it's an opimus
4 organization. But are there cases against people like these
5 individuals? I haven't found them.

6 MS. CONNELL: Well, your Honor, I would say
7 something like Lower Esopus River Watch, LERW case, it was a
8 not for profit -- person who managed the not for profit
9 corporation affairs was deemed a trustee and liable under
10 the EPTL, and that case although that's a Supreme Court
11 opinion, it analyzes the statute in detail.

12 THE COURT: Under your reading -- your reading
13 thousands of people in the State are trustees under the
14 EPTL; right? Every director and officers of not-for-profit
15 corporation in the State is a trustee.

16 MS. CONNELL: A charitable not-for-profit
17 corporation in the State could be a trustee, your Honor.
18 Yes, they could. And that's to protect the charitable
19 assets and the charitable corporation themselves and to
20 subject them to regulation to prevent waste and loss of the
21 type that we've seen here.

22 THE COURT: Then those same people are by
23 definition subject to direct and clear scrutiny under the
24 N-PCL; right. So why do you need both?

25 MS. CONNELL: Yes, they are, but the remedies are

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1 different. The remedies are different.

2 The EPTL allows broad, equitable, remedial relief,
3 and we think it kind of fills in the gap.

4 THE COURT: What broad remedial relief are you
5 seeking against these three individuals that you can't get
6 under the N-PCL?

7 MS. CONNELL: For example, Mr. LaPierre's counsel
8 just stood up and said he can't be removed under 706 or 714
9 of the N-PCL.

10 While we disagree with that, we would say, for
11 example, we can seek a bar on working as a fiduciary in a
12 New York not-for-profit or a not-for-profit that does
13 business in New York.

14 THE COURT: You can seek that only under the EPTL?

15 MS. CONNELL: Well, we think it's clear under the
16 EPTL.

17 Under the N-PCL, there are specific provisions
18 under 706 and 714.

19 We would refer you to Abrams versus Arcadipane, but
20 it's in our prior briefing.

21 MR. SHIFFMAN: It's actually a case that Mr.
22 Phillips submitted this morning. It's a case that they
23 submitted for the 213-7 argument, but in that, it also
24 asserted EPTL claims that were sustained. And in that case,
25 Judge Mazarelli for the appellate term found that there was

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

4 MR. CORRELL: Your Honor, that was pre-Grasso.

5 THE COURT: I'm still with you.

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

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

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

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

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

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

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

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

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

24 We've heard arguments from the defendants that
25 because of the statutory relief laid out in the N-PCL

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

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

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

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

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

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

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1 could return as EVP of the NRA in three weeks from now.

2 There's nothing preventing him to. He wasn't
3 disciplined. He wasn't suspended. He wasn't -- there's no
4 Board resolution that we don't know. We don't have
5 discovery, but no Board resolution that we know that would
6 prevent him from turning right back around and signing
7 another poison pill contract and getting him right back in
8 leadership. That is allowed under the EPTL. And your
9 Honor, again, if the statute applies, it applies, and it
10 should apply here.

11 THE COURT: Okay.

12 MS. ROGERS: Can I just be heard very briefly?

13 THE COURT: On this issue?

14 MS. ROGERS: Yes. So there are broad equitable
15 remedies that the Attorney General could seek using
16 corporate law if they went through the derivative standing
17 gauntlet.

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

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

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

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

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

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

19 The other thing --

20 THE COURT: Duplicativeness is a very common reason
21 for getting rid of claims.

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

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

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

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

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

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

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

18 You're talking about people who control the
19 corporation. We are not talking about a low level manager
20 here. We don't have the assistant director of HR here. We
21 have the top three officers who are appointed by the Board,
22 and we have the top three salaried officers here in terms of
23 having overall oversight over the NRA.

24 (Continued on the following page.)

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

10 THE COURT: All right --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 that a reasonable jury could conclude that they held
2 charitable assets in the way that the statute requires. So,
3 I would focus it very narrowly on that. You can make
4 whatever broad points you want, but I'm not suggesting a
5 broad ruling.

6 MS. CONNELL: I just wanted to ask for one
7 clarification. So, you want us to focus on the EPTL claims
8 as to the individual defendants or as to the NRA as well?

9 THE COURT: Just the individual defendants. I
10 think -- obviously, the NRA is a trustee by definition under
11 the statute; and I think it has admitted by making these
12 filings every year that it is covered by the statute. And
13 the fact questions about liability are the kinds of things
14 that I would not grant a directed verdict motion on at this
15 point.

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

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

21 THE COURT: Yes.

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

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

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

8 THE COURT: Good try, but no.

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

13 So, we're going hear from the jury for the second
14 stage. Let's go get them.

15 Wait, I haven't asked if any of you need a short
16 break before we do that?

17 MR. FARBER: Can we have two minutes, your Honor?

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

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

22 (Continued on next page)

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

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

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

18

19

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22

Finally, you have a demonstratives objection?

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

23

24

25

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

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1 we object to getting the documents and demonstratives late.
2 But, moreover, these demonstratives we don't think are the
3 type of traditional type of demonstratives that allow the
4 fact witnesses. We think they're sort of intended to do
5 what defendants objected, and we had to modify Mr. Hines
6 who's an expert slides to do which is kind of put down
7 facts, just offload facts this witness may not be able to
8 testify to with the foundation in front of the jury.

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

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

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

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

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

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

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

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B. Barr - by Defendants - Direct/Ms. Eisenberg

1 of the way, and then we'll talk.

2 COURT OFFICER: All rise, jury entering.

3 (Whereupon, at this time the jury then entered the
4 courtroom.)

5 THE COURT: Okay, please have a seat.

6 We're now shifting to the defense portion of the
7 case.

8 And so I'll ask the defendants, who is your first
9 witness?

10 MS. ROGERS: Thank you, your Honor. The NRA calls
11 Congressman Bob Barr.

12 THE COURT: Former Congressman.

13 MS. ROGERS: Yes.

14 THE COURT: Good afternoon.

15 B O B B A R R

16 called as a witness in behalf of the Defense, and after
17 having been first duly sworn by the Clerk of the Court,
18 took the witness stand and testified as follows:

19 THE CLERK: State your name.

20 THE WITNESS: Bob Barr.

21 THE CLERK: Spell your last name.

22 THE WITNESS: B-A-R-R.

23 THE CLERK: Thank you. You may be seated.

24 THE COURT: Ms. Eisenberg, I didn't even see you
25 come in.

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B. Barr - by Defendants - Direct/Ms. Eisenberg

1 MS. EISENBERG: Good afternoon, your Honor.

2 MS. EISENBERG: Good afternoon, ladies and
3 gentlemen of the jury. Can you hear me?

4 DIRECT-EXAMINATION

5 BY MS. EISENBERG:

6 Q Good afternoon, Congressman Barr.

7 A Good afternoon, ma'am.

8 Q Can you please tell us a little bit about your
9 background?

10 A I live in Atlanta, Georgia. I have lived in Atlanta,
11 Georgia, since the late 1970s. I moved to Atlanta after working
12 up here in Virginia, the District of Columbia for a number of
13 years. Worked for the CIA, went to law school and grad school
14 here in Washington DC, and then moved down to Georgia in the
15 late 1970s to practice law. I've practiced law off and on ever
16 since then, including currently.

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

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B. Barr - by Defendants - Direct/Ms. Eisenberg

1 newspapers and others.

2 THE COURT: Well, we'd like to consider ourselves
3 the first capital of the United States. We're not the
4 current capital, so we're not quite here in DC right now,
5 but with that, you can go ahead.

6 MS. EISENBERG: Thank you, your Honor. Thank you,
7 Congressman.

8 Q Did there come a time when you ran for president of the
9 United States?

10 A I did. I was the libertarian part of nominee for
11 president in 2008, obviously, unsuccessful, counsel.

12 Q Did there come a time when you worked with the ACLU?

13 A I did. After leaving the Congress in early 2003, I did
14 work on privacy issues and surveillance issues for both the ACLU
15 and the American Conservative Union or ACU at the same time. I
16 was not employee of the ACLU, but I was a consultant for them on
17 privacy issues.

18 Q Did there come a time when you became involved with the
19 NRA?

20 A Yes.

21 Q Please tell us about that?

22 A I was elected to the board of the National Rifle
23 Association of America in 1997. I served on the board ever
24 since then, being elected every three years -- being reelected
25 every three years since then.

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B. Barr - by Defendants - Direct/Ms. Eisenberg

1 Q What position do you currently hold on the board?

2 A In addition to being a board member, I currently serve
3 as the first vice president of the NRA.

4 Q How did you become the first vice president of the NRA?

5 A I was nominated for that position and elected to that
6 position by the NRA board of directors in I think it was May of
7 last year, 2023.

8 Q Who serves as the NRA's president and second vice
9 president currently?

10 A The current president of the NRA is Charles Cotton.
11 The current second vice president is David Coy.

12 Q I apologize, I just want to make sure we have water for
13 you.

14 A I have some right here.

15 Q You're all set, okay. Good, thank you.

16 Coming back to your board service, in your capacity as
17 a board member or first vice president, are you compensated for
18 your time?

19 A No. I've never been compensated by the NRA either as a
20 board member or as the first vice president.

21 Q And is it fair to say that the NRA's board has a number
22 of standing committees?

23 A It does.

24 Q Have you served on a committee?

25 A I have served on various committees. I'm a long-time

BP

3254

B. Barr - by Defendants - Direct/Ms. Eisenberg

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

5 Q Let's talk a little bit about the international affairs
6 subcommittee of the legislative affairs committee. Can you he
7 please tell us a little bit about its purpose?

8 A Certainly. Although, the primary focus and main
9 activities of the National Rifle Association are domestic
10 oriented; that is, with our 2nd Amendment rights here in the
11 United States, since the year 2001 the United Nations has become
12 involved in a number of ways on firearms issues. And insofar as
13 those policies can impact our rights here in this country, our
14 National Rifle Association international affairs subcommittee
15 follows those issues very importantly so that we're aware of any
16 problems that might crop up.

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

19 A I have.

20 Q And while doing that, have you formed any impressions
21 about the committee's work?

22 A I have.

23 Q What are they?

24 A As a regular board member for many years, I was not
25 intimately aware of or familiar with the work of the Audit

BP

3255

B. Barr - by Defendants - Direct/Ms. Eisenberg

1 Committee; but, certainly, as first vice president now and
2 having attended the various Audit Committee meetings since
3 becoming first vice president, I've been very impressed with the
4 thoroughness, the professionalism, and ethics that are displayed
5 by the Audit Committee in carrying out its very important
6 responsibilities.

7 Q Who is Robert Mensinger?

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

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

12 A I was.

13 MR. THOMPSON: Objection, your Honor, relevance.

14 THE COURT: Overruled.

15 Q You may answer.

16 A Yes, I am and I was.

17 Q What was the nature of your involvement?

18 A I had the opportunity when we were looking at
19 Mr. Mensinger to come on as our managing director of compliance
20 to interview him in person, to review thoroughly his background
21 and CV and was very impressed with the talents that he brought
22 to the possible position as compliance with the NRA.

23 Q Is the NRA in the process of potentially amending its
24 Bylaws to create a new officer position?

25 A Yes, they are.

BP

3256

B. Barr - by Defendants - Direct/Ms. Eisenberg

1 MR. THOMPSON: Objection, your Honor.

2 THE COURT: Sustained.

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

6 A Yes.

7 Q Did you attend that meeting?

8 A I did.

9 Q Please tell us about it?

10 A I don't remember the exact date of the committee.

11 THE COURT: Hold on.

12 MR. THOMPSON: Hearsay and no discovery into this
13 issue, your Honor. Need a foundational question as to
14 whether this meeting occurred, your Honor.

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

17 MR. THOMPSON: This occurred in the last -- since
18 November we think or something along those lines.

19 THE COURT: Overruled.

20 Q Please tell us about that meeting between the Audit
21 Committee and Wayne LaPierre?

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

BP

3257

B. Barr - by Defendants - Direct/Ms. Eisenberg

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

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

6 MR. THOMPSON: Objection, same objection. No
7 discovery into this issue, your Honor, and hearsay.

8 THE COURT: Overruled.

9 A Yes.

10 Q What is your understanding of that?

11 A At that meeting which Mr. LaPierre made his
12 presentation, our treasurer, CFO Ms. Sonya Rowling was present
13 and stated that she had reviewed the materials presented by
14 Mr. LaPierre and agreed that they -- that they appeared to be
15 what he presented them as comprehensive.

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

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

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

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

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

BP

3258

B. Barr - by Defendants - Direct/Ms. Eisenberg

1 preclude discussion of this or else discovery --

2 MS. ROGERS: Your Honor, the answer to your
3 question is they did ask for the information and the motion
4 filed in October 2022 before the Special Master, the Special
5 Master granted the motion and we produced the information as
6 it was created, including this information.

7 MS. CONNELL: Your Honor, that's not accurate.

8 THE COURT: This meeting happened in 2023?

9 MS. ROGERS: So, they asked in 22 for ongoing
10 productions after close of discovery, so newly created
11 documents.

12 THE COURT: Let me cut to the chase.

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

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

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

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

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

BP

3259

B. Barr - by Defendants - Direct/Ms. Eisenberg

1 moved to exclude them.

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

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

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

14 THE COURT: Which one?

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

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

22 MS. EISENBERG: Thank you, your Honor.

23 Q Congressman Barr, if the NRA's Bylaws are amended to
24 create the chief compliance officer position, what is your
25 understanding about the reporting structure with regard to that

BP

3260

B. Barr - by Defendants - Direct/Ms. Eisenberg

1 position?

2 MR. THOMPSON: Objection, your Honor.

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

6 Q Is it fair to say that there is a specific Bylaws
7 amendment that's up for consideration by the members at the
8 moment?

9 A Yes, there is.

10 Q And according to that proposed amendment, to whom would
11 the chief compliance officer report?

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

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

16 A No.

17 Q Is that important?

18 A It is important to maintain the objectivity of the
19 chief compliance officer.

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

22 A It is.

23 Q When did you join that committee?

24 A I joined the Special Litigation Committee last year
25 shortly after being elected to the post of first vice president.

BP

3261

B. Barr - by Defendants - Direct/Ms. Eisenberg

1 Q What is the purpose of the Special Litigation
2 Committee?

3 A The Special Litigation Committee was formed in 2020 for
4 the expressed purpose of handling and being the go-between
5 so-to-speak to handle litigation, including the litigation
6 currently before this Court and related litigation.

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

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

13 A The Special Litigation Committee has regular, that is,
14 weekly telephone conferences with outside counsel to be made
15 aware of the progress and status of the litigation, any matters
16 that might need to be decided by the NRA which would be made in
17 this litigation, by the Special Litigation Committee would be
18 handled and the Special Litigation Committee also reports as
19 necessary and as appropriate to the board of directors.

20 Q How many members does the SLC have?

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

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

25 A Yes.

BP

3262

B. Barr - by Defendants - Direct/Ms. Eisenberg

1 Q What is that responsibility?

2 A The members of the SLC which currently are myself,
3 Mr. Cotton and Mr. Coy -- the other member is on medical leave
4 of absence from the Special Litigation Committee -- we are
5 tasked with reviewing and approving monthly invoices from
6 outside counsel involved in these litigation matters.

7 Q Let's talk a little bit about the Legal Affairs
8 Committee.

9 Have you served on that committee, as well?

10 A Yes.

11 Q Since when?

12 A I think probably since 2022, but I don't recall
13 exactly.

14 Q And does it from time to time receive updates from
15 outside litigation counsel with regard to various litigation in
16 which the NRA is involved?

17 A Yes.

18 Q Does that include the matters within the purview of the
19 Special Litigation Committee, as well?

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

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

25 A As necessary and as appropriate.

BP

1 Q Let's talk a little bit about the NRA's defense in the
2 various litigations in which it's involved. Is it fair to say
3 that in your capacity as a member of the SLC you have been
4 involved in overseeing outside counsel's work in connection with
5 important litigation matters?

6 A Yes.

7 (Continued on next page)

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3264

Barr - by Defendant - Direct/Ms. Eisenberg

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

3 MR. THOMPSON: Objection.

4 THE COURT: Overruled.

5 Q What is your opinion?

6 A My opinion as an attorney myself, certainly that those
7 services are extensive, appropriate, professional and absolutely
8 essential to meet the challenges, the existential challenges
9 that the NRA faces as a result of litigation within the
10 responsibility of the SLC.

11 Q Congressman Barr, are you aware of the NYAG allegation
12 that the NRA has spent too much on legal fees?

13 A I'm aware of such allegations, yes.

14 Q What is your reaction to such allegations?

15 A Those allegations are wrong.

16 Q Why is that?

17 A Because facing the threats that the NRA is facing in
18 the litigation, it would be an irresponsible abrogation of our
19 duty to our responsibility to our members not to have the most
20 competent and highly-respected lawyers handling our cases.

21 Q How would you describe the threat that the NRA has
22 faced since 2018?

23 A Those threats are substantial existential, if you will,
24 both by the way of pronouncements by the NYAG as well as through
25 the litigation itself.

KM

3265

Barr - by Defendant - Direct/Ms. Eisenberg

1 Q You said existential. What did you mean by that?

2 A What I mean by that is threat to dissolve and dismantle
3 the association itself.

4 Q Whose threats?

5 A The NYAG.

6 Q Is it your understanding that the NYAG tried to
7 dissolve the NRA?

8 MR. THOMPSON: Objection. Leading.

9 THE COURT: Sustained.

10 Q Could you tell -- it's suggested that the NRA's Board
11 is too big.

12 What is your opinion on that issue? Do you think it is
13 too big?

14 A No, I do not.

15 Q Why is that?

16 A The NRA represents millions of citizens including more
17 than 4 million dues-paying members on Second Amendment issues
18 ranging from law enforcement to women's shooting to youth
19 shooting to law enforcement to black powder. And having a large
20 board as we do have with 76 members, it provides an opportunity
21 for all of those different interests to be heard and handled by
22 the Board of Directors.

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

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

KM

3266

Barr - by Defendant - Cross/Mr. Thompson

1 this in.

2 MR. FLEMING: I was going to ask that.

3 THE COURT: I think I will start with the
4 Plaintiff, and then if the other Defendants want to ask
5 questions, we can do that.

6 CROSS-EXAMINATION

7 BY MR. THOMPSON:

8 Q Good afternoon, Congressman Barr.

9 A Good afternoon, Counsel.

10 Q My name is Stephen Thompson, and I represent the
11 Plaintiff, the People of the State of New York. Just -- I
12 promise. I mean this. A few questions.

13 So I believe you testified that in your capacity as the
14 First Vice-President, you're a member of all standing committees
15 by default; is that correct?

16 A That is correct.

17 Q Prior to becoming the First Vice-President, you were
18 never a member of the Audit Committee; correct?

19 A That is correct.

20 Q And you were never a member of the Finance Committee;
21 is that correct?

22 A That is correct also.

23 Q And I believe you testified that you have attended some
24 Audit Committee meetings; is that correct?

25 A It is.

KM

3267

Barr - by Defendant - Cross/Mr. Thompson

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

3 A Yes. I occasionally sit in on them, but not formally.

4 Q Okay. And you never sat in on the meetings of the
5 Audit Committee while they sat in executive session; is that
6 correct?

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

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

11 A Yes, sir.

12 Q That occurred in 2023; is that correct?

13 A Yes.

14 Q And prior to Mr. Mensinger hiring, the NRA did not have
15 a dedicated compliance officer; is that correct?

16 A That is correct.

17 Q And so that occurred -- that hiring occurred three
18 years after this litigation was commenced; is that correct?

19 A It took place last year.

20 Q Okay. And Congressman, you voted to ratify the NRA's
21 filing of bankruptcy in 2021; is that correct?

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

24 THE COURT: Sustained.

25 MR. THOMPSON: No further questions.

KM

3268

Barr - by Defendant - Direct/Mr. Fleming

1 MR. CORRELL: No cross.

2 MR. WERBNER: No questions, your Honor.

3 DIRECT EXAMINATION

4 BY MR. FLEMING:

5 Q Good afternoon.

6 A Good afternoon, sir.

7 Q My name is William Fleming, and I represent Mr. Frazer,
8 so I just have a couple of questions for you.

9 Do you know Mr. Frazer?

10 A Yes.

11 Q How long have you known him for?

12 A Many years. I couldn't tell you exactly, but many
13 years.

14 Q Do you have -- are you able to tell us what your
15 general experience has been with Mr. Frazer?

16 A I am --

17 MR. THOMPSON: Scope, your Honor.

18 THE COURT: I'm trying to figure this out.

19 When you all call witnesses, are you all calling
20 the witness?

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

23 THE COURT: I'm not that old.

24 MR. FLEMING: Well, I too was trying to figure out
25 how it would work. So rather than calling witnesses for a

KM

3269

Barr - by Defendant - Direct/Mr. Fleming

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

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

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

10 MR. FLEMING: Yes.

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

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

18 MR. FARBER: Understood.

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

22 THE COURT: Careful what you suggest for me; right.

23 Okay. Well, look, more than one of you I guess can
24 call a witness. So go ahead. But that just means the AG is
25 going to have another shot at it.

KM

3270

Barr - by Defendant - Direct/Mr. Correll

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

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

5 A Yes. Over the many years that I have known Mr. Frazer
6 both before he assumed his current position with the NRA and
7 currently, I have very high regard for him. He has always
8 behaved professionally, responsive and ethically in my dealings
9 with him.

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

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

15 A Yes.

16 Q And what is that?

17 A That in all of my dealings with him, my observations,
18 he is a highly ethical character.

19 MR. FLEMING: Thank you very much.

20 DIRECT EXAMINATION

21 BY MR. CORRELL:

22 Q Good afternoon, Congressman Barr. I'm Kent Correll. I
23 represent Wayne LaPierre.

24 A Yes, sir.

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

KM

3271

Barr - by Defendant - Direct/Mr. Correll

1 LaPierre.

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

4 A Yes, I have.

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

6 A Yes, I have.

7 Q What is that opinion?

8 A This is a man in my view who has given a lifetime to
9 the National Rifle Association, its members and the United
10 States of America in a highly competent and energetic, selfless
11 way.

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

14 A I believe he has.

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

17 MR. THOMPSON: Leading, your Honor.

18 THE COURT: Overruled.

19 A Yes; but as all of us, he's made mistakes.

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

22 A Yes, he has.

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

24 THE COURT: Okay. Anything -- I don't know which
25 way to turn now.

KM

3272

Barr - by Defendant - Redirect/Ms. Eisenberg

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

4 MR. THOMPSON: No further cross, your Honor.

5 THE COURT: Okay.

6 MS. EISENBERG: May I briefly, your Honor.

7 THE COURT: Yes.

8 REDIRECT EXAMINATION

9 BY MS. EISENBERG:

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

12 A I'm sorry.

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

15 A I would say primarily the Audit Committee.

16 Q And in what way?

17 A Well, the job of the Audit Committee is to basically
18 oversee any of the outside audits, certainly internal controls,
19 conflicts of interest and so forth. It's an extremely important
20 function.

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

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

KM

3273

Barr - by Defendant - Redirect/Ms. Eisenberg

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

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

5 MR. THOMPSON: Nothing further, your Honor.

6 THE COURT: All right. That was one of the more
7 complicated set of questioning for a very short witness.

8 Thank you, sir. You are I think free to step down.

9 THE WITNESS: Thank you, your Honor.

10 THE COURT: Thank you.

11 Do we have time to begin our next witness.

12 MS. ROGERS: The NRA's next witness is an expert
13 Ryan Sullivan, and Plaintiff filed a motion today regarding
14 his testimony that if your Honor would like to hear argument
15 on, it should probably be done outside the presence of the
16 jury before he testifies.

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

19 MS. ROGERS: Understood. The NRA calls Ryan --

20 THE COURT: Hang on.

21 MS. CONNELL: We had been told Tom King was going
22 to go second and had prepared for that, and that's why we
23 raised the issue.

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

KM

3274

Barr - by Defendant - Redirect/Ms. Eisenberg

1 demonstratives yesterday.

2 MS. CONNELL: Yesterday evening.

3 THE COURT: So you had Tom King coming second.

4 MS. CONNELL: We had Tom King coming second.

5 Last night we got Mr. King's documents and then
6 later yesterday evening we got his --

7 THE COURT: Let me ask you this way.

8 Is the person who is going to be handling the
9 questioning of this next witness here?

10 MS. ROGERS: Yes. Well, I am here.

11 THE COURT: I mean, for -- I figured you were
12 ready.

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

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

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

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

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

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Sullivan - by Defendant - Direct/Ms. Rogers

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

5 MS. ROGERS: The NRA calls Dr. Ryan Sullivan.

6 THE COURT: We are probably not going to get too
7 far into the substance anyway.

8 Good afternoon.

9 THE WITNESS: Thank you.

10 R Y A N S U L L I V A N, a witness called on behalf of the
11 Defendant, after having been first duly sworn, took the witness
12 stand and testified as follows:

13 THE CLERK: State your name.

14 THE WITNESS: Ryan Michael Sullivan,
15 S-U-L-L-I-V-A-N.

16 THE CLERK: Thank you. You may be seated.

17 DIRECT EXAMINATION

18 BY MS. ROGERS:

19 Q Good afternoon, Dr. Sullivan.

20 Please introduce yourself to the jury.

21 A My name is Ryan Sullivan. I serve as a managing
22 director of an advisory firm known as Secretariat, and I work as
23 an economist. This means that I use data and information to
24 evaluate business performance. And in particular, economics is
25 the science of decision making when there are scare resources,

KM

3276

Sullivan - by Defendant - Direct/Ms. Rogers

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

3 Q Thank you, Dr. Sullivan.

4 Have you prepared some demonstratives for the jury
5 today?

6 A Yes, I have. I prepared these demonstratives, and the
7 title slide is up on the screen right now.

8 Q All right. Let's proceed.

9 THE COURT: As I have said for other expert
10 witnesses, these demonstratives are not themselves evidence
11 but are just designed to organize and display for your
12 benefit, but the testimony is what the witness says.

13 Q Dr. Sullivan, can you tell the jury a bit about your
14 professional credentials and background.

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

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

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

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Sullivan - by Defendant - Direct/Ms. Rogers

1 means that the work that I have performed has been evaluated by
2 other economists in the field to determine whether or not the
3 work is credible and appropriate but also a sufficient advance
4 in the science of economics such that it should be published in
5 journals such as the Journal of Finance.

6 Q You testified I think that economics is the science of
7 making decisions under scarcity and constraints; right?

8 A Yes.

9 Q What kind of constraints have you considered in your
10 professional work?

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

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

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

19 A Yes. I have, and this starts to get into some more
20 slides that I have put together, but I have worked with a number
21 of different organizations over the years, and some of those
22 have been in private industry and corporations and businesses.
23 Some have been non-profits. Some have been regulated entities
24 such as in telecommunications and energy and certain other
25 non-profit type laws as well.

KM

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Sullivan - by Defendant - Direct/Ms. Rogers

1 Q Can you tell the jury a little bit about the
2 similarities and differences that distinguish for profit from
3 non-profit clients you have worked for and advised.

4 A Sure. There are many, many similarities.

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

7 MS. ROGERS: I was doing this as part of that.

8 THE COURT: I thought you were moving out of
9 background into the substance.

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

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

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

19 Q Thank you, your Honor.

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

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

KM

3279

Sullivan - by Defendant - Direct/Ms. Rogers

1 little bit more tangible.

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

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

20 I have worked with universities such as Columbia, MIT
21 and Harvard among many others. Actually, a lot of my work is --
22 the fact of it and the actual work is maintained confidential,
23 but these are some of the clients that I am able to disclose
24 publically.

25 Q Let's go to the next slide.

KM

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Sullivan - by Defendant - Direct/Ms. Rogers

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

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

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

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

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

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

24 THE COURT: Your choice.

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

KM

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Sullivan - by Defendant - Direct/Ms. Rogers

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

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

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

21 THE COURT: Let's reconvene at 9:30.

22 THE COURT OFFICER: All rise. Jury exiting.

23 (Whereupon, at this time the jury exits
24 the courtroom.)

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

KM

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Sullivan - by Defendant - Direct/Ms. Rogers

1 while we are on break, you are effectively still on the
2 stand, so you shouldn't discuss the substance of your
3 testimony with anyone including counsel.

4 THE WITNESS: Understood.

5 THE COURT: See you all at 9:30.

6 MS. CONNELL: Can we just know who is testifying
7 tomorrow and what order?

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

12 MS. ROGERS: Of course, your Honor.

13 THE COURT: So what's the run of play tomorrow?

14 MS. ROGERS: So tomorrow we are going to finish
15 with Mr. Sullivan and then call Tom King and then Sonya
16 Rowling if we have time.

17 THE COURT: In that order?

18 MS. ROGERS: Yes.

19 THE COURT: Anything else?

20 MS. CONNELL: No, your Honor. I just want to raise
21 one more time -- I'm sorry.

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

25 This is stuff that we do not have discovery on.

KM

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Sullivan - by Defendant - Direct/Ms. Rogers

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

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

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

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

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1 maybe the defendants aren't planning this, but to the extent
2 that someone is planning to do that, it's not just one lump
3 sum number because you can't give a credit if the jury were
4 to find -- you know, let's say \$1,000 is what the damages
5 are. You can't just say, well, we paid \$700 back because
6 there is no way unless you provide the proof to know whether
7 the 700 applies to the thousand that the jury found as
8 opposed to the other 2,000 the jury didn't find. And so you
9 know, I don't know exactly how the defendants are going to
10 bring this all in, but at the moment, just general
11 statements about repayment is meaningless.

12 (Continued on the following page.)
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Proceedings

1 MS. CONNELL: Your Honor, Mr. LaPierre's counsel
2 asked and got a positive answer from Congressman Barr as to
3 whether he become even or broke even.

4 THE COURT: All square, I heard that.

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

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

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

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

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

BP

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Proceedings

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

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

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

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

BP

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Proceedings

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

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

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

23 The jury is going to decide whether a trip -- I
24 mean hypothetically -- trips A, B and C were some statutory
25 violation that somebody should pay the NRA back for; and

BP

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Proceedings

1 they may decide that A and B, yes; C, no. So, in this
2 setting knowing whether A and B were paid back and C not or
3 some combination, those are the facts that you're saying at
4 least at this point that have not been blocked.

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

8 MS. CONNELL: Your Honor, I'm sorry --

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

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

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

BP

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Proceedings

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

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

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

12 MR. THOMPSON: That's right, your Honor.

13 THE COURT: Did you try?

14 MR. THOMPSON: We didn't have the memoranda until
15 mid December of last year.

16 MS. CONNELL: 2023, your Honor.

17 MR. THOMPSON: 2023. She was deposed in I think
18 July of 2022.

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

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

24 MS. ROGERS: We offered an opportunity for
25 additional discovery, including a deposition of Ms. Rowling

BP

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Proceedings

1 which the New York Attorney General rejected.

2 MR. THOMPSON: We decided that it was not an
3 economic use of time with the two weeks prior to trial to
4 take another fact deposition raised on recently created
5 evidence.

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

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

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

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

25 It's the characterization of a complete repayment.

BP

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Proceedings

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

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

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

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

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

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

25 THE COURT: Well, I think there was time to take a

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1 subsequent deposition, and I know you were all busy; but
2 that ship has sailed. We need to close for the night.

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

8 Thus far, I haven't seen any examples of situations
9 where they argue something and then block or have blocked
10 you from finding out how to counter it. If I find that, I
11 will act accordingly.

12 All right, see you tomorrow.

13 (Whereupon, at this time the trial was adjourned
14 and continued on February 6, 2024.)

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART 3

-----X
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against-

INDEX NO.
451625/20

THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
and JOSHUA POWELL,

Defendants.

JURY TRIAL
60 Centre Street
New York, New York
February 6, 2024

BEFORE: HONORABLE JOEL M. COHEN,
Justice, and a jury

APPEARANCES:

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NOAH PETERS, ESQ.

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1 THE COURT: Good morning, everyone. Couple of
2 things. We -- we have looked at the Spray excerpts, and I'm
3 pretty sure my law clerk will be able to get those back to
4 you this morning. It wasn't really that much.

5 On the bankruptcy transcript, I can't recall
6 whether I have asked the State what their -- what their
7 position is with respect to Mr. Phillips's objection. You
8 may have been sending me letters.

9 I have to tell you the flow of letters is getting
10 to the point where it's beyond our bandwidth to field them,
11 especially on the timeframe that you all are suggesting. So
12 there may be times when I ask you to repeat things in court.

13 So Mr. Phillips' position. My assumption is that
14 he wasn't at the bankruptcy represented to be able to
15 cross-examine, and so I -- that argument does resonate with
16 me to some extent.

17 So what's the State's position on that?

18 MS. CONNELL: Your Honor, this came up with the
19 State's designation. We resolved it because the only
20 portions of the bankruptcy deposition for Mr. Spray that we
21 designated had to do with his qualifications, and Mr.
22 Phillips ultimately said that's fine.

23 I think, and I don't want to have this wrong, that
24 our objection to the bankruptcy designation of Mr. Spray now
25 by the NRA is there are new designations that was not

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Proceedings

1 previously given to the parties in December and otherwise,
2 you know --

3 THE COURT: No. But Mr. Phillips has objected
4 to -- I think he objects to the designations by the NRA and
5 the People, right, from that transcript?

6 MR. FARBER: That's correct, your Honor.

7 THE COURT: So does the State have any reaction to
8 that, whether it should be admissible as against Mr.
9 Phillips?

10 MS. CONNELL: Ours are just counter-designations to
11 the new designations.

12 THE COURT: Well, okay.

13 MS. CONNELL: I would have to look at that. I'm
14 sorry, your Honor. I didn't look at that.

15 THE COURT: It's a legal question; right. I mean,
16 he doesn't have -- I could see how the other defendants who
17 are current officers and obviously were part of the defense
18 team. They may disagree with me, but I think Mr. Phillips
19 was clearly an outsider at that time. So I mean, if I
20 didn't hear any compelling argument to the contrary, I'm
21 going to agree with them that they weren't there to
22 cross-examine; therefore, that's one of the basic indicia of
23 permitting prior sworn testimony.

24 MS. CONNELL: I agree, your Honor. You are not
25 going to hear a compelling argument otherwise from the

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Proceedings

1 State.

2 THE COURT: And from the NRA?

3 MS. ROGERS: We have no objection to a limiting
4 instruction that these -- most of what we have designated is
5 Mr. Spray saying the leadership supported the course
6 correction which doesn't really go for or against Mr.
7 Phillips.

8 THE COURT: Look, I read it, and there is some
9 -- there is not a lot of specific darts thrown, but there
10 are things like -- things needed to be cleaned up and along
11 those lines, but I think just in principle, since he wasn't
12 a party and certainly was not part of the team representing
13 the NRA at that time -- I see Mr. Correll standing up who is
14 going to maybe have a different position on that.

15 MR. CORRELL: Your Honor, cross-examination was one
16 thing Mr. LaPierre did not have, and he was also not a
17 party. So both of those two indicia of unfairness exist as
18 to him.

19 I would argue we are taking the same position that
20 nothing should be admissible against him.

21 THE COURT: Yeah. I'm not persuaded by that. I
22 think -- well, first of all, I don't -- from what I
23 received, the only objections to hearsay were from the
24 Phillips side, and they seem well-taken to me.

25 You know, we can get into evidentiary question of

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Proceedings

1 whether, you know, as a practical matter Mr. LaPierre's
2 interests were being represented. You know, he is guiding
3 the company at that point. I think that's a tougher sell to
4 me, to be honest with you.

5 MR. CORRELL: Mr. LaPierre made a blanket objection
6 early on to any use of any testimony from the bankruptcy, so
7 we didn't feel the need to repeat that.

8 THE COURT: I understand. I just think you're
9 differently situated as frankly is Mr. Frazer, but go ahead.

10 MR. FLEMING: Just same thing. We had objected,
11 your Honor, may recall at the beginning of the trial when
12 Mr. Spray's designations by the Plaintiff were put forth.
13 And so the fact being that I didn't object specifically to
14 the NRA's designations, I felt the objection was continuing.

15 THE COURT: Well, given how quickly things are
16 moving, and I am getting transcripts that say objection by X
17 or Y, I would not take that for granted.

18 Do -- does the AG take a position as to whether
19 this should be admissible as against the current officers?

20 MS. CONNELL: Your Honor, we don't take a position
21 on that, but we do -- I just want to reiterate this is a new
22 designation, so this is a designation made after the start
23 of trial, and you have recognized in the past that where a
24 live witness is not here to cross-examine, it can prejudice
25 a party. That's why we do these designations in advance and

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Proceedings

1 we object.

2 I just want to be clear we do object on the basis
3 of these Spray designations being wholly new, and that's the
4 basis for our objection. We don't take issue with the
5 individual defendant position.

6 THE COURT: I think there is a danger as we get
7 further into the trial and everybody is a little bit tired
8 and things are moving quickly that we've lost a little
9 internal control, and I do have my eye on that, and I do
10 need to insist that -- you know, because part of this does
11 come back to me because I end up getting, you know, lots of
12 things sent to me with, oh, this is coming up tomorrow.

13 That's just not going to work. It wasn't the way
14 it worked the first few weeks of the trial, but I do, having
15 been there, understand that this is -- nobody's working
16 under ideal conditions. So I'm not being too petulant about
17 the whole thing, but I do need you to respect each other's
18 time as well. And so I do need to insist that there's
19 enough advance notice so that I'm not getting jammed at the
20 end because, I mean, at the end of the day, I will just
21 delay your testimony coming in if I feel like I don't have
22 enough time to review. And so, that's not good for you
23 either.

24 Anything else?

25 MS. ROGERS: We understand, your Honor.

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Proceedings

1 MR. CORRELL: I have one small item to avoid a
2 motion.

3 Just in reviewing documents, we noticed that Mr.
4 LaPierre's personal information, driver's license number and
5 bank account number were in documents. We'd like to redact
6 it rather than filing a formal motion to seal.

7 THE COURT: That's granted. I think that's
8 statutory with respect to bank accounts. But you mean, it's
9 in an exhibit that's already been admitted?

10 MR. CORRELL: I'm not sure if it has been admitted
11 or not yet, but it's in documents that I think maybe --

12 THE COURT: That's kind of information that is in a
13 very rare category that would be sealed even in -- and there
14 is no reason for it even being shown in open court because
15 it's not relevant I assume as an evidentiary matter.

16 MR. CORRELL: It's not. So we'd like --

17 THE COURT: That's granted. You can represent
18 -- but it doesn't need to be sealed. You can just redact it
19 as an exhibit.

20 MR. CORRELL: That's what we are asking for, your
21 Honor.

22 THE COURT: So if it's not used in open court with
23 the confidential information in it, then you don't need to
24 seal it.

25 MR. CORRELL: Perfect. Thank you, your Honor.

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Proceedings

1 MR. FLEMING: Just one last point. On Mr. Frazer's
2 case, we intend to show again also some portions of the
3 Spray deposition. And just to kind of advertise where we
4 are going, obviously, since December we have had weeks of
5 testimony, so some changing of those designations will
6 occur. I will get it to the Government as soon as I can,
7 and they are minor, but I just wanted to flag that because I
8 do think it's necessary. Some of it is rebuttal.

9 THE COURT: This raises another sort of curious
10 question to me.

11 My assumption has been -- I don't want to be
12 reviewing the Spray transcripts five times.

13 I mean, are you not able to send me one defense
14 group of -- from what you just said, it sounds like there is
15 going to be another round of designations and
16 counter-designations for each defendants.

17 Is that what you're planning? Because if that's
18 what you're planning, I don't like it.

19 MR. FLEMING: Well, your Honor, the history of it
20 is in December all the parties made designations and
21 counter-designations, and we went through that round back
22 and forth.

23 So the intention always in -- on our witness was
24 Craig Spray obviously done by video. And you know, although
25 the defendants have tried to coordinate, it's not as though

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1 we are acting as a perfect team. So obviously, there is
2 some sort of dislocation in that respect. But yeah, the
3 intention was always to have a small portion of Craig
4 Spray's deposition played. We were happy to have it done on
5 Plaintiff's case, but your Honor said that needs to be
6 reserved for ours -- our designations, and that's what we
7 are intending to do.

8 THE COURT: I am only reviewing these once, let me
9 make it clear. And you know, I can not describe to you what
10 it does to our schedule when we start getting transcripts
11 that have to be rereviewed. I'm not sure how to deal with
12 that exactly. My assumption was that we were getting the
13 defense sides' Spray designations.

14 MR. CORRELL: Your Honor, may I make a suggestion
15 that we -- the defendants work together to do one
16 designation, and the NRA can play it for all of us.

17 THE COURT: Well, look, this is the defense case;
18 right. I haven't certainly in my mind designated this as
19 this is the NRA's case and then there will be a separate
20 case for each of you.

21 So I'm -- I have an issue with the way that whole
22 thing is phrased. I mean, we could do it that way, I
23 suppose, but obviously, we are going to have -- you're going
24 to question -- the witnesses aren't going to come back
25 multiple times; right. So I think that the combined

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1 designations should be played once.

2 I mean, the jury is going to not be very happy with
3 you all if they sort of get the sense that they are hearing
4 different parts of Spray's deposition at different times.
5 So that whole thing doesn't work. So you're going to have
6 to work together, to put it mildly, I think.

7 I understand that there are different positions and
8 you're going to make those during your arguments, but the
9 evidence has to come in in an organized way.

10 MS. ROGERS: Your Honor --

11 MR. FARBER: I completely agree with the logistics
12 of it coming in in an organized way. And just as sometimes
13 the Plaintiff's case, if there may be a nonparty witness who
14 is here, they will do everything together. I agree about
15 the efficiency of not having repeated, you know, series of
16 defense witnesses, but I object to this being presented as a
17 defense case.

18 THE COURT: I'm not presenting it to the jury that
19 way. I'm saying from my perspective, the defense case is --
20 is a block of time that you all have to figure out how to
21 allocate.

22 MR. FARBER: I understand that, your Honor, and
23 don't have a quarrel with that point.

24 MS. ROGERS: From the NRA's perspective, we
25 certainly don't intend, for example, Ms. Rowling to show up

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1 three times and be crossed by each defendant. So -- and
2 with respect to Mr. Spray, I don't imagine that there will
3 be divergent interests in which testimony are designated.
4 So why don't we coordinate, and if there is any loose ends,
5 we can apprise the Court, but I suspect we can get a unified
6 submission.

7 THE COURT: You have already thrown us off because
8 my law clerk and I have spent time reviewing a set of
9 designations, and now it sounds like we are going to get at
10 least one other one. So we will deal with that one, but
11 that's not happening again.

12 Okay. I guess as to each witness, you need to tell
13 me I suppose in some way all the direct should happen and
14 then all the crosses should happen. Right. And I'll need
15 to figure out to at least -- I guess if you're calling
16 them -- if the NRA is calling them, then the lawyers who
17 should get up in series are the ones who are taking direct
18 from that witness. You know, I don't know whether it's a
19 hybrid or not. But before the State has to get up, all the
20 direct should be out so that the scope of the cross is
21 clear.

22 MR. FARBER: On that point, your Honor. So if, for
23 example, I want to cross a witness that the NRA has
24 presented, does that mean I should wait until after the
25 State goes? I mean, I'll do it either way. I just want to

KM

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1 know the Court's preference.

2 THE COURT: I -- well, I think you should wait till
3 all the directs go so you know what the scope of the cross
4 is. Right.

5 Whether you go before the State, I think it might
6 make sense for the -- I don't have an answer to that really
7 that I care about. You know, you can -- you can go as part
8 of the defense group. It may not be as obvious to the jury
9 what you're doing if you go along the line of the directs.

10 So what would you prefer?

11 You didn't like that question coming back to you;
12 did you?

13 MR. FARBER: I think I'd prefer to go after the
14 direct if that's what we are doing.

15 THE COURT: Okay. And then the State after that.
16 Is that what you meant?

17 MR. FARBER: I'm fine with that.

18 I mean, if they bring up something new, I get to go
19 back to it, so it doesn't really affect me one way or the
20 other.

21 THE COURT: Okay. All right. So we should get
22 started. Can we get our witness back.

23 Get the jury, please.

24 MS. CONNELL: Your Honor, just to flag it for you,
25 the witness after that as we've been told is Mr. King who

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1 has the demonstratives. He is a fact witness.

2 THE COURT: Okay. I did see something. I mean,
3 just so you're aware, my law clerk is also out the last few
4 days, so I haven't really looked at stuff that came in. I'm
5 going to have to take a short look at it.

6 Do you have a hard copy of the demonstratives?

7 MS. ROGERS: We will get one, your Honor. Use of
8 demonstratives with fact witnesses where we think are
9 supported, these are designed to be illustrative.

10 THE COURT: Well, demonstratives, there is no
11 separate test for it. In my experience, they are very
12 rarely used to get at, you know, some summary of a lot of
13 data but not as a like a Power Point presentation where it
14 becomes a cue for memory.

15 It's designed to -- if the witness is testifying
16 first about a very complicated series of things, then you
17 can say, well, did you make a chart to make this clearer for
18 the jury. That's okay. But -- and again, I haven't looked
19 at it, but if it's the normal kind of Power Point you see
20 with an expert, that I think is -- raises some different
21 issues.

22 MS. ROGERS: So we will bring hard copies. These
23 aren't expert style Power Points that outline testimony.
24 But for example, we have a witness we want to prove up the
25 portion of our opening that deals with here are the

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1 charitable things the NRA does, and so we will have a
2 picture of a map with here's all the NRA chapters, something
3 of that nature.

4 THE COURT: If the witness can't remember that,
5 that's a problem.

6 MS. ROGERS: Right. I mean, they are illustrative
7 in their design to make clearer what the witness --

8 THE COURT: I'm inclined against something like
9 that. You know, again, the demonstrative in the fact
10 witness setting really should be a picture that helps to
11 illustrate a point that the witness is independently making.
12 That's the way I've seen it used, and I think that way
13 avoids the risk -- frankly, it's not very good for
14 credibility anyway to have it look like the witness is
15 reading from a script, but it also is a little dangerous, I
16 think. So I don't want to prejudge it because I don't know
17 what it looks like, but if it's -- in principle, a fact
18 witness should not need memory cues. If they do, then do it
19 the normal way where you refresh their recollection with
20 admissible evidence.

21 MS. ROGERS: We understand. We will print them.
22 They were intended as illustrative aids, not memory cues,
23 but we will print them, and we will discuss them.

24 THE COURT: The point is for them to be helpful to
25 the jury. Not to the witness.

KM

3307

Sullivan - by Defendant - Direct/Ms. Rogers

1 MS. ROGERS: Yes. Exactly.

2 (Witness resumed the witness stand.)

3 THE COURT OFFICER: All rise. Jury entering.

4 (Whereupon, at this time the jury entered the
5 courtroom.)

6 THE COURT: Good morning, folks. Welcome back.

7 Please have a seat.

8 Counsel, you may proceed.

9 MS. ROGERS: Thank you, your Honor.

10 CONTINUED DIRECT EXAMINATION

11 BY MS. ROGERS:

12 Q Good morning. Can everyone hear me? Great.

13 Dr. Sullivan, yesterday you testified about some of the
14 business analytics projects you've done.

15 You also work as an expert; right?

16 A Yes. That's right.

17 Q Can you describe the breakdown of your work? Do you
18 testify usually for plaintiffs or for defendants?

19 A My work -- my litigation and dispute-related work is
20 split roughly 50/50 between working on behalf of plaintiffs and
21 working on behalf of defendants. And roughly speaking, my work
22 is split about 50/50 between pure business advisory type work
23 and decision making versus litigation and disputes such as this
24 one.

25 Q All right. And I think -- is the Power Point working?

KM

3308

Sullivan - by Defendant - Direct/Ms. Rogers

1 I think we are ready to move ahead here.

2 In addition to your professional experience advising
3 for profit and non-profit companies, do you have any personal
4 experience on non-profit Boards or Councils?

5 A I do. As I mentioned yesterday, I served on the
6 Economic Leadership Council at University of California, San
7 Diego, and I also had an opportunity to work with San Diego's
8 Zoo Global which is now known as the San Diego Zoo Wildlife
9 Alliance. That was over the course of a five-year period from
10 2016 through 2020.

11 I served on two different Boards at the organization.
12 First was what was known as the Foundation Board, and that was a
13 fundraising and friend-raising Board. I did not have
14 operational or fiduciary duties or anything like that.

15 After a couple of years on that Board, I transitioned
16 to Board of Trustees wherein I did have fiduciary duties. And
17 for the last two years, I served as an officer, and I was the
18 treasurer for the San Diego Zoo Global Organization. In which
19 case I had responsibility for all of the financials and
20 financial performance regarding the organization.

21 Q And what have you been asked to do in this case?

22 A In effect, it is applying my expertise in economics and
23 finance and accounting and using those tools to evaluate the
24 control efforts that were undertaken by the NRA.

25 Q Are you being compensated for your work?

KM

3309

Sullivan - by Defendant - Direct/Ms. Rogers

1 A My employer Secretariat is compensated at the rate of
2 \$2,000 per hour for the work that I perform in this case.

3 Q How much has your employer been paid so far for your
4 work?

5 A I do not know.

6 Q And does your compensation depend in any way on what
7 you say?

8 A No, not at all.

9 Q Does it depends in any way on whether the NRA wins or
10 loses?

11 A No.

12 Q What kind of materials did you consider in forming your
13 expert opinions?

14 A A great deal of information. Really comes into two
15 categories or buckets. One is the set of information that I
16 received as part of this litigation that I either asked for or
17 received from counsel for the NRA. That's including Board
18 minutes and financial statements and Audit Committee meeting
19 minutes and things of that nature.

20 There is also a set of information that I obtained
21 independently through my research in the marketplace, and I'm
22 going to talk a little bit more about the framework that I
23 utilized in terms of how I evaluated the NRA's control efforts,
24 and that was obtained independently through my own work that I
25 did.

KM

3310

Sullivan - by Defendant - Direct/Ms. Rogers

1 Q Now, before testifying today, what kind of work have
2 you already done?

3 A So I performed my research, performed my analysis. I
4 set that forth in two different reports. There was an initial
5 report, and then I had an opportunity to submit a rebuttal
6 report in response to work that was done by the experts for the
7 AG.

8 Subsequently, I sat for deposition and provided
9 testimony at deposition, and the purpose of this is to provide
10 as much transparency and clarity to the work that I have done
11 and to be able to communicate that both to the AG and in the
12 court.

13 Q And what are the key topics you are going to be
14 testifying about today?

15 A I'd like to start off talking about just an overview or
16 a summary of what I did and what I found.

17 Second, I'd like to discuss the framework that I
18 utilized for performing my analysis.

19 And then third, applying that framework to some of the
20 information in this case. And in particular, with regards to
21 the corrective actions that were undertaken by the NRA.

22 Q All right. Well let's start with your summary.

23 A All right. For context, I am in part responding to the
24 work that was performed by Mr. Hines that he presented to you on
25 Friday and Monday.

KM

3311

Sullivan - by Defendant - Direct/Ms. Rogers

1 At a high level, Mr. Hines was explaining that the
2 control environment at the NRA was not effective and that there
3 were a number of what he found to be fraud risk indicators
4 associated with the work done at the NRA.

5 Q Now, you are not a forensic accountant like Mr. Hines;
6 right?

7 A That's right. So I am an economist. I use accounting
8 throughout my work as an economist, but I'm not a forensic
9 accountant. And thus, Mr. Hines and I approach our work
10 differently as a result of that, and that is part of why I want
11 to set forth the framework that I have utilized so you can
12 understand how it is I had went about my work and why.

13 Q And in the course of your work, can you describe
14 whether you help interpret the findings of forensic accountants?

15 A Yes. Part of the work as an economist and the work
16 that I do not surprisingly is based upon financial information
17 and financial reporting utilizing financial reports, looking at
18 auditing, the work that auditors have performed, looking at the
19 influence and affects of various control activities, and I think
20 this probably makes sense when we go back to think about what is
21 economics. You know, often considered the decision science, and
22 it is the study and the science of evaluating decision making
23 and actions that are taken by individuals and organizations and
24 companies and countries when there are scarce resources and
25 constraints, and that all is utilizing financial information.

KM

3312

Sullivan - by Defendant - Direct/Ms. Rogers

1 So in the course of my work, I am frequently utilizing
2 accounting work.

3 Q All right. And what opinions have you reached in this
4 case?

5 A As I'll explain, there are basic principles of
6 economics and accounting. These include things like cost
7 benefit analysis and materiality and prudent business person
8 judgment, and these principles are reflected in what we see in
9 industry practices.

10 Now, when I say "industry" here, I'm not referring to a
11 particular industry like the shoe industry or the hospital
12 industry or the automobile industry.

13 What I'm referring to is -- are the practices that are
14 utilized by organizations within industry meaning this is both
15 for private and public entities, and it is both profit and
16 non-profit entities.

17 Q And can you summarize the opinion you've reached?

18 A Based upon my research, my analysis which I'll
19 summarize here today, in my view the NRA's course correction has
20 been effective. And what that means is that they have taken
21 action. They have made decisions and certain activities that
22 have effectively changed their course in a way that I view as
23 positive.

24 Q And do we have an overview of your basis for that
25 opinion?

KM

3313

1 A Yes, and I will describe this in more detail, but what
2 I am depicting here is effectively a timeline.

3 So scrutiny was initially being placed on the NRA in
4 2017. In 2018 there were changes that were occurring within the
5 organization. Mr. Spray came in as CFO in March of 2018.
6 Subsequent to that, there was a Top Concerns memo in the middle
7 of 2018 that expressed a number of different issues. It was
8 really at that point in time with the catalyst for the course
9 correction that took place. Around the same time compliance
10 seminars were implemented. There were a number of actions that
11 were taken with regards to restitution or repayment by
12 employees.

13 A number of employees, their employment with the NRA
14 was terminated. And in addition, those are some of the internal
15 side of things.

16 On the external side with the vendors, you know, as you
17 may know, there were several of those that were either
18 terminated, renegotiated or in other ways corrected throughout
19 the process.

20 (Continued on the following page.)

21
22
23
24
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3314

R. Sullivan - by Defendants - Direct/Ms. Rogers

1 Q Can you talk about the economics finance accounting
2 framework you used to conduct your analysis?

3 A Yes. A framework is important because it provides a
4 principled way of performing an evaluation, of being able to
5 analyze and make a decision and inferences based upon
6 information and that's why it is important.

7 The first three principles I have listed here, cost
8 benefit analysis, materiality and prudent business person
9 judgment, these are basic principles of economics, finance and
10 accounting; and those principles are reflected in what are
11 referred to as industry standards or sometimes referred to as
12 industry practices.

13 And, I think it would be helpful to go through each
14 one.

15 Q Absolutely. So, what do you mean when you say "cost
16 benefit analysis?"

17 A At its most basic level, it is very simple. Although
18 there's been just a ton of economic research on different types
19 of analyses for cost benefits, it is also something that we all
20 do on a daily basis. You know, when we decide to take a subway
21 versus an Uber versus a taxi, and we're evaluating the costs
22 relative to the benefits that we get. And the more material,
23 the more important the issue is, the more effort that we tend to
24 put into it.

25 I might not put too much effort into determining

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3315

R. Sullivan - by Defendants - Direct/Ms. Rogers

1 whether it is Uber or lift; but if I'm going to rent an
2 apartment, if I'm thinking about purchasing a vehicle, then I'm
3 going to put a lot of time and effort into that analysis to
4 figure out am I going to get the benefits that outweigh the
5 costs associated with that.

6 Q Can you talk a little more about this business concept
7 of materiality?

8 A Sure. I was trying to think of the best way to explain
9 this, and I was in a market the other day and it occurred to me
10 that perhaps potato chips and diamonds. So, if we're at the
11 corner market and one is looking at controls in that market,
12 there's not going to be too much concern over the potato chips
13 if a bag or two of potato chips goes missing or perhaps not all
14 of them were received, that the package -- the box of potato
15 chips is short a bag.

16 But if you're up in the diamond district and there's
17 diamonds being brought in, sold, transferred, there's going to
18 be far more scrutiny paid to how those are handled, looking at
19 both employees and at customers to make sure that the diamonds
20 don't go into somebody's pocket and just walk out and, thus,
21 that becomes very important.

22 Now, more formally speaking, materiality is when a
23 particular financial information is such a magnitude that when
24 it is reported differently, it causes different decisions to be
25 made as a result; and, thus, that level of materiality is

BP

3316

R. Sullivan - by Defendants - Direct/Ms. Rogers

1 contextual. It varies based upon the situation; but, of course,
2 it affects how one thinks about the proper course of action to
3 take.

4 Q Can you talk a little bit about the concept of prudent
5 prudent business judgment?

6 A There's really two things to be thinking about here:
7 Prudent and person.

8 When judgments or decisions are being made, it is being
9 made by humans, by people. And we are -- and much to my chagrin
10 -- inherently imperfect; and as a result, we're not always
11 making perfect decisions, but we're doing so in a prudent way.
12 That means we're gathering a reasonable amount of information in
13 order to make the decision that we're making.

14 Again, if I'm choosing between Uber and Lift, I'm
15 probably not going to be putting too much thought into that.
16 But if I am making a decision on renting an apartment, then,
17 again, I'm going to be putting much more thought. I'm going to
18 be doing research. I'm going to be doing analysis to bring that
19 in.

20 But, what that ultimately reflects is what I am viewing
21 to be a good decision at that moment. We have to ensure that
22 there's not the so-called paralysis by analysis where we do so
23 much analysis that we delay a decision, and we don't take any
24 action; but, yet, we also want to make sure we have enough
25 information.

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3317

R. Sullivan - by Defendants - Direct/Ms. Rogers

1 It is trying to find that reasonable balance for being
2 able to make decisions.

3 Q You heard Mr. Hines testify that sometimes decisions
4 are revisited or changed in hindsight.

5 Can you describe how time interacts with prudent person
6 business judgment?

7 A Absolutely. In economics, we refer to this as X-ante
8 versus X-post. I suppose folks somewhere along the way enjoyed
9 the Latin side of things. And clearly once we have hindsight
10 and we're looking back on decisions, that gives us an
11 opportunity to better understand what has transpired and whether
12 a decision is accurate with that hindsight.

13 When we're only looking with foresight going forward,
14 we can make the best decision that we can. Sometimes that --
15 even a good decision might lead to a bad outcome and vice versa.
16 That just is inherent in life and with uncertainty.

17 Q You also heard Mr. Hines testify about a COSO framework
18 for internal controls.

19 Can you describe how your work and analysis touches on
20 COSO?

21 A Yeah, so the three principals I just described, cost
22 benefit analysis, materiality and prudent business judgment;
23 those are reflected in industry practices and standards.

24 COSO, which is the committee on sponsoring
25 organizations of the tread way commission is a framework that

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3318

R. Sullivan - by Defendants - Direct/Ms. Rogers

1 is in part focused on internal controls; and that framework,
2 which is used across many different organizations within
3 for-profits, within non-profits, it is very widely utilized and
4 it is a framework implemented by NRA throughout the course
5 correction, in particular, in order to improve the controls.

6 Q And do you improve controls once or repeatedly or can
7 you describe how that works over time?

8 A Absolutely. It is a continuous process.

9 It is not a one in done. It is not a singular event.

10 The notion of continuous improvement is observed across
11 different types of organizations in the areas. There's Lean
12 Manufacturing, for example; or you may have heard of Six Sigma
13 which is an approach towards trying to make continuously improve
14 operations in a way that makes them more efficient.

15 COSO is this continuous improvement framework that
16 applies to internal controls, and it is a collection of looking
17 at the control environment, performing risk assessments, control
18 activities, improving information and communication in
19 monitoring. What that means is that there's always a continuous
20 process of seeking to detect issues that are arising, seeking to
21 correct those, taking that information, learning from it to
22 improve policies so that there's less likelihood of something to
23 occur in the future; and if so, to be able to detect it.

24 There's not a perfect set of internal controls. They
25 are only one set simply continued to improve over time.

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3319

R. Sullivan - by Defendants - Direct/Ms. Rogers

1 Q We've heard a lot of references over the course of this
2 trial about audits and auditors. Can you talk about how your
3 analysis touches on that?

4 A Yes. Here, again, the principles I was referring to
5 earlier are reflected in the auditing process that is undertaken
6 for organizations and, specifically, here with regards to the
7 NRA.

8 So, in the 2000s up to about 2019 through 2018, the
9 NRA used a company known as RSM, which is a reputable accounting
10 firm; and then in 2019, switched over to Aronson, another
11 reputable accounting firm to perform an audit.

12 What the auditors have done and do is multifold. One
13 is to review the underlying information for the financial
14 statements to determine whether or not those are reasonably
15 accurate.

16 The interesting part about that is it is not simply
17 looking at the numbers, themselves, but it is digging in to
18 understand the internal controls. It is not an audit of the
19 controls, themselves; but in order to be able to render an
20 opinion on whether the audit process and, thus, the financial
21 statements are accurate, it is necessary for the auditors to
22 dig into and understand and work with the internal controls to
23 be able to know whether or not their process of auditing results
24 in something that's accurate.

25 When they release their results, they do provide

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R. Sullivan - by Defendants - Direct/Ms. Rogers

1 letters to management, and those letters typically have
2 improvements that can be suggested for how to make things even
3 better. And, just like --

4 MR. CONLEY: Objection, your Honor, Factual
5 narration.

6 THE COURT: That wasn't the one I was expecting,
7 but that one I'll overrule.

8 Q You can continue.

9 A An organization is much like an organism, evolves,
10 grows, develops, matures over time, and those management letters
11 help with that.

12 In 2019 when Aronson was beginning their work as
13 auditors, clearly --

14 THE COURT: I will interrupt just for a second
15 because I've done this with the other experts to make the
16 point maybe that Mr. Conley was making.

17 As with the other experts, this expert is not a
18 fact witness. So when he's relaying his understanding based
19 on his review of whatever he's reviewed, you can take that
20 as part of the basis for his opinion he's giving you; but
21 he's not a fact witness on all these things having happened.

22 Although sometimes people -- and I don't think it
23 is a problem -- don't always include "It is my understanding
24 that" before everything they say; that's -- that's how you
25 should take this. This is him not narrating facts as a

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3321

R. Sullivan - by Defendants - Direct/Ms. Rogers

1 witness who saw them; but as showing you what the basis for
2 his opinion is. Okay.

3 MR. CONLEY: Your Honor, I'd also like to object
4 that this is outside the scope of Dr. Sullivan's expertise
5 getting into audits and accounting standards.

6 THE COURT: That's what I thought you were going to
7 say last time.

8 To some extent, this witness is an economist and so
9 his testimony about what auditors do or don't do about
10 internal controls does strike to be outside his area.

11 MS. ROGERS: Well, I think he's testified -- and we
12 can voir dire him on this if the Court would like -- that
13 when he's giving business analytic advice, he has to
14 interpret these findings and know what they mean.

15 THE COURT: I think that's different than -- I
16 think the testimony that I was hearing was what auditors
17 actually do, and maybe there's a basis for that, but
18 that's -- he was approved as an expert on economics and in
19 analyzing this, so I think that references to what auditors
20 do may be part of his background understanding of the world,
21 but it is not a basis of an opinion.

22 MS. ROGERS: And we did also offer Dr. Sullivan as
23 an expert on finance and accounting. We offered him as an
24 expert on economics, finance and accounting.

25 MR. CONLEY: No, your Honor, my understanding is he

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R. Sullivan - by Defendants - Direct/Ms. Rogers

1 was offered as an expert in economics and he coauthored this
2 expert report with Bruce Blacker, who is a CPA and
3 accountant.

4 THE COURT: Yeah, I did not -- just listening to
5 the witness, I'd be surprised if he suggested he's an expert
6 witness in the field of accounting. I did not admit him for
7 that purpose.

8 So, anyway, I don't think anything dramatic has
9 happened; but I viewed it more as background, but it did
10 sort of sound like he was giving a view as to what in the
11 ordinary course auditors are supposed to do with respect to
12 internal controls and maybe you can ask him questions to see
13 whether he has an expert basis to make those kind of
14 statements. But, otherwise, I would keep to his area of
15 expertise.

16 Q Dr. Sullivan, do you have expertise or experience
17 relating to accounting and auditing?

18 A I do. I am a user of the information that is produced
19 by accountants and auditors; and as a user of that because I am
20 an economist performing analysis in many different types of
21 engagements from my clients, I am required in those instances to
22 have an understanding as to what is being performed by
23 accountants and auditors, what those documents mean and how to
24 use them.

25 I -- I am not offering up any expertise in being an

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R. Sullivan - by Defendants - Direct/Ms. Rogers

1 auditor or being an accountant; but rather it is the user, how
2 to interpret them and what they mean and how one can rely upon
3 them, which is what I do day in and day out.

4 THE COURT: Well, I think in that context, if you
5 go back and read some of the answers, I was listening for
6 that distinction. Some of them did sound like this is what
7 auditors have to do in reviewing internal controls is
8 different than a user's take on what in the real world he's
9 observed them doing.

10 I can -- I'm okay with the latter as part of his
11 general background, but let's just be careful. As he said,
12 we're all users of doctors, that doesn't make us doctors;
13 but we do understand what doctors tell us and so we can give
14 you background as to how that process works.

15 So, that's the distinction I'm going to hold to.
16 Okay.

17 MS. ROGERS: Thank you, your Honor.

18 Q So, Dr. Sullivan, from your perspective as someone who
19 uses and interprets the findings of auditors, can you talk about
20 management letters and special procedures and how they're used?

21 A Yes, indeed.

22 MR. CONLEY: Objection, your Honor, I'm sorry, this
23 is outside the scope of his expertise.

24 THE COURT: Overruled.

25 A As a user, information from auditors, including the

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1 information that I have on this slide, what I did in this case
2 is based upon my review of the facts and the information and it
3 is just that, it is just my review of that; but what I observed
4 is that there were management letters that were supplied by the
5 auditors to the NRA. Those management letters provided
6 suggestions or comments in terms of how to improve their
7 internal control processes.

8 When Aronson was determining whether to engage with the
9 NRA as an auditor which at the time the NRA was undergoing
10 considerable and substantial scrutiny, of course Aronson --

11 MR. CONLEY: Objection, your Honor, this is factual
12 narrative.

13 THE COURT: Overruled. Again, he's not saying it,
14 but this should all be interpreted as his understanding from
15 things he's read, which should all be in evidence anyway;
16 but, periodically, you might phrase it that way so that the
17 jury doesn't get confused. But, this jury seems like they
18 get what I'm -- how I'm advising them.

19 MR. CONLEY: I'm sorry, but we object. We don't
20 think this is in evidence, your Honor.

21 MS. ROGERS: So, we have a witness from Aronson.
22 He just hasn't testified yet. That will be part of our
23 direct case.

24 THE COURT: Right, and as I said before, at
25 instruction time I will tell you that if you find that any

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1 of the factual basis for any expert that you don't agree
2 with based on the evidence, then you can disregard what the
3 expert says.

4 That's the way this works.

5 MS. ROGERS: Understood, your Honor.

6 Q Thank you, Dr. Sullivan. Can you continue telling the
7 jury what you observed from the documents that you looked at
8 that helped you form an understanding about what the auditors
9 did?

10 A Absolutely, and just to be clear, this is all based
11 upon my review, it is my understanding, my interpretation. I am
12 not rendering an opinion on what the facts are.

13 However, when Aronson -- and this is based upon the
14 documents I reviewed. This is set forth in my expert reports.

15 When Aronson was making a decision to undertake the
16 engagement with the NRA as I noted there was substantial
17 scrutiny that the organization was facing; thus, Aronson put in
18 a special procedures to evaluate and make a determination on how
19 to proceed with the engagement. And those special procedures
20 went through and evaluated many different control items; and, in
21 particular, part of what they did was address the issues that
22 were --

23 MR. CONLEY: Objection, your Honor, I'm sorry. The
24 witness is evaluating evidence that isn't -- is evaluating
25 evidence that isn't in the record.

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1 THE COURT: That is true. Not yet, anyway.

2 MS. ROGERS: Not yet, your Honor. Just as they led
3 off their case with an expert and then put in factual
4 evidence.

5 Our goal here is to have Dr. Sullivan frame this
6 analysis; and then, obviously, we have a witness on our list
7 from Aronson. We have these documents on our exhibit list.
8 They're discussed in his expert report. They'll come in.

9 THE COURT: I'll take that representation; and if
10 it doesn't match up, the jury will make its evaluation.

11 MR. CONLEY: Your Honor, we think it is
12 inappropriate that the expert is describing what Aronson's
13 state of mind was, what their motivations were.

14 THE COURT: Overruled.

15 Q You can continue, Dr. Sullivan.

16 A Thank you. I think that comes close to rapping up what
17 I intended to convey with Aronson.

18 Q Okay, great.

19 Let's talk about the industry standards you're familiar
20 with concerning regulatory filings.

21 A When non-profits provide their financial information,
22 they file it in what is known as a Form 990. This provides the
23 public with an opportunity to review and view the financial
24 performance of the organization.

25 I did a review and analysis of other organizations,

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1 other tax exempt organizations in terms of their Form 990s I did
2 die this for a two-year period of 2019 to 2020 to determine
3 whether or not there were excess benefit disclosures in other
4 organizations, and I found that there were 206 organizations
5 that also had excess benefit disclosures.

6 One of the things that I find interesting, again, as a
7 user of accounting information as an economist performing the
8 work that I do is that in the Form 990, there's a section that
9 is specifically intended to identify whether or not there are
10 excess benefits to be disclosed, and this is indicative of being
11 able --

12 MR. CONLEY: Objection, your Honor, outside the
13 scope of his expertise.

14 MR. FLEMING: Your Honor, could we maybe let the
15 answer come in before the objection?

16 THE COURT: No, that's the opposite of what it is
17 supposed to be.

18 But, was this in the expert disclosures?

19 MS. ROGERS: This was in one of the reports. That
20 was a portion of his report --

21 THE COURT: Was it rebutting --

22 MS. ROGERS: It was rebutting something, so I don't
23 want to spend too much time on.

24 THE COURT: Rebutting something that I've excluded;
25 right?

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1 MS. ROGERS: Yes.

2 Q So, let's move on to your next slide.

3 THE COURT: Yes, you can disregard this section.

4 Q So, you heard Mr. Hines testify that he hadn't formed
5 an opinion on whether any of the fraud risk indicators were
6 corrected by the NRA. Do you recall that?

7 A I do.

8 Q Have you looked at any of that?

9 A I have looked at a great deal of information to
10 determine whether or not the course correction undertaken by the
11 NRA has been effective; and the bases that were presented by
12 Mr. Hines for his opinions are set forth on this slide in terms
13 of these different elements.

14 So, what I've done here is go through each of those
15 with the economic tools that I have used to evaluate it.

16 Q All right --

17 MS. CONNELL: Objection, your Honor. I'm sorry, a
18 lot of what is going to be covered is outside the scope of
19 Dr. Sullivan's reports.

20 MS. ROGERS: It is not outside the scope of his
21 reports.

22 MR. CONLEY: It is, your Honor.

23 MS. ROGERS: It's pages 35 and 36 of his rebuttal
24 report addressing Hines.

25 MR. CONLEY: But, your Honor, Dr. Sullivan does not

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1 discuss the consulting arrangements and the board member
2 arrangements that are set forth in the slide deck.

3 MS. ROGERS: That's nowhere on the slide, nowhere
4 on the next slide and the continued objections are -- we
5 didn't do this during their trial time.

6 THE COURT: We're going to take a short break
7 because I'd like to evaluate all these things wholistically
8 and not waste the jury's time with all these objections,
9 which may be well-founded or may not.

10 So, let's take a break and we'll try to get things
11 moving a little more smoothly after.

12 COURT OFFICER: All rise, jury exiting.

13 (Whereupon, at this time the jury then left the
14 courtroom.)

15 MS. ROGERS: Should we keep the witness or get rid
16 of the witness? Not get rid of him, but --

17 THE COURT: He doesn't need to leave the room.

18 MS. ROGERS: Okay.

19 (Whereupon, at this time the witness stepped down.)

20 THE COURT: Well, this hasn't gone very smoothly.

21 Why don't I start with, I guess, Ms. Rogers, first
22 of all, the part about the 990s --

23 MS. ROGERS: That was a mistake, your Honor.

24 THE COURT: Yeah. So, help me understand the scope
25 of the report because, obviously, a part of what his report

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1 did ended up being rebutting things that didn't come in.
2 So, there's no reason for that.

3 Help me understand why they're wrong about their
4 scope objections?

5 MS. ROGERS: Sure. So on page -- so, Dr. Sullivan
6 offered rebuttal testimony to several experts, including
7 both Harris which we're cutting out and Hines, which is
8 right on point.

9 So, on pages 35 and 36 of Dr. Sullivan's rebuttal
10 report delivered with Bruce Blacker and I'm sorry --

11 THE COURT: You're going to have to go a little
12 more slowly.

13 MS. ROGERS: Sorry. 35 -- it is actually page 37
14 of Dr. Sullivan's rebuttal report dated October 7, 2022,
15 which he delivered with Bruce Blacker.

16 THE COURT: I don't have all of this stuff at hand,
17 but...

18 MS. STERN: Your Honor, I have a copy for the
19 Court.

20 (Handed up to the Court)

21 THE COURT: Go ahead.

22 MS. ROGERS: So, if we look at pages -- it starts
23 -- actually I keep saying the page numbers wrong.

24 So, we'll start on page 34 where it says
25 "Evaluation of Hines Report," and he goes through the same

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1 buckets that Hines testified about which are discussed on
2 some of these slides.

3 There's also McKenna, which Hines didn't testify
4 about which is not -- we do not have a slide in here on
5 McKenna.

6 So, he summarizes Hines' testimony and then says
7 that Hines fails to consider corrective actions with respect
8 to each of these; and there's a chart attachment, E-1 to
9 this report, which is a detailed list of corrective actions
10 and evidence for it.

11 THE COURT: The corrective actions part I
12 understood; but, Mr. Conley, what was your out-of-scope
13 objection?

14 MR. CONLEY: Your Honor, the out-of-scope objection
15 was with respect to slides 31 and 32, which were part of the
16 summary on slide 27.

17 The rebuttal report does not discuss as a basis for
18 the opinions anything regarding Sandra Froman, David Keene,
19 David Butz, Marion Hammer --

20 THE COURT: Well, look, if the topic -- you know,
21 if the principles discussed in the report just weren't
22 applied to those individual situations -- you know, it is a
23 trial. He's allowed to comment on what actually happens at
24 the trial, too.

25 If he was bringing a different kind of analysis

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1 into play saying, well There's, you know, X-study which
2 shows that this is what happened with Marion Hammer that,
3 you know, X, Y, Z, then I can see your point.

4 If your only point is that he's applying the same
5 analysis to address things that Hines said on the stand, I'm
6 not as convinced by that.

7 MS. ROGERS: And, your Honor --

8 THE COURT: Wait, let me finish with him.

9 MR. CONLEY: Your Honor, there's really no expert
10 analysis here. It is factual recitation; but the -- the
11 facts that it appears that Dr. Sullivan is going to be
12 testifying about just are not discussed or --

13 THE COURT: Well, look his take on this, the expert
14 portion of this which, again, is going to be very prominent
15 in the instructions which, hopefully, you will get today.

16 You know, it is going to be up to the jury to
17 decide whether things that happened in 2018, '19 or whenever
18 are relevant to the -- to whether a violation occurred in
19 prior years. That's a very large issue of relevance that
20 the jury is going to have to grapple with.

21 This witness, obviously, the focus is on talking
22 about the corrective measures.

23 So, I've agreed to let them bring that into the
24 case subject to the jury making a decision about whether any
25 of it impacts whether it is state of mind or good faith or

BP

1 whatever you want to call it at the time of the events,
2 which is actually what they're going to be rendering a
3 verdict on.

4 But, I don't know that I see the need to object to
5 each little time that the corrective measures is applied to
6 something that Mr. Hines said on the stand.

7 (Continued on next page)

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Proceedings

1 MS. STERN: Your Honor, can I just address one
2 point which is a macro point which is this expert issued two
3 reports. The purpose of which was to challenge the
4 propriety remedies, and we now have the expert having
5 retailored his opinion not only to not really offer the
6 opinion that he disclosed, but besides that now to provide
7 particular information.

8 And if you really -- and the time is not now to do
9 this. But if you were to read the report, you will see that
10 it really is just a person who has a title talking about
11 facts.

12 There's no application of any kind of analytical
13 methods that are accepted anywhere outside of what is
14 written in this report by two different people, only one of
15 which is here, and one of which that person didn't even have
16 the expertise that he -- we already saw him trying to talk
17 about.

18 So we have him doing something that is -- we had no
19 disclosure of, we are having to respond to in real time, and
20 it's --

21 THE COURT: Well, can you isolate that for me? I'm
22 not sure I understand what's the "new" that you're
23 responding to that you haven't had disclosure of.

24 MS. STERN: As you have seen, primarily this expert
25 is here to describe the facts as he sees them to the jury.

KM

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Proceedings

1 THE COURT: Your expert did the same thing as part
2 of the background. We haven't really gotten to his opinions
3 yet.

4 MS. STERN: Well, that's exactly my point, your
5 Honor.

6 The opinion he offered -- and if you look through
7 his report, he offers opinions that based on this cost
8 benefit analysis, very mushy framework, that it's okay that
9 the NRA sort of got to correcting itself late in the game.
10 That's okay in a cost benefit analysis. It doesn't warrant
11 a independent monitorship. That's what he says in his
12 reports, both of them. And now he is trying to sort of say
13 something that's shy of that because obviously, that's not
14 before the jury.

15 But in the process, he's had to provide a little
16 bit -- something more tangible. And so now he applies it to
17 the things that he never even talked about in his report
18 which means that we did not have an opportunity to
19 cross-examine him in depositions about his application of
20 this framework to particular types of financial
21 transactions.

22 THE COURT: Let me ask the NRA what -- maybe to
23 help me understand exactly how, you know, given that the
24 portion of the report talks about monitorship is not going
25 to come in here which was an important part of it, but I do

KM

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Proceedings

1 understand that the -- the standard that the jury is going
2 to be asked is -- it's something like reasonable care and
3 good faith under the circumstances, and I'm not getting all
4 the language right, but -- and is -- ultimately, this come
5 down to also applying the cost benefit analysis to what was
6 being done at the relevant time before the course
7 correction.

8 MS. ROGERS: Correct, your Honor. You see the
9 timeline begins in his slides in 2018, and we talk about the
10 contemporaneous events at the time of their allegations and
11 remedies that unfolded, you know, in real time over these
12 relevant years, the same years during which their evidence
13 is coming in.

14 So they are challenging items that happened in
15 2018, 2019, 2021. He is talking about remedial processes
16 unfolding over the same years and a little bit afterwards.

17 There is a stark mischaracterization we have heard
18 which is that there is new content being populated that was
19 not in the report previously. That's not true.

20 They may not have chosen to focus their cost
21 examination there, but what we essentially did after the
22 motion in limine stage when it was clear that remedies
23 weren't going to be before the jury is we took his verbatim
24 opinions from his report and we lopped off the part about
25 the compliance monitor.

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Proceedings

1 So in his expert report he says he is evaluating
2 the reasonableness of the NRA's control efforts. That is
3 exactly what he's told the jury that he's done, and he says
4 that.

5 THE COURT: The control efforts as they changed
6 over time.

7 MS. ROGERS: Yes.

8 THE COURT: Is he also going to offer an opinion as
9 to the controls that were in place in 20 -- you know '17,
10 '16, '15 and the like?

11 MS. ROGERS: So some of what was in place in 2018
12 were from them. So for example, this related-party
13 disclosure policy as we have heard it from Mr. Frazer a bit
14 was kind of rolled out in '15, '16, '17. He's considered
15 that, and he is considering actions the NRA took in response
16 to this information.

17 THE COURT: So he's -- right now we are still in
18 the -- I think the background phase. So he's, you know,
19 populating things that are in his report as you say about
20 the facts of the corrective measures; right?

21 MS. ROGERS: Right.

22 THE COURT: So what is the next part where he says
23 here's my expert opinion about why that should matter?

24 MS. ROGERS: So his -- so he's delivered two expert
25 opinions. One is that you have to evaluate the

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Proceedings

1 reasonableness of these control efforts using this
2 framework. You have to consider cost and benefits and
3 materiality. And his second opinion that using that
4 framework, the NRA's corrective efforts have been
5 reasonable, have been effective and --

6 THE COURT: The corrective measures have.

7 MS. ROGERS: The corrective measures.

8 THE COURT: But not, you know, analyzing historical
9 ones.

10 MS. ROGERS: Well, he is saying control efforts and
11 corrective measures, so it is a bit of a blend because the
12 NRA had a whistleblower policy which it updated. The NRA
13 had a related-party transaction policy.

14 THE COURT: This is the slice of it that I thought,
15 you know, was legitimate expert testimony. It's a little
16 out there from what normally you see, but you know, in the
17 -- in a case like this where you're evaluating the
18 reasonableness and good faith of corporate officers and a
19 corporation over time, you know, I think you can -- that
20 this analysis that I think is admissible to make the points
21 you're making about what is reasonable to take into account
22 at a given point in time.

23 So to that extent, I'm sticking with my view that,
24 you know, I did not grant the motion to strike this
25 testimony. It is again unusual in that the report was

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Proceedings

1 written by two people, and so we have already seen a little
2 bit of that where that doesn't mean that either of them can
3 testify as to the expertise of the other which I think
4 happened a bit.

5 You know, I'm not sure exactly why you did it that
6 way, but I'm limiting it to whatever portion of that report
7 he can independently verify based on his own expertise.

8 But so, look, I don't know how long more this is
9 going to go on, but the background going through the facts
10 as long as, you know, the points about the course correction
11 are certainly disclosed in the reports to the point where
12 you can clearly cross or depose him on this, I really don't
13 want to have a running series of objections to the
14 background and to his statement about what he thinks
15 happened in the course correction. I think it is fair to
16 say they didn't really do that to your experts.

17 So you know, are there any other opinions -- I have
18 not sort of fly specked this demonstrative because I haven't
19 had time. But are there any opinions coming that you think
20 are just completely not in the report?

21 MS. STERN: Well, I think one issue that I just
22 want to flag is the notion of the economist offering his
23 opinion on the adequacy of internal controls and that being
24 outside the scope. The other --

25 THE COURT: Now, look, I will tell you this. I

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Proceedings

1 don't think that internal controls and what is reasonable in
2 the circumstance is entirely the province of any particular
3 sphere of expertise. You know, the whole idea of di minimus
4 tests is at some level is cost benefit. We are not going to
5 say that somebody has violated a duty because of something
6 that really wasn't material. This is a more nuanced and
7 sophisticated take on that as to what is a reasonable set of
8 controls to solve for the important problems but not
9 over-regulate and the like.

10 You know, I don't think that is inadmissible.
11 Whether the jury accepts it or not is up to them, but you
12 know, that's what they disclosed, and that's what I
13 thought -- you know, I'd like to give the parties leeway to
14 make the argument they want to make. And if one of their
15 arguments which it sounds like it is is that, you know, in
16 assessing the reasonableness of how closely you regulate
17 things, you think about cost and benefits. And you know, at
18 some level you could have controls that are too rigid, I
19 suppose, but I haven't heard anything -- look, I think as
20 long as he continues to be careful about when he is talking
21 about facts just making the point that he is not testifying
22 about the facts, I don't see the need for a continuing
23 string of objections on this principle. You can
24 cross-examine him including as to what time period he was
25 looking at, what time period he is not looking at and all

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Proceedings

1 the things you want to do, but I'd like to have the
2 testimony come in cleaner than it is right now. I get your
3 point that it's -- things evolved from the reports when
4 there were some plaintiffs' experts that are in that are no
5 longer in. It was also at a point when the trial was going
6 to be bifurcated and so things change, and -- but I'm
7 confident that, you know, I made the decision that I was not
8 excluding this kind of analysis, and I'm sticking to that.

9 MS. STERN: I understand, your Honor. I just
10 -- and we have to make our record, and I think that we did
11 see there was a lot of straying beyond various areas.

12 THE COURT: There was some.

13 MS. STERN: I would trust that opposing counsel now
14 heed the judge's directions and stay within the scope of the
15 report and the area of expertise.

16 THE COURT: Yeah. And given that this was a joint
17 report, it does require some discipline to bear in mind that
18 that doesn't mean that each of them can testify about
19 expertise of the other. It's a little strange, but I will
20 uphold that.

21 MS. ROGERS: We understand, your Honor, and the
22 remaining slides are not -- not accounting heavy. They
23 don't really have accounting informing on them at all. They
24 are bases for his assessment of the reasonableness of the
25 control efforts.

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1 THE COURT: Okay.

2 MS. STERN: Thank you, your Honor.

3 THE COURT: All right. So let's try to keep it on
4 both sides as smooth as we can. It's -- let's get through
5 it. There is a point to be made, and then there is a point
6 to be made on cross. It doesn't have to be lawyers talking.

7 Let's -- I don't whether they are going to be ready
8 yet. All right. Let's go -- hang on one more second. I'm
9 not sure there is going to be another break so.

10 MS. ROGERS: Well, this could be mid-morning break.

11 THE COURT: I'm saying if any of you need to take a
12 break, now is the time to do it.

13 (Whereupon at this time there was a recess taken.)

14 (Witness resumed the witness stand.)

15 THE COURT OFFICER: All rise. Jury entering.

16 (Whereupon, at this time the jury entered the
17 courtroom.)

18 THE COURT: Thank you. Please have a seat. So we
19 worked out a few kinks. So things hopefully will move a
20 little more smoothly.

21 Counsel, you may continue.

22 CONTINUED DIRECT EXAMINATION

23 BY MS. ROGERS:

24 MS. ROGERS: Thank you, your Honor.

25 Q Dr. Sullivan, can you walk the jury through the bases

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Sullivan - by Defendant - Direct/Ms. Rogers

1 of your opinion that the NRA's corrective efforts were
2 reasonable and effective?

3 A Absolutely. So what I have set forth thus far is the
4 framework that I utilized. I performed my research and my
5 analysis, and what I will describe to you is my opinions based
6 upon my understanding of the facts and based upon my research,
7 my analysis.

8 In effect, I categorized different corrective actions
9 into these different categories; policies and procedures,
10 individuals, and vendors.

11 Just to recap, I showed you this slide earlier in
12 summary form, and the notion here is that there are these
13 different types of corrective actions that were taken over time.
14 I evaluated those actions based upon the principles of economics
15 in order to evaluate the reasonable and the effectiveness of
16 those actions again based upon my opinion.

17 Q All right. And we looked at different categories of
18 risk indicators that Mr. Hines testified about; right?

19 A I did. And in my view, as I go through each one of
20 these, and I have a slide for each one of those to be able to
21 break it down in terms of my analysis of them, but there were
22 corrective actions taken across all of these items including the
23 McKenzie companies, Ackerman McQueen and so forth that in total
24 in my view relate or results in my opinion that those corrective
25 actions have been effective.

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Sullivan - by Defendant - Direct/Ms. Rogers

1 Q Well, let's talk about the McKenzie companies first.

2 A So with the vendors including McKenzie, there was
3 activity taken very shortly after the Top Concerns memo was
4 provided by the finance group Ms. Rowling and Mr. Erstling.
5 They provided that Top Concerns memo to the Audit Committee and
6 about ten days later or so, give or take, there were a series of
7 letters that were sent out by the NRA to its vendors to be able
8 to seek more information and to clarify the policies and
9 procedures that the NRA was seeking to implement. And the
10 verbal agreements as I understood them were -- those were
11 conveyed in this Top Concerns memo. There was in 20 -- and all
12 of that was 2018 as I viewed it and my understanding.

13 In 2019, there was a documentation provided by MMP
14 relating to the services that they were providing and the
15 management fees that were being charged. Over time there was
16 some things that occurred in the economy that we are all
17 familiar with of Covid occurring in 2020. I am directly
18 familiar with that in terms of work that I have performed with
19 other entities and with the San Diego Zoo and just the impact
20 that had on organizations.

21 Around that same time there was also the affects that
22 were being felt by NRA as a result of the activities being
23 undertaken by the State and others against the NRA.

24 The -- as I view it based upon my understanding of the
25 facts in this 2022 the agreement with MMP was renegotiated and

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Sullivan - by Defendant - Direct/Ms. Rogers

1 as a result, the fees and the services at that point in time
2 were reduced. It was at a time where during that process Mr.
3 LaPierre recused himself from the decision process. The new
4 agreement was reviewed by the Audit Committee; and thus, in my
5 view, this was effectively addressed.

6 Q All right. Why don't you talk about the basis for your
7 opinion that the NRA took effective corrective action on
8 Ackerman McQueen.

9 A Here similar to MMP, there was a letter sent to
10 Ackerman McQueen in 2018 and a second letter as well seeking
11 specific information. And thereafter, in trying to better
12 understand the issues with Ackerman McQueen, in 2019, again
13 based upon my understanding of the facts is that there was a
14 forensic accountant that was hired by the NRA. Ultimately, the
15 NRA opted to file a lawsuit against Ackerman McQueen, and in
16 2019, the contract with Ackerman McQueen was terminated and as
17 such, the corrective actions were eminently effective with
18 regards to Ackerman McQueen.

19 Q Now, there is a related company called Under Wild
20 Skies; right?

21 A There is, and many of the issues that I just described
22 with Ackerman McQueen applies to Under Wild Skies.

23 There was ultimately a lawsuit that was filed against
24 Under Wild Skies and payments to Under Wild Skies based upon my
25 understanding of the facts were stopped in 2019.

KM

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Sullivan - by Defendant - Direct/Ms. Rogers

1 So here again, based upon my review and analysis, the
2 Under Wild Skies issue was effectively addressed.

3 Q You also heard Mr. Hines testify about payments to
4 former employees and Board members.

5 Do you recall that?

6 A I do.

7 Q And did you form a view on whether he adequately took
8 into account corrective measures in these areas?

9 A In my view, he did not. In fact, with the three former
10 employees that were addressed by Mr. Hines, I recognized based
11 upon my review and understanding of the facts that the contract
12 with Wilson Phillips was terminated in 2019, that the payments
13 to Marcellin and Weaver, those were completed in 2019. And then
14 there was a dispute with Marcellin and a settlement agreement
15 that was entered into in 2020. And thus, in my view, these
16 issues had been effectively addressed.

17 Q And what about Board member contracts?

18 A Here too my view is that these issues have been
19 effectively addressed. There were new contracts negotiated with
20 Marion Hammer and Dave Butz in the 2018 and 2019 period. There
21 was a separate review by the Audit Committee of the
22 relationships with Dave Butz, Marion Hammer and Sandy Froman.

23 Further, in 2019 the relationship with Ackerman McQueen
24 including payments that were being allocated for Oliver North
25 was addressed and those -- that allocation of payments was

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Sullivan - by Defendant - Direct/Ms. Rogers

1 rescinded and as noted a few moments ago, the arrangement and
2 vendor relationship with Ackerman McQueen was terminated.

3 The payments to Mr. Butz and Ms. Froman, those ended by
4 the end of 2019. The payments to David Keene ended in 2021, and
5 I also just have listed here some of the minutes from the Audit
6 Committee describing the importance of the work being performed
7 by Marion Hammer, and thus, payments continuing there.

8 This is -- you know, going back to the framework that I
9 utilized to evaluate my understanding of the facts and thinking
10 about the cost to benefit analysis, this is a perfect example of
11 of that occurring in practice because there are costs that are
12 being incurred by the organization for the activities and
13 services being undertaken by Ms. Hammer wherein they -- the
14 organization determined that the benefits associated with those
15 costs with that service outweighed the cost. And thus, it was
16 beneficial in their view to the organization.

17 Q You also heard me ask Mr. Hines whether it was good or
18 bad that the NRA ended a relationship with a travel consultant
19 named Gayle Stanford.

20 Do you remember that?

21 A Yes.

22 Q He had no opinion on it.

23 A That's right.

24 Q Do you have an opinion on it?

25 A I do.

KM

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Sullivan - by Defendant - Direct/Ms. Rogers

1 In my opinion it was a good thing to have that occur.
2 There were challenges and issues that were discovered with Gayle
3 Stanford and her companies in terms of the fees that were being
4 charged and some of the markups that were being placed.

5 As this was discovered, the organization as I
6 understand it based upon my understanding of the facts issued an
7 RFP process. That's a Request For Proposal. It's a typical
8 process that organizations use when they are seeking vendors.
9 They will put out RFPs to different type of vendors, different
10 ones seeking, requesting a proposal for those services. And
11 then shortly after in 2020, the agreement and the services with
12 Ms. Stanford were terminated.

13 Q So can you sum up your opinion for the jury?

14 A Absolutely.

15 I think we have established that I am an economist and
16 that I utilized the framework of economics and as a user of
17 accounting information and the user of accountants and
18 organizations that I have managed that the principles of cost
19 benefit analysis, materiality, prudent business person judgment,
20 those basic principles not only are reflected in how
21 organizations operate; hence, the industry practices that we
22 observe in this industry, but those principles are informative
23 to my evaluation of the -- the factual information. This is my
24 analysis.

25 So I do not perform my analysis in a vacuum. I look at

KM

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Sullivan - by Defendant - Direct/Ms. Rogers

1 to the -- specifically with my review of factual information and
2 the evidence, and again, my understanding of it. And based upon
3 my analysis, utilize that framework.

4 In my view, the corrective actions that were undertaken
5 by the NRA were effective, and the items, the fraud risk
6 indicators that were identified by Mr. Hines have all been
7 addressed effectively.

8 MS. ROGERS: Thank you, Dr. Sullivan. Pass the
9 witness.

10 THE COURT: Okay. Are there any other counsel want
11 to elicit direct testimony from this witness? So just
12 cross?

13 MR. CORRELL: Just a little bit of direct.

14 THE COURT: Okay. Is that a little bit of direct
15 and just a little bit of cross?

16 MR. CORRELL: I think a little bit of direct and
17 then you can call it direct or cross. It's within the
18 scope.

19 THE COURT: So it's clear, the scope defined by the
20 direct.

21 MR. CORRELL: We will call it direct.

22 THE COURT: Okay.

23 DIRECT EXAMINATION

24 BY MR. CORRELL:

25 Q Good morning, Dr. Sullivan. I'm Kent Correll, and I

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Sullivan - by Defendant - Direct/Ms. Rogers

1 represent Wayne LaPierre?

2 A Nice to meet you.

3 Q Nice to meet you. During your time at the San Diego
4 Zoo, did the corporation provide any charter travel to
5 executives?

6 A Not to my recollection.

7 Q Did the corporation pay for charter travel for animals
8 from time to time?

9 A Yes.

10 Q And why was that?

11 A Well, some of the animals are incredibly valuable and
12 important. There is one distinct memory I have where there was
13 a collection of white rhinos, rhinoceros that were being
14 transported from Africa to San Diego. And as you can imagine,
15 not only are these highly precious because they are endangered.
16 And part of what we were doing at the zoo is to facilitate and
17 hopefully improve the viability of the species, but they are
18 also very big and they require special type of transport.

19 Q When you were treasurer at San Diego Zoo, did you form
20 any conclusion as to your duties as treasurer to that
21 corporation?

22 A Yes. I at the time had a lot of clarity over my roles,
23 responsibilities and obligations. The implementation of that
24 sometimes can be mirky.

25 Q As part of your duties as treasurer, did you understand

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1 it was your responsibility to provide the information to the
2 executives that they needed to make good decisions about
3 financial and accounting matters?

4 MR. CONLEY: Objection. Leading.

5 MS. ROGERS: And outside scope.

6 THE COURT: Sustained and sustained.

7 Q At the time that you were treasurer, did you have any
8 sense of what the proper role of a treasurer might be with
9 respect to providing information to executives?

10 MS. ROGERS: Outside scope. He is not here to
11 provide that kind of expert testimony.

12 (Continued on the following page.)

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R. Sullivan - by Defendants - Direct/Mr. Correll

1 Q You talked about cost benefit analysis on your direct.
2 Do you recall that?

3 A I do.

4 Q And is there a cost benefit analysis that might apply
5 to a corporation providing charter travel to executives?

6 A Generally, yes. As I noted, cost benefit analysis is
7 something that we all engage in on a relatively frequent basis,
8 and it can be very informal or very formal or anywhere in
9 between.

10 Q And if an executive were to have a very heavy travel
11 schedule in which the executive was producing benefits to the
12 corporation, is that a factor that would be taken into account
13 on a cost benefit analysis for charter travel?

14 A It could be. I have not analyzed that issue
15 specifically.

16 Q And what about if they -- if the corporation had a
17 serious security concern involving a particular executive
18 because of his visibility on a controversial issue; would that
19 be a factor that any economist might consider in analyzing the
20 wisdom of a business decision on the part of a corporation to
21 provide travel, charter travel or not?

22 MR. CONLEY: Objection, leading.

23 MR. CORRELL: It is hypothetical, your Honor.

24 THE COURT: I don't think this is a disclosed
25 opinion of this witness, and you can't elicit new opinions.

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R. Sullivan - by Defendants - Cross/Mr. Conley

1 MS. ROGERS: And it is not within the scope.

2 THE COURT: Sustained.

3 MR. CORRELL: Thank you very much, Dr. Sullivan.

4 THE WITNESS: Thank you.

5 THE COURT: Any other direct?

6 MR. FLEMING: None from me, your Honor.

7 THE COURT: Okay, so why don't we start with the
8 cross.

9 **CROSS-EXAMINATION**

10 **BY MR. CONLEY:**

11 Q Good morning, Dr. Sullivan. Can you hear me?

12 JUROR: A little more.

13 THE COURT: The higher the better.

14 Q Dr. Sullivan, you were retained by the Brewer firm in
15 this lawsuit; correct?

16 A My employer was engaged by the Brewer firm in behalf of
17 the NRA.

18 Q And the Brewer firm also retained you on behalf of the
19 NRA and another enforcement action pending in the District of
20 Columbia; correct?

21 A There, again, technically my employer was engaged by
22 the Brewer firm on behalf of the NRA in the DC action.

23 Q Understood. And the action was brought by the DC
24 Attorney General; correct?

25 A That is my understanding.

BP

3354

R. Sullivan - by Defendants - Cross/Mr. Conley

1 Q And the action concerns the NRA and NRA allegations --

2 MS. ROGERS: Scope.

3 MR. CONLEY: I'm sorry?

4 MS. ROGERS: Objection, scope.

5 THE COURT: He can probe any relationship.

6 So, I assume you're not going to get into details

7 of the other case; right?

8 MR. CONLEY: No, your Honor, no. This just goes

9 to --

10 THE COURT: Overruled.

11 MR. CONLEY: Okay.

12 Q The action concerns the NRA and the NRA Foundation
13 compliance with Charities laws; correct?

14 A I do not recall the specifics, but it did involve both
15 the NRA Foundation and the NRA.

16 Q And the court in that action excluded you from
17 testifying at trial; correct?

18 A That's right. As I understand it, the issues I was to
19 address were no longer at issue.

20 Q The court held that you were not qualified to testify
21 about nonprofit governance, correct?

22 A That's right.

23 Q And besides the DC Attorney General action where you
24 were found unqualified to testify, you have not worked on any
25 matters involving charitable organizations facing a regulatory

BP

3355

R. Sullivan - by Defendants - Cross/Mr. Conley

1 investigation or action; correct?

2 A I think that's right.

3 Q Ms. Rogers and Mr. Correll asked you some questions
4 about your experience on the San Diego Zoo Global, which is now
5 the San Diego Zoo Wild Life Alliance; correct?

6 A Yes, that's right.

7 Q And you recall being asked about that?

8 A At a high level, yes.

9 THE COURT: You're not going to challenge the rhino
10 transport --

11 MR. CONLEY: No, your Honor.

12 THE COURT: Good. I just wanted to make sure.

13 Q During your time on the board of trustees, you learned
14 that an employee at the San Diego Zoo, Matthew John Anderson,
15 that embezzled money from the zoo; correct?

16 A That's right. It occurred before my time.

17 Q But you learned of it while you were on the board of
18 trustees; correct?

19 A Right. So, I think it occurred in the 2008 to 2016
20 timeframe, and I joined the board of trustees in 2018; and it
21 was somewhere during the time that I was on the board of
22 trustees that I learned about it.

23 Q And he was convicted in 2020 for embezzling
24 approximately a quarter of a million dollars from the San Diego
25 Zoo; right?

BP

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R. Sullivan - by Defendants - Cross/Mr. Conley

1 A I don't recall when he was convicted. I do recall he
2 was terminated prior to my joining the board of trustees. My
3 recollection is somewhere on the order of \$200,000 that he
4 embezzled. I don't recall the exact amount.

5 Q And isn't it true that you were unwilling to say in
6 your deposition in this action that Mr. Anderson's embezzlement
7 caused harm to the San Diego Zoo?

8 A That's right. As an economist who operates with
9 prudence, I seek to be thoughtful in the analyses that I
10 undertake. I am also -- often engaged to determine whether
11 there's been harm or damage to entities; and, thus, I do so
12 thoughtfully, not off the cuff.

13 Q Dr. Sullivan, you don't have an accounting degree;
14 correct?

15 A That's right.

16 Q You're not a CPA?

17 A Correct.

18 Q You never conducted a financial statement audit; have
19 you?

20 A Not personally, no.

21 Q And you've never conducted an internal control audit;
22 correct?

23 A Not personally, no, I have not.

24 Q And I believe you testified earlier that you are being
25 paid to provide expert testimony in this matter; right?

BP

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R. Sullivan - by Defendants - Cross/Mr. Conley

1 A That is incorrect.

2 Q Your employer is being paid or being paid for you to
3 provide expert testimony in this matter; correct?

4 A My employer is paid for the research and analysis I do,
5 the work that I do, as well as the time that I spend providing
6 testimony.

7 Q Including testifying right now, right?

8 A I would imagine my firm will bill for my time.

9 Q And the NRA paid your employer for you to prepare two
10 expert reports in this matter; correct?

11 A Yes.

12 Q You authored those reports with Bruce Blacker who works
13 with you; correct?

14 A That's right, he is my colleague.

15 Q And he bills his time, also?

16 A I presume so, yes.

17 Q And the NRA paid your employer for your time being
18 deposed in this matter, right?

19 A Well, just for clarity, I am inferring that my firm is
20 invoiced for my time and all of the time I spent working on this
21 matter, including the work I did for the reports, sitting for
22 deposition testimony, the time I spent preparing to provide
23 testimony here today I would imagine also will be invoiced to
24 the NRA.

25 Q But you don't have personal knowledge of that?

BP

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R. Sullivan - by Defendants - Cross/Mr. Conley

1 A No, I do not. I am not involved in that part of our
2 company. I was years ago; and, fortunately, I've been able to
3 dispose of most operational obligations and responsibilities so
4 I can focus on doing economics.

5 Q Right. When you were initially engaged in this matter,
6 you were then working as the president of a company called
7 Intensity; correct?

8 A That's right.

9 Q You were the founder of Intensity?

10 A Correct.

11 Q And Intensity was charging the NRA \$2,000 an hour for
12 your time; right?

13 A Correct.

14 Q And Intensity was charging the NRA \$795 per hour for
15 Mr. Blacker's time; is that right?

16 A That sounds about right.

17 Q And a company called Secretariat purchased Intensity
18 last year; right?

19 A There was an acquisition, roughly one year ago.

20 Q And you're currently a managing director there, right?

21 A Correct, I'm a managing director of Secretariat.

22 Q What hourly rate is Secretariat charging for your time?

23 A I believe it is either 2000 or it might have been
24 increased to a higher amount.

25 Q And could you provide an estimate on what Intensity and

BP

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R. Sullivan - by Defendants - Cross/Mr. Conley

1 Secretariat has billed to date for this engagement?

2 A I do not know. That is outside my scope, outside my
3 work.

4 Q Couldn't provide any estimate?

5 A Well, I could make a guess or a speculation. I've been
6 told previously to not do that on a witness stand, so I'm
7 hesitant to do so.

8 THE COURT: And I'll tell you again.

9 Q And you recall being deposed in this litigation,
10 correct?

11 A Yes.

12 Q At that time, you gave an estimate that you spent on
13 the order of a couple hundred hours on the engagement; do you
14 recall that testimony?

15 A That sounds about right.

16 Q And it would be fair to say that Mr. Blacker also spent
17 a lot of time on this engagement, correct?

18 A I would imagine that he has.

19 Q If he had testified at his deposition that he estimated
20 spending hundreds of hours on the matter, then you'd have no
21 reason to question the veracity of that testimony; would you?

22 A No, I would not.

23 Q And it would be safe to say that you've spent more time
24 on this engagement since your deposition in 2020; correct?

25 A Yes, mostly very recently.

BP

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R. Sullivan - by Defendants - Cross/Mr. Farber

1 Q And you've also had a large team assisting you and
2 Mr. Blacker in this engagement; right?

3 A There were others working with us. I don't know that I
4 would think of it as a large team.

5 Q Mr. Blacker identified eight different people that were
6 working on the engagement with you and him.

7 Does that seem inaccurate to you sitting here?

8 A At various points in time different people were
9 performing different work based upon the work that we needed to
10 be done at any given point in time.

11 Q And, presumably, the NRA paid for their services as
12 well; right?

13 A I think that's a logical inference, yet I do not have
14 personal knowledge of it.

15 MR. CONLEY: I'll pass the witness.

16 THE COURT: Anything?

17 MS. ROGERS: I have very brief, your Honor.

18 MR. FARBER: Why don't we do the rest of the cross,
19 your Honor? May I proceed, your Honor?

20 THE COURT: Yes.

21 CROSS-EXAMINATION

22 BY MR. FARBER:

23 Q Good morning, Dr. Sullivan.

24 A Good morning.

25 Q My name is Seth Farber, and I represent Mr. Phillips in

BP

3361

R. Sullivan - by Defendants - Cross/Mr. Farber

1 this action.

2 I just want to clarify a couple points which you
3 addressed during your direct.

4 MR. FARBER: And to start with, if we could bring
5 up slide 13 from the presentation, the slide.

6 (Displayed)

7 Q So, this is the timeline that you gave of corrective
8 actions; is that right?

9 A It is a timeline I prepared on that, yes.

10 Q Right. And I think if we look over here, you list the
11 course correction 360 review as starting at some point 2018; is
12 that what you indicate there?

13 A In effect. So, what I was describing --

14 Q I just asked whether that's what you indicate there.
15 Is that right?

16 A There's more to it than that.

17 Q I know, but is that what you indicate there?

18 A I would not put that it plainly and simply.

19 Q Well --

20 MR. FARBER: If I can have one moment.

21 (Brief pause)

22 Q So, Dr. Sullivan, I think you testified on direct
23 that you observed some of the testimony in this case; is that
24 right?

25 A I have observed some testimony. I've also had access

BP

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R. Sullivan - by Defendants - Cross/Mr. Farber

1 to the transcripts and have gone through those, as well.

2 Q Okay. So, did that include Mr. LaPierre's testimony?

3 A I have taken a look through most all of the testimony.
4 I will admit I have not read all of it, but I've done my best to
5 get through it. There's a lot of it.

6 Q Okay. Do you recall when you reviewed the testimony
7 that Mr. LaPierre testified that the 360 review, quote, "started
8 in 2017 and continued forward for many years?"

9 A That sounds right. As I was describing --

10 Q Thank you.

11 A During my direct --

12 THE COURT: On cross, they can ask close-ended yes
13 or no. If you want to elaborate more you can when the NRA
14 questions you.

15 Q In 2016, that was before Mr. Spray was hired; is that
16 correct?

17 A Yes.

18 Q And Mr. Phillips was the treasurer and CFO at the time;
19 isn't that right?

20 A In 2017?

21 Q Yes.

22 A That is my understanding.

23 Q Okay.

24 MR. FARBER: We can take that slide down for a
25 moment. Thank you. So could we pull up slide 28, please.

BP

3363

R. Sullivan - by Defendants - Cross/Mr. Farber

1 Q And the slide we're going to pull up in a moment is the
2 slide that you made referring to the McKenzie Companies.

3 And I believe during some of your testimony -- I think
4 it was on direct -- you made some reference to economic factors
5 in I don't recall was it '21, 2022 regarding COVID and impact on
6 the NRA.

7 Do you recall that testimony?

8 A In a high level, yes.

9 Q What was the point you were attempting to make in
10 referencing those economic developments during that period of
11 time?

12 A The general point is that the economy in the
13 marketplace underwent changes. Those changes impacted many
14 organizations, including the NRA. As a result, it is sensible
15 in my view based upon my understanding of the facts to then
16 subsequently adjust the services and the fees that were agreed
17 to with MMP thereafter as noted in the slide in 2022.

18 Q So, is the point that the negotiations and MMP's
19 agreement to fee reductions in part reflected those changed
20 circumstances?

21 A Well, of course.

22 Q You've also got a reference in this slide under 2018 to
23 "Vendor Letters sent to McKenzie Companies."

24 Do you see that, Dr. Sullivan?

25 A Yes, I do.

BP

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R. Sullivan - by Defendants - Redirect/Ms. Rogers

1 Q And you mentioned some vendor letters that were sent to
2 other NRA vendors around that time. Do you recall that
3 testimony?

4 A Yes. There were many, many letters that were sent out.

5 Q And those were sent by Mr. Phillips; isn't that right?

6 A He was the signatory to those letters.

7 MR. FARBER: Nothing further.

8 THE COURT: Anything, Mr. Fleming?

9 MR. FLEMING: No.

10 THE COURT: Anything further from the NRA?

11 MS. ROGERS: Just a little.

12 REDIRECT-EXAMINATION

13 BY MS. ROGERS:

14 Q Dr. Sullivan, you mentioned with the attorney general
15 that you were not allowed to testify in the DC case against the
16 NRA's charitable foundation affiliate, the NRA Foundation. Do
17 you recall that?

18 A I do.

19 Q I know you're not a lawyer and you didn't work on that
20 case, but are there any differences between that case and this
21 case that you think are relevant?

22 A The issues there as I recall them were distinct and
23 very different than here. It had to do with the relationship --

24 MR. CONLEY: Objection, legal conclusion.

25 THE COURT: You asked the question. I think he can

BP

3365

R. Sullivan - by Defendants - Redirect/Ms. Rogers

1 respond.

2 Overruled.

3 A As I recall it, it involved issues between the
4 relationship between a 501(c)(3) and a 501(c)(4) and, thus, the
5 governance between those two in that relationship.

6 I -- I am an economist as, again, I think we've
7 discussed and mentioned many times; and, thus, as that case
8 evolved based upon my understanding of the facts there, certain
9 claims were dropped from that case which meant that my testimony
10 and my role was no longer relevant.

11 Q Mr. Conley also mentioned that during your deposition
12 you refused to provide expert testimony on damages caused by
13 embezzlement to the San Diego Zoo.

14 Do you recall that?

15 A I do.

16 Q And you said wouldn't testify about harm that was
17 inflicted; right?

18 A That's right.

19 Q Do you think differently about questions like that when
20 you're testifying as an expert than a corporate decisionmaker
21 might think about embezzlement in realtime?

22 MR. CONLEY: Objection, leading.

23 THE COURT: Overruled.

24 A Absolutely. Ex-post versus Ex-ante, so when I am
25 performing analysis of damages or harm as an expert, it is

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R. Sullivan - by Defendants - Redirect/Ms. Rogers

1 ex-post. That means it is after the fact, have the benefit of
2 the hindsight, perform the analysis based upon the data and
3 information that actually occurred.

4 When making business decisions in realtime, those are
5 done ex-ante, before hand, when we have the information set only
6 at that point in time and folks make the best decisions that
7 they can. That's the prudent business person judgments based
8 upon what they expect to happen based upon the inherently
9 limited information that they have at any given point in time.

10 Q Acting as a prudent business person rather than an
11 expert witness, did you form a view about whether it was harmful
12 that someone embezzled from the zoo?

13 A Well, certainly -- and I testified to this at my
14 deposition -- it is not a good thing that happens at the zoo or
15 otherwise, we seek to prevent embezzlement. That is a bad
16 thing.

17 But in terms of the harm that was caused when I am
18 engaged as an expert, that becomes an issue of much more
19 precision that I am required to implement in my analysis.

20 Q Finally, you testified with Mr. Conley that the NRA has
21 paid a couple of different firms, Intensity and Secretariat, for
22 your time.

23 Do you recall that?

24 A Generally, yes.

25 Q I just want to make clear for the jury, there was a

BP

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R. Sullivan - by Defendants - Recross/Mr. Conley

1 merger and these firms changed names. To your knowledge, the
2 NRA has not paid multiple people for your time at the same time;
3 right?

4 A Absolutely. So, I was employed by Intensity.
5 Approximately one year ago Intensity was acquired by
6 Secretariat; and, thus, our engagement and services simply
7 transitioned at a point in time.

8 MS. ROGERS: Nothing further.

9 THE COURT: Any other questions?

10 MR. CONLEY: Very brief.

11 RECROSS-EXAMINATION

12 BY MR. CONLEY:

13 Q Dr. Sullivan, you were asked about the MMP renegotiated
14 contract.

15 Do you recall that?

16 MS. ROGERS: Scope.

17 THE COURT: Was it just asked about it just now?

18 MR. CONLEY: Yes, by Mr. Farber.

19 THE COURT: Okay.

20 Q Is it your understanding that the NRA renegotiated the
21 fee arrangement with MMP because of COVID?

22 A No. COVID and other factors, including the AG's action
23 against the NRA, are factors that affected that renegotiation in
24 my view.

25 Q And you're aware that the agreement -- the new

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R. Sullivan - by Defendants - Recross/Mr. Conley

1 agreement with the MMP, the renegotiated agreement was a
2 three-year term?

3 A That sounds right. I could not validate that for you
4 sitting here right now.

5 Q And it is your understanding that it is for the same
6 services, right?

7 A It is a different scope, but, yet, similar services.
8 That's the point I was seeking to make earlier; hence, the
9 servicing level impacts.

10 MR. CONLEY: Thank you, Dr. Sullivan.

11 THE COURT: Anything else?

12 MR. FARBER: Nothing from me, your Honor.

13 THE COURT: You have to answer one of my favorite
14 questions and somebody asked you if you were the founder of
15 the entity and you were able to answer honestly yes. So
16 that's impressive.

17 THE WITNESS: Well, thank you.

18 THE COURT: All right. Well, anyway, so you're
19 free to go. Thank you.

20 THE WITNESS: Thank you.

21 (Whereupon, at this time the witness was then
22 excused.)

23 THE COURT: Before we get to the next witness
24 because you've now seen a couple times the different
25 defendants' lawyers sort of ask questions in somewhat of a

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R. Sullivan - by Defendants - Recross/Mr. Conley

1 different context.

2 So, there's an instruction you'll hear again from
3 me later. I think I've given a similar instruction before;
4 but you know and just to remind you the plaintiff has
5 asserted claims against four defendants here. There's the
6 NRA, the entity, and the three individuals, Mr. LaPierre,
7 Mr. Phillips and Mr. Frazer. So, we're effectively
8 conducting four trials at the same time.

9 It will, ultimately, be your obligation to evaluate
10 the evidence as it applies or fails to apply as to each
11 defendant separately. So, my instructions will tell you
12 that you must consider each defendant separately. So, you
13 have to in the end return a separate verdict concerning each
14 of the causes of action against each defendant, and the
15 verdicts need not be the same, though they may be.

16 So, they each have their own interests; and so
17 while they're all sitting over there together, they have to
18 be evaluated independently. And we'll make that clearer and
19 clear in the instructions, but I just didn't want you to be
20 confused by the fact that sometimes they're cross-examining
21 one of each other's witnesses. There are different claims
22 against different of them.

23 All right, next witness.

24 MR. PETERS: The NRA calls Tom King.

25

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T. King - by Defendants - Direct/Mr. Peters

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2

T H O M A S H. K I N G

3

called as a witness in behalf of the Defense, having been

4

first duly sworn by the Clerk of the Court, took the

5

witness stand and testified as follows:)

6

THE CLERK: State your name.

7

THE WITNESS: Thomas H. King.

8

THE CLERK: Spell your last name.

9

THE WITNESS: K-I-N-G.

10

THE CLERK: Thank you. You may be seated.

11

DIRECT-EXAMINATION

12

BY MR. PETERS:

13

Q Good morning.

14

A Good morning.

15

Q Noah Peters for the National Rifle Association.

16

Mr. King, can you state your name for the record?

17

A My name is Thomas H. King.

18

Q You lived in New York all your life?

19

A My entire life.

20

Q Can you tell me about your family background?

21

A Yeah, I've been married for 55 years to the same woman;

22

and I have two children, a boy and a girl and four

23

grandchildren, three boys and a girl.

24

Q Can you tell me a little bit about your education

25

background?

BP

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T. King - by Defendants - Direct/Mr. Peters

1 A I went to school on a basketball scholarship
2 originally, decided to become a student. My father got sick.
3 That was at Plattsburgh State University, and I wound up
4 transferring to St. John's Fisher college in Rochester, New
5 York.

6 THE COURT: You have to speak just a tad slower.

7 THE WITNESS: I'll calm down in a minute.

8 THE COURT: It is a big room.

9 Q Can you tell the jury a little bit about your
10 employment history?

11 A Yeah, it's been varied. I started out as a marketing
12 manager for a transportation-related company. I wound up being
13 recruited to go to work for an equity company where I had
14 various duties. I wound up being the vice president and general
15 manager of a division of which I had full profit and loss
16 control.

17 Q And then did you ever come to be involved -- first off,
18 did you ever work in the insurance industry?

19 A Yes, I did. I actually forgot about that. I owned an
20 insurance agency for about twenty years.

21 Q And then how did you come to be involved -- did you
22 come to be involved with the New York State Rifle and Pistol
23 Association?

24 A Yeah, I did, kind of inadvertently. I was familiar
25 with the legislature because of the business that my wife

BP

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1 operated, and the president of the New York State Rifle
2 and Pistol Association asked me if I would be willing to
3 take a position as the legislative director of the Rifle and
4 Pistol Association and two, three years later, I wound up as
5 president.

6 Q Now, what is your current position with the -- we'll
7 call it the State Association?

8 A I'm executive director/president of the State
9 Association.

10 Q All right can you tell us before you go further, can
11 you tell us a little bit about the relationship between the
12 State Association and the NRA?

13 A We're a state affiliate of the NRA. We're totally
14 separate corporations, separate board of directors, separate
15 officers; and we do almost everything on our own. What we use
16 the NRA for is for the literature that they can provide and the
17 programs that they developed over their 171 years.

18 (Continued on next page)

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King - by Defendant - Direct/Mr. Peters

1 Q Now, are you compensated by the State Association?

2 A For the first 13 years, I was not compensated, but
3 after 13 years, the Board of Directors came to me and asked me
4 if I would take the position of executive director.

5 Q Okay. Why are you compensated?

6 A I started out at \$90,000 a year, and I'm now making
7 \$110,000 a year.

8 Q My question is why.

9 A Oh, why. I'm sorry. Because it's a 28/7 job. I get
10 calls all days and nights, people asking what's going on in the
11 state legislature; what's going on with the Second Amendment
12 rights; what are you doing about it? Can you help me do this?
13 I am being persecuted because I can't get a pistol permit. My
14 Second Amendment rights are being violated.

15 And these rank and file people have -- it's a burning
16 fire that they have and a belief in the Constitution, and they
17 don't know any time. I have taken calls at 12:30 a.m., you
18 know, from members.

19 Q So how many hours a day do you think you spent speaking
20 with Grassroots NRA members?

21 A Oh, I have never thought about it that way, but
22 probably -- probably 60 percent of my time.

23 Q Now, do you consider your tenure as president of the
24 State Association you have to have been successful?

25 A You know, I don't like to brag, but yeah, I do.

KM

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King - by Defendant - Direct/Mr. Peters

1 When I started, the State Association had about
2 2,000 -- had about 6,000 members, and they had about \$2,000 in
3 the bank and about \$6,000 in debt.

4 Q How about now?

5 A How about now? Now, we own a building that's valued at
6 about \$350,000. We have a fairly large sum of money in savings
7 and bonds and usually cash balance of around \$40,000 in our
8 operating account, and the last that I saw, our net worth is
9 calculated about 1.2.

10 Q Okay. About how many members do you have?

11 A We have -- in New York State right now, we have about
12 22,000 direct members, and we have 250 sport associations
13 throughout the State that each have, oh, approximately minimum
14 of 100 per organization, you know, bringing it up to a vast
15 number. And you know, somewhere up around 200,000. And I say
16 that to people. And they say, yeah, sure. But it's the truth.
17 We have -- that's how many people we touch on a weekly or daily
18 basis.

19 Q And what kind of programs does the State Association
20 put on?

21 A Well, you know, I -- people ask me that all time, and I
22 said, well, you know, if you -- if you are an NRA member and
23 you're a Rifle and Pistol Association member, the programs are
24 essentially one and the same.

25 We train women in shooting sports. We train -- we have

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King - by Defendant - Direct/Mr. Peters

1 a program called Don't Be a Victim, and we tell people the
2 processes to follow so that they are not victimized while they
3 are out on the street or walking.

4 We have shooting programs that compete nationally and
5 state-wide. We -- and the one that I am particularly proud of
6 is we have a program calmed Eddie Eagle that the NRA has that we
7 fully support that -- teaching kids to, if they come upon a gun,
8 to leave the room, tell their parents and/or leave -- leave --
9 tell your parents, don't touch it, and leave the room. Okay.
10 It's a program that teaches avoidance for young kids so that
11 there is not something happening to them.

12 Q And does the State Association ever engage in
13 litigation?

14 A Oh, yes, we do.

15 Q Okay. Does the NRA ever support those efforts?

16 A For the most part, they -- they stand behind us all of
17 the time.

18 Q Okay. Was there -- is there a particular case in 2022
19 with the decision in 2022 that the State Association brought?

20 MS. CONNELL: Objection, your Honor. Your Honor,
21 irrelevant. Not probative of the claims in this case

22 THE COURT: I'm not sure where this is going, but
23 it sounds pretty far afield.

24 MR. PETERS: I am just asking him about the work
25 that the State Association does with the NRA on --

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King - by Defendant - Direct/Mr. Peters

1 THE COURT: I know. I just don't know how is that
2 relevant to the case.

3 MS. ROGERS: Your Honor, sorry. The State
4 indicated that it was challenging the NRA's support for its
5 New York affiliate as a related party or conflict
6 transaction.

7 The NRA drives immense value from this including a
8 winning Supreme Court case that we are about to discuss. So
9 if they are going to challenge that transaction, we get to
10 put in evidence about it.

11 MS. CONNELL: We are not challenging the NRA's
12 support activity. So payment for Second Amendment challenge
13 which we have endeavored a great effort to keep out of this
14 case, that's not an issue in this case, and I believe Mr.
15 King just testified the NRA supported that.

16 THE COURT: Well, is there a related-party
17 transaction --

18 MS. CONNELL: We are talking --

19 THE COURT: -- that's come up?

20 MS. CONNELL: The use of any NRA funds to pay Mr.
21 King's 90,000 a year salary, and I'll question him about
22 that.

23 THE COURT: Okay. So I guess I don't recall
24 hearing that during the State's case. Is that one of the
25 related-party transactions?

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King - by Defendant - Direct/Mr. Peters

1 MS. CONNELL: It's not something we haven't put in
2 evidence yet.

3 As you know, due to time constraints, we have been
4 trying to pick which related-party transaction we are going
5 to focus on. That wasn't one we put in our case in chief.

6 THE COURT: So it's not in the case.

7 MR. PETERS: She just said they are going to cross
8 him on it.

9 MS. CONNELL: Well, on his receipt of \$90,000.

10 THE COURT: If it's not a claim, it's not a claim;
11 right?

12 MS. CONNELL: Right. That's right, your Honor.

13 MS. ROGERS: So the confusion, your Honor, is that
14 it was in their discovery responses, their list of
15 transaction actions they were trying to put in. They failed
16 to put in any evidence about it.

17 If they're not going to try to shoe horn it into
18 cross, then maybe we don't need direct on it.

19 THE COURT: There is no shoe horning into anything
20 because the State's evidence is in. So if there is no
21 claim -- if this witness is here to testify about a claim
22 that there is no evidence of --

23 MR. PETERS: With all due respect --

24 THE COURT: We have enough to get through.

25 MR. PETERS: I understand. This will be quick. I

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King - by Defendant - Direct/Mr. Peters

1 also -- it goes into his role in terms of his board
2 oversight roles, the fact that he does have experience
3 overseeing legal cases, and we are about to get into that
4 directly.

5 THE COURT: He's -- that sounds like you're talking
6 about an expert witness which this would not be.

7 MR. PETERS: We are just talking about a Board
8 member and what his -- what his basis is for the oversight
9 that he exercises over the NRA.

10 THE COURT: That he exercises over the NRA?

11 MR. PETERS: As a Board member.

12 THE COURT: He is a Board member of the NRA?

13 MR. PETERS: Yes.

14 THE COURT: But you hadn't already elicited that.

15 MR. PETERS: No.

16 THE COURT: We -- you can ask him questions about
17 his membership on the NRA Board, but if the transaction that
18 you're about to tie this all into -- I mean, if the jury
19 hasn't heard about it from the State, it's not in the case.
20 So unless you want to bring it into the case, you can skip
21 over it.

22 MR. PETERS: Yeah, I'm not going to bring in the
23 thing about the salary. I was not going to -- that's a
24 first time hearing about that particular thing. I was just
25 going to ask him -- so maybe I'll do it this way.

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King - by Defendant - Direct/Mr. Peters

1 THE COURT: But -- all this other stuff that you're
2 about to talk about, I don't think it's -- it's not what
3 this case is about.

4 MR. PETERS: I understand.

5 Q So does the State Association engage in advocacy at the
6 State Capitol in Albany?

7 A Yes. We spend approximately 15 percent of our time at
8 advocacy for the Second Amendment at the State Capitol.

9 Q At some point did you become a member of the NRA's
10 Board?

11 A Yes, I did.

12 Q Okay. Now do you have experience overseeing and
13 working with lawyers and law firms?

14 MS. CONNELL: Objection, your Honor. Leading.

15 THE COURT: What's that?

16 MS. CONNELL: Leading.

17 THE COURT: He just asked.

18 No. Overruled.

19 A Yes. You know, all through my career, I've -- as
20 president -- executive -- I mean, as vice-president and general
21 manager of the corporation I was running, I dealt with lawyers
22 on a weekly basis.

23 Yeah, I have a lot of experience dealing with lawyers.

24 Q What about in your role as executive director of the
25 State Association?

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King - by Defendant - Direct/Mr. Peters

1 A Yeah. We have a -- we have a lawyer on our staff and
2 who evaluates legislation and looks at avenues that we should
3 take to see what our goals are and how we are going to reach
4 them.

5 Q Okay. So have you ever been involved in cases that
6 have come before the Supreme Court, for example?

7 A Yes, we have.

8 MS. CONNELL: Objection, your Honor.

9 THE COURT: You can answer. We are not going to
10 get into the details of all of this.

11 MR. PETERS: Okay.

12 A Yes. We have NYSRPA versus Bruen. It was a landmark
13 decision in June of 2022.

14 Q And the State Association was a plaintiff in this case?

15 A We were a plaintiff in that.

16 Q And you worked with the NRA on that?

17 A We worked with the NRA entirely on that.

18 Q What about your experience with financial oversight.
19 Can you describe that a little bit.

20 A Well, yeah, as a vice-president and general manager of
21 a corporation -- New York State corporation, you know, that I
22 had profit and loss experience with. I had to deal
23 with financial dealings, you know, every day I was working.

24 Plus, as the New York State Rifle and Pistol
25 Association executive director and president, we have a yearly

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King - by Defendant - Direct/Mr. Peters

1 budget, and we -- you know, we have fundraising goals, and
2 that's all finance. And of course, I dealt with it most of my
3 life.

4 Q So have you used the skills and experience you just
5 discussed in your role as a NRA Board member?

6 A Of course. It's hard not to use your life experience
7 in any issues that you're dealing with.

8 Q So how did you come to be involved with the NRA Board?

9 A It's kind of a funny story. There is a fellow who was
10 really prominently known in the -- in the Second Amendment
11 fight, and I met him at a large event, and this fellow who is a
12 friend of mine said I want to you meet someone and he went up
13 and introduced me to him. And the guy's name was John Sigler.
14 And this friend of mine walked away. And John Sigler happened
15 to be the First Vice-President in the NRA at the time, and he
16 looked at me and he shook my hand. He said, it's good to meet
17 you. And I said, It's fine to meet you. But who are you?

18 There was a few people standing around, and that
19 brought a lot of chuckles. Honestly, I thought it was going to
20 end my career right then, but obviously, it didn't.

21 Q So how did you -- did you initially after that run for
22 election on the Board or did you do something else?

23 A No. I -- Mr. Sigler came to me and he said because
24 you're involved with the New York State Rifle and Pistol
25 Association, our State Association, I'd like you to serve on our

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King - by Defendant - Direct/Mr. Peters

1 Clubs and Associations Committee, and I did that for three
2 years.

3 Q Okay. And then was there a time where you stood for
4 election to the Board of Directors?

5 A Yes, I did. And that was in 2007 I think it was, and
6 yeah. Yes, I did.

7 Q Okay. Have you ever been paid for your service on the
8 Board, by the way?

9 A No, I have not.

10 Q Okay. Now, can you describe how the Board of -- NRA
11 Board of Directors is elected?

12 A Yes. One third -- there is 76 members on the Board.
13 One third of them are elected every year, and there is a 76th
14 director who serves one-year term, and he is selected from the
15 -- one of the people who have not been successful in the
16 election.

17 Okay. The -- the -- the members at large nominate
18 people for the NRA Board, and in our monthly periodical, there
19 is a page that says "Nominate Your Director," and it's a short
20 form that people fill out, and they send it in to the
21 secretary's office who then turns it over to the nominating
22 committee. So we are actually nominated by the rank and file
23 members of the NRA.

24 Q So do you know who recommended you for nomination to
25 the Board?

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King - by Defendant - Direct/Mr. Peters

1 A I have no idea.

2 Q Okay. You -- were you selected by anyone or were you
3 elected some other way?

4 A I'm not sure I understand.

5 Q Were you at any point elected by the NRA's members?

6 A Oh, yeah. After the nominating committee made their
7 choices and recommended the slate to the NRA Board of Directors,
8 it's published, and there is a national election, and the
9 ballots are published in our monthly periodicals to all Life
10 Members of the Association. And like I said, it's a national
11 election, and you run on what people can know about you, what
12 you've accomplished and --

13 Q So do people campaign for seats on the Board, so to
14 speak?

15 A Yes, they do. You know, it's -- and it gets more and
16 more competitive every year.

17 There is -- if you go to Facebook, you go to Twitter,
18 you go to LinkedIn, you go to any of the websites, you will see
19 advertisements. My name is Jack Smith. I am running for the
20 NRA Board of Directors. Please support me. And there is
21 usually a short bio. It's very competitive.

22 Q If someone isn't selected or placed on to the ballot by
23 the nominating committee, does that mean they can't be on the
24 Board of Directors?

25 A No. There is another process where you can go out and

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King - by Defendant - Direct/Mr. Peters

1 get a number of petitions signed, and you submit it to the
2 secretary's office. And if you reach that number of signatures
3 on the petition, and they are all legal voters in the NRA, that
4 in turn is turned over to the nominating committee. And then
5 the full -- a full list or a full slate of candidates will come
6 out including the recommended members from the nominating
7 committee as well as the prospective Board members who came on
8 by a petition.

9 Q So have you known of Board of Directors who have
10 been -- gotten on the ballot by petition who are elected?

11 A Yes. There is four or five on the Board right now.
12 And over the course of my career at the NRA, I would say there
13 had to be 12 or 15, and I actually -- I don't know the exact
14 number, but it's more than ten. I know that.

15 Q Now, have you ever -- now, when the votes -- when
16 people cast their ballots, is there anyway to verify the votes
17 and tabulate them independently of the NRA?

18 A Oh, the NRA doesn't count them. It goes to an
19 accounting firm, and they receive the ballots by a direct mail.
20 They count them, and they are the ones that bring the results to
21 the NRA at our annual meeting where the successful candidates
22 are announced.

23 Q So you've spoken a little bit about the nominating
24 committee.

25 Can you -- have you served on the nominating committee?

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King - by Defendant - Direct/Mr. Peters

1 A Yes, I have. I have served on the committee, and I
2 have been Chairman of the Committee.

3 Q Okay. How does the nominating committee select or how
4 does the nominating committee kind of vet people for the ballot?

5 A Well, they -- they submit their application with a bio,
6 and there is usually I think about nine members on the
7 nominating committee, and the applications are spread evenly
8 amongst the members, and we all vet the number of people that we
9 have had, and we come back at another meeting and report on
10 those members and discuss them, and you know, vet whatever
11 problems there may be or whatever successes they may have, and
12 that's what we -- that's what's used to pick the members who are
13 running for the Board.

14 Q At any point did an officer tell you who to put on the
15 ballot of the NRA?

16 MS. CONNELL: Objection, your Honor. Leading.

17 THE COURT: Overruled.

18 Q Go ahead.

19 A You know, I don't want to sound -- no, no one has ever
20 told me anything, okay, and I would be very offended if someone
21 told me who I had to vote for.

22 Q And so are all people on the nominating committee
23 members of the Board or are some not members of the Board?

24 A No. Approximately half of the nominating committee are
25 Non-Board members.

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King - by Defendant - Direct/Mr. Peters

1 Q Okay. Now at high level, could you tell me about the
2 credentials of your fellow Board members?

3 A Yeah. If -- I'll never forget the first Board meeting
4 that I went to, and I walked in and I said, wow, there is
5 Congressman Bob Barr, there is Senator so and so, Governor --
6 the Governor of Maryland, the Governor of Missouri, you know,
7 and lawyers, bankers. You know, all level -- high-level people
8 as well as rank and file members. Okay. And it's an amazing
9 Board. Okay. And one of the things that I can really say that
10 out of the 76 board members, there is 76 Type A personalities.

11 Q Now, do you think it's appropriate for a member -- for
12 a director of a State Association to also be a Board member of
13 the NRA?

14 A Yeah. I don't see any reason why we shouldn't be
15 because we are the grassroots association and the grassroots
16 connection to -- at the State level to the NRA.

17 You know, this is a big nation; okay. And if you had
18 to put somebody on the ground everywhere to try to support your
19 cause, it wouldn't work. That's what the -- that's what the --
20 the State associations are for.

21 And as an aside, in 1871 when the NRA was formed, they
22 were formed by the New York State Rifle and Pistol Association
23 because we predated them.

24 Q About how many State associations are there?

25 A There is about -- there is usually 50. I think there

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King - by Defendant - Direct/Mr. Peters

1 is 48 or 49 right now.

2 Q How many local affiliates are there of the NRA?

3 A Oh, thousands. I have no idea. I mean, like I said
4 earlier, we have 250 in New York, and there are some that are
5 not affiliated with us that are affiliated with the NRA. I
6 honestly don't have no idea, but there's somewhere around 5
7 million gun owners in New York State.

8 Q Do the members of the Board of the NRA Board always
9 agree?

10 A Well, I think I just said that there were Type A
11 personality, and no -- that -- that doesn't happen. No is the
12 answer.

13 Q Is there ever a debate between the Board members about
14 decisions that they come to?

15 A Oh, sure, there is always a debate. You know, the --
16 we all have opinions. We all have ideas how things should be.
17 Debates.

18 If you come out during any of the breaks and in any of
19 the action of the committee meetings or even the Board meeting
20 and you sit at a table where three or four Board members are
21 drinking coffee, you're always going to hear them talking about
22 issues.

23 Q So in what ways do you -- does the Board exercise
24 oversight over the NRA?

25 A Well, just to that we -- the Bylaws state that we have

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King - by Defendant - Direct/Mr. Peters

1 procedural -- operational procedures that we set in place that
2 guide the NRA. We hire Wayne LaPierre. We hire the secretary,
3 and we hire the treasurer on a yearly basis at our annual
4 meeting.

5 Q Do you understand the Board as having governing
6 responsibility for the NRA?

7 A Oh absolutely.

8 Q Okay. Now you talked about the NRA hiring Wayne
9 LaPierre.

10 So how are officers of the NRA chosen?

11 A They are chosen from the Board of Directors, and they
12 have to go before the nominating committee again and convince
13 the nominating committee again that they are the best for the
14 office, and they -- you know, I've -- on the committee that I
15 have sat on, I had talked to a prospective secretary
16 vice-president for probably 45 minutes, you know, and it's not
17 something that we take lightly.

18 Q So how often does the Board vote on who should serve as
19 executive vice-president?

20 A Every year.

21 Q Okay. What about -- same for secretary?

22 A Same for secretary.

23 Q All right. What about for treasurer?

24 A Same for treasurer.

25 Q Okay. Now, is there ever a debate among the Board

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King - by Defendant - Direct/Mr. Peters

1 members as to whether someone should continue in those roles?

2 A Oh, of course. All the time.

3 Q Okay. What about the president? How is the president
4 chosen?

5 A Through the nominating committee recommended to the
6 Board of Directors. And then in an election at the annual
7 meeting, he is elected.

8 Q Okay. And what about the vice-president?

9 A Same way.

10 Q Okay. Now, how are committee assignments determined at
11 the NRA?

12 A That's the prerogative of the president. You know, he
13 knows -- you know, the presidents are usually longer serving
14 Board members who been there, and they know the people. They
15 know their strengths, and they -- he selects the chairman and
16 the committee members based on their strengths and where he
17 feels they could best serve the members and serve the NRA.

18 Q About how many committees does the NRA have?

19 A Oh, I think 32, 33.

20 Q Do they exercise oversight of the NRA?

21 A They recommend to the Board of Directors who has the
22 oversight.

23 Q Okay. Now, have you ever been -- how many -- do you
24 regularly attend different committee meetings?

25 A Yeah. I serve on five or six committees, okay, and any

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King - by Defendant - Direct/Mr. Peters

1 committee meeting -- and I attend a lot more as long as it
2 doesn't -- it doesn't conflict with the committees that I serve
3 on.

4 Q Have you ever been denied information that you felt you
5 needed to do your job as a Board member?

6 A Never.

7 Q Okay. Have you ever -- always felt well-informed in
8 your role on the Board of Directors?

9 A Yes. You know, if you pay attention at the Board
10 meetings, the information is always always given to the Board,
11 and if there is anything you miss, we get a compendium of the
12 minutes that's probably 150 pages long that's mailed to us
13 shortly after the Board meeting by the secretary's office. And
14 any of the questions you may have or what went on, the answers
15 are in the minutes.

16 Q Has anyone ever told you how to vote for an NRA officer
17 position when the Board is exercising that responsibility?

18 A No.

19 Q Do you oversee the NRA's legal spends?

20 A No. The Board --

21 Q Let me strike that. Does the Board of Directors
22 oversee the NRA's legal spends?

23 A Only in that we have, you know, the oversight approval,
24 and if there is bills that are coming up, we will discuss them
25 and vote on them and whether or not we are going to continue to

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King - by Defendant - Direct/Mr. Peters

1 spend the money and how we are going to do it.

2 Q Without getting into privilege information, are you
3 ever briefed by the NRA's lawyers as a Board member?

4 A Every since this action started, they brief us at every
5 Board meeting, and they also -- there are occasional, you know,
6 privileged communications that are sent out to us.

7 Q Okay. Now, in your role as a Board member, do you ever
8 talk to -- how often do you communicate with the officers of the
9 NRA?

10 A You know, frequently. I mean, you know, there are
11 times that I'll talk with them three or four times a week.
12 There are times I'll talk to them twice a month. Okay. It just
13 depends on what's going on. And Wayne has always been
14 available. I had Wayne's cell phone number. I do call him, and
15 if he was busy, he would call me back.

16 Q Do you ever talk with other directors about matters
17 pertaining to NRA's governance?

18 A Oh, yeah. It's not a matter of having to speak about
19 it because everybody is concerned about that.

20 Now, you got to remember, the people that are on this
21 Board, the people have great reputations; okay. Ex-senators,
22 congressmen, you know, governors, lawyers; okay. They don't
23 want to do anything, and they will not -- they would not -- you
24 know, neglect their fiduciary responsibility and take the risk
25 of ruining their reputation.

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1 Q Now, in your role as a Board member, did you ever have
2 discussions with government officials?

3 A Oh, absolutely all the time and as a State Association
4 executive director as well.

5 Q Did you ever have any discussions in 2017 with
6 government officials that gave you concern?

7 A Oh, yes, I did. I had a call from the then Attorney
8 General who called me and who I have had a kind of a working
9 relationship with, and he said, you know, you got to be careful,
10 Tom. There's a storm coming. There's some people aligning
11 against you and the NRA, and I would suggest that you take this
12 very seriously and that you hire a good attorney -- good New
13 York City attorney who knows his way around the courts and can
14 do a good job for you.

15 Q When -- when did that conversation take place?

16 A Late Spring of -- I mean, late Fall of 2017.

17 Q What was your reaction upon hearing this information?

18 A Well, I -- immediately I called -- I called the NRA and
19 talked to Wayne and explained to him what I had been told and
20 what was going on.

21 (Continued on the following page.)

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T. King - by Defendants - Direct/Mr. Peters

1

2 Q And what did you tell Wayne?

3 A I told him about the conversation, and I told him that
4 we were advised that we should probably hire a good New York
5 city attorney to represent us in the case.

6 Q Now, was it general idea that the government agencies
7 would be exercising oversight, was that different in some way to
8 you?

9 A Well --

10 MS. CONNELL: Objection, your Honor.

11 THE COURT: Overruled.

12 A No, I've been involved in -- tangentially in the
13 political system for twenty years, and I've watched the
14 regulations increase and I've watched the ideological divide
15 between people. I've watched the animus for the 2nd Amendment
16 grow and grow and grow.

17 And so, no, I wasn't surprised at this at all. I
18 watched it on an everyday basis.

19 Q So, after you had that conversation with Mr. LaPierre,
20 what did the NRA do after that?

21 A Well, I'm sure there was some discussion that I wasn't
22 privy to; but a couple weeks, maybe two, three weeks later
23 I got a call from Mr. LaPierre; and he asked me if I could
24 recommend an attorney from New York.

25 And the reason he did that, he was aware that I had

BP

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T. King - by Defendants - Direct/Mr. Peters

1 just previously six months had hired a very good New York city
2 law firm.

3 MS. CONNELL: Objection, your Honor. Move to
4 strike to the extent he's talking about what Mr. LaPierre
5 said out of court and Mr. LaPierre's state of mind.

6 THE COURT: Overruled.

7 A He asked -- you know he asked me -- he knew that I had
8 just hired a New York city law firm to rewrite the Bylaws of the
9 State Association because I was concerned before I got any
10 warning at all that there was a storm coming, I knew that it was
11 going to happen.

12 I had a daily -- daily basis I dealt with the
13 politicians in New York, and I knew that it was coming. So, we
14 had this very, very high priced law firm rewrite all of our
15 Bylaws to make sure that we were in line with what the New York
16 State laws not-for-profit laws call for.

17 Q When you say the storm is coming, what do you mean by
18 that?

19 A Well --

20 MS. CONNELL: Objection, your Honor.

21 THE COURT: Overruled.

22 A The -- what was happening was that the -- the voice was
23 getting louder. There were more people legislatively and
24 media-wise that were promoting this anti-gun clause and ignoring
25 -- ignoring the facts, and I knew that it was going to come down

BP

3395

T. King - by Defendants - Direct/Mr. Peters

1 to, you know, associations were going to be looked at. They
2 were going to be investigated.

3 And so that's -- that's what I meant by the storm,
4 okay. There was an offensive coming against the 2nd Amendment.

5 Q Do you know whether the NRA ended up retaining counsel
6 in response to these conversations you described?

7 A Well, yeah, I recommended the law firm I was with, but
8 they couldn't take the job because it was conflict of interest.
9 But the lawyer that I dealt with recommended two law firms,
10 okay; and one of them was the Brewer firm and the other I just
11 don't remember the name now because it was -- I just don't
12 remember it.

13 Q Without getting into privileged information, did you
14 hear -- were you part of presentations from multiple law firms?

15 A Yes, at a -- at a -- I think it was an executive
16 counsel board. It may have been a special board meeting that a
17 number of -- a number of attorneys came in and for lack of a
18 better term made a pitch to the NRA to represent us in all the
19 troubles that were coming.

20 Q And so you made a recommendation to leadership as to
21 who it should hire?

22 A I recommended that I think we should go with the Brewer
23 firm.

24 Q Do you -- without discussing privileged communications,
25 do you still think that hiring the Brewer firm was a good

BP

3396

T. King - by Defendants - Direct/Mr. Peters

1 idea?

2 MS. CONNELL: Objection, your Honor.

3 THE COURT: Overruled.

4 A Yes, I do.

5 Q Okay. All right, so when -- were there any other
6 events in late 2017 or early 2018 that increased your concern
7 about the -- about the regulatory situation in New York?

8 MS. CONNELL: Objection, your Honor.

9 THE COURT: This is in connection with legal spend
10 still?

11 MR. PETERS: Yes.

12 THE COURT: Overruled.

13 A There was a press release that then Governor Cuomo
14 released that was in all of the newspapers that was touting what
15 the Department of Financial Services -- what he instructed the
16 Department of Financial Services to do; the financial companies
17 and the insurance companies to take a look at their relationship
18 with the NRA because the State was going to take a look at their
19 relationship with the companies if they didn't.

20 Q At any point did the State Association lose its
21 insurance policies?

22 A We lost all of them. Within a very short period of
23 time we received cancellation notices from our insurance
24 companies. At the end of your term, we're sorry to say that
25 you're no longer going to be covered, okay.

BP

3397

T. King - by Defendants - Direct/Mr. Peters

1

2 Q Was that in relation to guns specific insurance or --

3 A No, no, this had to do with my directors and officers
4 insurance, errors and omissions insurance. The insurance on the
5 building that we owned, okay and the -- we go to gun shows where
6 we put on exhibits, okay, showing, you know, the programs that
7 we have; and they cancelled our liability insurance so that we
8 wouldn't be able to do that.

9 And besides that, I had hundreds, I mean hundreds of
10 members calling and telling me that their --

11 MS. CONNELL: Objection, your Honor.

12 THE COURT: Counsel, the only relevance of this is
13 that there's been a challenge to the legal spend, and we
14 don't need to get into the details of satellite litigation.

15 THE WITNESS: I'm sorry, your Honor.

16 THE COURT: No, it is not -- you were answering the
17 question.

18 Q So, did the NRA file a lawsuit in response to the
19 things that you're describing?

20 A Yes they did.

21 MR. PETERS: I'd like to move PX 352 into evidence,
22 or at least have our -- it is tab 3.

23 MS. CONNELL: Objection, your Honor.

24 MR. FARBER: Tab 3 of what?

25 MR. PETERS: Well, it should come up on the screen.

BP

3398

T. King - by Defendants - Direct/Mr. Peters

1 There it is.

2 THE COURT: Look, I'm going to sustain the
3 objection. The details of any other litigation is really
4 not what this case is about. You've made the point about
5 there being other litigation. I think that's really as
6 far as we need to go. The rest of it is I don't think
7 relevant.

8 MR. CORRELL: Your Honor, Mr. LaPierre has been
9 accused of failing to perform the duties of his position
10 appropriately, and one of the issues the AG has raised is
11 the amount of legal spend. It is hard for them to argue the
12 legal spend is excessive without allowing us to put before
13 the jury what the legal spend was for.

14 THE COURT: I've permitted him to answer questions
15 about the other litigations. It is just I think there's got
16 to be some boundary around it; otherwise, we're going to
17 have at some level all the court papers for all of these
18 cases would come flowing in here which is not something I
19 think makes any sense.

20 MS. ROGERS: Your Honor, if I may make a related
21 point. We agree that we don't want many trials on all the
22 other court cases or all the dockets come in. When other
23 separate lawsuits have been discussed, a pleading or two or
24 a filing has been introduced, we got that with the action
25 involving Colonel North.

BP

3399

T. King - by Defendants - Direct/Mr. Peters

1 And so if this were to come in, we would not spend
2 the time delving into and reading off into the record the
3 details of it. It would just be an evidentiary benchmark of
4 what was filed.

5 MS. CONNELL: Your Honor, the issues raised by the
6 attorney general on legal spend were issues raised by
7 multiple NRA board members about the amount of legal
8 spending; and the fact that the Brewer firm wasn't retained
9 correctly which was found to be true and that they asked for
10 an independent audit. That's what we raised, and that's
11 what's been raised here.

12 Letting the North complaint in is relevant because
13 it goes to the whistleblower retaliation that he was sued to
14 be ousted as a member. Letting this in when Mr. King has
15 said that he commenced an action and that the NRA has
16 supported the legal action was a backdoor method to get in
17 information that you, your Honor, has already precluded.

18 It is not relevant. It is not necessary. It is
19 prejudicial.

20 MS. ROGERS: Object to the characterization that
21 Colonel North was sued to be ousted as a member. That's a
22 mischaracterization of the court proceeding.

23 THE COURT: Insofar as it is relevant here, there
24 are claims that have been made about the amount of legal
25 spending. I've permitted some discussion about rationale

BP

3400

T. King - by Defendants - Direct/Mr. Peters

1 for it and the various litigations that have gone on.

2 I'm just thinking for a second. Now, is it your
3 intention, by the way, to bring in the court papers of
4 everything that the lawyers had worked on in the however
5 many year period of this case?

6 MR. PETERS: No.

7 THE COURT: Well, I am trying to get a sense for --
8 look, I think there is tangential relevance if there's a
9 dispute about legal fees. This is an example of a court
10 paper that the lawyers worked on.

11 So as long as we're not going down a hole of
12 getting into what each of these cases is about and getting
13 into the details of it, I'll permit this as an exemplar of
14 work that was done; but I'm really -- we all really have to
15 keep our eye on the ball here to get through this in time.

16 Without further adieu, I'll admit this PX 352 as an
17 example of the work that was done.

18 MS. CONNELL: Your Honor, please note it is over
19 plaintiff's objection as prejudicial and calling for
20 collateral matters.

21 THE COURT: Well, to be clear, we are not going to
22 walk through all these allegations and none of the things
23 that are alleged in the suit are evidence.

24 So, it is simply to show that this is work that was
25 done. Okay?

BP

3401

T. King - by Defendants - Direct/Mr. Peters

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MR. PETERS: Okay. Thank you, your Honor.

3

Q So PX 352, you've reviewed --

4

THE COURT: So, it is admitted.

5

MR. PETERS: Okay.

6

(Whereupon, at this time Exhibit PX 352 was

7

admitted and received into evidence.)

8

Q So, PX 352, is that the loss that the NRA filed in

9

response to what you described with the insurance and DFS?

10

A Yes, it is.

11

Q Did you receive regular briefings as a board member

12

about the status of this case?

13

A At every board meeting.

14

Q Do you know the status of the case right now?

15

A Yeah, it is before the US Supreme Court.

16

Q Okay. Now, you testified before about attorney --

17

getting a call from former Attorney General Schneiderman. Was

18

there anything else that occurred in 2018 that increased your

19

concern about the regulatory situation before the NRA?

20

MS. CONNELL: Objection, your Honor.

21

THE COURT: Overruled.

22

A Yeah. You know the media -- the media was covering

23

the merit of statements that Governor Cuomo that were coming out

24

of the attorney general's office that were come out of the

25

legislature about what was -- what was going on and how it was

BP

3402

T. King - by Defendants - Direct/Mr. Peters

1 limited and -- and just about every gun magazine and gun paper
2 and gun log was covering it.

3 So, it became a major concern because at that time we
4 had no -- we had no alternatives and, we were scrambling to find
5 insurance for our members.

6 Q Okay, what about was there anything else that happened
7 in 2018 that gave you cause for concern?

8 A Well --

9 MS. CONNELL: Objection, your Honor.

10 THE COURT: Overruled.

11 A There were, there were -- I mean there was, you know, a
12 couple press releases that the Governor made and there was the
13 filing of this; and I'm sure there were others, but I don't
14 recall right now.

15 Q Okay. Now, when you discussed before the lawsuit that
16 the attorney general filed, did you ever -- was there ever a
17 time when Mr. LaPierre addressed the board regarding the need to
18 undertake a course correction?

19 A Oh, of course. It was early on. I think it was in
20 2017 or 2018 he made that statement at a board meeting that
21 there were mistakes made -- and they were going to be rectified.
22 There was a new policy, essentially, a new sheriff in town, and
23 there were new procedures that were going to be followed and we
24 went on from there.

25 Q Did you ever ask Mr. LaPierre questions about the

BP

3403

T. King - by Defendants - Direct/Mr. Peters

1 allegations being made by the NYAG in her complaint?

2 A You know, not directly, but Mr. LaPierre addressed
3 those, okay; and he said there were mistakes made and
4 restitution was going to be made.

5 Q Did -- could this -- so, when this statement was made,
6 was it possible that it was made in April of 2019?

7 MS. CONNELL: Objection, your Honor.

8 THE COURT: On leading grounds?

9 MS. CONNELL: Yes, your Honor.

10 THE COURT: Overruled.

11 A That's -- that's when it happened. You know, the --
12 and the date sometimes it becomes foggy; but, yes, they were,
13 you know. The NRA board became very, very interested in what
14 was going on and very involved in what was going on; and, you
15 know, we were all looking to see what changes were going to be
16 made, how it was going to happen, how we were going to proceed
17 from there.

18 And, you know, frankly, you know did Wayne LaPierre
19 make mistakes? Yes, he did. Did Wayne LaPierre stand up and
20 say "I made these mistakes?" Yes, he did and he made
21 restitution. And, you know, and I love him for that because
22 there's -- there's not many people that will stand up and say
23 "I made a mistake and I'm taking the blame for it."

24 Q After Mr. LaPierre made these statements in April 2019,
25 did you perceive that the NRA was making progress in coming into

BP

3404

T. King - by Defendants - Direct/Mr. Peters

1 compliance with its policies?

2 MS. CONNELL: Objection, your Honor.

3 THE COURT: Sustained.

4 Q Did Mr. LaPierre's actions after April 2019 convince
5 you that he supported the course correction efforts?

6 MS. CONNELL: Objection, your Honor.

7 THE COURT: Less leading, I'll give you that so
8 I'll let it go.

9 A Yeah, yes, he did. Every board meeting it was
10 discussed at, there was a new financial team that came in.
11 There were some new chairmen. The Audit Committee was just
12 extremely active in looking at everything, and it was -- it was,
13 it was a new NRA.

14 Q Do you think that the board would have continued to
15 reelect LaPierre to his position if he had not supported the
16 course correction efforts?

17 A No.

18 MS. CONNELL: Objection -- sorry, slow on the draw.

19 Q Okay, so in your role as a board member you said
20 before, did you not, that you received regular briefings about
21 the progress of the course correction?

22 A Of course. At every board meeting and, you know, it
23 was in the minutes. Anybody who wanted to know anything could
24 get it out of the minutes or if they paid attention at the board
25 meetings, could understand what was going on.

BP

3405

T. King - by Defendants - Direct/Mr. Peters

1 Q Do you have any doubts about the NRA's ability to
2 fulfill its mission going forward?

3 A No, none at all.

4 Q And were you aware of as a board member, were you aware
5 of Mr. LaPierre's private plane travel prior to 2019?

6 A No, I was not.

7 Q Was anyone on the board aware of it?

8 A I don't know, I can't answer that question.

9 MR. FARBER: Objection, your Honor. Calls for
10 things that are firsthand knowledge, your Honor, of anybody
11 on the board would have.

12 THE COURT: Well, I guess he answered "I don't
13 know," so you were right.

14 Q Okay, so now are you currently -- did you come to have
15 any position with the NRA Foundation?

16 A Yes, I'm president of the NRA Foundation.

17 Q Can you explain the difference between the NRA
18 Foundation and the NRA?

19 A Yeah, we're two separate --

20 MS. CONNELL: Objection, your Honor.

21 THE COURT: Grounds?

22 MS. CONNELL: Your Honor, to the extent we're going
23 to get into that (c)(3) (c)(4) issue, it is a legal
24 distinction.

25 THE COURT: Overruled.

BP

3406

T. King - by Defendants - Direct/Mr. Peters

1 A 501(c)(3) is the NRA Foundation. 501(c)(4) is the NRA.
2 We have separate board of directors, although there are -- there
3 are NRA directors that serve on the trustee committee; but
4 there's also four or five nonmembers that are on the committee.
5 We make our own decisions. We have our own meetings, and we're
6 totally separate corporation.

7 Q And can you -- can you describe what programs the
8 (c)(3) supports?

9 A Yeah, we support all of the 501(c)(3) products that the
10 NRA has, like, a Woman on Target, Supporting the Shooting, the
11 shooting events, okay. Eddie Eagle, like I mentioned earlier,
12 Don't be a Victim, okay, and the National Shooting Champions,
13 Championships.

14 I think which is the jewel in our crown is is that we
15 have just entered into an agreement with the USA Shooting
16 Foundation which runs the shooting sports in the Olympics, and
17 we are a prime supporter of USA Shooting for the US team in the
18 Olympics.

19 Q So, are the Foundation's assets kept separate from the
20 (c)(4)'s assets?

21 A Totally separate.

22 Q Now, we were talking before very briefly about -- one
23 of the objections talked about Oliver North.

24 To your knowledge, did the NRA ever file lawsuits
25 seeking to expel Mr. North?

BP

3407

T. King - by Defendants - Direct/Mr. Peters

1 A I don't know. I don't think there was a lawsuit.

2 Q Okay, did you at any point file an ethics complaint
3 against --

4 A I filed an ethics complaint, yes.

5 Q Do you know what the status of that complaint is?

6 A I think it is on hold.

7 Q Have you been made aware of any hearings or any actions
8 taken on it?

9 A Not to date, no.

10 Q Were you as a board member, were you aware of the
11 bankruptcy action before it was filed?

12 A Yes, I was.

13 Q Did you support the bankruptcy filing?

14 A Yes, I did.

15 Q Why is that?

16 A Because I -- like I said earlier, I knew the dangers
17 were coming down the road and I was hoping that -- and this is
18 something that I thought of that I wasn't instructed by anyone,
19 but I thought that it might give us an opportunity to get out of
20 the state.

21 Q And is that because you don't like New York or because
22 you're concerned about the regulatory environment?

23 A I love New York. Okay, I've lived here all my life. I
24 love New York, but the regulatory system in New York State has
25 just gotten totally out of control.

BP

3408

T. King - by Defendants - Direct/Mr. Correll

1 MR. PETERS: Nothing further, your Honor.

2 THE COURT: Okay, is there any other direct
3 testimony?

4 MR. CORRELL: Yes, your Honor.

5 THE COURT: We have a few minutes. Do you want to
6 get started?

7 MR. CORRELL: That's fine.

8 DIRECT-EXAMINATION

9 BY MR. CORRELL:

10 Q Mr. King, I'm Kent Correll. I represent Wayne
11 LaPierre.

12 A How are you?

13 Q Good. Good afternoon.

14 A Good afternoon.

15 Q Do you know what a Form 990 is?

16 A Yes.

17 Q Were Form 990s presented to the board at board
18 meetings?

19 A Yes.

20 Q Did you -- how were they provided? Were they provided
21 one per person or in some other way?

22 A No, they were not -- they were -- some other way, okay.
23 I don't recall exactly. I think there was a -- a number of
24 financial binders that were passed out that they were in and
25 they were spoke about.

BP

3409

T. King - by Defendants - Direct/Mr. Correll

1 And I'm very familiar with them because as a
2 not-for-profit in New York State, we file 990s.

3 Q And those 990s are available, they're open to public
4 for inspection as well; correct?

5 A Absolutely.

6 Q You can go on the internet and Google the NRA and the
7 990 will pop up?

8 A Yeah, Google NRA 990s and you'll get about three
9 different sites you can find them on, four maybe.

10 THE COURT: Nobody here is going to be Googling
11 anything, right?

12 THE WITNESS: Okay, I'm sorry about that.

13 Q And there's a section of the 990 that lays out the
14 compensation of officers, correct?

15 A Correct.

16 Q And there's also a section of the 990 that lays out --
17 that asks the question in the last year has the corporation
18 provided any of the following, and one box is first class for
19 charter travel; right?

20 A Yes.

21 THE COURT: Is this direct or cross?

22 MR. CORRELL: Well, it can be either.

23 THE COURT: Well, no. To get into areas that were
24 not addressed on direct by the NRA, I would just ask you to
25 ask questions in the normal way.

BP

3410

T. King - by Defendants - Direct/Mr. Correll

1 MR. CORRELL: I would call Mr. King as a witness in
2 my case if we want to do it that way, your Honor.

3 THE COURT: I think that what we discussed is
4 having all the directs happen at around the same time to
5 avoid bringing witnesses back.

6 So, you can ask -- I'm not objecting to your
7 questions if they're direct testimony, but just go ahead.

8 MR. CORRELL: I intend to keep this very short and
9 because I don't want to be limited to the scope of the
10 direct, I'm going to treat this as my direct.

11 THE COURT: Right. So, just don't ask leading
12 questions.

13 MS. CONNELL: Right, sorry. Trying to move it
14 along.

15 Q So, are you familiar with Schedule J of the 990?

16 A Yes, I am.

17 Q And could you tell the jury what kinds of things are --
18 what kinds of questions are asked in Schedule J?

19 A Yeah, it's, you know -- I always look at it as
20 extraordinary expenses outside of possibly the realm of the --
21 the moneys that the Association might be, might be responsible
22 for, like, like, plane trips, you know, and parties and things
23 like that and they have to be explained.

24 Q And in the 990s that you looked at board meetings, was
25 the box for first class for charter travel checked?

BP

3411

T. King - by Defendants - Direct/Mr. Fleming

1 MS. CONNELL: Objection, leading, your Honor.

2 THE COURT: Overruled.

3 A Honestly, I don't know. I don't remember.

4 Q So that's just something you didn't focus on, is that
5 fair?

6 A Not at the time, I probably didn't.

7 MR. CORRELL: No further questions.

8 THE COURT: Anything else before we break?

9 MR. FLEMING: I could probably finish before lunch.

10 THE COURT: Sold. Is this still direct?

11 MR. FLEMING: This is still direct, yes.

12 DIRECT-EXAMINATION

13 BY MR. FLEMING:

14 Q Mr. King, hi.

15 A Hi.

16 Q William Fleming, I represent Mr. Frazer.

17 How long have you been a board member?

18 A Twenty years or so, just short of twenty years.

19 Q Were you a board member in 2015?

20 A Yes, I was.

21 Q Do you recall Mr. Frazer joining as secretary and
22 general counsel in that year?

23 A Yes, I was actually chairman of the nominating
24 committee that year.

25 Q Have you had occasion to work with Mr. Frazer?

BP

3412

T. King - by Defendants - Direct/Mr. Fleming

1 A All of the time.

2 Q And based on your observations, do you have any
3 thoughts about his professionalism and competence?

4 A Yes, I always found John to be extremely professional
5 and competent.

6 Q And the board has elected him every year since 2015?

7 A Every year since then.

8 Q Even though there's, as you say, type As, you don't
9 always agree on everything?

10 MS. CONNELL: Objection to leading, your Honor.

11 A Yes.

12 THE COURT: Getting one free leading question per
13 round.

14 Anything further from the defendants on direct?

15 MR. FARBER: Not on direct.

16 MR. CORRELL: A little cross for me, your Honor.

17 THE COURT: Well, let's pick back up after lunch.
18 We'll figure out the order when we get back.

19 During the break, sir, you're still on the stand so
20 you shouldn't discuss the substance of your testimony with
21 anyone, including counsel.

22 THE WITNESS: Okay.

23 THE COURT: Thank you.

24 COURT OFFICER: All rise, jury exiting.

25 THE COURT: 2:15 we'll resume.

BP

1 (Whereupon, at this time the jury then left the
2 courtroom.)

3 (Whereupon, at this time a luncheon recess was then
4 taken.)

5
6 (Continued on next page)

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Proceedings

1 A F T E R N O O N S E S S I O N

2 * * * * *

3 THE COURT: My law clerk will be sending you at
4 long last the jury instructions.

5 MR. FARBER: He did.

6 THE COURT: Okay. That was faster than I thought.
7 Was it a PDF? We are trying to work on getting you a Word
8 version so it's easier to edit, but we are not really quite
9 sure how to do that, so we are working on it and it also
10 indicated -- hopefully, you're free to meet on Friday at
11 three to discuss them.

12 MR. CORRELL: Your Honor, did you contemplate a
13 simultaneous briefing on that or were we going to respond to
14 the AG's?

15 THE COURT: Which are we talking about; the
16 directed verdict?

17 MR. CORRELL: I'm sorry.

18 MS. CONNELL: I think there are two issues, your
19 Honor.

20 MR. CORRELL: Pardon me.

21 MS. CONNELL: I thought there were two issues. We
22 were tasked with briefing the EPTL as against the individual
23 defendants and then I thought there was something you had
24 asked.

25 THE COURT: Yeah. These can be letters or however

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3415

Proceedings

1 you want, but on the defense front, one of the issues was
2 whether the two claims are duplicative, the EPTL claims and
3 the N-PCL claims. And on that front, the Government is at
4 least concerned that the position the defendants will take
5 is some of the relief you're seeking you can't get under the
6 N-PCL but only the EPTL. That might not be outcome
7 determinative on whether the claims have any merit, but I
8 would at least be interested to know the Defendant's
9 position because to the extent that I'm going to rely on
10 duplicativeness, it typically means that the facts and --
11 are roughly the same and the relief is the same.

12 So if you disagree that the relief is the same,
13 that's worth me knowing.

14 MR. CORRELL: Thank you.

15 THE COURT: All right. Let's get to it. Hang on a
16 second.

17 MR. THOMPSON: Because I think we are going to be
18 getting to Ms. Rowling relatively quickly. There is an
19 issue with the demonstrative that the NRA intends to use,
20 and we also have some evidentiary objection that might be
21 more efficient to deal with before the jury comes in or we
22 get Ms. Rowling on the stand.

23 THE COURT: Okay. Well, what do I need in front of
24 me to decide any of this?

25 MR. THOMPSON: I can hand up a copy of the

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3416

Proceedings

1 demonstratives, your Honor.

2 THE COURT: Okay.

3 MR. THOMPSON: In terms of the exhibits, we can
4 bring them up on the screen with respect to the ones that we
5 have particular objections to.

6 THE COURT: Okay.

7 MR. THOMPSON: So first, with respect to the
8 demonstratives, Ms. Rowling is a fact witness and these
9 slides seem to be aimed at guiding her testimony, reminding
10 her or treating her as an expert witness, and we don't think
11 that that's appropriate.

12 THE COURT: I mean, candidly, I agree. This is the
13 kind of slick presentation you put on with an expert, not a
14 fact witness. I don't -- I'm not used to seeing this kind
15 of thing with fact witnesses.

16 MS. ROGERS: Your Honor, the only one that I think
17 or one of these that I think aligns with your guidance
18 earlier is this COSO framework which Ms. Rowling gave
19 deposition testimony about and two experts have talked
20 about. It's all the experts who implemented describe it
21 using the three dimensional cube, and they talk about how
22 the different parts of the cube intersect.

23 THE COURT: I am okay with the cube.

24 MS. ROGERS: Okay. So we can keep the cube. And
25 then we have pictures of the people which is really more --

KM

3417

Proceedings

1 THE COURT: Just so it's clear, is this something
2 that she created or who? Where is this from?

3 MS. ROGERS: So I don't have personal knowledge, so
4 I don't know. I think it was a collaborative effort of Ms.
5 Rowling and counsel. This is pictures of the people we are
6 talking about.

7 If your Honor --

8 THE COURT: The reason why this doesn't trouble me
9 is, you know, this is a graphic depiction that I think can
10 be helpful to the jury to see it, and it doesn't suggest any
11 testimony, and it doesn't guide any testimony. So this is
12 more like what I have seen which is a graphical depiction of
13 something that is easier to see than to describe. So I'm
14 fine with that one page.

15 MS. ROGERS: Okay.

16 MR. THOMPSON: Just for the record, your Honor,
17 this cube is actually part of the COSO framework. Like,
18 it's generated by COSO, and it wasn't created by Ms.
19 Rowling, and you may -- if your Honor says that this is just
20 a Cross issue, then that's fine, but during her deposition,
21 Ms. Rowling had taken one continuing education class on
22 COSO. She's not an expert.

23 THE COURT: I'm not assuming that this is going to
24 be her expounding on COSO as much as this is -- maybe I
25 thought this through the wrong way. But is this going to

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1 just be her way of -- her personal way of describing the way
2 things work at the NRA, not COSO?

3 MS. ROGERS: Correct, your Honor. She's not an
4 expert witness on COSO, but the cube which Ms. Rowling may
5 have helped create the deck, but she did not invent the
6 cube. It's sort of an industry standard cube.

7 MS. ROGERS: Mr. Thompson is right. She will
8 testify about she follows and implements the policy
9 interaction sections that the cube prescribes.

10 THE COURT: Yeah. I don't have a problem with
11 that.

12 MS. ROGERS: And then the other slide's different.
13 Your Honor's guidance this morning, if your Honor doesn't
14 want to put them up, we won't. I think one of them which is
15 just photographs of people we are talking about is not
16 really -- the witness knows what these people look like. It
17 would really be a reminder for the jury who they are. And
18 if your Honor would like us to omit that, we can.

19 THE COURT: I'd stick with the cube.

20 MS. ROGERS: Okay. Just the cube.

21 THE COURT: All right. Thank you. Is there
22 anything else?

23 MR. THOMPSON: There are a number of evidentiary
24 issues with documents that we expect to come up with Ms.
25 Rowling. It may be more efficient to deal with it now, your

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1 Honor.

2 THE COURT: Okay.

3 MR. THOMPSON: So I'm going to put aside the
4 objections to the lateness of the documents that we have
5 preserved otherwise. But there are a few independent
6 grounds.

7 THE COURT: Oh, you mean the ones that were
8 produced in 2023.

9 MR. THOMPSON: Correct, your Honor.

10 THE COURT: Okay.

11 MR. THOMPSON: But with respect to some memoranda
12 that Ms. Rowling prepared -- let me pull up the exact DX
13 number. DX 1-837. If we can pull that up please, Jesse.

14 This document is not a business record. It is
15 hearsay, and it contains hearsay within hearsay in the form
16 of conversations that Ms. Rowling had with Mr. LaPierre and
17 Mr. Correll.

18 It also refers to the Audit Committee meeting that
19 your Honor had precluded testimony about with Congressman
20 Barr that we did not get any discovery into, and the
21 attachments to this are work product created by counsel that
22 were also not business records that Ms. Rowling is then
23 performing some sort of independent or purporting to perform
24 some independent review of.

25 THE COURT: This version doesn't seem to have

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1 attachments.

2 MR. THOMPSON: The attachments are separate
3 exhibits. So we can just take a look at DX 1-835 which is
4 Attachment A to the memorandum.

5 MS. ROGERS: Your Honor, this memorandum is a
6 business record to the same extent as other internal
7 memoranda that were admitted as part of Plaintiff's case.

8 For example, memoranda from Colonel North, there
9 were similar issues that attached copies of documents
10 analyzing.

11 The purpose of this exhibit would not be to admit
12 layers of hearsay and use the document to get in front of
13 the jury what Ms. Rowling thought someone else said for its
14 truth, but the NRA has essentially been brought before the
15 Court on charges of failing to oversee and consider, analyze
16 documents and issues like this. This is a memorandum that
17 the CFO put together reflecting and encapsulating her
18 analysis of issues and documents like this, and she should
19 be allowed to testify about it.

20 THE COURT: Do you have a hard copy of this?

21 MR. THOMPSON: I apologize. I do not, your Honor.

22 MR. CORRELL: For Mr. LaPierre's point of view,
23 it's a party admission.

24 I know that the -- Mr. LaPierre and the NRA are
25 separate parties, so to the extent that this is Sonya

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1 Rowling writing about matters, it's an admission.

2 MR. THOMPSON: Party opponent admission. I don't
3 think Mr. LaPierre is a party opponent to the NRA.

4 THE COURT: He is not.

5 MR. CORRELL: Well, that will derisive and sneering
6 comment is actually quite untrue, and I think there is
7 adversity.

8 THE COURT: It's not literally a party opponent. A
9 party opponent is when somebody is suing another party.
10 It's not different than an adverse party.

11 MR. CORRELL: I understand that, your Honor, but --
12 well, I'll leave it there for the moment.

13 THE COURT: Can I just read this first. It
14 wouldn't be a terrible idea to send these to me the day
15 before so I wouldn't be reading this while the jury is
16 waiting. Just a head's up. Maybe you already did, and I
17 didn't see it. I mean, this is exactly -- the first page is
18 her detailing a conversation with Mr. LaPierre setting forth
19 a bunch of facts that I assume you want them to believe are
20 true.

21 MS. ROGERS: Well, it wouldn't be admissible for
22 the truth of what Mr. LaPierre told her, but they protested
23 that we blocked examination on what were you considering,
24 which flights did you check were repaid. And so the fact
25 that -- the fact she conducted the diligence, the statements

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1 were made to her, and they informed her analysis is what's
2 relevant here. They can separately cross-examine, you know,
3 was that flight really \$10,000. Did he really repay it?
4 Was it really business or personal?

5 MR. CORRELL: Both Mr. LaPierre and Sonya Rowling
6 are witnesses, and Mr. LaPierre is a party.

7 I'm not sure -- I think that informs the analysis.
8 If we have to, Mr. LaPierre can testify as to what he said
9 he said, and she can testify as to what --

10 THE COURT: Well, that's what hearsay is. They are
11 here. They can testify live about this stuff.

12 Why would you use somebody else's recorded
13 recollection out of court instead of that?

14 MR. CORRELL: Well we could use it to refresh their
15 recollection if we have to, but we are under time
16 constraints, and we are hoping to move this along.

17 MS. ROGERS: We have seen other documents including
18 very old documents.

19 THE COURT: This is a way for the jury not to be
20 able to test his credibility because it's written by
21 somebody else. So, look, it seems to me, and you know,
22 given the timing of this, this is kind of difficult to
23 believe this wasn't partly prepared for trial.

24 I mean, it's a month before trial started. This
25 does not sort of out of the blue --

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1 MS. ROGERS: It's not out of the blue. But when
2 you have the progression toward trial overlapping with the
3 NRA making these efforts internally, obviously, there is
4 going to be overlap.

5 I think the fact that Ms. Rowling prepared the
6 document and conducted the analysis is relevant. The fact
7 that she interviewed and was briefed by particular people on
8 these issues is relevant.

9 We had been happy -- we'd be obviously content with
10 an instruction to the jury that things people told Ms.
11 Rowling aren't being admitted for their truth, but she is
12 essentially being called negligent and incompetent, and this
13 is a record she generated at part of her job, and she should
14 be able to explain to the jury what kind of analysis she
15 did.

16 THE COURT: I'm not sure anybody has called her
17 incompetent, but what is -- so she makes findings at the end
18 here.

19 MS. ROGERS: So she's doing testing essentially.
20 So there were payments made in earlier years, but some of
21 them were made as a result of a process where Mr. LaPierre
22 and his lawyer went through expenses and said I want to
23 repay these. These were personal. There was an effort to
24 make sure that was tested. It wasn't on the honor system;
25 right.

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Proceedings

1 So this is the treasurer who was one of the
2 whistleblowers sitting down and scrutinizing these expenses.

3 THE COURT: Did she -- I can't remember. Did she
4 testify about some of this analysis when she was here
5 before?

6 MS. ROGERS: I don't -- not that I can recall. I
7 don't believe so.

8 THE COURT: Well, look. I think that the NRA
9 treasurer's analysis of all of this stuff is independently
10 relevant. You know, late though it may be. In other words,
11 the -- or it would be independently relevant. I guess let
12 me put it that way.

13 I'm -- this is a close one because it does awfully
14 sound like vouching in a way for another witness'
15 credibility, but it's -- it's, you know -- ultimately, the
16 burden of proving the repayment, proving it will have to be
17 done by actual evidence. Not this. So I'm not sure I
18 understand what this adds other than you want to be able to
19 point out that this examination occurred. That's all this
20 is for.

21 MS. ROGERS: Correct, your Honor.

22 The NRA, we are not really concerned with taking on
23 the burden of proving a setoff against damages that are
24 being paid to us. We have coming at this from a proper
25 administration perspective, a properly administered

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1 non-profit checks and test issues like this and as a CFO
2 would do this kind of analysis.

3 THE COURT: In December of 2023, one month before
4 trial.

5 MS. ROGERS: Our case isn't that the -- this is the
6 first or only time something like this was done, but a theme
7 of our case as you saw with Sullivan, this is a continuing
8 process.

9 THE COURT: Frankly, I suspect the plaintiff can
10 make as much use of this as you can in some ways. But how
11 do we get over the hearsay? I mean, first of all, whoever
12 the witness is on the stand -- oh, Ms. Rowling is going to
13 be the witness.

14 MS. ROGERS: Ms. Rowling will be the witness.

15 THE COURT: So she is going to lay a foundation
16 that this is the ordinary course of her business to write
17 things like this.

18 MS. ROGERS: Right. As the ordinary course of her
19 business as treasurer, she, financial compliance officer
20 side or part of her job, and this is one of the issues she
21 analyzed. And we could even frame the question as --

22 THE COURT: Will she say she wrote this entirely on
23 her own or with counsel?

24 MS. ROGERS: She wrote this on her own. There are
25 document attached to it and plaintiff hasn't made much of

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Proceedings

1 this.

2 If you look at the metadata of some of the
3 spreadsheet, you will find that counsels paralegal prepared
4 it.

5 THE COURT: If you can establish that she wrote it
6 on her own, and it's, you know, in the ordinary course of
7 her business to send notes to file when summarizing things
8 that she does, and that this is an example of that, I'll
9 permit it with an instruction that none of the -- it's to
10 prove the fact that the analysis was undertaken but not for
11 the truth of any of the underlying facts including the
12 conversations with Mr. LaPierre. But I think as a process
13 matter, it is part of the story that, you know, however late
14 it was done. I don't know that it adds a lot honestly, but
15 I can't say that it's inadmissible or unduly prejudicial in
16 this regard because they either come up with the evidence or
17 they don't.

18 MR. THOMPSON: Your Honor, if I may just note a few
19 objections for the record. So we don't think that there is
20 any plausible explanation that this was created in the
21 ordinary course of business a month before trial when they
22 have had these documents. I mean, these payments go back to
23 2019 and all of a sudden she is doing this review and.

24 THE COURT: Sounds like a heck of a
25 cross-examination, Mr. Thompson.

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Proceedings

1 MR. THOMPSON: I know, and it will be, but ideally
2 not to have to deal with it.

3 THE COURT: It will be fun.

4 MR. THOMPSON: It will be fun.

5 And then with respect to the attachments, these are
6 lawyer work product that she's trying to turn --

7 THE COURT: What are the attachments?

8 MR. THOMPSON: We can bring up DX 1-835, please,
9 Jesse.

10 I would scroll down a few pages to get to the
11 actual chart. Yeah. So this chart was produced to us in
12 the bankruptcy. It was created by an employee.

13 THE COURT: I have no idea what this is.

14 MS. ROGERS: I will explain what this is because
15 its been mischaracterized repeatedly.

16 So what the record about this chart shows, and this
17 charity has been the subject of voluminous cross-examination
18 is that in 2020 when Mr. LaPierre repaid certain flights, a
19 non-lawyer employee of my firm sat with him and transcribed
20 into a spreadsheet clerically his explanation of where he
21 was flying and what he was doing on each of these dates.
22 That's not legal advice. It's not. If we had put this in
23 our in-camera sample, it would probably have to be deemed
24 non-privileged, and it was produced three years ago.

25 THE COURT: Where does the foundation in terms of

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Proceedings

1 something happening in court in front of the jury that these
2 need to put in? Everything you have just said may be true,
3 but this witness is not going to be able to tell me that.

4 MS. ROGERS: Well, what this witness will tell you,
5 this was provided to her. It was a part of a court record
6 at that point, and it informed her analysis of the
7 repayments. So this is what Wayne said he repaid. I'm
8 testing.

9 THE COURT: So this document is in fact something
10 that was submitted to the bankruptcy court.

11 MS. ROGERS: Oh, yes. Well, it was produced in the
12 bankruptcy. I can't remember if it's an exhibit in the
13 bankruptcy. I suspect it was, but I can't represent that
14 with 100 percent confidence.

15 MR. CORRELL: Mr. LaPierre is going to testify as
16 to the process he followed in going back through records and
17 identifying invoices that he examined to determine whether
18 he wanted to make payments to resolve issue that had been
19 raised by the Attorney General.

20 THE COURT: I'm just trying to get over this thing.
21 So this witness who is going to be -- it's going to be
22 introduced in front of -- is going to just testify she was
23 given this by the law firm?

24 MS. ROGERS: Correct, your Honor. And I think -- I
25 expect -- I'm not putting the witness on, but that's my

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Proceedings

1 understanding of the testimony is this is what I tested.
2 This is what was written to me, and this is the work I did.

3 THE COURT: Okay. I think that falls within the
4 same. And was any inquiry into this document blocked by
5 privilege?

6 MS. ROGERS: No, your Honor. We produced this
7 document and no lawyer -- no lawyer participated in creating
8 this document, so we couldn't have asserted privilege.

9 THE COURT: In depositions if people were asked
10 about it, were questions blocked?

11 MS. ROGERS: I can't recall if the initial
12 depositions, there were objections. Fact witnesses will
13 freeze up sometimes. I don't know. I know that there was a
14 supplemental 30(b)(6) corporate rep deposition.

15 THE COURT: They freeze up when they are instructed
16 not to answer maybe.

17 MS. ROGERS: Sometimes they don't know. Sometimes
18 they recall they had a bunch of of conversations about it,
19 and they have been sitting there for seven hours hearing
20 that they are not supposed to talk about lawyers. But for
21 that reason, we gave yet another corporate rep deposition
22 where there were pages of testimony about this.

23 MR. THOMPSON: At which the corporate
24 representative was not able to identify this document
25 because he didn't know what it was.

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1 MS. ROGERS: The document -- we have been arguing
2 about this document for years. We have not -- we have not
3 asserted privilege over it or anything about it.

4 MR. PETERS: We offered another deposition in
5 December as well.

6 MS. CONNELL: Your Honor, in December, you held
7 that the Plaintiff need not prove the current state of
8 what's going on in the NRA as part of our claims. You noted
9 that it was impractical for us because we didn't have
10 discovery going up to that point and also noted that trial
11 by ambush would not be permitted.

12 In November and December, the NRA produced over
13 11,000 pages of documents including these belated memos.
14 This is trial by ambush textbook. That's hearsay within
15 hearsay and things we tried to get out earlier --

16 MS. ROGERS: False.

17 THE COURT: I think -- this is largely about
18 something that's already been testified a lot about. It's
19 about were repayments made and what were they for.

20 I think that's something that the defendants are
21 going to have to prove one way or the other, and I do think
22 that the process is relevant. You know, whether it's
23 persuasive or not is a different question. Whether it's too
24 late or not is a different question. And so I'm going to
25 permit it.

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1 MR. THOMPSON: Your Honor --

2 THE COURT: And if I get a feel that, you know,
3 your cross-examination is hindered by some document that
4 they have not produced, I may require that it be produced.

5 MR. THOMPSON: A similar issue just in terms of any
6 limiting instruction to the jury would be for DX 1-855.
7 It's a separate memo. We won't get into it, but just in
8 terms of any instructions that your Honor provides with
9 respect to this memorandum.

10 THE COURT: Is it a similar?

11 MR. THOMPSON: Related to Tyler Schropp.

12 THE COURT: It's her process and going through the
13 same thing. Okay; and this is an attachment to the 837?

14 MR. THOMPSON: Separate memorandum, your Honor.

15 THE COURT: These are separate exhibits. All right.
16 So I'm going to be careful with it, but I'll let them --
17 I'll let them -- this is part of jury narrative which you
18 have every ability to cross-examine and argue against.

19 All right. Let's go get them.

20 MR. FARBER: Judge, while we are waiting for the
21 witness --

22 THE COURT: Well, we are not getting the witness
23 yet. I'm sorry. Why didn't we finish this witness before
24 we did that.

25 MR. FARBER: I don't know. But my question

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Proceedings

1 concerns the draft of the jury instructions. It was just
2 sent to us, and there is a reference to "verdict sheet."

3 Has the Court prepared a draft verdict sheet?

4 THE COURT: No.

5 MR. FARBER: Are we supposed to just propose one?

6 THE COURT: I want you to take the first shot at
7 it. The ones I saw I think it's at a time before a lot of
8 claims have changed and things have changed. I want you to
9 take a better run at it because -- and frankly, I don't have
10 the time or the manpower at the moment. I have had to do
11 the instructions nights and weekends, so I didn't want to do
12 the verdict sheet at the same time. The verdict sheet is
13 extremely important, and you'll see that at least I do show
14 the verdict sheet during the instructions so they know what
15 they are going to get. So I do want very smart people
16 taking a good hard look at how to get what needs to be on
17 this verdict form and not make it 1,000 pages long.

18 MR. FARBER: Understood.

19 THE COURT: I did envision that the related-party
20 transactions would be listed out separately. I didn't
21 envision every like plane flight would be out separately.
22 So I'm going to leave it to you guys in the first instance
23 to come up with something brilliant, and I'm going to keep
24 my fingers crossed.

25 MR. FARBER: Thank you, your Honor.

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King - by Defendant - Cross/Ms. Connell

1 THE COURT: All right. Let's get the jury.

2 (Witness resumed the witness stand.)

3 THE COURT OFFICER: All rise. Jury entering.

4 (Whereupon, at this time the jury entered the
5 courtroom.)

6 THE COURT: All right. Please have a seat. Sorry
7 to keep you waiting. We are trying to do as many of these
8 objections and arguments off -- when you are not here to
9 avoid wasting your time. So we have gotten through a bunch
10 of that.

11 Who is up next?

12 MR. FARBER: I think it's cross, your Honor so --

13 THE COURT: Let's start with the State.

14 MS. CONNELL: We are done with direct.

15 THE COURT: Direct is over.

16 MS. CONNELL: As far as we know.

17 CROSS-EXAMINATION

18 BY MS. CONNELL:

19 Q Good afternoon, Mr. King. How are you?

20 A Pretty good. How are you?

21 Q Good. Thank you.

22 Mr. King, you're a big fan of Wayne LaPierre; correct?

23 A Yes.

24 Q And you have been a supporter of his over the years;
25 right?

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King - by Defendant - Cross/Ms. Connell

1 A Yes.

2 Q And you voted for him every year that he ran for EVP
3 even until 2023; right?

4 A That is correct.

5 Q Okay. Mr. King, you believe that no one is exempt from
6 breaking the NRA's rules or violating the NRA's bylaws; right?

7 A I certainly do.

8 Q Okay; and that includes Mr. LaPierre?

9 A That includes everybody.

10 Q Okay. Are you aware that Mr. LaPierre has admitted on
11 questioning from NRA's counsel that he violated the Board's
12 authorizations by sending a private plane, for example, to pick
13 up his niece's husband in Las Vegas because his niecекnees child
14 needed a babysitter?

15 MR. PETERS: Objection to characterization of
16 testimony. Also, he is not supposed to hear the testimony
17 from other witnesses. He is a fact witness, but we object
18 to the characterization.

19 MS. CONNELL: Your Honor, I can point to the page
20 in the transcript, but this is the general tenor. The jury
21 can decide if I am reflecting the testimony correctly or
22 accurately.

23 MR. CORRELL: Misstates the testimony, your Honor.

24 THE COURT: I know it's more tedious, but I think
25 when we are talking about testimony from at least a number

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King - by Defendant - Cross/Ms. Connell

1 of days ago, it would be better to use the actual words.

2 MS. CONNELL: Okay. I don't know -- okay. Can we
3 please bring up the 4:21 p.m. I'm sorry. 1/29/24 transcript
4 at Page 2397, Lines 22 to 2398, Line 5.

5 Q Mr. King, are you aware that Mr. LaPierre admitted that
6 he sent a plane to pick up his niece's husband in Las Vegas
7 because the kid needed a babysitter?

8 A I had no idea what the reason was, but I was aware of
9 that after Mr. LaPierre had stated that, yes.

10 Q And you're aware that he acknowledges now that that's
11 -- that was a violation of Board authorization; right?

12 A Yes, I do, and as I stated earlier, that's --

13 Q Mr. King, I'm sure that the NRA counsel and that full
14 table of defense counsel can ask you questions. I'm going to
15 ask you answer my question.

16 A Apologize.

17 Q Thank you. And you're aware if we turn to Page 2924 at
18 2398, Lines 10 to 19 that he admitted that --

19 THE COURT: Let's get it up there.

20 Q 2398, Lines 10 to 19.

21 And you're aware that he also acknowledged that it was
22 wrong for the NRA to pay for his niece and her baby to fly on a
23 private jet because she was "stuck at an airport and their
24 flight had been delayed;" right?

25 A As I stated in the last question you asked, I knew that

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1 that had happened. I had no idea what the reasons were and
2 because he apologized and made restitution --

3 Q Well, let's talk about that.

4 You said Mr. LaPierre made restitution; right?

5 A Yes.

6 (Continued on the following page.)

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T. King - by Defendants - Cross/Ms. Connell

1

2 Q You don't have personal knowledge of how much money
3 Mr. LaPierre owed the NRA; is that correct?

4 A Well, personal knowledge, no.

5 Q So, Mr. King, you don't have personal knowledge of
6 whether any amount Mrs. LaPierre repaid to the NRA were full
7 restitution for amounts he admits he wrongfully spent; right?

8 A Yes.

9 Q That's correct, right? Just to clear.

10 A Yes.

11 Q Thank you. And you're aware that Mr. LaPierre has
12 admitted this wrongdoing that he -- that he said occurred in the
13 past; right?

14 A Yes.

15 Q And Mr. LaPierre's retirement went into effect a few
16 days ago, correct?

17 A Correct.

18 Q And he was -- he left the NRA under his own steam;
19 right?

20 A Yes.

21 Q He wasn't fired; right?

22 A No.

23 Q Not suspended?

24 A No.

25 Q Nothing prevents him from coming back to the NRA should

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T. King - by Defendants - Cross/Ms. Connell

1 he choose to do so in terms of a rule or determination within
2 the NRA; right?

3 A As far as I know, no.

4 Q Okay. You mentioned before that you would be offended
5 if someone told you how to vote; right?

6 A Yes.

7 Q But you know that Millie Hallow distributed crib sheets
8 of nominees and told board members who they should vote for;
9 right?

10 A I never received one, but I understand that that
11 happened and from what I understand they were suggestions.

12 Q You understand that Ms. Hallow distributed the crib
13 sheets to board members with suggestions on how to vote?

14 A Yes.

15 Q And that they came from Wayne LaPierre; right?

16 A That I don't know.

17 Q Did you ever ask who gave Ms. Hallow those crib sheets?

18 A I never got one, so I never asked.

19 Q You just heard about the crib sheets and didn't ask?

20 A Yeah, there was a board member who used to make a joke
21 about it all the time.

22 Q And you considered that a good joke?

23 A At the time it was funny, yes, the way it was done.

24 Q So, Mr. King, you said that the NRA welcomes spirited
25 debate among board members?

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T. King - by Defendants - Cross/Ms. Connell

1 A Yes.

2 Q And that there's to your knowledge no retaliation for
3 dissenting voices in the NRA board?

4 A That's true.

5 Q You sometimes discuss NRA's business via text, right?

6 A Via text did you say?

7 Q Yes, like text message on your phone?

8 A Rarely.

9 Q You've exchanged texts with Ms. Hallow, correct?

10 A You know, I assume so, I don't know.

11 Q Let's take a look at PX 16 -- well, actually before we
12 get into that --

13 MR. PETERS: I'm going to object that this is
14 outside the scope of the direct. He never spoke about
15 Ms. Hallow or texts he received from her during his direct.

16 THE COURT: Overruled.

17 MS. CONNELL: Thank you, your Honor.

18 Q You have said before, Mr. King, that NRA members who
19 support accountability should be neutralized; right?

20 A I never said that.

21 Q Okay, so let's pull up PX 1620.

22 MS. CONNELL: This has not been admitted into
23 evidence, your Honor. I'm using it for impeachment.

24 I have a hardcopy if you'd like, but I'm going to
25 show it to...

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T. King - by Defendants - Cross/Ms. Connell

1 (Handed up to the Court)

2 MS. CONNELL: I think we can bring it up and show
3 it to the witness since it is for impeachment, your Honor.

4 THE COURT: All right, so you're not seeking to
5 admit this and just to take it off the screen.

6 So, you're not publishing it?

7 MS. CONNELL: Why don't we not publish it right now
8 and I'll use it for the impeachment, but I will move to
9 admit it as well. So why don't we not publish it yet and
10 I'll ask him about it.

11 THE COURT: Okay.

12 Q Mr. King, this is a text stream between you, Joel
13 Friedman, Millie Hallow, Sandra Froman, Charles Cotton and
14 others; right?

15 A That's what it says, but I don't recall ever writing
16 this at all.

17 Q So, you exchanged texts with those people at times,
18 right?

19 A Certainly.

20 Q And I'll represent to you that this was a document
21 produced by the NRA in discovery. So you have no reason to
22 doubt that this is a text stream that you shared with these
23 people; right?

24 A I have no doubt that my name is on it, but I do not
25 remember doing that and I have no idea who Muhammad Ahmed is or

BP

3441

T. King - by Defendants - Cross/Ms. Connell

1 Alex Arnau. I never heard those names before until today.

2 Q You know who Willes Lee is; right?

3 A I absolutely know who Willes Lee is.

4 Q And you know who Charles Cotton is?

5 A I certainly do.

6 Q Marion Hammer?

7 A Yes.

8 Q Jay Prince?

9 A And I very rarely ever exchange e-mails with Marion
10 Hammer.

11 Q Jay Prince?

12 A Jay Prince, I very rarely exchange e-mails with Jay
13 Prince.

14 Q But you have texted with them, right?

15 A Or I text -- I very rarely. I can't even remember one
16 time texting Jay Prince.

17 Q But you have texted with him; right?

18 A I don't know. I just said I can't remember doing it.

19 Q So, let's take a look at this and let's see.

20 Okay, well, actually, Mr. King, you have the version
21 that will be brought up on the screen, has the phone numbers
22 redacted. But if you could look at the number that's there for
23 you, it's at the very bottom of the page if you looked at that
24 as well.

25 Is that a phone number that you've had?

BP

3442

T. King - by Defendants - Cross/Ms. Connell

1 A Yeah, that's my current cellphone number.

2 Q So, that's your current cellphone number that you use
3 now; right?

4 A Yes.

5 Q And it was your cellphone number in May of 2019; right?

6 A Yes.

7 Q And if we look at the first bubble on this text stream
8 from Mr. Lee, do you see that at the top of the page?

9 A Yes, I do.

10 Q And Mr. Lee says --

11 MS. ROGERS: Your Honor, objection.

12 THE COURT: If you want to use it, you want to
13 admit it as something, then can you start reading from it;
14 but if you want to use it to refresh his recollection, you
15 can have him read it --

16 MS. CONNELL: I was going to impeach him, but,
17 actually, your Honor, I'd move for its admission.

18 MR. PETERS: We object. There's been on the
19 writing, no foundation.

20 MR. CORRELL: Lots of different names and texts.

21 MS. ROGERS: And, your Honor, with respect to a
22 text message like this produced from a personal cellphone,
23 the admission is more straightforward attributable to the
24 person whose phone it was. But he doesn't remember the
25 provenance of these messages attributed to him and it is not

BP

3443

T. King - by Defendants - Cross/Ms. Connell

1 from his phone.

2 MS. ROGERS: Your Honor, there are messages from
3 his phone.

4 THE COURT: Well, why don't you tell me how you got
5 this?

6 MS. CONNELL: We got this through the production by
7 the NRA.

8 THE COURT: By the NRA, itself?

9 MS. CONNELL: Yes, by the NRA itself; and we asked
10 for production of certain text messages from certain board
11 members. We received this, and you'll see that these are
12 NRA board members who are on this text stream. Mr. King has
13 admitted this is his number, and he said he had occasionally
14 texted.

15 MS. ROGERS: And this was a document collected by
16 the NRA from someone's cellphone, but it is not from an NRA
17 server. We don't have chain of custody of it or know how
18 contacts are stored on people's phones.

19 MR. CORRELL: And Mr. LaPierre knows nothing about
20 it.

21 MS. CONNELL: Your Honor, the NRA gathered -- I'm
22 sorry.

23 THE COURT: Whether Mr. LaPierre knows anything
24 about it is not really the relevant question.

25 So, look, my assumption is is that the NRA doesn't

BP

3444

T. King - by Defendants - Cross/Ms. Connell

1 collect documents from its employees, directors and
2 officers. They didn't go around making these things up.

3 MS. ROGERS: Not routinely. I mean, as part of the
4 discovery obviously.

5 THE COURT: In response to a discovery request you
6 collected documents for people in your custody and control.
7 That's the only reason why it would be produced. It is
8 admitted.

9 (Whereupon, at this time Exhibit PX 1620 was
10 admitted and received into evidence.)

11 MS. CONNELL: Thank you, your Honor. If we can
12 please show this.

13 (Displayed)

14 Q Mr. King, you see at the top of the page a text from
15 Willes Lee and he's referring to Facebook page "NRA members for
16 Accountability;" correct? Do you see where I'm looking? It is
17 on your screen as well.

18 A Yes.

19 Q He says "Just now got 1,052 page likes. And noticed
20 several more board members Schneider, Brown, Maloney and then he
21 goes on to say Johnny Nugent, Liptak have liked the page."

22 Do you see that?

23 A Yes, I do.

24 Q If you look down, Mr. Cotton responds to this and
25 says: "We need to reconsider Nugent's committee assignments."

BP

3445

T. King - by Defendants - Cross/Ms. Connell

1 Right?

2 A Yes, it does.

3 Q And Ms. Hammer responds -- that's Marion Hammer; right?

4 A Yes.

5 Q You know his Ms. Hammer well; right?

6 A No, I know her. I don't know her well.

7 Q She's been on the board for years?

8 A Yeah, and I've her maybe three times.

9 Q Ms. Hammer responds "Please keep a list. There's more
10 than one kind of accountability."

11 Right?

12 A Yes.

13 Q And there's an emoji of what appears to be a Hammer and
14 a clock; right?

15 A Yes.

16 Q Does that mean Hammer-time to you?

17 A I don't know how to interpret that, I'm sorry.

18 Q Okay, fair enough. Not an expert in Marion Hammer as
19 some of us are becoming.

20 If we continue down, you'll see that Jay Prince said "I
21 would be cautious. I think Johnny Nugent an ok Wayne
22 supporter;" right?

23 A Yes.

24 Q If we keep going down to the bottom you respond and
25 say, "They are waving a war," and you say, "Actions will be

BP

3446

T. King - by Defendants - Cross/Ms. Connell

1 taken very soon to neutralize some of these people;" correct?

2 A I'm reading through that. (Brief pause) Yes.

3 Q Okay, thank you.

4 A But I dispute that I said that.

5 Q Mr. King, the number that you can see on the paper,
6 that's your cellphone number; correct?

7 A Yes, it is.

8 Q And that's the cellphone number you used in May of
9 2019; correct?

10 A Yes, it is.

11 Q Thank you. We can put that aside.

12 Mr. King, you testified that any NRA board member who
13 wants to know what's going on can just read the reports in that
14 like 150-page board book that you get after a board meeting;
15 right?

16 A That's true.

17 Q And you're saying that's how a board member can educate
18 themselves for what's really happening in the NRA; right?

19 A For any board member that missed the board meeting,
20 yes.

21 Q But you supported a suggestion to hold most board
22 meetings, most board meetings in executive session; didn't you?

23 A No, not most. I've done it three or four times in my
24 entire career at the NRA.

25 Q But supported a suggestion that more meetings be held

BP

3447

T. King - by Defendants - Cross/Ms. Connell

1 in executive session so that the discussions wouldn't appear in
2 the reports that are in those board books; right?

3 A Not that I'm aware of. I don't remember doing that at
4 all.

5 MS. CONNELL: Your Honor, I'd like to bring up for
6 identification PX 1553. I have a paper version that does
7 not have the numbers redacted. Thank you.

8 MR. CORRELL: Your Honor, it is very hard to decide
9 whether to object or not if we're not given a copy of what
10 the witness is being shown. If we could just in the future.

11 THE COURT: Yeah, for cross-examination you don't
12 always have them in advance, but we can put them up on the
13 screen without it being in front of the jurors.

14 MR. CORRELL: Thank you, your Honor.

15 Q Mr. King, I placed in front of you a document that was
16 also produced by the NRA in this action, and it is a text stream
17 between you and other NRA board members and employees including
18 Ms. Hallow, Ms. Froman, Mr. Friedman; and it has been marked for
19 identification as PX 1553.

20 Do you see that?

21 A Yes, I do.

22 Q And do you see the second text bubble down there seems
23 to be a response from you?

24 A Yeah, it says "Agree."

25 Q And that's number -- is that number that's there the

BP

3448

T. King - by Defendants - Cross/Ms. Connell

1 phone number you had in June of 2019?

2 A Yes, it is.

3 MS. CONNELL: Your Honor, I move for the admission
4 of this document.

5 THE COURT: On the same grounds, admitted.

6 (Whereupon, at this time Plaintiff's Exhibit PX
7 1553 was admitted and received into evidence.)

8 MS. CONNELL: I'd ask it be published to the jury.

9 THE COURT: Yes.

10 (Displayed)

11 Q Do you see the first text from Joel Friedman?

12 A Yes.

13 Q Who's Mr. Friedman?

14 A Mr. Friedman is just a board member.

15 Q And Mr. Friedman says, "Believe serious consideration
16 be made to hold most meetings in executive session so only the
17 results are put in the minutes. Quote, Resolved that -- blank
18 -- was passed."

19 Do you see that?

20 A Yes, I do.

21 Q And your response was "Agree;" correct?

22 A Yes.

23 Q Mr. King, would you agree that money spent on, for
24 example, a \$1600 tip to a landscaper is money not spent on
25 mission activities of the NRA?

BP

3449

T. King - by Defendants - Redirect/Mr. Peters

1 MR. CORRELL: Objection, your Honor. Assumes facts
2 not in evidence.

3 THE COURT: Overruled.

4 MR. PETERS: And this, also, is outside the scope
5 of direct.

6 THE COURT: Overruled.

7 A Could you repeat the question, please?

8 Q Sure. Would you agree with me that money spent on, for
9 example, a \$1600 tip to a landscaper is money not spent on
10 mission activities of the NRA?

11 A Yes.

12 Q And, in fact, money -- the NRA spending on mission
13 programming has declined between 2014 and 2022; correct?

14 A Yes.

15 MS. CONNELL: Thank you, Mr. King.

16 THE COURT: Any further questioning?

17 MR. PETERS: Yes.

18 REDIRECT-EXAMINATION

19 BY MR. PETERS:

20 Q Good afternoon, Mr. King.

21 A Good afternoon.

22 Q Sir, you testified -- I think I asked you during direct
23 whether you were -- whether you were aware of the extent of
24 Mr. LaPierre's use of a private plane prior to 2019. Do you
25 remember me asking you that?

BP

3450

T. King - by Defendants - Redirect/Mr. Peters

1 A Yes, I do.

2 MS. CONNELL: Objection.

3 THE COURT: Overruled.

4 Q And did there come a time when you learned more about
5 Mr. LaPierre's use of private plane travel?

6 A Yes, there did.

7 Q Did you describe when that was?

8 A It was sometime mid 2018 if I'm not mistaken. You
9 know, it is hard to put dates with that.

10 Q Okay. And, so, at that point you discovered that the
11 extent of -- or did you or did you not discover the extent of
12 Mr. LaPierre's private plane usage was greater than you had
13 previously realized, is it fair to say?

14 MS. CONNELL: Objection, your Honor.

15 THE COURT: It's a little bit leading, but I'll let
16 it.

17 A Yes, I did. You know, and, and as far as I was
18 concerned, it didn't matter what it was spent on. It was
19 misspent monies, okay; and that was -- that was infringement on
20 the NRA laws, okay.

21 I don't care if he -- if it was spent on his nephew. I
22 don't care if it was spent on anything, okay. It shouldn't have
23 been spent, and that's what I decided on and plus he was making
24 restitution.

25 Q Okay. So, you said before, didn't you, that a -- well,

BP

3451

T. King - by Defendants - Redirect/Mr. Peters

1 strike that.

2 Is it fair to say that from 2019 going forward, a key
3 part of your support, continued support for Mr. LaPierre was
4 that he was supporting efforts at compliance; is that fair to
5 say?

6 MS. CONNELL: Objection, your Honor.

7 THE COURT: You used your one phrase leading.

8 Q So, you said before on cross that you continued to
9 support Mr. LaPierre; is that right?

10 A Yes.

11 Q Why did you continue to support Mr. LaPierre after
12 2019?

13 A I think I may have stated this earlier.

14 Everybody makes mistakes. Mr. LaPierre stood up in
15 front of this entire board and said he made a mistake and that
16 he was making restitution. And, in my eyes, someone who stands
17 up, admits their mistakes and has the hutzpah, okay, to do that,
18 is a man who has some honor, okay. And he told us that he was
19 going to reimburse the money to the NRA, and he has in fact done
20 that.

21 Q Now, if Mr. LaPierre were to run -- say put his name in
22 that ring once again for EVP, do you think that you would
23 support him?

24 A I stated that earlier. No. You know, Mr. LaPierre's
25 time -- he did great work for the NRA. Even in consideration of

BP

3452

T. King - by Defendants - Redirect/Mr. Peters

1 the problems that he had and the mistakes that he made, he
2 raised hundreds of millions of dollars and he increased the
3 membership and made the NRA what it is today. But could I
4 support him again? No, the time has passed. It is time for a
5 new NRA.

6 Q Now, you said before we were talking about, you know,
7 who is elected in board of directors' elections.

8 Did anyone ever ask you for your advice on how they
9 should vote, any NRA members?

10 MS. CONNELL: Objection, your Honor.

11 Q Let me get there a different way. You said before that
12 it was --

13 THE COURT: What was the objection based on?

14 MS. CONNELL: I thought it was leading, your Honor,
15 but --

16 THE COURT: It's not.

17 MR. PETERS: It's is not?

18 THE COURT: You're allowed to ask did something
19 happen. It doesn't suggest the answer.

20 Q So has anyone -- did anyone ever ask you for how you
21 think people should vote on board of directors elections?

22 A You know, I stated earlier that there's discussions
23 going on between the board of directors. All of the time while
24 we're there, okay, and does that topic come up? Of course it
25 does.

BP

3453

T. King - by Defendants - Redirect/Mr. Peters

1 You know, we're people that are interested in who's
2 going and somebody might I'm supporting so and so, I'm
3 supporting so and so. Who do you think or what do you think?
4 It was never a case of asking me for any type of coercion to
5 make me vote in any one particular way.

6 So, yeah, of course, we discussed that.

7 Q Okay, you said before that you found it funny or that
8 it was a joke when, you know, some people would submit their own
9 lists of who to vote for for the board of directors.

10 Can you explain why you thought that was funny?

11 A Because, he -- he just mocked it, okay. And, you know,
12 and, frankly, I don't know who they came from and I don't know
13 if he did or not; but he just thought it was funny. Oh, it was
14 because he didn't give one, okay, and that's what he was making
15 fun of.

16 Q Now, when we saw these text messages before that seemed
17 to involve a lot of different directors and you -- you expressed
18 a concern here in one of these about Facebook names that you
19 don't know or appear fake.

20 Do you remember writing that part of the text message?

21 A Which one was that?

22 Q This is PX 1620.

23 A You know, you know that had been discussed numerous
24 times. The thing that I see here, okay, is I don't abbreviate
25 "FB" for Facebook. I write it out. I come from the old school

BP

3454

T. King - by Defendants - Redirect/Mr. Peters

1 where I don't like using abbreviations. Okay, it took me three
2 years to figure out O-M-G, what it meant, okay, and so I just
3 don't do that.

4 Q Okay, fair enough.

5 Do you remember discussions around May of 2019
6 regarding, you know, the Oliver North and the attempt with, you
7 know, and the stuff around the annual meeting that year?

8 A Yeah, that was -- there was a lot of discussion going
9 on about that.

10 Q And you even filed an ethics complaint against
11 Mr. North?

12 A Yes, I did.

13 Q Can you explain why you filed that complaint?

14 MS. CONNELL: Objection, your Honor, beyond the
15 scope.

16 THE COURT: Sustained.

17 MR. PETERS: Well, I asked about it in direct, but
18 it is fair --

19 THE COURT: You asked about it.

20 MR. PETERS: Okay.

21 THE COURT: If you want to cross yourself, I'm not
22 sure you can.

23 Q Do you remember discussions in May 2019 around Oliver
24 North and the leadership challenges at the NRA?

25 MS. CONNELL: Objection, your Honor.

BP

3455

T. King - by Defendants - Redirect/Mr. Peters

1 A Yeah, there was a lot of discussion going on, okay, and
2 a lot of it centered around the fact that we had found out that
3 Mr. North was getting a -- was getting paid, and he would become
4 actually the first paid NRA president and many people on the
5 board took exception to that, and that's what started this whole
6 thing.

7 Q And so you didn't -- so around that time is it fair to
8 say that you had concerns about Mr. North's attempt to continue
9 in leadership at the NRA with his conflict of interest; is that
10 fair to say?

11 MS. CONNELL: Objection, your Honor.

12 THE COURT: Hang on. I missed the last objection,
13 but this really wasn't covered by anybody on cross.

14 Q Okay, understood.

15 So, were there discussions -- what was the tenor of
16 discussions among board members in May 2019, if you can recall?

17 MS. CONNELL: Objection, your Honor.

18 THE COURT: This is the same topic I just said.

19 MR. PETERS: Well, these are discussions among
20 board of directors May 2019.

21 THE COURT: You're back to that, so discussions
22 about what?

23 Q I'm asking, were there discussions -- what were the
24 tenor of discussions among board members in May 2019 if you
25 recall?

BP

3456

T. King - by Defendants - Redirect/Mr. Peters

1 A Well, yes, I do. There was a lot of discussion that
2 was going on, and one of the things that was happening is that
3 all of our discussions were being leaked to the press. Okay,
4 and in one instance I was sitting -- I was sitting at my table
5 and we had just discussed something and I read it on the
6 internet. Okay, and that was the reason -- and I don't --
7 honestly, I don't remember this particular text; but if somebody
8 had sent this to me asking me that if I agree that we should do
9 most of the sensitive things in executive session, I would have
10 said I agree.

11 So, I'll take credit for this even though I don't
12 remember it.

13 Q So, but, generally speaking, when you talk about people
14 being directors having access to information at board meetings,
15 are you talking about the board minutes only or talking about
16 other things such as financial statements?

17 A I'm talking about everything, financial statements,
18 legal discussions, you know, and that -- that are supposed to
19 be -- that are supposed to be privileged and held to the board.

20 Q And your understanding is that -- and your experience
21 has been or has it that board members are given ample amount of
22 information to guide their governance of the NRA?

23 MS. CONNELL: Objection, your Honor.

24 A I totally agree with that is if they are interested
25 enough and want to find out, the information is there and you

BP

3457

T. King - by Defendants - Redirect/Mr. Peters

1 know, we're seeing these text messages and all that. You can
2 text anyone of the officers, particularly the president. You
3 can e-mail them or even, you know, most people don't do it
4 anymore, is pick up the phone and call him and you would get an
5 answer to your questions.

6 Q And would you not only -- is it fair to say that you
7 would not only speak to officers, you might also speak to the
8 NRA's own employees to be able to get information; is that
9 fair?

10 MS. CONNELL: Objection, your Honor.

11 THE COURT: Sustained again.

12 Q What other sources of information do you have as an NRA
13 board member?

14 A I -- the employees, okay. The fellow who was running
15 general operations at the time -- he's since retired -- was a
16 fellow from New York State who served on my board of directors,
17 the New York State Rifle and Pistol Association, and we
18 regularly talked.

19 Q And I think you said before that there was vigorous
20 discussion and debate amongst the board members. Is that fair
21 to say?

22 A Oh, yeah. There's always vigorous discussion no matter
23 what the topic is.

24 Q And there's sometimes board members will even criticize
25 other board members; is that fair to say?

BP

3458

T. King - by Defendants - Redirect/Mr. Peters

1 A Oh, yes.

2 Q Do you -- have you found -- but in the, in the end is
3 it fair to say the members of the NRA decide who's on the board?

4 A Yeah, they're the ones that vote. It's a national
5 election like I stated. The ballots go out in the magazines and
6 hundreds of thousands of them come back in.

7 Q So, people can and directors can start their own
8 Facebook group, for example; is that fair to say?

9 A Sure.

10 Q And you can start your own Facebook; right?

11 A Yes.

12 Q And you can make statements on your Facebook in support
13 of certain directors?

14 A Yes --

15 MS. CONNELL: Objection, your Honor.

16 THE COURT: Hang on a second.

17 THE COURT: Ground?

18 MS. CONNELL: Leading, and going beyond the scope.

19 THE COURT: Sustained.

20 Q Fair to say there's lots of ways for directors to
21 communicate their views to the public?

22 A Absolutely.

23 MS. CONNELL: Objection, your Honor.

24 THE COURT: You can borrow one leading question
25 from your next witness, if you want.

BP

3459

T. King - by Defendants - Redirect/Mr. Correll

1 Q Go ahead.

2 A Absolutely. Any of us that are running for -- for the
3 board, I mean, if you want to go to Facebook -- and I know you
4 can't do it right now -- but see Tom King, NRA Board, Reelect
5 Tom King NRA Board 2021. I don't remember the exact year, but,
6 sure, we all do that.

7 Q Fair to say that you -- that you -- have you ever
8 threatened anyone to try to get them to vote for you?

9 MS. CONNELL: Objection, your Honor.

10 THE COURT: That's not leading.

11 A You know, I'm sorry to say this, but that's absurd, no.
12 That would never ever, ever, ever happen; and if someone did it
13 to me, I would be really offended and that would not be the end
14 of it.

15 MR. PETERS: Okay, no further questions. Thank
16 you.

17 REDIRECT-EXAMINATION

18 BY MR. CORRELL:

19 Q Good afternoon, again.

20 A Good afternoon again.

21 Q You were asked a question about a \$1600 tip to a
22 landscaper by Ms. Connell.

23 Do you remember that?

24 A Yes, I do.

25 Q Do you have any knowledge of a \$1600 tip being paid to

BP

3460

T. King - by Defendants - Redirect/Mr. Correll

1 a landscaper?

2 A First time I heard about is right now.

3 Q Has the NRA had any security problems during the time
4 you served on the board?

5 A In what way do you mean that?

6 Q Does the NRA have a security department?

7 A Yes, we do have a security department.

8 Q Is security important to the NRA?

9 A Extremely important.

10 Q And why is that?

11 A Because we -- we talk about many sensitive things. You
12 know, we are an advocacy group, okay; and we put plans together
13 about what we're going to do politically over the years, what
14 were going to do on elections. And we can't have people
15 listening into what we're doing and being able to counteract
16 everything that we're putting together.

17 I mean, it is like during the Gulf War, Governor
18 Schwarzkopf (sic.) didn't tell the Iraqis where he was going to
19 attack and it is exactly the same thing.

20 Q Any security incidents at headquarters?

21 MS. CONNELL: I said beyond the scope, your Honor.

22 MR. CORRELL: Your Honor, the landscaping was a
23 security charge to protect Mr. LaPierre at his home from a
24 sniper or house invasion.

25 MS. CONNELL: Your Honor, that's counsel

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testifying. He's going to have Mr. LaPierre testify.

THE COURT: Sustained.

(Continued on next page)

BP

3462

King -by Defendant - Cross/Mr. Correll

1 Q You were asked a question about a \$1,600 tip to a
2 landscaper.

3 A Yes.

4 Q Did you have any knowledge that that landscaper might
5 have been doing any work for security purposes?

6 MS. CONNELL: Objection, your Honor.

7 MR. CORRELL: I'm just asking him for his
8 knowledge, your Honor.

9 A No, I did not.

10 Q An if that \$1,600 expense had been incurred by the NRA
11 legitimately for payment to landscaping for security purposes,
12 would your answer be the same?

13 A No, it would not.

14 MS. CONNELL: Objection, your Honor.

15 THE COURT: You already got the answer.

16 THE WITNESS: Sorry.

17 MR. CORRELL: That's all I have for you right now.
18 Thank you, sir.

19 THE COURT: Anything else?

20 MR. FARBER: No questions, your Honor.

21 THE COURT: Anything further from the State?

22 MS. CONNELL: No, your Honor.

23 THE COURT: All right. Sir, you're free to go.

24 MR. FARBER: Judge, there is something on the
25 screen that shouldn't be on the screen.

KM

3463

King -by Defendant - Cross/Mr. Correll

1 THE COURT: Do you want to turn the screen off.

2 (Witness excused.)

3 THE COURT: So members of the jury, we started the
4 second -- this session late. We would normally have a break
5 if we started at 2:15.

6 Are you okay pushing through? If anybody is
7 uncomfortable -- so we can either take a break now or we are
8 going to go all the way to the end. So if you need a break,
9 then I'll let you have that. Do you want a short break?

10 Okay. Restroom break. And then we will get the
11 next witness.

12 THE COURT OFFICER: All rise. Jury exiting.

13 THE COURT: Once whoever needs to do that is done,
14 just let the court officer know and we can restart. Not to
15 rush anyone.

16 (Whereupon, at this time the jury exits
17 the courtroom.)

18 (Whereupon at this time there was a recess taken.)

19 THE COURT OFFICER: All rise. Jury entering.

20 (Whereupon, at this time the jury entered the
21 courtroom.)

22 THE COURT: Thank you. Please have a seat. Okay.
23 Next witness for the defense.

24 MS. ROGERS: The NRA calls Sonya Rowling.

25 THE COURT: She was previously sworn. Do you want

KM

3464

Rowling - by Defendant - Direct/Ms. Eisenberg

1 me to have her sworn again.

2 MS. ROGERS: We think that might be wise, your
3 Honor, because it's separate testimony.

4 THE COURT: Sure.

5 (Witness resumes the witness stand.)

6 THE COURT: Welcome back.

7 S O N Y A R O W L I N G, a witness called on
8 behalf of the Defendant, after having been first duly sworn,
9 took the witness stand and testified as follows.

10 THE COURT: Welcome back.

11 DIRECT EXAMINATION

12 BY MS. EISENBERG:

13 Q Good afternoon. Can the members of the jury hear me?

14 Ms. Rowling, welcome back.

15 A Thank you.

16 Q Please tell us a little bit about your background.

17 A I'm a graduate of James Madison University. I am also
18 a CPA. I have a degree in accounting. I spent my beginning
19 professional career at the Department of Defense, Office of the
20 Inspector General auditing intelligence programs and moved from
21 there to public accounting auditing non-profits and then came to
22 the NRA in '99 where I started as a assistant manager within the
23 Financial Services Division and eventually became a director and
24 then became treasurer and CFO in 2021.

25 Q Thank you. There should be a binder with documents in

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1 front of you.

2 A Yes.

3 Q If you can please turn to Tab 37, and Mr. Stein, if we
4 can please display for the Court and counsel Tab 37 which is
5 DX1-0547.

6 Ms. Rowling, what is DX1-0547?

7 A This is the compliance seminar that is provided Board
8 of Directors by Mr. Frazer. It's the slides associated with
9 that.

10 Q When was it provided?

11 A September of 2023.

12 Q Did you attend the presentation?

13 A Yes.

14 MS. EISENBERG: Your Honor, at this time the NRA
15 moves to admit DX 1-0547 in evidence.

16 MR. THOMPSON: No.

17 THE COURT: It's admitted.

18 Q If we can please scroll down to Page 6 of the exhibit
19 and publish it to the jury.

20 What is the COSO Framework?

21 A COSO Framework is a guideline for internal controls for
22 an organization. It creates a -- provides for a 360-degree
23 review of compliance. It gives the organization a means to
24 identify risk areas and understand risks so that the
25 organization can then prioritize risk along and group and link

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1 risk with strategy and operational performance of the
2 organization.

3 Q It looks a little like a Rubik's cube; right.

4 Can you walk through the various sides of the cube and
5 what they refer to?

6 A Sure. The top layer where it discusses operations
7 reporting and compliance, those areas represent your internal
8 control structure.

9 You want your internal control structure to enhance
10 your operations to insure that you have efficiencies and
11 effectiveness in working through and fulfilling the mission of
12 the organization.

13 The reporting side is to -- you want your internal
14 controls to report that your external reporting is accurate.
15 And you want your internal controls to also insure compliance
16 with laws and regulations.

17 Q Let's look at the panel on the right, the one that
18 refers to entity level division, etc.

19 What are those references to?

20 A So that references basically all of your compliance,
21 and your internal controls impacts every level of the
22 organization from the entity level all the way down to say a
23 staff position, an entry-level staff position, and everyone is
24 actively involved. And then across the front, it starts with
25 control environment.

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1 Control environment is your culture of your
2 organization, your tone at the top.

3 And moving down, risk assessment is prioritizing risk,
4 setting and understanding what your risks are as an
5 organization.

6 The control activities takes the risks and makes sure
7 that you have policies and procedures in place to mitigate where
8 those risks are.

9 Your information and communication then makes sure you
10 disseminate this information across the Board.

11 So our compliance seminars are a prime example of that.
12 And then monitoring activities, you really think of that as kind
13 of an independent review. So external auditors, internal
14 auditors. And then even internal kind of reviews can be done in
15 the treasurer's office or the Office of General Counsel.

16 Q The most important question. What does "COSO" stand
17 for?

18 A COSO is the Committee of Sponsoring Organizations. It
19 was a commission of the Treadway Commission, and this was just a
20 product of that commission.

21 Q And to what extent, if any, do you as treasurer and CFO
22 of the NRA use the COSO Framework in assisting the NRA comply
23 with the various legal regulatory and policy requirements?

24 A Well, it's a daily operation.

25 Compliance is a part of everything that we do, and it's

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1 pretty much part of everyday life.

2 Q What is "Tone at the top?"

3 A Tone at the top refers to as I said culture. It's do
4 you have the support from the very top of the organization to --
5 and to basically set that tone for the rest of the employees.
6 So all the employees understand the importance of compliance.

7 Q Who is the interim executive vice president of the NRA?

8 A Andrew Arulanandam.

9 Q Has he worked at the NRA for a while?

10 A Yes.

11 Q And during your time with the organization, have you
12 formed an opinion as to his respect in regard for the NRA's
13 internal policies?

14 MR. THOMPSON: Objection. Leading.

15 THE COURT: It's not leading. Overruled.

16 A In the 20 years that I have a worked with Mr.
17 Arulanandam, he has been nothing but forthright and has never
18 shown any sort of noncompliance-type behavior.

19 Q As far as you know, never sought reimbursement for
20 expenses without providing backup? Would that be fair?

21 A Yes, as far as I know.

22 Q And in terms of tone at the top and sort of the CFO
23 treasurer level, how, if at all, did the tone at the top of the
24 NRA change when Mr. Spray replaced Mr. Phillips in 2018?

25 A Mr. Spray, when he came on board, his -- you know, his

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1 first goal was obviously to try to understand the organization.
2 We were holding meetings. That's with myself, my colleagues,
3 Mr. Spray.

4 We didn't have those under Mr. Phillips. We were
5 sharing information, and he -- his behavior was one of we want
6 to get this right. We want to look at expenses. We want to see
7 if everything is for lack of better words "aboveboard," and he
8 really focussed in those areas and provided this kind of a
9 catalyst for the sharing of information amongst each other that
10 identified some areas of concern.

11 Q And in terms of potential override of internal
12 controls, how did the atmosphere change with Mr. Spray's arrival
13 and Mr. Phillips' departure?

14 A Mr. Spray was -- was not supportive of overrides. I do
15 believe there was one he participated in, but for the most part,
16 not very supportive of our internal control policies and
17 procedures.

18 Q And Ms. Rowling, do you see yourself as a vital
19 contributor to tone at the top?

20 A Absolutely.

21 Q What's your policy with respect to internal overrides
22 or internal policies?

23 A There are no internal overrides.

24 Q Let's talk a little bit about Mr. Frazer.

25 He is the secretary an general counsel of the NRA;

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1 right?

2 A That's correct.

3 Q Again, how, if at all, would you say he contributes to
4 tone at the top and the NRA's efforts to comply with laws,
5 regulations and policies?

6 A Mr. Frazer is an integral part of that process. We
7 collaborate all the time regarding controls and compliance, and
8 he faces any issue head on and always wants to do the right
9 thing.

10 Q When Mr. Powell left the organization or was asked to
11 leave the organization, how, if at all, did the control
12 environment and tone at the top change?

13 A It improved the tone at the top.

14 Mr. Powell had some control violations himself. So him
15 leaving really emphasized that desire for the proper tone at the
16 top.

17 Q How did Mr. Mensinger's arrival as director of
18 compliance effect the NRA's tone at the top?

19 A Well, that further enhanced that tone at the top as
20 a -- letting the organization and all the employees know the
21 importance of compliance effort.

22 Q What, if any, role does the Audit Committee of the
23 NRA's Board play in setting appropriate tone at the top?

24 A They are -- they are a compliance partner really with
25 myself and other members of the staff in that they are -- their

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1 efforts with regards to whistle blowing and reviewing
2 related-party transactions as well as -- they actually oversee
3 and hire the external auditors. And yeah, they are just a
4 complete partner with the -- with the organization.

5 Q Is it fair to say that there might be other things that
6 they do? Those are just some of the ones that come to mind at
7 the moment?

8 A Yes.

9 Q If you would be so kind as to please turn to the first
10 tab in your binder.

11 MS. EISENBERG: Mr. Stein, could you please advise
12 me of the next available DX-1. Actually, I have it.

13 Q I am showing the witness and the Court but not the jury
14 for the moment what's been marked as DX 1-0800 for
15 identification.

16 Do you have it in front of you?

17 A I have it on my binder.

18 Q Tab one. Okay. I'll wait.

19 While Mr. Stein is pulling it up, and thank you so much
20 for doing that, can you tell us in general terms whether or not
21 the NRA has a risk assessment?

22 A Yes, the NRA has a risk assessment.

23 Q What is the purpose of a risk assessment in the context
24 of the COSO Framework?

25 A The risk assessment gives the organization an

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1 opportunity to identify risk, prioritize resources associated
2 with those risks. It also really makes you sit down and in
3 thinking of risk, map those controls to insure that your risks
4 are minimized.

5 Q Is it the organization's practice to have a risk
6 assessment?

7 A Yes.

8 Q Did you recently participate in an update to the risk
9 assessment?

10 A I did. Our original risk assessment focused from a
11 loss exposure and insurance analysis perspective and that had
12 already been provided to our auditors, but I enhanced this to
13 focus in areas of financial and governance in more detail.

14 Q When did you do that?

15 A 2023.

16 Q Who, if anyone, else participated in the preparation of
17 the most recent risk assessment?

18 A Mr. Frazer did.

19 MS. EISENBERG: Mr. Stein, do we have the exhibit?

20 Your Honor, at this time I move to admit in
21 evidence this exhibit.

22 THE COURT: Is this the same document?

23 I mean, it's a different tab. Just make sure I
24 have the right one.

25 Can you do the first tab?

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1 MS. EISENBERG: And also the middle one. That's
2 called "Risk Assessment."

3 THE COURT: Oh, yeah. It just doesn't look like
4 the one that's in the book. I can't figure out which page
5 is what, but okay.

6 Are there there any objections?

7 MR. THOMPSON: Yes, your Honor. Relevance, hearsay
8 and then also attempts to offer a lay expert opinion
9 particularly as to the risk assessment tab.

10 MS. EISENBERG: Your Honor, this is highly relevant
11 to the defense.

12 The NYAG defense of the case is the NRA has done
13 nothing to insure compliance.

14 THE COURT: Hang on. This is the actual document
15 used in the business now; is that right?

16 MS. EISENBERG: And that's the one that Ms. Rowling
17 prepared with input from Mr. Frazer.

18 THE COURT: And this is prepared and kept in the
19 ordinary course of business?

20 THE WITNESS: Yes.

21 THE COURT: It's admitted.

22 MR. THOMPSON: Just to note for the record that we
23 also object as to have been a late-produced document.

24 THE COURT: Understood. Overruled.

25 It was prepared in 2023; right.

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Rowling - by Defendant - Direct/Ms. Eisenberg

1 MS. EISENBERG: Yes, your Honor, and we offered an
2 opportunity for the further deposition.

3 THE COURT: Fine.

4 MS. EISENBERG: Let's talk a little bit about some
5 of the NRA's control activities, and we can take the exhibit
6 down, Mr. Stein. Thank you.

7 What is C-Track.

8 A C-Track is a program that we -- we have used or we use
9 to prepare our 990 which is our information return for the IRS.

10 It is kind of -- you can think of it like a Turbo Tax
11 for non-profits. It helps you to answer the questions. It then
12 prompts you with what schedules you also need to fill out
13 associated with those.

14 As you've seen before this 990 is 100 pages long.
15 Having that kind of checks and balances provides a good control.

16 Q What do you mean by checks and balances?

17 A Where the form itself will give you an error if you
18 have not filled out based on your answers in certain areas.

19 Q Does the NRA use C-Track?

20 A Yes, we do.

21 Q Has it used C-Track for several years now?

22 A Yes. Since 2019.

23 Q And to the extent you view it as part of the NRA's
24 control activities, how so?

25 A Well, it provides that good checks and balances. It's

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1 part of our process of creating the -- the 990 as well as it --
2 it -- it's really part of our control environment or control
3 processes.

4 Q Let's talk about the accounts payable software that's
5 in use at the NRA.

6 What is PN3 for Payables?

7 A PN3 is a software where all of our invoices are input
8 electronically into the software. They are routed for
9 approvals.

10 Embedded within the software are control check points.
11 So if an invoice is -- and those control check points tie
12 directly to our policies.

13 So if an invoice is over \$50,000, it requires two
14 signatures of certain individuals. If I am the only person that
15 approves it, it will not route. It will tell me there is an
16 error. It has to go to the next person, and I have to select
17 that person -- only certain individuals then are able -- I'm
18 only able to select certain individuals as well in that approval
19 process.

20 Q Do you consider the NRA's choice to use the software as
21 part and parcel of its control activities under the COSO
22 Framework?

23 A Yes.

24 Q Let's talk a little bit about management reporting.

25 What reports do managers at the NRA receive with regard

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Rowling - by Defendant - Direct/Ms. Eisenberg

1 to money going in and out within their department?

2 A So monthly managers will receive electronically
3 accounting reports of all their activities within their
4 divisions, but the reports also provide -- drill down capability
5 into the details. So not only do you see information on summary
6 level, you see the information at the invoice level, for
7 example, of an expense so that they can adequately track and
8 manage their budgets.

9 Q Has the NRA recently amended any of its internal
10 policies?

11 A Yes. The travel policy has been amended. The
12 procedures that have been amended to travel procedures were
13 added. We have added purchasing procedures.

14 Basically, the procedure -- the policy is part of what
15 the Board implements. Procedures help define for the users more
16 detailed explanation to enhance those policies.

17 Q I'd like to talk to you about enforcement of policies
18 at the NRA.

19 If a late expense report is submitted, what happens?

20 A If an expense report is submitted after 60 days, it
21 will be denied and not paid.

22 Q What if someone submits an expense report but it is
23 missing support to show the business purpose of the expense or
24 to provide information about the nature of the expense?

25 A Those will be rejected, sent back to the individual who

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1 submitted the expense report, and they either provide additional
2 information we have requested or the -- or they have to remove
3 the expense -- that portion from the expense report.

4 Q What is the NRA's procedure for vendor contracts as it
5 relates to the NRA's purchasing policy?

6 A Vendor contracts must comply with the policy at this
7 point. The policies require certain signatures if the
8 contract's over a certain amount.

9 So the whole goal is to insure that the vendor
10 contracts follow the policy.

11 Q Does the NRA expect its vendors to comply with the
12 NRA's requirement with regard to those matters as well?

13 A Yes.

14 Q What would happen to a vendor if it didn't comply?

15 A If they -- if they already had a contract and were
16 refusing to submit support for an invoice that we have asked
17 for, we would terminate the contract.

18 Q And in fact, that's happened in the past; would that be
19 fair?

20 A Yes.

21 Q What is the NRA's policy and procedure with regard to
22 related-party transactions and other conflicts of interest?

23 A So related-party transactions are -- you know, you want
24 to identify them. If they exist, they would go before the Audit
25 Committee, would need proper disclosure into financial statement

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1 or otherwise, if it's necessary. So the whole idea is to
2 identify and evaluate and disclose.

3 Q What about the whistleblower policy?

4 Has the NRA's policy and procedure with respect to
5 ensuring that whistleblower protections are widely disseminated
6 and known by its staff employees, officers and directors?

7 A Our whistle blowing policy is on our NRA website. It's
8 on our intranet. It's on the timekeeping system. It's a log-in
9 type system, and it is readily available to anyone to view.

10 Q What is the NRA's policy and procedure with regard for
11 identifying and recognizing potential private inurement?

12 A Obviously, private inurement, you would try to
13 basically stop from happening upfront. So you would identify it
14 in a process of accounts payable process, whatever. You would
15 identify it upfront, not pay it. If it's identified after the
16 fact, you are going to evaluate it and seek reimbursement and
17 disclose, if necessary.

18 Q To the extent the NRA uses a corporate credit card, how
19 would you compare the extent of such use today versus let's say
20 in 2018?

21 A So the use today is for very limited use.

22 So our travel agency has a card where I log into a
23 system. If I'm going to book my flight, it automatically
24 charges that card.

25 We have a card for general counsel's office when they

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1 have to submit charitable filings, their fees. These type of
2 things, you have to pay on-line, so there is a card for that.
3 And there is a card for our IT Department. Same types of
4 things.

5 They have areas where you can only pay by credit card.
6 And then one other area that we have a card in is if we are
7 going to have an event and we're room blocking hotel space like
8 at our annual meeting, credit cards are used to secure that room
9 block.

10 In the past, not every employee, but a lot -- over 100
11 employees had cards. It was a much bigger, bigger piece, and we
12 just have eliminated that use.

13 (Continued on the following page.)

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 Q That is no longer the case?

2 A That's correct.

3 Q Let's talk a little bit about information, which is
4 part of the COSO cube. Can you please remind us how information
5 sharing is important in that context?

6 A Sure. I mean, one of the biggest things you want to
7 make sure you do is share these policies and procedures with the
8 staff so they know, and not just staff but board members and
9 part of that effort is the compliance training.

10 Staff also knows our compliance efforts, are policies
11 are in the Employee Handbook; but these compliance trainings
12 actually kind of reinforce all of the compliance efforts.

13 Q Let's take a look at Tab 27, which is PX 2567, which is
14 already in evidence. Do you recognize this exhibit,
15 Ms. Rowling?

16 A Yes.

17 Q What is it?

18 A This is the compliance seminar front page of the deck
19 that was provided at the seminar in 2018.

20 Q And to what degree, if any, do you find this deck to be
21 informative?

22 A They're very informative. They provide the users or
23 attendees at these events with not only the policies, but
24 examples and kind of a Q and A of what do you think and to be
25 able to provide kind of a thought provoking interactive

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 discussion and really sets the framework for -- for all of the
2 compliance efforts.

3 Q Does the NRA make efforts to track attendance at these
4 seminars?

5 A Yes.

6 Q You could please turn to Tab 26, which is marked for
7 identification as DX1-0243.

8 What is this exhibit?

9 A That is a sign-in sheet for the compliance training on
10 July of 2018.

11 Q Does your name appear on the sign-in sheet?

12 A Yes, it does.

13 Q You attended this seminar?

14 A Yes, I did.

15 MS. EISENBERG: Your Honor, at this time I move to
16 admit DX1-0243 in evidence.

17 THE COURT: It is admitted.

18 (Whereupon, at this time Defendants' Exhibit
19 DX1-0243 was admitted and received into evidence.)

20 Q Ms. Rowling, let's take a look at Tab 29. This exhibit
21 is not yet in evidence. It's been identified as DX1-0133.

22 What is Tab 29?

23 A It is the compliance training seminar slides from 2019
24 February.

25 Q Did you attend the seminar?

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 A Yes, I did.

2 MS. EISENBERG: Your Honor, at this time I move
3 into evidence DX1-0133.

4 MR. THOMPSON: No objection.

5 THE COURT: It's admitted.

6 (Whereupon, at this time Defendants' Exhibit
7 DX1-0133 was admitted and received into evidence.)

8 Q Let's take a look at Tab 28, which is DX1-0242 for
9 identification. What is it?

10 A This is a sign-in sheet for the compliance meeting in
11 February of 2019.

12 Q Does your name appear on it?

13 A Yes, it does.

14 MS. EISENBERG: Your Honor, at this time the NRA
15 moves to admit DX1-0242 in evidence.

16 MR. THOMPSON: No objection.

17 THE COURT: It is admitted.

18 (Whereupon, at this time Defendants' Exhibit
19 DX1-0242 was admitted and received into evidence.)

20 Q Let's take a look at Tab 33, DX1-0496 for
21 identification.

22 What is it?

23 A This is the compliance seminar slides relating to the
24 seminar given in December of 2021.

25 Q Did you attend the seminar?

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 A Yes, I did.

2 MS. EISENBERG: Your Honor, at this point NRA moves
3 to admit DX1-0496 in evidence.

4 MR. THOMPSON: No objection.

5 THE COURT: It is admitted.

6 (Whereupon, at this time Defendants' Exhibit
7 DX1-0496 was admitted and received into evidence.)

8 Q Let's take a look at Tab 32, DX1-0439 for
9 identification. What is it?

10 A It is the sign-in sheet for the December 2021
11 compliance training.

12 Q Does your name appear on it?

13 A Yes, it does.

14 MS. EISENBERG: Your Honor, at this point the NRA
15 moves to admit DX1-0439 in evidence.

16 MR. THOMPSON: No objection.

17 THE COURT: It is admitted.

18 (Whereupon, at this time Defendants' Exhibit
19 DX1-0439 was admitted and received into evidence.)

20 Q Let's take a look at Tab 36 in your binder, which is
21 DX1-0516 for identification.

22 What is it?

23 A Compliance training from September of 2022.

24 Q How if at all does -- I'm sorry -- did you attend this
25 seminar?

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 A Yes, I did.

2 MS. EISENBERG: Your Honor, at this point the NRA
3 moves to admit in evidence DX1-0516.

4 MR. THOMPSON: No objection.

5 THE COURT: It is admitted.

6 Q How, if at all, does the front page of this deck or
7 PowerPoint presentation differ from the ones we looked at
8 before?

9 A The ones before had indicated they were for upper
10 management. That designation was removed and currently all
11 employees are required to attend.

12 Q What if you work at the Whittington Center in New
13 Mexico, are you supposed to travel to the headquarters to be a
14 part of the training or do they make arrangements to train folks
15 who are not in Virginia?

16 A They make arrangements in different ways. I
17 know arrangements have been made for remote sessions as well as
18 individuals traveling to actually give the seminar.

19 Q Who was travelled in order to give these seminars?

20 A Mr. Frazer traveled to give the seminar to our field
21 staff and Mr. Mensinger traveled to Whittington Center.

22 Q And are these -- I'm sorry. Is the current version of
23 the slide deck available online to the NRA's employees?

24 A Yes, it is.

25 Q Let's take a look at Tab 37. This has already been

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 admitted in evidence as DX1-0547 remind us, please, what this
2 exhibit is?

3 A This is the compliance training for the board of
4 directors given September 2023.

5 Q Please describe a little about the training that you
6 attended for the board.

7 A Mr. Frazer gave this training to the board, and he
8 basically goes over governance requirements and the requirements
9 that are basically impact the board, themselves.

10 Q Understood. Moving on, let's take a look at Tabs 39
11 and 40, which are two images not yet in evidence, identified as
12 DX1-1068 and DX1-1069.

13 What are they?

14 A These are photographs taken at a compliance event
15 during compliance week in 2023.

16 Q Do you consider that event to be part of the
17 informational effort under the COSO framework?

18 A Yes.

19 Q Please describe that event.

20 A That event was held as an introduction and a -- an
21 introduction of our new managing director of compliance, as well
22 as to reinforce our compliance efforts within the organization.

23 Q Did you attend this event?

24 A I did.

25 MS. EISENBERG: Your Honor, at this point the NRA

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 moves to admit DX1-1068 as well as 1069 in evidence.

2 THE COURT: I thought -- wait, which tabs were you
3 looking at?

4 MS. EISENBERG: 39 and 40, 1068 and 1069.

5 THE COURT: Okay, it is admitted.

6 (Whereupon, at this time Defendants' Exhibits
7 DX1-1068 and DX1-1069 was admitted and received into
8 evidence.)

9 Q Ms. Rowling, do you recognize some of the individuals
10 depicted in these pictures?

11 A Yes.

12 Q Whom do you recognize?

13 A Mr. LaPierre in the DX1-1068 and I don't know if I can
14 see him in 69; but 1068 he's holding the microphone. Bob
15 Mensinger is also standing in the front.

16 Q Let's take a look at Tab 38 for identification,
17 DX1-1067. What is it?

18 A These are the slides that were presented at that
19 compliance week seminar.

20 Q And, again, you attended the seminar and saw these
21 slides being used during that event?

22 A Yes.

23 MS. EISENBERG: Your Honor, move in evidence
24 DX1-1067.

25 MR. THOMPSON: No objection.

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 THE COURT: Admitted.

2 (Whereupon, at this time Defendants' Exhibit
3 DX1-1067 was admitted and received into evidence.)

4 Q Let's take a look at Tab 41 for identification,
5 DX1-1070. What is it?

6 A This is a picture of a banner that has -- was created
7 for compliance week and just shows a commitment to integrity
8 that is signed by employees.

9 Q And did you observe this banner being used and signed
10 during that event?

11 A Yes, I did.

12 MS. EISENBERG: Your Honor, at this point the NRA
13 moves to admit DX1-1070 in evidence.

14 MR. THOMPSON: No objection.

15 THE COURT: It is admitted.

16 (Whereupon, at this time Defendants' Exhibit
17 DX1-1070 was admitted and received into evidence.)

18 MS. EISENBERG: Let's display it for the jury.

19 (Displayed)

20 Q I'd like to switch gears a little bit and talk about
21 monitoring activities. Did you say monitoring activities are
22 sort of the COSO framework in some way?

23 A Yes.

24 Q How in your view are monitoring activities important in
25 terms of maintaining compliance?

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 A Monitoring activities provide the efforts of an
2 independent kind of review of activities. Think of the external
3 audit as a prime example of monitoring activity.

4 Q Why do you need monitoring activity if you have
5 thousands of procedures in place that say all the right things?

6 A Because if you identify a risk, even if you have
7 controls in place, you want to make sure and test those controls
8 to -- to give you further confidence that everything that
9 you're doing is right, and those monitoring controls provide
10 that.

11 Q Understood. And does the NRA hire external auditors?

12 A Yes.

13 Q What is the main thing that the external auditors is
14 hired to do?

15 A Well, they audit the financial statements.

16 Q And what does it mean to audit the financial
17 statements?

18 A They -- they perform tests of our internal controls and
19 then they give an opinion of whether the financial statements
20 present fairly the -- in all material respects the financial
21 position of the organization.

22 Q Did Aronson perform special procedures in the last few
23 years?

24 A Yes, they did.

25 Q For what purpose as far as you understand?

BP

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 A They prepared special procedures relating to actually
2 the allegations from the New York AG. They wanted to ensure
3 themselves that the allegations that were presented in the past
4 were not still continuing.

5 Q You already testified about Bob Mensinger being the
6 compliance director. What about an internal auditor, does the
7 NRA have anyone who performs the function of internal audit?

8 A Yes. Mr. Mensinger has hired an internal auditor.

9 Q Let's talk about the segregation of duties. Is that a
10 concept that you've heard about?

11 A Yes.

12 Q Why is that important when you talk about compliance?

13 A In a monitoring aspect, especially it is important
14 given -- so there are processes of the organization that I'm a
15 part of, but I shouldn't be the one to test that process because
16 I'm a part of it.

17 So, the separation of duties gives you that comfort
18 that an independent source is still doing that monitoring or
19 that testing.

20 Q Understood. Switching gears a little bit again. If
21 you can please turn to Tab 12, which is DX1-0837 for
22 identification.

23 What is it?

24 A This is a memo that I wrote regarding my review of
25 excess benefit transactions, potential excess benefit

BP

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 transactions relating to Mr. LaPierre.

2 Q Who performed the review that's described in this
3 memo?

4 A I did.

5 Q And if you can also flip to Tabs 13 through 17, and
6 tell us what they are. For identification these are DX1-0835,
7 0834, 0838, 0839, and 0836.

8 Would you mind telling us what those tabs are, 13
9 through 17?

10 A They are attachments to the memo that I wrote that
11 detail out the testing procedures that I took.

12 Q To the extent the memo reaches certain conclusions, who
13 is it that reached these conclusions?

14 A I did.

15 Q And who drafted this memo?

16 A I did.

17 Q And did anyone review it before it was finalized?

18 A Yes, I reviewed it with you.

19 Q Did you and I review it for clarity?

20 A Yes, we reviewed this for clarity. There was no
21 changes to the conclusions. Those were all -- those were all
22 mine.

23 Q And is it your practice as the CFO and treasurer of the
24 organization to prepare such analyses and to memorialize them?

25 MR. THOMPSON: Leading, your Honor.

BP

3491

S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 THE COURT: Overruled.

2 Q You said yes?

3 A Yes.

4 Q And is it also the practice of the organization as a
5 whole to prepare and memorialize such analyses when the need for
6 them arises?

7 A Yes.

8 Q Please give us some examples of similar analyses that
9 you have done?

10 A So, I've done analyses like this relating to a review
11 of expense reports that were submitted late by Mr. LaPierre, Mr.
12 Coy; and I did that review and memorialized it in the same
13 format.

14 I reviewed and memorialized Josh Powell's expenses in
15 the same format.

16 MS. EISENBERG: Understood. Your Honor, at this
17 point the NRA moves into evidence DX1-0837 as well as all
18 the attachments.

19 MR. THOMPSON: Renewing our business records
20 argument, your Honor. She reviewed this with counsel, which
21 goes to the litigation of this document and preserving our
22 other objections.

23 THE COURT: Well, we discussed this. I'm going to
24 admit it.

25 I'm just going to advise the jury that this is one

BP

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 of knows out-of-court statements that has a bit of a story
2 to how can you use it.

3 The analysis is Ms. Rowling's and it is being
4 admitted to show the process that she went through, but
5 there are a number of statements in here that reflect
6 conversations with others where it has recitations of facts
7 based upon what she was -- who she was talking to.

8 Those are all in here just for the purpose of her
9 describing her process, but that is not evidence that you
10 can use for the truths of the matter asserted -- to use that
11 phrase again. This is hearsay. This is things that were
12 told to Ms. Rowling and that she then transcribed.

13 So, you should not use it for the proof of the
14 underlying facts stated by other people in this memo. The
15 main source of your evidence will be Ms. Rowling's personal
16 testimony about this process, and this document will just be
17 evidence that the process took place and contemporaneous
18 evidence of her notes, but only to that extent.

19 So, any proof of the underlying facts here will
20 have to come through other evidence. Okay.

21 MS. EISENBERG: Thank you, your Honor.

22 Let's display DX1-0837 for the jury. And for the
23 record, the attachments that I understand your Honor to have
24 admitted are DX1-0835, 0834, 0838, 0839 and 0836.

25 THE COURT: Yeah, I didn't specifically make my

BP

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 comments to the attachments and we discussed those as well.
2 I'm admitting those.

3 Those, also, have a number of things that come from
4 third parties or other documents that -- that these are
5 documents she either looked at or used. They are not
6 admitted for the truth of the matters asserted in them.
7 This is really just to show the process. Okay.

8 MS. EISENBERG: Thank you, your Honor.

9 Q Ms. Rowling, directing your attention to the first page
10 of DX1-0837 which is the top 12 of your binder. Specifically
11 the paragraph that starts with the words "The NRA has."

12 Do you have that in front of you?

13 A Yes.

14 Q And if can you please sort of help us understand what
15 the purpose of your writing this paragraph was and what you
16 intended to communicate by these words and sentences?

17 A It really just -- you know, we identified excess
18 benefits or potential excess benefits that were engaged in 2019
19 or prior years. Those, those were reported on the IRS Form 990
20 for 2019 through 2022, and another transaction which was going
21 to be -- is going to be recorded on a 2023 990.

22 They relate to Mr. LaPierre and he -- he has reported
23 those and then reimbursed those transactions.

24 Q Thank you. Directing your attention to the sentence
25 that starts with the word "To ensure." Do you see that?

BP

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 A Yes.

2 Q What does it say? Would you please read that for us.

3 A "To ensure the NRA has properly reported and be
4 reimbursed for those transactions. I have performed a review of
5 these transactions."

6 Q And does the sentence fairly reflect the purpose for
7 which you conducted this review?

8 A Yes.

9 Q Let's take a look at the second to third page of this
10 exhibit under the heading that's numbered "2".

11 Directing your attention to the sentence next to number
12 2 where it states, "My review of these."

13 Do you see that?

14 A Yes.

15 Q And fair to say that that sentence states that your
16 review of these excess benefit transactions and potential excess
17 benefit transactions included the following list?

18 A Yes.

19 Q And did you go on to list the specific types of
20 categories that you reviewed?

21 A Yes.

22 Q Please tell us what they are by reference to pages 2
23 and 3 of this exhibit.

24 A Airfare, charter airfare, gifts, cosmetics, family
25 lodging, personal lodging and cellphone-related expenses, black

BP

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 car service, wardrobe and leased vehicles was mentioned although
2 no additional testing was done there.

3 Q Does your memo reflect your findings?

4 A Yes, it does.

5 Q Again, who if anyone other than yourself participated
6 in the formulation of your findings?

7 A No one.

8 Q What were your findings? If you can please tell us by
9 reference to the memo.

10 A I found that there were no errors, inconsistencies
11 within the testing of charter travel.

12 I did find two additional gifts within his expense
13 reports that were not reported. They were of minimal dollar
14 amount and given there were -- was an overpayment relating to
15 personal and black car usage, he's actually was still -- has an
16 overpaid position.

17 I did not note any errors relating to the calculations
18 for cosmetics or family lodging.

19 I did find an error in the wardrobe calculation where
20 the wrong applicable federal rate was used. Because of the
21 length of time these transactions occurred, the rate should have
22 been a long-term rate, and so a recalculation was done and
23 Mr. LaPierre provided an additional payment.

24 Q And by "the rate," are you referring to the interest
25 rate?

BP

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 A The interest rate that was charged, yes.

2 Q Was the interest rate calculation compounded?

3 A Yes.

4 Q And what does that mean?

5 A Compounding means you pay interest on interest. So,
6 when it happens over multiple years, you're going to pay your
7 principal plus your interest and then you're going to continue
8 to pay interest on that, on the total as everyday occurs.

9 Q How was it done here? Was it compounded?

10 A It was compounded.

11 Q I'm sorry, I think you already testified to that.

12 Let's go back to section 2, and I'd like to draw your
13 attention to references within section 2 to various attachments;
14 for example, at the end of subparagraph A and B and so on.

15 Fair to say that these references are to the
16 attachments that are included in your binders as Tabs 13 through
17 17?

18 A Yes.

19 Q We won't look at all of them, but let's take a look at
20 Attachment A, which is in evidence and as DX1-0835, and it
21 appears in Tab 13 of your binder.

22 Let's take a look at the first page. What does it say
23 in the top-right corner?

24 A Attachment A.

25 Q Please identify for us the handwritten notes on this

BP

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 page?

2 A So, the handwritten notes reference that I was testing
3 the -- what was reported on the 2019 990 within this group of
4 testing.

5 The checkmark means I tied out what was on the Excel
6 spreadsheet to an underlying invoice, and that tie-out includes
7 verifying the dates, the amounts and who was actually on the
8 flights.

9 The other checkmark with the slash through it means
10 that I further tied out the trip, itself, to expenses that
11 Mr. LaPierre had submitted and that further gave me evidence of
12 the business purpose. Because the expense report also had the
13 business purpose on there and it validated that the trip was
14 actually taken.

15 The T represents a trace to or matching to the IRS
16 website for the federal -- for the applicable federal rate.
17 That's an interest rate, and the R represents that I
18 recalculated that interest calculation and for the final
19 payment.

20 MS. EISENBERG: Thank you. Excuse me for just one
21 moment.

22 (Brief pause)

23 Q Would you be so kind as to please tell us the or kind
24 of walk us through the rest of this exhibit, which is Attachment
25 A, DX1-0835. What are some of the subsequent pages that appear

BP

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 as part of that attachment?

2 A The next pages are representative of what was disclosed
3 in the 990. Specifically, the page following the one on the
4 screen references Mr. LaPierre's excess benefit transactions.

5 Q And there's a checkmark that appears in the third page
6 on the left side of the page at the top. Who made that
7 checkmark?

8 A I did.

9 Q And what was that in reference to?

10 A That that was what I was testing in the next several
11 pages.

12 Q And would you mind reading for us the language that
13 appears in all caps starting with the words "From 2015" up
14 through the penultimate sentence.

15 A "From 2015 to 2019, the NRA estimates it paid on behalf
16 of Mr. LaPierre directly or indirectly travel expenses for
17 Mr. LaPierre in the aggregate amount of 299,000 and some change.
18 The NRA has determined to treat the payments as automatic excess
19 benefits under treasury regulations as described here.
20 Mr. LaPierre has repaid this excess benefit to the National
21 Rifle Association plus interest, and, therefore, the excess
22 benefit has been corrected."

23 Q And how does this passage relate to the memo that you
24 prepared? What's the relationship between the payments that are
25 described that you just read and the memo and the analysis that

BP

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 you prepared?

2 A My analysis was of those, the calculations that were
3 presented in that.

4 Q And moving on to the next page. Can you please tell us
5 what that appears to be?

6 MS. EISENBERG: Let's go to page 4 and 5 and
7 display them in landscape format, if that's possible.

8 (Displayed)

9 Q What appears on page 4, Ms. Rowling?

10 A These are the transactions that were identified by
11 Mr. LaPierre.

12 Q Who provided you with this spreadsheet?

13 A Mr. LaPierre did.

14 Q It appears there are check marks on the left margin of
15 the page. Do you see those?

16 A Yes.

17 Q Who made them?

18 A I did.

19 Q And what do they denote?

20 A They denote that I -- I tied out the underlying
21 information except for the business purpose to an actual
22 invoice.

23 Q Let's take a look at page 5. Here, we see two types of
24 checkmarks on the left side. Can you please tell us what that
25 means?

BP

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S. Rowling - by Defendants - Direct/Ms. Eisenberg

1 A Sure. The regular checkmark, once again, is the
2 tie-out to the actual invoice, the matching to that invoice.

3 The checkmark with the slash is the tie-out to an
4 actual expense report justifying the trip.

5 Q Let's take a look at the next page, which is page 7 and
6 focus on the right side of the page.

7 I see a reference or I see a capital T and capital R in
8 handwritten note. Who made those?

9 A I did.

10 THE COURT: Do you mean page 7 or page 6? I think
11 they have page 6 up.

12 MS. EISENBERG: I'm sorry, your Honor, I couldn't
13 hear you.

14 THE COURT: They have page 6 up on the screen. Do
15 you mean page 6 or 7?

16 Now 7 is on the screen.

17 MS. EISENBERG: Thank you very much.

18 Q Directing your attention to the right side of the page,
19 I see a capital T and capital R in blue ink.

20 Do you see those?

21 A Yes.

22 Q Was that you who wrote that?

23 A Yes.

24 Q What does the T mean?

25 A The T means that I tied that interest rate, the

BP

3501

1 1.93 percent to the IRS website.

2 Q And what does the R mean?

3 A That I recalculated the interest calculation.

4 Q And to the extent there are other check marks of the
5 type that you just discussed, are the Ts and Rs that appear on
6 this exhibit, do they all denote effectively what you just
7 described?

8 A Yes.

9 Q Let's take a look at exhibit -- I'm sorry. Let's take
10 a look at Tab 18, which is DX1-0855, for identification.

11 Please tell us what it is?

12 A This is a memo that I wrote describing the review
13 process of Mr. Schropp's expense report submitted in relation to
14 expenses that were paid through Ackerman McQueen.

15 Q When were they paid?

16 A 2016 to 2018.

17 Q Has there -- has this practice continued past 2018?

18 A No, it has not.

19 Q What is Tab 19, which is DX1-0856 for identification?

20 A These are attachments relating to that memo.

21 (Continued on next page)

22

23

24

25

BP

3502

Rowling - by Defendant - Direct/Ms. Eisenberg

1 Q And the analysis that you performed, was it yourself
2 who performed it? Were you assisted by others?

3 A I performed it myself.

4 Q And who drafted the memo that appears in Tab 18?

5 A I drafted the memo.

6 Q And is it your practice to perform such analyses when
7 the need arises and to memorialize them similar to how you did
8 that in DX 1-0855 through DX 1-0856?

9 A Yes.

10 MS. EISENBERG: The NRA moves to offer -- to admit
11 in evidence 1-0855 and the attachments which are 0856.

12 MR. THOMPSON: Preserving our objection.

13 THE COURT: Well, I'm going to admit this with the
14 same instruction. This memorialized her analysis, and you
15 will hear her testimony.

16 The underlying facts that are reported in here are
17 not -- these are out-of-court statements, so they are not
18 admissible for the truth of the matters asserted including
19 things that she heard from Mr. Schropp and in reports here.

20 So this again, is part to show the process and to
21 show her contemporaneous notes of it, but not for the truth
22 of the matter. So it's same as the last one.

23 MS. EISENBERG: Thank you, your Honor.

24 Q Let's display to the jury DX 1855 which is the memo
25 itself.

KM

3503

Rowling - by Defendant - Direct/Ms. Eisenberg

1 Can you please tell us by reference to the memo what
2 your findings were with regard to your review?

3 A My findings?

4 Q Yes. And I guess for that purpose, it may be helpful
5 to go to the second page.

6 A I found that Mr. Schropp had traveled business and
7 first class flights without proper approvals that were required
8 under our policies.

9 There were categories of missing receipts. There were
10 also business -- lacking in business purpose and occasion as
11 well as an expense submitted for a meal that was seemed
12 excessive.

13 Q Okay. And in the middle of the page where it states,
14 "My Findings," do you see that sentence?

15 A Yes.

16 Q There is a reference to a report to the Audit Committee
17 on November 30, 2023.

18 Do you see that?

19 A Yes.

20 Q What does that refer to?

21 MR. THOMPSON: Objection. Hearsay. And this was
22 not provided any discovery on this.

23 MS. EISENBERG: Your Honor, this document was
24 produced through the NYAG on December 5, 2023. After which
25 they were given the opportunity to depose the witness.

KM

3504

Rowling - by Defendant - Direct/Ms. Eisenberg

1 THE COURT: Overruled. The objection to the
2 question -- we will see how far you go into the next thing.

3 Q To the extent the sentence refers to a report to the
4 Audit Committee on November 30, 2023, what is that reference in
5 reference to?

6 A That reference, my -- that I presented these findings
7 to the Audit Committee.

8 Q And how would you characterize the status of your
9 review with regard to Mr. Schropp's use of the Amex back in '16,
10 '17 and '18?

11 A That we are currently waiting on payment from Mr.
12 Schropp.

13 He is aware of the -- that the Audit Committee found
14 that he needed to reimburse and that we performed the
15 calculations, and he is aware of the amount.

16 Q And just to be clear, is he being asked to repay the
17 entirety of the expenses that he incurred using that method,
18 only some or something else?

19 A For business and first class flights, he doesn't have to
20 pay back the whole flight. He is paying back a difference. He
21 wouldn't pay back the coach flight portion, so there are
22 calculations that had to be done. And then he would reimburse
23 plus interest.

24 Q What, if any, information did Mr. Schropp provide to
25 you in connection with the review that you conducted?

KM

3505

Rowling - by Defendant - Direct/Ms. Eisenberg

1 A He provided -- he basically created expense reports.
2 He took -- he took every Amex statement and every transaction on
3 the Amex statement, was then put into an expense report and
4 attached receipts and identified business purpose.

5 Q Let's take a look at Page 1 of the DX 1-0855 which is
6 the exhibit right in front of you. There is a three part list
7 at the top of the page preceded by the words, "He explained his
8 process of the creation of the expense reports as follows."

9 Do you see that?

10 A Yes.

11 Q And do these three points effectively refer to what you
12 just described?

13 A Yes.

14 Q And do they fairly reflect your understanding as to
15 what he had done in connection with your review of these
16 expenses?

17 THE COURT: What he told you he had done, you mean?
18 Is that the question? Of what he told her he had done?

19 MS. EISENBERG: Her understanding; right. Do those
20 words fairly reflect her understanding?

21 THE COURT: Okay. You can answer.

22 A Yes.

23 Q Let's take a look at the attachments which appear which
24 have been admitted as DX 1-0856. I believe they are Attachments
25 A through D. If you can please walk us through each and briefly

KM

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Rowling - by Defendant - Direct/Ms. Eisenberg

1 describe what it is.

2 A So Attachment A was taking every -- every line item
3 from the Amex statement, putting it into Excel to come up with a
4 total so that then it could be compared to Attachment B which
5 was a list of every expense report line item that he had
6 submitted and to make sure that those two actually agreed so
7 that he had identified every single transaction.

8 Q Thank you. And if we proceed further to Page 11 of
9 this exhibit, that's the beginning of Attachment B.

10 Please tell us about attachment B, Ms. Rowling.

11 A So Attachment B was each line item from the expense
12 reports. The Attachment A was the line items from the Amex
13 statement.

14 Q What about Attachment C which appears on Page 21?

15 A Attachment C is kind of my first review of his expense
16 reports. I had some questions. I met with him again. I needed
17 further explanation. I gave him the opportunity to do further
18 research and then come back with additional explanations.

19 Q Thank you. And what about Attachment D which appears
20 on the last page?

21 A Attachment D was the final findings presented to the
22 Audit Committee.

23 MS. EISENBERG: Okay. Let's talk a little bit about
24 Josh Powell. We can take this down.

25 THE COURT: Counsel, we are pretty much out of time

KM

3507

Rowling - by Defendant - Direct/Ms. Eisenberg

1 for the day.

2 MS. EISENBERG: Certainly, your Honor.

3 THE COURT: I'm assuming you are not going to
4 finish the whole thing in the next two minutes.

5 MS. EISENBERG: Yes, I still have a little bit.

6 THE COURT: Why don't we reconvene tomorrow morning
7 at 9:30. We will see you all then.

8 THE COURT OFFICER: All rise. Jury exiting.

9 (Whereupon, at this time the jury exits
10 the courtroom.)

11 THE COURT: And just for the witness' benefit,
12 again, during the break overnight, you are still on the
13 stand and shouldn't discuss your testimony with anyone
14 including counsel.

15 You can escort the witness out.

16 Thank you. See you tomorrow.

17 Before you all go, just to -- you can have a seat.
18 Just real briefly before we go too far into the week, I just
19 wanted to check in on one thing about the allocation of time
20 among the defendants.

21 I can certainly see there are at least let's put
22 thematic differences in terms of what the defendants are
23 probing, and I want to make sure I have some comfort that
24 each of the individual defendants have enough time allocated
25 to them during this period of time to be able to put their

KM

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Rowling - by Defendant - Direct/Ms. Eisenberg

1 defenses in.

2 So I don't need to jump in and micromanage this
3 unless there is a problem, but I just wanted to air it and
4 say that I need to make sure, and I'll use counsel as the
5 proxy to help me make sure that there is -- that the process
6 is being done in a way that's fair. So that, you know, you
7 don't get stuck at the end with no time for evidence -- that
8 affirmative evidence that you want to put in because, I
9 mean, you know, the NRA's -- I'm not suggesting they have
10 gone over time because they just started, but if I don't
11 raise this until the end of next week, it's too late.

12 So you know, you don't have to react now, but I do
13 want to hear sooner rather than later if you need any
14 managing to make sure that occurs because, you know, left on
15 their own, the NRA could take the entire time and that would
16 not be fair.

17 MR. FARBER: Understood, your Honor.

18 Speaking for Mr. Phillips, I think as of now, we
19 are fine. We will raise an issue if one arises.

20 THE COURT: Yeah. Just don't wait till the end
21 when I can't do anything about it.

22 MR. FARBER: No. Understood, your Honor, but I
23 think the way things are proceeding from our perspective, I
24 don't see an issue.

25 THE COURT: All right. If you're happy, I'm happy.

KM

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1 MR. FLEMING: Your Honor, I would just say we have
2 spoken not with great precision, but my understanding is
3 that I should have enough time I think the last day to get
4 our case in.

5 THE COURT: I hope you don't wait till the last day
6 to figure that out.

7 MR. FLEMING: Well, we would don't have many days
8 left, so somebody has to have the last day.

9 THE COURT: Objects in the mirror are closer than
10 they appear.

11 MR. CORRELL: Your Honor, I'm hopeful that there
12 will be enough time for Mr. LaPierre to put on his.

13 THE COURT: Well, the only point I'm making to you
14 is I need to hear about it in enough time that I can change
15 anything because the -- if the expected solution is, well,
16 we will just keep the jury the following week, that's not a
17 solution I'm willing to live with. So forewarned equals
18 forearmed.

19 Okay. All right. See you tomorrow.

20 (Whereupon, at this time the trial was continued
21 until February 7, 2024.)

22

23

24

25

KM

3510

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART 3

-----X
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against-

INDEX NO.
451625/20

THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
and JOSHUA POWELL,

Defendants.

JURY TRIAL
60 Centre Street
New York, New York
February 7, 2024

BEFORE: HONORABLE JOEL M. COHEN,
Justice, and a jury

APPEARANCES:

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Proceedings

1 THE COURT: I have a jury note. What's the Court
2 Exhibit number we're up to?

3 THE COURT REPORTER: IX.

4 THE COURT: So, we'll mark this as Court
5 Exhibit IX. It is from one of the jurors. I'll show it to
6 counsel.

7 "Dear, your Honor, I didn't have much time to view
8 some of the demonstrative slides and would like to know if I
9 would have access to them in the future during deliberations
10 if necessary. This would have direct impact on how I take
11 notes. Thank you."

12 MR. WERBNER: Which juror was that, your Honor?

13 THE COURT: Seven. So, my typical practice is
14 that if any demonstratives that were shown in court so that
15 they were able to see, it doesn't make a lot of sense to say
16 they can't see them in deliberations. It is not supposed to
17 be a memory test. That's my general view.

18 It is hard to see what's the prejudice around that
19 since they were allowed to see them. I would need counsel
20 to be careful about not including slides that are in their
21 deck, but were not shown.

22 Any other objections to that if they saw it in
23 court, whether if they want to have them when they ask for
24 documents, generally speaking, I have provided those?

25 MR. CORRELL: Your Honor, Mr. LaPierre objects on

BP

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Proceedings

1 the ground that big numbers were put on these slides that
2 may have disproportionate impact in the jury room. They may
3 provide sort of a baseline for discussion in the event that
4 there's any finding of liability discussion of damages, I
5 think would be highly prejudicial to have the slides put
6 before the jury just because of the disproportional effect.

7 THE COURT: Well, I mean, they have been before the
8 jury. The question is whether the jury should be told,
9 well, we're going to flash things on the screen real quick
10 which are designed and only permitted if I consider them to
11 be helpful to the jury and then say, but you don't get to
12 see them again.

13 MR. CORRELL: Well, your Honor, some judges do
14 allow jurors to take notes, and there are arguments on
15 either side. I think that allowing them to take notes and
16 then take things that have been prepared by counsel into the
17 jury room is extremely problematic.

18 MR. FARBER: Judge, I join in that objection. I
19 think that's the difference between demonstratives and
20 exhibits that are admitted into evidence. The presentations
21 are, in essence, sort of mini summations. The same
22 reason there will be, I assume, if the State's likely going
23 to use presentations during their summation, they're not
24 going to take that and view in the jury room.

25 It is a summary of testimony, becomes a summary of

BP

3513

Proceedings

1 testimony and I think it's inappropriate, and that's why the
2 evidentiary rules distinguish between demonstratives and
3 admitted evidence.

4 MS. EISENBERG: Your Honor, the NRA similarly
5 objects to Mr. Hines's demonstratives going back to the
6 jury.

7 THE COURT: Just those, but not yours?

8 MS. EISENBERG: Well, I think what he did was at
9 least in certain of his slides was provide total amounts
10 that the NRA spent on this type of expense or that type of
11 expense, which we submit is not even relevant.

12 THE COURT: Well, look, I'm taking in considering
13 these objections before I let them be shown to the jury, but
14 I understand. So, but just so -- I didn't mean it as a
15 joke. You just object to those demonstratives going to the
16 jury?

17 MS. EISENBERG: In terms of the ones that have been
18 shown to date, correct.

19 THE COURT: What does the AG think?

20 MS. CONNELL: Well, your Honor, we certainly object
21 to selective exclusion of disclosures for just Mr. Hines;
22 but this is an unusual circumstance where I think all
23 parties are in agreement. Demonstratives tend to not go
24 back with the jury. It is admitted exhibits.

25 THE COURT: Okay.

BP

3514

Proceedings

1 MS. CONNELL: And I just want to flag one issue.
2 We have an expert coming up and we have a problem with at
3 least one of the sides, so...

4 THE COURT: So, for what it's worth, that has not
5 been my practice; but I don't think I'll do it over the
6 objection of literally everyone. If you don't want any
7 slides, demonstratives go back, I do think it is a little
8 peculiar; but if they're allowed to see it, then I guess
9 what they're asking essentially -- what this juror is asking
10 is leave them on for a longer time so they can take notes
11 about it.

12 The thing about notes -- I saw that objection early
13 on. I think asking jurors to sit for six weeks without
14 taking notes is a little unrealistic.

15 MR. CORRELL: Your Honor, I had objected to the
16 jurors seeing Mr. Hines's demonstratives. So, the fact that
17 they saw it doesn't give me any comfort in weighing in on
18 this issue of whether they should be able to have it in
19 their lap during deliberations.

20 THE COURT: Well, I won't make a final decision on
21 that; but I'll just tell the jury that, you know, for now
22 they should assume it will just be the admitted exhibits and
23 I'll make a decision about that at the end.

24 MR. FARBER: Could I just add one thing?

25 MS. CONNELL: I don't know who was up first. I

BP

3515

Proceedings

1 didn't catch who's up first.

2 THE COURT: I don't have a buzzer system, so...

3 MR. FARBER: I think the nature of the note, in
4 other words, that they wanted to take more time for their
5 note taking to view more slides, they should not be taking
6 notes of what's in the slide. They should be taking notes
7 of testimony coming from the witness and that should be the
8 focus. That's our view.

9 THE COURT: Look, both sides are using slides for
10 some reason, right? And the test is that it's helpful to
11 the factfinder. So, it is helpful, except you don't want
12 them to see them or remember, right? That doesn't make any
13 sense to me. I mean, so, presumably -- I'm a little puzzled
14 by that.

15 I mean, I recognize there are some that you
16 don't -- that you objected to and you win some and you lose
17 some; but if it is helpful to the jury, how is it helpful
18 to go by at a hundred miles an hour and never to be seen
19 again?

20 MR. FARBER: Judge, we haven't offered any slides
21 and I don't think any of these are appropriate, but your
22 Honor has ruled on that.

23 THE COURT: Demonstratives are -- especially as
24 years go by, more and more part of trials, you know, people
25 use audiovisual. People use all sorts of things. It seems

BP

3516

Proceedings

1 a tad unrealistic to say, well, okay for them to see it;
2 it's just not okay for them to remember it.

3 MR. FARBER: I accept that in principle, your
4 Honor; but a lot of the demonstratives that are used here
5 are summation slides and that's really the problem.

6 THE COURT: Well, then, look, I mean, if you're
7 saying that you disagree with decisions about some of the
8 demonstratives, okay. But, look, everybody seems to be in
9 agreement.

10 MS. CONNELL: I was just going to add one thing.

11 Maybe the difference is sending them back to the
12 jury room versus if they ask to hear a certain testimony and
13 there's demonstratives that go along with it, having them
14 see it in the courtroom is nice way to split the baby;
15 right?

16 MR. CORRELL: Your Honor, I'm opposed to any baby
17 splitting.

18 THE COURT: All right, as a general matter, I think
19 that's probably right.

20 All right, let's bring -- everybody else set?

21 MS. EISENBERG: Your Honor, just in terms of
22 timing, would the Court be interested in knowing what our
23 math is prior to --

24 THE COURT: Let's review that at the end of the
25 day, okay?

BP

3517

Proceedings

1 MS. EISENBERG: Certainly.

2 THE COURT: All right, let's go get them.

3 THE COURT: Is the witness back?

4 Bonnie, can I get this marked as Court Exhibit IX.

5 (Whereupon, Court Exhibit IX was so marked.)

6 (Whereupon, at this time the witness,

7 SONYA ROWLING, having been previously duly sworn by the

8 Clerk of the Court, resumed the witness stand and testified

9 as follows:)

10 COURT OFFICER: All rise, jury entering.

11 (Whereupon, at this time the jury then entered the
12 courtroom.)

13 THE COURT: Good morning, everyone. Please have a
14 seat.

15 So, before we begin, I got one of your notes about
16 the demonstrative slides. The general rule is that only
17 admitted exhibits go into the jury room for deliberations,
18 not demonstratives. Demonstratives are designed for
19 in-court viewing.

20 I'll think about it as we go, but you should assume
21 that the only things you can call up into the jury room are
22 going to be the admitted exhibits. That's typically the way
23 it works, but I'll let you know.

24 So, if that affects your note taking, the notes
25 should be focused, candidly, on the admitted exhibits and

BP

3518

S. Rowling - by Defendant - Direct/Ms. Eisenberg

1 any notes about the testimony. The demonstratives are meant
2 really as a visual aid, not really a substantive thing. So
3 you should be taking your facts from the witness's mouth and
4 from the admitted exhibits. But, again, I'll let you know
5 as we go if I decide to permit some or all of them to go
6 back.

7 All right, so let's continue with Ms. Rowling.

8 Ms. Rowling, just to confirm, you're still under
9 oath.

10 MS. EISENBERG: Thank you, your Honor.

11 DIRECT-EXAMINATION

12 BY MS. EISENBERG: (Continuing)

13 Q Good morning, Ms. Rowling.

14 MS. EISENBERG: Good morning, members of the jury.
15 Can you hear me okay? Thank you.

16 Q Ms. Rowling, yesterday we discussed review of certain
17 repayments made by Mr. LaPierre.

18 Do you recall our discussion?

19 A Yes.

20 Q What is the amount of total of repayments made by
21 Mr. LaPierre?

22 A Over a million dollars.

23 Q And I would also like to talk to you about a slightly
24 different topic.

25 Did there ever come a time when you and David Coy

BP

3519

S. Rowling - by Defendant - Direct/Ms. Eisenberg

1 reviewed certain expense reimbursement requests from
2 Mr. LaPierre?

3 A Yes.

4 Q And when, approximately, was that?

5 A Early 2021 when I first became treasurer.

6 Q How did that arise?

7 A Mr. LaPierre had a number of outstanding expense
8 reports that had never been processed. They related to previous
9 years and the expense reports have kind of been passed around;
10 and they landed in my office, and the Audit Committee requested
11 that Dave Coy and I review those for processing.

12 MS. EISENBERG: Can the jury hear the witness?

13 JUROR: Can be a little louder.

14 Q Who conducted the review of the reimbursement requests
15 that you just referenced?

16 A Mr. Coy and myself.

17 Q And at the time Mr. Coy was a member of the Audit
18 Committee?

19 A Yes, that's correct.

20 Q And also one of the officers, correct?

21 A Yes.

22 Q Please describe what you did.

23 A The first step was we -- we looked at all the expense
24 reports. There were a lot, but there were many from years that
25 were way too old and we immediately made the decision we weren't

BP

3520

S. Rowling - by Defendant - Direct/Ms. Eisenberg

1 even going to look at those. We were going to say they were
2 submitted late, and we were not going to process them. That was
3 not part of an accountable plan with according to IRS rules that
4 we would -- we couldn't process those.

5 The next step we took was to look at the ones that were
6 submitted timely even though they hadn't been processed. The
7 timely submission is the key. It is not about when the payment
8 is actually made, and Mr. LaPierre had submitted timely certain
9 number of expense reports and so we reviewed those.

10 There were items that we decided should not be paid,
11 and then we ended up processing maybe about \$12,000 worth of
12 expense reports of over 200,000 that were submitted.

13 Q So, what was the approximate amount of the ones that
14 were not paid?

15 A The over 200,000.

16 Q Could you please turn to Tab 4 in your binder.

17 A Yes, I'm there.

18 Q It is PX 2455 for identification. What is it?

19 A This is a memo from Mr. Coy and I to the Audit
20 Committee documenting the process we took in the review of those
21 expense reports.

22 Q Who prepared the memo?

23 A I prepared it originally, and Mr. Coy reviewed it.

24 Q When the need arises to conduct a review of this kind,
25 is it your practice to prepare a memo to file like this?

BP

3521

S. Rowling - by Defendant - Direct/Ms. Eisenberg

1 A Yes.

2 Q And is it the organization's practice as well?

3 A Yes.

4 MS. EISENBERG: Your Honor, at this point the NRA
5 moves to admit PX 2455 in evidence.

6 MR. THOMPSON: No objection.

7 THE COURT: It is admitted.

8 MS. EISENBERG: Thank you, your Honor.

9 (Whereupon, at this time Exhibit PX 2455 was
10 admitted and received into evidence.)

11 Q If we may publish it for the jury, please.

12 (Displayed)

13 Ms. Rowling, in the first paragraph there's a reference
14 to an accountable plan, and you just referred to that as well in
15 your testimony.

16 Can you please tell us a little bit about what an
17 accountable plan is?

18 A An accountable plan is -- it's kind of an IRS
19 definition whereby expenses must be submitted timely. There has
20 to be a business purpose, things of that nature that are
21 specific to what qualifies as an accountable plan.

22 Q Let's take a look at Tab 3 in your binder. It has been
23 marked for identification as DX1-1066.

24 What is it?

25 A This is the Purchasing Procedures Manual.

BP

3522

S. Rowling - by Defendant - Direct/Ms. Eisenberg

1 Q Did you have a role in the preparation of this manual?

2 A Yes.

3 MS. EISENBERG: Your Honor, at this point the NRA
4 moves to admit DX1-1066 in evidence.

5 MR. THOMPSON: Objection, as late produced, but no
6 other objection.

7 THE COURT: Is there a date on this as to -- just
8 curious.

9 Q Ms. Rowling, when approximately was this manual
10 adopted?

11 A This is a procedure, so it wouldn't have been adopted
12 per se; but it was -- it was prepared in 2023.

13 THE COURT: It is admitted.

14 (Whereupon, at this time Exhibit DX1-1066 was
15 admitted and received into evidence.)

16 Q Let's publish it for the jury.

17 (Displayed)

18 If you would, please, Ms. Rowling, review the various
19 sections of the manual just to kind of help us understand what
20 types of issues it addresses.

21 A Section 1 just goes over the reporting and
22 authorization levels of various positions, what they're allowed
23 to approve, depending on their level within the organization.

24 Q Let's scroll to Section 2 on page 2, please.

25 (Displayed)

BP

3523

S. Rowling - by Defendant - Direct/Ms. Eisenberg

1 A The next section just relates to basically as it says,
2 budgeting responsibilities. So, it has to be anytime anyone is
3 submitting any requests for a purchase, needs to be a part of
4 the budget. You have to have account numbers, that sort of
5 thing.

6 Q Let's scroll down to page 3, Section 3.

7 A Section 3 defines the competitive bidding process and
8 requests for proposals.

9 Q And what about Section 4 on page 3?

10 A These are other general procedures. So, how to get
11 office supplies and just more simple purchases.

12 Q And, finally, let's take a look at page 6, Roman number
13 V.

14 A That area discusses more specialized procedures.
15 Purchasing paper, for example, is more of a specialized
16 procedure due to most of our paper is purchased for magazines.
17 So that purchase of magazine paper is very different than a
18 normal ream of paper for your printer.

19 Q Thank you. We can set that down. Can you please take
20 a look at Tab 6 in your binder.

21 What is it?

22 A This is a memo -- an example of a memo that was sent to
23 our -- to our vendors explaining the -- the process of
24 submitting support for invoices, having proper -- sorry --
25 having proper description on the invoices as well as any backup

BP

3524

S. Rowling - by Defendant - Direct/Ms. Eisenberg

1 that's needed, and it was a memo sent to kind of reinforce that
2 policy.

3 Q When was the memo sent?

4 A August of 2018.

5 Q Approximately how many members did the memo go out?

6 A Approximately 200.

7 Q Did any of the individuals who you supervised at the
8 time suggest that they were either on vacation of the vendors to
9 whom the memo was sent?

10 A Yes.

11 Q And who was that?

12 A Portia Padilla, she created the accounts payable list
13 to provide to who could do the mail merge with this memo.

14 Q By "mail merge," you're referring to Microsoft Word's
15 application that allows you to quickly generate multiple letters
16 that say the same thing, but are addressed to different
17 individuals; is that fair?

18 A That's fair.

19 MS. EISENBERG: Your Honor, at this point the NRA
20 moves to admit DX1-0176 in evidence.

21 MR. THOMPSON: No objection.

22 THE COURT: It is admitted.

23 (Whereupon, at this time Exhibit DX1-0176 was
24 admitted and received into evidence.)

25 Q Ms. Rowling, I'd like you to please take a look at

BP

3525

S. Rowling - by Defendant - Direct/Ms. Eisenberg

1 Tab 7, which is DX1-0674 and Tab 9, which is DX1-0567. These
2 are exhibits marked for identification that are not in evidence
3 at this point.

4 What do you recognize them to be?

5 A These same letters to different vendors.

6 MS. EISENBERG: Your Honor at this point the NRA
7 moves to admit DX1-0674 and DX1-0567 in evidence.

8 MR. THOMPSON: No objection.

9 THE COURT: They are both admitted.

10 (Whereupon, at this time Exhibit DX1-0674 and
11 DX1-0567 were admitted and received into evidence.)

12 MS. EISENBERG: Thank you, your Honor.

13 THE COURT: Do you want them on the screen or you
14 just want to have them in for later reference?

15 MS. EISENBERG: It is for later reference, your
16 Honor.

17 THE COURT: Okay.

18 MS. EISENBERG: Thank you.

19 Q Ms. Rowling, did there come a time when you
20 participated in the review of certain expenses incurred by
21 Mr. Powell?

22 A Yes.

23 Q When approximately was that?

24 A Late 2019.

25 Q And how did that come about?

BP

3526

S. Rowling - by Defendant - Direct/Ms. Eisenberg

1 A Mr. Spray had noticed there was some unusual charges on
2 his Am Ex and requested that I go back and review all -- get
3 access to and then go back and review all the Am Ex charges that
4 had been made on his card.

5 Q And when you are saying "his card," you're referring to
6 Mr. Powell's card?

7 A That's correct.

8 Q And did you, in fact, do what Mr. Spray suggested?

9 A Yes, I did.

10 Q Describe in general terms what you did to conduct that
11 review.

12 A I got access to all of the detailed Am Ex statements as
13 well as all of his expense reports and detailed out all of his
14 charges and then made note of what seemed inappropriate or
15 considered personal charges.

16 Q What types of inappropriate charges did you identify?

17 A First class and business class travel was the biggest
18 item. There were some black car service.

19 Q Did there come a time when the NRA engaged a forensic
20 company to conduct the same review?

21 A Yes.

22 Q What was the understanding about the purpose of that
23 engagement?

24 A Just a further independent review of the process I had
25 taken so that there would be no kind of argument over whether it

BP

3527

S. Rowling - by Defendant - Direct/Mr. Correll

1 was -- it was a fair assessment.

2 Q After the forensic -- I'm sorry, what was the name of
3 the outside forensic company?

4 A FRA.

5 Q And after FRA completed their review, what conclusions
6 did they reach?

7 A They reached similar conclusions that I had had and
8 found.

9 Q And what happened there after?

10 A Mr. Powell was asked to reimburse the NRA for the
11 amounts that were considered personal, plus interest.

12 Q And what happened after that?

13 A He did not pay and he was subsequently let go from the
14 organization.

15 MS. EISENBERG: Thank you very much. I'll pass the
16 witness.

17 THE COURT: Okay. Any other direct testimony, or,
18 I'm sorry, where are we? Any other direct testimony?

19 MR. CORRELL: Your Honor, if I may, I'm in next
20 order.

21 THE COURT: Okay, sure.

22 DIRECT-EXAMINATION

23 BY MR. CORRELL:

24 Q Good morning.

25 A Good morning.

BP

3528

S. Rowling - by Defendant - Direct/Mr. Correll

1 Q Good morning, Ms. Rowling. I'm Kent Correll, and I
2 represent Wayne LaPierre.

3 Did you attend an Audit Committee meeting where Wayne
4 LaPierre appeared and made a presentation regarding repayment of
5 expenses?

6 MR. THOMPSON: Objection, leading.

7 THE COURT: It is not leading. Overruled.

8 A Yes, I did.

9 THE COURT: Partially leading, but it is not
10 completely leading.

11 Q Can you tell the Court and jury what you can recall
12 about Mr. LaPierre's presentation at that meeting?

13 MR. THOMPSON: Your Honor, hearsay, and we were not
14 provided any evidence of this meeting in discovery.

15 MR. CORRELL: Your Honor, it's relevant to show
16 notice to the NRA of our efforts to address issues raised by
17 the AG.

18 THE COURT: Well, it may be. But are you saying
19 that requests were made and documents about the meeting were
20 withheld?

21 MR. THOMPSON: This was included in the continuing
22 discovery, and we did not receive anything about a November
23 Audit Committee meeting.

24 THE COURT: It doesn't necessarily mean -- if there
25 are no documents about it, then there's nothing to produce.

BP

3529

S. Rowling - by Defendant - Direct/Mr. Correll

1 MR. THOMPSON: I guess we'd like to know whether
2 there were documents about it.

3 MR. CORRELL: Your Honor, Mr. LaPierre has not
4 withheld anything.

5 THE COURT: That's not --

6 MS. EISENBERG: In addition, your Honor, the
7 process is that at the January meeting of the board, the
8 Audit Committee makes a report to the board which includes
9 minutes/report of the meeting that they had held previously;
10 and then the board book comes out after the January meeting.

11 So, the records that we had committed to produce to
12 the NYAG are board minutes, board books, board reports.

13 So, the timing simply was such that the meeting
14 about which Mr. Correll is asking occurred shortly before
15 the January meeting for which the board books are still
16 being finalized.

17 THE COURT: Well, but there's still documents that
18 exist independently. They just haven't been put in the
19 books yet?

20 MS. EISENBERG: That's right. I mean, what happens
21 is the NRA pulls together all of the reports of all of the
22 committees, and then that's what comes out and that's what
23 we had committed to produce.

24 THE COURT: Well, there's a -- especially if you're
25 going to rely on a meeting, the notion that you can sort of

BP

3530

S. Rowling - by Defendant - Direct/Mr. Correll

1 just hold off on producing -- I'm not going to -- I'm going
2 to sustain the objection, rather than going on to give all
3 my reasons for it. So, it is sustained.

4 MR. CORRELL: Your Honor, let me try it another
5 way.

6 Q Did you attend a meeting where Wayne LaPierre appeared
7 and made a presentation?

8 A Yes.

9 Q And after that meeting, did you come to any conclusions
10 as to whether Mr. LaPierre had made a fair representation with
11 respect to -- a fair representation with respect to his efforts
12 to identify and repay amounts that might be considered personal
13 expenses?

14 MR. THOMPSON: Leading, and same objection.

15 THE COURT: Well, this is hearsay at this point
16 now. I think --

17 MR. CORRELL: I'm asking for her conclusion at the
18 end of the meeting, your Honor.

19 THE COURT: You're asking her to vouch for a
20 hearsay statement that we're not providing?

21 MR. CORRELL: I'm just asking her if she attended a
22 meeting and afterwards formed any conclusions.

23 THE COURT: Sustained.

24 MR. CORRELL: Thank you, Ms. Rowling.

25

BP

3531

1 DIRECT-EXAMINATION

2 BY MR. FLEMING:

3 Q So, Ms. Rowling, you were asked a lot of questions
4 yesterday about what I'll sort of call current events; right?

5 A Yes.

6 Q Okay. I'm going to ask you some questions about
7 related-party transactions, but I want you to go way back in
8 time as best as you can.

9 Do you recall in 2016 after the adoption of the new
10 conflicts of interest and related-party transactions policy?

11 A Sure, yes.

12 Q Okay. I want to ask you questions about the Audit
13 Committee and work it did or didn't do with respect to
14 related-party transactions.

15 Do you recall or let me -- were you present for Audit
16 Committee meetings in 2016?

17 A Yes.

18 (Continued on next page)

19

20

21

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BP

3532

1 Q Okay. Can you describe the process that the Audit
2 Committee went through to evaluate related-party transactions?

3 A Sure. They were presented usually by Mr. Frazer, kind
4 of what the potential conflict was in great detail, and then
5 they would make a decision whether to -- whether it was fair,
6 reasonable to the NRA, and that would then get documented.

7 Q Do they also evaluate whether it's in the best
8 interests of the NRA?

9 A Yes.

10 Q Okay. Is there anything intrinsically wrong with
11 related-party transactions?

12 MR. THOMPSON: Objection. Leading.

13 THE COURT: Overruled. You can answer.

14 A No.

15 Q Okay. So after Mr. Frazer would present these
16 related-party transactions, what would happen next? What did
17 the Audit Committee do when it was presented with these?

18 A Well, they would make a decision whether they were --
19 could -- could -- that would -- could incur those expenses --
20 the NRA could incur those expenses.

21 Q Now, I would like to ask you about documentation of
22 that meeting.

23 Can you take us through the process of how that meeting
24 was documented?

25 MR. THOMPSON: Foundation, your Honor.

KM

3533

1 MR. FLEMING: She is present.

2 THE COURT: Overruled: Again, based on your
3 personal observations of it.

4 A It was documented in the minutes.

5 Q Who would do the minutes?

6 A It would depend. I did some at some point and then
7 later it has changed, but I would prepare some in the beginning.

8 Q And I know I'm testing your memory because it was
9 eight years ago, but can you be as granular as possible about
10 sort of how it went from the evaluation of related-party
11 transactions to pen on paper and final documentation?

12 A I would be given -- its been a long time since I've
13 done minutes.

14 I was generally given kind of a review sheet from Mr.
15 Frazer that actually documented the transactions that were
16 discussed and then include that write-up in the minutes so that
17 it would -- could be accurately portrayed.

18 Q Okay. So if I understand correctly, you would take a
19 document that had been created by Mr. Frazer; is that right?

20 A Yes.

21 Q And edit it based on what happened at the meeting?

22 A I would generally cut and paste it in the minutes
23 format really because there would not necessarily need to be
24 edits made to what -- what had been -- he had sent.

25 Q Okay. Now I'll come back to that in a second.

KM

3534

1 From that point after you do whatever you do, is there
2 a process by which it's finalized?

3 A Yes.

4 Q Is that the final action done or is there subsequent
5 action after you've, you know, added this document?

6 A I would generally give it to the secretary, whoever was
7 the secretary at the time, and then they would take it to the
8 Audit Committee Chair who would review potentially, make edits,
9 and then sign.

10 Q And the secretary at that time was Mr. Tedrick?

11 A I believe that's correct.

12 Q And do you recall that there was also an Audit
13 Committee report?

14 A To the -- report to the Board, yes.

15 Q Right. And in 2016, were those two separate documents,
16 minutes and report?

17 A Not to my knowledge.

18 Q Okay. Can I call up PX 2586 for identification. Not
19 for the jury. You will see it on the screen in a second,
20 hopefully.

21 THE COURT: 2586?

22 MR. FLEMING: 2586 for identification.

23 Q Ms. Rowling, take a look is this. Si that your email
24 address at the top?

25 A Yes, it is.

KM

3535

1 Q All right. Can we have the whole document so she can
2 see it.

3 I just want to have you look at this and tell me if you
4 recognize this.

5 A Yes, I do.

6 Q Okay. What is this? Without describing its content,
7 what is this?

8 A It is an email between myself and other various
9 parties.

10 Q And if you can look now at the attachments. Do you
11 see -- what is that right there?

12 A The report of the Audit Committee.

13 Q And if you can scroll down to the next page. Is this a
14 draft of the Audit Committee report. Up one page.

15 A Actually, go back.

16 Q Go back one more page up.

17 A No. One more page down.

18 Q I'm sorry. One more page down.

19 A There we go.

20 Q Okay.

21 A This is the language from -- for the minutes basically
22 that -- so it's draft.

23 Q And this is the document you just described a couple of
24 minutes ago?

25 A That's correct.

KM

3536

1 Q All right. And if you go one more page down. This is
2 the rest of it.

3 Do you recall whether this is the document after you
4 worked on it or before you worked on it?

5 A This is before.

6 Q Okay. And do you recall making any changes to this
7 -- well, I apologize for the disjointed presentation. But can
8 we go back up to the first page. If you can look at the third
9 email from the top where Mr. Tedrick asks you a question.

10 Do you see that?

11 A Yes.

12 Q And then you get back to him with a response. Is that
13 right?

14 A Yes.

15 Q Okay. Does this refresh your recollection about
16 whether the attachments are after you've looked at the document
17 you were given by Mr. Frazer?

18 A I think -- well, it's a little bit confusing because
19 there was an assumption at this point that there were separate
20 minutes and separate Board documents, and they were kind of one
21 in the same, so it's a little muddy.

22 Q Now, do you recall at some point in the future where
23 the minutes and the report ceased to be separate documents and
24 they were all put together into one document?

25 A To me, they were not two separate documents at this

KM

3537

1 point.

2 Q Okay. Okay.

3 MR. FLEMING: Your Honor, we have had a long
4 tortured history with this document, but I have exhausted
5 the witnesses who are able to discuss how it was formulated.

6 I would move its admission.

7 THE COURT: What's the independent relevance of
8 draft minutes when there are final minutes?

9 MR. FLEMING: Well, these are the final minutes.
10 It's a draft report. The report is then finalized later.
11 The report does not include the discussion of what actually
12 happened, but the draft report does corroborate what was
13 done in the minutes.

14 THE COURT: The issue I had in an earlier version of
15 this is that -- and maybe I'm wrong. And you can -- when
16 the witness -- some of it seemed like it had been prepared
17 before the meeting even happened as to what was anticipated
18 to happen at the meeting and that was an issue I had with
19 it.

20 I mean, it's not -- there is nothing wrong with
21 doing this, but it doesn't reflect what actually happened.
22 How do I tell the difference?

23 Because the earlier version of this seemed at least
24 pretty clear as if it much more incomplete than this one,
25 and it seemed like somebody was writing for what was

KM

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1 intended to be discussed at the meeting by the staff which
2 is different than what you just said now which is that it's
3 a summary of what was actually done at the meeting.

4 Has -- I don't know that this witness has yet given
5 a foundation for saying that what follows is a
6 contemporaneous recording of what was actually done at the
7 meeting as opposed to what was the prep for it.

8 MR. FLEMING: Well, what the witness just verified
9 that, yes, there was a document prepared before the meeting.
10 She was given it. She observed the meeting. She made
11 whatever changes she would make, and that document was then
12 finalized, and there are other versions of this document
13 that are part of the business records that are forwarded
14 within the objection years later.

15 THE COURT: Well, how about maybe ask just that
16 question more directly about whether the part of this that
17 you really want to use which I guess is the summary, if this
18 witness can say, yeah, this is based on my work reflecting
19 what was actually -- I actually observed at the meeting and
20 I contemporaneously -- this group contemporaneously put it
21 together in the ordinary course of business to reflect what
22 happened. Because it's still a little unclear to me.

23 MR. FLEMING: Okay. I will try to do it in sort of
24 two separate questions.

25 So can we scroll down to this part.

KM

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1 THE COURT: Apologies to the jury. I know this is
2 kind of like a mystery novel because we are talking about
3 something that you haven't seen, but I want to do it out of
4 your presence, and I want to make sure what it is before you
5 see it.

6 MR. FLEMING: I have taken up way too much of your
7 time, and I apologize.

8 Q Can you tell me without mentioning names that you
9 recall that these transactions were looked at by the Audit
10 Committee, identified, evaluated and voted on?

11 A Yes, they were.

12 MR. FLEMING: Okay. I would also then like to
13 change documents.

14 THE COURT: Wait. The question I was -- maybe you
15 are going to get to it -- is whether this summary is after
16 the meeting based on her and her colleague's recollections
17 of what actually happened as opposed to meeting in advance.

18 MR. FLEMING: Okay. Well, first of all, I will ask
19 that, but you're right, that's what I was getting to.

20 Q But do you recall whether this document that you're
21 looking at reflects the final version of the minutes of the
22 Audit Committee related-party transaction review in
23 September 2016?

24 MR. THOMPSON: Asked and answered, your Honor. I
25 believe she testified to this prior.

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1 THE COURT: You can go ahead and answer because it
2 was so long ago, I can't remember.

3 A Yes, it does accurately reflect.

4 MR. FLEMING: Are we able to do a side by side
5 document?

6 Can I side by side do PX 1631? Is this doable or
7 no? Okay.

8 Q So Ms. Rowling, on the left is PX 1631 which I'll
9 represent is an email dated April of 2018. That's about a year
10 and a half after the one we just looked at; is that right?

11 A Yes.

12 Q Can we scroll to the second page of PX 1631 and to the
13 similar page on PX 2586.

14 Keep going. Keep going. Thank you.

15 A tough question, but are you able to see whether these
16 are the same document?

17 A I mean, a quick review it, they appear to be the same
18 document.

19 Q Can we scroll to the next page of both of those and
20 again --

21 A Yes.

22 MR. FLEMING: Okay. And if I could now get rid of
23 PX 1631 and call up PX 1674. And if we could on PX 1674.
24 Again, scroll to the attachment. Hold on a second. I'm
25 sorry.

KM

3541

1 Q PX 1674, Ms. Rowling, is an email from February 2019;
2 is that right? Can you go back?

3 A That's correct.

4 Q And if we can scroll to the minutes, please.

5 Once again, I would ask you to do a comparison and tell
6 me whether these are the same document.

7 A They appear to be the same document.

8 Q And second page of both.

9 A The spacing is a little different, but they appear to
10 be the same document.

11 Q Now, do you recall in 2016 --

12 A Something seems to be missing on these two documents.

13 Q I'm going to ask you a question about it.

14 Now do you recall in 2016 after the Audit Committee
15 meeting where a transaction involving Mr. Skelton was left off
16 and the members voted electronically subsequent to the meeting
17 to approve it?

18 MR. THOMPSON: Leading, your Honor.

19 THE COURT: Sustained.

20 Q Do you recall any issue with respect to a transaction
21 involving Mr. Skelton?

22 A I really don't. Not off the top of my head.

23 MR. FLEMING: Well, your Honor --

24 THE COURT: My question, are any of these the final
25 minutes.

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1 MR. FLEMING: The one -- the ones that I showed Ms.
2 Rowling, PX 2586, is the final minutes.

3 THE COURT: Well, there is no -- this final minutes
4 that I have seen have a signature on them.

5 MR. FLEMING: They do not have the signature on
6 them. That was the unfortunate practice back then, and it
7 evolved.

8 THE COURT: We know they are the final minutes how?

9 MR. FLEMING: From speaking to different people who
10 are involved in the process.

11 THE COURT: And who sat next to me with a
12 microphone?

13 MR. FLEMING: Yes. Mr. Cotton testified.

14 THE COURT: No. I mean testified --

15 MR. FLEMING: Mr. Frazer testified to it.

16 THE COURT -- that this Document 2586 is the final
17 minutes.

18 MR. FLEMING: That these transactions were all
19 voted on in 2016.

20 THE COURT: Different questions.

21 MR. FLEMING: I understand, and that minutes were
22 taken and Ms. Rowling -- and Mr. Frazer testified that he
23 created the document, was pretty sure that this was the
24 final one but understood that Ms. Rowling had been given the
25 pre-prepared document to edit after the meeting for any

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1 changes. And Ms. Rowling is here today to testify that
2 that's what she did.

3 You can take these down.

4 THE COURT: But has she? I'm not -- I'm asking
5 that.

6 MR. FLEMING: Well, she just answered yes, that
7 these were the final. I could read back the answer, but I
8 could ask you again.

9 THE COURT: Is that right? With all these
10 different documents floating around, you have an independent
11 recollection that this last one was the final? Because I
12 thought what you first started asking about it, she said it
13 was a draft.

14 MR. FLEMING: Right. PX 2586 -- can you please call
15 it back up -- was what I presented to her, and I took her
16 through that. She received from Mr. Frazer a draft, that
17 she edited it. She wasn't, you know, sure this was the
18 final, but when I took her through the transactions, she
19 said yes, this is the final.

20 THE COURT: She said that those were discussed at
21 the meeting. She didn't say that this document -- why don't
22 instead of asking me, you can ask her again because I --
23 maybe I misheard it. I didn't -- I think -- and the
24 testimony that these were discussed at the meeting, that's
25 fine. That's her personal recollection, but we are still at

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3544

1 the question of whether this particular version of a
2 document that you've already sort of shown her a few
3 different of is the final despite it not being signed.

4 Again, you can have -- I guess you can have a final
5 minutes if somebody can testify, and maybe your client is
6 the best one to testify at the end of the day, the secretary
7 of what the final minutes were. But if you want to ask this
8 witness again, it may be that a few questions have gone by,
9 and I have forgotten it.

10 MR. FLEMING: I will ask, and then I'll leave it
11 alone.

12 THE COURT: Okay.

13 Q Can we go -- scroll to the minutes, please, at the end.
14 So Ms. Rowling, I apologize for putting you through
15 this, but I'll again ask you.

16 Were these transactions voted on that's reflected in
17 this document by the Audit Committee in September 2016?

18 A To the best of my recollection, they were.

19 Q Okay. Was the treatment by the Audit Committee as
20 reflected in this document and as expressed in this document?

21 A Yes.

22 Q Okay. And if you can scroll to the second page.

23 I know it's a tough question, but I would ask you to
24 the best of your ability, was this the final version -- final
25 documentation of the Audit Committee's consideration of these

KM

3545

1 transactions, the final minutes for this meeting in
2 September 2016?

3 A To the best of my recollection, they are.

4 MR. FLEMING: So I would move its admission on this
5 basis, your Honor.

6 MR. THOMPSON: Quite a few objections. I don't
7 know if it would be better to approach but --

8 THE COURT: I have an idea. Again, just going back
9 one more page.

10 Q Go back one more page, please.

11 THE COURT: The document on the top says "language
12 for minutes."

13 Does -- just -- is your recollection that this
14 is -- I mean, that could sound like a draft for this is what
15 we're thinking about for the minutes.

16 Is that not what this is?

17 THE WITNESS: Yeah. I tried to say before that the
18 minutes were -- at the time there weren't two separate sets
19 of records necessarily. And so I think there was a
20 misunderstanding with the secretary's offices that they were
21 completely separate minutes with respect to -- and then the
22 Board -- the Board report. And so generally, the way -- the
23 way we had done them was they were one document, but in this
24 case, specifically we kind of had this second document that
25 kind of acted as the minutes.

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1 THE COURT: Let me ask the question that I actually
2 had and then we can maybe be done with this part and the
3 jury can find out what we are actually talking about.

4 Is this prepared before or after the meeting?

5 THE WITNESS: This was prepared before the meeting
6 to lead the discussion and then used as kind of the
7 discussion document for the minutes. It was kind of both.

8 THE COURT: So is it edited afterwards to reflect
9 what happened at the actual meeting?

10 THE WITNESS: If any changes would have needed to
11 be made, it would have been edited.

12 THE COURT: I will admit it on that ground.

13 Now, it is hearsay, so it's on out-of-court
14 statement. Somebody recorded various things about it. You
15 can take it as at least one version of this witness
16 describing contemporaneous notes of the process, but the
17 underlying facts have to be shown by actual evidence, but
18 this can be evidence that these were discussed based on this
19 witness' eyewitness testimony and that this is a summary
20 prepared contemporaneously. So I got the objections. You
21 don't have to say them again. I understand it, but I think
22 its been adequately explained that this is a post-meeting
23 summary; whereas earlier, I was a little concerned that some
24 of the other versions of it and in fact sound like some
25 things are prepared in advance of the meeting which is not

KM

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1 an accurate summary of what happened, but this witness has
2 given her testimony.

3 MR. FLEMING: Okay.

4 MR. THOMPSON: Just one brief thing for the record
5 that Ms. Rowling was just shown two different versions of
6 the quote unquote "final minutes," and so there is no -- our
7 objection is that there is no evidence that these are the
8 final minutes.

9 THE COURT: Well, the jury can make their own
10 decision about that, I think.

11 Q If we can publish for the jury, I have a couple of
12 questions about the document for you.

13 So Ms. Rowling in September 2016, do you recall that an
14 annual contract the NRA had with Dave Butz was evaluated by the
15 Audit Committee?

16 A Yes.

17 Q And was it approved as fair, reasonable and in the best
18 interests of the NRA?

19 MR. THOMPSON: Hearsay, your Honor.

20 THE COURT: No. You're asking whether that actually
21 happened?

22 MR. FLEMING: I am asking whether in her experience
23 it actually happened.

24 THE COURT: From her observation.

25 MR. FLEMING: From her observations.

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1 THE COURT: Overruled.

2 Q What's the answer?

3 A Yes.

4 Q Okay. Now, in September 2016, did the Audit Committee
5 address an arrangement with Sandra Froman by which she was paid
6 by the organization?

7 A Yes.

8 Q And did the Audit Committee determine that that
9 arrangement was fair, reasonable and in the best interests of
10 the NRA?

11 A Yes.

12 THE COURT: This is from your recollection. This
13 is not in the document.

14 Q Not from the document. From your own recollection;
15 right?

16 And one last question.

17 Do you recall -- if we can scroll down a little bit --
18 whether the Audit Committee considered an arrangement with
19 Marion Hammer that the NRA had with Marion Hammer?

20 A Yes.

21 Q And did the Audit Committee determine that that
22 arrangement was fair, reasonable and in the best interests of
23 the NRA?

24 A Yes.

25 Q Okay. I just have a few more questions for you. You

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1 can take the document down.

2 You were asked questions about "tone at the top."

3 Do you recall those?

4 A Yes.

5 Q Do you consider Mr. Frazer to be one of the top people
6 at the NRA?

7 A Yes.

8 Q And have you been able to observe his performance in
9 the years that you've known him?

10 A Yes.

11 Q Now, based on those observations, do you believe that
12 he sets a good tone at the top?

13 A Absolutely.

14 (Continued on the following page.)

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3550

S. Rowling - by Defendant - Cross/Mr. Thompson

1 Q Now, I think you testified that he gives the compliance
2 training seminars; is that right?

3 A Yes.

4 Q Have you received any feedback about whether those
5 compliance training seminars are effective?

6 A Um, yes, actually, yes.

7 Q Is there any sort of specifics you can tell us about
8 what that feedback has been?

9 A I've gotten -- I actually get questions a lot more
10 questions now from people based on those seminars of what's
11 appropriate or what's not, including from board members.
12 They'll call me directly.

13 Q Do you feel like people are emboldened by what they
14 hear in the seminars to raise questions that maybe before they
15 wouldn't have?

16 A Yes.

17 MR. FLEMING: I have nothing further, thank you.

18 THE COURT: Any other questions on the defense
19 side?

20 MS. COUTU: No direct, your Honor.

21 THE COURT: Okay. The State can cross.

22 CROSS-EXAMINATION

23 BY MR. THOMPSON:

24 Q Good morning, Ms. Rowling.

25 MR. THOMPSON: Can you hear me all right?

BP

3551

S. Rowling - by Defendant - Cross/Mr. Thompson

1 THE COURT: Yes.

2 Q Ms. Rowling, you were asked some questions yesterday
3 about COSO. Do you recall that?

4 A Yes.

5 Q As of your deposition in July of 2022, COSO was not
6 memorialized in any of the NRA's policies or written documents;
7 correct?

8 A Um, not memorialized, no.

9 Q And prior to July of 2022, you had taken one continuing
10 education class on COSO; is that correct?

11 A As far as I can recall. I've been a CPA since 1994, so
12 it is a long time.

13 Q Right, so you can only recall the one class?

14 A One recently, very recently.

15 Q And, Ms. Rowling, you have no experience conducting
16 internal controls audits; is that correct?

17 A That's correct.

18 Q And you testified about tone at the top yesterday and a
19 little bit this morning.

20 Do you recall that?

21 A Yes.

22 Q And you testified that the tone at the top changed when
23 Mr. Spray became the treasurer and CFO or that was one example
24 of when the tone changed; is that right?

25 A I testified that he was -- I didn't say he was -- the

BP

3552

S. Rowling - by Defendant - Cross/Mr. Thompson

1 tone changed at that point, no. I said that he was part of a
2 change in the tone at the top.

3 Q Right. And Mr. Spray was fired in 2021, right?

4 A No.

5 Q Mr. Spray was told that the NRA was going in a
6 different direction in 2021; correct?

7 MS. EISENBERG: Your Honor, objection.

8 THE COURT: Overruled.

9 A To my understanding, Mr. Spray left for medical
10 reasons.

11 Q Your understanding is that Mr. Spray left for medical
12 reasons?

13 A Yes.

14 Q Mr. Arulanandam has been at the NRA for over
15 twenty years; is that correct?

16 A Yes.

17 Q And you've been at that time NRA for over twenty years;
18 is that correct?

19 A Yes.

20 Q And Mr. Coy and Mr. Cotton each have been at the NRA
21 for over twenty years; is that correct?

22 A Yes.

23 Q And Mr. Frazer has been at the NRA for almost
24 twenty years; is that right?

25 A I guess, approximately.

BP

3553

S. Rowling - by Defendant - Cross/Mr. Thompson

1 Q And during your testimony yesterday you mentioned an
2 amendment to the NRA's travel policy.

3 Do you remember that?

4 A Yes.

5 Q And that amendment occurred in 2021, correct?

6 A That's correct.

7 Q So, that was a year after the complaint when this
8 action was filed?

9 A Yes.

10 Q And you mentioned changes to the NRA's credit card
11 program.

12 Do you recall that?

13 A Yes.

14 Q The NRA had Am Ex cards for a number of employees until
15 the bankruptcy in 2021 cut them off, correct?

16 A Yes.

17 Q And Mr. Mensinger was hired by the NRA in September of
18 2023, right?

19 A Correct.

20 MR. THOMPSON: If we could please, if you could
21 turn to Tab 12 of your binder. Please bring up DX1-0837,
22 which is already admitted.

23 (Displayed)

24 Q Ms. Rowling, this is the memorandum that you prepared
25 in November and December of last year; right?

BP

3554

S. Rowling - by Defendant - Cross/Mr. Thompson

1 A Yes.

2 Q That was about a month before the trial started;
3 right?

4 A Correct.

5 Q And I believe you testified -- oh, first, you are the
6 first NRA employee other than Mr. LaPierre to review the excess
7 benefits disclosed in the 2019 990; is that correct?

8 A Yes.

9 Q And that's the 990 that Mr. Spray did not sign,
10 correct?

11 A Yes.

12 Q And that Mr. LaPierre did sign?

13 A Yes.

14 Q And are you testified yesterday that you prepared this
15 memorandum DX1-0837 in the ordinary course of the NRA's
16 business; correct?

17 A Yes.

18 Q And so it is the NRA's ordinary course of business to
19 review disclosures in 990 filings three years after the fact?

20 MS. EISENBERG: Mischaracterizes the testimony.

21 THE COURT: Overruled.

22 A Sorry, can you repeat that question?

23 Q Sure. It is the ordinary course of the NRA's business
24 to review disclosures in its Form 990s three years after the
25 fact?

BP

3555

S. Rowling - by Defendant - Cross/Mr. Thompson

1 A No.

2 Q Now, this says that it was dated November 28th and then
3 updated December 4th, right?

4 A Yes.

5 Q Did the update occur after you reviewed this with
6 litigation counsel, Ms. Eisenberg, for clarity?

7 A No, that wasn't what the substance of the update was.

8 Q When did the review with Ms. Eisenberg for clarity
9 occur?

10 A It occurred around the same time period, but I can't
11 recall what I changed subsequently to that. There was
12 something -- I can't recall what, what I subsequently changed
13 about it; but I had made a substantive change, and then I
14 reviewed it with counsel.

15 Q Okay. And it is the ordinary course of the NRA's
16 business to review memoranda for clarity with litigation
17 counsel?

18 A It is not unheard of.

19 Q Did you do that with the memorandum regarding
20 Mr. LaPierre's expense reports?

21 A I don't recall.

22 Q And then if -- and so just to situate this in time, so
23 this memorandum is dated November 28, 2023, and then updated
24 December 4, 2023. That's three years after the complaint was
25 filed in this action, right?

BP

3556

S. Rowling - by Defendant - Cross/Mr. Thompson

1 A Correct.

2 Q And three years after Mr. LaPierre's excess benefits
3 were first disclosed on Form 990; right?

4 A Yes.

5 Q And one month before this trial started, right?

6 A Yes.

7 Q Okay. And if we could please go to Tab 13 of your
8 binder, which is DX1-0835, which is already admitted.

9 So, I just want to clarify or make sure that I
10 understand, Ms. Rowling, the sort of normal checkmark means that
11 you tied it, a flight to a CAA invoice; is that correct?

12 A Yes.

13 Q And then the check with the slash through it means that
14 you tied it to an expense report submitted by Mr. LaPierre, is
15 that correct?

16 A Not the -- you've got to be clear that it was the trip
17 itself was tied. Not the flight, but the trip was tied to an
18 expense report.

19 Q So, ancillary expenses to the trip?

20 A Correct.

21 Q Okay. If we could please go to page 4 of the document.

22 MR. THOMPSON: And, Jesse, if you could please blow
23 up rows 2 and 3.

24 (Displayed)

25 Thank you.

BP

3557

S. Rowling - by Defendant - Cross/Mr. Thompson

1 Q So, looking at row 2, so the checkmark there means that
2 you tied this to a CAA invoice; correct?

3 A Yes.

4 Q And I believe you testified that you did not determine
5 whether or not this trip was for an appropriate business
6 purpose, correct?

7 A That's correct.

8 Q Okay. So, if we look in the column with the locations
9 or the destinations where it says "Washington DC, Colorado
10 Springs, Colorado, Grand Island, Nebraska, Washington DC;" do
11 you see that?

12 A Yes.

13 Q So, this trip included a leg to Grand Island, Nebraska;
14 right?

15 A Yes.

16 Q And you do not know what the business purpose of
17 Mr. LaPierre, Ms. Sterner and Ms. LaPierre flying to Grand
18 Island, Nebraska, was; correct?

19 A I do not.

20 Q Okay. And so you don't know whether or not this was an
21 appropriate business expense for the NRA, correct?

22 A I have to take Mr. LaPierre's word for that.

23 Q You have to take Mr. LaPierre's word for it, right?

24 A That's correct.

25 Q And this is the same Mr. LaPierre who has to date to

BP

3558

S. Rowling - by Defendant - Cross/Mr. Thompson

1 reimburse the NRA for about a million dollars for inappropriate
2 expenses?

3 MR. CORRELL: Objection to the characterization,
4 your Honor.

5 THE COURT: Sustained.

6 Q This is the same Mr. LaPierre who has to date
7 reimbursed the NRA about a million dollars?

8 A That's correct.

9 Q And are there still ongoing reviews of Mr. LaPierre's
10 excess benefits?

11 A Not at the moment.

12 Q Not at the moment. So, as of the date of the trial, no
13 more excess benefits being reviewed; is that right?

14 MR. CORRELL: Objection, mischaracterizes the
15 testimony.

16 THE COURT: Overruled. You can answer.

17 A If any documentation is discovered or found that has
18 any sort of inappropriate expense by Mr. LaPierre, we would
19 absolutely be following up on it. Documents have been -- have
20 been researched and searched for. I mean, a lot of this stuff
21 is really old. It is hard to find.

22 But, if we find them, we will absolutely be seeking
23 reimbursement, plus interest.

24 Q So, for example, trips to Grand Island, Nebraska, where
25 there's no clear business purpose, for example?

BP

3559

S. Rowling - by Defendant - Cross/Mr. Thompson

1 MR. CORRELL: Objection, your Honor. This assumes
2 facts not in evidence as to whether or not there was a
3 business purpose.

4 THE COURT: Overruled.

5 A Again, we would have to -- you can't make a
6 determination off the fly without having any sort of support or
7 backup associated with a trip.

8 Q Which you don't for this trip, right?

9 A I don't personally sitting here today have any backup
10 to that.

11 Q Did you have access to the backup for it?

12 A I had discussions. We've had conversations. We have
13 expense reports potentially. This is not one that I went back
14 and looked at.

15 But, but testing of transactions proved that expense
16 reports were there as backup so --

17 Q Except for this one?

18 A I didn't look at 2015.

19 Q You didn't look at 2015?

20 A Not expense reports. When I tested -- audit or a test
21 does not look at every single document. I tested a process.
22 The process showed consistent and accurate reporting.

23 Q But your testing here was just that this flight was
24 paid for, right, effectively?

25 A Correct.

BP

3560

S. Rowling - by Defendant - Cross/Mr. Thompson

1 Q Okay. And with respect to the flights where you did
2 look at ancillary business or expense reimbursement requests,
3 you're taking Mr. LaPierre's word for it; right?

4 MS. EISENBERG: Objection, unclear.

5 THE COURT: Overruled.

6 A There has to be some level of that, yes.

7 Q Okay. And the flights -- well, first of all, you
8 testified that Mr. LaPierre provided you with this chart; is
9 that correct?

10 A Yes.

11 Q And do you know who created the chart?

12 A I'm not a hundred percent sure who created the chart.

13 Q Do you know what the source of the information in this
14 chart is?

15 A The CAA documents.

16 Q And the chart -- this chart, the flights in it only
17 went back to 2015; correct?

18 A On this one.

19 Q And so you have not reviewed the flights that
20 Mr. LaPierre took in 2014; have you?

21 A I believe some of those were reviewed in subsequent
22 testing.

23 Q In subsequent testing?

24 A After this -- in the testing done -- not in this
25 document. There were four or five attachments.

BP

3561

S. Rowling - by Defendant - Cross/Mr. Thompson

1 Q And let's look at one of the other attachments. Well,
2 first of all, did Mr. LaPierre provide you with all of the
3 attachments to your memorandum?

4 A Well, no there are pieces to these attachments that are
5 the 990s, so, no.

6 Q With respect to the charts, themselves, and excluding
7 the cover page and the 990s?

8 A He did not provide us with the leased vehicle
9 calculations.

10 Q Any of the other attachments that Mr. LaPierre did not
11 provide you with?

12 A Not that I'm aware of.

13 Q And so if you could please go to Tab 17 of your binder.

14 MR. THOMPSON: So, this is DX1-0836. Specifically,
15 the second page and if we can rotate it please, Jesse.
16 Thank you. You're ahead of me.

17 Q So, this is another one of the charts that Mr. LaPierre
18 provided to you, is that correct?

19 A Yes.

20 Q And then at the very top where it says "BNN," that
21 reads "BNN recreation of chart prepared by Lisa Correll."

22 Do you see that?

23 A Yes.

24 Q Do you know what BNN means?

25 A No.

BP

3562

S. Rowling - by Defendant - Cross/Mr. Thompson

1 Q So, Lisa Correll, that's Mr. Correll's paralegal; is
2 that correct?

3 A Yes.

4 Q So, this chart was to the best of your knowledge
5 created by Mr. LaPierre's counsel?

6 MR. CORRELL: Objection, your Honor. Paralegal is
7 not counsel.

8 MR. THOMPSON: I'll rephrase, your Honor.

9 Q This chart was created by somebody in Mr. Correll's
10 office?

11 A It appears to be the case.

12 Q Okay. All right, so if we could please bring up this
13 Tab 18 of your binder, Ms. Rowling. DX1-0855.

14 This is the memorandum that you prepared concerning
15 Mr. Schropp's out-of-pocket expenses; correct?

16 A Yes.

17 Q And you learned that Mr. Schropp was -- had expensed
18 things through Ackerman McQueen during your deposition in 2022,
19 is that correct?

20 A No, I thought I had said I heard about it during --
21 during this case at some point when I read about it in the
22 paper.

23 Q Now, you had testified a little bit about what an
24 accountable plan is; right?

25 A Yes.

BP

3563

S. Rowling - by Defendant - Cross/Mr. Thompson

1 Q And so if I'm remembering correctly -- and please
2 correct me if I'm wrong -- the process here was that you looked
3 at the Am Ex statements with Mr. Schropp's expenses, is that
4 right?

5 A Yes.

6 Q And then Mr. Schropp recreated the expense reports for
7 those expenses, is that right?

8 A Yes.

9 Q So, he didn't timely submit expense reports for
10 anything on his Am Ex, is that correct?

11 A He submitted this information to Ackerman at the
12 time -- these all were run through Ackerman McQueen. I would
13 never have had them.

14 So, the expenses were incurred and already paid. I was
15 doing this to seek reimbursement. He was just providing me
16 backup for my calculations on reimbursement back to the NRA for
17 things that might have been inappropriate.

18 Q The total amount that Mr. Schropp spent on the Am Ex
19 card just between 2016 and 2018 was about \$241,000; right?

20 A Correct.

21 Q Is Mr. Schropp being asked to repay the full \$241,000
22 to the NRA?

23 A No.

24 Q And that's even though his expenses did not follow the
25 NRA's accountable plan?

BP

3564

S. Rowling - by Defendant - Cross/Mr. Thompson

1 A These -- that is correct.

2 Q And if you could turn to the attachment to this
3 memorandum, which is the next tab, Tab 19, and this is DX1-0856.

4 So, can you describe again, please, Ms. Rowling, what
5 the difference is between Attachment A and Attachment B to this
6 memorandum?

7 A Attachment A is the -- each line item in the Am Ex
8 directly off the Am Ex statement.

9 Q Okay, and then what is Attachment B?

10 A Each line or expense report off of -- from the expense
11 reports.

12 Q Okay. Does Attachment B contain the business purpose
13 for the charge?

14 A No.

15 Q Where would I find the business purpose for each of
16 these expenses in Attachment A and Attachment B?

17 A On the expense reports that he created.

18 Q And those expense reports haven't been produced in
19 discovery; have they?

20 A I wouldn't know the answer to that.

21 Q Okay. So, looking at just the front page of Attachment
22 A, the first four charges there are for several stays at the
23 Beverly Hills Hotel for more than \$4,000; right?

24 A Yes.

25 Q What was the business purpose for those trips to the

BP

3565

S. Rowling - by Defendant - Cross/Mr. Thompson

1 Beverly Hills Hotel?

2 A I can't recall off the top of my head what all of these
3 would be, so...

4 Q I'm sorry?

5 A It is impossible to do that at this point.

6 Q And it is impossible to do that without looking at the
7 expense reports that Mr. Schropp created that have not been
8 produced in discovery, right?

9 A Again, I don't know if they have been produced in
10 discovery.

11 Q Okay, and I'll represent to you, Ms. Rowling, that in
12 Attachment A, there are approximately 55 references to Landini
13 Brothers.

14 Do you know what the business purpose for each of those
15 meals at Landini Brothers was?

16 A No.

17 Q All right, and has Mr. Schropp repaid the NRA yet for
18 anything?

19 A No.

20 Q If you could please turn to Tab 26 in your binder,
21 which is DX1-0243, which is in evidence.

22 This is the sign-in sheet for the two 2018 compliance
23 seminars; correct?

24 A Did you say two?

25 Q I believe there's a 7/26 and then an 8/28 compliance

BP

3566

S. Rowling - by Defendant - Cross/Mr. Thompson

1 training on the second page; is that correct?

2 A Oh, yes.

3 Q Mr. LaPierre did not attend this training; did he?

4 A I don't recall if he did.

5 Q He doesn't appear on the sign-in sheet; right?

6 A That's correct.

7 Q Neither does Mr. Arulanandam; right?

8 A I have to quickly look through, but doesn't appear to
9 be.

10 Q Okay, and if you could go to Tab 28 of your binder,
11 please, which is DX1-0242, also already in evidence.

12 So, this is the sign-in sheet for the February 2019
13 training; correct?

14 A Yes.

15 Q And, again, Mr. LaPierre's signature or sign-in does
16 not appear anywhere on this, correct?

17 A No.

18 Q Neither does Mr. Arulanandam?

19 A No.

20 Q And, Tab 32 also admitted, this is the sign-in sheet
21 for December 16, 2021; correct?

22 A Yes.

23 Q Mr. LaPierre did attend this one, right?

24 A This one is really hard to read.

25 Q Oh, yes, I'm sorry. So, we'll -- I think we can

BP

3567

S. Rowling - by Defendant - Cross/Mr. Thompson

1 highlight it on the screen.

2 MR. THOMPSON: It is 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,
3 11, 12 -- 13 from the bottom, Jesse.

4 (Displayed)

5 A Yes, I see it.

6 Q And so this was the first training that Mr. LaPierre
7 attended; right?

8 A This just says it is the first one that he's signed in.

9 Q All right, so three years after the compliance
10 trainings began; right?

11 A That is the date of this seminar.

12 Q Okay. And the same thing for Mr. Arulanandam, right,
13 this is the first one he attended?

14 A Did we establish his name was on this?

15 Q Okay, we can move on. That's fine.

16 So quickly, if you could please go back to Tab 27,
17 which is Plaintiff's Exhibit 2567 already in evidence.

18 When did the trainings become mandatory, Ms. Rowling?

19 A I don't recall the exact timeframe.

20 Q Was it approximately 2022 to the best of your
21 knowledge?

22 A That probably sounds right.

23 Q Okay. And then if you could please go to page 15 of
24 the deck, the slide deck and directing your attention to the
25 little sub-bullet that reads, includes "free" use of boats,

BP

3568

S. Rowling - by Defendant - Redirect/Ms. Eisenberg

1 planes, vacation houses, sporting events or other items or part
2 of a social activity."

3 Do you see that?

4 A Yes.

5 Q And that's a type of gift that needs to be reported, is
6 that correct?

7 A Yes.

8 Q Do you think it would have been useful for Mr. LaPierre
9 to attend this training in 2018?

10 A Yes.

11 Q And then you spoke a little bit yesterday about the
12 compliance week training that happened, right?

13 A Yes.

14 Q That was in November of last year, right?

15 A Yes.

16 MR. THOMPSON: Pass the witness, your Honor.

17 THE COURT: Okay. Anything further? Let me just
18 see if there's anymore cross first.

19 MS. COUTU: No cross either, your Honor.

20 THE COURT: Redirect.

21 REDIRECT-EXAMINATION

22 BY MS. EISENBERG:

23 Q Ms. Rowling, you've been asked about the timing of some
24 of the work that you've done.

25 Please tell us what types of responsibilities you have

BP

3569

S. Rowling - by Defendant - Redirect/Ms. Eisenberg

1 as the chief financial officer and treasurer?

2 A Well, obviously, I'm in charge of all of the financial
3 aspects of the organization and as well as the entire I.S.
4 Department.

5 So, I have a lot of job responsibilities that require
6 my day-to-day work.

7 Q And remind us the breadth of the operations of the NRA?

8 A The NRA is a 200 to 300 million dollar organization
9 with a hundred different divisions that have activities going
10 on, ongoing at all times.

11 Q Mr. Thompson questions suggested that he is questioning
12 the general commitment of the NRA to getting compliance right.

13 What is your reaction to that accusation?

14 A Well, I find it kind of appalling, actually.

15 This -- this effort has been consistent and ongoing
16 since 2018 really, and there's been a concerted effort to get,
17 you know, what you might call the titanic turned around and that
18 takes time; but it has been a consistent effort for years to do
19 that.

20 Q Let's talk a little bit about COSO. He asked whether
21 it was memorialized. Is COSO something that you actually have
22 to memorialize?

23 A No.

24 Q Why not?

25 A Well, it is a -- I mean, it's kind of a framework of --

BP

3570

S. Rowling - by Defendant - Redirect/Ms. Eisenberg

1 of compliance and internal controls. So, while we have internal
2 controls memorialized, procedures memorialized, it wasn't
3 memorialized in a -- in that specific COSO framework.

4 Q Let's talk a little bit about the internal audit piece.
5 You testified that you don't have any experience conducting
6 internal audits.

7 Tell us what you do have experience doing?

8 A Oh, I was an auditor for seven years, five of which
9 audited non-profits. So, while I don't have internal specific
10 audit experience, I do have audit experience, auditing
11 non-profits.

12 Q Does the NRA now have an internal auditor as well?

13 A Yes.

14 Q To the extent Mr. Thompson's questions suggested that
15 policies were amended only because of this litigation, what is
16 your reaction to that accusation?

17 MR. THOMPSON: Objection, leading.

18 THE COURT: Overruled.

19 A Policies and procedures have been amended for various
20 reasons throughout the history of the organization. The travel
21 policy, specifically, was amended because it lacked clarity in
22 several areas.

23 We took that as an opportunity to add clarity, and this
24 happens all the time in an organization.

25 Q Mr. Thompson asked you a few questions about the review

BP

3571

1 of Mr. LaPierre's repayment and he pointed out that the first
2 repayment had occurred all the way back in 2020. Do you recall
3 that?

4 A Yes.

5 Q And was there anything wrong with Mr. LaPierre making
6 the repayment before you had an opportunity to review it?

7 MR. THOMPSON: Objection, leading.

8 THE COURT: Overruled.

9 A No.

10 Q You mentioned that other attachments to the memo which
11 is in Tab 12 refer to flights that occurred before 2015.

12 Can you please take a look at Tabs 13 through 17 and
13 identify the exhibit number that discusses earlier flights.

14 A There were earlier flights in Attachment B.

15 MR. EISENBERG: Okay, let's take a look at that.

16 Mr. Stein, can you please display for the jury
17 DX1-0834.

18 (Displayed)

19 Q And, Ms. Rowling, where in the exhibit are you looking?

20 A Page 5.

21 MS. EISENBERG: Mr. Stein, let's go to page 5.

22 (Continued on next page)

23

24

25

BP

3572

Rowling - by Defendant - Redirect/Ms. Eisenberg

1 Q We now have it on the screen. What are the dates of
2 some of the reimbursed flights?

3 A 2013 and 2014.

4 Q Isn't it fair -- let me ask more generally.
5 Some of the repayments relate to expenses that had been
6 incurred a while ago. Would that be fair?

7 A Yes.

8 Q What is the earliest date for which repayments
9 occurred?

10 A 2020. I'm sorry. 2000.

11 Q And that relates to purchases of certain wardrobe items
12 for television appearances. Is that your understanding?

13 A Yes.

14 Q Mr. Thompson discussed with you that Mr. Schropp hasn't
15 yet repaid the amount that you identified as requiring
16 repayment.

17 And what is your understanding as to whether or not he
18 will be required to pay interest once he makes the repayment?

19 A Mr. Schropp is very aware that every day he doesn't
20 make payment, that interest is being accrued.

21 I am actually meeting with him tomorrow when I get
22 back.

23 Q And will it be compounded just like it was for Mr.
24 LaPierre?

25 A Yes.

KM

3573

Rowling - by Defendant - Redirect/Ms. Eisenberg

1 Q Today does the NRA follow the accountable plan?

2 A Yes.

3 Q To the extent there were certain expenses incurred by
4 Mr. Schropp using the Ackerman Amex, is it fair to say that the
5 ones that the NRA is not demanding that he reimburse, he in fact
6 represented that they were for business purpose?

7 MR. THOMPSON: Objection. It's leading and
8 hearsay.

9 THE COURT: Sustained on leading.

10 Q You testified that there were certain expenses that he
11 incurred using the Amex that he doesn't have to reimburse.

12 Why is that?

13 A He -- Mr. Schropp had submitted expense reports to us
14 that indicated a business purpose.

15 Q What is his position at the NRA?

16 A He is the Director of Advancement.

17 Q So what does he do?

18 A He fundraises.

19 Q And in fundraising for the NRA, is he frequently
20 required to travel for work?

21 A Yes.

22 Q Did you present your findings concerning repayments by
23 Mr. LaPierre to the Audit Committee?

24 MR. THOMPSON: Objection on the same Audit
25 Committee issue. No discovery into the Audit Committee

KM

3574

Rowling - by Defendant - Redirect/Ms. Eisenberg

1 meeting.

2 THE COURT: I think you can ask whether she
3 presented. It's fine.

4 MS. EISENBERG: Thank you, your Honor.

5 THE COURT: Nothing about -- at this point nothing
6 about the meeting.

7 A Yes, I did.

8 Q What were your findings?

9 A Is this on or about Mr. Schropp or Mr. LaPierre?

10 Q Mr. LaPierre. And in answering the question before I
11 was talking about Mr. LaPierre. Did you present your findings
12 regarding Mr. LaPierre's repayments to the Audit Committee?

13 When you said yes, were you answering that question?

14 A Yes.

15 Q What were your findings with regard to Mr. LaPierre's
16 repayments?

17 MR. THOMPSON: Objection. No discovery into this
18 Audit Committee meeting.

19 THE COURT: You're asking about her conclusions;
20 right?

21 MS. EISENBERG: Yes, your Honor.

22 THE COURT: Overruled.

23 A My findings were I believe we actually talked about
24 them yesterday as well that, you know, Mr. LaPierre had put
25 forth a -- a valiant effort in trying to find all of his

KM

3575

Rowling - by Defendant - Recross/Mr. Correll

1 expenses and document any that were -- were considered personal
2 in nature, and he made payments back to the NRA plus interest.

3 MS. EISENBERG: No further questions.

4 THE COURT: Anything further from the defense?

5 MR. CORRELL: Just a little bit, your Honor.

6 RECROSS EXAMINATION

7 BY MR. CORRELL:

8 Q Just quickly, Ms. Rowling. You were asked about an
9 entry on a chart that showed travel to Colorado Springs.

10 Do you remember that?

11 A Yes.

12 Q Does the NRA conduct any activities in or around
13 Colorado Springs with respect to Olympic shooting?

14 A Yes. They have events kind of all over the place, but
15 Colorado Springs is one.

16 Q Does the NRA provide any support to the Olympic
17 shooting team?

18 A Yes, we do.

19 Q Is Mr. LaPierre to your knowledge involved in any of
20 the communications with the U.S. Olympic committee about
21 supporting the team?

22 A I am unaware of that.

23 Q Do you know what "WLF" means?

24 A Yes.

25 Q What does that mean?

KM

3576

Rowling - by Defendant - Recross/Mr. Correll

1 A Women's Leadership Forum.

2 Q Did Mrs. LaPierre -- Susan LaPierre have any
3 involvement to your knowledge with the Women's Leadership Forum?

4 A Yes.

5 Q Did Colleen Sterner have any involvement with the
6 Women's Leadership Forum?

7 A Yes.

8 Q Do you have any view whether the Women's Leadership
9 Forum was an important part of the work that the NRA was doing
10 with women in this country?

11 A Yes.

12 Q And what's your view?

13 A Well, my view is that, you know, women are generally
14 unrepresented in this -- within the NRA, so it was a prime
15 opportunity to bring more women into the organization, and
16 that's what this group was doing as well as bringing in
17 fundraising dollars associated with that.

18 Q And do you have any view as to whether it was in the
19 interest of the NRA for Mr. LaPierre -- Susan LaPierre and
20 Colleen Sterner to be working with the Women's Leadership Forum
21 to try to pursue that mission?

22 MR. THOMPSON: Objection. Leading.

23 THE COURT: Overruled.

24 A It definitely has -- it's a good effort for our
25 organization.

KM

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Proceedings

1 MR. CORRELL: Thank you, Ms. Rowling.

2 THE WITNESS: Sure.

3 THE COURT: Anything further?

4 MR. FLEMING: Nothing from me.

5 THE COURT: Anything from the State?

6 MR. THOMPSON: No, your Honor.

7 THE COURT: All right. Thank you. You're free to
8 step down. We are going to take our morning break before
9 the next witness.

10 THE COURT OFFICER: All rise. Jury exiting.

11 (Whereupon, at this time the jury exits
12 the courtroom.)

13 THE COURT: Just two small things before we break.
14 Well, three small things, I guess.

15 One, on the demonstratives, look, I do agree the
16 law is generally that you don't give demonstratives to the
17 deliberation room.

18 I think in my prior trial experience that I was
19 referencing, it was typically by consent that both sides
20 thought it made sense for them to have it. I think nudged
21 along by my staff doing some research in the background and
22 sending them to me, in the absence of consent, I think I am
23 unlikely to put anything back there or typically I would
24 wait for them to ask for exhibits rather than just sending
25 all however many hundreds of exhibits there are.

KM

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Proceedings

1 I think I described to them the general principles
2 that they are not entitled to them, so I'll just leave it
3 where it is.

4 The second thing, and this -- I wasn't going to ask
5 this in front of the jury, but it's just for my instructions
6 purposes, the document that Mr. Fleming and I tussled over
7 for a little bit, is it the position of the defense that
8 those 2016 or the 2016 meeting constituted approvals of
9 those related-party transactions prior to the transactions
10 taking place or were they just an earlier ratification?

11 MR. FLEMING: Your Honor, as we talked about in
12 2016, the conflict-of-interest policy was adopted by the
13 NRA. Before that, it did not have a procedure to do that,
14 and the revitalization law imposed that new obligation. And
15 so in 2016 was the first time that in compliance with the
16 revitalization law, the NRA had an opportunity to deal with
17 these legacy arrangements, so they were both a ratification
18 in the first instance. But since a lot of these were
19 continuing, they were approvals going forward.

20 THE COURT: And what's the effective date of the
21 N-PCL?

22 MR. FLEMING: I believe --

23 MS. STERN: July 1, 2014.

24 THE COURT: Regardless of what the internal
25 policies, the law required pre-approval, so these would in

KM

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Proceedings

1 any event be ratifications.

2 In my proposed instructions, I -- and again, I'll
3 hear from you on Friday that at least as far as I'm aware,
4 there is no dispute that as to the specific related-party
5 transactions that I assume are going to be listed in the
6 verdict form. None of them had compliant prior approval,
7 but they are all going to be defended on the ground that
8 they were ratified. Correct?

9 MR. FLEMING: That's correct, but there is one
10 little wrinkle with that.

11 Your Honor, you may recall at one of the pretrial
12 meetings, you had talked about if there are legacy
13 transactions or contracts or agreements that were entered
14 into before the law changed, that you would entertain a
15 directed verdict on those. And so these three that I talked
16 about today fall into that category.

17 THE COURT: I think I have told you my general view
18 is there is probably a three-year Statute of Limitations on
19 related-party transaction claims because they are a creature
20 of statute, but you know, we will see if you have any that
21 you think are prior to the statute changing.

22 But anyway -- but the point remains, to the extent
23 that it is covered by the statute and it is part of the
24 case, none -- none of these anyway were approved in advance.
25 I'm not suggesting that means they are unlawful. I'm

KM

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Proceedings

1 just -- I try to in the draft instructions and the ones that
2 will ultimately come out try to make it clear to the jury
3 what's disputed and what's not.

4 MR. FLEMING: I understand totally.

5 So Mr. Hines addressed four related-party
6 transactions. Three of them were what we addressed today,
7 and there is one other that was entered into in 2017 which
8 was also ratified.

9 THE COURT: Right. The only point of that whole
10 2016 thing is it provides a somewhat earlier date for the
11 ratification. It doesn't provide a preapproval.

12 MR. FLEMING: Right.

13 THE COURT: Okay. And it doesn't have the other
14 things that the statute requires in a ratification. There
15 is a list of things that have to be in a ratification for it
16 to be effective. We will talk about that all later.

17 The other -- you mentioned about the time. You
18 know, I do -- I am thinking about it. And so what is the
19 current state?

20 MS. EISENBERG: As of the beginning of today by our
21 calculation, the NYAG had only three and a half hours left
22 which would be including their closing argument. So to the
23 extent Mr. Thompson has used 20 to 30 minutes at this point,
24 we think they are at about three hours to include their
25 closing arguments. So if they use an hour and a half for

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Proceedings

1 the rest of the day, they would only be left with an hour
2 and a half for their closing.

3 THE COURT: Yeah. I did have a sense of sand going
4 out of an hourglass a little bit. But you know, they can do
5 the math too. So I was -- it's going to have to get awful
6 efficient to be able to reserve time for closing arguments.

7 MR. WERBNER: Yesterday you asked the individual
8 defendants if we were kind of getting squeezed out of time
9 or something to be sure we had adequate time and do it
10 before it's too late.

11 On behalf of Mr. Phillips, we need an hour for
12 closing argument. I don't think we are going to be using
13 any minutes -- very few minutes prior to that, but we would
14 like to be sure that we have that hour for closing.

15 THE COURT: Well, I mean, if you're really going to
16 be very short in terms of other time, you certainly -- you
17 are certainly entitled to at least that. But if you want to
18 put any evidence in, I think that would be fine. I'm
19 hopeful, you know, this time we will have, to get all the
20 closings in in one day. That should be still doable even
21 with you taking -- I think taking an hour because we --
22 well, especially if you use far less of the other time.

23 MR. WERBNER: That's right. While we are on the
24 subject of the closing, Mr. Farber and I wanted to split our
25 hour closing, one of us handling liability and one on

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Proceedings

1 damages.

2 Is that okay with the Court?

3 THE COURT: That's fine.

4 MR. WERBNER: Thank you.

5 MS. CONNELL: I'm so sorry, but there is an
6 objection to the upcoming expert. I don't want to do this
7 in front of the jury. It's very brief.

8 THE COURT: Okay.

9 MS. CONNELL: If I can share with your Honor the
10 demonstratives. This is for Mr. Lerner.

11 Your Honor, Mr. Lerner is an expert -- an NRA
12 expert. He proffered expert -- he offered expert opinions
13 in September and October of 2022. His primary opinions were
14 as of -- about the control environment and the effectiveness
15 of the internal controls in the NRA as of a snapshot of
16 December 31, 2020. That's the primary focus of his
17 opinions. But if you turn to Page 12 or slide 12, he is
18 offering evidence of 2023 and continued compliance
19 improvements.

20 Your Honor, this is inappropriate discovery. This
21 is not in his report. This should not be permitted.

22 THE COURT: Was any supplemental expert report
23 filed to give notice of new opinions?

24 MS. EISENBERG: Your Honor, no, but I believe that
25 Mr. Hines and Mr. Tenenbaum have also given testimony

KM

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1 through the present.

2 MS. CONNELL: No, your Honor. They did not testify
3 to a single thing that was not in the reports. In fact, we
4 were careful about that, and had they, it should have been
5 objected to. This is clearly outside the scope of his
6 reports and shouldn't be permitted.

7 THE COURT: Look, I mean, I think, you know, this
8 is the kind of thing that should have been in a supplemental
9 report if you were going to try to bring this up to date.

10 I mean, you have already put in mountains of
11 evidence about new things, so I don't think in the absence
12 of a supplemental report, you can go beyond his -- what he's
13 disclosed as his opinions.

14 MS. EISENBERG: Thank you, your Honor.

15 MR. FARBER: I have an additional objection. So
16 Page 14.

17 THE COURT: Was that the end of yours?

18 MS. CONNELL: We also object to some of his
19 exhibits if they are going to seek admission, but I think we
20 will see if they are going to seek admission.

21 MR. FARBER: Page 14 references "evidence." It's
22 not before the jury, and I don't think that's --

23 THE COURT: What specifically?

24 MR. FARBER: Well, if you look at the box on the
25 right, you know, "Deposition and Bankruptcy Court

KM

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Proceedings

1 Testimony."

2 THE COURT: That's referencing -- well, at the
3 moment, it's just saying these are things he looked at.
4 That's partly of the thoroughness of his preparation.
5 You're objecting to --

6 MR. FARBER: Okay, Judge.

7 THE COURT: -- the fact that these exist?

8 It would be inaccurate for him to say he didn't
9 look at it; right?

10 MR. FARBER: Well, I just don't think that there
11 ought to be opinions offered on the basis of things that are
12 not in evidence. And to the extent that's what this and the
13 next slide are --

14 THE COURT: Well, if what you're saying is he is
15 going to in his -- is the plan in his opinion in his
16 testimony to specifically rely on this kind of stuff that's
17 not been admitted?

18 MS. EISENBERG: Your Honor, it's merely to like you
19 said impress upon the jury that his review was thorough.

20 THE COURT: Right. So we are not going to hear a
21 question that says, well, the basis for this opinion is
22 something in the bankruptcy court testimony.

23 MS. EISENBERG: Correct.

24 THE COURT: I think just listing it is not a problem
25 to me. I think -- and it is also true just parenthetically

KM

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1 that experts are permitted to rely in some circumstances on
2 evidence that would otherwise be inadmissible for other
3 reasons, but you have to be careful that's going on that
4 those inadmissible -- that inadmissible evidence doesn't
5 sort of dribble in and become sort of confusing to the jury.
6 So I'll be alert if he starts getting into -- I don't see
7 how we will get to that point, and I would certainly caution
8 counsel to avoid it, that he can not be the vehicle to
9 introduce inadmissible evidence just freestanding, but I
10 don't think that him listing what he actually looked at is
11 inappropriate, even if some of the stuff was inadmissible.

12 MR. FARBER: Thank you, your Honor.

13 MS. EISENBERG: Your Honor, I had additional things
14 about related-party transactions, but it sounds like I will
15 have an opportunity to do that later.

16 THE COURT: You mean on the instructions?

17 MS. EISENBERG: Right; what you discussed with Mr.
18 Fleming.

19 THE COURT: I'm just trying to keep -- I wasn't
20 sure whether the vigor with which we were fighting about
21 2016 had a chronological significance that I didn't
22 understand.

23 MS. EISENBERG: Well, I think the EPTL claim, they
24 probably will argue that failure to follow laws in effect in
25 2016 constituted improper administration. And in that

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1 regard, the fact that there was approval ratifications back
2 then is very important.

3 THE COURT: But it's still -- my only question was
4 the approval still is supposed to be at least in the prima
5 facie case for related-party transactions, the statute
6 requires the approval be in advance. It gives an
7 affirmative defense if you can show that it was ratified
8 after. I was just probing to make sure that under any
9 reading, 2016 is still ratification, not preapproval.

10 MS. EISENBERG: Well, I think it was both. They
11 were ratifying what had occurred previously and approving
12 things going forward.

13 MR. FLEMING: Right.

14 THE COURT: Meaning that there were new
15 transactions going forward that were being preapproved.

16 MS. EISENBERG: Correct. And in addition, Ms.
17 Connell represented to the Court that to the extent some
18 post-July 14 payments were made pursuant to preexisting
19 contracts that had not yet been extended or reviewed, that
20 the NYAG was not going after payments in that regard.

21 MR. FLEMING: And further, your Honor, the
22 significance was also to show Mr. Frazer's diligence in
23 addressing these issues.

24 THE COURT: I think that's a fair point. I'll have
25 to think about how to maybe tweak some of the language. If

KM

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Proceedings

1 basically the argument is that each year a new decision is
2 made as to whether to pay Board Member X for something going
3 on in Florida or wherever, that some of these approvals will
4 be ratification of past payments but preapproval of forward
5 looking payments, I can -- assuming they are deemed to be
6 separate transactions which, you know, I guess is an
7 argument you can make.

8 MS. CONNELL: Your Honor, I think there is a lot of
9 argument to be made from that document that was admitted
10 today such as it is, but I don't believe it would satisfy
11 either approval or ratification, but I think --

12 THE COURT: Well, maybe. I may have to -- I think
13 I have a sense, and they are saying it's undisputed that all
14 the transactions were not approved in advance, and I may
15 have to sharpen that a little in that if you look at each
16 payment made annually to Ms. Hammer, for example, it may
17 have -- I don't know whether you are currently arguing it
18 that it's one -- it's one related-party transaction that
19 lasted ten years or maybe they are going to say it's --
20 well, it's ten related-party transactions, one happening
21 each year for ten years or something like that.

22 MS. CONNELL: Well, I don't know what they are
23 going to say. I'm going to say that Ms. Hammer was paid by
24 three different streams over the years. Sometimes with a
25 contract. Often without and for many years.

KM

3588

Proceedings

1 THE COURT: No, but the point is about when -- at
2 some point in time they either did a ratification or an
3 approval. There was a thing that happened. That is going
4 to be a dispute about whether it's sufficient under the
5 statute is fine, but the difference between whether it's a
6 preapproval or ratification depends on how you view its
7 forward impact.

8 You know, in other words, when they were -- even if
9 they were doing a ratification of something, depending on
10 how it reads, and I'll have to go back and look at the
11 approval, if it is designed to be an approval for
12 going-forward transactions, that might have some legal
13 significance.

14 My recollection of the reading is that it looked to
15 be backward facing, but that's going to be a specific
16 decision. It's kind of technical, but it's important.

17 All right. See you in a second. We have used most
18 of our break, so be quick about it.

19 (Whereupon, at this time there was a recess taken.)

20 THE COURT: Ready for the jury?

21 THE COURT OFFICER: All rise. Jury entering.

22 (Whereupon, at this time the jury entered the
23 courtroom.)

24 THE COURT: Okay. Let's please have a seat. Okay.
25 Ready for the next witness for the Defense?

KM

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Lerner - by Defendant - Direct/Ms. Eisenberg

1 MS. EISENBERG: Yes, your Honor. We call Matt
2 Lerner.

3 M A T T H E W L E R N E R, a witness called on
4 behalf of the Defendant, after having been first duly sworn,
5 took the witness stand and testified as follows:

6 THE CLERK: State your name.

7 THE WITNESS: Matthew Lerner, L-E-R-N-E-R.

8 THE CLERK: Thank you. You may be seated.

9 THE COURT: Just try to stay as close as you can to
10 the mike without swallowing it.

11 THE WITNESS: Thank you.

12 MS EISENBERG: May I proceed, your Honor?

13 THE COURT: Yes, please.

14 MS. EISENBERG: Thank you very much. Can the
15 members of the jury hear me? Thank you.

16 DIRECT EXAMINATION

17 BY MS. EISENBERG:

18 Q Mr. Lerner, please tell us what you do.

19 A So I am an internal auditor. I perform internal
20 control assessments for not-for-profit organizations.

21 Q Where do you work?

22 A I work for Grant Thornton, large national accounting
23 firm.

24 Q And how long have you been doing this?

25 A I have worked with Grant Thornton for 13 years. Prior

KM

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Lerner - by Defendant - Direct/Ms. Eisenberg

1 to that I also worked in the not-for-profit industry in a
2 compliance role.

3 Q Please tell us a little bit about your education.

4 A So I have an undergraduate degree from Rutgers
5 University Business School in Management and also have an MBA
6 from New York University, Stern School of Business specializing
7 in Finance and Accounting.

8 Q Did there come a time where you reached certain
9 conclusions with regard to this case?

10 A Yes, I did have opinions related to the internal
11 control environment at the NRA in 2020.

12 MS. EISENBERG: Your Honor, at this point the NRA
13 offers Mr. Lerner as an expert in internal audits.

14 MS. CONNELL: No objection to his qualifications,
15 your Honor.

16 THE COURT: Okay. He is admitted to provide
17 opinion testimony.

18 Q We have heard testimony about different kind of audits;
19 internal audits, external audits.

20 Can you please help us understand the relevant
21 distinctions?

22 A Sure. We have heard about financial statement audits,
23 for example. Those are really -- the point of that, of course,
24 is to insure that the financial statements of an organization
25 -- so a financial statement audit, the primary objective is

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Lerner - by Defendant - Direct/Ms. Eisenberg

1 really to evaluate that there are no material misstatements
2 within the financial statements of an organization.

3 An internal audit is different in that it evaluates the
4 internal controls associated with -- it could be a variety of
5 business processes or functional areas within an organization.
6 So you could perform an internal audit of accounts payable or a
7 human resources function, expenditures of an organization.

8 And similarly, an internal control assessment is
9 similar to an internal audit. It can be, you know, performed in
10 a variety of different areas.

11 Q Have you ever testified as an expert witness before?

12 A No.

13 Q And are you being compensated for your work on this
14 case?

15 A My firm is being compensated.

16 Q To your knowledge, does your compensation depend in any
17 way on the outcome of this case?

18 A No.

19 Q To your knowledge, does your firm's compensation depend
20 in any way or what opinions you offer to the jury today?

21 A No.

22 Q What are internal controls?

23 A So at the highest level, internal controls, the
24 objective is to really insure that the business processes,
25 practices, policies of an organization support their business

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Lerner - by Defendant - Direct/Ms. Eisenberg

1 objectives. So those objectives can be a number of things. It
2 could be operational objectives, so making sure that the
3 operations of an organization are efficient and effective. They
4 can be related to reporting; financial reporting, non-financial
5 reporting, the accuracy of those to make sure that business
6 decisions can be made based upon sound information, and there
7 could be compliance objectives as well. So making sure that we
8 are complaint not only with the organization's policies and
9 procedures but also related to regulatory requirements and
10 things like that.

11 MS. EISENBERG: Can the members of the jury hear the
12 witness okay? Perfect.

13 Q Let's go to the next slide. Please tell us a little
14 bit -- well, we have already heard about COSO somewhat. But
15 just tell us from your perspective what role it plays in
16 compliance.

17 A COSO is really a critical component of -- to evaluate
18 an effective framework of internal controls for an organization.
19 So it can really help promote compliance within an organization,
20 and those objectives that I spoke to earlier, the operational
21 objectives, the financial objectives, the compliance objectives,
22 those are all part of COSO. So that framework really helps an
23 organization evaluate the effectiveness of their control
24 environment in support of those areas.

25 Q Directing your attention to the third main bullet that

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Lerner - by Defendant - Direct/Ms. Eisenberg

1 starts with the words "The Framework Establishes Five
2 Components," please tell us about what the five components are
3 and how that relates to the overall COSO Framework.

4 A So the framework does outline these five components
5 that are really interrelated and are hallmarks of an effective
6 control environment holistically.

7 So that first element, control environment has to do
8 with things like tone at the top and the culture of the
9 organization, making sure that, you know, that there is good
10 governance and good tone at the top to make sure that we have an
11 effective control environment.

12 Risk assessment is also a key element or key component
13 of the COSO Framework making sure that we understand the
14 organization's various risks and how we respond to them.

15 Control activities has to do with really what are we
16 doing, what policies, procedures, internal controls do we have
17 in place in the support of our objectives, making sure that we
18 have a sound set of controls.

19 Information and communication has to do with how those
20 policies, procedures and controls are communicated throughout
21 the organization to make sure that there is awareness which is
22 obviously critical to the success of the overall control
23 environment.

24 And then monitoring is also the fifth component really
25 has to do with really evaluating periodically in various

KM

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1 different ways to make sure that the control environment that we
2 do have in place is actually functioning as we expect it to.

3 Q Thank you. Let's go to the next slide.

4 Before we turn to the slide, can I ask you please to
5 repeat what it is that you were asked to do in this case.

6 A Sure. So I was asked to evaluate the control
7 environment at the NRA really in consideration of some of the
8 changes that were made as part of NRA's course correction which
9 began in approximately early 2018.

10 Q And what, if any, timeframe did you specifically focus
11 on?

12 A My evaluation focused on the timeframe of 2020. So my
13 opinions are really as of the control environment as of
14 December 31, 2020.

15 (Continued on the following page.)

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M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 Q Did the NRA's counsel direct you to focus on that
2 particular timeframe?

3 A No.

4 Q Your slide says that you assess both the design of the
5 NRA's internal controls and their effectiveness. Let's focus on
6 that distinction for a second.

7 What is the difference?

8 A So, when you're evaluating internal controls at an
9 organization, the first thing that you want to do is understand
10 how those internal controls are designed. It is important to do
11 so because later on you're going to test whether those controls
12 are effective. If they aren't really effective, effectively
13 designed in the first place, it doesn't matter if they're
14 operating effectively.

15 You need to have appropriate design. You need to make
16 sure that they are comprehensive and adequate to ensure the
17 achievement of the organization objectives.

18 Now, I spoke to the operating effectiveness a little
19 bit. That is a process by which the someone can look at the
20 actual effectiveness of those internal controls and that can be
21 done various ways; for example, through testing of transactions
22 often through either sample testing. It can be done through
23 data analytics and a number of different ways, but testing of
24 those controls is one way of evaluating the operating
25 effectiveness of control environment.

BP

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M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 Q Let's go to the next slide. You didn't actually go to
2 the NRA, right, to interview individuals and conduct an internal
3 audit on your own; is that fair?

4 A Yes. I did have a conversation with members of
5 management at the NRA, but that's correct.

6 Q And, nonetheless, you were able to formulate certain
7 opinions in this case; right?

8 A Correct.

9 Q What enabled to you do that?

10 A It was really the wealth of information that was
11 available to me in the record.

12 So, for example, in evaluating the design effectiveness
13 of internal controls, I looked at policies, procedures, meeting
14 minutes and things like that. And then when I was evaluating
15 the operating effectiveness, one of the things that I had
16 leveraged were special procedures that were performed by the
17 NRA's audit firm, Aronson. They had conducted these -- I'll try
18 and stay close to this, I apologize. The special procedures
19 were performed by --

20 THE COURT: If they don't hear it, it doesn't
21 count.

22 THE WITNESS: Okay, understood.

23 A The special procedures were conducted by Aronson in
24 2020 as part of their taking on the NRA as a new client.

25 Q And what are we looking at on this slide?

BP

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M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 A So, these are the descriptions of some of the tests
2 that they had performed; and so, broadly, I'll discuss a little
3 bit about what I understand the process that they undertook.

4 It involved discussions with various members of
5 management and the Audit Committee to understand their
6 perspectives on the control environment, governance, the
7 compliance of the NRA at the time that they conducted this
8 review. They also -- Aronson that is -- conducted these
9 additional procedures in connection with their financial
10 statement audit that was conducted in 2020.

11 Now, while these were done in connection with the
12 financial statement audit, they were -- I would say in addition
13 to what is typically performed in a financial statement audit in
14 that they looked at specific internal controls that were part of
15 the AG's complaint to evaluate whether or not the control
16 environment in those areas was strong as of the time that they
17 looked, which was December 2020.

18 MS. CONNELL: Your Honor, I'm just going to object
19 to the slides to the extent they contain language that's
20 hearsay that's not been admitted.

21 THE COURT: Yeah, this witness is to give his
22 opinions, not just to vouch for another party's work, right?

23 So, I mean, it is fine that if he looked at various
24 things people did; but I would ask that we focus on this
25 witness's independent views as to the adequacy and not

BP

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M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 simply repeating what -- I don't know whether you have
2 somebody coming from Aronson or not, but their views are
3 their views. His views should be independent.

4 MS. EISENBERG: Understood, your Honor.

5 MR. FARBER: Judge, there's a lot of it in these
6 slides. I said that's what a lot of these slides consist of
7 so perhaps the witness should just testify.

8 THE COURT: As I said, it can be background for
9 some of the research he did, but this is the live witness
10 here and Aronson's work would be hearsay.

11 MS. EISENBERG: Okay.

12 Q Now, Mr. Lerner, you're not simply adopting whatever
13 conclusions Aronson may have reached; is that fair?

14 A That's correct.

15 Q Explain to us how, nonetheless, reviewing their papers
16 enabled you to reach your independent opinions in this case.

17 A Sure. So, that was a part of the information that I
18 did review; and, basically, what I had done in the professional
19 standards that apply to my profession, internal auditing, you
20 can rely upon testing that is performed by external parties as
21 long as it meets certain criteria.

22 I did apply that criteria when evaluating the testing
23 of internal controls that was performed by Aronson. That
24 criteria includes things like making sure that the scope is
25 aligned and appropriate to the assessment that you would

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M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 perform, that I would perform, the credentials of the
2 individuals who are performing that review and the like.

3 So, in applying that criteria, I determined it was
4 appropriate to include the results of their internal control
5 testing as part of my assessment, but I also at that -- in
6 forming my conclusions, reviewed documentation, policies,
7 procedures, meeting minutes, testimony, these types of things.

8 THE COURT: All right, with that as the background,
9 any references here to what Aronson may have concluded or
10 did is simply background. This evidence is -- this is not
11 substantive evidence for you to consider. It is just part
12 of his background. But statements made about what Aronson
13 concluded or said are hearsay, and they're not at the moment
14 anyway testifying.

15 So, you can consider it to that limit of extent as
16 part of the background that he did and looked at, but their
17 conclusions are not evidence yet.

18 MS. EISENBERG: And, your Honor, the jury will be
19 hearing from Aronson later today who now goes by Aprio.
20 They changed their corporate name.

21 Q Now, let's go back to the list that you just provided,
22 the materials that you reviewed.

23 In addition to reviewing those materials, you also
24 spoke to certain individuals at the organization; is that fair?

25 A That's correct.

BP

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M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 Q To whom did you speak?

2 A I spoke with Sonya Rowling, John Frazer, and Arif
3 Rahman.

4 Q Arif Rahman?

5 A Yes.

6 Q What types of things did you discuss with them?

7 A My discussion with them was primarily focused on
8 their -- the process by which they compile they're statutory
9 reports, the IRS Form 990 and the New York CHAR500.

10 Q Understood. Let's go to the next slide.

11 In conducting your work on this case, was one of the
12 areas on which you focused conflicts of interest generally and
13 related-party transactions specifically?

14 A Yes.

15 Q And what did you do with regard to that specific
16 subject matter?

17 A In evaluating the controls and some of the underlying
18 documentation that was available noted certain aspects of a
19 control environment that I thought was effective.

20 So, things like considering the financial disclosure
21 form process that the NRA has instituted, which requires
22 officers and members of the board to disclose related-party
23 transactions and conflicts of interest. Some of the controls
24 that were put in place by management to review known conflicts
25 and related-party transactions against expenditures, payment

BP

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M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 transactions, those types of things.

2 Just noted the enhancements that were made to the
3 financial disclosure questionnaire form. There were -- there
4 was an additional question was added to help gather additional
5 information where a -- one of the individuals who filed the form
6 might know of any third-party relationships that could be
7 involved with the NRA, for example.

8 Q Did you reach a conclusion with regard to the
9 effectiveness of the design of the NRA's internal controls for
10 addressing related-party transactions and conflicts-of-interest
11 matters?

12 A Yes. So, as of the time period that I considered as of
13 December 31, 2020, I felt that the design of the control
14 environment related to -- for related-party transactions and
15 conflicts of interest was effective.

16 Q What about the operating effectiveness of the same
17 controls, did you reach any opinions with regard to that?

18 A Yes, in my opinion that the controls were operating
19 effectively, as well.

20 Q Let's go to the next slide.

21 MS. CONNELL: Your Honor, objection for one second
22 on foundation of these questions.

23 The expert is being asked his summary, and I think
24 he needs to state the foundation because I think it is going
25 to implicate an issue that your Honor put his finger on.

BP

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M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 THE COURT: Overruled.

2 MS. EISENBERG: Thank you, your Honor.

3 Q Mr. Lerner, what is this slide about?

4 A This really reflects some of the underlying
5 considerations related to the analysis of -- my analysis of the
6 internal control environment as it relates to the approval of
7 third-party contracts.

8 Q What were some of the observations that you made in
9 connection with the review of this subject?

10 A So, I had noted the policy that is in place at the NRA
11 where we refer to as an authority matrix, which really outlines
12 the contract approvals that are necessary for different types of
13 contracts and different amounts; I did note additional controls
14 what we call detected controls that are put in place and those
15 are meant to identify things that may have occurred after, after
16 the fact they may have been non-compliant.

17 One example of that is control that was implemented to
18 evaluate all vendors paid over \$100,000 in the -- during the
19 course of the year to make sure that there was a contract in
20 place.

21 So, it is a good detected control from my perspective.

22 Had noted that a number of historically non-compliant
23 contracts had been terminated by the NRA. Those that had
24 remained were either renegotiated or were being monitored such
25 in the way I just described, including an evaluation of the

BP

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M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 payments that exceed \$100,000, for example.

2 Q You referenced an authority matrix in answering my
3 question. Can you please talk a little bit more about what that
4 is?

5 A Sure. So, that's something that is typically found in
6 a policy that relates to contracts or purchasing approvals and
7 things like that. What that describes are the approvals that
8 are necessary from management or the board for, in this case,
9 contracts of specific amounts. So, and it is something you
10 typically like to see in an effective control environment.

11 Q And did you conclude that the NRA has an authority
12 matrix?

13 A Yes.

14 Q Let's look at the right side of the slide. Please tell
15 us what the box at the top refers to and what image we're
16 looking at?

17 A Sure. That's actually an image from the compliance
18 training that the NRA has held since 2018. Just demonstrating
19 in this case the information communication element of COSO which
20 is really about making sure there's awareness of policies and
21 procedures.

22 This outlines some of the requirements as they relate
23 to procurement of new vendors on the top. And then what I was
24 referring to earlier the authority matrix, that's summarized
25 below for contracts greater than or equal to \$100,000.

BP

3604

M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 Q Did you reach an opinion with regard to whether the
2 NRA's internal controls are designed effectively when it comes
3 to management of third-party contracts?

4 A Yes. And, in my opinion, as of the period that I
5 evaluated, December 31, 2020, the design of the controls related
6 to third-party contracts were effective.

7 Q What about the operating effectiveness of those
8 controls?

9 A Yes. In my opinion, those -- the operating
10 effectiveness of those controls were effective, as well.

11 Q Let's move to the next slide.

12 Please tell us what this slide is about?

13 A Similar to the prior slides, really just highlighting
14 some of the key controls that were the basis for my opinions and
15 conclusions in this case relating to the NRA's expense approval
16 and reimbursement process.

17 Q Thank you. There is a graphic at the bottom on the
18 left side. Let's focus on that. If you can walk us through
19 that and explain how that relates to any conclusions that you
20 reached.

21 A Sure. So, this is really just a high-level visual
22 representation of an effective of the expense report approval
23 process in place at the NRA.

24 So, when an individual submits an expense report,
25 there's a review of that report, make sure that there's

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M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 appropriate business purpose that is supported by receipts and
2 evidence that those expenses actually occurred. And should
3 those exist, it can be approved. If not, it should be denied.

4 Q And did you conclude based on the review of the
5 information you described that at the NRA, reimbursement
6 requests are denied if they don't come with appropriate backup?

7 MS. CONNELL: Your Honor, I'm going to object at
8 this point. And to the extent that Mr. Lerner's opining on
9 the design effectiveness, that's one thing. When he's
10 opining on the operating effectiveness, you'll hear and
11 he'll admit he relied upon and vouching upon client
12 retention procedures performed by Aronson. And so that's
13 the vouchering that your Honor was speaking about.

14 We can do voir dire separately, but I think that
15 just having him state his conclusion without revealing that
16 he relied upon and is just spitting back out Aronson
17 procedures is not correct.

18 THE COURT: I'll sustain that. At least the way
19 the question was asked, it is a little unclear. It seems to
20 be more of a fact question. I think the question was to ask
21 whether reimbursements are denied if they don't come with
22 appropriate backup. That's a different question than what
23 the procedures are and what's supposed to happen.

24 I thought the way you asked it sounded like you
25 were asking him whether that's actually the way it works in

BP

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M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 real practice.

2 MS. EISENBERG: Understood, your Honor.

3 THE COURT: So, maybe we can put a little more
4 behind that question.

5 Q Based on the work that you've done and the review that
6 you've conducted, what is your understanding as to the NRA's
7 policy for any expense reimbursement requests that are not
8 accompanied by appropriate backup?

9 A Through my understanding, the policy would require that
10 those expense reimbursements be denied or returned to the
11 individual who submitted it for it to be corrected.

12 Q Let's look at the left side of the slide. Is it fair
13 to say that it summarized some of the observations that you
14 reached in connection with your work on this case?

15 A Yes.

16 Q Please walk us through them.

17 MS. CONNELL: Objection, your Honor. These are
18 factual conclusions, rather than support for an opinion on
19 operating or design effectiveness.

20 MS. EISENBERG: Your Honor, this goes to weight.
21 It is clearly admissible.

22 THE COURT: And these are intended to describe the
23 policies, not facts on the ground of what actually happened
24 during the years?

25 MS. EISENBERG: I think it is a little bit of both,

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M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 but he based these opinions on things that experts in his
2 field typically review.

3 MS. CONNELL: Your Honor, Mr. Lerner offered an
4 opinion as to the control environment in the NRA as of
5 December 31, 2021.

6 THE COURT: 2020.

7 MS. CONNELL: I'm sorry, 2020. If he's going to
8 state what the design was, so what he based that opinion on
9 that's the actual procedures and policies that were in place
10 that he thought were fine, that's fine.

11 If he's going to talk about what actually happened
12 as of December 31, 2020, and that it was okay and it was
13 operating effectively, he needs to state his basis; and when
14 he states his basis, I think you'll see that there's a basis
15 for objection.

16 THE COURT: I think those are fair observations.
17 So, if we're switching now away from design to efficacy, is
18 that what we're doing?

19 MS. EISENBERG: Your Honor, I simply asked the
20 witness about the left side of the slide, but I'm happy to
21 rephrase and take effectiveness of design versus operating
22 effectiveness one at a time.

23 THE COURT: Okay.

24 MS. CONNELL: Well, it says controls implemented
25 which is operating effectiveness.

BP

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M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 THE COURT: Right, that's what makes it a little
2 confusing as to where we are; but I do agree if you're going
3 to switch to the effectiveness, you have to -- I would
4 suggest that you have to ask the witness what it is based on
5 and what his views are and as opposed to putting --
6 sometimes these may sound to the jury like factual
7 statements. I don't think that's what you intend.

8 So, with that caveat, you can continue.

9 MS. EISENBERG: Certainly, your Honor.

10 Q Let's focus on the right side of the slide. Please
11 walk us through the three graphics that we see there and tell us
12 how they relate to your analysis.

13 A Sure. So, those are visuals, excerpts of the NRA
14 travel and business expense policy. They outline just
15 requirements related to various types of expenses. In this
16 case, lodging, meals and business entertainment expenses,
17 commercial airfare as well as charter air travel.

18 Q At some point did you reach an opinion as to the design
19 and the effectiveness of the design of the NRA's internal
20 controls when it comes to expense approvals and reimbursement?

21 A Yes. In my opinion they were effective as of
22 December 31, 2020.

23 Q And what was your opinion about the effective design
24 based on?

25 A Based on my review of the policies, procedures that

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M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 type of documentation.

2 Q Okay, and this is a yes or no: Did you at any point
3 reach an opinion as to whether the controls in this regard were
4 operating effectively as of the timeframe that you specified?

5 A Yes.

6 Q When you reached that opinion, what was that opinion
7 based on?

8 A It was based on my review of testing that was performed
9 by Aronson.

10 Q And when you say you reviewed the testing that they
11 performed, please tell us specifically or please describe
12 generically what you reviewed and perhaps give us a few
13 examples.

14 A Sure. So, I had reviewed their what we call audit work
15 papers test sheets that really describe the testing that they
16 had performed in these areas, the samples that they selected,
17 the results of that testing noting any exceptions.

18 Q And do professionals in your field typically rely on
19 papers or documents of that type?

20 MS. CONNELL: Objection, your Honor. This --

21 THE COURT: She can ask that question. We'll take
22 it one step at a time.

23 A Yes, at times you can rely on the testing of others.
24 I think I described a little bit about what that process and the
25 criteria that I applied earlier.

BP

3610

M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 Q And based on all of that, what opinion did you reach
2 about the effectiveness of the NRA's internal control in terms
3 of their operating effectiveness with regard to this topic?

4 MS. CONNELL: Objection, your Honor. This is --

5 THE COURT: Sustained. Based on his testimony, the
6 only thing that he said it is based on is somebody else's
7 work.

8 MS. EISENBERG: Thank you, your Honor.

9 Q Let's go to the next slide, which is slide 9.

10 (Displayed)

11 Mr. Lerner, what is this slide about?

12 A Similar to the prior slides, just my evaluation of
13 internal controls as they relate to executive compensation.

14 MS. CONNELL: Your Honor, I would ask that the
15 slide be taken down. This relates to operating
16 effectiveness and implementation which he did not, himself,
17 look at.

18 THE COURT: Well, we're going to have to do this
19 foundation thing for each part of this, so let's see how it
20 goes. Again, the slides aren't evidence anyway. So, let's
21 just proceed through it.

22 MS. EISENBERG: Thank you, your Honor.

23 Q Mr. Lerner, let's take a look at the right side of the
24 slide. Please tell us what we're looking at?

25 A So, this is an excerpt from the meeting minutes for the

BP

3611

M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 officers -- I'm sorry -- the report of the officers compensation
2 committee, which is really charged with approving the
3 compensation provided to NRA executives and officers.

4 Q What are were looking at the bottom?

5 A This really speaks to -- it is another excerpt from
6 that. It is really speaking to some of the criteria that the
7 officers' compensation committee considered in approving the
8 compensation that was provided to the NRA executives in this
9 case in 2020, which included just different reports from
10 compensation experts.

11 Q Based on your review of the materials that you
12 described, what do you understand the internal controls to be at
13 the NRA for ensuring that compensation is determined
14 appropriately?

15 A So, the NRA hires a third-party consultant to evaluate
16 the compensation that is provided to its officers and
17 executives, which is common in my experience. Making sure that
18 it is compared against similar organizations, to make sure that
19 the payments -- that the compensation that's provided is
20 appropriate.

21 Q Did you reach an opinion as to whether the NRA's
22 internal controls with regard to executive compensation are
23 designed effectively?

24 A Yes. In my opinion, the controls are designed
25 appropriately.

BP

3612

M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 Q And that was, again, in relation to the timeframe of --

2 A Yes, as of 2020, correct.

3 Q Let's go to the next slide, which is slide 10.

4 (Displayed)

5 Please tell us what this slide is about?

6 A Similar, this is the basis upon which I formed my
7 opinions, just some highlights as -- of the control environment
8 as it relates to the NRA's whistleblower program.

9 Q When you're evaluating the -- I'm sorry -- the
10 effectiveness of the design of internal controls when it
11 comes to whistleblower programs, what types of things do you
12 look for?

13 A Well, I look for some of the policies and procedures
14 that are in place. So, in this case it was the NRA's statement
15 of corporate ethics and whistleblower policies.

16 I look at really the things like the reporting
17 structures that are in place. So, things like the Audit
18 Committee review of any whistleblower reports to make sure that
19 those are appropriately reviewed by governance.

20 I look at the structure for investigating whistleblower
21 reports, resolving them, and also look for some of the vehicles
22 through which whistleblower reports can be submitted.

23 Q Let's look at the at the top of the right side. It
24 says: "Non-retaliation Clause."

25 Do you see that?

BP

3613

M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 A Yes.

2 MS. CONNELL: Your Honor, I'm sorry, I don't mean
3 to interrupt; but the slide is a factual narration of not
4 what the design and his opinion about the design, but
5 findings that he made. It is the type of narration that
6 your Honor has spoken about before.

7 Focussing on the policies is one thing for design
8 effectiveness, the rest is --

9 THE COURT: At this point I'm not flyspecking the
10 slides and focussing on the testimony.

11 The jury has heard me say enough times that factual
12 statements by expert witnesses are not evidence. They may
13 or may not be relevant to the opinions we're getting into.

14 So, I'd rather not --

15 MS. CONNELL: I'm sorry, your Honor, I'm just
16 trying to preserve the record.

17 THE COURT: Well, the record right now is the
18 testimony. That slide is not in the record.

19 So, go ahead.

20 Q Mr. Lerner, the top right part of the slide, there's a
21 quote. What is this a quote from?

22 A This is a quote from the NRA's whistleblower policy,
23 which is a part of the statement of corporate ethics.

24 Q And what does that quote say?

25 A Well, I can --

BP

3614

M. Lerner - by Defendant - Direct/Ms. Eisenberg

1 Q In sum and substance.

2 A In summary it says that anyone who submits a
3 whistleblower report in good faith should not be retaliated
4 against.

5 Q When you evaluate the effectiveness of the design of
6 internal controls related to whistleblowing, do you typically
7 look for an anti-retaliation provision?

8 A Yes.

9 Q And when a company does have an anti-retaliation
10 provision, how does that affect your analysis with regard to
11 this issue?

12 A Well, it's one aspect of a good control environment in
13 that place. You want to make sure that individuals feel
14 comfortable submitting whistleblower reports and understanding
15 that they won't be retaliated against for submitting them.

16 Q Let's look at the second box, which is entitled "Audit
17 Committee Discusses Reports Received."

18 Why did you include it on the slide?

19 A I think it is important and it is part of the NRA's
20 policy that whistleblower reports be submitted for consideration
21 to the Audit Committee. So, as part of my analysis, I reviewed
22 Audit Committee meeting minutes to evaluate whether
23 whistleblower reports were included in those minutes.

24 Q And when you see references to whistleblowing in Audit
25 Committee reports, how does that affect your over all evaluation

BP

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1 of the effectiveness of design of internal controls with regard
2 to whistleblowing?

3 A It is an important aspect of an effective control
4 environment.

5 Q Let's look at the third rectangle entitled "Anonymous
6 Reporting Capabilities."

7 Please tell us why you included that?

8 A That is an aspect of the NRA's whistleblower policy as
9 well. Similar to my comments about non-retaliation, you want
10 potential whistleblowers to feel comfortable with submitting
11 anonymous reports as well should they not be comfortable
12 submitting it with their name attached. So, we want to make
13 sure there's a way that whistleblowers can do that.

14 Q Is this a quote?

15 A Yes, this is an excerpt from the NRA's whistleblower
16 policy.

17 (Continued on next page)

18

19

20

21

22

23

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25

BP

3616

Lerner - by Defendant - Direct/Ms. Eisenberg

1 Q When an organization has an arrangement for enabling
2 anonymous reporting, how does that affect your overall
3 evaluation of the internal control?

4 A It's an element of an effective control environment.

5 Q So that's a good thing; right?

6 A That's a good thing.

7 Q Let's take a look at the next piece which is entitled
8 email communication of whistleblower policy updates.

9 What is that?

10 A So this was a email that was sent by the NRA in this
11 case with I believe it was John Frazer, and you want to make
12 sure that when policies are updated that they are not only
13 updated and available but actually communicated to individuals.
14 So this was an excerpt from an email that went to NRA staff just
15 highlighting updates and changes to the whistleblower policy to
16 help with awareness.

17 Q And what about the last one?

18 A Similar email communication. In this case, the
19 Statement of Corporate Ethics was updated. So a similar email
20 that was sent demonstrating that it was communicated to staff.

21 Q And this slide, just to be clear, doesn't represent all
22 the information that you reviewed in connection with the
23 subject; is that fair?

24 A Correct. Like the others, these are just some
25 highlights or excerpts of things that I considered in my

KM

3617

Lerner - by Defendant - Direct/Ms. Eisenberg

1 evaluation of control environment in this area.

2 Q And you have also considered sworn testimony by fact
3 witnesses; is that fair?

4 A Correct.

5 Q And based on all the various things that you considered
6 and your experience, what, if any, conclusion did you reach with
7 regard to whether the internal controls of the NRA are designed
8 effectively as of 2020 when it comes to the NRA's whistleblower
9 program?

10 A I felt that the control environment was designed
11 effectively as of December 31, 2020.

12 Q And this is a yes or no.

13 Did you reach a conclusion as to the operating
14 effectiveness of the same controls?

15 A Yes.

16 Q What was that conclusion based on?

17 A It was based upon in part on some of the testing that
18 was performed by Aronson, but I also reviewed Audit Committee
19 meeting minutes and things like that to evaluate whether
20 whistleblower reports were submitted and reported to the Audit
21 Committee.

22 Q If you set aside the Aronson piece, is the material
23 that you reviewed in addition to that sufficient for you to be
24 able to form a view as to the operating effectiveness?

25 A I don't -- I don't think so. I think it's important to

KM

3618

Lerner - by Defendant - Direct/Ms. Eisenberg

1 consider, you know, holistically. That's an important element
2 of the operating effectiveness of the controls.

3 MS. EISENBERG: Your Honor, while preserving our
4 rights, I will just move on because I know that you will
5 rule the same way as you did previously.

6 THE COURT: Okay.

7 Q Let's look at the 11th slide.

8 Why did you include it in your presentation?

9 A So this highlights some of the compliance trainings
10 that have been held at the NRA since 2018.

11 I mentioned earlier, you know, the information and
12 communications component, for example, of COSO. This is really,
13 you know, evidence of that and showing in various areas that I
14 evaluated. So conflicts of interest and related-party
15 transactions, expenditures, contract approvals, whistleblowers,
16 those types of things. Those have been included in the
17 compliance training that are provided to NRA staff, senior
18 leadership and the Board over the last number of years.

19 So you know, it's important as I mentioned earlier that
20 there is not only policies but awareness of those policies and
21 how individuals are expected to behave and enforce and make sure
22 that those policies are enforced, and compliance trainings are I
23 think -- are critical elements of that.

24 Q Let's take down the slides, and I just want to talk to
25 you without the slides.

KM

3619

Lerner - by Defendant - Direct/Ms. Eisenberg

1 Did you evaluate the internal controls at the NRA for
2 making sure that form 990, CHAR 500 reporting is complete and
3 accurate?

4 A I evaluated the design effectiveness of those controls.

5 Q In evaluating the design effectiveness of those
6 controls, what materials did you consider?

7 A I mean, the reports themselves. I did have a
8 conversation, I referred to earlier, with Sonya Rowling, John
9 Frazer and Arif Rahman.

10 Q What did you come to understand with regard to the
11 internal controls of the NRA based on your interview of those
12 employees?

13 A They walked me through, and this is a typical way of
14 understanding control environment. They walked me through the
15 process that they undertake to compile the information for the
16 form 990.

17 So you know, they talked about how -- who was
18 responsible. In this case Arif Rahman. He is primarily
19 responsible for compiling a lot of the information.

20 We talked about the approvals and reviews that are
21 performed to make sure that they are accurate, you know, the
22 information that is compiled.

23 We talked about the sources of information, you know,
24 taken from HR records, vendor records, 1099's, the accounts
25 payable records of the organization, how that's all compiled.

KM

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Lerner - by Defendant - Direct/Ms. Eisenberg

1 It is reviewed by multiple individuals including
2 Michael Erstling, Sonya Rowling, John Frazer. Talked about the
3 process for presenting the report for approval and review by the
4 Audit Committee.

5 So they really walked me through the entire process of
6 compiling the 990.

7 MS. EISENBERG: Can the members of the jury hear the
8 witness? I want to make sure the members of the jury can
9 hear you.

10 Q Okay. So in -- after having done the work that you
11 just described, analyzed the information, and based on your
12 experience, what, if any, conclusion did you reach about whether
13 or not the internal controls of the NRA when it comes to Forms
14 990 and their accuracy are designed effectively?

15 A So my -- in my opinion, the design of the internal
16 controls as they relate to the compilation of the Form 990 and
17 CHAR 500 are effective as of December 31, 2020.

18 MS. EISENBERG: Mr. Stein, if we can please go to
19 slide 14.

20 Q Please tell us what we are looking at on this one.

21 A So this is a -- what I would say is a very high-level
22 representation of the documents that I had considered as a part
23 of my analysis. There are many of them. So I put them into I
24 would say some buckets or categories here.

25 Q Okay. Let's go to the next slide.

KM

3621

Lerner - by Defendant - Direct/Ms. Eisenberg

1 Did you evaluate the opinions offered by Mr. Tenenbaum
2 and Mr. Hines?

3 A I did.

4 Q What observations, if any, did you form?

5 A In my opinion, you know, they had stated opinions, and
6 we had heard some of them I think recently about the
7 effectiveness of the control environment at the NRA, fraud risk
8 indicators and the like.

9 In my opinion, they did not take into consideration
10 some of the control enhancements that were implemented during
11 the course correction at the NRA so beginning in 2018 and
12 continuing into present day.

13 Q Anything else?

14 A No. That's high-level summary.

15 MS. EISENBERG: Thank you very much, Mr. Lerner.
16 I'll pass the witness, your Honor.

17 THE COURT: Any other direct testimony? No?

18 MR. FARBER: No, your Honor.

19 MR. FLEMING: No, your Honor.

20 THE COURT: Okay. Begin cross. We have maybe 15,
21 20 minutes.

22 MS. CONNELL: I'd like to see if I can get it done
23 in this time. I think I can, and we can make the most use
24 of time.

25 THE COURT: Good.

KM

3622

Lerner - by Defendant - Cross/Ms. Connell

1 CROSS-EXAMINATION

2 BY MS. CONNELL:

3 Q Good afternoon, Mr. Lerner. I'm Monica Connell from
4 the Attorney General's Office.

5 We have met before; correct?

6 A Yes.

7 Q You just gave a lot of opinions about the design
8 effectiveness of various NRA internal controls; right?

9 A Right.

10 Q You would agree with me that the design effectiveness
11 of an internal control assumes that it operates as designed;
12 correct?

13 A Correct.

14 Q And that the effectiveness of even the best designed
15 internal control can be negated when management overrides or
16 evades that internal control; correct?

17 A It can be, yes.

18 Q As part of your work in this case, you did not look at
19 whether any of the NRA's internal controls had been evaded or
20 overridden before 2020; right?

21 A My opinions did not specifically relate to those, but I
22 am aware of some of the elements within the complaint and did
23 take those into consideration when conducting my analysis and
24 scoping my analysis and some of the areas that I considered.

25 Q But you didn't investigate whether those allegations

KM

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Lerner - by Defendant - Cross/Ms. Connell

1 were true; correct?

2 MS. EISENBERG: Outside the scope, your Honor.

3 THE COURT: Overruled.

4 A No, I didn't specifically investigate them.

5 Q You are an internal auditor; right?

6 A Right.

7 Q You weren't hired to do an internal audit for the NRA
8 in this case.

9 A No.

10 Q And you weren't hired to do an internal control audit
11 for the NRA in this case.

12 A I performed an internal control assessment.

13 Q You performed an assessment. Not an internal control
14 audit; correct?

15 A I mean, I think those terms are similar.

16 Q Well, Mr. Lerner, didn't you testify that, for example,
17 the IIA standards that usually apply to your work didn't apply
18 to this engagement?

19 A Yes. So those apply --

20 Q That's a yes or no question.

21 MS. EISENBERG: Your Honor, I ask that counsel not
22 interrupt the witness.

23 THE COURT: It was a yes or no. She can insist on
24 a yes or no answer.

25 You can -- just so you know, on cross-examination,

KM

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Lerner - by Defendant - Cross/Ms. Connell

1 they can ask narrow questions like that. You can either
2 answer yes or no or say why you can't.

3 If you want to elaborate beyond the yes or no, you
4 can be redirected on that.

5 THE WITNESS: Thank you.

6 Q Mr. Lerner, you said you were -- you were retained by
7 the Brewer Firm for the NRA in this case; right?

8 A My firm was.

9 Q Your firm was; correct.

10 How much has your firm been paid for your work to date?

11 A To my knowledge, it's approximately \$700,000.

12 Q Up to date?

13 A Yes.

14 Q And how much are you getting paid on an hourly basis?

15 A My rate is \$775 an hour, I believe.

16 Q So as part of your engagement, you could go to the
17 NRA's headquarter and poke around; right?

18 A I could.

19 Q And you could have spoken to any NRA employees that you
20 wanted to; right?

21 A I think so.

22 Q And yet, you testified at your deposition that the only
23 NRA employees you spoke with were Sonya Rowling, John Frazer and
24 Arif Rahman by a 90-minute Microsoft Teams call; right?

25 A Correct.

KM

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Lerner - by Defendant - Cross/Ms. Connell

1 Q That focused on regulatory filings; right?

2 A Correct. Primarily.

3 Q And you talked about reviewing sworn testimony in this
4 case; correct?

5 A Yes.

6 Q And the sworn testimony that you were given in this
7 case was given to you by the Brewer Firm; correct?

8 A Yes.

9 Q They determined what testimony you would review;
10 correct?

11 A They did provide it. You know, I had asked for --

12 Q Mr. Lerner, you previously testified --

13 THE COURT: Well, he can finish that answer.

14 A Yes. They provided the testimony that I reviewed on
15 specific topics that I had outlined as the scope of my review.

16 Q And they determined what testimony you should review;
17 correct?

18 A I mean, yes. I wasn't aware of all of the testimony
19 that existed.

20 Q And Mr. Lerner you were talking about the travel --
21 enforcement of the travel policy earlier on the slide that you
22 brought up. I think it was slide -- if we can have it brought
23 up. Slide number eight. On the bottom, Square D.

24 A Yes.

25 Q Do you know what year that travel policy went into

KM

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Lerner - by Defendant - Redirect/Ms. Eisenberg

1 effect?

2 A I believe it was 2021 or it might have been 2022.

3 Q So it went into effect after the date you're opining
4 about the design effectiveness of the NRA's internal controls;
5 correct?

6 A Correct.

7 MS. CONNELL: Thank you very much, Mr. Lerner.

8 THE COURT: Okay. Any other defendants want to
9 cross?

10 MR. FARBER: No, your Honor. No thank you.

11 THE COURT: Okay.

12 Anything further, Ms. Eisenberg?

13 MS. EISENBERG: Yes, your Honor. Just briefly.

14 REDIRECT EXAMINATION

15 BY MS. EISENBERG:

16 Q In connection with your work on this case, did you have
17 an opportunity to review reports of Mr. Tenenbaum and Mr. Hines?

18 A Yes.

19 Q And based on your review of those reports, do you have
20 any information about whether or not they are being compensated
21 for their work on this case as well?

22 MS. CONNELL: Objection, your Honor.

23 THE COURT: I think they have already testified
24 about their compensation.

25 MS. CONNELL: It's fine, your Honor. We withdraw

KM

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Lerner - by Defendant - Redirect/Ms. Eisenberg

1 the objection.

2 A Yes.

3 Q And the rate that you charged for your work on this
4 case, is it the typical rate that you charge to all clients?

5 A Yes.

6 Q When you were provided with information that you
7 evaluated in connection with your work on this case, do you have
8 any reason to believe that any testimony was held back or
9 withheld?

10 A Not to my knowledge.

11 Q And was there anything that you wanted to see that was
12 not provided to you?

13 A No.

14 Q Ms. Connell mentioned a few things you could have done
15 but didn't do. Nonetheless, even though you didn't travel to
16 Virginia, how were you able to form the opinions that you shared
17 with the members of the jury earlier today?

18 A You know, this is customary in my profession. Right.
19 I conduct a lot of internal audits, internal control
20 assessments.

21 We don't always visit on site. There are different
22 means and methods for gathering information, and you know, in
23 connection with that analysis.

24 In this case, there was a lot of documentation related
25 to policies, procedures, testimony and things like that that I

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Lerner - by Defendant - Redirect/Ms. Eisenberg

1 did consider. Where I felt like I didn't have enough
2 information to form my conclusions, I asked for more
3 information. In this case, it related to the conversation that
4 I had with Sonya Rowling, John Frazer and Arif Rahman.

5 MS. EISENBERG: Thank you very much, Mr. Lerner.

6 No further questions, your Honor.

7 THE COURT: Thank you. Anything further?

8 MS. CONNELL: No, your Honor.

9 THE COURT: Thank you very much. You can step
10 down.

11 We have about -- we would have about five minutes.
12 So should we just take our break now or is there any benefit
13 of starting something? All right. Let's take our lunch
14 break. We will reconvene at 2:15.

15 THE COURT OFFICER: All rise. Jury exiting.

16 (Whereupon, at this time the jury exits
17 the courtroom.)

18 THE COURT: Is there anything that we can
19 profitably do to address things for the afternoon that are
20 going to come up without wasting the jury's time?

21 MS. CONNELL: I'm not aware of any right now, but
22 Mr. Shiffman is handling the next witness. Mr. Wang.

23 Ms. Cullen is the next witness?

24 MS. EISENBERG: Correct.

25 MS. CONNELL: Mr. Wang is. I don't think so.

KM

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Cullen - by Defendant - Direct/Ms. Eisenberg

1 THE COURT: All right. See you then.

2 MR. FARBER: One logistical thing.

3 THE COURT: Off the record.

4 (Whereupon, an off-the-record discussion
5 was held.)

6 THE COURT: All right. Thanks.

7 (Whereupon, at this time there was a luncheon
8 recess taken.)

9 * * *

10 A F T E R N O O N S E S S I O N

11 * * * * *

12 THE COURT: I think we are ready for the jury.
13 Yes.

14 MS. EISENBERG: Yes, your Honor.

15 THE COURT: Okay. Let's go get them. .

16 THE COURT OFFICER: All rise. Jury entering.
17 (Whereupon, at this time the jury entered the
18 courtroom.)

19 THE COURT: Have a seat please. All right.
20 Welcome back, everyone. Next witness for the Defense.

21 MS. EISENBERG: Stacey Cullen, your Honor.

22 THE COURT: Okay. Let's bring the witness in.

23 THE COURT: Good afternoon. How are you?

24 (Witness resumed the witness stand.)

25 S T A C E Y C U L L E N, a witness called on

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Cullen - by Defendant - Direct/Ms. Eisenberg

1 behalf of the Defendant, after having been first duly sworn,
2 took the witness stand and testified as follows:

3 THE CLERK: State your name.

4 THE WITNESS: Stacey Cullen, C-U-L-L-E-N.

5 THE CLERK: Thank you. You may be seated.

6 DIRECT EXAMINATION

7 BY MS. EISENBERG:

8 Q Good afternoon. Please tell us where you work.

9 A At Aprio.

10 Q What kind of company is Aprio?

11 A It's an accounting firm.

12 Q Did it recently merge with another company called
13 Aronson?

14 A Yes, that's correct. As of January 1, 2023.

15 Q What is your position at Aprio?

16 A I am the director of non-profit tax services.

17 Q How long have you been with Aprio? I'm sorry. With
18 Aronson/Aprio.

19 A I have been with them roughly three years.

20 Q What, if any, services does Aprio perform for the NRA?

21 A They perform audit services as well as a review and
22 consulting work on the 990.

23 Q Have you been involved in the review and consulting
24 work on the Form 990 for the NRA?

25 A Yes, I have.

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Cullen - by Defendant - Direct/Ms. Eisenberg

1 Q And since when was that?

2 A Since I started in April of 2021.

3 Q We have heard in the trial references to Form 990
4 preparation and separately Form 990 review.

5 Would you please tell the members of the jury from your
6 perspective what the distinction is.

7 A Sure. So the Form 990 is a tax form that non-profit
8 organizations have to file, and the preparer is the one who is
9 actually taking the form and using software to put the
10 information on to the return.

11 A reviewer looks at that information for accuracy and
12 completeness.

13 Q And when a company like yours reviews but don't prepare
14 Form 990, does it typically sign the Form 990?

15 A No, we would never sign a return that we are not the
16 preparer for.

17 There is a line for the organization to sign the return
18 and a line for the paid preparer and for the organizations that
19 we are just providing review work for, we don't sign those
20 returns.

21 Q Is it fair to say that the NRA prepares its own Form
22 990?

23 A Yes, that is correct. They have their own software
24 that they are using, and they are preparing their 990.

25 Q And that your company reviews the form and provides

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Cullen - by Defendant - Direct/Ms. Eisenberg

1 consulting services in connection with the form?

2 A Yes. That's correct.

3 Q Do you have any clients other than the NRA who prepare
4 their own Forms 990?

5 A Yes. Typically our larger clients are preparing their
6 own 990s. They have a more sophisticated staff and are able to
7 do that and hire us to do the review and any consulting work
8 regarding the 990.

9 Q Understood. Now, let's step back a little bit and tell
10 the members of the jury a little bit about your professional
11 background.

12 A Sure. So I have a J.D. and an LLM in taxation.

13 I started my career at Deloitte doing various types of
14 tax there.

15 When the Form 990, the non-profit tax form was
16 revitalized in 2008, I jumped over to start doing non-profit
17 only work and have done non-profit tax solely for the past
18 15 years.

19 Q And did you say that you head up a particular
20 department at your company?

21 A So I head up the non-profit tax group. We are a group
22 of eight individuals that are dedicated to our non-profit
23 clients.

24 We have got about 850 990s that we do. So everybody on
25 the team is a non-profit specialist. We don't have people doing

KM

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Cullen - by Defendant - Direct/Ms. Eisenberg

1 like partnership returns, individual returns. Everybody is a
2 non-profit specialist.

3 Q Did you say 850?

4 A Yes.

5 Q And what does that refer to?

6 A The number of 990s that our firm either prepares or
7 reviews.

8 Q What do you do to stay on top of the latest tips and
9 best practices in your field?

10 A Sure. So I get a daily email that is non-profit tax
11 specific that highlights any changes that have recently happened
12 or any court cases. And then I also go to different training.
13 Most recently, I was in the State of New York for their New York
14 State Non-Profit conference.

15 Q Welcome back.

16 A Thank you.

17 Q Could you please tell us what you do to review the
18 NRA's Form 990.

19 A Sure. So I start -- I look at the financial
20 statements, familiarize myself with what was going on during
21 that year that way. And then I start on Page 1 of the return
22 and I really flip every single page looking for accuracy and to
23 make sure that the narrative is telling the same information
24 throughout the return.

25 Q And in connection with with this process, with whom at

KM

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Cullen - by Defendant - Direct/Ms. Eisenberg

1 the NRA do you typically interface?

2 A Rick Tedrick, Sonya Rowling, John Frazer, and there was
3 a gentleman with the organization named Arif who is no longer
4 there who was also part of it.

5 Q And when you have occasion to speak to them about it,
6 is it typically in person, on the phone over Zoom or something
7 else?

8 A We use Teams meetings a lot or Zoom meetings.

9 Q Okay. And when you use Zoom meetings, does that
10 provide for an opportunity to pull up the form on the screen and
11 discuss it in context?

12 A Yes. Zoom and Teams meetings both allow you to share
13 your screen so that everybody is on the same page and able to
14 look at the draft of the 990 and make sure we are talking about
15 the same questions.

16 Q Understood. And in the course of your work on this
17 engagement for the NRA and interactions with the three
18 individuals that you mentioned, have you come to form a view as
19 to their commitment to making sure that the NRA's Form 990 is as
20 complete and as accurate as possible?

21 A Yes. I believe they are all very involved in the
22 process. The depth of the questions that they typically reach
23 out to me for while they are preparing those shows they are
24 really taking a vested interest in what information they are
25 putting on the return. And additionally, they ask me to present

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Cullen - by Defendant - Direct/Ms. Eisenberg

1 the return to the Audit Committee.

2 Q Let's talk about the Audit Committee. Have you made
3 presentations to the NRA's Board's Audit Committee?

4 A Yes. The past two years I have done a virtual
5 presentation to the Board of the 990 where we walk through all
6 -- every page of the 990 and point out the important parts that
7 they really need to be focusing on as well as the general
8 information that's contained in the return.

9 Q When was the latest set presentation that you delivered
10 to the Audit Committee?

11 A I don't remember the exact date, but it was before
12 their 2022 return was due November 15 of 2023. I believe it was
13 in October, but I might be a little off when that happened.

14 Q Of course. And ballpark, how long was your
15 presentation?

16 A The meeting itself went for about an hour, but it
17 wasn't just a presentation. I encouraged them to ask questions
18 throughout the process which they -- everybody was very
19 interactive, asking questions and was really involved in the
20 process.

21 Q And how does that compare to some of your other
22 clients?

23 A So I do have some other clients that are -- have audit
24 committees that are very good and interactive as well and then I
25 do have some clients who unfortunately their audit committees

KM

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Cullen - by Defendant - Direct/Ms. Eisenberg

1 don't ask any questions. I have a ten-minute presentation
2 instead of an hour, and at the end when I'm done, I don't know
3 if anybody's listened to anything I have actually said. So they
4 are much more involved.

5 Q And going back to your interactions with Mr. Frazer,
6 Ms. Rowling and Mr. Tedrick, are there ever times when after
7 your review you identify questions for them?

8 A Yes. So quite often, I'll ask questions to get more
9 information from them to figure out if what is on the form is
10 the way it should be reported.

11 Additionally, as we are going through things, if there
12 is things that I think are not being reported correctly, they
13 will make those changes and then send out another draft for
14 review.

15 Q What is the C-Track validation process?

16 A Sure. So C-Track is the tax software system that the
17 NRA uses to prepare their return. And part of that process is
18 once they think their return is ready to be submitted to the
19 IRS, there is a button that they have to press that says
20 "validate," and I'm not an IT person, but it somehow runs the
21 data to make sure all of the numbers are tied in correctly and
22 that every part that is required to be completed is complete.

23 Q And in your professional opinion, how does that help,
24 if at all, insure that disclosures are as accurate and complete
25 as possible?

KM

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Cullen - by Defendant - Direct/Ms. Eisenberg

1 A So it insures that required disclosures are in the
2 return because it won't pass validation without that. And then
3 if it doesn't pass validation, they can't hit the "submit"
4 button to e-file the return with the IRS, and e-filing is
5 required, so they can't file the return until it passes
6 validation.

7 Q Do all of your clients use C-Track?

8 A They do not. So when Aprio was Aronson, Aronson was
9 using C-Track for all of our clients. It's an excellent
10 software, and I believe the only software that was designed just
11 for 990s, so it's specific for non-profit organizations and is
12 very user-friendly and interactive.

13 We do have -- after we merged we switched over to CCH
14 software that we use for the bulk of our clients, but most of
15 our clients that are preparing their own returns have decided to
16 stay with C-Track.

17 THE COURT: Counsel, I don't like to interrupt, but
18 just because I am trying to keep track, do we know the
19 years -- the witness has talked a lot about the company's
20 process, but I don't know that you've asked yet which years
21 of 990s she's worked on.

22 MS. EISENBERG: I don't think --

23 THE COURT: If I am confused, it's certainly
24 possible that the jury might not know either.

25 MS. EISENBERG: I'm sorry. Thank you very much.

KM

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Cullen - by Defendant - Direct/Ms. Eisenberg

1 Q Ms. Cullen, tell us which of the NRA's Form 990s you
2 have reviewed?

3 A I have reviewed their 2020, 2021 and 202 tax returns.

4 Q And those were filed in which years?

5 A So that they -- those would have been filed a year
6 later. So close to November 15 of 2021, November 15 of 2022 and
7 November 15 of 2023.

8 THE COURT: Thank you.

9 Q Thank you. You shared with us your recollection of the
10 meeting with the Audit Committee in the Fall of 2023.

11 I believe you testified there was a similar
12 presentation that you delivered in the year prior. Please tell
13 us about that presentation.

14 A That was very similar. It was also a virtual meeting.
15 And again, the Audit Committee was very involved in the process
16 asking questions and really making sure to the best of their
17 knowledge that the information that was being reported was
18 accurate.

19 Q If you would be so kind to turn to Tab 5 in the binder
20 that's to your left, and that is PX 2347.

21 A Okay.

22 Q And that document is already in evidence, so we can
23 display it for the jury.

24 What is PX 2347?

25 A This is the NRA's Form 990 for their 2020 tax year. So

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Cullen - by Defendant - Direct/Ms. Eisenberg

1 this is the one that would have been filed around November 15 of
2 2021.

3 Q And not specifically or exactly, but about how many
4 pages does this Form 990 contain?

5 A So I haven't flipped to the back page of this one, but
6 the NRA's 990 is usually about 101 to 103 pages. This one is
7 108.

8 Q Does the form consists of certain sections or parts?
9 And if so, what are they?

10 A Sure. So the form -- the core form of the 990 has 12
11 parts, and each of those are asking for various information
12 that's different in each part.

13 So what you're seeing on the screen right now is Part 1
14 of the return and this is just an overview, and it gives the
15 reader an overall sense of what they are going to see further
16 into the return, and almost all of the information on Page 1 of
17 the return is being pulled from other sections of the return.

18 Q And then on -- if you direct us to a particular page,
19 we can scroll to that on the screen.

20 A Okay. And then the next page, Page 2 of the return is
21 Part 3. This is program service accomplishments are listed
22 here. This is a really important part of the return. This
23 tells the reader exactly what the organization was spending
24 their money on and what their program services were for that
25 year, and this changes a lot each year because everything that

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1 they are doing is slightly different year to year.

2 I mean, it all falls under their general mission, but
3 the extent of their reach changes each year, so it's important
4 that this is updated. So that's Part 3.

5 And then Part 4 which is the next page is a checklist
6 of required schedules, and this is one of those sections that
7 C-Track is particularly good with. Depending on the answers on
8 this schedule, it let's you know what other schedules you need
9 to complete.

10 So the core form of the 990 has 12 parts, but then
11 there is all these lettered schedules that organizations may
12 have to complete depending on how they answer these yes and no
13 questions.

14 (Continued on the following page.)

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3641

S. Cullen - by Defendant - Direct/Ms. Eisenberg

1 Q Thank you, Ms. Cullen. Is there a form -- I'm sorry.
2 Is there a section of the form that deals with governance
3 issues?

4 A Yes. That's section -- part 6.

5 Q And is there a schedule that goes with that?

6 A There's not a schedule, per se, for the governance.

7 Q Okay.

8 A It's all on part 6; and a lot of part 6 depending on
9 how the questions are answered do have Schedule O disclosures.

10 Q Understood. What is Schedule J?

11 A Schedule J -- so I think it might make sense to go back
12 to part 7 first, part 7 which is actually page 7 of the 990.

13 This lists out the officers, directors and board
14 members, the highest compensated individuals and key employees
15 of the organization. Anybody that's listed on this part who has
16 compensation over \$150,000, it's called the Schedule J.

17 So the Schedule J then provides additional breakout of
18 compensation information for individuals listed in part 7.

19 Q Understood. When you made the presentation to the
20 Audit Committee of the NRA's board in the fall of 2023, do you
21 remember where they used specifically discussed the governance
22 section of the Form 990?

23 A Yes, we did.

24 Q And what about during the fall of 2022?

25 A Yes.

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S. Cullen - by Defendant - Direct/Ms. Eisenberg

1 Q Does the Internal Revenue Service issue instructions
2 for the Form 990?

3 A Yes, there's a long set of instructions for the core
4 form of the 990, as well as instructions for each schedule.

5 Q Based on your professional experience in this area,
6 what if any view have you formed about whether or not despite
7 best efforts sometimes inadvertent errors are caught?

8 A Yes. Many organizations --

9 MR. WANG: Objection. Your Honor. It calls for
10 opinion testimony.

11 THE COURT: Overruled.

12 A Many organizations have an error or two or something
13 that can be stated more clearly on their 990s. It is such a
14 large document.

15 Q Thank you very much, Ms. Cullen.

16 MS. EISENBERG: No further questions at this time.

17 THE COURT: Any other direct testimony?

18 MR. CORRELL: No cross, your Honor.

19 MR. WERBNER: No, your Honor.

20 MR. FLEMING: No questions, your Honor.

21 THE COURT: Okay. Mr. Wang?

22 MR. WANG: No questions, your Honor.

23 THE COURT: Okay. Thank you very much.

24 THE WITNESS: Thank you.

25 (Whereupon, at this time the witness was then

BP

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G. Plotts - by Defendant - Direct/Ms. Rogers

1 excused.)

2 MS. ROGERS: The NRA's next witness will be Craig
3 Plotts.

4 THE COURT: Okay, if we can get that witness,
5 Mr. Plotts.

6 How do you spell the witness's last name?

7 MS. ROGERS: P-L-O-T-T-S.

8 Your Honor, while we wait for Mr. Plotts, it is my
9 understanding that there were a few slides that Mr. Lerner
10 had that were objected to because the Aronson testimony
11 wasn't yet on the record.

12 I wasn't here so I apologize if I'm misconstruing,
13 but would the Court after the Aronson testimony is in be
14 amenable to us briefly calling Mr. Lerner to discuss those
15 matters?

16 THE COURT: No.

17 MS. ROGERS: Okay.

18 THE COURT: I didn't mean that as harshly as it may
19 have come across. I didn't think it was an unreasonable
20 request.

21 MS. ROGERS: Okay.

22 THE COURT: Being succinct.

23 (Continued on next page)

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G. Plotts - by Defendant - Direct/Ms. Rogers

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G R E G O R Y P L O T T S

3

called as a witness in behalf of the Defendant,

4

and after having been first duly sworn by the Clerk of the

5

Court, took the witness stand and testified as follows:

6

THE CLERK: State your name.

7

THE WITNESS: Gregory Michael Plotts.

8

THE CLERK: Spell your last name.

9

THE WITNESS: P-L-O-T-T-S.

10

THE COURT: Have a seat. Stay as close to the mike

11

as you can because the mike is not that great. Okay.

12

DIRECT-EXAMINATION

13

BY MS. ROGERS:

14

Q Good afternoon, Mr. Plotts. Can you introduce yourself

15

to the jury and describe your professional background?

16

A Yes, I'm Greg Plotts.

17

THE COURT: That's not going to work. You have to

18

come closer.

19

A I'm Greg Plotts. I'm a CPA. I've been a public

20

accountant for twenty-five years. Currently, I work at Aprio.

21

Aronson just recently just merged in with Aprio January 1st,

22

2023.

23

Started out my career at PricewaterhouseCoopers working

24

the not-for-profit audit division, and went to a regional firm

25

after that and became partner and then joined up with Aronson

BP

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G. Plotts - by Defendant - Direct/Ms. Rogers

1 about 2016.

2 Q Can you describe for the jury the extent to which your
3 work as an accountant focuses on not-for-profit versus for
4 profit organizations?

5 A Yes. Currently now with Aronson/Aprio is one hundred
6 percent not-for-profit audits.

7 Q Are you a Certified Public Accountant?

8 A I am.

9 Q The jury's heard from some paid accounting experts
10 brought in to give about opinions about issues in litigation.

11 I want you to clarify you're not testifying as a hired
12 expert witness; right?

13 A That's correct.

14 Q Can you describe the standard of independence that
15 applies to you as an accountant, as an auditor?

16 A Yeah, independence is a keystone to being an
17 independent auditor. It is making sure that we are objective,
18 that we're free from any influence from management, from the
19 board, from the Audit Committee. And we're not ones to make
20 management decisions. We have to make sure that that's
21 management and we're independent from management.

22 And we -- we do professional skepticism. It is very
23 important with all the independence that go along with that.

24 Q What do you mean by "professional skepticism?"

25 A The bottom line, just not taking everything at face

BP

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G. Plotts - by Defendant - Direct/Ms. Rogers

1 value when you're having conversations with management and Audit
2 Committee. We trust what they're saying, but we verify what
3 they're saying.

4 Q The jury just heard testimony from Stacey Cullen.
5 Can you describe how your position differs from her
6 position at Aprio?

7 A Yes, I am an audit partner so I'm in charge of the
8 audits for not-for-profit division in our firm, and she is a tax
9 accountant, so she does all of our 990 work for our
10 not-for-profits.

11 Q And you work on the NRA account, too; right?

12 A I do work on NRA account.

13 Q When did you start your work with the NRA at
14 Aronson/Aprio?

15 A I'm sorry, repeat that question?

16 Q Sure, so you were at Aronson and now Aprio, which is
17 the same firm; right?

18 A Yes, it is.

19 Q And you work with the NRA, right?

20 A That's correct.

21 Q When did that start?

22 A That started in 2019.

23 Q Okay. Let's turn to Tab 4 of your binder. This is --

24 MS. ROGERS: I'm going to show this to the witness,
25 but it is not in evidence yet.

BP

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G. Plotts - by Defendant - Direct/Ms. Rogers

1 This is DX1-0007.

2 Q And let me know when you've got that in front of you.

3 A I have that in front of me.

4 Q Mr. Plotts, do you recognize this document?

5 A I do.

6 Q What is the document?

7 A This is our Acceptance and Continuance form.

8 Q Is it in the ordinary course of your work as an
9 auditor, do you prepare these forms often?

10 A We do on every job.

11 Q And you rely on them in the ordinary course of your
12 work?

13 A We do.

14 MS. ROGERS: I move to admit it into evidence.

15 MR. SHIFFMAN: Your Honor, we object to the extent
16 it contains hearsay within the document itself.

17 THE COURT: Look, this is -- it's admissible as a
18 business record which means that you can accept it for the
19 fact that it faithfully records certain things that they did
20 and thought.

21 To the extent that within it are statements made by
22 other people that they have recorded, you can take it as
23 evidence that this is what they heard and reported on their
24 form; but it doesn't go to the truth of what those other
25 people told them.

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G. Plotts - by Defendant - Direct/Ms. Rogers

1 We've talked about this so many times you probably
2 would all get a very good grade in an evidence class in law
3 school, but that's the issue here. It is called hearsay
4 within hearsay. So, the business record gets sort of a
5 first level, which is that since this is prepared in the
6 ordinary course it has some general business reliability
7 that it's not just made up, but the underlying statements
8 from others is -- this is not for the truth of the matter
9 asserted by those people.

10 Okay, otherwise, it is admitted into evidence with
11 that caveat.

12 MS. ROGERS: Thank you, your Honor.

13 (Whereupon, at this time Exhibit DX1-0478 was
14 admitted and received into evidence.)

15 Q Mr. Plotts, when your audit firm takes on a new client,
16 is there a vetting process for the client?

17 A There is. There's a form that we always fill out, an
18 acceptance form.

19 Q Can you describe that vetting process?

20 A Yeah, we go through and make sure that we are
21 comfortable with internal controls or tone at the top with the
22 not-for-profit organization when we bring on new clients and
23 that we'll be able to complete an audit of their financial
24 statements.

25 Q Is the vetting process always the same or does some

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G. Plotts - by Defendant - Direct/Ms. Rogers

1 potential new audit clients receive more scrutiny than others?

2 A It is not the same. Every audit is unique, and so we
3 tailor audit procedures around each client that we have.

4 Q Tell the jury when and why you prepared this form
5 regarding the NRA?

6 A Sure. We were contacted in October of 2019 that the
7 NRA was looking for a new auditor, a new audit firm and so we
8 were understanding we did some investigation as far as news
9 articles that were out there and so we came through a couple of
10 ones that concerned us.

11 So, we wanted to talk within our organization if this
12 is the kind of client that we wanted to be associated with and
13 to -- to work with. It was approved. To go out and meet with
14 the management of the NRA to find out more information of what's
15 in those news articles.

16 Q And would you describe this as a due diligence process?

17 A Oh, absolutely, yes.

18 Q In the course of your diligence, whom at the NRA did
19 you meet with?

20 A We met with Craig Spray, the CFO and treasurer at the
21 time. We met with Sonya Rowling and we met with Rick Tedrick.

22 Q And can you describe for the jury aspects of those
23 meetings that informed your view of whether this was the kind of
24 clients you wanted to be associated with?

25 A Yeah, we definitely had some concerns with what was

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G. Plotts - by Defendant - Direct/Ms. Rogers

1 going on in the environment. So, we came in pretty, pretty hard
2 asking questions to management of some things that came out were
3 the allegations of the Russia investigation. These were top of
4 my list to talk to them about. I wanted to get their story on
5 this. Oliver North and Ackerman McQueen and that relationship,
6 we also heard about the New York State Attorney General was
7 having an investigation into the NRA.

8 So, those were the main topics that I wanted to get
9 information from them and get an understanding to make sure we
10 can move on with a proposal process.

11 Q We want to orient the timeline here. So this is 2019.
12 There's an investigation by the New York State AG, but not a
13 lawsuit, right?

14 A That's correct.

15 Q When you met with management, what kind of criteria and
16 qualities were you assessing to figure out if you wanted to work
17 with these people?

18 A Integrity is one of the first things that we look at.
19 We want to make sure that they want to have internal controls
20 and that they're transparent with us about what's going on with
21 our questions, too.

22 Q If we turn to the top of page 2 of -- well, wait, let's
23 stay on page 1 for a second. You said you had a list of things
24 you were concerned about, and you heard you name Russia, Oliver
25 North, Ackerman and the New York State AG.

BP

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G. Plotts - by Defendant - Direct/Ms. Rogers

1 Are those the three things listed on the first page?

2 A They are.

3 Q And let's turn to the top of page 2, where you have a
4 sentence beginning "The NRA's management team has taken major
5 steps discussing Craig Spray, revamping oversight and strict
6 controls."

7 Do you see that?

8 A I do see that.

9 Q Can you explain what information you gathered about
10 management and controls that informed your decision to take this
11 client on?

12 A Yes. So, we had -- again, we had a conversation with
13 Craig, Rick and Sonya; and in there, we found that they were
14 very transparent on answering all of our questions and admitting
15 that there was some not best in practice contracts that were
16 signed in the past; but they are implementing internal controls
17 and that Craig was a new CFO that came in and he was adamant
18 that he was going to have tight internal controls. He was -- he
19 was seems a little emotional about it, too, and very, very
20 genuine.

21 In fact, I brought on do you know of any other fraud or
22 fraud allegations made within the organization other than the
23 things we've been talking about today; and he said, yes, we
24 actually have a chief of staff --

25 MR. SHIFFMAN: Objection, your Honor, to hearsay,

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G. Plotts - by Defendant - Direct/Ms. Rogers

1 would be relating conversations with Mr. Spray.

2 THE COURT: Again, I think it's admissible for what
3 was said, that these are things he heard. It is not
4 admitted for the truth of what this person might have said.

5 Q Mr. Plotts, what was said to you that helped you form
6 the view that management were being transparent?

7 A Well, when we were asking the questions, he was saying
8 they are doing an investigation into the chief of staff over
9 expense reporting. That they thought there was some fraudulent
10 expense reporting on that behalf.

11 Just his overall we're going to take care of the
12 internal controls, we're looking to beef them up; and so that
13 was really to me, that was very transparent, passionate of where
14 he was with these internal controls and how he wanted to take
15 them for the future.

16 Q Let's look at the second paragraph on this page, where
17 it says "Aronson found the NRA."

18 Do you see that?

19 A Yes.

20 Q Did you find just that Mr. Spray was transparent, or
21 was that your view of other NRA leadership, too?

22 A I had a past history with Sonya Rowling and Rick
23 Tedrick. When I used to work at PricewaterhouseCoopers, I was
24 part of that audit that PricewaterhouseCoopers did with the NRA
25 in the early 200s we're talking --

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G. Plotts - by Defendant - Direct/Ms. Rogers

1 Q 2000s? You're not that old.

2 A Not that old, you're right. Twenty years ago. I added
3 a couple thousand on that. Yeah, early 2000s.

4 THE COURT: You're using a stone tablet at that
5 point. Wrong continent I think, but, go ahead.

6 A So early 2000, my key contacts -- they were my key
7 contacts when I was out there doing the audit as a lower level
8 staff, and I had a good relationship with them when I was out
9 there doing -- I think it was probably three or four years if I
10 remember correctly I was on that audit.

11 So, I was excited that they were still in that position
12 of a finance role. And I felt like -- I've met them at another
13 not-for-profit event, we started talking and that's why actually
14 Sonya reached out to me in October 2019 because we kept that
15 relationship up.

16 Q You said as a "lower level staff." Did you mean that
17 when you worked on the NRA twenty years ago, you were a lower
18 level accountant?

19 A Yeah, I was a senior accountant.

20 Q I see references in your red text here in a couple of
21 places to the AC. So you say "Craig has the report of the AC
22 CEO board." Do you see that?

23 A Yes.

24 Q What is the AC?

25 A It's the Audit Committee.

BP

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G. Plotts - by Defendant - Direct/Ms. Rogers

1 Q Did you find the Audit Committee to be transparent?

2 A We met with the Audit Committee during our proposal
3 process; so after we met internally at Aronson at the time with
4 partners in the board and said let's go forward and put a
5 proposal together and give that proposal and have a meeting with
6 the Audit Committee, I thought that meeting with the Audit
7 Committee was very, very transparent, very straightforward as
8 far as what they're looking for in an auditor.

9 They wanted to have someone to come in, give them a
10 thorough audit.

11 So, again, that was reassuring to us that we weren't
12 going to have, you know, in our minds we're not going to have
13 any blockades to performing this audit.

14 Q Have you ever heard of something called SKE in the
15 terms of an audit?

16 A Yeah, so we call SKE, Skills, Knowledge and Experience;
17 and that's how we really evaluate finance staff. So we -- we
18 document that in our audit file the SKE that the finance staff
19 would have.

20 Q And without divulging confidential details about any of
21 your other clients, can you tell the jury generally how in your
22 assessment the SKE of the NRA finance staff compares to other
23 not-for-profits you've seen?

24 A We were very -- I was -- let's see. SKE was very high
25 for me when we evaluated the finance staff. The skills,

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G. Plotts - by Defendant - Direct/Ms. Rogers

1 knowledge and experience, we knew Sonya Rowling and Rick Tedrick
2 have been there a long time, right. I met them twenty years
3 ago. So, that was important to us.

4 They were very knowledgeable back then and very
5 knowledgeable about their accounting and generally accepted
6 accounting principles.

7 Q What about the level of transparency at the top without
8 divulging confidences about other clients, how does the NRA
9 transparency in your view compare to other not-for-profit you've
10 seen?

11 MR. SHIFFMAN: Objection, lack of foundation.

12 THE COURT: Overruled.

13 A We have a great two-way communication with the Audit
14 Committee. That's one of our staples. It is very important to
15 us to have that, so I find them to be as transparent, but more
16 communication than I have with the Audit Committee at the NRA.
17 And it could be because they have a lot of things going on also,
18 too, compared to some of my other not-for-profits.

19 Q I want to flip back to page 1 quickly and focus on your
20 paragraph concerning the New York State AG.

21 At the very bottom of the first paragraph, you document
22 a concern that the NYAG will prolong the investigation to keep
23 legal fees --"

24 MR. SHIFFMAN: Objection, your Honor.

25 THE COURT: If you can wait till maybe the question

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G. Plotts - by Defendant - Direct/Ms. Rogers

1 is finished before --

2 MR. SHIFFMAN: She was reading in the hearsay
3 portion.

4 MS. ROGERS: I'm directing him to a paragraph.

5 THE COURT: Look, I've admitted this document with
6 a caveat about what can be done about it.

7 Q Do you see that sentence in the document you prepared?

8 A Yes, I do.

9 Q Do you recall --

10 MR. SHIFFMAN: Same objection.

11 THE COURT: Again -- just let me. Nothing in this
12 document that comes from the NRA is viewed as evidence of
13 its truth.

14 So, maybe the slight concern is that you referenced
15 it as a concern without indicating whether it was his
16 concern or concern that the NRA had expressed, and maybe
17 that was causing Mr. Shiffman some indigestion.

18 MS. ROGERS: I understand, your Honor.

19 MR. SHIFFMAN: It is speculative and prejudicial.

20 THE COURT: Well, whatever it is, it is what he
21 heard, which is all that I'm admitting it for.

22 So, maybe you can just fine tune the question to
23 focus on that.

24 Q Mr. Plotts, do you recall documenting a concern
25 expressed to you by the NRA that the Attorney General would

BP

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G. Plotts - by Defendant - Direct/Ms. Rogers

1 prolong the investigation to keep legal fees high?

2 MR. SHIFFMAN: Same objection.

3 THE COURT: Overruled.

4 A Yes. So, we had a concern about the New York State
5 AG's Office investigating the NRA. So, this is their response
6 to it that they were concerned that the New York AG would
7 prolong investigations and keep this going to increase legal
8 fees and expenses for the NRA.

9 Q Did you generally find that the management you
10 interviewed were attentive to the potential costs imposed by
11 legal fees?

12 A Yeah, of course. There were three staff in finance and
13 they were concerned about their finances.

14 Q So, after completing this assessment, did you accept
15 the NRA as a compliant?

16 A We did.

17 Q Let's turn to Tab 1 in your binder.

18 MS. ROGERS: And this is going to be DX1-0810, and
19 I want to show it to the witness for identification because
20 it is not in evidence yet.

21 THE COURT: This has been admitted --

22 MS. ROGERS: I thought it wasn't. Just in case,
23 we'll do the ritual.

24 Q Mr. Plotts do you recognize the document?

25 A DX1-0810?

BP

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G. Plotts - by Defendant - Direct/Ms. Rogers

1 Q That's correct.

2 A I do recognize.

3 Q This is your engagement letter when you took on the NRA
4 as a client; right?

5 A That is correct.

6 Q Is it the ordinary course of your business to prepare
7 engagement letters like this one for new client?

8 A We have engagement letters for all of our clients, yes.

9 Q And you prepared --

10 A For all have our audit clients.

11 Q And you prepared this one; right?

12 A I did.

13 MS. ROGERS: I move to admit it in case it is not
14 admitted.

15 MR. SHIFFMAN: No objection.

16 THE COURT: It's is admitted now.

17 MS. ROGERS: Thank you very much.

18 (Whereupon, at this time Exhibit DX1-0810 was
19 admitted and received into evidence.)

20 Q The document is now on screen. So, you took on the NRA
21 as a client for Audit Services and Related; right?

22 A We took on the client for Audit Services -- actually,
23 what was your question again?

24 Q Well it, says, "Audit services and Related Report." So
25 what is the related report?

BP

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G. Plotts - by Defendant - Direct/Ms. Rogers

1 A Oh, audit services and related financial statement
2 opinion report.

3 Q I want to turn to page 3 of the document where it says
4 Roman number IV, "Other Services."

5 And do you see where it says that Aronson will assist
6 in preparing the NRA federal and state tax returns?

7 A I do see that.

8 Q But, we just -- well, I won't say that. Did Aronson
9 prepare the NRA's tax return that year?

10 A Aronson did not prepare it.

11 Q Why?

12 A The NRA went out and got their own tax software and got
13 training on that software and prepared their own 990 tax return
14 on that software.

15 Q And how did the NRA software, if you know, compare to
16 the software Aronson would have used if Aronson had prepared
17 it?

18 A I think I understand your question. At this time we're
19 all using C-Track as a tax return. So we would use the C-Track
20 within Aronson, and NRA would use that same system, that tax
21 system.

22 Q Now, instead of preparing the tax return, Aronson
23 reviewed it; right?

24 A That's correct.

25 Q And do you recall whether subsequent years engagement

BP

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G. Plotts - by Defendant - Direct/Ms. Rogers

1 letters correctly specified that Aronson would have reviewed
2 rather than prepared the return?

3 A To the best of my knowledge, I believe it does say that
4 we're going to review the tax return and not prepare it.

5 Q Let's turn to Tab 6 of your binder, which is DX1-0478
6 for identification.

7 THE COURT: Any objection to this one being
8 admitted?

9 MR. SHIFFMAN: No, your Honor.

10 THE COURT: You can skip the foundation.

11 MS. ROGERS: Move it admitted.

12 THE COURT: It's admitted.

13 (Whereupon, at this time Exhibit DX1-0478 was
14 admitted and received into evidence.)

15 MS. ROGERS: Thank you very much. We can show it
16 to the jury.

17 (Displayed)

18 Q Mr. Plotts, this is the audit report you prepared when
19 your company audited the NRA financial for 2019; right?

20 A That's correct.

21 Q This is an unqualified opinion, right?

22 A Unqualified clean opinion, yes.

23 Q Can you explain to the jury what a clean opinion means
24 and doesn't mean?

25 A Sure. A clean opinion means that in all material

BP

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G. Plotts - by Defendant - Direct/Ms. Rogers

1 respects, the financial statements are free of material
2 misstatements in accordance with generally accepted accounting
3 principles. A lot of people call GAAP, and that's where that
4 GAAP comes from.

5 Q Is a clean opinion the same as a clean internal
6 controls audit?

7 A It is not.

8 Q Can you describe for the jury the extent to which a
9 clean audit opinion takes into account internal controls?

10 A Sure. When we plan and perform audit procedures, we
11 want to get an understanding of the organization, the
12 environment, the internal control processes in order to
13 specifically identify audit procedures that we're going to use
14 to come up with this opinion that we -- that we're going to
15 have.

16 Q All right, let's look at Tab 5 of your binder for
17 identification, because this is not in yet.

18 MS. ROGERS: It is DX1-0030.

19 MR. SHIFFMAN: With the same objection as the
20 previous form, PX 150, the hearsay within the hearsay.

21 THE COURT: Right, well, are you going to move to
22 admit it?

23 MS. ROGERS: Yes, on the same basis.

24 THE COURT: This is a similar form, so the similar
25 instruction that it's admitted as a business record to show

BP

1 what they heard and observed and wrote down; but it's not
2 admissible for the truth of the underlying statements made
3 by others that are reflected in it.

4 So, with that caveat, it is admitted.

5 (Whereupon, at this time Exhibit DX1-0030 was
6 admitted and received into evidence.)

7 (Continued on next page)

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Plotts - by Defendant - Direct/Ms. Rogers

1 Q Mr. Plotts, do you recognize this document?

2 A I do.

3 Q You prepared this document?

4 A Yes.

5 Q So you had to vet the NRA before you took them on as a
6 client. That's the previous form we saw.

7 A Correct.

8 Q This looks like a similar form. So can you explain the
9 extent to which or why you were vetting the NRA again the
10 following year?

11 A Yeah. So every year as a new engagement with a
12 not-for-profit organization, so we would do an acceptance and
13 continuance form for all of our clients to make sure that we can
14 continue working with them in the following year.

15 Q And this form is dated August 2020, and it references
16 an Attorney General and NY Attorney General and DC Attorney
17 General lawsuits filed in August of 2020.

18 Do you see that?

19 A I do.

20 Q So given that the Attorney General had just sued your
21 client the NRA, did that affect the level of investigating, the
22 level of diligence that Aronson performed?

23 A Yes, it did.

24 Q Describe to the jury how it affected it.

25 A Yeah. When serious allegations came out with an

KM

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Plotts - by Defendant - Direct/Ms. Rogers

1 official lawsuit, we got together internally and we met with the
2 managing partner, with the the GC partner and decided our next
3 steps to take in order to see if we should continue working with
4 the NRA. There was phone calls. We were part of a praxity
5 alliance firm. That's like 55 connected accounting firms
6 together, and they have global offices. So that's where we go
7 to bounce off some ideas to the praxity firms that maybe have
8 dealt with something in like this situation in the past just to
9 get some best practices.

10 We also met with our external counsel to make sure that
11 we were, you know, doing all the right things with our
12 continuance work paper that -- making sure we have dotted all
13 our Is, crossing all our Ts, meeting with the right people and
14 understanding if we should move forward with the NRA.

15 Q When you say "external counsels," you mean your
16 accounting firm lawyers?

17 A That's Aronson lawyers, yes; correct. And through
18 those discussions, we decided to come up with an ad hoc
19 committee made up of partners to evaluate the continuance form
20 so that's out of normal scope of what we would do with other
21 not-for-profit organizations. It's directly related to the New
22 York State Attorney General lawsuit.

23 Q So after talking with your quality control partner,
24 your lawyers, a network of other accounting firms, was there
25 additional diligence that Aronson decided to perform on the NRA

KM

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Plotts - by Defendant - Direct/Ms. Rogers

1 before continuing the engagement?

2 A Yes. We decided to meet with those within management
3 and the Audit Committee, those charged with governance.

4 Q Now, in addition to talking to people at the NRA, did
5 you continue doing your own outside independent research?

6 A Yeah, of course. We are keeping an eye on, you know,
7 outside environment. I have a Google alert that comes to my
8 emails every day about clients in the news and headlines. So we
9 are watching those. And then we wanted to talk with management
10 and the Audit Committee about what's going on and what we are
11 hearing out there in the environment.

12 Q Let's turn to Page 2 of this document, and I want to
13 direct your attention to the list of bullet points on the top
14 half of the page, and I'm looking at the second one from the
15 bottom where it says, "He welcomed the comment that we made
16 about having to perform additional procedures around the
17 lawsuits from NY and DC AG, and he encouraged us to review all
18 material contracts and vendors."

19 Do you see that?

20 A Yes.

21 Q You are not testifying about the truthfulness of what
22 this person said to you. But who was it that told you he
23 welcomed the additional scrutiny and wanted you to perform a
24 review?

25 A Yes. When we were having a conversation with Craig

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Plotts - by Defendant - Direct/Ms. Rogers

1 Spray, we wanted to get his take on the New York AG lawsuit, so
2 we walked through that. And then I told him that we were going
3 to -- we already reviewed the lawsuit, and we were going to take
4 their point in their lawsuit and make special procedures in our
5 2020 audit to make sure because there is a risk of a material
6 misstatement due to a significant fraud risk and a significant
7 material misstatement risk. So we are going to do special
8 procedures to mitigate those risks directly related to the
9 allegations in the New York Attorney General lawsuit, and he was
10 open to it, he was welcoming to it, and he was happy that we
11 were doing those things.

12 Q And you also spoke with others at the NRA; right?

13 A I did talk to others within the NRA. I wanted to make
14 sure everyone was clear that we were going to do special
15 procedures that directly related to the lawsuit that was filed
16 by the New York Attorney General's Office.

17 Q Sir, were other -- other NRA leadership team consistent
18 with Mr. Spray in welcoming the additional scrutiny?

19 A They all were welcoming. They said you have full
20 access. We want you to go in and make sure that these things
21 are not happening, you know, in your audit. So please -- they
22 just wanted me -- they had no complaints about it. They wanted
23 to have open access for our audits.

24 Q All right. You mentioned special procedures. Can you
25 explain to the jury when auditors use the word "procedures" what

KM

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Plotts - by Defendant - Direct/Ms. Rogers

1 do they mean?

2 A Those are audit tests that we would do, so we call them
3 procedures, work papers, audit tests. So what we want to do,
4 they are specifically designed to mitigate some risk especially
5 the special procedures were.

6 Q Let's turn to Page 8 of this document, and I'm going to
7 direct your attention to a long numbered bulleted list prefaced
8 by the sentence, "Through the review of the lawsuit brought on
9 by the NYAG Office, Aronson will perform the following
10 additional procedures in the 2020 audit."

11 Do you see that?

12 A I do.

13 Q Is this a list of the special testing you performed due
14 to the concern of a fraud risk raised by their lawsuit?

15 A Yes, these are special procedures that when I was
16 reviewing the lawsuit that I wanted to address and put into my
17 file for the 2020 audit.

18 Q There is a lot here. I want to focus first on number
19 seven.

20 Does it describe testing you did concerning contracts
21 with David McKenzie's companies?

22 A Yes. That's correct.

23 Q When you did that testing, did you find any material
24 risks?

25 A Yeah. When we reviewed the contracts, we did find some

KM

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Plotts - by Defendant - Direct/Ms. Rogers

1 noncompliance with the internal controls at the NRA.

2 Q In the past or in the present?

3 A In 2020 when we looked at like the MMP contract, we saw
4 it was old, and they were -- they were working on renegotiating
5 it but did not follow the internal controls at the NRA and we
6 have a comment about that.

7 Q And what about in the same bullet you talk about
8 testing on Ackerman McQueen, Mercury Group and Under Wild Skies.

9 Do you see that?

10 A Yes.

11 Q And what did that testing show?

12 A They have a lawsuit out -- they started a lawsuit
13 starting out in 2019, so there was no expenditures, but we
14 wanted to make sure. We had them run to make sure there was no
15 expenditures against those contracts that they weren't still
16 paying Ackerman McQueen for invoices and things like that.

17 Q You also list a consulting agreement with former
18 employees and current Board members.

19 A That's right.

20 Q Your special procedures also covered legal fees; right?

21 A That's correct, yes.

22 Q Why did your special procedures in number 11, why did
23 you look at the Women's Leadership Forum?

24 A That was specifically identified in the Attorney
25 General's lawsuit that there was -- so that made us concerned

KM

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Plotts - by Defendant - Direct/Ms. Rogers

1 that there was something in the Women's Leadership Forum expense
2 accounts that we should look at and test for compliance with the
3 internal controls at the NRA.

4 Q Looking at number 17 which is on the top of the next
5 page. You also tested conflict of interest and related-party
6 transaction issues; right?

7 A That's correct.

8 Q And if we look a couple down, number 19, you also
9 tested how the NRA handled whistleblower complaints; right?

10 A That's correct.

11 Q All right. Did you meet with the Audit Committee
12 regarding this testing?

13 A Yes. We met with Charles and David of the Audit
14 Committee Chair and Vice-Chair and had these conversations that
15 we were going to perform these procedures.

16 Q And can you describe how the Audit Committee reacted to
17 the news that you would be testing and inspecting these
18 documents pertaining to these transactions?

19 A Again, they welcomed the news. They were -- they
20 thought that was a great idea and they were encouraged that we
21 came up with these and are going to do the special procedures.

22 Q All right. Let's turn now to Tab 8 in your binder
23 which is DX 1-0477.

24 MS. ROGERS: Do we have any objection to this
25 document?

KM

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Plotts - by Defendant - Direct/Ms. Rogers

1 MR. SHIFFMAN: No.

2 MS. ROGERS: We move to admit it.

3 THE COURT: It's admitted.

4 Q Did you prepare these audited financial statements
5 after doing those procedures to test the New York Attorney
6 General's allegations?

7 A Yes, we did. These were filed in September 2021, and
8 this was another clean opinion that we had over the financial
9 statements.

10 Q Now, you mentioned there was an old MMP contract. So
11 how did you issue a clean opinion even though the MMP contract
12 was old?

13 A Yeah. So we look at underlying invoices with the MMP
14 and make sure that they are reviewed and approved and entered
15 into the financial accounting records appropriately and recorded
16 in accordance with NYAG accounting principles.

17 Q I want to look back now at the document which is when
18 you vetted the NRA again following the lawsuit, and I want to
19 look deeper into that document, and I want to look at Page 10 of
20 DX 1-0030 which was Tab 5 of your binder. Let me know when
21 you're there, and let's get to Page 10.

22 A I'm at Page 10.

23 Q I want the screen to be at Page 10 too. All right.

24 In the middle of the page, there is some gray text that
25 says, Update to the continuance documentation in May 2021 after

KM

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Plotts - by Defendant - Direct/Ms. Rogers

1 the dismissal of the bankruptcy case."

2 Do you see that?

3 A I do.

4 Q So you had to vet the NRA again after its bankruptcy;
5 right?

6 A That's correct.

7 Q And you discuss here issues that you -- diligence, when
8 the NRA emerged from bankruptcy.

9 A Yeah, that's correct. We started the audit, and it was
10 paused because they filed for bankruptcy in January of 2021. So
11 the audit was put on hold and when the bankruptcy was dismissed,
12 there were things that came out of bankruptcy that was
13 concerning to us. So we decided as a continuance committee,
14 let's go back and meet with management and the Audit Committee
15 again to get an understanding of some of these things that came
16 out of the bankruptcy.

17 Q Now, Craig Spray was no longer treasurer by that time;
18 right?

19 A That's correct.

20 Q So did you do anything to gain comfort with the new
21 treasurer Ms. Rowling?

22 A Yes. We interviewed Ms. Rowling, and we had a long
23 relationship. Well, we did the audit in 2019. I have known her
24 for 20 years as I discussed before. And again, we evaluated her
25 SKE, the skills, knowledge and experience and if she was fit for

KM

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Plotts - by Defendant - Direct/Ms. Rogers

1 that role that she was put in.

2 Q Did Aronson form a opinion whether she was fit to
3 replace Mr. Spray?

4 A I want to be careful here.

5 Q I'll ask it a different way.

6 Did you form a view on whether she was fit for the
7 role?

8 A We evaluate the SKE to make sure that there are
9 financial statements that we are comfortable with the people in
10 their positions in the finance role, yes, and that's what we
11 document.

12 Q Did you form a view as to whether you were comfortable
13 with Ms. Rowling in that role.

14 A Yes, we were.

15 Q Okay.

16 A We documented that.

17 Q When you look at your list of special procedures, I saw
18 a lot of familiar allegations, but I didn't see anything about
19 Gayle Stanford, the travel consultant.

20 Why is that?

21 A I believe it is in there.

22 Q Well, if we look at the bottom of Page 11 or the middle
23 of Page 11 -- I'm sorry -- right there where it says, "Aronson
24 asked specific questions."

25 A Yes.

KM

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Plotts - by Defendant - Direct/Ms. Rogers

1 Q Do you recall performing any due diligence regarding
2 Gayle Stanford the travel consultant?

3 A Yes. In number four -- I'm sorry. In special
4 procedures number six, we obtain travel consultants contracts
5 invoices and payments. We inquired about Gayle Stanford after
6 the bankruptcy filing, and Charles said that they have cut ties
7 with her because -- so maybe bad practices in accounting and how
8 she was billing the NRA.

9 Q Have you discovered any information inconsistent what
10 with what Charles told you?

11 A I have not discovered anything that would conflict or
12 approve what he was saying.

13 Q Okay. Now you described the special procedures, and I
14 see a list of 21 of them keyed to the New York Attorney
15 General's lawsuit which you perform in the 2020 audit.

16 Has Aronson continued to scrutinize and test those same
17 issues in subsequent audits?

18 A Yeah, we continue to do that in 2021, 2022, and we are
19 starting the 2023 audit, and we are going to do the special
20 procedures.

21 Q Let's turn to Tab 11 of your binder. This is going to
22 be DX 1-0526. These are the audited financials for the year
23 ending December 31, '22 and '21.

24 Do you have any objections to those?

25 MR. SHIFFMAN: Which Tab?

KM

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Plotts - by Defendant - Direct/Ms. Rogers

1 MS. ROGERS: It's Tab 11.

2 MR. SHIFFMAN: No.

3 THE COURT: It's admitted.

4 Q Mr. Plotts, is this the clean audit been that you
5 rendered for the indicated years?

6 A It is.

7 Q And do these reflect the special procedures we
8 discussed testing the New York Attorney General's allegations?

9 A We did perform those special procedures during this
10 year's audit.

11 MS. ROGERS: All right. Let's turn now to Tab 14.
12 Oh, and this is admitted.

13 Let's turn now to Tab 14 of your binder, and this
14 is Plaintiff's Exhibit 40, and we are going to show it to
15 the witness for identification only.

16 THE COURT: This is actually now on the screen. I
17 thought you said it had been admitted.

18 MS. ROGERS: The last one was. The financials
19 were. This is a new document.

20 THE COURT: Okay.

21 MS. ROGERS: So we should put it only on the
22 witness' screen. PX 40.

23 THE COURT: The witness has the hard copy, so let's
24 just do it this way.

25 Q Okay. Mr. Plotts, do you recognize PX 40?

KM

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Plotts - by Defendant - Direct/Ms. Rogers

1 A I do.

2 Q Did you prepare this document?

3 A The audit team and I was included in that preparing of
4 this document, yes.

5 Q In connection with special procedures, is it your
6 ordinary course of business practice to prepare documents like
7 this one?

8 A A memo that discusses special procedures, yes.

9 MS. ROGERS: I move to admit it.

10 MR. SHIFFMAN: No objection.

11 THE COURT: It's admitted.

12 Q Would it be correct now -- strike that. I see P X 150
13 in red text there.

14 What does that refer to?

15 A That's referring back to our continuance and acceptance
16 document, and those special procedures that were in that
17 document.

18 Q That list of 21 sets of tests performed on items the
19 Attorney General sued about; right?

20 A That's correct.

21 Q Now as part of those special procedures, would I be
22 correct to understand this memorandum to indicate that you spoke
23 with Audit Committee members about whether the Audit Committee
24 was fulfilling its duties under its charter?

25 A That's correct.

KM

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Plotts - by Defendant - Direct/Ms. Rogers

1 Q And did you make a determination about whether the
2 Audit Committee was fulfilling its duties under its charter?

3 A Yeah, we felt like they were performing their duties.

4 MS. ROGERS: All right. Let's turn to Tab 15 of
5 your binder. This is a similar memorandum. It's not
6 admitted yet.

7 Does Plaintiff have any objection.

8 MR. SHIFFMAN: I'm sorry. I missed it.

9 MS. ROGERS: Tab 15, PX 28.

10 MR. SHIFFMAN: No objection.

11 THE COURT: It's admitted.

12 MS. ROGERS: Let's show that to the jury.

13 Q Mr. Plotts, this is a similar memorandum you prepared
14 with your audit team to memorialize the kinds of special
15 procedures you were doing; right?

16 A That's correct.

17 Q And in addition to assessing whether the Audit
18 Committee was doing its job, did you look at how the NRA was
19 handling late expense reports?

20 A Yes. We inquired about how they are handling late
21 expense reports that were in or held for certain reason.

22 Q And why were you interested in late expense reports?

23 A It was mentioned in the New York Attorney General's
24 lawsuit.

25 Q I want to turn to the second paragraph where you

KM

3677

Plotts - by Defendant - Direct/Ms. Rogers

1 mention meeting with Sonya Rowling, and you say that were no
2 late expense reports that were approved.

3 Do you see that?

4 A I do.

5 Q Do you recall reaching the determination that the NRA
6 was not approving late expense reports even though there were
7 some submitted for Wayne LaPierre?

8 A Yeah. That was our conclusion on this.

9 Q This paragraph also says that expense reports for Mr.
10 LaPierre were reviewed by Ms. Rowling and David Coy of the Audit
11 Committee.

12 Do you see that?

13 A I do.

14 Q Did you form an understanding as to whether this
15 represented a changed practice vis a vis a practice alleged
16 years ago whereby his expense reports were reviewed by someone
17 at ILA?

18 MR. SHIFFMAN: Objection. Lack of foundation and
19 leading.

20 THE COURT: Overruled.

21 A Yeah. I was talking with Sonya Rowling, and she said
22 they had a new process in process that she was going to review
23 Wayne LaPierre's expense report and have David Coy review those
24 with her.

25 MS. ROGERS: Okay. Let's turn to Page 16 of your

KM

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Plotts - by Defendant - Direct/Ms. Rogers

1 binder. Oh, wait. Hold on. Let's -- no, I think this is
2 it. Let's turn to Tab 16, and this is not in yet. So let's
3 just it show it to the witness. For identification. It is
4 PX 1324.

5 Are there any objections to this?

6 MR. SHIFFMAN: We object on hearsay grounds.

7 Q Okay. Mr. Plotts, do you see this email?

8 A I do see the email.

9 Q I don't want you to focus on the very top of the email
10 chain which doesn't involve you, but I want you to look at the
11 email dated Tuesday, September 15 which you wrote.

12 Do you recall writing this email?

13 A I recall writing this email to Craig and Rick.

14 Q In the ordinary course of your work as an auditor, do
15 you send communications like this to these individuals?

16 A I would.

17 Q And do you rely on these communications in the ordinary
18 course of your work?

19 A Yes.

20 MS. ROGERS: I move to admit it.

21 MR. SHIFFMAN: Same objection. This is produced by
22 the NRA. It's an email -- part of an email chain that
23 contains hearsay.

24 MS. ROGERS: The document is being admitted for the
25 proposition that there are regular communication on certain

KM

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Plotts - by Defendant - Direct/Ms. Rogers

1 topics between the auditors and Audit Committee. So the
2 fact it was said is pretty important.

3 THE COURT: I agree. I think once -- there is not
4 much to it, frankly. But once you see it, it's really more
5 transactional to say that these meetings were set up, and I
6 think that has independent evidentiary significance. So
7 I'll admit it. I actually don't see a lot of factual
8 statements other than it just documented that certain topics
9 wanted to be discussed. So I'll admit it.

10 Q Mr. Plotts, do you have regular communications with the
11 Audit Committee about the topics listed in this email?

12 A Yes, we do have.

13 MR. SHIFFMAN: Can we just get a timeframe.

14 MS. ROGERS: Well, this email -- so I'll ask over
15 several timeframes.

16 Q Mr. Plotts, you first took on the NRA as a client at
17 Aronson in 2019; right?

18 A That's correct.

19 Q And over the course of 2019, did you have regular
20 communications with the NRA about financial operations?

21 A Yes.

22 Q Did you have regular communications with the NRA
23 getting updates on lawsuits or investigations like theirs?

24 A Of course.

25 Q Did you have regular communications with the NRA

KM

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Plotts - by Defendant - Direct/Ms. Rogers

1 getting updates on fraud inquiries?

2 A Yes.

3 Q Did you have regular communications with the NRA on
4 whistleblower matters?

5 A Yes.

6 Q Did you have regular communications with the NRA on
7 current events?

8 A Yes.

9 MR. SHIFFMAN: Objection. Leading.

10 THE COURT: Overruled.

11 Q Did you have regular communications with the NRA on any
12 internal control concerns?

13 A Yes.

14 Q Did your communications with the NRA happen with senior
15 leadership, junior staff or both?

16 A We have communications throughout the organization with
17 senior staff, Audit Committee, and then we do fraud interviews
18 with those at lower level positions.

19 Q What's a fraud interview?

20 A Fraud interview is asking questions -- I'll give an
21 example -- to like the AP clerk. Has -- have you witnessed any
22 fraud? Do you know of any fraud allegations? Were you asked to
23 do anything out of your ordinary course of your job that made
24 you feel uncomfortable? Those kind of conversation which is --
25 are, you know, one on one with the audit team and that person.

KM

3681

Plotts - by Defendant - Direct/Ms. Rogers

1 Q And the Attorney General wanted us to be specific on
2 time. So we talked about your communications during 2019.

3 Would it be fair to say that you continued to have
4 regular communications with the NRA over the course of
5 subsequent years on topics like this?

6 A Yes.

7 Q Did the communication frequency increase or decrease
8 after they filed their lawsuit?

9 A The communication with the Audit Committee increased
10 when the lawsuit was filed.

11 Q All right. Let's turn to Tab 17 of your binder, and
12 this is a large document. It is an annual filing, and I'm going
13 to direct your attention to Page 0205 of this document which I
14 believe should be the financial statements.

15 Do you have any objection to admitting any portion of
16 this?

17 MS. CONNELL: That's the PX?

18 MS. ROGERS: It's a DX, but it's 1-1729.

19 THE COURT: I will hazard to guess it's in evidence
20 somewhere else.

21 MR. SHIFFMAN: I believe it's already in in a
22 different form.

23 No objection.

24 THE COURT: All right. So DX 1-0729 is admitted;
25 although, this is probably a duplicate of at least one other

KM

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Plotts - by Defendant - Direct/Ms. Rogers

1 exhibit.

2 MS. ROGERS: Sorry for increasing the exhibits, your
3 Honor?

4 THE COURT: It doesn't cost me anything.

5 Q Let's turn to Page 0205 of this large exhibit.

6 Mr. Plotts, do you recognize this as the clean audit
7 opinion you delivered for the years indicated?

8 A On 0207 starts our opinion, yes.

9 Q Okay. Yes and that's -- there is the cover page and
10 then your opinion; right?

11 A That's correct.

12 Q Okay. Mr. Plotts, what is a management letter?

13 A A management letter is when an auditor goes through
14 their audit. They look at controls. They do walk-throughs of
15 controls and sometimes they test controls. And if anything is
16 found during this process or if any audit adjustments come out
17 during the audit, there could be a control breakdown within the
18 organization. So a management letter is a way for us to
19 communicate with management those control deficiencies.

20 Q And can you --

21 THE COURT: You know, Counsel, I realize we have
22 been going for a while, and the jury hasn't -- although, I
23 know this is --

24 MR. ROGERS: I have very little additional.

25 Probably one more minute with Mr. Plotts.

KM

3683

Plotts - by Defendant - Direct/Ms. Rogers

1 THE COURT: Let's finish.

2 Q What are the different type of deficiencies you can
3 communicate with a management letter?

4 A You can communicate the best practices control
5 deficiencies. You can communicate significant deficiencies, and
6 you can communicate material weaknesses.

7 Q We have heard the word "material" a lot.

8 As an accountant, what do you mean when you call
9 something material?

10 A I look at it as two ways. You have a quantitative
11 factor that can be material, a large amount, and it can also be
12 qualitative, what's meaningful to the user of the financial
13 statements, and that might not have a quantitative figure to it.
14 It could be a low figure if it's meaningful to the users of the
15 financial statements.

16 Give a brief example. Maybe like if you are going to
17 fail a debt covenant by like \$5,000 because you are not meeting
18 a ratio. That's a bigger deal. So that's a qualitative
19 materiality because that's a big deal that they are failing debt
20 covenants compared to maybe an adjustment of a couple of hundred
21 thousand dollars that really on a hundred million dollar
22 account, that really doesn't really mean much to the user of the
23 financial statement.

24 Q Would it be fair to say that a financial statement
25 which is materially inaccurate has many some kind of inaccuracy

KM

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Plotts - by Defendant - Direct/Ms. Rogers

1 in it, that the kind of person who relies on that financial
2 statement might act differently if they knew the truth?

3 MR. SHIFFMAN: Objection. Leading.

4 THE COURT: That's a free one.

5 MS ROGERS: I'll withdraw it.

6 Q So Mr. Plotts --

7 MS. ROGERS: I want the jury to get the break, so
8 I'm leading a little bit.

9 Q Mr. Plotts, would it be fair to say that when a
10 document is materially misleading --

11 A Yes.

12 Q -- it means that the kind of person who cares about
13 that document and relies on it might make a different decision
14 by reason of that inaccuracy than he would if the document were
15 true?

16 MR. SHIFFMAN: Objection. Leading for the second
17 time.

18 A I understand where you're going.

19 MR. SHIFFMAN: In a hypo.

20 THE COURT: Overruled.

21 A Yes. So that's where we look at for materiality.
22 What's going to a a user of the financial statement? What would
23 make -- maybe change the way that they would view the
24 organization. It could be a lender, a banker, and they can see
25 something different and that could be material to them. So we

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Plotts - by Defendant - Direct/Ms. Rogers

1 want to make sure it's materially correct for the users of the
2 financial statement.

3 Q I also heard you use the term "significant deficiency."
4 When you say "significant," what do you mean?

5 A Significant, it's a judgment by the auditor. And when
6 I talk about "significant deficiency," it's a control deficiency
7 that we found during the audit, and we feel like it's
8 significant enough to communicate that to those charged with
9 governance, and in this case it could be the Audit Committee.

10 Q Have you found any material weaknesses in the NRA's
11 finances?

12 A We did not identify any material weaknesses in the
13 internal controls that were communicated or that we found during
14 our audit.

15 Q You did find a few items that were significant enough
16 to talk with management about; right?

17 A We did find significant deficiencies that we wanted to
18 discuss with the Audit Committee, yes.

19 Q And over the course of your work since what you've been
20 performing since they brought their lawsuit, have you formed a
21 view on whether management has diligently addressed those
22 deficiencies?

23 A That's very important to us at auditors, that they take
24 our management letter seriously, that they look into that, that
25 they respond to our significant deficiency or even best

KM

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1 practices, and they put things in place to fix those control
2 deficiencies, and we have seen that get better over the time
3 that we have been auditing the NRA.

4 Q I have only one tiny more topic to ask you about;
5 You are also the auditor for the NRA's charitable
6 affiliate the NRA Foundation; right?

7 A That's correct.

8 Q From an audit perspective, can you describe for the
9 jury the difference between the NRA and the Foundation?

10 MR. SHIFFMAN: Objection. Legal conclusion.

11 THE COURT: Overruled.

12 A So the NRA Foundation is a charitable organization, and
13 it's there to set up for charitable reasons and maybe some
14 education reasons where the 501(c)(4) of the part of the NRA is
15 not a charitable organization and is really set up to do --

16 MR. SHIFFMAN: Objection, your Honor. It's a legal
17 conclusion.

18 THE COURT: He's giving an auditor's perspective on
19 it.

20 MR. SHIFFMAN: It's confusing. It's -- we are
21 talking about --

22 MS. ROGERS: I'm asking from an audit perspective,
23 and the speaking objection is stealing trial time.

24 (Continued on the following page.)

25

KM

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G. Plotts - by Defendant - Direct/Ms. Rogers

1 THE COURT: Look, you can ask on cross what he
2 means by it, but this witness is not giving you a legal
3 definition of whether something is covered by the New York
4 law governing charitable organizations. That's not his
5 field, so his view as an auditor, just take that for what
6 it's worth.

7 Q You can complete your answer, Mr. Plotts.

8 A So, 501(c)(4) is not a charitable organization. That's
9 set up to do more lobbying activities, getting education for
10 those that are in political field and doing more of those that
11 are running for office, and getting more information out to the
12 public about those type of things. And they're really unlimited
13 with those lobbying activities where a (c)(3) would be confined
14 on very particular things on what they could do.

15 Q Is there money within the NRA, pools of money that
16 would have to be spent for charitable purposes?

17 MR. SHIFFMAN: Same objection, your Honor.

18 Q From an accounting perspective.

19 THE COURT: I mean, charitable purposes has
20 different definitions within the statutes than it might for
21 an accountant.

22 MS. ROGERS: Well, I'll ask it this way.

23 Q Is there money within the (c)(3) that -- strike that.

24 Is there money within the NRA that has to be spent for
25 501(c)(3) charitable purposes?

BP

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G. Plotts - by Defendant - Direct/Mr. Correll

1 A There are net assets that are held for donor
2 restriction in the 501(c)(4). Those are monies that were given
3 for specific areas that they have to spend the money for, and
4 that's what they call the endowment that's set up there at the
5 501(c)(4).

6 Q In all your years auditing the NRA, have you ever seen
7 any misuse, abuse, diversion, waste, weakness or deficiencies
8 that you know affected any of those restricted donor --

9 MR. SHIFFMAN: Objection, leading and same thing --

10 THE COURT: Overruled.

11 A We have not seen any of that taken place with the
12 endowment there at the (c)(4).

13 MS. ROGERS: Pass the witness.

14 THE COURT: All right, we're going to take a short
15 break. We'll see you shortly.

16 COURT OFFICER: All rise, jury exiting.

17 (Whereupon, at this time the jury then left the
18 courtroom.)

19 (Whereupon, at this time a short recess was then
20 taken.)

21
22 THE COURT: Let's bring them down. We have a
23 witness. Let's bring him in, too.

24 (Whereupon at this time the witness,
25 GREG PLOTTS, having been previously duly sworn/affirmed by

BP

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G. Plotts - by Defendant - Direct/Mr. Werbner

1 the Clerk of the Court, resumed the witness stand and
2 testified as follows:)

3 COURT OFFICER: All rise, jury entering.

4 (Whereupon, at this time the jury then entered the
5 courtroom.)

6 THE COURT: Have a seat. We have some more water,
7 if anybody needs bottles of water.

8 MR. CORRELL: May I proceed, your Honor?

9 THE COURT: Yes. We're going to continue with
10 direct.

11 MR. CORRELL: Yes.

12 THE COURT: Okay.

13 DIRECT-EXAMINATION

14 BY MR. CORRELL:

15 Q Mr. Plotts, I'm Kent Correll. I represent Wayne
16 LaPierre. Good afternoon.

17 A Good afternoon.

18 Q I have one question for you. For all the work you did
19 for the NRA, everything that you have done, have you ever
20 encountered any resistance from Mr. LaPierre?

21 A We have not.

22 MR. CORRELL: Thank you.

23 DIRECT-EXAMINATION

24 BY MR. WERBNER:

25 Q Mr. Plotts, you remember when you said 200 when you

BP

3690

G. Plotts - by Defendant - Direct/Mr. Werbner

1 meant 2000?

2 A Oh, yes.

3 Q I think what you were describing then was that you had
4 worked with Rick Tedrick and Sonya Rowling when you were a young
5 auditor at PricewaterhouseCoopers; is that right?

6 A That's correct.

7 Q How many years did you work as a young auditor at
8 PricewaterhouseCoopers?

9 A My tenure there is about seven years.

10 Q And how many of those seven years were you doing audit
11 work for the NRA?

12 A I believe it -- to the best of my knowledge it was
13 three, could have been four.

14 Q And that would be in the early 2000s?

15 A That's correct.

16 Q And you got to know, did you not, Sonya Rowling and
17 Rick Tedrick pretty well from those audits?

18 A Yes.

19 Q What was your opinion of them as you worked with them
20 in the early 2000s?

21 A Again, I evaluate people on SKE, the Skills, Knowledge
22 and Experience and I thought they were high, very good
23 accountants.

24 Q And they were part of the Financial Service Division of
25 the NRA?

BP

3691

G. Plotts - by Defendant - Direct/Mr. Fleming

1 A That's correct.

2 Q And you were impressed them?

3 A Yes, I was impressed and I -- yes, I was.

4 Q Did PwC, Pricewaterhouse, give clean audits to the NRA
5 back in the early 2000s when your were working with Sonya
6 Rowling and Rick Tedrick?

7 A To the best of my knowledge, they were clean audit
8 opinions.

9 Q You never had a problem with the Financial Services
10 Division back then?

11 A Again, I know, they did a clean audit opinion; and I
12 was a low-level accountant at that time so it's hard for me to
13 answer that whether others on my team had any other issues.

14 Q But you didn't not have any issues, and they were clean
15 audits?

16 A I did not have any issues.

17 MR. WERBNER: All right, thank you.

18

19 DIRECT-EXAMINATION

20 BY MR. FLEMING:

21 Q Mr. Plotts, sorry to burden you with more questions,
22 but I'll be brief.

23 So, I believe you testified earlier that a clean audit
24 opinion is -- the financial statements are free of misstatement;
25 is that right?

BP

3692

G. Plotts - by Defendant - Direct/Mr. Fleming

1 A Free of material misstatement, yes.

2 Q So, how long does it take to reach that conclusion
3 annually?

4 A The audit at the NRA we start October, November, start
5 doing preliminary field work; and then we go on depending if we
6 don't have a bankruptcy lawsuit in between there, it usually
7 ends around March.

8 So, we're talking a couple months.

9 Q Okay, so that's five, six months?

10 A Yeah, we're not out there completely for those five or
11 six months, but we probably are focused on it for about twelve
12 to fourteen weeks. That's twelve to fourteen weeks, yeah.

13 Q And when you talk about twelve to fourteen weeks, what
14 part of the audit are you talking about?

15 A Well, we start with the preliminary, so we do some
16 control testing and get some inquiries with management. So
17 that's maybe a couple of weeks to plan. And then performing the
18 fieldwork part of the audit, that's the core of the audit and
19 that takes -- I want to say about eight to ten weeks to wrap it
20 up.

21 Q So, let me stop you there. With fieldwork, does that
22 involve your staff going to the NRA?

23 A Yes, it does. Typically, now when COVID hit, there was
24 a lot of virtual going on; but we are going out to the client,
25 to the NRA.

BP

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G. Plotts - by Defendant - Direct/Mr. Fleming

1 Q Now, how many staff go to the NRA during the fieldwork
2 process?

3 A We could have as many as four staff that are going to
4 the NRA at a time.

5 Q And do you know what they do there with some level of
6 granularity? I don't want excruciating detail, but just so you
7 can educate the jury about what they did?

8 A So we set up audit programs. So, they're following the
9 programs that are laid out and identified exactly what the steps
10 that we want to take during the audit for the NRA. So, they're
11 fulfilling those steps.

12 Q And how do they fulfill them? What are they doing
13 actually?

14 A They're looking at -- they're doing a lot, right.
15 There making inquiries with management. They're looking at
16 source documents and vouching different transactions to make
17 sure that there's right transactions are recorded in the
18 financial statements, themselves.

19 They're looking at estimates that management is making
20 about the financial statements, and we're testing those
21 underlying numbers.

22 Q And I've always heard the expression "ticking and
23 tying." Is that still used in auditing?

24 A Yes, it's changed over the years of the ticking and
25 tying; but, yes, we still tick and tie the work papers to make

BP

3694

G. Plotts - by Defendant - Direct/Mr. Fleming

1 sure they're agreeing with -- I don't want to get too technical
2 here -- like the trial balance, the general ledger they give us,
3 we want to make sure everything is being properly recorded in
4 the financial statements that they gave us and then we opine on
5 those financial statements whether or not they're materially
6 correct and in accordance with generally accepted accounting
7 principles.

8 Q So, that fieldwork process where staff is on site, it's
9 about you said eight weeks?

10 A Yeah, eight to ten, yeah.

11 Q All right. And then when you get to the opinion
12 process, how long does that take? Is there reporting back? How
13 does it work?

14 A Yeah, the wrap-up stage is when we're done with all of
15 our testing, the financial statements are prepared by NRA
16 management. They give us though to us. We make sure we have
17 all the support in our file for the audit, and then the wrapping
18 up of doing the opinion probably takes about two weeks after
19 fieldwork.

20 Q And just going back to fieldwork for a second. Does
21 your staff work with NRA internal Financial Services Division
22 staff?

23 A Yes, they work very closely with them.

24 Q Are you familiar with those people, the Financial
25 Services Division staff at the NRA?

BP

3695

G. Plotts - by Defendant - Direct/Mr. Fleming

1 A Yes.

2 Q Are they accountants?

3 A Yes.

4 Q Are they CPAs?

5 A Some are.

6 Q How many are would you say?

7 A It is -- I don't know if they're active CPA licenses or
8 they just hold the CPA license, but there's a couple.

9 Q But a CPA -- does a CPA in your mind have some level of
10 sort of professional cache?

11 A I would like to think so, yes, yes.

12 Q And do you -- to what extent does your staff rely on
13 those accountants, if at all, rely on Financial Services
14 Division accountants?

15 A There's reliance on the information they gave us.
16 There's trust, but we've got to verify of all those transactions
17 they give us. It is the professional skepticisms that we say
18 you have to keep high during the audit. Again, when I talked
19 about independence, professional skepticism, we make sure that
20 the entire team knows to do that. We just don't take things at
21 face value that we're actually diving into the details and
22 making sure things are correct in the financial statements.

23 Q And do you have a view or have you formed a view of the
24 quality of the NRA's internal accountants?

25 A No, we think very highly of the internal people that

BP

3696

G. Plotts - by Defendant - Direct/Mr. Fleming

1 they have there inside the FSD.

2 Q Okay. Now, I think you said in your role on this
3 engagement you also oversee -- did I get it correctly -- the tax
4 portion of this engagement?

5 A Stacey Cullen now oversees that.

6 Q Do you have any sort of visibility into that process?

7 A I -- I worked with Stacey a little bit, but she is a
8 990 guru, so I just -- we bounce questions maybe back and forth
9 with each other, but I let her do the review of the 990.

10 Q Do you have any idea how long that tax process lasts?

11 A At the NRA or at?

12 Q The process by which Aprio performs tax services for
13 the NRA on their 990?

14 MR. SHIFFMAN: Objection, lacks foundation. I
15 think this is a different witness.

16 THE COURT: He asked if he knew that's the
17 foundation.

18 THE WITNESS: I think it is over a certain amount
19 of months because this is a big process of putting the 990
20 together. So, when the staff at the NRA are putting it
21 together, they might be asking questions to Stacey Cullen as
22 for some help or some review of what they're doing.

23 Q Do you know when the tax services portion of engagement
24 begins, you know, on a calendar basis?

25 MR. SHIFFMAN: Objection, lack of foundation.

BP

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G. Plotts - by Defendant - Cross/Mr. Shiffman

1 THE COURT: He's asking whether he has a
2 foundation. He said "Do you know."

3 A They wait until after the audit is settled, make sure
4 the numbers. That's their focus right now, and then they start.
5 In my knowledge, that's when they start looking at the 990 and
6 putting that together; and to the best of my knowledge that
7 happens May, June timeframe that they start working on that.

8 Q And do you know when it ends?

9 A Well, there's a November 15th deadline that it needs to
10 be filed by. That's the extended deadline.

11 Q And by November when the deadline comes for the tax
12 return, your auditors are back in process, is that right, on the
13 next year?

14 A Yeah, we are talking with management, getting ready for
15 the preliminary fieldwork. That's correct.

16 Q One last question for you. At the beginning of the tax
17 services, do you have any understanding of whether the beginning
18 step is to populate the 990 with any of the figures from the
19 audited financial statements.

20 MR. SHIFFMAN: Foundation, leading.

21 THE COURT: Asking if he knows, which is --

22 A I don't know that for sure, but that would be my
23 assumption that you would start there for the audited financial
24 statements to populate the 990, yes.

25 MR. FLEMING: Thank you.

BP

3698

G. Plotts - by Defendant - Cross/Mr. Shiffman

1 THE COURT: Counsel, you may do your cross.

2 MR. SHIFFMAN: Thank you, your Honor.

3 CROSS-EXAMINATION

4 BY MR. SHIFFMAN:

5 Q Good afternoon, Mr. Plotts. My name is Steve Shiffman
6 and I'm an Assistant Attorney General with the Charities Bureau.
7 I have just a few questions for you.

8 In 2019 the NRA was the Aronson's largest 501(c)(4)
9 client; wasn't it?

10 A That's correct.

11 Q And you received -- Aronson received over a quarter
12 million dollars in fees that year; right?

13 A That's correct.

14 Q And the NRA was your largest client; wasn't it?

15 A In revenue?

16 Q Yes.

17 A Yes, it was.

18 Q And wasn't it also twice as large as any other client?

19 A Close, yes, I would say that.

20 Q Okay. How much in fees has Aronson and Aprio received
21 from the NRA since you started the engagement?

22 A Well, for the audit, it is around that 250,000 to
23 300,000 dollars a year for all of our audit services, including
24 employee benefit plans and tax review services.

25 So, we did '19, '20, '21, '22, so, you know, so that's

BP

3699

G. Plotts - by Defendant - Cross/Mr. Shiffman

1 roughly 1.2 million.

2 So, we did have some extra procedures that we did with
3 the special procedures and with the New York Attorney General
4 lawsuit they --

5 Q I'm just asking for the amount.

6 A Oh, there's more, right, when they subpoena us, too.
7 And when the New York AG --

8 Q Sir, I just asked you for a number.

9 A Okay, all right. I would say approximately 1.2.

10 Q Okay, thank you.

11 You talked recent with Ms. Rogers about some of the
12 work that Aronson did with respect to Gayle Stanford. Do you
13 recall that?

14 A Yes.

15 Q So, you did some special procedures with Gayle Stanford
16 who's a travel agent; right?

17 A Well, the special --

18 Q That's a yes or no question, sir.

19 A Yes, we pulled those invoices.

20 Q Right. And when you did that for 2020, you pulled only
21 two invoices; isn't that correct?

22 A That's correct.

23 Q And 2019 you looked at one, right?

24 A That's correct.

25 Q You, also, talked about the type of audit you did.

BP

3700

G. Plotts - by Defendant - Cross/Mr. Shiffman

1 Aronson did a financial statement audit; right?

2 A Correct.

3 Q Okay, and when Aronson provides a clean opinion, it's
4 not opining that the NRA had effective controls; correct?

5 A That's correct.

6 Q If the NRA had wanted to do a -- wanted to get Aronson
7 to give an opinion on the effectiveness of its internal
8 controls, it could have done or asked for an internal controls
9 audit; right?

10 A That's correct.

11 Q But the NRA never asked Aronson for internal controls
12 audit; correct?

13 A Correct.

14 Q And there's another type of audit called the forensic
15 audit; right?

16 A Correct.

17 Q And the NRA never asked Aronson to conduct a forensic
18 audit; right?

19 A That's correct.

20 Q Sir, are you aware that there are excess benefit
21 transactions that were listed on the 990 for 2019?

22 A I am aware.

23 Q Okay, and you as the auditor wanted to know, didn't
24 you, what breakdowns in internal controls led to those excess
25 benefit transactions being listed on the 990 for 2019?

BP

3701

G. Plotts - by Defendant - Cross/Mr. Shiffman

1 A We would, yes.

2 Q And some of those excess benefit transactions were
3 excess benefit transactions involving Mr. LaPierre; correct?

4 A Correct.

5 Q But you never found out what breakdown in internal
6 controls led to the excess benefit transactions with
7 Mr. LaPierre that were identified in the NRA's 2019 990; right?

8 A We would not have audited those years, that's correct.
9 So, we would not have known the breakdown of controls
10 necessarily for those past years.

11 Q And you didn't ask any questions to find out what those
12 breakdowns were, right?

13 A We test transactions in the current year to make sure
14 controls are in place over those transactions.

15 Q So, Aronson, though, did not play any role in examining
16 whether the NRA's disclosures of Wayne LaPierre's excess benefit
17 transactions in the 2019 990 were accurate; right?

18 A That's correct.

19 Q But Aronson was the auditor on the 2019 990; right?

20 A We didn't audit the 990.

21 Q Were you the auditor for 2019, the fiscal year 2019?

22 A Well, we audited the financial statements, yes.

23 Q Right, I understand that, sir.

24 Were you the auditor of the financial statements in
25 2019?

BP

3702

G. Plotts - by Defendant - Cross/Mr. Shiffman

1 A Yes.

2 Q But even though you audited the financial statements in
3 2019, you did not look into what led to the -- what control
4 breakdowns led to the financial disclosures of excess benefit
5 transactions in 2019; right?

6 A Are you talking about 2020 audit or 2019?

7 Q I'm talking about the fiscal year 2019 that would have
8 been done in 2020.

9 A Yeah, our audit was complete by March of 2020 for the
10 2019 audit.

11 Q Okay.

12 A And the 990 was filed in November, but, yes.

13 Q My question, though, was Aronson did not play any role
14 in examining whether the NRA's disclosures of Mr. LaPierre's
15 excess benefit transactions in its 2019 990 were accurate; is
16 that right?

17 A That is correct, yes.

18 Q Thank you. And you, personally, are not familiar with
19 what New York law requires for the approval of related-party
20 transactions; are you?

21 A I'm familiar with New York not-for-profit law, but I'm
22 not an expert in it, and we do not audit in accordance with
23 not-for-profit law.

24 Q And you did not test whether when the Audit Committee
25 ratified related-party transactions whether it complied with New

BP

3703

G. Plotts - by Defendant - Cross/Mr. Shiffman

1 York law; isn't that correct?

2 A That is correct.

3 Q And Aronson did not interview Mr. LaPierre in
4 connection with its 2019 audit to inquire about his expenses,
5 right, even though there was press about those expenses; isn't
6 that correct?

7 A We did not interview Wayne LaPierre in 2019 audit.

8 Q And it is true, isn't it, that when you conducted your
9 audit of the 2020 financial statements, Aronson did not ask
10 Mr. LaPierre about any of the specific allegations in the
11 complaint?

12 A We asked broad questions about the complaint, that
13 there were -- that their lawsuit was out there and --

14 THE COURT: Let him answer.

15 A Restate the question, and I'll do a better answer.

16 Q You asked, generally, about the attorney general's
17 complaint; isn't that correct?

18 A That is correct.

19 Q But did you not ask Mr. LaPierre about any of the
20 specific allegations of the complaint; right?

21 A We asked, generally, about the lawsuit complaint, yes.
22 We did not get into specifics. We wanted him to discuss that
23 with us.

24 Q Okay. So, the answer to the question did you discuss
25 specific allegations is no; right?

BP

3704

G. Plotts - by Defendant - Cross/Mr. Shiffman

1 A Not in detail, no.

2 Q Okay. And you never asked Mr. LaPierre about the
3 flights that the complaint alleges that took place in the period
4 prior to 2021; isn't that right?

5 A Not directly with Wayne LaPierre did we ask him.

6 Q Now, you learned in January or so of 2021 that
7 Mr. Spray was no longer the CFO of the NRA; right?

8 A That is correct.

9 Q And when you asked why he left, you were told by
10 Mr. Cotton and Mr. LaPierre that he left for health reasons;
11 right?

12 A As to the best of my knowledge and that's my testimony
13 in the past, yes.

14 Q But you later learned that Mr. Spray said he was let
15 go two days after he pushed back with Mr. LaPierre about the
16 bankruptcy filing; isn't that correct?

17 MR. CORRELL: Objection, assumes facts not evidence
18 and misstates prior testimony.

19 THE COURT: Overruled.

20 A There's a conversation I had with Craig Spray after he
21 was let go, and I documented that in the continuance form that
22 we went through.

23 MR. SHIFFMAN: Well, let's pull up that continuance
24 form, which I have it as PX 47.

25 THE COURT: That's the one that's already in

BP

3705

G. Plotts - by Defendant - Cross/Mr. Shiffman

1 evidence from --

2 MR. SHIFFMAN: From Ms. Rogers.

3 MS. ROGERS: I believe it's DX1-0030, Tab 5, in his
4 binder.

5 MR. SHIFFMAN: Thank you, Ms. Rogers.

6 Q If we can go to page 13 there.

7 A I missed the tab.

8 Q I'm sorry, Tab -- it will be in the binder that
9 Ms. Rogers gave you, Tab 5, the Brewer book which is right
10 behind you.

11 We're going to show it on the screen.

12 (Displayed)

13 If you look there, this is from that report that you
14 prepared, right, and you wrote:

15 "He pushed back on bankruptcy to Wayne and then two
16 days later he was let go."

17 Right?

18 A Let me get to the hardcopy here.

19 Q Sure.

20 A It is page 13. I'm just verifying this is all what I'm
21 writing here with Craig's conversation. Yes, I had a phone
22 interview with him on June 9th and these are my notes
23 documenting that phone conversation.

24 MR. SHIFFMAN: All right, you can take it down
25 Jesse.

BP

3706

G. Plotts - by Defendant - Cross/Mr. Shiffman

1 Q When the NRA completed -- I'm sorry.

2 When Aronson completed this 2019 audit, it sent a
3 management letter to the NRA; right?

4 A That is correct.

5 MR. SHIFFMAN: Can we mark PX 327, which is Tab 4.

6 Q Can you turn to Tab 4 in the binder that we gave you.

7 MR. SHIFFMAN: I don't know if there's any
8 objection to this? This is the management letter.

9 THE COURT: Any objection?

10 MS. ROGERS: It is not Tab 4 in my binder.

11 MR. SHIFFMAN: I'm sorry, we didn't give you a
12 binder. It is PX 327, but it is the management letter.

13 MS. ROGERS: No objection.

14 THE COURT: It's admitted.

15 (Whereupon, at this time Exhibit PX 327 was
16 admitted and received into evidence.)

17 Q I just want to mark it; and if we turn to page 3, the
18 last sentence of the second paragraph. It's true, Mr. Plotts,
19 isn't it, that Aronson found a number of significant
20 deficiencies in its audit and that those significant
21 deficiencies were found even though it wasn't the focus of the
22 audit; right?

23 A It is true that we did find three significant
24 deficiencies during our audit, yes.

25 Q Thank you. Let's go to Tab 5, which is the management

BP

3707

G. Plotts - by Defendant - Cross/Mr. Shiffman

1 letter for the next year.

2 MS. ROGERS: No objection.

3 MR. SHIFFMAN: Which is PX 48.

4 THE COURT: It is admitted.

5 MR. SHIFFMAN: Thank you.

6 (Whereupon, at this time Exhibit PX 48 was admitted
7 and received into evidence.)

8 Q And in this in 2020, it's true, isn't it, that Aronson
9 found additional significant deficiencies; right?

10 A We identified four significant deficiencies.

11 Q Right. Can you go to page -- I think 10 of that
12 letter, please, sir.

13 Under the best practices, in its management letter
14 Aronson recommended a number of practices for the NRA to
15 undertake, right?

16 A The best practice recommendations, yes, we did.

17 Q And one of those was to install a compliance manager or
18 officer; right?

19 A That's correct.

20 Q And the NRA actually agreed with that recommendation;
21 right?

22 A They did.

23 MR. SHIFFMAN: Let's go to Tab 6, PX 2385, which is
24 the 2021 management letter.

25 MS. ROGERS: No objection.

BP

3708

G. Plotts - by Defendant - Cross/Mr. Shiffman

1 THE COURT: That's admitted, as well.

2 MR. SHIFFMAN: Thank you.

3 (Whereupon, at this time Exhibit PX 2385 was
4 admitted and received into evidence.)

5 Q So, in this letter which is for 2021 that you sent in
6 2022; right?

7 A That's correct.

8 Q So, in this letter Aronson, again, identified a number
9 of significant deficiencies; correct?

10 A Yes, that is correct. I believe two.

11 Q Okay. And, again, in this management letter, Aronson
12 again recommended that the NRA get a compliance manager or
13 officer; right?

14 A As a best practice, I believe, right?

15 Q It was Aronson's recommendation, right?

16 A Yes, I see it in here.

17 Q And the NRA, again, agreed with it; right?

18 A Yes, they did.

19 Q And we talked a little bit about the special procedures
20 and those were conducted after the attorney general commenced
21 this lawsuit; right?

22 A That's correct.

23 Q But the special procedures were not designed to test
24 whether the allegations in the attorney general's lawsuit were
25 right or wrong; right?

BP

1 A They were not.

2 Q And the special procedures were actually only designed
3 to test if the allegations and the violations were still ongoing
4 in 2020; right?

5 A That's correct.

6 Q They were not looking at anything that was going on
7 prior to 2020; right?

8 A Our focus was 2020, yes.

9 MR. SHIFFMAN: Pass the witness, your Honor.

10 THE COURT: Okay. Anything further on redirect?

11 MS. ROGERS: Just a bit.

12 (Continued on next page)

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3710

Plotts - by Defendant - Redirect/Ms. Rogers

1 Q You testified with the Attorney General that the NRA
2 was one of your larger clients; right?

3 A That's correct.

4 Q What percentage of Aronson's revenue, if you know, did
5 the NRA account for in 2020?

6 A Less than one percent.

7 Q It if I told you at your deposition you testified it
8 was less than one half of one percent, would that sound right to
9 you?

10 A It would.

11 MR. SHIFFMAN: Leading.

12 Q Does what your compensation from the NRA depend on
13 whether you issue a clean audit or you find deficiencies?

14 A No.

15 Q You said you were paid to be independent. Did that
16 extend to your compensation?

17 A There's a lot involved in my compensation.

18 Q But would it be fair to say that your compensation
19 doesn't depend on the outcome of this matter?

20 A No.

21 Q And you're certainly not an expert witness being paid
22 for this testimony.

23 MR. SHIFFMAN: Objection.

24 A I'm not expert witness on this testimony. Yes, that's
25 correct.

KM

3711

Plotts - by Defendant - Redirect/Ms. Rogers

1 Q Why didn't you look at more of Gayle Stanford's
2 invoices?

3 A In 2019, it was a sample size that we took, and we did
4 one of GS2, I believe. She had a couple of -- a couple of
5 different companies. We did hit one. And then in 2020, we
6 selected two. There wasn't -- the travel is starting to come
7 down quite a bit because Covid hit in March of 2020, so I
8 believe that's why our sample size was only two.

9 Q Do you have an understanding as to whether after Covid
10 Gayle continued to be employed by the NRA?

11 A We were told she was not, and we found in the next
12 audit, there was no transactions.

13 Q Mr. Shiffman asked you about another audit called a
14 forensic audit. Do you remember that?

15 A Yes.

16 Q To your knowledge, did the NRA hire a forensic firm to
17 do a forensic audit of any expenses?

18 MR. SHIFFMAN: Objection. Foundation. Hearsay.

19 MS. ROGERS: If you know.

20 THE COURT: Overruled.

21 A I have heard that they have.

22 Q Okay. But don't testify about what you've heard. If
23 you don't know, that's fine. But yeah, I am not 100 percent
24 positive of that report or that they hired them.

25 Q You testified that you don't audit related-party

KM

3712

Plotts - by Defendant - Redirect/Ms. Rogers

1 transactions in accordance with New York Law.

2 Do you remember that?

3 A I do.

4 Q What does that mean?

5 A Well, our audit isn't geared to New York Not-For-Profit
6 law. It's geared to generally accepted accounting principles
7 and certain audit standards that we have to do, and one of them
8 is looking at related-party transactions, and that is the
9 guidance that we go by. It's not that we look at New York
10 Not-For-Profit Law and audit towards that.

11 Q You testified that when you interviewed Wayne LaPierre,
12 you asked him about their lawsuit generally. But you didn't sit
13 down with him and go through their lawsuit paragraph by
14 paragraph and ask him if the allegations were true or false;
15 right?

16 MR. SHIFFMAN: Leading.

17 A That's correct. We had long conversations with Wayne
18 LaPierre, but I did not specifically detail out all of the
19 allegations in the lawsuit to walk him through.

20 Q When you were testing whether each of those allegations
21 seemed to be true or false, why didn't you just ask Wayne
22 LaPierre?

23 MR. SHIFFMAN: Objection. Misstates the testimony.

24 MS. ROGERS: I can rephrase.

25 Q When you were testing each of those allegations, why

KM

3713

Plotts - by Defendant - Redirect/Ms. Rogers

1 didn't you just ask Wayne LaPierre if they were true or false?

2 A Well, at this point --

3 MR. SHIFFMAN: Timeframe.

4 THE COURT: Overruled.

5 A Professional skepticism comes in so we have already had
6 our conversations with Wayne LaPierre's Audit Management
7 Committee, and so no offense to the management at the NRA here,
8 but we are professional skepticism. We don't take everything at
9 face value. We want to actually test documents to verify what
10 they are saying is true.

11 Q Let's go back to Tab 5 of your binder. That is the
12 continuance document the Attorney General just asked you to look
13 at.

14 I am going to direct you to Page 13 where you discuss a
15 conversation with Craig Spray. In the same bullet point, we
16 read from earlier, it says, "An Agreed Memo. An agreed memo
17 went out that it was health reasons."

18 Do you see that?

19 A Yes. I think I'm in the wrong binder.

20 Q Sorry.

21 A I apologize. Wait. This is -- all right, but I'm
22 familiar with the document that you are looking for. It's right
23 here.

24 Q What did you mean by agreed memo?

25 A I'm sorry.

KM

3714

Plotts - by Defendant - Redirect/Ms. Rogers

1 Q When you say an agreement memo went out that Craig was
2 gone for health reasons, what did you mean by "agreed?"

3 A Well, what was told to me is that Craig wanted it to go
4 out that it was about health reasons that he was let go, and
5 that's what he told me, and I verified that with Wayne LaPierre
6 that that's the conversation that they had in this meeting when
7 he was let go, that they wanted to go -- that it was due to
8 health reasons.

9 Q Did Craig also tell you that because it was a
10 termination, he was able to get severance?

11 A Yes.

12 Q It's fair to say from your prior testimony, right, that
13 Craig Spray made comments to you which were pretty supportive of
14 the NRA's correction efforts; right?

15 MR. SHIFFMAN: Objection. Leading.

16 THE COURT: Sustained.

17 Q I'll ask it this way. Mr. Plotts, when you spoke to
18 Mr. Spray after he left the NRA, did his tone or his comments
19 about the NRA's control environment change at all?

20 A No. It was very important for to us get a hold of him.
21 We tried.

22 MR. SHIFFMAN: Objection.

23 Q This, you can answer.

24 A We tried numerous times to get a hold of him until we
25 probably got him on the phone because it was important to us to

KM

3715

Proceedings

1 get his take of someone that just left the organization in these
2 terms. So I was -- I was happy to hear his transparency that he
3 was confident in the integrity of management, but there were
4 some concerns that he had, and I could add that to my testing in
5 the audit file that he had some concerns over contracts and
6 certain related-party transactions so we could add that to our
7 audit evidence in our file.

8 Q When you went out to perform the additional testing in
9 response to your conversation with Mr. Spray, did you encounter
10 any resistance from the NRA?

11 A No. They encouraged it. I told the NRA management
12 team that I wanted to have that conversation with Craig Spray.
13 I thought that was important for our continuance. And in fact,
14 our ad hoc committee really made sure that that was a pivotal
15 conversation that we wanted to have before we moved on with the
16 audit.

17 Q When you say "the ad hoc committee," are you talking
18 about the lawyers and the other accountants and the people you
19 talked to?

20 A The ad hoc committee is internally at Aronson.

21 We had an ad hoc committee made up of partners that was
22 going to decide if we are going to continue with the audit of
23 the NRA.

24 MS. ROGERS: Thank you. Nothing further.

25 THE COURT: Anything further on defense side?

KM

3716

Proceedings

1 MR. CORRELL: No.

2 MR. FLEMING: No.

3 MR. WERBNER: No.

4 THE COURT: Anything further from the Attorney
5 General?

6 MR. SHIFFMAN: No, your Honor.

7 THE COURT: Thank you very much. You are free to
8 step down.

9 I don't think we have enough time to get too deep
10 into the next witness, so that means an early exit. So I
11 will see you 9:30 tomorrow morning.

12 Thank you very much for your attention.

13 THE COURT OFFICER: All rise. Jury exiting.

14 (Whereupon, at this time the jury exits
15 the courtroom.)

16 THE COURT: Okay. So what can we clear off the
17 agenda for tomorrow for this next witness?

18 MS. CONNELL: Thank you, your Honor. This pertains
19 top Mr. Mehta who is the next witness. I think he is in the
20 courtroom and should probably step out for this discussion.

21 MS ROGERS: He is an expert. He's been here, so he
22 can remain or leave.

23 MS. CONNELL: I'm not objecting to him being here
24 during the testimony.

25 THE COURT: Well, sometimes it's actually helpful

KM

3717

Proceedings

1 because the other witness heard some of the limiting
2 instructions and I saw, took them to heart.

3 Look, if you --

4 MS. CONNELL: It's fine. It's fine, your Honor.

5 THE COURT: We are not talking about anything that
6 he doesn't know so.

7 MS. CONNELL: If I can hand this up, your Honor.

8 THE COURT: Sure.

9 MS. CONNELL: These are the demonstratives
10 regarding Mr. Mehta that the NRA circulated. Mr. Mehta
11 rendering his opinions relies very heavily on the special
12 procedures that Aronson performed. And in fact, really just
13 re-discusses them and re-channels them and restates them to
14 the extent they have been stated, and I would direct your
15 attention particularly, your Honor, to Pages 8 and which if
16 you see the two slides described on eight, there is the
17 heading, "Procedures performed by Aronson, NRA's independent
18 auditor," and he just walks through the procedures performed
19 again but without --

20 THE COURT: I'm sorry. The pages aren't numbered
21 to me. Okay.

22 MS. CONNELL: I'm sorry. Pages 8 -- and I was
23 actually looking at 11 and 12. So maybe shooting you to 11
24 and 12 would be the best.

25 On 11 and 12, it says, and they are on the screen

KM

3718

Proceedings

1 now. "Procedures performed by Aronson, NRA's independent
2 auditor." Again, he is just walking through what Aronson
3 did.

4 Your Honor, this is -- it's not for an expert
5 witness just to bolster, restate whatever the independent
6 auditor did. And the same kind of thing is done on the next
7 page on slides 13 and 14.

8 You know, Mr. Mehta discusses a review of the
9 record and conclusions by the outside auditor Aronson. You
10 know, your Honor, it goes on and on 18 -- Slide 18, he is
11 also talking about procedures performed by Aronson. We just
12 heard from Aronson. We don't need a witness to tell us what
13 Aronson said and found.

14 THE COURT: Sounds right to me.

15 MS. ROGERS: Your Honor, so --

16 THE COURT: Certainly not in this detail.

17 I mean, I think he, you know, maybe can sort of
18 note in passing that he is aware that there was -- there
19 were audits, but this does seem like vouching to me.

20 MS. ROGERS: So your Honor, two points. This is a
21 lengthy slide deck and a few of the slides discuss Aronson.
22 Mr. Mehta is an expert on non-profit external auditing.

23 So we were told, for example, that Mr. Sullivan
24 couldn't talk about, you know, what auditors would do, but
25 he can talk about that.

KM

3719

Proceedings

1 The auditors talk about, and the auditing expert
2 can talk about it.

3 THE COURT: Look, it's been a long time. I can't
4 remember the motion in limine on this witness. But did his
5 expert disclosures indicate that he would give opinions
6 about the nature and quality of the audit?

7 MS. ROGERS: Everything in these slides comes from
8 my understanding is the -- I didn't prepare them, so I am
9 being careful, but I think this comes from his report.

10 THE COURT: Well, there is a difference between --
11 as I mentioned, lots of expert reports which are not
12 admissible generally contain all sorts of factual summaries
13 and background and all of which I kind of ignore because all
14 I care about is what is the testimony going to be, and the
15 testimony should be his opinions and the facts that support
16 them. So the fact that he may have referenced the audit in
17 his opinion, but -- in his expert report didn't by itself
18 move the needle for me. The question is did he indicate
19 that these statements about the audit are part of the basis
20 for his opinion about the NRA's establishing protocols to
21 handle whistle blowing.

22 MS. ROGERS: I believe the fact that the outside
23 auditor did a special procedure, it was a fact he considered
24 in forming his assessment.

25 THE COURT: That's just like one expert leveraging

KM

3720

Proceedings

1 off another.

2 I mean, there are times when there may be a
3 precursor finding from one expert that the other one can
4 sort of launch off of, say, well, look assume the driver was
5 negligent, you know, which is another expert -- here's my
6 opinion on damages.

7 This though seems to say that his opinion about the
8 NRA's establishing protocols, you know, I think it's at best
9 you are saying it's consistent within what Aronson did, but
10 that's really, alright, for the jury to determine. So what
11 does this add for him to basically, you know -- the fact of
12 the audit is what it is. Right.

13 But how does it -- I'm just a little -- I don't
14 really understand how this does anything other than echo
15 what we have already heard.

16 MS. ROGERS: Well, obviously, there have been a lot
17 of attacks on these particular controls and activities, so
18 we probably have had multiple witnesses discuss them.

19 There are a number of bases for his opinions in
20 this slide that have nothing to do with Aronson. Like, he
21 reviewed the NRA's compliance seminars. He reviewed their
22 questionnaires. He is giving an opinion on, you know, as a
23 career non-profit auditor.

24 THE COURT: Did he disclose an opinion that I have
25 as an auditor I have reviewed Aronson's work and I conclude

KM

3721

Proceedings

1 in my expert opinion that they did a good job? I mean, is
2 that a disclosed opinion.

3 MS. ROGERS: It's -- I believe that's in his
4 report, and I would also note that part of his expertise is
5 he performs what are called peer-review of auditors. So he
6 examines whether other auditors have done a good job.

7 THE COURT: There might be some case in which he
8 could be qualified as an expert to opine about another
9 accountant's work which happens in malpractice cases all the
10 time. That's not how I read it, that that's what he was
11 doing here, and there is -- you know, there are -- it's
12 frowned upon to have an expert basically just vouching for
13 somebody else.

14 MS. ROGERS: If it would resolve the issue, I think
15 there are three or four slides that refer to Aronson.

16 THE COURT: All I'm saying is it's a question of
17 emphasis; right. I mean, I don't -- it is a fact that he
18 saw that Aronson did an audit, and -- but I think that the
19 way these slides are written, it does look like he is sort
20 of offering a qualitative opinion which has not been
21 disclosed.

22 MS. ROGERS: Your Honor, if it would help, we can
23 condense the Aronson references to one slide and can make
24 sure that whatever is on them is in his report.

25 THE COURT: It's the content, not so much the

KM

3722

Proceedings

1 repetition. Extensive procedures performed by Aronson. You
2 know, various things like that are qualitative.

3 To me, you know, if this goes beyond background --
4 background fact that, you know, maybe it gives -- he can
5 say, look, the fact that they had a recognized auditor doing
6 an audit is, you know, helpful but all of this sounds like
7 the jury is hearing another distinguished person saying and
8 that guy you just had testify today did a great job which
9 is, you know, in another case, he might be able to give that
10 opinion, but that's not the opinion that was disclosed. So
11 that part, all of that, I think you -- I think all of this
12 sort of detail needs to come out.

13 MS. ROGERS: We'd be happy to do that, your Honor.

14 As a point of clarification, if instead of "great
15 job," he is saying something like as an expert in this
16 field, I think this looks pretty wide ranging, the fact that
17 they acquiesced to something like that is notable and it
18 impacts how I view the financials. What if he said
19 something like that? Not that the other auditors are great
20 auditors, but that the auditor turned over a lot of rocks
21 that a financial audit might not normally.

22 THE COURT: And tell me how this plays into his
23 opinion exactly.

24 MS. ROGERS: Well, we have just heard, you know,
25 the Attorney General cross-examine, you know, try to poke

KM

3723

Proceedings

1 holes in what the jury can take from Mr. Plotts. What did
2 they really look at? Were they not exercising a lot of
3 scrutiny because the NRA is a large client? And we have
4 here a leading New York not-for-profit auditor that
5 specializes in this, and he as part of his profession is to
6 form a view of whether I can rely on these controls, and he
7 does this all the time. And he's saying, I looked at the
8 NRA, and I formed the view that the controls are good.

9 THE COURT: In terms of Aronson to say that as part
10 of the basis for his opinion, just as an example, he would
11 say, you know, they did -- they had an auditor which of
12 course they have to, but also there were -- his
13 understanding is there were special procedures.

14 MS. ROGERS: Right. His understanding is among the
15 many things they looked at. They had questionnaires. They
16 had seminars, and an audit, and that audit was extensive or
17 wider ranging or had special procedures, and we heard
18 testimony from Mr. Hines that in considering a control
19 environment, it's not relevant whether there was special
20 procedures done by the auditor.

21 We will hear from this professional that he does
22 consider that a relevant data point, not because he is
23 vouching for the acuity of Ackerman of Mr. Plotts but
24 because we are considering as a default, the NRA's
25 administration and control environment. And we have heard

KM

3724

Proceedings

1 one witness say the jury shouldn't care about the special
2 procedures and here's a witness saying I care about them.

3 THE COURT: Well, look, I think he can -- he can --
4 I think he can address that as a -- just an understood. His
5 understanding is that the audit included special procedures
6 and other things, and I think a -- it's not unfair assuming
7 it's in the expert report as well that without opining on
8 whether they did a good job at it or not because that's not
9 what he is here to do, but just that fact is supportive of
10 the opinion, generally. I think that's okay.

11 MS. ROGERS: Thank you, your Honor.

12 THE COURT: But the part where I start to lose you
13 is a qualitative assessment of how they did at it which he
14 may have a view on, but that's not the expertise he is being
15 asked to give an opinion on here.

16 MS. ROGERS: I will double check tonight and make
17 sure that anything he says is literally in his report.

18 THE COURT: In other words, it's another version of
19 assumed facts.

20 In other words, the assumed fact is that they had
21 an audit. There were special procedures and whatever the
22 objective things one can say is, look, if I'm correct that
23 this all happened which I'm assuming as part of my
24 background, that's helpful, and the difference from that and
25 what at least I'm gleaning maybe between the lines here is

KM

3725

Proceedings

1 that this is more of a qualitative assessment of how they
2 did the job. So I think if it's limited to his
3 understanding of the kind of procedures that they have
4 described and that the jury has seen in some of these
5 documents, you know, if those took place, that's helpful.

6 MS. ROGERS: Understood, your Honor.

7 MS. CONNELL: May I just address this for one
8 second?

9 THE COURT: Sure.

10 MS. CONNELL: Mr. Mehta, just to be clear, is
11 really just vouching in most instances for Aronson's special
12 procedures.

13 THE COURT: Well, we are taking that out.

14 MS. CONNELL: But I don't know --

15 THE COURT: Look, the fact that the special
16 procedures happened is a fact; right. I mean, now whether
17 they were a bust or not or whatever, that's what you can
18 argue about to the jury based on your cross-examination, but
19 I think it's not unfair for an expert to say because, you
20 know, not all audits have special procedures and all -- and
21 I think he can opine on that being something that is
22 supportive.

23 My concern is that they are not -- that he not
24 provide some not previously disclosed qualitative vouching
25 for the work that was done. So --

KM

3726

Proceedings

1 MS. CONNELL: But my concern is all he did is
2 vouching. So for example, he was asked if you look at slide
3 12, it asks him about related-party transaction.

4 He was asked if he did any audit work with respect
5 to the NRA's related-party transactions or conflict of
6 interest policies. He said, I did not. And then he went on
7 and said -- we said, Did you test them. He said, I did not.
8 I reviewed the work of Aronson, and I -- you know, that's
9 what he did.

10 So he is coming back in and saying Aronson did
11 this. You know, yeah, for Aronson and we are just having--

12 THE COURT: No. Look, I think this is not really
13 that inconsistent. He can give the basis for his opinions
14 and if, for example, he comes in and says, well, the only
15 basis for my opinion is I thought it was good that some
16 special procedures were formed by somebody else, I think
17 that's cross-examination material.

18 MS. CONNELL: Your Honor, but there is a
19 gatekeeping function here because we have duplicativeness.

20 We have the special procedures being brought in by
21 another parade of expert witnesses, and we have him saying,
22 for example, he approves the whistleblower policy's
23 application. He admitted he is not an expert on the
24 application or efficacy of whistleblower policies. He just
25 relied on Aronson. And to a certain point that puts too

KM

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Proceedings

1 much emphasis --

2 THE COURT: Well, look, I have to sort of evaluate
3 what I heard as well.

4 I mean, I am hearing you describe what he is going
5 to say. I haven't heard it yet. I will evaluate as it
6 comes in. I'm reacting to the specific thing you're
7 pointing to and you know -- I -- he is somebody whose
8 qualifications meet the test for expertise, you know, and
9 I'll have to just sort of evaluate when it comes in, if
10 there is some reason, and I have been not shy about doing it
11 with other experts if there is something that I view as
12 going -- running afoul of what normal and proper expert
13 testimony is, I'll address it then. So I understand the
14 point. I don't -- I did not preclude him in its entirety
15 based on the motions in limine. I think this is one of the
16 ones where I wanted to see what the testimony is.

17 MS. CONNELL: Could we have just an offer of proof
18 or something in the morning as to what's left and what he is
19 going to say? Because I think there is a real question mark
20 there, and we should have some clarity on that, your Honor,
21 before we have to object and delay things in front of the
22 jury which you know irritates the jury.

23 MS. ROGERS: We are happy to provide as plaintiff
24 did Mr. Hines' revised set of demonstratives indicating
25 where we intend to go.

KM

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1 THE COURT: I think that might be helpful and send
2 a copy to me as well.

3 MS. ROGERS: Of course, your Honor.

4 THE COURT: And hopefully, we don't need a lot of
5 time because my inclination is to see how it goes. And what
6 I'm hearing largely goes to weight, not admissibility. But
7 at some point, if weight is overwhelming, then it goes to
8 admissibility.

9 MS. CONNELL: Thank you, your Honor. I do think
10 there is duplicativeness.

11 THE COURT: It's their time.

12 MS. CONNELL: I know.

13 THE COURT: We will see you tomorrow at 9:30.

14 MS. ROGERS: Thank you, your Honor.

15 MS. CONNELL: Thank you, your Honor.

16 (Whereupon, at this time the trial was continued
17 until February 8, 2024.)

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART 3

-----X
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against-

INDEX NO.
451625/20

THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
and JOSHUA POWELL,

Defendants.

JURY TRIAL
60 Centre Street
New York, New York
February 8, 2024

BEFORE: HONORABLE JOEL M. COHEN,
Justice, and a jury

APPEARANCES:

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NOAH PETERS, ESQ.

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1 THE COURT: Good morning everyone. Just a head's
2 up, if there is something I need to read and it's coming in
3 really late at night, send it to the chamber's email also
4 because I received those slides as I was walking downstairs
5 because they weren't -- they didn't go to me.

6 So I don't know whether there are any continuing
7 issues with the slides.

8 MR. CONLEY: Yes, your Honor, we do still have
9 issues with the Mehta slides.

10 While the NRA did scrub references to Aronson from
11 the slides that we discussed yesterday, the slides --
12 specifically slides 11, 12 and 16, they are still describing
13 work that Aronson and -- Aronson performed and that Mr.
14 Mehta did not, and we have a concern that this is
15 essentially vouching for work that Aronson -- Aronson
16 completed.

17 And I also just want to note that the witness NRA
18 intends to call after Mr. Mehta, Mr. Blacker, we have the
19 same concerns about the demonstratives for him. There are a
20 couple of slides that are just describing the procedures
21 that Aronson performed.

22 MS. ROGERS: Your Honor, we definitely aren't
23 intending to use either of those experts to simply rehash
24 what the Aronson fact witness already testified to nor would
25 that be a valuable use of our time, but the idea that the

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Proceedings

1 Plaintiff can offer two experts who opine on what the audit
2 doesn't mean, that just because they got clean audits, the
3 jury shouldn't credit reliance on those and that the
4 pretense that they can have experts refer to Aronson and how
5 those findings can and can not be interpreted without us
6 offering experts touch on the same issues is unsupported by
7 law or common sense.

8 These are financial experts, and we had Mr.
9 Sullivan an economist who is a user of this information
10 testifying about how he would use it, but he was not
11 permitted to testify about, you know, what an auditor could
12 do or look at. The reason being the limits of his expertise
13 and the fact that his report was prepared jointly with Mr.
14 Blacker.

15 So now we have Mr. Blacker who -- that is the
16 second expert he just referenced whose report was likewise
17 not excluded. His testimony was likewise not excluded, and
18 it wouldn't behoove us to just have the expert get up and
19 say, well, you saw Aronson's documents and I saw them too.
20 But we have a professional non-profit auditor with decades
21 of experience auditing non-profits.

22 THE COURT: Tell me how the opinion -- how the
23 Aronson work plays into his opinion. Is it the basis for
24 his opinion? What is he --

25 MS. ROGERS: He mentioned the Aronson procedures

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Proceedings

1 among a list of data points that he considered when he did
2 his work opining on the NRA's internal controls.

3 THE COURT: What does that mean? Does that mean
4 because they issued a clean opinion, he therefore opined
5 that the internal controls were robust?

6 MS. ROGERS: So he looks into Aronson work papers.
7 He will talk about if I was the auditor what kind of things
8 would I have looked at. He disagrees with Aronson in a
9 couple of places.

10 THE COURT: Is that in his expert report?

11 MS. ROGERS: I don't think the disagreement is in
12 his expert report.

13 He's obviously been listening to testimony so. But
14 if we look at slide 9 of the demonstratives which I
15 apologize that your Honor is just now receiving, there is a
16 second bullet, and this is an example of the kind of
17 testimony the jury will hear. Related-party transactions
18 appear appropriately handled, an opinion I reached based on,
19 and he lists a bunch of things, none of which are Aronson.

20 And then he also says at the end, Analyzing the
21 outside auditor's work papers, I also noted procedures
22 confirming, you know, what I saw. And again, you know, both
23 of Plaintiff's experts touched on Aronson and what they
24 thought about -- what they thought it could mean and what
25 they thought it didn't.

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Proceedings

1 We heard Mr. Tenenbaum testify, you know, just
2 because a non-profit gets clean audits doesn't mean that the
3 directors can content themselves with the state of controls.

4 And here we have an auditor saying when I come in
5 and look at a company, here's the kind of things I would
6 look at to reach a clean audit. Here's the kind of
7 documents and data that I looked at the NRA to form the view
8 that as a auditor could rely on these controls, and I
9 wouldn't be blind to what the other auditor did. I looked
10 through all their work papers. That's something I would
11 consider.

12 THE COURT: Well, looked through all their work
13 papers and rendered an independent view or just is saying
14 they did a good job?

15 MS. ROGERS: He is not just saying they did a good
16 job. He is rendering an independent view as we tried to
17 make clear in these slides, and I think part of the issues
18 we had was just the demonstratives.

19 If you actually look at his report, he is saying
20 here's what the professional standards require. Here's how
21 I am applying them, and here's how Aronson applied them.
22 And we have distilled the slides to focus on, you know,
23 here's how I am applying them.

24 THE COURT: So offering an opinion as to what a
25 clean audit opinion means?

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Proceedings

1 MS. ROGERS: So I do intend to ask just as
2 Plaintiff asked Mr. Tenenbaum and Mr. Hines, you know, what
3 can you take and not take from a clean financial audit.

4 I do intend to ask our auditor and forensic
5 accountant a couple of questions that are similar, but the
6 meat of his opinion -- of Mr. Mehta's opinion is summarized
7 on slide 3 titled, "Summary of Opinions." And it's
8 basically -- it's core merits stuff, not sort of meta
9 opinions about Aronson.

10 I think that talking about how you interpret
11 financial audit findings is certainly within the scope of
12 the expert testimony.

13 THE COURT: All right. Well, this has been cleaned
14 up, it seems to me anyway, the summary of opinions.

15 I guess the question is whether the -- when you get
16 to the basis for each one, is that his work or is it him
17 saying to them, well, you've already heard that they did an
18 audit. It sounds like you're on top of this.

19 Look, this is not one that's easy to micromanage
20 nor is that typically my job in advance. I will see what it
21 comes in like. I don't -- I think that the -- sort of the
22 most obvious material has been removed, and you know, it's a
23 combination of cross-examination material which is not
24 something that would cause me to strike either the expert or
25 all these things. So I don't see anything in the slides

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Proceedings

1 that jumps out at me, but I'll be listening. And you know,
2 the appropriate -- you know, I think it is -- if something
3 came up during trial that was not necessarily in the -- in
4 either expert's report but just part of the back and forth,
5 I think your expert can comment on it, but as long as it's
6 not a new opinion.

7 MS. ROGERS: I understand.

8 MR. FARBER: With respect to the jury charge, I
9 know your Honor in what you've sent called upon the Defense
10 to submit a combined set of comments.

11 As you noted, there are four separate trials going
12 on here. I have no ability to compel the NRA to work
13 cooperatively. They said they would provide us with a draft
14 yesterday which they haven't, so I'm going to need to
15 prepare my own set of comments because I need to provide
16 them to the Court. So I just wanted to alert your Honor.

17 THE COURT: Well, look, I'm hopeful that you can at
18 a minimum fold them into a single document by whenever, you
19 know, Thursday so that, you know, literally if it's just
20 cutting and pasting to say here's Mr. Phillips on this and
21 here's Mr. Phillips on that just to avoid the juggling
22 process -- physical juggling of trying to figure out who is
23 saying what.

24 MR. FARBER: I understand. I will provide that to
25 the NRA -- today is Thursday which I had hoped to get this

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Proceedings

1 yesterday.

2 THE COURT: Yeah. I forgot about that.

3 MR. FARBER: I was told I would, but we didn't.

4 THE COURT: Do the best you can, and I told the
5 jurors it was four trials. For me, it's one, and I have to
6 give one set of instructions. And it's -- you know, it's in
7 your own interests to make your filings easier for me to
8 digest.

9 MR. FARBER: I agree with that, your Honor, and we
10 are endeavoring to do that.

11 THE COURT: Yours were in the first round of 260
12 pages. Yours were the only ones that were relatively
13 concise. So hopefully, they will listen to some of your
14 ideas.

15 MR. CORRELL: Your Honor, may we -- may I have
16 until tomorrow morning at 10:00 a.m. to get our comments to
17 you because I can't do two things.

18 THE COURT: Well, with the following caveat. It
19 means that I won't read them because I'm going to be in
20 hearings every minute of tomorrow until 3:00.

21 MR. CORRELL: Is there a drop-dead time for you,
22 your Honor? Because I'm happy to work all night if I need
23 to, but if there is some -- it's going to be impossible for
24 me to start until the end of the day.

25 THE COURT: Well, I mean, do the best you can.

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Proceedings

1 I'll try to either read it on my commute or -- I don't know
2 what it's going to look like. So I guess what you're saying
3 is yours is also not going to be folded into whatever I get
4 from the other defendants.

5 MR. CORRELL: I have sent my comments to the NRA
6 and asked that they be included. I'm not sure if they will
7 be, and if not, I will have to do a separate set.

8 THE COURT: Just so it's clear, that shouldn't
9 happen in the sense that if there is something that you
10 submit as your position it should just be inserted as you
11 have done in the past as Mr. LaPierre's separate position.

12 I'm just trying to have a one document or two
13 document that I can balance. Four is a little harder.

14 MR. CORRELL: I understand, your Honor, and our
15 position is a little different from the NRA's.

16 THE COURT: I get it, but it can be in the same
17 piece of paper. I didn't give you a page limit.

18 MS. ROGERS: We have no problem putting one party's
19 position in different color text or something like that. We
20 just weren't able to get a draft out yesterday.

21 THE COURT: Look, I didn't give you a lot of time.
22 I tried as best I could, but I'm doing things during the
23 week also. So do the best you can.

24 If -- I would appreciate it if it could be in a
25 single document, even if it's maybe not coordinated as well

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Proceedings

1 as we might if you had a few more days just so I can during
2 the commute, if that's where I'm reading it, I don't have to
3 take an entire train car up with balancing them. Okay.

4 MR. CORRELL: Understood, your Honor. Thank you.

5 THE COURT: All right. All right. Let's get the
6 jury.

7 I will have an hour in the morning to look at
8 things.

9 MR. CORRELL: I would encourage everyone to get it
10 in earlier, but that's nice to have an escape belt if we
11 need to.

12 THE COURT OFFICER: All rise. Jury entering.

13 (Whereupon, at this time the jury entered the
14 courtroom.)

15 THE COURT: Welcome back, everyone. Please have a
16 seat.

17 Is the next witness for the Defense available?

18 MS. ROGERS: Yes, your Honor. The NRA calls Amish
19 Mehta.

20 THE COURT: Good morning.

21 A M I S H M E H T A, a witness called on behalf of
22 the Defendant, after having been first duly sworn, took the
23 witness stand and testified as follows:

24 THE CLERK: State your name.

25 THE WITNESS: Amish Mehta, A-M-I-S-H; last name

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Mehta - by Defendant - Direct/Ms. Rogers

1 M-E-H-T-A.

2 THE CLERK: Thank you. You may be seated.

3 MS. ROGERS: Could I trouble the court officer to
4 give the witness the Power Point clicker.

5 Q Please introduce yourself to the jury.

6 A Sure. My name is Amish Mehta. I am an engagement
7 partner and the New York metro non-partner insurance leader for
8 the accounting firm Marcum, LLP.

9 I graduated from New York University with a Bachelors
10 of Science in Accounting, and I have been a Certified Public
11 Accountant since 1993.

12 So in my role at Marcum, I exclusively work with
13 non-profit organizations. I spend 100 percent of my time
14 working with different non-profit organizations. And over my
15 career, I have worked on organizations similar to the NRA.

16 So I started my career in 1991 with the firm called
17 KPMG. It's one of the firms known as one of the Big Four firms.
18 I spent a number of years --

19 MR. ROGERS: The witness is a native New Yorker. We
20 can tell. He talks fast, and it's his first time
21 testifying. So the court reporter has to write down
22 everything you say.

23 A So I graduated in '91, as I mentioned. I started my
24 career at KPMG. That's where I grounded my fundamentals in
25 not-for-profit accounting.

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Mehta - by Defendant - Direct/Ms. Rogers

1 I also spent a number of years at the firm
2 Pricewaterhouse, another one of the Big Four firms, and again,
3 specializing in non-profit organizations.

4 Since then I have joined a firm called Friedman, LLP to
5 head up their not-for-profit practice. So fairly small mid-size
6 firm, and it grew over the years. And in September of 2022,
7 Friedman merged into the national firm of Marcum, LLP and that's
8 where I made my current role as the New York metro non-profit
9 insurance leader.

10 So over my career, in addition to specializing in
11 non-profit organizations, I have also taken on other special
12 projects.

13 So one of the things that accounting firms have to do
14 is as part of being able to perform audits of any organization
15 for that matter, they are subject to what's called the peer
16 review by the American Institute of Certified Public
17 Accountants, and that process takes place every three years.

18 And so what happens there is a firm -- similar size
19 firm would go into another firm and obtain a sample of financial
20 statement audits that they have issued, look at their work
21 papers and come to some conclusion is that firm complying with
22 professional standards in rendering and performing their audits.

23 So I -- my firms over the years have participated in
24 that process where I have gone into other firms and performed
25 these peer reviews and been able to look at their work papers

KM

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Mehta - by Defendant - Direct/Ms. Rogers

1 and to be able to draw conclusions as to did they perform the
2 audits that I was looking at, and in my particular example,
3 performed their working in accordance with professional
4 standards.

5 In addition to that, most of the firms have an internal
6 inspection process that they typically go through as well. So
7 your colleagues would come in and look at the work that you have
8 done, and that happens periodically. Similar fashion.

9 They would follow the AICPA checklist similar to a peer
10 review, but you are looking at your own firm's work that another
11 colleague of yours has performed.

12 So based on those, the experience that I have with
13 performing internal inspections as well as peer reviews, I am
14 able to review the work of other auditors and be able to draw
15 conclusions based on the work that they have done.

16 In addition, over my career, I have also been a Board
17 member of a --

18 MR. CONLEY: Objection. Narrative.

19 THE COURT: It was kind of a long answer to please
20 introduce yourself to the jury. Maybe we can do it more
21 traditionally.

22 Q All right. We can break this up a little bit.

23 Mr. Mehta, you mentioned applying the standards of an
24 organization called the AICPA.

25 What is that?

KM

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Mehta - by Defendant - Direct/Ms. Rogers

1 A The American Institute of Certified Public Accountants.

2 Q And before we get to your non-profit personal
3 experience, I do want to ask about a couple of things you just
4 mentioned in your introduction.

5 We have heard testimony, and you have been listening to
6 testimony in this case the past couple of days; right?

7 A Correct.

8 Q And you have reviewed transcripts and reports from
9 other experts; right?

10 A That's correct.

11 Q We heard testimony from an accountant Ms. Cullen who
12 works on the tax side, and we heard testimony from Mr. Plotts
13 who works on the audit side of the NRA engagement; right.

14 You are an engagement partner. Can you explain to the
15 jury how the engagement partner is situated vis a vis tax and
16 audit?

17 A Certainly. So I am the engagement partner on the
18 audits that I have relationships with. So I have overall
19 responsibility for all services that are delivered to my
20 clients. That would include the audit service, the tax services
21 and any advisory services that the client has requested.

22 So I would work with our tax directors similar to Ms.
23 Cullen who would be responsible for preparing the Form 990, that
24 individual and their team, but I would have ultimate
25 responsibility for the tax services that are delivered to the

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Mehta - by Defendant - Direct/Ms. Rogers

1 client and would review the 990 prior to the issuance to the
2 client.

3 Q But you don't work at Aprio or Aronson with Ms. Cullen
4 and Mr. Plotts.

5 A That's correct.

6 Q You are an expert witness, and you're being compensated
7 for your testimony; right?

8 A That's correct.

9 Q Are you being compensated based on what you say?

10 A No.

11 Q When the NRA hired you and agreed to pay you, did it
12 know what conclusions you would come to as far as you're aware?

13 A It did not.

14 Q As far as you're aware -- and is your firm being
15 compensated for this work at the same rate it would be
16 compensated if you were doing regular accounting work?

17 A That's correct. For similar work.

18 MS. ROGERS: I offer Mr. Mehta as an expert in
19 non-profit accounting and auditing.

20 MR. CONLEY: No objection.

21 THE COURT: Okay. He is admitted for that purpose.

22 Q Mr. Mehta, you mentioned that you also served on
23 non-profit Boards.

24 A That's correct.

25 Q Tell the jury about that.

KM

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Mehta - by Defendant - Direct/Ms. Rogers

1 A Sure. I have served on Boards of non-profit
2 organizations initially as a Board member, and then I spent two
3 years as the treasurer of a non-profit organization, so I am
4 able to see, kind of wear two hats. And again, my testimony,
5 one that is an auditor for financial statements, but also a
6 Board member understanding my fiduciary responsibility as a
7 Board member knowing the things that I requested from the
8 accounting firm that, for example, worked on the audit of the
9 organization that I was on the Board of, the questions that I
10 would ask my fellow Board members and management, in fact, you
11 know, to carry out my fiduciary obligations as a Board member.

12 Q What were you asked to do in this case?

13 A So I was asked to provide expert witness testimony.

14 Q Is the clicker working? Okay. He is not an expert on
15 this, and it's not his fault either. There we go.

16 So you were asked to give opinions and testimony on --
17 sorry. Go ahead.

18 A Sorry. So yes, so I was asked to review the
19 documentation from the -- review the first complaint, the
20 amended complaint, second amended complaint, review the
21 testimony, various documentation, policies and procedures and
22 the like in order to provide my expert opinion on the financial
23 reporting practices of the NRA, their internal controls and
24 their commitment and then compliance with good corporate
25 governance.

KM

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Mehta - by Defendant - Direct/Ms. Rogers

1 Q Yesterday you heard Greg Plotts testify about how
2 auditors have to be independent.

3 Do you recall that?

4 A I do.

5 Q Can you describe whether or to what extent that
6 standard applies to you?

7 A Certainly. So again, under the AICPA, we are bound to
8 the independent standards of AICPA in fact and appearance.

9 So what does that mean?

10 So we are prohibited from having any type of business
11 relationships with the client that we audit. We can't have an
12 ownership interest in any client that we audit. We can not have
13 relationships -- for example, I can not have a spouse that's the
14 CFO of an organization that we audit. So those are types of --
15 and then when I mentioned appearance, if there is any doubt that
16 someone could potentially say that you have an independence
17 problem even though in reality there might not be one, we are
18 really precluded from carrying out that particular transaction.

19 So even though the underlying foundation may not be
20 independence violation, but because the fact it might give the
21 appearance that could be an independence violation, we would be
22 prohibited from carrying out such a transaction.

23 Q Have you ever been an expert witness before?

24 A I have not.

25 Q Can you summarize briefly for the jury and then we will

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Mehta - by Defendant - Direct/Ms. Rogers

1 walk through them, the opinions that you reached when you looked
2 at these documents.

3 A So I was asked to -- one of the things I was asked to
4 do is look at and evaluate the NRA's various policies and
5 procedures. Specifically, a couple of key areas.

6 One is related-party transaction. One is whistle
7 blowers, and the the third being their filings with the
8 regulatory authorities of whether the Audit Committee of the NRA
9 properly discharged their responsibilities and come to some
10 conclusion of what my assessment was with -- related to those
11 particular opinions.

12 So with respect to conflict of interest and
13 related-party transactions, I have worked on hundreds of
14 non-profit organizations over the years and looked at conflict
15 of interest, and related-party transactions is a key cornerstone
16 of the work that we do.

17 So in any audit, we would ask for what is your
18 conflict-of-interest policy. May I see a copy of it? What is
19 the process that you utilize to, for example, circulate
20 related-party questionnaires or conflict-of-interest
21 questionnaires on an annual basis to all Board members, officers
22 and senior management.

23 THE COURT: Just are you now moving on from the
24 summary to now -- I'm just trying to --

25 Q I think -- why don't we talk -- before we get into the

KM

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Mehta - by Defendant - Direct/Ms. Rogers

1 meat of your opinions, let's talk about what you're basing them
2 on, and I think that should be your next slide.

3 A So one of the key concepts that you may have heard --

4 Q I think we skipped a slide.

5 THE COURT: He is back now.

6 Q Sorry. There we go.

7 A So the items that I looked at in coming and forming
8 conclusions and my opinions are I looked at the allegations that
9 the NYAG office has made with respect to the NRA. So I looked
10 at the second amended verified complaint. I looked at the
11 various subpoenas that were produced by the various parties and
12 the witnesses during the litigation. I reviewed policies and
13 procedures, the conflict-of-interest policy, the whistleblower
14 policy, the employee handbook, their corporate governance
15 policies.

16 I looked at the -- Aronson's work papers, for example.
17 I looked at the depth and breadth that they did their work and
18 the areas that they looked at specifically as it relates to what
19 the opinions that I'm forming. I looked at the Bylaws, the
20 employee handbooks. I looked at the compliance and governance
21 refresher seminars. I looked at the Audit Committee, the
22 meeting -- the minutes of the Audit Committee meetings. So I
23 looked at a whole -- in addition to also consulting
24 professionally accounting guidelines in forming my opinions.

25 Q All right. We have heard from a few different

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Mehta - by Defendant - Direct/Ms. Rogers

1 witnesses about a concept called "materiality," and you used
2 that concept in your work; right?

3 A That's correct.

4 Q Can you tell the jury what that means from a financial
5 perspective and in layman's terms?

6 A Certainly. I recall Sonya Rowling testify in terms of
7 the size of the NRA.

8 When I looked at the financials from '15 to '21, and
9 just to get an overview of the size and depth and breadth of the
10 organization, you can see that the NRA's, you know, transactions
11 run at hundreds of millions of dollars. And in addition, the
12 NRA's a complicated organization in the sense that they have
13 multiple entities; right. So they have separately incorporated
14 entities that carry out different purposes.

15 You've heard the NRA being what's called a (c)(4)
16 organization which is the advocacy organization. You have heard
17 that they have a (c)(3) organization which is the foundation
18 that carries out different charitable activities. So they have
19 multiple organizations that have been established to carry out
20 various purposes, and those organizations are consolidated from
21 a financial reporting purposes into what's called consolidated
22 financial statements.

23 So someone takes several or multiple different trial
24 balances, ledgers and pulls out information together to give you
25 an overall picture of the total organization.

KM

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Mehta - by Defendant - Direct/Ms. Rogers

1 So when you take an organization like the NRA, the
2 concept of materiality is the under -- is the undertone of the
3 work that we as auditors do.

4 So when we render an audit opinion, we are not saying
5 that the financial statements are 100 percent accurate. What we
6 are saying is that the financial statements are fairly presented
7 in accordance with generally accepted accounting principles,
8 that they are materially stated correctly.

9 So when we talk about that it's possible that you can
10 -- you could have an error, for example, ranging in the hundreds
11 of thousands, but that would not prevent an auditor from
12 rendering what's called an unmodified opinion or a clean opinion
13 on those financial statements.

14 So from a materiality standpoint, it's one of the
15 concepts that you have to look at when you evaluate the
16 financial statements of any organization.

17 Q And if we move ahead. Now that we have talked about
18 how accountants calculate materiality, how would you think about
19 it as a layman and how did you think about it when you were on a
20 not-profit Board?

21 MR. CONLEY: Objection to leading, your Honor.

22 THE COURT: Also, his -- he is testifying as an
23 accounting expert, not as an expert in director's duties.

24 MS. ROGERS: That's fair. I did also say as a
25 layman. I don't know if he is allowed to give lay testimony

KM

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Mehta - by Defendant - Direct/Ms. Rogers

1 at the periphery of his expert testimony.

2 THE COURT: Materiality is an accounting principle
3 which is that's what he is here for, but he can explain it
4 to the jury in layman's terms.

5 Q Can you explain to the jury in layman's terms?

6 A Certainly. So in layman's terms, materiality as this
7 slide indicates, it's where are the financial statements
8 misstated to the point where a user of a financial statement
9 would come to a different conclusion, you know, had an error not
10 been present.

11 So if you talk about the NRA and you're talking about
12 revenues of three to \$400 million, if the revenues were off by
13 let's say a million dollars, would that cause you to come to a
14 different conclusion than if that error was not present.

15 You heard Mr. Plotts testify that, you know, we also
16 look at materiality in a qualitative manner. So if that million
17 dollars would have changed the debt covenant in where there
18 would have been default of their debt covenant, from a
19 qualitative standpoint, yes, that would be material. So you
20 have got to take a look at materiality from a quantitative as
21 well as a qualitative standpoint.

22 Q Let's talk now about the specific opinions that you've
23 reached, and I'd like to direct you back to the discussion about
24 related-party transactions.

25 Can you explain to the jury the opinion you reached

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1 about the NRA's controls on related-party transactions and walk
2 the jury through the basis for your opinion.

3 A Certainly. So as I mentioned earlier, when we look at
4 conflict of interest and related-party transactions, we ask for
5 a number of items when we are performing a financial statement
6 audit. So one being that does the organization have a
7 conflict-of-interest policy.

8 In my experience having served on audits of hundreds of
9 non-profit organizations, I'm familiar with -- I can distinguish
10 between what's a fairly robust policy versus one that's lacking
11 in some key principles that I would expect to see in a policy.
12 So that's one area that we looked at.

13 Also, do they obtain conflict-of-interest statements
14 from their Board members, officers and senior management
15 typically on an annual basis? So does that process take place?
16 Who is in charge of that process? How are the results of those
17 questionnaires handled and disseminated to the Board and other
18 members of governance?

19 And then also how is that process documented. I would
20 expect to see that process documented in the minutes of the
21 audit committee's meetings that, you know, conflict-of-interest
22 policy statements were circulated. These were the results that
23 were -- that we obtained. These were the conflict -- potential
24 conflicts that were reported to the -- within this particular
25 case, the Office of General Counsel, and how are we going to

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1 address those particular conflicts that may have been mentioned.

2 In addition, what type -- what does the organization do
3 to communicate that policy and what do they do to insure that
4 individuals are following through on that policy.

5 So the NRA, for example, I looked at a number of these
6 governance and compliance seminars that I believe you have seen
7 from different experts along the trial. And in those seminars,
8 there is a constant focus on insuring that the Board members as
9 well as members of senior management understand and know how --
10 what a potential conflict could look like, how to identify, what
11 is the reporting mechanism once you have identified such a
12 conflict and then, you know, what's the protocol for handling
13 those types of conflicts.

14 So I looked at all of those factors in determining that
15 the NRA does have a robust conflict-of-interest policy process
16 in place.

17 (Continued on the following page.)

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1 Q Let's move ahead and talk a little bit about those
2 seminars.

3 You said you've audited hundreds of not-for-profits in
4 your career. How would you compare the NRA's seminar conflict
5 education program to most of not-for-profits you've seen?

6 A It's certainly more robust than many of my existing
7 clients. Most of my clients do have a conflict-of-interest
8 policy in place -- I mean, all of my clients have a
9 conflict-of-interest policy in place. They do circulate
10 conflict-of-interest questionnaires to board members, members of
11 senior management and officers. They disseminate those results
12 and discuss those within the board.

13 But I don't recall any of my existing clients doing
14 these types of seminars or a constant training on a periodic
15 basis to those constituents and ensure and reinforce that
16 there's a policy in place and what is the protocol for adhering
17 to the policy, and what happens if you have a potential conflict
18 that you want to report.

19 So, certainly, the NRA has a more robust policy in
20 place.

21 Q Mr. Mehta, I want to situate your analysis on a
22 timeline. When you were analyzing NRA's conflict policies and
23 its other documents and practices, did you look at the NRA
24 before or after the attorney general's lawsuit?

25 A So, the years of my -- the focus of my analysis related

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1 to 2019 and 2020.

2 Q So before and after?

3 A That's correct.

4 Q Let's talk about -- well, strike that.

5 You mentioned that a financial statement can be off by
6 a million dollars and if it's a billion dollar company that
7 might or might not be material. Separate from those kinds of
8 misstatements, are auditors required to look -- are auditors
9 like you required to look at related-party transactions
10 specifically?

11 A Yes. I mean, we're -- again, we're required to look at
12 related-party transactions. So, typically, what we'll do is
13 obtain -- we'll we ask management for a listing of their
14 related-party transactions. So, we'll say can you provide us
15 with a list of your related-party transactions, and we'll go
16 through those and test those transactions to ensure that, one,
17 they were reviewed, they were approved. That they appear to be
18 have been carried out as arms-length transactions similar to
19 what the organization would obtain if they had gone out into the
20 marketplace for similar goods or services.

21 And then we would maintain a heightened level of
22 professional skepticism so that as we're carrying out our work,
23 if we happen to notice a payment made to a vendor, for example,
24 that we recall seeing it on a related-party questionnaire that
25 was disclosed as a related-party, we want to make sure that

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1 particular transaction appeared on the related-party transaction
2 list that we obtained from the client.

3 Q You talked about analyzing whether the company is
4 getting the same terms from a related party that it would get if
5 it went out into the marketplace.

6 Can you talk a little bit more about that analysis?

7 A Certainly. So, in looking at the related-party
8 transactions, we would do an assessment to determine whether,
9 again, those transactions were arm's length.

10 Again, drawing on our professional experience, if we
11 see that there's a transaction that causes a cause for concern,
12 we would certainly go out --

13 MR. CONLEY: Objection, your Honor. This is
14 outside the scope of his report. Mr. Mehta didn't perform
15 the analysis.

16 MS. ROGERS: There's an entire section in his
17 report.

18 THE COURT: Right now he's just talking about what
19 he would do in an audit of a different company. We haven't
20 really gotten to any of his opinions about whether he did
21 any of this for the testimony about this case, yet.

22 Q Mr. Mehta, let's talk about what you looked at in this
23 case in reaching your opinion of the NRA was robustly handling
24 related-party transactions, what items did you analyze?

25 A So, again, I analyzed -- as I mentioned -- the Audit

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1 Committee reports. I also looked at as I mentioned their
2 conflict-of-interest policies and procedures. I looked at the
3 questionnaires. I obtained a list of questionnaires for
4 particular years that were my areas of focus and emphasis.

5 I looked at the -- the auditor financial statements, so
6 I think that's one area I want to talk about.

7 So, it's Generally Accepted Accounting Principles of
8 the Financial Accounting Standard Board is the body that
9 promulgates accounting principles, so that's the FASB, F-A-S-B.

10 The American Certified Public Accountants promulgates
11 the audit standards for auditors when we carry out our
12 procedures. It is the AICPA. It is the AICPA that promulgates
13 the audit standards in terms of how the auditors carry out their
14 procedures.

15 So, the disclosures that go into the financial
16 statements are promulgated by the FASB under Generally Accepted
17 Accounting Principles, and it's management that's responsible
18 for the financial statements. The auditors are not responsible
19 for the financial statement. The only thing that belongs to the
20 auditors is that one 2-to-3 page opinion at the beginning of the
21 financial statement that says we have audited.

22 That's the report that belongs to the auditors; but the
23 financial statements and the notes to the financial statements
24 belong to the management.

25 So, it's management that makes the disclosure of the

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1 related-party transactions in the financial statements. That's
2 one of the requirements if you have related-party transactions,
3 that you must disclose -- you must have some level of disclosure
4 about the related-party transactions. So, when I reviewed the
5 NRA's financial statements, it is clear that there is reference
6 to the fact that there are related-party transactions with board
7 members and other insiders.

8 So, when the Aronson firm looked at the financial
9 statements, they concurred that, for example, and I felt that
10 the related-parties disclosure were also appropriate in terms of
11 the NRA had put forth.

12 The other thing I also looked at was Form 990, and kind
13 of backing up a little bit. So the reader knows that there are
14 related-party transactions, they can always ask the NRA can we
15 get more information on what those related-party transactions
16 are. If you go to the Federal Form 990, the Form 990 goes into
17 much, much more detail about related-party transactions.

18 So, if you take a look at the financial statements,
19 that will cue you that there are related-party transactions with
20 the organization; and if you go to the 990, it will give you a
21 lot more detail as to what those related-party transactions are.

22 Q Thank you.

23 A So, combination of all those documents.

24 MR. CONLEY: Objection, narrative answer.

25 THE COURT: Yeah, it might be better to do question

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1 and answer format.

2 MS. ROGERS: Okay.

3 Q Mr. Mehta, I'll try to ask slightly narrower questions.

4 Did you look at the tools and rules the NRA has in
5 place to make sure information about these transactions filters
6 where it can be disclosed?

7 A I did.

8 Q Let's talk about what you found narrowly.

9 A Collectively, when I looked at the different tools that
10 I described in my testimony, I formed the conclusion that the
11 NRA in fact does have robust conflict-of-interest and
12 related-party transactions process where the transactions that
13 it engages in that are deemed to be related party have been
14 disclosed in their financial statements as well as their Federal
15 Form 990 and have been documented in their Audit Committee
16 meeting minutes.

17 Q Do you have a few more slides on what you looked at at
18 the accounting standards that you applied?

19 A So, this is an example for a -- it's an example of
20 related party financial disclosure question, FDQ, that the NRA
21 circulates to board members and members of senior management.

22 This is -- there's actually two pages missing. It is a
23 five-page document. Most of my clients would typically have a
24 two pager, for example, for their related-party transactions
25 conflict-of-interest questionnaire. In NRA's case, it is a

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1 five-page document. It is extremely robust in terms of the
2 types of transactions that it inquires about.

3 And, certainly, there's space on the forms to provide
4 further detail if you answered yes to any of the questions that
5 are asked on the questionnaire.

6 Q All right, and let's talk a little more just briefly
7 because I know you've already gotten into this somewhat about
8 what accountants and auditors like you do when you dig into this
9 issue?

10 A So, we -- we go through the process of evaluating the
11 client's related-party transactions. As I mentioned earlier, we
12 look at the policy. We look at the process that they utilize to
13 educate the board and members of the senior management about the
14 policy. We also look at the results of the questionnaires.

15 We maintain a heightened level of skepticism and
16 professionalism to the extent that we uncover any transactions
17 that have not been reported by the members of the board or
18 members of senior management in order to come to conclusions,
19 and should there be any issues or concerns we would certainly
20 communicate them in what we call a management letter to those
21 with charge with governance indicating any issues we found in
22 performing our work.

23 Q You heard Mr. Plotts testify about doing something
24 called testing, testing related-party transactions.

25 Can you tell the jury what that means?

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1 A Certainly. So, as I mentioned we would obtain a
2 listing of related-party transactions from management, and we
3 would obtain those transactions and then we would pick a sample
4 of those transactions and vouch them to the underlying
5 transactions, supporting documentation, were there review and
6 approval processes in place for the transaction and also look at
7 the Audit Committee minutes to see if that transaction was
8 discussed and deliberated in the minutes of the meeting.

9 Q Let's talk about whistleblowers. You also looked at
10 the NRA's whistleblower controls; right?

11 A That's correct.

12 Q And can you tell the jury what you found and tell the
13 jury concisely, if you can, and then we'll go into each one, the
14 basis for that opinion.

15 A Sure. So, when I looked at the NRA whistleblower
16 policy, my first question was where can I find the policy. And
17 it's outlined in a number of areas.

18 So, for example, it is in their policy manual. It is
19 in their Employee Handbook. It is in their intranet, which is
20 within the company itself. If you go to the NRA external
21 website, you'll see a statement about whistleblower policy
22 directly on their website; so anybody, anyone in the world, for
23 example, can take a look at their whistleblower policy. It is
24 also embodied in their statement of corporate ethics.

25 Another place you can find is also another part of

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1 their compliance and governance refresher seminars that we've
2 been talking about. So, that's a key point in that particular
3 seminar where they reinforce what the policy is, and we'll go
4 into more detail in terms of the points that they cover in that
5 policy. But, again, it is embodied in those particular seminars
6 that are given. And then the Audit Committee and the Office
7 General Counsel, also what their role and responsibilities are
8 that relates to the organization's whistleblower policy.

9 Q You mentioned that your analysis covered both 2019 and
10 2020. Did you notice any revisions to whistleblower policy
11 during that time?

12 A I do recall seeing a document where the NRA enhanced
13 their whistleblower policy where they laid out more detail the
14 anonymity clause, and we'll talk about how they've added that
15 particular clause about how whistleblower claims can be made
16 anonymously.

17 Q Even before 2020, how did the NRA's whistleblower
18 protections compare to those you've seen in other
19 not-for-profits?

20 THE COURT: By "before" you mean 2019?

21 MS. ROGERS: Well, yes, so in 2019 before 2020
22 because his analysis covered both years.

23 THE COURT: Right, but when you say before, that's
24 a long period of time. You mean he looked at 2019?

25 MS. ROGERS: Right -- well, the

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1 whistleblower policy, yeah.

2 Q So for the whistleblower policy you saw in 2019, the
3 one before they laid -- added more details to the anonymity
4 clause, how did that 2019 policy compare to policies that other
5 not-for-profits you audited?

6 A I found the NRA's whistleblower policy robust. When I
7 look at a whistleblower policy, we look for a couple of
8 different factors.

9 One, is that one, obviously, they have to have a policy
10 to begin with; but does their statement in there that says
11 whistleblower policies can be made anonymously.

12 MR. CONLEY: Objection, your Honor. This is
13 factual narrative and doesn't discuss any analysis MR. Mehta
14 did.

15 MS. ROGERS: He's comparing the policy to other
16 policies he looked at in his capacity as an expert.

17 THE COURT: Overruled.

18 By the way, we lost the real time completely. It
19 is going to take awhile. It already crashed. So, we're
20 just going to have to listen for awhile. Go ahead.

21 Q So, Mr. Mehta, in the documents you reviewed, did you
22 form an understanding as to whether anonymous whistleblowers
23 even before the NRA revised its policy were coming forward at
24 the NRA?

25 A That's my understanding.

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1 Q All right, let's talk about --

2 THE COURT: Okay, I -- you just asked him a factual
3 question about --

4 Q Well, what was your understanding based on?

5 A So, again, looking at Audit Committee minutes in 2019,
6 I saw evidence that whistleblowers were coming forward on an
7 anonymous basis.

8 Q And let's talk more about the technical accounting
9 standards that govern whistleblowers and why and how an
10 accountant would consider this.

11 So, are there any specific accounting standards you
12 consider in your practice that you brought to bear here on your
13 whistleblower policy analysis?

14 A Sure. So, the whistleblower policy is kind of part and
15 parcel with the auditor's responsibility for assessing fraud in
16 a financial statement audit. So, as auditors, we're not --
17 we're not performing a financial statement audit for the purpose
18 of detecting fraud, but we have to be aware that the possibility
19 of fraud exists.

20 So, that's the guidance that we look at in performing
21 with financial statement audits. So, a key cornerstone of
22 having -- a key cornerstone of minimizing the possibility of
23 fraud in an organization is having an effective whistleblower
24 policy.

25 So, if an organization has an effective whistleblower

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1 policy, that gives us comfort that the risk of fraud or that
2 minimizes the risk of fraud. It's impossible to have an
3 environment where you'll never have any fraud, right? But
4 you're always trying to minimize the risk of fraud, so having
5 effective whistleblower policy does that.

6 So, when we look at the whistleblower policy, what is
7 the policy, what is the reporting mechanism for the policy, what
8 is the -- are there -- and one of the key cornerstones is to
9 having making sure that you have anti-retaliation clauses so
10 that whistleblowers are not retaliated against if they bring
11 forward any complaints that they have.

12 And then what is a reporting mechanism? Is it -- there
13 should be a reporting mechanism directly to the Audit Committee,
14 for example, the Office of General Counsel which is the case in
15 the NRA's practices, that those matters are brought forward to
16 the Office of General Counsel and, ultimately, to the Audit
17 Committee.

18 The whistleblower matters were documented in the
19 minutes of the Audit Committee meetings as to how they were
20 addressed. So, my conclusion on the NRA's policies when I look
21 at the audit standards in terms of our response is that the NRA
22 is meeting those standards.

23 Q You mentioned looking for an anti-retaliation clause,
24 and you also mentioned looking at both the 2019 and 2020
25 versions of the NRA's policy. Focussing on the 2019 policy, did

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1 you form a view about the robustness of the NRA's
2 anti-retaliation mechanism?

3 A I did. So, I mean, that particular anti-retaliation
4 clause is present in the 2019 policy. I can see from the
5 minutes, the Audit Committee meetings that those items were
6 discussed, that whistleblower protections were offered to those
7 individuals that came forward.

8 Certainly, that's a point that's emphasized in the
9 governance and refresher seminars they offer periodically, and I
10 was comfortable with the fact that those clauses were present.

11 Q The Audit Committee meetings aren't always very
12 detailed about whistleblowers; are they?

13 A That's correct.

14 Q Did that concern you?

15 A What I look for is the fact that the item was
16 discussed. Sometimes, again, they could be very sensitive
17 matters and discussions so many times those specifics of the
18 whistleblower matters are discussed in executive session. There
19 might be confidentiality issues at hand and that, therefore,
20 you would not see the details of what investigation was
21 documented.

22 MR. CONLEY: Objection, to factual narrative, might
23 occur.

24 MS. ROGERS: He's providing an expert view on
25 whether as an auditor --

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1 THE COURT: Look, I've done this with each expert.

2 Experts base their or have to base their opinion on
3 their review of documents and the like. This is not a fact
4 witness. He doesn't have firsthand knowledge of what is
5 going on at the NRA on a daily basis. He's basing it on the
6 same kind of evidence that you're looking at.

7 So, at the end, as I said, you evaluate all the
8 experts; and if you consider that the factual basis that
9 they're using you disagree with or you think that's not
10 really the way it worked, you can use that in considering
11 with this expert or any of the experts.

12 So, some of the experts more frequently say
13 explicitly that it is based on things that they have read or
14 things that they have heard; but you should assume that
15 unless you hear otherwise, Mr. Mehta is not a fact witness.

16 So, he's not testifying about facts, although it
17 sometimes sounds like it. He's just giving you his
18 understanding of the evidence.

19 Ultimately, it is up to you.

20 Q Thank you, Mr. Mehta. In the Audit Committee minutes
21 you read that the jury is going to see, too, did you have any
22 concerns or opinions about the level of detail or lack of detail
23 concerning whistleblowers?

24 A I did not.

25 Q Can you explain to the jury how you look at those

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1 documents and how you form that opinion?

2 A So, as I stated earlier, I'm looking to see is there
3 evidence in the Audit Committee minutes that whistleblower
4 matters are discussed and deliberated.

5 That's certainly laid out in their policies and
6 procedures, so I'm certainly checking to see are they in fact
7 carrying out what they have documented to be their policies and
8 procedures.

9 So, I did see evidence in the Audit Committee minutes
10 that their whistleblower matters were discussed. They,
11 certainly, may not have gotten into detail as far as the full
12 extent of the investigation that was conducted; but, certainly,
13 there was evidence in the minutes that whistleblower matters are
14 being discussed.

15 Q All right, let's talk now about the completeness and
16 accuracy of the NRA's filings, and I want you to explain the
17 opinion you formed based on the evidence and the basis for that
18 opinion.

19 A So, as an auditor, I reviewed their financial
20 statements, again looking at the disclosures that were made in
21 the financial statements. There was nothing that jumped out at
22 me that wouldn't cause me concern that there were significant
23 disclosures that were missing or inadequate.

24 Just taking a step back, in New York State what's
25 called it's called a CHAR500 filing. So, the CHAR500 form,

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1 itself, is a fairly simple form. It asks a bunch of
2 administrative questions. But the crux of that filing package,
3 if you will, is to submit the audited financial statements
4 and the copy of the Federal Form 990 that accompanies the
5 CHAR500.

6 So, that forms the packet -- the reporting package
7 that's provided to the New York State Attorney General's
8 Charities bureau on an annual basis.

9 So, I reviewed that package, the reporting package. I
10 found the financial statements to be complete. There was
11 nothing when I reviewed those financials that caused me concern.

12 I, also, reviewed the Federal Form 990 for those
13 particular years and found them to be complete.

14 I, also, consulted with other experts within my firm as
15 a second look to see if there was anything that raised red flag
16 concerns to them, and they communicated back to me that there
17 was nothing that they saw out of the ordinary in the
18 organization's 990 filings.

19 Q All right, I think we have a couple more screens on
20 this, including one discussing the C-Trac software that the NRA
21 used to prepare its 990.

22 In your experience, is that a robust way in preparing a
23 tax form?

24 A So, as part of our audit and tax preparation process we
25 look to see what is the organization's process for preparing

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1 their financial statements as well as their Federal Form 990.
2 I would expect to see that there are sound, robust processes in
3 place in terms of review by the management.

4 Once those documents are ultimately prepared, the
5 Federal Form 990 is typically -- if we're engaged to prepare the
6 990, obviously, we'll do that; but in the NRA's case, they
7 utilized the C-Trac software to prepare their own Federal Form
8 990 and had utilized their external auditor in a consulting
9 fashion.

10 So, I looked at the process that the NRA undertakes to
11 prepare, for example, their Federal Form 990. Based on the
12 documents that were provided to me and testimony that was
13 provided by John Frazer, Sonya Rowling. I understand that
14 that's a coordinated effort between the office of General
15 Counsel, the CFO and the Financial Services Division. And they
16 also used outside tax counsel to review the Form 990 for
17 completeness. They also utilized their independent auditor,
18 Aronson, who provides consulting advice so if they have
19 questions, to answer a particular question --

20 MR. CONLEY: Objection, your Honor, a narrative.

21 The question was about C-Trac software.

22 MS. ROGERS: The question was completely
23 appropriately framed, and the witness is providing the basis
24 for his opinion.

25 THE COURT: Yeah, there's still a disconnect

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1 between the scope of questions and the scope of answers.

2 Direct there's a fair amount of leeway, but it's a little
3 hard to follow.

4 Q Let's go back to the C-Trac software. You would agree
5 with me that the C-Trac software doesn't prevent anyone from
6 lying on their tax return; right?

7 MR. CONLEY: Objection, leading.

8 THE COURT: Overruled.

9 Q It wouldn't prevent you from lying, from intentionally
10 concealing information; right?

11 A No. The C-Trac software relies on inputs; and as
12 testimony was given, there are crosschecks within the software
13 so if you answered a particular question -- I believe Ms. Cullen
14 talked about the governance questions. So, if you answered yes
15 on a particular question, it would prompt you that you must fill
16 out a supplemental schedule. So if you failed to fill out a
17 supplemental schedule, the software would not let you validate
18 the tax returns.

19 So, by itself, it wouldn't allow any type of lying.

20 Q Now, you had a slide earlier about how a form can be
21 inconsistent without being it from an audit perspective
22 materially misleading.

23 Can you describe whether and to what extent that's the
24 kind of thing the software would solve?

25 A I'm sorry, repeat the question again?

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1 Q Sure. So, you had an earlier slide that talked about
2 inconsistencies in a document. Can you describe whether that is
3 the kind of thing the software would address?

4 A Certainly. So, as I mentioned earlier that the
5 software has built-in checks. So that the way you answer the
6 questions or you fill out a particular number on a particular
7 line item would force you to complete the other required
8 schedules or line items so that would, itself, would prevent any
9 type of inconsistencies in the reporting within the document.

10 Q Let's talk about the Audit Committee.

11 Can you describe for the jury the facts and documents
12 that you analyze relating to the NRA Audit Committee and how it
13 does its job?

14 A Sure. So, as independent auditors, we have a direct
15 line of reporting to the board and, typically, the Audit
16 Committee. So, we work for the board and the Audit Committee
17 and not management.

18 So, we have a collegial relationship with members of
19 management, but that's not who ultimately hires us to perform
20 the audit of the financial statements. It is the Audit
21 Committee of the board that hires us.

22 So, how does the Audit Committee carry out its
23 responsibilities? Typically, there's an Audit Committee
24 charter. So in that charter it outlines what responsibilities
25 the Audit Committee has for financial reportings. The Audit

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1 Committee has responsibility for the internal controls of the
2 organization. So, that's the responsibility that they're taxed
3 with.

4 They also are responsible ensuring that the
5 organization complies with the various laws and regulations that
6 it has to adhere to; and then, ultimately, it has -- as I
7 mentioned -- overall responsibility for the external audit.

8 Q You heard Mr. Plotts testify yesterday that as part of
9 the special procedures he did after the attorney general's
10 lawsuit, he looked at --

11 MR. CONLEY: Objection, characterizing testimony.

12 THE COURT: She can --

13 MS. ROGERS: I can abbreviate the characterization
14 slightly, but I'm trying --

15 THE COURT: You didn't get to it yet, so it is a
16 premature objection.

17 MS. ROGERS: I'm prematurely accommodating him.

18 THE COURT: You're just assuming.

19 Q You heard Mr. Plotts testify yesterday about special
20 procedures done after they filed their lawsuit; right?

21 A That's correct.

22 Q And you heard him testify that one of those special
23 procedures involve looking at whether the Audit Committee was
24 doing its job under its charter; right?

25 A That's correct.

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1 Q Did you look at similar issues in forming your expert
2 opinion?

3 A Yes. So, in reviewing the work that was done by
4 Aronson, I looked at the extent that they performed their
5 procedures and how that would compare to procedures that I would
6 perform where I would perform an audit of an organization.

7 So, I was comfortable with the -- by the way, what
8 Aronson refers as special procedures are really just extended
9 procedures that they performed in light of --

10 MR. CONLEY: Objection, your Honor.

11 THE COURT: The witness is not here to give an
12 opinion about the quality of Aronson's work. He's here to
13 give you his opinion based on his own work.

14 Q Let me ask this. I won't ask about the quality of
15 Aronson's work; but we did hear cross-examination yesterday
16 about the difference between a financial audit with special
17 procedures, which is what Aronson did, and an internal controls
18 audit.

19 Do you recall that?

20 A I do.

21 Q If you were advising the NRA, would you tell the NRA to
22 do an internal control audit?

23 MR. CONLEY: Objection.

24 THE COURT: Overruled.

25 A So, the NRA complies -- currently complies with what

BP

3774

Mehta - by Defendant - Direct/Ms. Rogers

1 they're required to do, which is performing a financial
2 statement audit. Under New York State they're required to
3 perform a financial statement audit and also file a Federal Form
4 990.

5 There is no requirement under New York State to perform
6 any type of an internal control audit. Organizations may elect
7 to do that, should they wish to get an additional level of
8 comfort, organizations may wish to incorporate an internal audit
9 function within the organization, but there's certainly not a
10 requirement.

11 Given the -- given the robust policies of the
12 procedures that the NRA has placed, the different groups that
13 work together during the NRA, for example, the Financial
14 Services Division, the CFO, the treasurer, the office of General
15 Counsel, use of outside consultants; it is my opinion the NRA
16 has a robust internal control structure in place already that
17 would not necessitate them to perform a separate internal
18 control audit.

19 Q Let's talk about the NRA's commitment to corporate
20 governance. That's your opinion number 5.

21 You've audited hundreds of non-profits. Without
22 revealing confidential details about any other client, where
23 would you say the NRA ranks in its commitment to corporate
24 governance among the non-profits you've looked at and I'll tell
25 you to focus that ranking on the time period you looked at which

BP

3775

1 started before their lawsuit in 2019 and into 2020?

2 A So in 2019, again, based on my experience having
3 performed financial statement audits of hundreds of non-profits
4 in my career and looking at the breadth and depth of the
5 procedures and policies that the NRA has in place, in 2019 I
6 would probably put their governance structure in the top
7 25 percent.

8 Ones this litigation was brought on by the AG's office
9 and the improvements that they made to their environment in
10 2020, I would say probably in the top 10 to 15 percent.

11 Q And then listening to the trial which has included
12 testimony about improvements after 2020, would that ranking
13 change?

14 A I would still put them in the top 10 to 20 percent.

15 Q You mentioned earlier that at the end of the audit you
16 send a management letter if you want to communicate certain
17 issues to management; right?

18 A That's correct.

19 Q And yesterday you saw Mr. Plotts cross-examined about a
20 management letter he issued, which was Plaintiff's Exhibit 48.

21 MS. ROGERS: Can you put that up.

22 (Displayed)

23 (Continued on next page)

24

25

BP

3776

Mehta - by Defendant - Direct/Ms. Rogers

1 Q All right. Let's turn to Page 5 of this exhibit.

2 Did you review this management letter in forming your
3 opinion?

4 A I did.

5 Q As part of the basis for your opinion?

6 A I did.

7 Q You heard testimony yesterday about significant
8 deficiencies, and I want to know if you disagree with Aronson on
9 any of these.

10 A So when we think about a management letter, it's one of
11 the documents that we issued.

12 MR. CONLEY: Objection, your Honor. This isn't --
13 this is beyond the scope of his report.

14 MS. ROGERS: He is responding directly to testimony
15 he heard yesterday.

16 THE COURT: Well, you're asking him whether he
17 disagrees with the conclusions in this document which he's
18 had for his report, so sustained.

19 Q Okay. All right. Well, I can't ask that because
20 that's beyond the scope of your report, but in addition to
21 management letters, did you review other communications issued
22 by the auditors to the NRA?

23 A Yes. So in addition to the management letter, I
24 reviewed their required communication with those charged with
25 governance. So that's a letter that we typically issue in every

KM

3777

Mehta - by Defendant - Direct/Ms. Rogers

1 audit, and what that letter does is outlines the auditor's
2 responsibilities, you know, what we came across from the results
3 of the audit, whether we had disagreements with management,
4 whether there were any audit adjustments that we came across
5 that were either booked or passed upon by management.

6 We talked about our independence. We talked about the
7 accounting principles that the organization utilized and what
8 are your thoughts on those accounting principles. So it's
9 basically recap to the Audit Committee of the work that we have
10 done and the results of our audit.

11 Q And in your career as an auditor, you have delivered
12 these communications hundreds of times; right?

13 A That's correct.

14 Q In reviewing Aronson's communications to the Audit
15 Committee and the Audit Committee's response, how would you rank
16 the NRA's responsiveness to its auditors concerning relative to
17 other non-profits that you have seen?

18 MR. CONLEY: Objection. Outside the scope of his
19 reports.

20 MS. ROGERS: It's not explicitly in his report. I
21 would say it's within the general area that he's analyzing.
22 The NRA's commitment to corporate governance, this is
23 certainly one of the benefits of that.

24 Q Do you need me to ask it again?

25 THE COURT: Overruled.

KM

3778

Mehta - by Defendant - Direct/Ms. Rogers

1 A Yes.

2 Q You have hundreds of times at the end of your audit
3 issued management letters and governance letters, and you have
4 talked those over with management and audit committees; right?

5 A That's correct.

6 Q And they respond to your concerns to some degree;
7 right?

8 A That's right.

9 Q So looking at the documents, looking at what Aronson
10 told the NRA and how the NRA responded, how would you rank the
11 NRA's responsiveness, it's Audit Committee relative to other
12 non-profits you've seen? How would you rank their
13 responsiveness to the concerns their auditors raised?

14 A So the NRA has been responsive to recommendations and
15 suggestion by their audit firm.

16 Even when I compared 2019 to 2020, you can see the
17 volume of comments that the auditors provided to management come
18 down. So the way the comments are phrased is that the auditors
19 provide a recommendation and then management is given an
20 opportunity to respond. How are they going to address those
21 recommendations? And we typically like to give the client about
22 a year to address those hopefully for the following year that
23 those comments have been addressed. And when I look at the
24 NRA's management letters, I can see an effort by management to
25 address the comments and implement the best practice

KM

3779

Mehta - by Defendant - Direct/Mr. Fleming

1 recommendations by the auditors.

2 Q And how do those efforts compare like percentage-wise
3 to other non-profits?

4 A Again, I would put them in the top 15 to 25 percent.

5 MS. ROGERS: Thank you. Pass the witness.

6 THE COURT: Okay. Any other direct testimony?

7 MR. CORRELL: Not here, your Honor.

8 MS. COUTU: No your Honor.

9 MR. FLEMING: Just a couple of questions.

10 CROSS-EXAMINATION

11 BY MR. FLEMING:

12 Q Mr. Mehta, good morning. I just wanted to see if I
13 understood a couple of things. The financial statements you
14 testified belong to management; is that right?

15 A That's correct.

16 Q All right. So the auditor doesn't create the financial
17 statements?

18 A That's correct.

19 Q They just audit them.

20 A That's correct.

21 Q Okay. And when an auditor gives a clean opinion, is
22 that in any way a commentary on the care and competence of the
23 NRA's professionals who put it together?

24 MR. CONLEY: Objection. Leading.

25 THE COURT: Let's -- overruled on this one.

KM

3780

Mehta - by Defendant - Cross/Mr. Conley

1 A So when an auditor gives an unmodified or clean
2 opinion, there is some level of comfort that the auditor -- the
3 public can take that the financial statements were prepared in
4 accordance with generally accepted accounting principles and
5 thereby draw a conclusion that there is competency among the
6 management group who prepared those financials.

7 Q I can't recall if your testimony is that you were an
8 auditor at some point. Were you?

9 A I am still an auditor.

10 Q Okay. And do you derive comfort from a company's
11 financial statements after an audit?

12 A I do.

13 Q Okay. Second question I have and last question, and
14 I'm not sure if I got it right. But you said in 2019 the
15 governance of the NRA you viewed was in the top 25 percent of
16 companies.

17 A In my opinion, yes.

18 Q And if the New York AG began its investigation in 2019,
19 would that statement cover that period of time?

20 A Yes.

21 MR. FLEMING: Thank you.

22 THE COURT: Any cross-examination from the State?

23 MR. CONLEY: Yes, your Honor.

24 CROSS-EXAMINATION

25 BY MR. CONLEY:

KM

3781

Mehta - by Defendant - Cross/Mr. Conley

1 Q Good morning, Mr. Mehta. Can you hear me?

2 A Good morning. Yes.

3 Q You were retained by the NRA to testify in this action;
4 correct?

5 A That's correct.

6 Q What's your hourly rate?

7 A 975.

8 Q How much has Marcum billed the NRA to date for your
9 services?

10 A I have billed -- my firm has billed approximately
11 \$400,000 to date.

12 Q Okay. If I understood your testimony, you are offering
13 the opinion that the NRA's sufficiently robust policies and
14 procedures in place detect and address conflicts of interest and
15 related-party transaction issues. Is that accurate?

16 A That's correct.

17 Q That opinion does not apply to policies in place of the
18 NRA before January 1, 2019; correct?

19 A That's correct.

20 Q And while you are saying that these policies are
21 sufficiently robust, you aren't actually offering an opinion on
22 whether the opinions were violated; correct?

23 A That's correct.

24 Q So while you're telling the jury today that the NRA's
25 conflict of interest and related-party transaction policies are

KM

3782

Mehta - by Defendant - Cross/Mr. Conley

1 sufficiently robust, you're in no way refuting or contesting
2 that there were persistent violations of these policies for
3 years; are you?

4 A I'm not drawing that conclusion.

5 Q And you are not offering any opinion whatsoever on
6 whether any of the NRA's internal policies have been violated;
7 correct?

8 A That's correct.

9 Q You also opined that the NRA established protocols for
10 handling whistle blowing; correct?

11 A That's correct.

12 Q You are not offering an opinion today that the NRA's
13 whistleblower program is actually operating effectively;
14 correct?

15 A That's correct.

16 Q And you admit that evaluating the effectiveness of a
17 whistleblower program is not within your expertise; correct?

18 A That's correct.

19 Q You also stated a couple of opinions about the NRA's
20 regulatory filings.

21 You didn't perform any of our own testing to verify
22 that any of the information the NRA reported in it's Form 990
23 was accurate and complete.

24 A I did not perform my own testing.

25 Q You also offer an opinion that the Audit Committee

KM

3783

Mehta - by Defendant - Cross/Mr. Conley

1 properly discharged its responsibilities with respect to the
2 NRA's outside auditors; correct?

3 A That's correct.

4 Q At the time that you were deposed in 2022, you had
5 never spoke with the Audit Committee members; correct?

6 A That's correct.

7 Q You never attended any Audit Committee meetings?

8 A That's correct.

9 Q You couldn't name any of the members of the Audit
10 Committee; right?

11 A No, I can name a member.

12 Q In your deposition in 2022, you could not; correct?

13 A I couldn't remember.

14 THE COURT: Little tiny bit slower on the
15 questions.

16 Q And when you were deposed in 2022, you couldn't recall
17 how many people served on the Audit Committee; correct?

18 A At that time, I probably didn't know exact number.

19 Q You're also offering the opinion that the NRA's
20 demonstrated a commitment to corporate governance and strong
21 internal controls.

22 A Correct.

23 Q You are not saying that the NRA demonstrated commitment
24 to corporate governance and strong internal controls in 2018;
25 correct?

KM

3784

Mehta - by Defendant - Cross/Mr. Conley

1 A That's correct.

2 Q Or in 2017?

3 A That's correct.

4 Q Or in 2016; right?

5 A That's correct.

6 Q And isn't it true that in offering this opinion, you
7 didn't actually apply any established standards or framework;
8 correct?

9 A Well, I consulted accounting guidance and relied on my
10 skills, knowledge and experience, education and training, but I
11 did consult accounting guidance in offering my opinion.

12 Q You were not actually applying any standards or
13 framework.

14 A That's not correct. I referred to accounting
15 guidelines in offering my opinions.

16 Q Do you recall being deposed in this action in 2022?

17 A I do.

18 Q And you swore an oath to tell the truth?

19 A I did.

20 MS. ROGERS: Jesse, could you please pull up Page
21 375, Lines 12 to 25.

22 Q I draw your attention to question: "You opine that the
23 NRA's demonstrated a commitment to corporate governance; is that
24 correct?"

25 "That's correct" is your answer.

KM

3785

Mehta - by Defendant - Cross/Mr. Conley

1 "Question: So what standards are you applying when
2 you make that statement?

3 I'm referring to the documentation that was
4 provided, the testimony that's been provided and my review
5 of the work papers that Aronson provided.

6 Question: Are there any standards or framework
7 that you're applying?

8 Answer: No."

9 You would agree that without enforcement, even the
10 best written policies are just words on paper; correct?

11 A That's correct.

12 Q And you're opining that the NRA's demonstrated a
13 commitment to corporate governance and strong internal controls
14 without having conducted any independent evaluation of whether
15 the NRA internal controls were actually followed; correct?

16 A That's correct.

17 Q You don't believe that misappropriating or misusing
18 funds is appropriate if it's below a certain monetary threshold;
19 do you?

20 A I'm sorry. Can you repeat the question?

21 Q I will ask it differently.

22 Diverting charitable assets is wrong; correct?

23 A That's correct.

24 Q And you aren't opining that misusing charitable funds
25 is okay if it's below a certain amount; correct?

KM

3786

Mehta - by Defendant - Redirect/Ms. Rogers

1 A That's correct.

2 MR. CONLEY: Pass the witness. Thank you.

3 THE COURT: Anything further?

4 MS. ROGERS: Just a bit more.

5 REDIRECT EXAMINATION

6 BY MS. ROGERS:

7 Q Mr. Mehta, you just testified that you didn't test
8 whether the NRA's good policies were actually being followed;
9 right?

10 A I didn't independently test them.

11 Q But in the course of your work as an auditor, do you
12 have to be alert for indications that the policies you look at
13 are being followed or disobeyed?

14 A Yes.

15 Q And in the documents that you looked at for the years
16 you looked at, did you see indicia that the NRA was letting its
17 policies be violated?

18 MR. CONLEY: Objection. Leading.

19 THE COURT: Well, it's not leading.

20 Q I am happy to rephrase.

21 THE COURT: I'm just trying to -- overruled. You
22 can ask.

23 Q In the document you looked at for the years you looked
24 at, did you see indicia that the NRA was letting its policies be
25 violated?

KM

3787

Mehta - by Defendant - Redirect/Ms. Rogers

1 A No.

2 Q Irrespective of whether there is a formal framework you
3 use every time in the ordinary course of your work as an
4 auditor, do you have to form opinions about companies'
5 commitment to governance?

6 A I'm sorry. Repeat the question.

7 Q Sure. In the ordinary course of your work as an
8 auditor, do you have to try to gauge whether or -- strike that.
9 I'm sorry.

10 In the ordinary course of your work as an auditor, do
11 you have to try to gauge whether the company you're auditing is
12 committed to good governance?

13 A Yes.

14 Q Why?

15 A Again, you know, with -- one of the areas that we
16 looked, and I think we talked about COSO Framework with one of
17 the expert witnesses, that one of the bases for sound internal
18 control environment would be to assess the tone at the top. So,
19 you know, commitment to corporate governance would be a factor
20 evaluating the tone at the top.

21 Q And even if there is no formal framework you're citing
22 every time you make that judgment, can you describe for the jury
23 whether that judgment impacts your ability to audit the
24 financials?

25 A I'm sorry. Again, repeat the question.

KM

3788

Mehta - by Defendant - Recross/Mr. Conley

1 MS. ROGERS: You know what, that's okay. Pass the
2 witness.

3 THE COURT: Okay. Anything further?

4 MR. CONLEY: Briefly, your Honor.

5 RECROSS-EXAMINATION

6 BY MR. CONLEY:

7 Q Mr. Mehta, you are an auditor; correct?

8 A That's correct.

9 Q In this case you didn't perform an internal control
10 audit; correct?

11 A That's correct.

12 Q And you didn't perform a financial statement audit;
13 correct?

14 A That's correct.

15 Q And you didn't test the work that the NRA's external
16 auditor Aronson performed; correct?

17 A I did not independently test the work.

18 THE COURT: Anything else?

19 MS. ROGERS: Nothing further.

20 THE COURT: All right, sir. You are free to step
21 down. Thank you.

22 So would now be a good time to break before the
23 next witness?

24 MS. ROGERS: Yes, your Honor. I think so.

25 THE COURT: Let's take a short break and then we'll

KM

3789

Blacker - by Defendant - Direct/Ms. Rogers

1 push on.

2 THE COURT OFFICER: All rise. Jury exiting.

3 (Whereupon, at this time the jury exits
4 the courtroom.)

5 (Whereupon at this time there was a recess taken.)

6 THE COURT: Have a seat. Let's get the jury. Who
7 is the next witness so they can get them ready?

8 MS ROGERS: So he is also an expert. He is our
9 last one, so he's here.

10 THE COURT: Just remember to talk clearly and
11 slowly.

12 THE COURT OFFICER: All rise. Jury entering.
13 (Whereupon, at this time the jury entered the
14 courtroom.)

15 THE COURT: Okay. Have a seat, please. Next
16 witness, Counsel.

17 MS. ROGERS: The NRA calls Bruce Blacker.

18 THE COURT: Good morning.

19 B R U C E B L A C K E R, a witness called on
20 behalf of the Defendant, after having been first duly sworn,
21 took the witness stand and testified as follows:

22 THE CLERK: State your name.

23 THE WITNESS: Bruce Leon Blacker, B-L-A-C-K-E-R.

24 THE CLERK: Thank you. You may be seated.

25 DIRECT EXAMINATION

KM

3790

Blacker - by Defendant - Direct/Ms. Rogers

1 BY MS. ROGERS:

2 Q Good morning, Mr. Blacker.

3 A Good morning.

4 Q Could you please introduce yourself briefly to the
5 jury.

6 A Yes. My name is Bruce Blacker. I'm a CPA. I'm
7 certified in financial forensics. And generally what I do is
8 provide consulting services to clients, and some of that
9 consulting services includes being an expert witness like I am
10 in this case today.

11 Q Can you tell the jury about your professional
12 credentials and experience in the fields of forensic accounting
13 and financial forensics?

14 A I have a slide. Let me just briefly explain my
15 background and why I'm here today.

16 I received my Bachelors in Accounting in 1989 and a
17 Master Degree from Brigham Young University.

18 After that I began working at what was then one of the
19 Big Eight accounting firms, KPMG. Today you will hear of the
20 Big Four accounting firms, and there was some consolidation. I
21 worked in their tax department and prepared tax returns.

22 After that I began working at Pricewaterhouse Coopers.
23 I was in their dispute analysis and resolution group, and what
24 the services that I provided there included an assessment of
25 financial documents in bankruptcy and insolvencies.

KM

3791

Blacker - by Defendant - Direct/Ms. Rogers

1 I did business valuations and forensic work, fraud
2 investigations where we began to do expert witness testimony.

3 You heard a lot about independence and objectivity with
4 accountants. Pricewaterhouse Coopers at the time, and I was a
5 partner there was one of the largest, if not the largest
6 accounting firm in the world. But as I said, I provided
7 consulting services including litigation consulting services.
8 And to maintain independence, it became very difficult for me to
9 have the world largest accounting firm doing tax work and audit
10 work and then me maintain my independence and provide consulting
11 work. So I had an opportunity to leave. And generally over the
12 last 20 years, I have either worked at an economic consulting
13 firm or a financial advisory firm, but I have continued to use
14 my accounting to provide these consulting services.

15 Q Now, we have heard that Pricewaterhouse Coopers used to
16 audit the NRA.

17 Just to be clear for the jury, you weren't part of the
18 Pricewaterhouse Coopers team that worked on the NRA.

19 A That's correct.

20 As I said, I was part of a consulting division. I
21 wasn't part of the audit division or the tax division. There is
22 others, but I will just divide it into those three categories
23 for this purpose.

24 Q We've heard about different kind of audits. We heard
25 from an external auditor Mr. Mehta, an internal auditor Mr.

KM

3792

Blacker - by Defendant - Direct/Ms. Rogers

1 Lerner and a forensic auditor a Mr. Hines who testified for the
2 Government.

3 What kind of audits have you done?

4 A So this is where sometimes speaking generally can be
5 misleading.

6 Often times I'm asked because I provide consulting
7 services, Are you an auditor. Because the general public, and I
8 think most people think of auditing as auditing the financial
9 statements, it wouldn't be uncommon for me to say, No, that's
10 not what I do. However, to an accountant, an audit means
11 different things. So as an accountant and as a consultant, I'm
12 often times asked do you conduct an audit of a contract, audit
13 for compliance, audit for those things.

14 So I just caution you when you hear "audit," it may not
15 be that there is an internal control audit or a financial
16 statement audit. There is also other types of audits.

17 Q You have done compliance audits; right?

18 A I have done compliance audits.

19 Q And forensic audits; right?

20 A And forensic.

21 For example, their are rules and regulations in the
22 healthcare industry as to what hospitals can charge insurance
23 companies and how that's billed.

24 So for example, I would go in and see if they were in
25 compliance with regard to that contract or two companies may

KM

3793

Blacker - by Defendant - Direct/Ms. Rogers

1 enter into a licensing agreement where royalties are due one to
2 another. I have audited those contracts to see if they are in
3 compliance with those contracts.

4 MS. ROGERS: I offer -- the NRA offers Mr. Blacker
5 as an expert in forensic accounting and financial forensics.

6 MR. CONLEY: No objection, your Honor.

7 THE COURT: Okay. He is admitted for that purpose.

8 Q We see a company on your screen Secretariat, and we
9 have heard testimony earlier this week from Ryan Sullivan, the
10 economist.

11 You worked with Mr. Sullivan on your expert analysis;
12 right?

13 A He is my colleague. Dr. Sullivan is a stellar
14 economist. I come out with a different background being an
15 accountant, CPA and certified in financial forensics.

16 Q What were you asked to do in this case?

17 A The task that we were given was to evaluate the NRA's
18 controls efforts using the tools that we have from our
19 experience, education and training.

20 So on the slide, you'll see that I have highlighted
21 finance and accounting. You have heard from Dr. Sullivan
22 already, so I will try to stick to the accounting piece of the
23 work that we did.

24 Q Now you were here listening to Dr. Sullivan testify;
25 right?

KM

3794

Blacker - by Defendant - Direct/Ms. Rogers

1 A I came on Tuesday. I think he started Monday, but I
2 have been in the courtroom since Tuesday.

3 Q Well, did you hear him examined about what he was being
4 paid and what you were being paid and what Secretariat was being
5 paid?

6 A Yes, I did.

7 Q And you're being compensated as an expert; right?

8 A To be specific, my employer pays me for the work that I
9 do, and the NRA is paying my employer.

10 Q But you are not being paid -- your employer is the same
11 as Mr. Sullivan's. So you're covered by what the money that was
12 discussed with Dr. Sullivan; right? You are not additional.

13 A Exactly. My personal compensation is not tied to this
14 case because as an accountant, for one, I have to be independent
15 and objective.

16 Q All right. What materials and information did you
17 consider in evaluating the NRA's control efforts from a finance
18 and accounting perspective?

19 A I mentioned that I provide consulting services and
20 sometimes it's in a litigation.

21 Now, if it's not in a litigation, it's a little bit
22 different than in litigation. But in litigation, we are
23 provided the documents that are produced within the litigation
24 itself.

25 So I reviewed the financial statements, the audit

KM

3795

Blacker - by Defendant - Direct/Ms. Rogers

1 reports, the audit work papers, the policies and all the
2 documents that you've heard about now.

3 I have had an opportunity to review those and to read
4 deposition testimony and to sit here in court prior to arriving
5 here. I was provided some transcripts. Its been a long trial.
6 I think the transcripts were up to over 3,000 pages, so I got
7 through them the best that I could. But I take all of that
8 information as an input into forming my independent opinion.

9 Q And what additional work did you do before arriving
10 here today?

11 A I have assessed as I mentioned before how effective the
12 NRA has been in monitoring its controls. I have also looked at
13 specifically the testimony both in reports and at trial of Mr.
14 Tenenbaum and Mr. Hines.

15 Q Did you hear Mr. Tenenbaum say anything about
16 accounting or auditing that you would like to comment on?

17 A Yes. Two quick points. Mr. Tenenbaum is not an
18 accountant. And when I heard his testimony that auditors simply
19 test the numbers, I think after the testimony today and
20 yesterday, I think you know that auditors do a lot more than
21 just test the numbers. So I took issue with that.

22 The testimony that he did give that I totally agree
23 with is that companies in their attempt to be independent, to go
24 through this cycle of monitoring, identifying, correcting and
25 improving, they should rely on outside experts. As an

KM

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Blacker - by Defendant - Direct/Ms. Rogers

1 accountant, I sometimes too rely on the information that other
2 professionals conduct.

3 You have heard the phrase, you know, "Trust But
4 Verify." That's what accountants do.

5 Q Great. And let's -- is your clicker working?

6 A Yes.

7 Q And you did some work. You prepared a report; right?

8 A So I was retained in this case in 2022. I have issued
9 two reports, hundreds of pages, hundreds of foot notes, reviewed
10 the deposition testimony that I talked about.

11 Also in 2022 as part of litigation process, the
12 Attorney General's Office of New York is aware of the opinions
13 that are in my report. They have not taken my deposition. I
14 provided deposition testimony so that they would know what my
15 opinions would be.

16 Q In addition to reviewing testimony by the Government's
17 expert Mr. Tenenbaum, you also reviewed testimony by Mr. Hines.
18 He is a forensic accountant like you; right?

19 A He is.

20 Q And did you form any opinions in response to Mr. Hines
21 that you want to share with the jury?

22 A You seen the slide maybe a couple of times. And as a
23 forensic accountant, one of the things that I want to point out
24 that he and I are totally in agreement on and that is that fraud
25 risk indicators are just that. They are only indicators of the

KM

3797

Blacker - by Defendant - Direct/Ms. Rogers

1 possibility of fraud. They do not in and of themselves mean
2 that there was any misconduct or harm that was done because of
3 the internal controls.

4 I do have concerns about the way too that Mr. Hines
5 said and tried to make it a distinction, if you will, between --

6 MR. CONLEY: Objection, your Honor, to
7 characterization of other testimony.

8 THE COURT: Overruled.

9 A That Mr. Hines made the distinction between what a
10 financial audit is and what an internal audit is. They are
11 different, but I think it's incomplete to not take it a step
12 further.

13 Q Please take it that step further for the jury.
14 How would you explain that?

15 A For example, again, I have taken only as an input into
16 my analysis to form my own independent opinion the work of other
17 professionals including the NRA's auditors.

18 When looking at the audit for December of 2019, the
19 year 2019, you heard testimony from Mr. Plotts that the auditors
20 begin somewhere in the Fall and begin the audit and then that
21 audit takes about five months. So somewhere around March they
22 are going to issue this audit.

23 Part of that was that they issued a management letter
24 which you've heard about. That's the audit might be looking
25 backwards, but the management letter is looking forward. I

KM

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1 think it's important on the slide here right above those
2 highlighted, it says that it's done in accordance with auditing
3 standards generally accepted in the United States of America.
4 Those standards are for audits. So the auditors have standards
5 that they have to follow. They follow GAP, generally accepted
6 accounting principles. That, as I forensic accountant gives me
7 a lot of comfort in taking that piece of data, putting it into
8 my analysis and assessing that in forming an independent
9 analysis.

10 (Continued on the following page.)
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3799

B. Blacker - by Defendant - Direct/Ms. Rogers

1 Q Now, you saw the Government's forensic accountant
2 create some of his own data in that he took dollar amounts in a
3 bunch of invoices and added them up.

4 MR. CONLEY: Objection, your Honor, on
5 characterization of work done by an expert.

6 THE COURT: Overruled. Are you talking about the
7 compilations exhibits?

8 MS. ROGERS: Yes, yes.

9 Q Do you -- did you understand that that's what their
10 expert was doing?

11 A Yes, and I may have gotten a little ahead of the
12 slides. I'm going to go quickly through the slides.

13 This is again Aronson talking about the special
14 procedures. We don't need to talk about that anymore.

15 MR. CONLEY: Objection, your Honor. There's no
16 question pending.

17 Q Well, let's talk first about what Hines discussed, and
18 then we'll hear more what you have to say about the special
19 procedures.

20 But their forensic accountant made big lists on all of
21 the flight invoices and what they totalled; right?

22 A Yes.

23 Q You're a forensic accountant and you didn't do that;
24 right?

25 A I did not need to do that.

BP

3800

B. Blacker - by Defendant - Direct/Ms. Rogers

1 MR. CONLEY: Objection.

2 THE COURT: Overruled.

3 Q Why?

4 A I was asked to assess whether the internal controls and
5 specifically the corrective action of the NRA had been
6 effective.

7 So, on this slide I'm showing where Mr. Hines' analysis
8 was about past transactions, and he went in and he summarized
9 some of those past transactions. Again, those are transactions
10 that possibly could be at issue because those were only fraud
11 indicators, not evidence of fraud.

12 So, as a forensic accountant, I would be concerned that
13 that's not measuring the right thing as far as either the
14 internal control or --

15 MR. CONLEY: Objection, your Honor, testifying to
16 what's at issue here.

17 THE COURT: Overruled.

18 A That that's not measuring the assets that are alleged
19 to have been self-dealt or mismanaged.

20 Q And in your career as a forensic accountant, have you
21 ever made a list of invoices that had fraud indicators without
22 looking at whether assets were ever actually diverted?

23 A Not in the real world. All right, so I will do
24 consulting outside of litigation and that would be an incomplete
25 analysis. If I had a client who wanted to know if there were

BP

3801

B. Blacker - by Defendant - Direct/Ms. Rogers

1 fraud indicators, they would want to know, well, how much and
2 what next.

3 Q Would you ever look only at what the organization was
4 paying for a contract and ignore what the organization was
5 getting?

6 A No. This goes to the incomplete assessment of what
7 Mr. Hines has done in my opinion.

8 Let's just take the vendors, for example. I'll give
9 two examples starting with the vendors. Some of the vendors I
10 was able to see that there were issues with, and those were
11 terminated and I went and looked at the general ledger and I
12 could see if the payment stopped. So, I know the corrective
13 action was taken there.

14 Other vendors were ratified and continued to move
15 forward. They would fall in Mr. Hines' bucket of, Here's some
16 invoices that I'm concerned -- concerned about, red flagged.
17 What that doesn't tell you is did the NRA receive reasonable,
18 fair services? So, that would be for the vendors.

19 Another example would be for an employee who had a
20 business trip, but they took a black car service. The business
21 trip was valid. They needed to have a travel expense, but there
22 might be an incremental difference between following the NRA
23 policy and using, say, black car service.

24 Mr. Hines did not do that analysis.

25 Q What do you mean when you say "incremental?"

BP

3802

B. Blacker - by Defendant - Direct/Ms. Rogers

1 A The difference. If, if the allegation is that there
2 was self-dealing and that there were mismanagement of assets,
3 what Mr. Hines does not do is provide that amount.

4 All he does is provide the entire universe where
5 there's red flags where there should be further investigation.
6 He doesn't complete the analysis to say here's what the amount
7 is.

8 Q You heard Mr. Mehta testify that accountants look at
9 what kind of deal the company could have gotten if it went out
10 into the market.

11 Do you recall that?

12 A Yes.

13 Q Can you explain to the jury how, if at all, that plays
14 into what you've diagrammed here vis-a-vis alternative NRA
15 decisions?

16 A Again, bringing it back to what Mr. Hines did not do,
17 so we've -- he looked at what the real world -- what the
18 decision actually was.

19 What he doesn't do as Mr. Mehta had said is go out and
20 get a request for a proposal or see who else could provide the
21 services. This chart indicates that it might have been more
22 expensive or less expensive.

23 Mr. Hines didn't do that analysis, so, again, we're
24 just left with a summation of expenses that aren't -- that don't
25 get to the issue.

BP

3803

B. Blacker - by Defendant - Direct/Ms. Rogers

1 Q I apologize because I asked you a question earlier that
2 was out of sync with your PowerPoint.

3 Were there aspects of the Aronson special procedures
4 that informed your opinions that you want to tell the jury
5 about?

6 A Again, it's the Aronson documents were an input. Why
7 do I think the basis for why it was important to me to be able
8 to look at Aronson and to look at the financial statements and
9 be able so see there were clear audits is knowing that not only
10 was the normal, if you will -- auditing the NRA is not normal --
11 there were additional steps that were taken and that was
12 important to me --

13 MR. CONLEY: Objection, your Honor. This is
14 testimony about work that Mr. Blacker didn't perform.

15 THE COURT: Overruled.

16 Q You can answer.

17 A As I said, I'm taking that as an input into my analysis
18 to know that the work that Aronson and other outside consultants
19 have done was thorough and rigorous.

20 Q You testified just now that auditing the NRA isn't
21 normal. What do you mean by that?

22 A No client, I guess, is normal with an accountant; but
23 it is no secret that the NRA has political implications. When
24 you mention the NRA, people usually have a reaction to that one
25 way or another.

BP

3804

B. Blacker - by Defendant - Direct/Ms. Rogers

1 As a consultant or an auditor, that also has
2 implications as when you take a client as to what that means in
3 the marketplace. Are other people going to look at that
4 consultant and say, oh, you work for that entity or that entity?
5 I don't want to be associated with you or I do want to be
6 associated with you.

7 Those things are business decisions that have to be
8 made; but, also, because at the time they were looking at
9 retaking the audit, the lawsuit had been filed and they knew it
10 was going to be -- this is a public case with public issues --

11 MR. CONLEY: Objection, your Honor, to testifying
12 about what people knew or didn't know.

13 THE COURT: Overruled.

14 A The case was filed in -- at the end of 2020, and
15 they're trying to make this assessment as to whether they want
16 to take the audit. And they went through those special
17 procedures and determined that it was okay for them,
18 professionally, to be able to do the work that they needed to
19 and render the independent decision that they would, ultimately,
20 come up with.

21 THE COURT: Just to repeat the instruction I've
22 given now probably six times:

23 When the witness describes something like his
24 understanding of what Aronson was facing, sometimes people
25 use that words "it is my understanding that" and sometimes

BP

3805

B. Blacker - by Defendant - Direct/Ms. Rogers

1 they leave that out. None of these statements of which
2 sound like facts are of personal knowledge of this witness.

3 All of the basis for his opinion is based on what
4 he read and heard from others, at least in terms of the
5 factual basis. So, just repeating that same -- that same
6 point. And I didn't sustain the objection because I believe
7 by now that you understand that when the witness is talking
8 about facts, he's saying that his understanding is based on
9 what he has read in preparing for this is X, Y and Z.

10 If you conclude that those facts are not accurate,
11 then you can take that into account.

12 Q Based on the resume of yours that we reviewed and your
13 experience as an accountant, if you were vetting a new client
14 engagement with a very controversial political adverse group
15 that had just been targeted for a dissolution for corruption by
16 a state regulator, would you vet that client more strictly or
17 less strictly than other clients?

18 A That's not a hypothetical question. I had to make that
19 decision in accepting this engagement.

20 Q And did you scrutinize the NRA more strictly or less
21 strictly than other companies?

22 A More strictly. We go through our conflict check, but
23 we also had to make a business decision.

24 MS. ROGERS: Thank you. Pass the witness.

25 THE COURT: Any other direct testimony?

BP

3806

B. Blacker - by Defendant - Cross/Mr. Conley

1 MR. CORRELL: No.

2 MR. FLEMING: Nothing for me.

3 THE COURT: Okay, from the State?

4 CROSS-EXAMINATION

5 BY MR. CONLEY:

6 Q Good morning, Mr. Blacker.

7 A Good morning.

8 Q What's your hourly rate in this case?

9 A I think it was mentioned before that Secretariat has
10 charged \$795 an hour for my services, and beginning in 2024 that
11 rate may have increased.

12 Q Your colleague, Dr. Sullivan, testified he didn't know
13 how much your prior firm, Intensity, and your current firm,
14 Secretariat, has billed the NRA for this matter. Do you know
15 how much they have been billed?

16 A I do not. There are people at Secretariat that take
17 care of the billing.

18 Q Your deposition in 2022, you testified you billed
19 hundreds of hours on this engagement; correct?

20 A Yes, I've spent a lot of time to form my opinion.

21 Q And safe to assume you've billed more since then?

22 A Yes, in preparation for today, certainly.

23 Q Mr. Blacker, are you aware that this case concerns
24 questions about compliance with corporate governance standards
25 for not-for-profits and their officers; right?

BP

3807

B. Blacker - by Defendant - Cross/Mr. Conley

1 A As an accountant, that's my general understanding of
2 the legal allegations in the case.

3 Q You were engaged by the NRA to be an expert in an
4 action by the DC attorney general against the NRA and the NRA
5 Foundation; correct?

6 A To correct your question just a little bit, again, was
7 hired by outside counsel for the NRA, and then I can say yes.

8 Q Sure. And in that action there are also claims
9 concerning corporate governance standards and not-for-profits;
10 correct?

11 A I believe so, but I've been focused on this case so I
12 don't want to speculate.

13 Q And you were found unqualified to offer expert opinion
14 testimony on that topic, correct?

15 MS. ROGERS: Objection. Misstates the ruling, I
16 think.

17 THE COURT: That's not -- you can ask it. I'm
18 assuming you have some basis for asking that question the
19 way you did?

20 MR. CONLEY: Yes.

21 A Can you repeat the question? I did not understand it.

22 Q You were found unqualified to offer expert testimony on
23 corporate governance in that case, correct?

24 A I'm not an attorney. I don't believe that's a correct
25 way to describe that in the question.

BP

3808

B. Blacker - by Defendant - Cross/Mr. Conley

1 MR. CONLEY: Jesse, could you please pull up the
2 pretrial order.

3 (Displayed)

4 Q And this is a pretrial order in this DC action. Do you
5 see the highlighted language there, Mr. Blacker?

6 A I do see that. I don't know if I have actually seen
7 this document before.

8 Q And you agree it says:

9 "Upon review of Ryan Sullivan and Bruce Blacker's
10 qualifications as identified in their June 21, 2023, expert
11 report, neither expert is qualified to testify about
12 not-for-profit governance."

13 Do you see that?

14 A I see that's what it says, yes.

15 Q You are not an auditor, correct?

16 THE COURT: Just so it is clear, I don't think -- I
17 don't think he's been offered as an expert on not-for-profit
18 governance here.

19 MS. ROGERS: He has not. He's a forensic
20 accountant.

21 Q You're not an auditor, correct, Mr. Black?

22 A That's where I provided an explanation as what do you
23 mean by auditor? Do you mean auditor of financial statements?
24 Because to an accountant, there's a number of different types of
25 audits.

BP

3809

B. Blacker - by Defendant - Cross/Mr. Conley

1 Q Understood. You've never conducted a financial
2 statement audit; is that right?

3 A That is correct.

4 Q And you never conducted an internal control audit; is
5 that right?

6 A That is correct.

7 Q And in your analysis, you looked at transactions and
8 arrangements that the attorney general raised in the complaint
9 in this action, right?

10 A Yes.

11 Q And you're not opining on the accuracy of those
12 allegations; right?

13 A That would not be for me as an expert witness. I
14 believe that decision will be left up to the trier of fact.

15 Q You testified a moment ago that the attorney general --
16 about the attorney general's expert, Eric Hines; is that
17 correct?

18 A Yes, I spoke about Mr. Hines.

19 Q You are not opining that any of the arrangements and
20 transactions analyzed by Mr. Hines complied with the NRA policy;
21 are you?

22 A Mr. Hines is not providing that testimony and I am not
23 providing that testimony.

24 Q It is your understanding Mr. Hines isn't providing
25 testimony regarding the compliance of certain arrangements and

BP

3810

B. Blacker - by Defendant - Redirect/Ms. Rogers

1 transactions with NRA policy?

2 A Correct. He said he's identified red flags that would
3 require further investigation.

4 Q You have not evaluated whether the NRA's internal
5 controls are functioning currently, correct?

6 A That's correct, and was not necessary in forming my
7 opinion.

8 Q And you did not evaluate whether the NRA's
9 relationships with the vendors complied with internal policies
10 and procedures; correct?

11 A Again, not necessarily for the work I did, no, I did
12 not.

13 MR. CONLEY: Pass the witness.

14 THE COURT: Anything further?

15 MS. ROGERS: Just a little bit.

16 REDIRECT-EXAMINATION

17 BY MS. ROGERS:

18 MS. ROGERS: I'm going to ask if the attorney
19 general tech person would be so kind as to put back on the
20 screen the DC AG case ruling shown a moment ago, and scroll
21 down to the two sentences that were left off the screen.

22 Q And while we're waiting for that, Mr. Blacker, to your
23 knowledge have you ever been offered as an expert on
24 not-for-profit corporate governance law?

25 A No.

BP

3811

B. Blacker - by Defendant - Redirect/Ms. Rogers

1 Q Do you remember that you were offered as an expert in
2 forensic accounting in the DC case?

3 A Yes, I was.

4 Q Did you know that they moved to strike your opinion,
5 and the court denied that motion and said that you could testify
6 about forensic accounting?

7 A I have that understanding from counsel. I don't think
8 I've reviewed this document, but that's my understanding, yes.

9 MS. ROGERS: All right, nothing further.

10 THE COURT: Okay. Anything further for anyone?

11 MR. CONLEY: Nothing further, your Honor.

12 THE COURT: Okay. Thank you, sir, you can step
13 down.

14 (Whereupon, at this time the witness was then
15 excused.)

16 No clients are normal, that would be a good thing
17 for the business card.

18 Okay, next witness for the defense.

19 MS. ROGERS: The NRA calls Michael Erstling.
20 He's a fact witness, so I think the court officer has to get
21 him.

22 THE COURT: Okay.

23 COURT OFFICER: Ready, your Honor?

24 THE COURT: Yes, sir. Welcome back, sir.

25 THE WITNESS: Thank you.

BP

3812

B. Blacker - by Defendant - Redirect/Ms. Rogers

1 M I C H A E L J. E R S T L I N G

2 called as a witness in behalf of the Defendant,

3 and after having been first duly sworn by the Clerk of the

4 Court, took the witness stand and testified as follows:

5 THE CLERK: State your name.

6 THE WITNESS: Michael J. Erstling.

7 THE CLERK: Spell your last name.

8 THE WITNESS: E-R-S-T-L-I-N-G.

9 THE CLERK: Thank you. You may be seated.

10 THE COURT: Counsel, you may proceed.

11 MS. EISENBERG: Good afternoon, your Honor.

12 THE COURT: Good afternoon.

13 MS. EISENBERG: Good afternoon, members of the
14 jury.

15 DIRECT-EXAMINATION

16 BY MS. EISENBERG:

17 Q Welcome back, Mr. Erstling. Please remind us what your
18 position is at the NRA?

19 A I am the director of finance at the NRA.

20 Q How long have you worked at the NRA?

21 A I started at the NRA in 2001.

22 Q Who is your supervisor at this point?

23 A Right now, I report to Sonya Rowling.

24 Q What are some of your responsibilities in your current
25 position?

BP

3813

B. Blacker - by Defendant - Redirect/Ms. Rogers

1 A I am responsible for accounting operations. I am
2 responsible for budgeting. I am responsible for the preparation
3 of the 990 and any other duties as a side.

4 MS. EISENBERG: Thank you. Your Honor, may I
5 approach the witness to hand him a bottle of water?

6 THE COURT: Sure.

7 MS. EISENBERG: Thank you. I meant to do this
8 before.

9 (Handed to the witness)

10 THE WITNESS: Thank you.

11 Q About how many people report to you?

12 A Approximately, eight.

13 Q Let's talk a little bit about the period of in or
14 around the summer of 2018. What was your position at the NRA at
15 that time?

16 A I was the director of budget and financial analysis.

17 Q To whom did you report then?

18 A I reported to Rick Tedrick.

19 Q Did there come a time in or around early 2018 when
20 Mr. Spray joined the organization?

21 A Yes, I think it was in March of 2018.

22 Q And he became the treasurer and the CFO over the course
23 of that year; is that fair?

24 A Over the course of the year, yes, he became both of
25 those.

BP

3814

B. Blacker - by Defendant - Redirect/Ms. Rogers

1 Q In early 2018, did you have an opportunity to form an
2 opinion about his leadership style?

3 A I did.

4 Q And how would you compare his leadership style to that
5 of Mr. Phillips, his predecessor?

6 A Craig was much more engaged in the day-to-day
7 activities of the association. He was present. He was
8 inquisitive. He asked tough questions. He made decisions. It
9 was 180 degrees from Mr. Phillips.

10 Q And in the five or so years prior to Mr. Phillips
11 departure in 2018, with what frequency did you personally meet
12 with Mr. Phillips?

13 A Over the -- from 2015 to 2018, I don't think I ever met
14 with Mr. Phillips. Prior to that, it would be maybe two to
15 three times for budget purposes.

16 Q Did there come a time when you and your colleagues
17 started to have regularly scheduled meetings in 2018?

18 A As soon as Craig started, we were having regular
19 monthly meetings. It was myself, Sonya Rowling, Emily Cummins,
20 Rick Tedrick, and Lisa George.

21 Q What type of discussion did you have in those
22 meetings?

23 A We -- we discussed the financial results. We discussed
24 budgeting, insurance, risk, accounting, whatever the topic was
25 of the day, of the month, we were all talking about it. So, we

BP

3815

B. Blacker - by Defendant - Redirect/Ms. Rogers

1 were all sharing information.

2 Q And prior to Mr. Spray's arrival, did you and the
3 individuals you listed hold regularly scheduled meetings or
4 randomly scheduled meetings?

5 A We definitely did not hold regularly scheduled
6 meetings. We would definitely talk in the office, but it
7 wouldn't be all of us together at one time. So, there was no
8 group thing. It was just one or two of us meeting to talk about
9 an issue, but it wasn't a complete 360-degree view of the
10 organization.

11 Q As you started to attend these meetings, these
12 regularly scheduled meetings that Mr. Spray organized, did there
13 come a time when you expressed certain concerns about certain
14 transactions, expenditures or the like?

15 A So, my personal experience was I was frustrated. I had
16 seen a great deal of large transactions, large invoices, very
17 little detail. There were other concerns of transactions that,
18 I mean, were being approved and, also, at that time concealed
19 carried initiative was ramping up; and the invoices for that
20 were absolutely enormous.

21 All they said was three letters, CCI, and they were
22 half a million dollars, three hundred thousand dollars. They
23 were big, and so that was troubling.

24 Q Did you share this concern with Mr. Spray and others
25 who attended those meetings?

BP

3816

1 A Yes. We started to -- we started to compare notes.

2 We started to, you know, put the puzzle together to a
3 certain degree where prior we were -- we may not have been
4 sharing all information that we had. By sitting around a round
5 table and sharing, we were able to start to put the puzzle
6 together, to try to figure out what was going on.

7 Q And as you started to do that, did you personally
8 arrive at new realizations about the state of compliance at the
9 NRA?

10 A Yeah, it was -- the -- the scope was getting larger
11 every time we met.

12 So, there was -- there were significant problems. I
13 don't think any one of us knew individually how big the issue
14 was until all of us were sitting around talking about it.

15 (Continued on next page)

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BP

3817

Erstling - by Defendant - Direct/Ms. Eisenberg

1 Q And at the time -- at the time what were the various
2 responsibilities of the various individuals in the meeting?

3 A So at that time I was working on budget and financial
4 forecasting and analytics. Sonya Rowling was accounting
5 operations. Emily Cummins was risk and insurance and tax. Lisa
6 George was purchasing, and I think that names them.

7 Q Thank you, Mr. Erstling.

8 Did there come a time when you and certain of your
9 colleagues made a presentation about these concerns to the NRA's
10 Audit Committee?

11 A So out of --

12 Q Just yes or no.

13 A Yes. Sorry.

14 Q And what role, if any, did Mr. Spray have in that
15 meeting in connection with that meeting?

16 A So Craig could see that we were frustrated and he
17 suggested that we come forward and bring these -- bring these
18 issues up to the Audit Committee.

19 Q Leading up to the meeting of the Audit Committee, did
20 you and others corroborate on preparing a list of top concerns
21 to discuss with the committee?

22 A Yes. So we -- we met -- we met off line off of the
23 standard Craig meeting. We met in Sonya's office, and I
24 provided my few items, and Lisa provided her couple of items,
25 and Sonya provided her items. Portia Padilla who was our

KM

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Erstling - by Defendant - Direct/Ms. Eisenberg

1 accounts payable manager provided some information about some of
2 these items, and then Emily sent a document of her concerns and
3 so Sonya consolidated all of those concerns on to the Top
4 Concerns memo.

5 Q Let's take a look at PX 2605 which is in evidence.
6 Let's go to the second page of the exhibit.

7 Mr. Erstling, is this the document that you were just
8 testifying about?

9 A Yes, ma'am.

10 Q Leading up to the meeting on July 30, 2018 with the
11 Audit Committee, did you have any meetings with Mr. Frazer about
12 any of your concerns?

13 A Yes. John was trying to understand some of the
14 financial transactions that were presented in this list.

15 Q Please tell us what happened at the meeting.

16 A We -- we talked about specifically the Grassroots
17 Behavioral item number 4B which dealt with some accounts payable
18 for the National Rifle Association to PM Consulting that
19 remained on the Association's books after PM Consulting was sold
20 to MMP and that those accounts payables were never written off.
21 They just remained there. And then accounting operations was
22 instructed to slowly pay that accounts payable off over a period
23 of years at a think it was like 20,000 increments.

24 Q Instructed by whom?

25 A I believe it was Woody Phillips.

KM

3819

Erstling - by Defendant - Direct/Ms. Eisenberg

1 Q Did you also share with the Audit Committee your
2 concerns about payments to ATI or Associated Television for
3 rental of a house?

4 A Yeah. I saw those -- those invoices come through, and
5 I obviously did my own Google search of the address and found
6 out who the property was owned by, and I -- I brought it up as
7 an issue. You know, the invoice itself was not descriptive. So
8 I mean, if it was truly the rental of that house, then we paid a
9 lot of money for that rental. If it was for something else,
10 then why wouldn't you have put what it was for. Why did you
11 have to hide that it was for lights and cameras and stuff like
12 that. I don't understand.

13 Q Do you have an understanding as to who had authorized
14 payments for this in the past?

15 MR. FARBER: Objection, your Honor. And is it
16 firsthand knowledge or what he was told?

17 THE COURT: I mean, you're here as a fact witness,
18 so it should be things that you observed or know. Not
19 speculating.

20 MR. FARBER: Judge, I would object to know. People
21 know things from hearsay.

22 THE COURT: Well, that's a fair point. The -- in
23 the first instance, the question is whether you have
24 personal knowledge.

25 A Can you ask the question one more time.

KM

3820

Erstling - by Defendant - Direct/Ms. Eisenberg

1 Q Yes. To the extent or someone had caused the NRA to
2 make payments for Associated Television for the rental of the
3 house before you brought this concern to the Audit Committee's
4 attention, do you have firsthand knowledge regarding who
5 authorized those payments?

6 A I don't have -- I don't have knowledge of who
7 authorized them. I have knowledge who signed them.

8 MR. FARBER: Your Honor, that's the question.

9 Q Do you have knowledge about whose name appeared on the
10 approval portion of the paperwork?

11 A I do.

12 Q And what was that?

13 MR. FARBER: Again, your Honor. Just reading the
14 document is not appropriate.

15 THE COURT: Is that a document that's in evidence?

16 MS. EISENBERG: I don't have it handy, your Honor.
17 Maybe.

18 MR. FARBER: It's not appropriate to ask a question
19 what his knowledge is of a document. If it's in evidence,
20 it's in evidence.

21 THE COURT: I disagree. I mean, if it's -- if the
22 document is hearsay and not admissible, then you might be
23 right; but the document has been admitted. So maybe at some
24 point during this you can confirm that before the witness
25 answers that.

KM

3821

Erstling - by Defendant - Direct/Ms. Eisenberg

1 MS. EISENBERG: Certainly, your Honor.

2 Q Let's take a look at item two, Mr. Erstling. It refers
3 to senior management override of internal controls.

4 Do you see that?

5 A Yes, ma'am.

6 Q And then there is a listing at the top of five
7 different procedures or policies that you were telling the Audit
8 Committee were being overridden. And let's just go through that
9 list. What are they? Accounts payable procedures, IST
10 purchasing policies.

11 What does "IST" refer to?

12 A Information Technology or Information Services
13 Technology.

14 Q Okay. Travel and expense reporting policy, procurement
15 contract policy, HR policy.

16 And when Mr. Thompson asked you questions about this
17 document, the first time you testified in this trial, you
18 testified that item 2b as well as item 2c is something that you
19 personally contributed to this list.

20 Do you recall that testimony?

21 A Yes, ma'am.

22 Q So let's focus on item 2b that talks about Lance
23 Olson's invoices.

24 To the extent you believe -- well, let me just confirm.

25 Did you believe that the payment of those invoices

KM

3822

Erstling - by Defendant - Direct/Ms. Eisenberg

1 constituted overrides by senior management of internal controls?

2 MR. FARBER: Objection, your Honor. His belief
3 about whether something constitutes an override or not is
4 not proper testimony.

5 THE COURT: Overruled.

6 A I believe that this -- this overrode internal controls.

7 Q And who is -- whom specifically, if you know, overrode
8 those controls?

9 A Well, Josh Powell and Woody Phillips' signatures are on
10 all of the documents associated with this purchase.

11 Q Let's go to item 2c. It refers to Josh Powell's
12 purchases of computer assets.

13 Do you see that?

14 A I do.

15 Q Who was the senior manager who overrode internal
16 controls with regard to item 2c?

17 A Josh Powell.

18 Q Items 2a and 2d are not something that you previously
19 testified you contributed to the list. But let me ask you about
20 2a, whether once it was added by one of your colleagues you
21 agreed that this particular transaction was an issue that should
22 be reported.

23 MR. FARBER: Objection, your Honor.

24 THE COURT: Overruled.

25 A I agree that -- I was on the floor when this

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1 transaction came down, and I witnessed it, and I agree that this
2 was a total override of controls.

3 Q Who was the senior manager or senior managers who
4 overrode internal controls?

5 A In this case, it was Woody Phillips and then also it
6 was handed down by Craig Spray as well.

7 Q And what about item 2d that refers to hiring of staff
8 without HR knowledge.

9 In your opinion was that another instance of senior
10 management overriding internal controls?

11 A Yes, and that was Josh Powell hiring people left and
12 right.

13 Q Let's take a look at item three. It refers to
14 management's subordinating its judgment to vendors. It states
15 decisions are made in the best interest of vendors.

16 When Mr. Thompson questioned you about this document,
17 you didn't identify number 3 as a item that you personally
18 contributed to the list. But the same question. Once it was
19 added to the list, did you agree with your colleagues that this
20 was a concern?

21 A Yes.

22 Q Which management subordinated its judgment to vendors?

23 A In the case that I'm thinking about, it would have been
24 Wayne LaPierre and Woody Phillips.

25 Q When you -- we can take down the document.

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1 When you presented the concerns with the Audit
2 Committee, was that the first time you ever met with the Audit
3 Committee about these concerns?

4 A Yes.

5 Q And as far as you know, was it the first time the other
6 individuals who came with you were meeting with the Audit
7 Committee about their concerns?

8 A As far as I know, yes.

9 Q How would you characterize their reaction of the Board
10 members at the meeting?

11 A I thought that the three that remained were engaged.
12 They asked questions. They were receptive to not only the list
13 that was sent to them early but some additional items that we
14 brought forward in that meeting specifically that weren't even
15 on that list, and so we brought those as well. So they were
16 asking questions.

17 They were -- you know, I know Curtis Jenkins seemed mad
18 about it. They were -- they were interested.

19 Q And when you say that Mr. Jenkins seemed mad, in what
20 respect did he seem mad? Was he mad at you or was he mad about
21 what you were reporting?

22 A He was mad about what we were reporting. I mean, he
23 -- I think he was a bit flabbergasted.

24 Q You previously talked about how once you started to
25 have meetings organized by Mr. Spray with Lisa George and Sonya

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1 Rowling and others sort of knew things or things kind of came
2 together, you pieced together certain things that previously you
3 hadn't.

4 So would it be fair to say that you began to have an
5 understanding of sort of the magnitude of some of the issues?

6 A That's a very good, fair understanding. I mean, each
7 one of us brought, you know, two or three or four items to this
8 list. But then when you put the list together and you see its
9 length and complexity, it sort of opens your eyes; right.

10 I mean, like one thing doesn't -- doesn't make you say
11 oh, you know, that's horrific; right. But when you look at the
12 totality of what was happening, it was bad.

13 Q Who, if anyone, at the NRA prior to Craig Spray's
14 departure would have been in a position to understand the
15 magnitude of these issues?

16 MR. FARBER: Objection, your Honor.

17 THE COURT: Sustained.

18 Q Do you think that Mr. Phillips knew about these
19 concerns and these issues?

20 MR. FARBER: Objection, your Honor. He is asking
21 for his opinion about his mental state, what was in his
22 mind.

23 THE COURT: Yeah. If you can ask it just focusing
24 on fact witness, what he knows on personal knowledge.

25 Q Do you know facts that would enable you to form a

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1 belief on whether or not Mr. Phillips knew about these issues
2 and their magnitude?

3 MR. FARBER: Objection, your Honor. She can ask
4 specific questions about specific facts.

5 THE COURT: Sustained.

6 Q Who was the contact person at the -- or persons at the
7 NRA for the vendors that are listed in the Top Concerns memo?

8 A As far as Ackerman McQueen, it would have been Wayne
9 LaPierre and Woody Phillips. For ATI, it would have been Wayne
10 LaPierre and Woody Phillips. For PM Consulting, it would have
11 been Wayne LaPierre and Woody Phillips.

12 Q What about McKenna?

13 A That would have been Josh Powell, and I don't know what
14 -- what the other two knew about McKenna.

15 Q In or around that time for a payment to go out, is it
16 fair to say that someone at the NRA had to approve the payment?

17 A Yes. Over \$50,000 invoices, there has to be two
18 officers signatures.

19 Q And in your position at the time did you have occasion
20 to go review approvals to see who was approving payments to
21 these vendors?

22 A Yes.

23 Q Who were those individuals?

24 A Mostly Rick Tedrick for Wilson Phillips, John Frazer,
25 Josh Powell. On a rare occasion, Wayne LaPierre, but it wasn't

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1 very often.

2 Q Let's go back to July 30, 2018.

3 After the meeting with the Audit Committee, did things
4 happen at the NRA that you considered to have improved its
5 efforts to comply with laws, regulations and internal policies?

6 A There were a lot of things that changed after the
7 meeting.

8 Q And just before we get into those, how quickly did you
9 start to observe change?

10 A Within a week.

11 Q Please tell us about some of the changes.

12 A So I would categorize the changes into sort of four
13 different groups. There were changes to vendors. There were
14 changes to employees. There were changes to systems, and there
15 were changes to what I will call education or compliance.

16 So the changes, and these happened -- these started
17 quickly. So the vendor one started immediately. The others
18 over the -- over the period, you know, three, four, five years
19 these other things have been continuing to change.

20 So but starting with the vendors, within a week. We
21 had sent out a letter to 200 of the top vendors at the NRA and
22 said hey our policy is that you have to have detail on your
23 invoice, and if you can't provide that, then we are not going to
24 be able to do business with you. So we allowed them to try to
25 correct the issue. If they weren't able to correct the issue,

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1 we ended the relationship.

2 We removed any type of out-of-pocket expense associated
3 with NRA travel and that no longer went through Ackerman McQueen
4 or an outside vendor, so we brought that in-house.

5 We started to move vendors out of EVP and out of public
6 relations and put them where they belong. So if a particular
7 consultant or contractor was working on general operations work
8 or they were working on publications work or they were working
9 on advancements work, we took them out of the EVP office and we
10 put them in the area of responsibility for whatever work they
11 were doing. And what that does is it creates accountability,
12 right, so that the manager of that particular area is now
13 accountable for that contractor; what are they doing, are they
14 working, are they providing benefit to the association. And if
15 they are not, they were then eliminated. So those are some of
16 the things that occurred on the vendor side.

17 On the employee side, we started to dig in to expense
18 reports and start to look for anything that might be personal in
19 nature. And if we found that, then we asked for reimbursement.
20 And if reimbursement wasn't made, they were terminated.

21 Then on to the systems side, there were three -- three
22 systems that were instituted. One was a change in how we
23 reported monthly financials.

24 So prior to 2018 we would send out the monthly
25 financial statements in paper format. So we printed everything

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1 off. We, you know, collated it with the general ledger detail,
2 and we put it in an interoffice envelope and mailed it out
3 interoffice, but we were able to digitize that. So we were able
4 to add a component to our accounting system where it sent an
5 electronic picture of your income statement and all your detail
6 and you could drill down on that.

7 So each manager could look at their phone wherever they
8 were and see their financial statements, and you could drill
9 down on a variance. And say, oh, why is this big or little or
10 what's going on with the variance there. Why is this going up
11 or down?

12 The next thing we instituted was PN3. So PN3 is a
13 software that enables us to track invoices as they come in to
14 the Association. So they come in to an email box. They get
15 sort of imported into PN3, and PN3 then routes that invoice to
16 the appropriate person and gets their approval so you can track
17 the approval process all the way along. No invoices get lost,
18 and there is record within PN3 of exactly who approved whatever
19 invoice.

20 And the last thing we instituted was purchasing KYX's
21 C-Track. It's a software. Completes the 990. It's similar to
22 a Turbo Tax, but it's for Associations, and what it does, it
23 allows you when you input information on one schedule, it might
24 bring it over to another schedule, wherever it's pertinent, but
25 it also does a lot of cross checks to allow you to make sure

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1 that you have accuracy across different schedules.

2 And the final grouping is compliance and education.

3 MR. THOMPSON: Your Honor, just narrative.

4 THE COURT: Overruled.

5 A Was the compliance software, the compliance
6 presentation.

7 So we started to give compliance presentations to sort
8 of teach everybody the stuff that they should have known; right.
9 So what are the rules? What are -- what are the policies?
10 Where do you need to be looking when you do a transaction, when
11 you make a contract? What do you need to be doing for that
12 process to work?

13 I was part of giving those compliance seminars. I gave
14 the compliance seminar portion related to purchasing and related
15 to what authority you needed, what signatures you needed on
16 purchases, and that's ongoing. Education is ongoing. You have
17 to keep teaching people over and over and over again. You can
18 never stop.

19 And on top of that, we did -- the Board revised the
20 travel and reimbursement policy. We have new procedures for
21 travel and reimbursement policy.

22 The purchasing policy has been -- procedures have been
23 updated, and we continue to educate people. What are the rules?
24 What do you have to follow?

25 Q Thank you very much, Mr. Erstling. Let's go back to PX

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1 2605, the second page.

2 Directing your attention to the second item that refers
3 to "Senior Management Override of Internal Controls."

4 Mr. Erstling, is it fair to say that you and your
5 colleagues used this memo to communicate your concerns to the
6 Audit Committee on July 30, 2018?

7 A Yes.

8 Q And in so far as the words "Senior Management Override
9 of Internal Controls" were used, to who were you referring when
10 you used the word "senior management" there?

11 A That would be Wayne LaPierre, Woody Phillips and Josh
12 Powell.

13 Q Directing your attention to item three which refers --
14 states that management has subordinated its judgment to vendors.

15 To the extent this was another concern that you
16 communicated to the Audit Committee, when you used the word
17 "management" there, to whom were you referring?

18 A Wayne LaPierre, Woody Phillips, Josh Powell.

19 Q Let's talk a little bit about the budgeting process
20 leading up to the July 30 presentation.

21 Did you have any concerns about the timing of the NRA's
22 budgeting process relative to the timing of the budgeting
23 process with Ackerman?

24 A Yes. So --

25 MR. FARBER: Objection, your Honor. He's answered

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Erstling - by Defendant - Direct/Ms. Eisenberg

1 the question.

2 Q Please tell us about the nature of that concern.

3 A The budgeting process at a very high level starts in
4 July. We -- we work towards a goal of getting a budget prepared
5 and approved by senior management in and around the week of
6 Thanksgiving. And so once that's been approved, we send that
7 budget -- that approved internal budget to the Finance Committee
8 for review at the December Finance Committee meeting.

9 And then that NRA budget is then -- you know, if there
10 are any changes, those changes occur, and we again, send it out
11 in early January for the January 6 or 7 Finance Committee
12 meeting. And then if they approve it, then it goes to the full
13 Board for approval. On a parallel track, there are meetings
14 taking place between the NRA and Ackerman McQueen where they
15 also are figuring out what their budget is going to be for the
16 next year. Next fiscal year.

17 That budget -- that Ackerman McQueen budget is then not
18 incorporated into the NRA's budget so that -- that budget is
19 taking the -- the Ackerman McQueen budget, the timing of that is
20 late November, early December at the same time that our budget
21 is going on.

22 And so what happens is you get to January, and the
23 NRA's budget is being approved by the Board, but it doesn't have
24 any of the adjustments or any of the projects or any of the work
25 that Ac-Mac is going to be doing for the next year within our

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1 own budget. And so you get to January's actual results, and you
2 start to compare the NRA's budget to actual, and there are
3 variances all over the PR budget where Ackerman is involved
4 because the budget's not the same. It's different.

5 (Continued on the following page.)

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M. Erstling - by Defendant - Direct/Ms. Rogers

1 Q Who at the NRA caused this issue?

2 MR. FARBER: No foundation, your Honor?

3 Q When Ackerman and the NRA negotiated the budget, who at
4 the NRA participated in that process?

5 A There were two people that were the contacts for the
6 Ackerman McQueen relationship, and that was Wayne LaPierre and
7 Woody Phillips. I wasn't in the room. I don't know who was
8 sitting there.

9 Q And when the Finance Committee was presented with a
10 budget for its approval, who amongst management presented the
11 budget for the Committee's approval?

12 A Woody would have initiated the meeting, and he would
13 have given an overview. Wayne would have spoken, and then each
14 of the department heads would have spoken at that meeting.

15 Q Switching topics a little bit.

16 What is your understanding as to the meaning of the
17 term 501(c)(4) Organization?

18 A A 501(c)(4) is a social welfare organization that
19 files -- that is a nonprofit, nontaxable, nonfederal taxable
20 organization by IRS code.

21 Q Is the NRA a 501(c)(4)?

22 A Yes, ma'am.

23 Q What type of organization is the NRA Foundation?

24 A That's a 501(c) charitable organization.

25 Q Did the NRA receive 501(c)(3) funds from the Foundation

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M. Erstling - by Defendant - Direct/Ms. Rogers

1 in 2015 through present timeframe?

2 MR. THOMPSON: Objection. Relevance, your Honor.

3 THE COURT: Overruled.

4 A Yes, ma'am.

5 Q When the NRA received or is receiving funds from the
6 Foundation, how can the funds coming in from the Foundation be
7 used by the NRA?

8 A There are different levels of restriction; but the
9 overarching goal is that (c)(3) funds can only be used for
10 (c)(3) programs. Further restricting it could be money may be
11 restricted to competitions, or money may be restricted to the
12 Eddie Eagle Gun Safe Program, or it could be restricted to our
13 Youth Hunter Education Challenge.

14 So, those monies could be further restricted, but
15 they're still restricted to (c)(3) programs.

16 Q Who at the NRA has been responsible since at least 2015
17 for ensuring that (c)(3) funds coming in from the Foundation are
18 accounted for appropriately and spent only for the types of
19 services that you just referenced?

20 A Me.

21 Q How have you done that?

22 A (C)(3) accounting-wise, in the accounting system we set
23 up cost centers. A cost center or a profit center, it's just a
24 code. It is a series of numbers.

25 So, each-- each cost center has a five digit code. So,

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M. Erstling - by Defendant - Direct/Ms. Rogers

1 with this example right now, the NRA Museum, the cost center
2 number is 40685; and so any expenses associated with the museum,
3 whether that be salaries and benefits, whether it be supplies
4 and materials, whether it be travel, we would code those
5 expenses to 40685. And so when money comes over from the
6 Foundation and it is restricted to a (c)(3) program, well, the
7 museum counts as a (c)(3) program. If it was restricted to just
8 museum, well, I could put it in museum.

9 And so each program within general operations that is a
10 (c)(3) program, it's educational, it is for the public, they
11 fall in a specific cost center and they have a specific cost
12 center number, and that's how we keep each column separated from
13 the next.

14 And so when the money comes over from the Foundation,
15 when we request money from the Foundation, we request it in
16 those particular buckets. So, I may request \$125,000 to cover
17 the expenses and allocations to the museum from the Foundation,
18 and the Foundation would send if they approved 125,000.

19 I might request for the Eddie Eagle Gun Safe Program
20 that we send out \$25,000 worth of material across the country.
21 I might request \$25,000 of Eddie Eagle money to be granted over
22 to the NRA, and so I keep those things separate by their
23 accounting code on the ledger.

24 Q Were there any other steps you took to ensure that
25 (c)(3) funds coming from the Foundation were spent only for the

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M. Erstling - by Defendant - Direct/Ms. Rogers

1 designated purposes like the museum, Eddie Eagle, Refuse to be a
2 Victim, et cetera?

3 A I mean, that's the analysis that I do on a monthly
4 basis. So, I am pulling information directly from the general
5 ledger, right from our accounting software. I place it into
6 this -- this model, this spreadsheet and it gives me a column
7 for each and everyone of those (c)(3) programs.

8 And so when I make my request to the Foundation, I
9 provide -- I provide the Foundation with that spreadsheet and
10 with the detail behind it showing the ledger and the expenses to
11 the Foundation to approve that request.

12 MS. EISENBERG: Thank you, Mr. Erstling. No
13 further questions at this time.

14 THE COURT: Any other direct testimony?

15 MR. CORRELL: I'll pass the witness, your Honor.

16 MR. FARBER: No direct, your Honor.

17 DIRECT-EXAMINATION

18 BY MR. FLEMING:

19 Q Hello, Mr. Erstling. How are you?

20 A Good, thank you.

21 Q So, I have some questions and you seem like the right
22 person to get granular with.

23 So, you testified about approving payments to vendors.
24 Do you recall?

25 A Yes.

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M. Erstling - by Defendant - Direct/Ms. Rogers

1 Q Can you explain to the jury the process by which an
2 invoice comes in and payments are approved ultimately?

3 A So, today we request that payments are e-mailed as a
4 PDF into an e-mail box called AP Invoices.

5 THE COURT: You say payments, you mean invoices
6 e-mailed?

7 THE WITNESS: Invoices. So, invoices are sent in
8 to an e-mail box called AP Invoices.

9 From there, PN3 will import that PDF into the
10 system and so that's step one.

11 Step 2 is the AP group will then take a look at
12 that invoice and they will enter in whatever type of
13 information they can as far as the vendor name and address
14 and the like, and then they look on that invoice for who the
15 owner is of that particular invoice.

16 Q That's where I want to stop you, if you don't mind to
17 go through it.

18 A No worries.

19 Q When you say owner of an invoice, what do you mean?

20 A In some cases it's really simple because it might say
21 in the address, it might say Mike Erstling NRA; and so right
22 there they can say, oh, look, that belongs to Mike. Let me
23 route that to Mike for approval.

24 Q Okay, but is owner of the invoice in any way related
25 to the person who contracted for the services, for instance?

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M. Erstling - by Defendant - Direct/Ms. Rogers

1 A Not always, not always.

2 Q Okay. Is that person; that is, the person who
3 originated the contract or ordered -- asked for the services,
4 does that person get routed the invoice at all?

5 A Um, they should. At some point, at some point in the
6 routing if let's say -- let's say a junior, a manager, a manager
7 gets the invoice; they have the ability to route that to a more
8 senior manager in their own department for approval as well.

9 So, it tracks those steps all the way through. So, it
10 depends on what their authority is to sign off on a particular
11 invoice.

12 Q Okay, but if I worked at the NRA and I ordered 100
13 widgets and the invoice comes into AP invoices, would I expect
14 to see that invoice?

15 A You should.

16 Q Okay. And once the person in my position gets the
17 invoice, what input if you know do they then provide and who do
18 they provide it to?

19 A So, the invoice would pop up on their screen if they're
20 in the software, and they might be asked to code that invoice,
21 to provide that five digit cost-center code that we talked about
22 the GO a couple minutes ago; they might be asked to put that
23 code. In they might be asked to put an account in, office
24 supplies, fulfillment supplies and then they would be asked to
25 either approve it or approve and forward to the next person for

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1 their approval as well.

2 Q Okay, and when they approve it -- let's assume they
3 approve it -- are they saying yes, I ordered this, and yes, I
4 received it?

5 A They should be, yes.

6 Q And are they also saying that yes, this is the price I
7 agreed to?

8 A Yes.

9 Q And then after they do that, where does it go?

10 A It depends on the size, right? So if -- if the size is
11 small, let's say under 50,000 -- we'll just go with that easy
12 one -- and the person approved it last had the authority to
13 approve up to that level, then it just returns back to AP for
14 payment.

15 Q Okay. So, if -- now, let's take a different level.
16 Let's say it is over a hundred thousand. Where does it go?

17 A So, let's say we have a show of exhibits. So they have
18 a \$105,000 invoice, and so John Bailey goes ahead and he signs
19 off on it; and he would send it to Lisa Supernaugh and Lisa
20 Supernaugh would go ahead and she would approve it. And then it
21 would go -- the next step would go to the treasurer's office,
22 and the treasurer would sign off on it because it is over
23 \$50,000.

24 And then once the treasurer signs off on it, she'll
25 send it to John Frazer, and John Frazer will sign off on it

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1 because it needs two -- two officers' signatures.

2 Q Let me stop you. I had understood that that process
3 you just described for invoices between 50 and 100, am I wrong
4 about that?

5 A It is over 50,000.

6 Q Over 50, okay. And when it goes to the treasurer's
7 office and then to Mr. Frazer for signature, do they usually
8 have any original or primary understanding of that invoice or
9 that service that was provided?

10 A I don't know what knowledge they would have. If it's
11 a contract or any type of contract they would have seen a
12 contract, right? Because through the contract process, the
13 approval of that has the signature of the treasurer and the OGC.
14 So, they would have known about it they way.

15 Q Now, by the time the treasurer and Mr. Frazer received
16 this invoice, is it true that the originator of the service --
17 me in the example I asked you -- would they know that I have
18 already approved that, yes, I ordered those services; yes, I
19 received them; yes, that's the price I contracted for?

20 A It would show up in PN3 that you've signed off on it.
21 So, they would see that the trail of prior signatures going down
22 the list, yes.

23 Q Okay. Next topic and last topic: You talked about
24 compliance and education being a critical function of the NRA
25 now; is that right?

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1 A Yes.

2 Q And you were talking in the sort of post-whistleblowing
3 Top Concerns Memo period; is that right?

4 A That's correct.

5 Q Now, is it true that the first compliance refresher
6 seminar was given actually prior to July 30, 2018?

7 A It may have been. I just don't remember the timing of
8 the exact date.

9 Q Okay, and then chronologically, last question. All of
10 that, the 2018 whistleblowing, the Top Concerns Memo, the
11 compliance refresher and all of these reactions that took place
12 according to your testimony within a week occurred prior to
13 2019; isn't that right?

14 A Not all of them, but a lot of them, yes.

15 Q And that was prior to the New York Attorney General's
16 investigation; isn't that right?

17 A I believe so, yes.

18 MR. FLEMING: Thanks so much.

19 THE COURT: All right, we're going to take our
20 break, and we'll reconvene at 2:15.

21 COURT OFFICER: All rise, jury exiting.

22 (Whereupon, at this time the jury then left the
23 courtroom.)

24 THE COURT: Mr. Erstling, as last time, during the
25 break, you're still on the stand so you shouldn't discuss

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M. Erstling - by Defendant - Direct/Ms. Rogers

1 your testimony with anyone, the substance of your testimony,
2 including counsel.

3 THE WITNESS: Thank you.

4 (Whereupon, at this time the witness stepped down.)

5 (Whereupon, at this time a luncheon recess was then
6 taken.)

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8 (Continued on next page)

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Proceedings

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AFTERNOON SESSION

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THE COURT: The jury is ready. Are you all ready?

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MR. FLEMING: Just as a quick housekeeping matter really. I had spoken to the Attorney General about stipulating to certain exhibits, primarily all 990s and also secretary's reports; and I haven't heard back and I'm not pressing them for an answer, but I just wanted to raise the issue because I think at some point it would be very effective to make sure that all these documents were in instead of rather than have belabor --

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THE COURT: I'd be surprised if all 990s haven't been put in already.

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MR. FLEMING: Well, 990s of importance go back to 2008, at least for our case and I wanted to get all the '08 through '14. I think you're right, 15 through 22 are in.

17

18

19

THE COURT: The '08 through '14 are relevant?

20

MR. FLEMING: Into the history and treatment of certain items that are in issue here.

21

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THE COURT: Okay, and the 990s and the secretary's reports are presumptively admissible as either business records or public filings, right?

23

24

25

MR. FLEMING: Certainly, the 990s for sure. The

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Proceedings

1 secretary's reports are internal business records. They're
2 traditionally done every year. They're part of the standard
3 practice.

4 THE COURT: So, is there -- do you expect any
5 issues, issue about relevance or --

6 MR. THOMPSON: Relevance, your Honor, but we are
7 looking at it and we are going to respond to Mr. Fleming's
8 e-mail. We just figured Mr. Frazer was not going to be on
9 the stand today, and we had a little more time to look at
10 it.

11 THE COURT: And I had been generally been fairly
12 lenient with the before-and-after time period. In terms of
13 just broad relevance, as you probably saw in the
14 instructions, I'm going to tell them that the only thing
15 that ultimately matters are how things bear on the relevant
16 period; but that sometimes you learn things from prior
17 periods that's relevant and some things.

18 So, hopefully, you won't have an issue because
19 they're admissible in terms of hearsay and other kinds of
20 things. Let's wait and see if we have an issue. I'm
21 inclined to let them in, but --

22 MR. FLEMING: Just to be fully clear, 2008 I forgot
23 to mention is in already and, actually, I used it in
24 previous testimony. So you know for what it's worth.

25 THE COURT: And that was before your client was --

BP

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Proceedings

1 was the GC, right?

2 MR. FLEMING: That's right.

3 THE COURT: Okay. All right, I don't want to waste
4 any time on something that's probably not going to be an
5 issue.

6 So, let's get the jury.

7 MR. THOMPSON: Just one more quick housekeeping
8 item, your Honor.

9 THE COURT: Get the witness.

10 MR. THOMPSON: This is just about the closings. So
11 we are -- we're still working with the NRA to sort of
12 finalize the time allocation. There's just one discrepancy
13 that we're working on; but as far as we calculated the time,
14 we think the closings are probably going to need to start
15 Wednesday afternoon in order to finish by the end of day
16 Thursday.

17 We just want to see if that tracks with what the
18 defendants are thinking as well?

19 THE COURT: Well, how long are you all thinking for
20 closings? I mean, there's five hours in a court day, and so
21 we have to have breaks. Mr. Phillips wants an hour.

22 What does the AG want?

23 MR. THOMPSON: I think we're thinking approximately
24 two hours, your Honor.

25 THE COURT: That's your opening bid. I will accept

BP

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Proceedings

1 that as --

2 MR. CORRELL: Your Honor, Mr. LaPierre will require
3 an hour.

4 THE COURT: Okay. Mr. Phillips, still an hour?

5 MS. ROGERS: The NRA would be looking -- I'm sorry.

6 THE COURT: Mr. Phillips, an hour?

7 MR. FARBER: As of now, but we may be less.

8 THE COURT: Mr. Frazer?

9 MR. FLEMING: Tough to say, your Honor, so I will
10 an hour. It could be less. It could trickle over.

11 THE COURT: And the NRA?

12 MS. ROGERS: We were thinking about ninety minutes
13 and we think -- we're still resolving our time discrepancy;
14 but if the AG takes two hours for closing, then we think
15 cross is pretty much done.

16 MR. CORRELL: The other concern, your Honor, is
17 Mr. LaPierre has not had an opportunity to present his case
18 in chief yet, and he is planning -- I'm planning to call him
19 on Tuesday. I have two experts and maybe one other witness,
20 and we have time allotted to do that.

21 THE COURT: Yeah, so your assumption in your time
22 allotments was that we would have through Wednesday for
23 evidence; but nobody completely dialled in on how long
24 closings would take.

25 So, I still want those done -- even if I back the

BP

3848

Proceedings

1 AG down to ninety minutes, that still doesn't work for one
2 day, right?

3 MR. FLEMING: Well, your Honor, just one other
4 factor. By my understanding of the clock, before today the
5 attorney general is at 43 and a half hours. Two hours for
6 summation puts them at 45 and a half, doesn't include
7 whatever they have done today.

8 If they have no cross next week, then maybe that
9 quickens the day and frees up some time on Wednesday because
10 right now, I have an expert witness, as well. Mr. Frazer
11 may testify; and if we can eliminate cross so we know
12 there's no cross, it's a lot quicker.

13 THE COURT: Well, I'm not going to anybody in
14 advance. We'll just have to sort of see. I made a point at
15 the beginning, it is not a mathematical test here.

16 It's got to be equitable, but I do want to make
17 sure that especially the individual defendants who haven't
18 really -- that they have time. The NRA has, obviously, been
19 spending the time so far.

20 Well, look, my preference would be for all the
21 closings to be together on Thursday. I realize now that
22 would necessary -- require everybody to be much shorter to
23 be able to get all four of you in in four hours. If nobody
24 thinks that's reasonable, then it has to start Wednesday
25 afternoon.

BP

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Proceedings

1 So, I'm going to let you all talk about it for now.
2 But, yeah, the question is what I'd like you to be able to
3 do is to get all the closings in in a total of four hours
4 and to just be more efficient. The jury has heard six weeks
5 of evidence, look, I get it. Summations are important, so
6 I'm aware of the AG's time expenditure.

7 So, unless you can figure out a schedule that gets
8 you down to four hours for closings, some closing is going
9 to have to start and it will be a defendant closing on
10 Wednesday afternoon.

11 MR. FARBER: Judge, I'll say for our part if the
12 Court is going to do this in four hours, we'll conform our
13 closing to do our portion of that. I mean, I would prefer
14 to have these all be in one day, as would the Court.

15 THE COURT: I would certainly. There's a lot to
16 summarize, but my experience watching you all is that time
17 constraints has more often than not improved the quality of
18 presentation. Not that the quality has been bad ever; but
19 the shorter crosses, for example, are not a lot of wasted
20 time, right to the point. Frankly, you have to sort of plan
21 that out.

22 I don't want to do a dicta that says it has to be
23 four hours and, basically, an hour a piece; but that's what
24 I would prefer and that would give the AG some more
25 flexibility on time for cross.

BP

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Proceedings

1 And it may be a little too flip for me to say this;
2 but if you can't summarize it in an hour, that's a
3 problem.

4 MR. FARBER: Judge, what is the order of summations
5 going to be?

6 THE COURT: Well, I mean, the default is defense
7 first and it goes the opposite of the openings. So, the
8 defendants go first and then the plaintiff finishes, and the
9 default, at least for jury selection which I guess I would
10 apply is the caption, where normally the NRA is listed first
11 and the same order that you've been sitting in that we would
12 do it in that order, and then the four defendants go and
13 then the plaintiff.

14 MR. CORRELL: Your Honor, actually, the CPLR
15 provides for closing in inverse order of opening. So --

16 THE COURT: Inverse meaning the defendants first
17 and then plaintiff.

18 MR. CORRELL: Yes, so that would be Mr. Fleming
19 would go first, Mr. Farber --

20 THE COURT: I don't think it necessarily -- does it
21 get as granular as that, that the opposite of the
22 defendants?

23 MR. CORRELL: I think it does, your Honor.

24 THE COURT: Really?

25 MR. CORRELL: I've been planning my closing in that

BP

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Proceedings

1 order.

2 MR. FARBER: The CPLR does say inverse. It does
3 not --

4 THE COURT: I'm not going to --

5 MR. FARBER: -- anything beyond that.

6 THE COURT: While we're worried about time, let's
7 get the jury and get the witness, and we'll deal with the
8 rest of all this.

9 I want you to work on a time. Again, if the AG
10 which has to do the entire case can do there's in an hour,
11 that suggests to me that maybe a little more than an hour
12 for them instead of just assuming a block of an hour. For
13 each individual defendant there should be like
14 forty-five minutes each and the NRA, which has a blank sort
15 of an overview, maybe a little bit more.

16 I'm not going to micromanage it yet, but I think
17 the AG who has to cover the entire case would likely have a
18 pretty good argument to have a little bit longer time than
19 the individual defendants who are only arguing part of the
20 case.

21 MR. THOMPSON: Your Honor --

22 MR. CORRELL: Your Honor, I respectfully disagree.
23 So far my client has had one hour to the AG's ten, and we
24 are feeling like we're getting squeezed already and to allow
25 them more time in closings than Mr. LaPierre when he's had

BP

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Proceedings

1 to deal --

2 THE COURT: Well, you're not getting squeezed by me
3 because I made this point already, that you should have as
4 much of the defense case as you feel like you need; and if
5 you're not getting it, let me know.

6 MR. THOMPSON: Your Honor, just to note that we
7 have been building the two hours into our, like, how much
8 time we have for cross.

9 THE COURT: Get the witness.

10 Look, like I said, you all know the rules; but the
11 two hours doesn't work for us to have closings in one day.
12 And the Wednesday start for closings is not consistent,
13 maybe with how defendants are reasonably planning out when
14 their witnesses are going to be allowed to be in and your
15 case did take into the fourth or maybe even the fifth week.

16 So, I have to give them some deference in terms of
17 making sure they can put their primary witnesses in; and if
18 that's the expense of you going from two hours of a closing
19 to an hour and a half to an hour and fifteen, that's just
20 the way it is.

21 So, let's get the jury.

22 (Whereupon at this time the witness,
23 MICHAEL ERSTLING, having been previously duly sworn/affirmed
24 by the Clerk of the Court resumed the witness stand and
25 testified as follows:)

BP

3853

M. Erstling - by Defendant - Cross/Mr. Thompson

1

2

COURT OFFICER: All rise, jury entering.

3

(Whereupon, at this time the jury then entered the courtroom.)

4

5

THE COURT: Welcome back. Please have a seat.

6

All right, I think we left off just before cross-examination, right?

7

8

Welcome back, Mr. Erstling.

9

THE WITNESS: Thank you.

10

THE COURT: Mr. Thompson, you may proceed.

11

MR. THOMPSON: Thank you, your Honor.

12

CROSS-EXAMINATION

13

BY MR. THOMPSON:

14

Q Good afternoon, Mr. Erstling.

15

A Good afternoon.

16

Q Just a few questions. Would you agree with me, Mr. Erstling, that all of the NRA funds must be used in furtherance of the NRA's mission?

17

18

19

A I would agree that the funds should be used in the NRA's mission.

20

21

Q And before the break when you were being questioned by Mr. Fleming, he was asking about the timing of the NYAG's investigation.

22

23

24

Do you recall that?

25

A I recall there was an investigation, yes. I don't

BP

3854

M. Erstling - by Defendant - Cross/Mr. Thompson

1 remember the exact dates.

2 Q Did you ever receive a document preservation notice in
3 connection with that investigation?

4 A Yes.

5 Q And do you recall that being in approximately April of
6 2019?

7 A I could agree with that. I don't know the -- again, I
8 don't know the exact date, but I know there was a preservation
9 and I know we're following that.

10 Q Okay. And if I can just to refresh your recollection,
11 Mr. Erstling, if I could hand up a document very quickly.

12 MR. THOMPSON: And I have copies here, as well.

13 THE COURT: Marked for identification so we know
14 what it is?

15 MR. THOMPSON: It is marked for identification as
16 Plaintiff's Exhibit 3584.

17 THE COURT: And you're not admitting this. This is
18 just for refreshing recollection?

19 MR. THOMPSON: Correct, your Honor.

20 Q And my question, Mr. Erstling, when you have the
21 document, does this refresh your recollection as to the timing
22 of the document preservation notice?

23 A Yes.

24 Q What does it refresh your recollection as to when the
25 preservation notice was issued?

BP

3855

M. Erstling - by Defendant - Cross/Mr. Thompson

1 A It was according to the document, which I believe I've
2 seen, is April 26, 2019.

3 Q And you were testifying about the new invoice software.
4 That's PM3?

5 A N as in Nancy.

6 Q N as in Nancy. When did the NRA begin using that
7 software, that program?

8 A That was probably 2018 to 21.

9 Q Okay. And then you were talking with Ms. Eisenberg
10 about the Top Concerns Memo and sought of the pace of change
11 after you spoke with the Audit Committee.

12 Do you remember that?

13 A Yes, sir.

14 Q And one of the items on the Top Concerns Memo concerns
15 Membership Marketing Partners; correct?

16 A Yes.

17 Q And the NRA renegotiated its agreement with Membership
18 Marketing Partners and Allegiance Creative Group in 2022?

19 MS. EISENBERG: Objection, outside the scope.

20 THE COURT: I can't remember.

21 MR. THOMPSON: Were discussing the Top Concerns
22 Memo and the timing things changed, your Honor, so this is
23 going to an item in the Top Concerns Memo.

24 THE COURT: Overruled.

25 MR. THOMPSON: And if we could please bring up for

BP

1 the witness only, Plaintiff's Exhibit 2459.

2

3 THE COURT: So, the witness and counsel?

4 MR. THOMPSON: Witness and counsel, please.

5 This was Tab 8 of the Erstling binder. I'm not
6 sure if there was a binder for Mr. Erstling today. And if
7 there's no objection, I will move this into evidence.

8 (Continued on next page)

9

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BP

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Erstling - by Defendant - Cross/Mr. Correll

1

4

MR. FARBER: Can we have a moment, your Honor.

5

THE COURT: Sure. Any objection from the Defense?

6

MR. FARBER: No your, Honor.

7

THE COURT: Hearing none, it's admitted.

8

Q And Mr. Erstling, if we can please go ahead and publish this actually.

10

My question is just does this email chain reflect the timing of the renegotiation with MMP in 2022?

12

A Yes. It appears about the right timing, yes.

13

Q And you received this email; is that right?

14

A Yes, I was on an earlier exchange.

15

Q If you look at the topmost email.

16

A July 29. I see my name, yes.

17

Q Okay. We can take that down. No further questions.

18

THE COURT: Okay. Anything further from the Defense?

19

20

THE COURT: Cross-examination, yes? This is cross?

21

MR. CORRELL: Yes.

22

THE COURT: And cross next?

23

MR. FARBER: Perhaps.

24

THE COURT: Okay.

25

CROSS-EXAMINATION

KM

3858

Erstling - by Defendant - Cross/Mr. Correll

1 BY MR. CORRELL:

2 THE COURT: Okay. Mr. Correll, you can continue if
3 you can talk over the construction. We will try to keep our
4 mikes high.

5 Q Good afternoon Mr. Erstling. I am Kent Correll. I
6 represent Wayne LaPierre.

7 A Good afternoon.

8 Q And would you please direct your attention to Tab 18 in
9 your notebook.

10 A I don't have a notebook. I'm sorry.

11 MR. CORRELL: Could we bring Tab 18 up on the
12 screen.

13 THE COURT: Is that the notebook from last week?

14 MR. CORRELL: This is the Top Concerns memo.

15 THE COURT: But what notebook are we talking about?
16 Is there a notebook for this; Erstling exhibits? The one he
17 just testified from.

18 MS. EISENBERG: We identified a set we could have
19 used. Because I only used one document, I didn't bother
20 bringing a binder.

21 MR. CORRELL: It's PX 2605, Top Concerns memo.

22 THE COURT: I think it would be helpful for the
23 witness to have a copy of the binder so he can have a hard
24 copy to look at if he wants to. Okay.

25 But it's just the Top Concerns memo that we looked

KM

3859

Erstling - by Defendant - Cross/Mr. Correll

1 at before.

2 MR. CORRELL: Yes, it is.

3 Q I would like to direct your attention if you would to
4 the third item on the list of Top Concerns for the Audit
5 Committee.

6 Next page, please. Third item.

7 A Yes, sir.

8 Q Did you write that statement?

9 A I did not.

10 Q Who did?

11 A I believe Emily Cummins wrote that.

12 Q Did you have any personal knowledge at the time this
13 was written as to whether management had subordinated its
14 judgment to vendors?

15 A I believe that Emily -- during our conversations --

16 MR. CORRELL: Objection, your Honor. Hearsay.

17 THE COURT: Well --

18 MR. CORRELL: This is a former.

19 MR. FARBER: This is a yes or no question, your
20 Honor.

21 Q So my next question is did she also write the part that
22 says "Decisions are made in the best interest of vendors?"

23 A She would have written the whole thing.

24 Q Okay. As you sit here -- well, at the time this was
25 written, did you have any personal knowledge as to whether any

KM

3860

Erstling - by Defendant - Cross/Mr. Correll

1 decisions were being made in the best interest of vendors?

2 A I did not.

3 Q And at the time this was written, did you have any
4 personal knowledge as to whether management had subordinated its
5 judgment to vendors?

6 A I did not.

7 Q And as the time -- as of the time this was written, had
8 you ever spoken to Mr. LaPierre?

9 A Not about this, no.

10 Q And at the time this was written, did you go and talk
11 to Mr. LaPierre about any of your concerns?

12 A I did not.

13 Q Okay. Did Mr. LaPierre ever hold any assets for
14 charitable purposes pursuant to a will?

15 A I have no idea what you're talking about.

16 Q Okay. You talked about charitable assets before. Do
17 you remember testifying about that?

18 A Yes.

19 Q And you testified that there were restricted assets
20 that would come under your management.

21 Do you remember that?

22 A Yes.

23 Q Was Mr. LaPierre involved in that process of managing
24 the funds from the (c)(3) corporations?

25 A No.

KM

3861

Erstling - by Defendant - Cross/Mr. Correll

1 Q Did you know that Ackerman McQueen tried to fire Craig
2 Spray shortly after he was hired?

3 A Only through this process.

4 Q Through which process?

5 A This lawsuit that's going on today. I have heard that
6 information.

7 Q Okay. And that was before the Top Concerns memo was
8 composed; correct?

9 Do you have any personal knowledge as to when that
10 occurred?

11 A I do not.

12 Q And do you know -- do you have any knowledge as to
13 whether Mr. LaPierre pushed back on that and prevented that from
14 happening?

15 A Only through this process.

16 Q Was Mr. LaPierre supportive of your efforts to address
17 these issues in the Top Concerns memo?

18 A He was.

19 Q And were those concerns ultimately addressed to your
20 satisfaction?

21 A They were.

22 Q And could that have happened without Mr. LaPierre's
23 support?

24 A It probably would have been more difficult, yes, but he
25 was helpful.

KM

3862

Erstling - by Defendant - Cross/Mr. Farber

1 Q But as you sit here today, you have no personal
2 knowledge of Mr. LaPierre doing anything to try to impede that
3 effort; correct?

4 A No.

5 Q And in fact, your personal knowledge is the opposite
6 that to -- as far as you know, he was an ally in that process;
7 correct?

8 MR. THOMPSON: Objection. Leading.

9 THE COURT: This is cross. Overruled.

10 MR. CORRELL: Thank you.

11 THE COURT: Mr. Farber.

12 MR. CORRELL: I don't see an answer to the last
13 question.

14 THE COURT: The last question; And in fact your
15 personal knowledge is the opposite that as far as you know,
16 he was an ally in that process; correct?

17 And then there was an objection which I overruled.
18 So you can answer.

19 A Yes. He's been an ally.

20 MR. CORRELL: Thank you, your Honor.

21 MR. FARBER: May I proceed?

22 THE COURT: Yes.

23 Q Good afternoon. My name is Seth Farber. I represent
24 Mr. Phillips.

25 Mr. Correll just asked you some questions as to whether

KM

3863

Erstling - by Defendant - Cross/Mr. Farber

1 Mr. LaPierre did anything to impede the reforms that were being
2 put into place at the NRA after you went to the Audit Committee
3 with these concerns.

4 Do you recall that question?

5 A I do.

6 Q Okay. Mr. Phillips didn't do anything to impede those
7 reforms either; did he?

8 A He wasn't here, so no.

9 Q He was still a treasurer at the NRA at the time; wasn't
10 he?

11 A I didn't see him so -- correct. I don't think he did
12 anything, but I wouldn't know. He wasn't here.

13 Q You wouldn't know?

14 A I wouldn't know.

15 Q At the time your position at the NRA was Director of
16 Budget and Financial Analysis; is that correct?

17 A That's correct.

18 Q How many people reported to you in that capacity?

19 A Usually one to two.

20 Q Okay. Of and you did not report directly to Mr.
21 Phillips at that time; did you?

22 A I did not.

23 Q You reported to Mr. Tedrick?

24 A Correct.

25 Q But you were frustrated because you did not get to

KM

3864

Erstling - by Defendant - Cross/Mr. Farber

1 speak to Mr. Phillips directly; is that correct?

2 MS. EISENBERG: Mischaracterizes testimony.

3 THE COURT: He is just asking a new question.

4 Overruled.

5 A I wasn't necessarily frustrated I couldn't meet with
6 him. It's just that we didn't meet with him.

7 Q But you didn't report directly to him. You reported to
8 Mr. Tedrick; isn't that correct?

9 A That's correct.

10 Q Who is the treasurer now?

11 A Sonya Rowling.

12 Q Okay. And how many people roughly report to her?

13 A Got to be close to 50.

14 Q And what's the scope of her responsibilities as
15 treasurer and CFO?

16 A Financial aspects of the Association. That could range
17 from IT work to Financial Services to treasury to risk and
18 insurance to tax.

19 Q Interactions with the Board?

20 A Yes.

21 Q Audit Committee?

22 A Yes.

23 Q Finance Committee?

24 A Yes.

25 Q Mr. LaPierre when he was EVP?

KM

3865

Erstling - by Defendant - Cross/Mr. Farber

1 A Correct; yes.

2 Q Fairly broad?

3 A Yes.

4 Q And is it correct -- is it a fair characterization to
5 say that you were not a fan of Mr. Phillips' management style?

6 A I was not a fan.

7 Q You preferred Mr. Spray's; isn't is that right?

8 A I do prefer Mr. Spray's.

9 Q And I think you testified that you at some point were
10 frustrated that you were seeing a great deal of large
11 transactions with very little detail.

12 Is that accurate?

13 A Yes.

14 Q And you were also frustrated -- you had concerns about
15 transactions that you believe were lacking proper approvals. Is
16 that correct as well?

17 A I don't know if approvals was the right word, but it
18 was lacking in detail.

19 Q Okay.

20 A They always had approvals.

21 Q And you have shared that with Mr. Spray you said in
22 2018?

23 A We did, yes.

24 Q Well, I'm asking about you.

25 A I did, yes.

KM

3866

Erstling - by Defendant - Cross/Mr. Farber

1 Q You did; correct.

2 And if I recall correctly, you have been at the NRA
3 since about 2001; is that correct?

4 A Yes.

5 Q And so that was the first time that you shared those
6 concerns with someone at Mr. Spray's level; is that correct?

7 A I would always bring them up to Rick, but I never had a
8 meeting with Woody to talk about stuff like that.

9 When Craig came, we had meetings. We were sitting
10 around the table on a month to month basis so as these things
11 were coming in, I was able to bring them up.

12 Q Okay. So in -- from 2001 when you started to 2018, you
13 never saw Mr. Phillips in person?

14 A I saw Woody three times a year during the budget
15 process.

16 Q And you never said anything to him about those concerns
17 at that time; right?

18 A The invoices, no.

19 Q When did you first meet Mr. Frazer over here?

20 A Probably when he became general counsel.

21 Q Which was in 2015; correct?

22 A I guess, yes.

23 Q Okay. And you testified on direct examination that
24 prior to the Audit Committee meeting in 2018, you talked with
25 him about the concerns that you had; correct?

KM

3867

Erstling - by Defendant - Cross/Mr. Farber

1 A Correct.

2 Q You've never had any doubts about Mr. Frazer's
3 integrity, I take it.

4 A No.

5 Q Okay. Has he ever refused to hear you out on an issue?

6 A No.

7 Q You never went to him in 2015, 2016, 2017 about these
8 concerns that you say you had; isn't that correct?

9 A That's correct.

10 Q Okay. And you could have done that; right?

11 A I could have.

12 Q You could have sent him an email even if he wasn't
13 personally available; right?

14 A Yes.

15 Q But you didn't do that.

16 A I did not.

17 Q I think you said that in 2018, you started to sort of
18 sit around the table with the group of other people in the
19 Finance Department that you described and sort of put things
20 together, engaged, and I think you used the word "group think."

21 Is that correct, sir?

22 A Yes, sir.

23 Q Okay. So when you engaged in that group think with
24 your colleagues, what was your salary at the time?

25 A I think 180,000.

KM

3868

Erstling - by Defendant - Cross/Mr. Farber

1 Q Okay. What's your salary now, sir?

2 A 250,000.

3 Q And you have a higher position now; don't you?

4 A I do and more responsibility.

5 Q And Mr. Tedrick's job. Mr. Tedrick's job. You now
6 have the job that he used to have?

7 A No, sir, I do not. Mr. Tedrick is still there, and Mr.
8 Tedrick still does his job.

9 Q Are you above Mr. Tedrick?

10 A No.

11 Q You just have a higher salary?

12 A I have Sonya Rowling's old job.

13 Q I am mistaken. I apologize.

14 So you have Sonya Rowling's old job. And do you know
15 what her salary was at the time when you were all sitting around
16 talking?

17 A I do not at the moment, no.

18 Q And by the way, you said that Mr. Phillips had not
19 held -- that there were never any formal regularly scheduled
20 meetings prior to Mr. Spray being there; is that correct?

21 A That's correct.

22 Q But you did testify you would have ad hoc random
23 meetings; isn't that right?

24 A As it relates to the budget, yes.

25 Q There was nothing preventing you from talking to your

KM

3869

Erstling - by Defendant - Cross/Mr. Farber

1 colleagues about these concerns that you had during that period?

2 A We did talk from time to time, but it was --

3 Q Nothing prevented you from doing this.

4 A Nothing prevented us from doing it.

5 Q Or take the concerns that emerged from those
6 discussions and going to Mr. Frazer as the general counsel of
7 the NRA and reporting to him that there was something that
8 bothered you; isn't that right?

9 A That's correct.

10 Q Okay. So now you're still employed by the NRA today?

11 A Yes, I am.

12 Q Making your higher salary?

13 A That's correct.

14 Q Okay. Now, you were deposed in this case; isn't that
15 right?

16 A I was.

17 Q Okay. And you understand that Ms. Eisenberg who
18 questioned you earlier represents the NRA; right?

19 A That's correct.

20 Q Your employer.

21 A Correct.

22 A Yes.

23 Q She represented you at that deposition too; isn't that
24 what right?

25 A I believe so.

KM

3870

Erstling - by Defendant - Cross/Mr. Farber

1 Q Okay. And you testified earlier in this trial. It
2 seems like a while ago. Several weeks ago.

3 Do you recall that, sir?

4 A I do.

5 Q Okay. And between your testimony then and today, have
6 you talked with Ms. Eisenberg at all?

7 A I have.

8 Q And any other members of her firm?

9 A Yes.

10 Q You talked to them about what you're going to testify
11 about?

12 A Whatever documents, yes.

13 Q Well, you just went over documents? Is that all that
14 happened?

15 A That's what happened.

16 Q Did you talk about the subject that you were going to
17 testify about?

18 A We talked about the documents which is the subject of
19 the testimony that I'm doing today.

20 Q Did she ask you any questions?

21 A Yes.

22 Q Okay. And you answered and went over what you were
23 going to testify about today; isn't that right?

24 A Yes.

25 Q About how many times did you do that?

KM

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Erstling - by Defendant - Cross/Mr. Farber

1 A Two.

2 Q Okay. And did you have any meetings like that before
3 you testified the first time?

4 A Yes.

5 Q Okay. With Ms. Eisenberg or with others from the
6 Brewer Firm?

7 A Others from the firm.

8 Q Which ones?

9 A Susan Dillon.

10 Q And what's Susan Dillon's role at the Brewer Firm?

11 A You have to ask the Brewer Firm. I don't know exactly
12 what her role is.

13 Q Well, I'm asking if you know.

14 A I don't know.

15 Q Okay. Did you have any meeting with Mr. Brewer
16 himself?

17 A Yes.

18 Q Okay. And when were those?

19 A I had a meeting yesterday.

20 Q Oh, okay.

21 With Ms. Eisenberg?

22 A She was in the room, yes.

23 Q Okay. And to talk about the documents?

24 A Yes.

25 Q That you testified about today.

KM

3872

Erstling - by Defendant - Redirect/Ms. Eisenberg

1 A Yes.

2 MR. FARBER: Okay. Nothing further your Honor.

3 THE COURT: Redirect.

4 REDIRECT EXAMINATION

5 BY MS. EISENBERG:

6 Q Mr. Erstling, when you and I met to prepare for your
7 testimony today, I didn't tell you what answers to give. Is
8 that fair?

9 A That's fair.

10 Q I didn't script out your answers for you; right?

11 A No, ma'am, you did not.

12 Q And neither did Ms. Dillon?

13 A No, she did not.

14 Q Nor Mr. Brewer right?

15 A Correct.

16 Q All the answers that you gave today are your answers;
17 fair?

18 A They are my answers.

19 Q You mentioned the word "group think" in your testimony
20 when I asked questions and then Mr. Farber brought it up again.
21 That tends to have different connotations.

22 Can you please explain to the members of the jury in
23 what sense you meant it here.

24 A I go to back to the puzzle. It's putting the pieces of
25 the puzzle together. Nobody had all of the pieces of the puzzle

KM

3873

Erstling - by Defendant - Redirect/Ms. Eisenberg

1 and so by sitting around, everybody was putting their piece into
2 this puzzle and you could start to see the picture that was
3 taking place.

4 It wasn't a, hey, let's all group together and pick one
5 route. That wasn't the purpose. It was just to get a clear
6 picture of what was going on.

7 Q And did the meetings that Mr. Spray organized serve as
8 a catalyst for being able to put those pieces of the puzzle
9 together?

10 A I would say yes, definitely.

11 Q Mr. Farber asked you about your promotion.
12 Congratulations.

13 A Thank you.

14 Q Please tell us if you don't mind how your
15 responsibilities have increased in connection with that
16 promotion?

17 A So prior to the promotion, I was responsible for the
18 budget and the annual budget and financial forecasting.

19 I am now responsible for all of accounting operations
20 which includes accounts payable, accounts receivable, general
21 ledger. I am also responsible for tax filings. So all of the
22 state, sales and use tax filings, all U.S. census bureau filings
23 and 990 preparation.

24 Q And by state filings, are you referring to filings in
25 pretty much every state in the United States?

KM

3874

Erstling - by Defendant - Redirect/Ms. Eisenberg

1 A All 50 states and some states have counties so you have
2 to do those as well.

3 Q Mr. Thompson asked you about the timing of the PN3
4 software and you testified that that came in place in 2021.

5 Do you recall that testimony?

6 A I do.

7 Q Is there anything wrong within the NRA continuing to
8 improve its processes?

9 A No. It should always improve its processes.

10 Q I asked you about what changed after the July 30, 2018
11 presentation, and you gave a fairly long answer.

12 If you recall, some of the items that you specified
13 what was the timing of the other items there. So for example,
14 you mentioned information and education, and you mentioned the
15 seminars.

16 A So the compliance seminars started in the Summer of
17 2018 and have been every year, sometimes twice a year since that
18 time. The updating of the policies happened during that time.
19 It may have taken more time than, you know, 2018. I can't
20 remember exactly when the travel and expense reimbursement
21 policy was finally updated, but it wasn't -- I don't think it
22 was in 2018. I think it was a little bit further out.

23 Q What about the budgeting issue that you described in
24 connection with the NRA's own budget versus Ackerman's? Did
25 that stop being a problem at some point?

KM

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Froman - by Defendant - Direct/Ms. Rogers

1 A We no longer do business with Ackerman McQueen, so it's
2 not a problem.

3 Q Fair to say that that happened in 2019?

4 A Yes.

5 MS. EISENBERG: Thank you very much. No further
6 questions.

7 THE COURT: Anything further from the Defense or
8 from the Government?

9 MR. THOMPSON: Nothing further, your Honor.

10 THE COURT: Thank you, sir. You're free to step
11 down.

12 MS. ROGERS: The NRA calls Sandra Froman.

13 S A N D R A F R O M A N, a witness called on
14 behalf of the Defendant, after having been first duly sworn,
15 took the witness stand and testified as follows:

16 THE CLERK: State your name.

17 THE WITNESS: Sandra Froman, F-R-O-M-A-N.

18 THE CLERK: Thank you. You may be seated.

19 DIRECT EXAMINATION

20 BY MS. ROGERS:

21 Q Good afternoon, Ms. Froman.

22 Can you tell the jury a little bit about your personal
23 background.

24 A My name is Sandy Froman. I was born an raised in the
25 San Francisco Bay area.

KM

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1 My dad originally grew up in the Bronx, but he married
2 my mother from San Francisco, and when they came east to live,
3 she didn't like the cold so we ended up moving back to
4 California and that's where I was raised.

5 My dad growing up in New York, mom and dad came from
6 Odessa, Russia, so it's kind of weird to be back here and seeing
7 a lot of places that I remember visiting as a child.

8 I went to school in the Bay area, grade school, high
9 school, had an unremarkable but happy childhood and ended up
10 going for my college to Stanford University, graduated with a
11 degree in Economics.

12 (Continued on the following page.)

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3877

Stroman - by Defendant - Direct/Ms. Rogers

1 Q At Stanford, did you become involved in any student
2 activism or causes?

3 A I went to -- went as a volunteer to the Stanford radio
4 station, KZSU; and one of my assignments was to cover the
5 Oakland draft riots in the late sixties. And I went there with
6 a tape recorder trying to interview the police, trying to
7 interview the students. Ended up getting beat up and ended up
8 in the infirmary at Stanford because it was a mess. It was a
9 free for all. That was the end of my radio career.

10 Q After that, you decided to pick another adversarial
11 career and you went to law school; right?

12 A That's correct.

13 Q Tell the jury about that?

14 A When I graduated from Stanford, I applied to a number
15 of law schools. I got into Harvard, and the Dean of the
16 Stanford Law School advised me that I should go somewhere
17 different than Stanford, I should have a different kind of
18 experience.

19 So, I went back east to Harvard Law School, graduated
20 from law school. That was a great experience. It was very
21 different for me having grown up in California. Boston was a
22 great city, and I really enjoyed spending time there and kind of
23 being on my own.

24 Q Did you get involved in any activism at Harvard or had
25 you learned your lesson?

BP

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Stroman - by Defendant - Direct/Ms. Rogers

1 A I hadn't learned my lesson. There were very few women
2 in my law school class. There were less than ten percent women,
3 and then there were no women bathrooms in Langdell Hall --
4 L-A-N-G-D-E-L-L. Sorry, my sister is a reporter.

5 So I, along with some other women, went to the law
6 school and said you have to change some of the mens rooms into
7 ladies rooms because we were having to run, like, ten minutes
8 all the way back to the dorms in between class to use the
9 restroom. And that was I guess my most important activist
10 experience while at law school.

11 And I don't know if this is being an activist or not,
12 we didn't eat very well at law school. The food in the dorms
13 wasn't very good. So a woman named Julia Child, the famous
14 French chef was on WGBH TV in Boston at the time, which was the
15 educational station and I wrote a letter asking her to come to
16 the law school and give a cooking demonstration.

17 And to my surprise, she did. She said yes, and she
18 came and I didn't expect there to be great attendance because
19 there were so few women in school. In fact, it was a sold out
20 crowd. We had mostly men coming to watch her cook and give her
21 demonstration. That's the end of my activist career.

22 Q So, you were successful at your activism to teach the
23 lawyers to cook for themselves.

24 A That's right.

25 Q What about the ladies bathrooms, did succeed at getting

BP

3879

Stroman - by Defendant - Direct/Ms. Rogers

1 Harvard law school to create a bathroom for women?

2 A Yes.

3 Q And after you graduated law school, you went to a law
4 firm; is that right?

5 A That's correct.

6 Q And what firm?

7 A I went to a firm called Loeb & Loeb in Los Angeles. It
8 was at that time the third largest law firm in LA. My goal when
9 I left law school was to go to a major firm and do big time
10 litigation.

11 Q What kind of work did you end up doing at Loeb & Loeb?

12 A Pretty much everything, everything in commercial
13 litigation. I did securities work. I did banking litigation.
14 I did real estate litigation, bankruptcy litigation. We advised
15 corporate clients in different business areas. I took whatever
16 came to me.

17 I was really enthusiastic learning about every area of
18 the law I could.

19 Q Did you work on any major bankruptcies?

20 A I did. I was one of the lawyers who worked on -- baby
21 lawyer is what I used to call myself because I had a lot of
22 people older and more experienced than me to learn from. But we
23 worked on what was then the Equity Funding Corporation of
24 America bankruptcy which at the time was the largest bankruptcy
25 in the country.

BP

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Stroman - by Defendant - Direct/Ms. Rogers

1 Q And how did your career at Loeb & Loeb progress?

2 A I did very well. I was made a partner in the shortest
3 amount of time and was, in fact, the first woman partner in the
4 50-year history of that firm.

5 Q Did they have a bathroom for you or did you have --

6 A Funny you ask, we had women's rooms on the even
7 numbered floors of the high rise and men's rooms on the odd
8 numbered floors.

9 Q A little better than Harvard.

10 A Definitely.

11 Q And after you made partner at Loeb & Loeb, did you
12 change careers at all?

13 A I took a leave of absence from Loeb & Loeb. I had
14 tried five cases in four months and was pretty tired, and I had
15 an offer to teach law school at the University of Santa Clara,
16 which is also in the Bay area, Silicone Valley. So I wanted to
17 do something different, so I accepted that offer and I went and
18 I taught as a visiting assistant professor of law for two years
19 at Santa Clara.

20 Q What law classes did you teach?

21 A I taught evidence. I taught criminal law. I taught
22 the civil side of the law clinic, which was about forty-five law
23 students who were actually practicing in the state court in
24 California representing clients, and I was, like, the advisor.

25 I used to joke it was like having forty-five lawyers

BP

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Stroman - by Defendant - Direct/Ms. Rogers

1 under your supervision trying to commit malpractice on a daily
2 basis and my job was to keep them out of trouble.

3 THE COURT: A little pressure on me getting my
4 evidence rulings right.

5 Q Ms. Stroman, how long have you been a member of the
6 NRA?

7 A Since the early eighties. I would say '82 or '83.

8 Q And how long have you been on the board of directors at
9 the NRA?

10 A Since 1992.

11 Q Why did you become a gun owner?

12 A Practicing law in Los Angeles, living alone in my
13 house, I was going through a separation and divorce at the time;
14 and in the middle of the night someone tried to break into my
15 house, woke me up. I was very frightened. I pounded on the
16 inside of the door. I could see through the peephole that there
17 was somebody there and he would not go away.

18 So, I finally called the police and they came and took
19 them fifteen minutes; and it was one of those things that
20 changes your life because I realized that I had to take
21 responsibility for my own safety and I went the next day to a
22 gun store and tried to buy a gun, and that's how I got involved
23 in the shooting sports.

24 Q Let's look at Tab 2 of your binder.

25 MS. ROGERS: These are the NRA's ByLaws, DX1-0754.

BP

3882

Stroman - by Defendant - Direct/Ms. Rogers

1 There are other versions of the Bylaws that are in evidence.

2 I would like to admit this one. Is there any
3 objection.

4 MR. WANG: No objection.

5 THE COURT: Admitted.

6 (Whereupon, at this time Exhibit DX1-0754 was
7 admitted and received into evidence.)

8 Q Look at page 13 of the Bylaws, and I'm referring to the
9 numbered page of the pamphlet, not the evidence -- yeah, the
10 numbered page of the pamphlet, not the exhibit page.

11 A I have it in front of me.

12 Q All right. And we see the Powers and Duties of the
13 board of directors to formulate the policies and governing
14 association and exercise general oversight of the affairs and
15 property.

16 Do you see that?

17 A Yes.

18 Q Would you -- does that conform with your understanding
19 of your role and your job on the board?

20 A Absolutely.

21 Q Have you served on other board of directors?

22 A I have.

23 Q For profit and nonprofit?

24 A Yes.

25 Q Let's look now at page 1 of the same Bylaws, and it is

BP

3883

Stroman - by Defendant - Direct/Ms. Rogers

1 page 1 of the pamphlet.

2 Those are the Purposes and Objectives of the NRA.

3 Ms. Froman, in your capacity as a member of the NRA
4 board, do you feel you have a duty to advance these purposes and
5 these objectives?

6 A Yes.

7 Q And do you feel the NRA does that?

8 A Yes, absolutely.

9 Q Can any one member of the board speak for the NRA?

10 A No.

11 Q You all have the right to free speech; right?

12 A Everyone on the board as an individual has a right to
13 free speech, but the NRA operates as a collective body. We make
14 decisions as a group. We debate issues before we make a
15 decision, before we vote on it; and then once we voted and we've
16 established a policy, every board member has a fiduciary duty to
17 carry out that policy and to abide by that policy that has been
18 reached through board discussion and deliberation.

19 Q I heard you use the word "fiduciary duty." You and I
20 are lawyers, but not everyone on the jury -- actually, I think
21 nobody on the jury is.

22 Can you explain in lay terms how you understand your
23 responsibilities as a board member?

24 A It is a responsibility --

25 MR. WANG: Object to providing a legal opinion.

BP

3884

Stroman - by Defendant - Direct/Ms. Rogers

1 THE COURT: Overruled. She's a board member. She
2 can give her take on what she thinks her responsibilities
3 are.

4 A My understanding as a board member of the NRA is that I
5 have a fiduciary duty to act in the best of the association, not
6 in my own best interest, not in the best interest of a third
7 party.

8 That I have an obligation to inform myself of the
9 matters that are put before the board for us to decide and
10 discuss. That I can't take advantage of that position for my
11 own personal benefit, and I've tried very hard throughout my
12 time on the board to adhere to those obligations and
13 responsibilities and to that duty.

14 Q Procedurally, how does the board make decisions?

15 A Well, the board is a very large board. We have 76
16 board members. And like a state legislature or even like
17 Congress, we do most of our work through committees. We have
18 over 30 committees, several more boards and trusts that are
19 affiliated with the NRA. And so we ask the committees to dig
20 deep into the subject matter of what they're being asked to look
21 at. It might be a rule change in an NRA competition. It might
22 be an outreach program that we have. It might be a training
23 program that we have. Let's say to train women in marksmanship
24 and the safe handling of firearms, whatever that subject matter
25 is we ask the committee whose responsibility is in that subject

BP

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Stroman - by Defendant - Direct/Ms. Rogers

1 matter to take a look at it and dig deep, debate the issues
2 within the committee and then bring any action items that they
3 might have, any motions that they might have to the entire board
4 of directors.

5 The committee chairman would stand up at the board
6 meeting, give a report. Make a motion for any action item, and
7 then the board would have an opportunity to debate that and,
8 ultimately, vote on whether to accept the recommendation of the
9 committee and put it into action.

10 Q You mentioned debate. Can you describe for the jury
11 the tenor and robustness of the debates that happen on the NRA
12 board?

13 A Some things are pretty much everybody agrees to. We
14 have rule committees that make up the rules and amend the rules
15 for different competitions, and those are people who are experts
16 in those competitions and I'm not.

17 So, if that committee makes a recommendation to me,
18 unless on its face it looks like something's wrong, I would
19 certainly object to it.

20 However, most of the other committees deal with issues
21 that many of us are as board members are familiar with and
22 there's many, many different points of views. The NRA board is
23 lucky to have people from different walks of life, from
24 different socioeconomic statuses, people with different
25 experience in their lives who come together; and we all share a

BP

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Stroman - by Defendant - Direct/Ms. Rogers

1 common purpose, which is to support the NRA and to support its
2 missions and objectives.

3 But when it comes to whether or not we should engage in
4 a particular activity, we sometimes have debates and we talk
5 about them at the board meetings. Very often those debates are
6 contentious I would say even. I think we strive to be
7 respectful. We like one another. We're all part of the same
8 family in the sense that we agree with the missions and goals of
9 the NRA. Otherwise, we wouldn't be on the board; but when it
10 comes to how to best carry out those missions and goals we
11 sometimes disagree, so we talk it out. And people who have
12 opposing views get a chance to express those and have those
13 views challenged.

14 Q You've been on the board for decades so both before and
15 after the rise of social media; right?

16 A Decades, yes.

17 Q How has -- how, if at all, has social media affected
18 the way that this vigorous contentious debate happens?

19 A When I first joined the NRA board, things were handled
20 and discussed mostly inside the board, at board meetings.

21 Sometimes during the social hour at dinnertime we would be
22 talking still in the restaurant about issues that had come up.

23 But now there's such a plethora of ways for people to
24 talk about these issues, to get information on the issues that
25 we discussed. Social media has changed the way we do business

BP

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Stroman - by Defendant - Direct/Ms. Rogers

1 because people want to debate this in social media as opposed to
2 win the confines of a board meeting.

3 Q Is there a set of rules that the board issues to
4 officers to direct the management of the NRA?

5 A Yes. We have -- we have elected volunteer officers and
6 we have elected paid officers, and they have different
7 responsibilities.

8 As a board member, my boss, if you will, is the
9 president of the association, and the president of the
10 association and the vice presidents and the board together then
11 direct the activities, if you will. We have oversight
12 responsibility over the activities of the paid elected officers,
13 including the executive vice president.

14 Q Is there a policy manual comprising the board's
15 director policies?

16 A Yes, a very thick policy manual. It was -- I don't
17 know exactly when it was started, but I know when I first came
18 on the board in 1992 it contained all of the accumulated
19 policies having been passed by the NRA directors, which one had
20 been amended, which one had been superseded by new policies.

21 It was sort of like a history of the policies, motions,
22 resolutions that the NRA had passed as a collective body; and
23 those were available in the office of the secretary and you
24 could look at those anytime you wanted. Quite often, I would
25 either go up to the secretary's office and look at the policy

BP

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Stroman - by Defendant - Direct/Ms. Rogers

1 book or I would ask someone in the secretary's office to tell me
2 if we had a particular policy on a matter we were being asked to
3 discuss at a board meeting.

4 Q As a director, do you expect the NRA executives and
5 staff to comply with the rules that the board sets?

6 A Absolutely.

7 Q And as a director, do you have a sense of whether those
8 rules are freely available to be consulted by staff and
9 executives?

10 A They are freely available. And, in fact, a number of
11 these policies have also been made available to employees at all
12 levels. We now have an NRA internal intranet so employees can
13 look up things that might affect their job, their position and
14 rely on those policies.

15 Q Is there training not just for employees, but for board
16 members on compliance and policy?

17 A Yes.

18 Q Can you describe what that's like?

19 A We have -- training is given at least once a year on
20 compliance to board members that I know about. It's been more
21 often when changes are made and how in our compliance policies
22 board members will be advised of those changes in, let's say,
23 the form that we have to report.

24 Employees are also given training. We, as a board, are
25 advised that employees received training, and we can ask

BP

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Stroman - by Defendant - Direct/Ms. Rogers

1 questions about that or what the training included.

2 So, it's done on an at least annual basis and sometimes
3 more than once. I know -- I can't remember what year it was,
4 but maybe 2022, 2023. There were two compliance trainings for
5 board members. I missed one of them. I was absent for illness
6 during that meeting and attended the other one.

7 Q Let's turn to page 1 of your binder.

8 MS. ROGERS: This is DX1-0521. Do you have any
9 objection to this document? I think I received none. This
10 is the NRA directory.

11 MR. WANG: No objection.

12 MS. ROGERS: I move to admit it.

13 THE COURT: Anyone? All right, it is admitted.

14 (Whereupon, at this time Exhibit DX1-0521 was
15 admitted and received into evidence.)

16 Q Ms. Froman, do you recognize this document?

17 A Yes. It is the NRA official directory from September
18 of 2022.

19 Q I'd like you to turn to the page that's marked 19 in
20 the pamphlet. It is going to be exhibit page 20.

21 Do you recognize the list of committees?

22 A Yes.

23 Q Can you describe -- and I know you touched on it a
24 little bit, but describe to the jury the role that committees
25 play with the governing of the NRA?

BP

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Stroman - by Defendant - Direct/Ms. Rogers

1 A As I mentioned, the committees are made up of people
2 who have subject matter of expertise in the different areas.

3 The Black Powder Committee which is committee number
4 four --

5 Q Let's try to talk slower for the court reporter.

6 A I will. Thank you. The people who are appointed to
7 that committee are people who are black powder competitors who
8 are familiar with the rigor of black powder competitions.
9 Sports shooting have a lot of different ways that people
10 participate. You can be a shotgun shooter. You can be a pistol
11 shooter. You can be a long-range rifle shooter shooting at
12 targets like a thousand yards away. This is a precision sport,
13 much like archery, for example.

14 So, the people who are appointed to each of these
15 committees are people who can add value to the discussion of
16 those topics for NRA.

17 I've been on a number of these committees over the
18 years. Some shooting committees, some legislative committees.
19 I'm currently chair of the Legal Affairs Committee, for example.

20 So, I've served on a lot of these different committees
21 over the years and I'm familiar with what most of them do.

22 Q Let's talk about the Grassroots Development Committee.
23 Have you served on that committee?

24 A I served on that committee for a very long time, and I
25 am currently chair of that committee. The purpose of that

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Stroman - by Defendant - Direct/Ms. Rogers

1 committee is to deliver information about NRA's programs and
2 activities to the Grassroots. That is to our members in every
3 state, all across the country to let them know what's available
4 to them, what classes, activities, training are available to
5 them as NRA members and beyond.

6 We don't restrict our courses, our marksmanship courses
7 or our gun safety courses or our hunting safety courses to just
8 members. It is anyone who wants to take them. We encourage
9 people, of course, to become members, but they're available to
10 everyone.

11 Q What about the Legislative Policy Committee, were you
12 on that committee?

13 A Yes. I've been on the Legislative Policy Committee for
14 a number of years, and that deals with the legislative affairs
15 of the NRA. Probably what most people think about when they
16 hear NRA if they're not members, is they think about the
17 political part of the NRA, but it's -- the political part is
18 what we're known for. I think it's what we make the papers for,
19 but it's in many ways a relatively small part of what the
20 association does.

21 Our bigger general operations department and all of the
22 programs we have really account for the majority of employees at
23 NRA and for the majority of our budget.

24 Legislative Policy Committee deals with the political
25 and legislative aspects of the NRA.

BP

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Stroman - by Defendant - Direct/Ms. Rogers

1 Q Have you served on the Nominating Committee?

2 A Yes.

3 Q And we'll talk in more detail later about the mechanics
4 of NRA elections, but can you tell the jury what the Nominating
5 Committee is?

6 A Every year a nominating committee is elected by the NRA
7 board of directors as a whole, and the job of the Nominating
8 Committee is to consider applicants for nomination as possible
9 directors, for their names to be included on the ballot that is
10 sent out every year to NRA voting members to vote on members of
11 the board of directors. The Nominating Committee also nominates
12 officers for the next term.

13 I've served on the Nominating Committee maybe three or
14 four times in my thirty years on the NRA board, and I chaired a
15 nominating committee about three years ago.

16 Q What's the Committee on Hearings?

17 A The Committee on Hearings hears complaints, often
18 ethical complaints about members, members who are not -- who do
19 things that are contrary to the NRA's purposes and objectives.

20 When a complaint is made, it usually comes in from
21 outside the NRA board, a complaint about a member doing
22 something that's contrary to the interest of the NRA. It has a
23 process that is followed and the Committee on Hearings is often
24 asked to deliberate and make a decision on whether that person
25 who is complained about -- the defendant if you will -- retains

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1 their NRA membership.

2 Q Is that process different for different complaints or
3 is every NRA member entitled to file a complaint and have it
4 subjected to the same process?

5 A Every NRA member is entitled to file a complaint and
6 have it subjected to the same process.

7 Q And when a fellow NRA member is the target of an ethics
8 complaint, can you describe the due process that person
9 receives?

10 A I can't describe it in detail. It is prescribed in our
11 Bylaws, and I think due process is a big part of that because we
12 want to make sure that everybody has a fair opportunity to tell
13 their side of the story. There's an appeals process as well.

14 I served on that Hearings committee a very long time ago;
15 and I remember it was a -- it was a confidential matter. I
16 don't remember the name of the person anyway, but it was a
17 matter of them speaking out and saying untrue things about the
18 NRA; and the committee heard it, that person had an opportunity
19 to have their side of the story told. They wrote many letters.
20 They were considered by the Hearings committee and a decision
21 was ultimately reached.

22 Q What about the Public Affairs Committee, have you been
23 on that one?

24 A Yes, recently only. I have not served -- I did not
25 serve on the Public Affairs Committee for a long time; but in

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Stroman - by Defendant - Direct/Ms. Rogers

1 the last three years, I've been a member of the Public Affairs
2 Committee. The job of that committee is to represent to the
3 outside world what the NRA is, what programs we provide, the
4 positions that we take, why the association exists.

5 Q You're chair of the Legal Affairs Committee; right?

6 A Yes.

7 Q What does that committee do?

8 A The Legal Affairs Committee has oversight
9 responsibility overall of the legal affairs of the association
10 unless they have been sent to another body or deliberative body
11 that is responsible for handling a particular legal affair.

12 But we meet three times a year at least, sometimes more
13 often and we will hear reports from our General Counsel. We
14 will hear reports from outside counsel. This is all done in
15 executive session and subject to the attorney-client privilege;
16 and if we have questions, we have an opportunity as a committee
17 to ask those questions, to get answers to those questions and
18 make sure that we feel as members of that committee that the
19 legal affairs of the NRA are being properly handled.

20 Q What about the Committee on Elections?

21 A The Committee on Elections oversees the handling of NRA
22 elections; and by that, I mean when the 76 board members who
23 serve on the NRA board are elected and take office. We have a
24 very large board. When you're elected, you serve for a
25 three-year term usually, and the elections including the

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1 counting of the ballots by a certified public accounting firm,
2 that's the jurisdiction of the Committee on Elections.

3 We want to make sure those are full and *** fair
4 elections. The members vote by mail, so the ballots are
5 collected by mail, counted. They're kept in a safe. It's the
6 job of the Committee on Elections to supervise the election
7 process and make sure that security measures are in place to
8 make sure the election is fair.

9 Q You served on the Committee on Elections?

10 A Yes.

11 Q And what years did you serve on that committee?

12 A I don't remember.

13 Q More than one?

14 A I think I only served on that committee once.

15 Q Well, in your years of service on the board and
16 including when you were on the Elections Committee, did you ever
17 observe anything you would characterize as election rigging?

18 A No.

19 Q You mentioned that security procedures are used for
20 elections; right?

21 A Yes.

22 Q And an accounting firm is involved; right?

23 A Yes.

24 Q Can you explain a little more about what that is and
25 what that means and why the NRA does that?

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1 A Well, the ballots, we vote by mail. That's in
2 accordance with our Bylaws; and in order to be a voting member,
3 you need to be a member of the NRA for five continuous years or
4 more or to be a live member or above. And you get a ballot in
5 your magazine. They usually come around February. The election
6 results are usually available a week or two before our annual
7 meeting, which is in the spring, April or May, let's say.

8 So, when the ballots start to come in, they are
9 collected by the accounting firm. They are stored safely. They
10 are counted by that firm. I do remember a little bit of issues
11 about how quickly the accounting firm was actually counting the
12 ballots. We had to announce the results in our upcoming
13 meeting, and we needed to know what the count was.

14 So, the accounting firm then certifies the results of
15 that election, and the NRA secretary announces the results of
16 that election at the annual meeting of members, which is akin to
17 a corporate shareholders meeting.

18 Q Now, there's a 76th director that's elected at the
19 meeting; right?

20 A Yes.

21 Q Can you describe that process?

22 A The 76th director is elected at the annual meeting.
23 The annual meeting moves around to different jurisdictions.
24 we might meet one year in Dallas. We might meet one year in
25 Indianapolis. We had a meeting in Tucson, Arizona, where I

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1 live. We had a meeting in Charlotte.

2 Any NRA member who's present at the annual meeting,
3 they don't have to be five-year continuous member or better.
4 They can be any NRA member is entitled to vote for the 76th
5 director, and that person is elected to serve for one year until
6 the next annual meeting when we elect a 76th director again.

7 The important thing about that is the people who are
8 eligible to run for 76th director are those people who ran for
9 the board in the last election, but didn't make the cut off.
10 They didn't get elected to a spot, so they are the four or five
11 or sometimes eight or ten people who did the work to apply for
12 and run for the NRA board of directors, didn't get elected. Now
13 they can -- they're names are on the ballot for the 76th. They
14 don't have to do anything else. They're already on the ballot.

15 Q We heard testimony about board meetings where there's
16 about 76 people in the room, but the 76th director is elected by
17 members at the members meeting; correct?

18 A Correct.

19 Q Can you compare for the jury the size and scope of the
20 members meeting and who attends that versus the board meeting?

21 A Well, the board meeting we have 76 members of the
22 board, but any NRA member can attend the board meeting and the
23 committee meetings of the board except for executive sessions.

24 So, I, being an enthusiast for NRA, I've always invited
25 NRA members come to the meetings, see what goes on. Remember,

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1 come to the committee meetings, come to the board meetings and
2 I've encouraged many NRA members who have been to those meetings
3 with me to run for the board of directors and many have gotten
4 on the board that way.

5 So, a board meeting is relatively small, especially the
6 meetings that we have that aren't -- we have three meetings a
7 year: One is in the winter, usually in January. One is at the
8 annual meeting, which is in the spring or early summer, and one
9 is in the fall, usually September.

10 The January and September meetings are held at a hotel
11 in usually in either DC or we've had them in Dallas, Texas; but
12 the main meeting, the annual meeting of members is always in the
13 spring or early summer and those meetings are very large because
14 we always have what we call the NRA annual meeting.

15 It is like a convention. We have different seminars
16 for our members to attend. We invite them to come. There's
17 usually a show with exhibitors. We have training that actually
18 occurs at that annual meeting. We have a lot of entertainment,
19 a lot of country western singers come and perform at that
20 meeting. There are lots of speakers. There are celebratory
21 events. There are fundraising events for NRA's programs. So we
22 might have, you know, 20 to 40 or 50,000 people at those
23 conventions, depending on what time of year it is and where
24 they're held.

25 (Continued on next page)

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Froman - by Defendant - Direct/Ms. Rogers

1 Q And all of those people, if they are an NRA member can
2 vote for the 76th Director?

3 A Correct.

4 Q Who chooses who is on each Board committee?

5 A Under our Bylaws, the president chooses the committee
6 members and chooses the Chair and the Vice-Chair of these
7 committees.

8 Q You have been president of the NRA; right?

9 A Yes.

10 Q As president, did that process for committee assignment
11 make sense to you?

12 A Yes. I had worked with -- when I became president in
13 2005, I had worked with a number of people already on the Board
14 who had been on the Board for a long time. I knew them. I knew
15 the work they were capable of. I knew what their talents were,
16 and I wanted to make sure that the committees were staffed to
17 the best of my ability.

18 I wanted people in charge who would help me pick the
19 right members for that committee so the committee could
20 discharge their responsibilities to the Board and to our
21 members.

22 Q Have you ever wanted to be on a committee and not been
23 picked for it?

24 A Yes.

25 Q Did that upset you?

KM

3900

Froman - by Defendant - Direct/Ms. Rogers

1 A No. I -- I indicated we all get a chance as directors
2 to fill out a form indicating which committees we want to serve
3 on, but then it's up to the president to choose those people
4 that he or she wants to have serve on the committee and I know
5 I'm not going to always get what I pick.

6 Q All right. So now let's go back to the nominating
7 committee which you have served on.

8 Does Wayne LaPierre pick the nominating committee?

9 A No. The nominating committee is elected by the NRA
10 Board of Directors.

11 Q But isn't there some incentive to vote the way Wayne
12 wants you to vote?

13 A I don't know of any incentive.

14 I will tell you that when I was -- as a director, my
15 job is to pick the nine people I thought would best serve the
16 NRA on the nominating committee. There are rules. You can only
17 have six Board members on the nominating committee. Three
18 people have to be outsiders, people who aren't on the Board.
19 And most of the time because I have been on the Board so long, I
20 would know the six people who were being proposed.

21 We often had more than nine people nominated for the
22 nominating committee. Then the Board has to vote. So some
23 people have to be excluded.

24 When I didn't know one of the three people who was
25 being proposed for the Non-Board member slots, I would ask

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3901

Froman - by Defendant - Direct/Ms. Rogers

1 questions. I would ask questions of the NRA president. I would
2 ask questions of Wayne LaPierre. I would ask questions of my
3 fellow Board members.

4 For example, if someone gets nominated from the State
5 of Delaware, we have a Delaware director on our Board, gentleman
6 by the name of John Sigler. I would go to John. Delaware's a
7 relatively small state. And I would say John, do you know this
8 person. They claim to be an active NRA member in Delaware.
9 They claim to have done all these things, put on these NRA
10 programs in Delaware. Do you know this person? And I would
11 trust that John would be honest with me and tell me I know this
12 person. He is a great guy or I don't know her. I have never
13 heard of her. She's not even a member of our State Association,
14 and that would kind of raise heckles on the back of my neck, and
15 I would ask more questions of more about why is this person
16 being proposed.

17 So I sought input from as many people as I could until
18 I was satisfied that this was someone that I could support.

19 Q Did anyone ever give you a crib sheet of who to vote
20 for?

21 A I never heard that term.

22 Q Did anyone ever make suggestions as to who we think
23 would be great for the nominating committee?

24 A Yes. I myself made suggestions when I was not on the
25 nominating committee. I would go to the Vice-Chair of the

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3902

Froman - by Defendant - Direct/Ms. Rogers

1 nominating committee, and I would say, I think these people
2 ought to be considered for the Board.

3 Q When you received suggestions of who to vote for, did
4 you always vote consistently with those suggestions?

5 A No.

6 Q Now, when you vote for the nominating committee, do you
7 raise your hand or is it a secret ballot?

8 A It's a secret ballot.

9 Q So if you voted the way Wayne didn't want you to, he
10 would never know.

11 A Correct.

12 Q What would you say to the allegation that some part of
13 the Board is entrenched?

14 A I don't think that's true. I think that we as Board
15 members, we all get elected every three years. You run for
16 Board seat every three years. It's the members who vote for you
17 by mail ballot. So I have been elected every three years since
18 I first came on the Board in 1992.

19 We have a bio -- a little short bio in the magazine
20 next to the ballot. People read your bio. I have had hundreds
21 of phone calls from people who didn't know me personally but
22 called me up to say, I see you're running for the NRA Board, but
23 what do you feel about this issue or that issue, and I would try
24 to answer as many as I could.

25 The members elect the Board. Wayne doesn't elect the

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3903

Froman - by Defendant - Direct/Ms. Rogers

1 Board. I don't think Wayne would want to elect the Board. He
2 is busy doing other things and has been busy doing other things.

3 People who think that any one person runs the NRA, it's
4 just not true. It's -- it has not been true in my 30 years of
5 experience.

6 That doesn't mean that we don't ask one another for
7 advice or recommendations for help. It's a matter of judgment
8 how you vote for the Board of Directors, and I have had a lot of
9 people come to me and say I don't like this person. I don't
10 trust this person. I want to hear what they have to say.

11 I will ultimately make my own judgment to the best of
12 my ability, but the more information, the better as far as I'm
13 concerned.

14 Q Even though Wayne LaPierre can't control the nominating
15 committee, would it be fair to say sometimes people have wanted
16 to know his opinion about things?

17 MR. WANG: Objection. Leading.

18 A Of course.

19 I have asked -- when I didn't know someone myself
20 personally and a name was floated and someone might say, well,
21 Wayne thinks that's a good person for the nominating committee I
22 would go to Wayne and say who is this person. I don't know
23 them. Why do you think they would be good?

24 Sometimes he said it wasn't my idea. So people often
25 said it was Wayne's idea when Wayne said no, it wasn't my idea.

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3904

Froman - by Defendant - Direct/Ms. Rogers

1 I think there were a lot of people on the Board from
2 time to time who would purport to speak for Wayne LaPierre and
3 maybe it wasn't really what Wayne LaPierre would have said if
4 you asked him yourself. So I took a lot of that with a grain of
5 salt. I tried to as I said gather information, make my own
6 decision to the best of my ability.

7 Q How long have you known Mr. LaPierre?

8 A Since I joined the Board in 1992.

9 THE COURT: Counsel, when we reach a time between
10 subjects for a break.

11 MS. ROGERS: Now is a good time actually.

12 THE COURT: We will take a short break, let the
13 jury stretch for little bit.

14 Just the common instructions during a break. You
15 are still on the stand, so you shouldn't discuss your
16 testimony with anyone including counsel.

17 THE WITNESS: Certainly, your Honor.

18 (Whereupon, at this time the jury exits
19 the courtroom.)

20 (Whereupon at this time there was a recess taken.)

21 (Witness resumed the witness stand.)

22 THE COURT OFFICER: All rise. Jury entering.

23 (Whereupon, at this time the jury entered the
24 courtroom.)

25 CONTINUED DIRECT EXAMINATION

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3905

Froman - by Defendant - Direct/Ms. Rogers

1 BY MS. ROGERS:

2 THE COURT: Thank very much. Please have a seat,
3 everyone.

4 All right, Ms. Rogers. You may continue.

5 MS. ROGERS: Thank you.

6 Q Welcome back, Ms. Froman.

7 So you described how the nominating committee is
8 picked.

9 Now, whom does the nominating committee pick?

10 A The nominating committee nominates people to run for
11 the Board of Directors.

12 Q If a nominating committee doesn't pick you to be on
13 that slate, that ballot, are you prevented from getting elected
14 to an officer position?

15 A No. Our Bylaws also provide that you can run by
16 petition. You gather petition signatures to support your
17 nomination, and you submit those petitions to the Office of the
18 Secretary, and if you meet the requirements of gathering enough
19 petition signatures, you are put on the ballot.

20 Q What are the leadership positions that -- the officer
21 positions on the board?

22 A Okay. The unpaid officers are the president, the first
23 vice-president and the second vice-president.

24 Q You described the president before as your boss. But
25 we have also heard testimony that sometimes the presidency is

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3906

Froman - by Defendant - Direct/Ms. Rogers

1 ceremonial.

2 What do you think about that?

3 A The president certainly has a lot of ceremonial
4 functions appearing on behalf of the NRA as president. I
5 remember going to many events when I was president being
6 introduced in that capacity, but the president also has work to
7 do including the work of managing the committees and also work
8 in sometimes reviewing management documents.

9 I remember I had to review a lot of business documents
10 when I was president.

11 Q How did you become president?

12 A I came on the Board in 1992, and in approximately 1996,
13 I was asked if I would be interested in coming in as second
14 vice-president which is the lowest level of volunteer elected
15 office, and I was very humbled and kind of flattered to be
16 asked. And I said yes, I would be willing to do that, and I
17 would be willing to spend the time that was needed to serve in
18 that office. So I said yes.

19 The nominating committee nominated me, and I was
20 elected at that 1992 annual meeting. I'm sorry. The -- the 199
21 -- see I was -- I think it was the 1997 or 8. It was 1998
22 annual meeting of members. So I had to run for it in '97. I
23 was elected in '98. I'm going back a long way now.

24 Q We have been clarifying all the witnesses' time period
25 focus, so if this has varied over time, let me know. And if

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3907

Froman - by Defendant - Direct/Ms. Rogers

1 not, you can just answer. But what is the compensation
2 committee and whose compensation do they determine?

3 A The compensation committee has changed over time. I
4 believe it's the -- currently the three volunteer officers of
5 the NRA which would be the president, the first vice-president
6 and the second vice-president. They determine the compensation
7 of the paid officers of the NRA which are the executive
8 vice-president, the secretary and the treasurer.

9 Q When you were president, how was compensation set?

10 A Compensation of the president -- I'm sorry.
11 Compensation of the executive vice-president who is functionally
12 the CEO of NRA was set by looking at comparison studies of other
13 CEO's of similarly sized non-profit organizations.

14 I asked for -- my time as president, I asked for
15 preparation of outside reports about what CEOs of similarly
16 sized non-profits were making, and as I recall, the compensation
17 of the executive vice-president then and still Wayne LaPierre
18 was set kind of in the middle. There were larger organizations
19 and smaller organizations, but -- and there were ones that paid
20 their CEOs more, and some paid their CEOs less, but ours was
21 pretty much squarely in the middle.

22 Q Before you were president, you were second
23 vice-president of the NRA; right?

24 A Yes.

25 Q Who was the president that you came up under?

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3908

Froman - by Defendant - Direct/Ms. Rogers

1 A The year I was elected as second vice-president, 1998,
2 Charlton Heston was elected as president of the NRA.

3 Q Who is Charlton Heston?

4 A Charlton Heston was an incredibly well-known movie and
5 television actor from the 1950's, 1960's. He was Moses in the
6 Ten Commandments. He was Ben-Hur in the movie of the same name.
7 My favorite Charlton Heston role is when he was in the
8 Planet of the Apes, but he was extremely well known. He was my
9 mother's favorite actor of that time period, so I saw a lot of
10 Charlton Heston on TV before I met him at NRA, but he came to
11 NRA first as the 76th Director.

12 The process of getting elected for that one-year term,
13 the way I described it, he came in in 1997, became the 76th
14 Director and was elected as first vice-president in 1997 that
15 same year. Then the following year in 1998 he was elected as
16 president.

17 Q Did you develop a view of his performance as president?

18 A Yes. He was extraordinary. He made the NRA a
19 household name. He brought a lot of positive attention to the
20 NRA. He brought a lot of people who knew him as an actor and
21 knew him as the president of the Screen Actors Guild, not an
22 insignificant organization in and of itself.

23 He brought those people in the NRA and let them know
24 that the NRA was more than a political organization, that we had
25 a lot of good programs that we delivered to firearms owners and

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3909

Froman - by Defendant - Direct/Ms. Rogers

1 people who didn't own firearms all over the country.

2 Q Were the NRA's Bylaws changed to allow Mr. Heston to
3 occupy an office for a particular period of time?

4 A Yes. So under our Bylaws, before Mr. Heston was
5 elected president, you could serve as long as you wanted as
6 second vice-president if the Board continued to elect you.

7 You could serve as long as you wanted as first
8 vice-president if you were reelected by the Board, but you could
9 only serve as president for two one-year terms. You had to be
10 elected each year. But after your second year of president, you
11 could no longer serve.

12 I think the Board realized pretty early on in Mr.
13 Heston's presidency he was an extraordinary person and
14 extraordinary value to the NRA and our mission, and the Board
15 amended the Bylaws to allow him to be reelected to succeed
16 himself for what ended up being a total of five years. So he
17 was five years as president of the NRA from 1992 to 2003.

18 Q And why did Mr. Heston leave the Board?

19 A Mr. Heston announced in 2002 that he had Alzheimer's,
20 and it was beginning to affect his ability to do his job as NRA
21 president, and I think if it hadn't been for that, he would have
22 continued to serve and would have continued to be reelected, but
23 that's why he ultimately did not run for any more terms as
24 president.

25 Q Can you describe some of the ways the NRA responded

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3910

Froman - by Defendant - Direct/Ms. Rogers

1 when its prominent public advocate Charlton Heston became ill?

2 A It was tough because we got used to having a face and a
3 name out there that would draw attention to our organization and
4 speak for our organization, and we realized that we would lose
5 Mr. Heston's public appearance abilities, and we had to have our
6 executive vice-president Wayne LaPierre really step up and take
7 center stage. He had always been working. He had always been
8 out there often accompanying Mr. Heston in representing the NRA,
9 but now he was going to have to be that face, that name, and
10 those of us on the Board pushed him to do it and he was willing
11 to do it.

12 Q Did the public advocacy role of some other directors
13 like you change too?

14 A Yes. Now that Mr. Heston was not able to stay and
15 Wayne LaPierre was doing more and more of the work that Mr.
16 Heston had done in the past, many of us, especially former
17 presidents who had been in the Chairs, we knew what the NRA
18 stood for. We were articulate about it. We were asked to do
19 more speaking on behalf of NRA, and I was asked to do more
20 speaking on behalf of NRA.

21 Q We talked about how you became president. But just
22 very quickly, how did you get on the Board in the first place?

23 A I was a NRA member already from the early eighties when
24 I had that bad experience with the attempted break-in home
25 invasion. And I was speaking at a rally in Phoenix in 1991 and

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3911

Froman - by Defendant - Direct/Ms. Rogers

1 was approached by a man by the name of Bob Corbin who was then
2 the Attorney General of the State of Arizona where I lived at
3 the time and he had been in office I think for 10 or 11 years.
4 He was a very long-standing Attorney General, and he asked me
5 after he heard me speak -- he said, have you ever thought of
6 running for the NRA Board of Directors. And I said no. And he
7 said, I think you should, and I would support you. And I was
8 also approached by a gun rights activist who also lived in
9 Arizona at the time, a man by the name of Neal Knox. I knew him
10 from his writing in a newspaper that he published, and he asked
11 me if I would run for the NRA Board of Directors, and I said
12 yes, I will, and he supported me also.

13 So I had these two pretty powerful activists urging me
14 to run for the Board. I talked to my husband at the time and he
15 said I think you should do it. And so I did. I filled out a
16 very lengthy questionnaire that's required for new Board members
17 and submitted that to the Office of the Secretary and the
18 nominating committee nominated me.

19 Mr. Knox also circulated petitions on my behalf to
20 enable me to run as a petition candidate in case the nominating
21 committee chose not to nominate me. And so I ran both as a
22 petition candidate and a nominating committee for the Board, and
23 I was elected to the Board that year in 1992.

24 Q You testified earlier that Board members sometimes
25 vigorously disagree with each other; right?

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3912

Froman - by Defendant - Direct/Ms. Rogers

1 A Yes.

2 Q Did there come a time when Neal Knox who helped you get
3 on the Board was involved in one of those vigorous
4 disagreements?

5 A Yes.

6 Q Can you describe that?

7 A Well, Neal was working his way up through the Chairs of
8 the NRA, and I'm talking about the volunteer positions now to
9 become president of the NRA, but it all became apparent over the
10 years from 1992 until 1997 when I was just a Board member that
11 he wanted to become executive vice-president of the NRA and to
12 receive a salary for that, and he was complaining I guess is the
13 best way to say it or telling people that the NRA was in
14 trouble, that Wayne LaPierre was mismanaging the finances, that
15 the NRA was about to go bankrupt and that we should all vote for
16 him as president and eventually he would get rid of Wayne
17 LaPierre.

18 I was fairly new on the Board even though I had been
19 there for several years. When you have that many people on a
20 Board of Directors, it's hard to get to know everybody. It's
21 just a lot of people to meet and to get to know them especially
22 when you only meet three times a year.

23 So I went to Neal Knox who I considered a friend, and I
24 said why are you saying this. Show me the paperwork that says
25 we are about to go bankrupt, we are in trouble financially, that

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Froman - by Defendant - Direct/Ms. Rogers

1 Wayne's mismanaging the assets. And the response I got from
2 Neal at that time was, just do what you're told. Just vote for
3 me. You don't need to know anything else.

4 So I did the same thing with Mr. LaPierre. I went to
5 him, and I said this is what Mr. Knox is saying. Tell me why he
6 is wrong. Explain to me why we are fine financially and that I
7 should continue to support the people whom were in office at the
8 time.

9 He said, I think you should go see the financial office
10 at NRA, and he told them in my presence, show her anything she
11 wants to see. Explain to her what these documents are. The
12 drawers are open. You can look at anything you want. And I
13 didn't understand perhaps every single document I looked at
14 because I'm not an accountant, but what I did understand was Mr.
15 LaPierre was not afraid for me to look at anything and Mr. Knox
16 was not giving me any access to the information that he was
17 using to make his argument, and that's how I made my decision to
18 support Mr. LaPierre and not Mr. Knox.

19 Q Now you testified that Mr. Knox disagreed with how Mr.
20 LaPierre was managing the Association's financial assets; right?

21 A Yes.

22 Q Have you formed a view on whether if Mr. Knox had won,
23 the NRA would be financially better off?

24 A I think --

25 MR. WANG: Objection. Calls for speculation.

KM

3914

Froman - by Defendant - Direct/Ms. Rogers

1 THE COURT: I am asking for her judgment as a Board
2 member.

3 THE COURT: Sustained.

4 Q Ms. Froman, what fight -- what did Mr. Knox disagree
5 about?

6 A Mr. Knox felt that we had to liquidate our assets
7 including our entire stock portfolio and that's what he was
8 urging. He was urging me to vote for him and put him in charge
9 so he could do that. This was in 1997.

10 Q And with the benefit of hindsight as a fiduciary of the
11 NRA, do you have a view on whether the NRA would have benefitted
12 from liquidating all its stock in 1997?

13 A It would have been a disaster.

14 MR. WANG: Objection. Same basis.

15 THE COURT: Overruled.

16 A It would be a disaster. Look at what's happened with
17 the stock since 1997.

18 Q Your term as president ended in spring of 2007;
19 correct?

20 A My term as president ended in 2007, yes.

21 Q And you mentioned that your role as an advocate
22 publically for the NRA increased after Mr. Heston got sick;
23 right?

24 A Yes, and -- but when I -- when I was an officer, I was
25 out there speaking on behalf of the NRA as an officer.

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3915

Froman - by Defendant - Direct/Ms. Rogers

1 Q So after you left the presidency, you continued
2 speaking publically; right?

3 A Yes.

4 Q Who asked you to do this?

5 A Wayne LaPierre. The head of our fundraising department
6 asked me. Various members of the Board of Directors asked me.
7 NRA members out in the country who had met me at various
8 functions would ask me to come back and speak to their Clubs,
9 their Associations. I loved speaking. I was very enthusiastic
10 about it, and people wanted me to continue, but I wasn't sure
11 that was something I was supposed to be doing now that I was no
12 longer president.

13 Q Can you describe the work that you did in that role?

14 A Wow. I probably in the period of time from 2008 to
15 about 2018, I spoke to at least 50 law schools around the
16 country to the law students who would become lawyers, judges,
17 justices and probably an equal number of service groups like
18 Rotary or the Kiwanis. I spoke to political clubs. I spoke to
19 groups of lawyers -- practicing lawyers for their legal
20 continuing legal education requirements, professional
21 requirements.

22 I spoke at and actually helped a gentleman who was
23 putting together a 14-week course on guns in America for older
24 learners that was sponsored by the University of Arizona. He
25 was not a friend of guns, but he was somebody who wanted to

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Froman - by Defendant - Direct/Ms. Rogers

1 present both sides of the issue. And so he asked me if I would
2 come talk at his -- at one of his classes. And then after I
3 did, he had me serve on a panel. And then he asked for my help
4 on finding people to speak both for and against some of the
5 issues, like individual rights to own a gun, like concealed
6 carry, things that like that were kind of hot topics at the time
7 on gun ownership.

8 Q About how many times per year did you speak?

9 A At least a dozen times a year. Maybe more.

10 Q Were you paid for giving these speeches?

11 A No.

12 Q But you did receive some money; right?

13 A I did, yes.

14 Q Describe that arrangement.

15 A Well, when I was asked by Wayne LaPierre and the head
16 of the advancement office if I would continue to speak about NRA
17 and about the Second Amendment and the importance of the Second
18 Amendment to our Constitution and our freedom in our country, I
19 said, well, I'm happy to volunteer. I don't want to charge my
20 hourly rate that I was charging my clients for my work, but I
21 needed some support to cover the overhead of my law office
22 because I couldn't be gone to be doing this and not be able to
23 keep my law office open because that's how I made my living. I
24 was practicing. I had a solo practice at the time, and it
25 was -- it was something that I needed in order to be able to do

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Froman - by Defendant - Direct/Ms. Rogers

1 what NRA wanted me to do. So I sat down with someone in the
2 treasurer's office, and I said this is what I think it will cost
3 to be able to support my speaking engagements, and they said
4 that's fine. Send us an invoice, and I did.

5 Q And this was probably sometime before 2015; right?

6 A Yes.

7 Q Was it closer to 2008 than 2015?

8 A Yes.

9 Q Was there ever a written contract for the NRA's
10 supporting your speaking work?

11 A No.

12 Q Could that kind of arrangement be made today to the
13 NRA?

14 A No because now we have a requirement that every
15 payment -- every arrangement like that has to be supported by a
16 written contract approved in accordance with the new controls,
17 procedures and purchasing policies.

18 Q How do you know that the NRA has new controls
19 preventing non-verbal contracts or -- I'm sorry -- unwritten
20 contracts like yours?

21 A Because the Board has been informed at Board meetings
22 that these new processes and procedures were being put in place
23 over a period of several years, and we were updated periodically
24 at Board meetings that we were changing the rules.

25 We were -- we were updating, strengthening the rules so

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Froman - by Defendant - Direct/Ms. Rogers

1 that we would not be in a position that frankly got us here
2 today.

3 Q Did you report the speaking fees you received on your
4 financial disclosure questionnaires to the NRA?

5 A Not at first because I understood them to be
6 reimbursement of expenses, but they were reported on the 990s.

7 Q Did anyone at the NRA monitor your speaking activity to
8 make sure you were doing what you were being paid for?

9 A I don't know if they monitored, but I was constantly
10 reporting to them this is where I went to speak, this is how big
11 the audience was, this was the subject that I talked about.

12 I wanted feedback from the NRA as to whether I was
13 doing what they thought would be most valuable to the
14 Association, so I probably talked more than I should have trying
15 to let people know what I was doing, and I was saying -- I would
16 remember saying very often to Wayne LaPierre, if you think I'm
17 not doing what you want me to be doing for the NRA, let me know
18 and we will change it.

19 Q You stopped giving these speeches around 2018; right?

20 A Yes.

21 Q Why?

22 A I was sort of powering down my speaking engagements. I
23 was getting ready to retire from my law practice which I did
24 retire at the end of December 2019, and there were other people
25 out there speaking, and I just figured it was time to move on to

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1 other things.

2 Q What was the atmosphere at the NRA like in 2017?

3 A It was tumultuous. We were starting to learn of
4 threats to the existence of the National Rifle Association.

5 When I say "we," we as a Board of Directors. There was
6 a lot of discussion about that, and we were starting to look at
7 what we needed to do to protect the Association.

8 (Continued on the following page.)

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S. Froman - by Defendant - Direct/Ms. Rogers

1 Q And in 2021, the NRA filed for bankruptcy; right?

2 A Yes.

3 Q As a bankruptcy lawyer, what kind of considerations did
4 you evaluate when you decided to ratify that filing?

5 MR. WANG: Objection, your Honor. Calling for her
6 to make expert legal opinion on a bankruptcy.

7 THE COURT: No, she's asking about her reaction as
8 a board member.

9 MS. ROGERS: Yeah, I'll rephrase it.

10 Q So, you had been a lawyer working on sophisticated
11 bankruptcies at a big law firm; right?

12 A I worked on a lot of things, including bankruptcies,
13 very high level bankruptcies.

14 Q Did that inform your judgment as a board member?

15 A Of course.

16 Q In spring of 2021, you voted to ratify the NRA
17 bankruptcy filing; right?

18 A Yes.

19 Q Why?

20 A Because I thought it was the right thing to do. I,
21 frankly, was not entirely pleased with how it came about, but I
22 was not part of that decision. I was, in fact, not in the room
23 when the contract with Mr. LaPierre was ratified. I had recuse
24 myself for other reasons.

25 But once the bankruptcy was filed and it was something

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S. Froman - by Defendant - Direct/Ms. Rogers

1 that I thought could help protect the association, I voted to
2 ratify it.

3 Q You were friends with Ollie North; right?

4 A Professional colleagues, let's say. I mean, when
5 people say friends with, I think, you know, did they invite me
6 home to dinner with their family. No, I never got invited home
7 to dinner with Mr. North.

8 Q Did you know he raised concerns he thought outside
9 counsel fees were too high?

10 A He did with me yes.

11 Q Did you examine that issue?

12 A I did.

13 Q What did you conclude?

14 A Mr. North said to me -- I was in the building one day,
15 in the building at NRA Headquarters in Fairfax, Virginia, and
16 for a meeting having to do with something else. My plane wasn't
17 until the next day.

18 So, I had time walking around the building, seeing who
19 was in their office that I could say hello to. And I happened
20 to find Mr. North and he called me in and he was complaining
21 about the Brewer firm's fees being too high. I said, "What do
22 you mean too high?" He said, "Well, they're just too high."
23 So I said, "Well, do you think they're billing for work that
24 they're not doing?" And he said, "Well, no, I don't know that."
25 I said, "Well, litigation is very expensive." I had an

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S. Froman - by Defendant - Direct/Ms. Rogers

1 experience as a litigation attorney and it's very expensive, and
2 he wasn't giving me any measurable way to evaluate his statement
3 that they were too high.

4 And, he kept repeating the same sentence which kind of
5 caused me to believe that somebody told him to say it. He was
6 repeating a part of a script, if you will, and I kept
7 questioning him about it. And I said, "Well, are you reviewing
8 the fees?" And he said, "No. I said, "Well, who is reviewing
9 the fees?" He said, "John Frazer," the corporate secretary at
10 the time. I said, "Well, do you have a problem with his
11 review?" He says, "well, I don't know. They're just too high."

12 He just kept saying that over and over again. So I did
13 follow that conversation up with investigating who was reviewing
14 the fees, the fact that the fees were being reviewed by the
15 appropriate people at NRA was what I was concerned about.

16 Q You've reviewed the legal filings including this one
17 that have come out; right? Did you look at the attorney
18 general's complaint?

19 A Yes.

20 Q And you've read some of the bankruptcy testimony;
21 right?

22 A Yes.

23 Q And you still voted for Wayne LaPierre the last year he
24 ran before his resignation; right?

25 A Yes.

BP

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S. Froman - by Defendant - Direct/Ms. Rogers

1 Q Why?

2 A Because I thought he was in a position to help see us
3 through this incredibly difficult time. He was the one who had
4 started the course correction that had led us to make changes
5 that were important to the future of the NRA.

6 He gave all of our employees, especially our Financial
7 Services Department full access to every piece of information
8 that they needed to make sure we strengthened our policies,
9 strengthened our control processes and he did that knowing that
10 he was probably going to be one of the people who would be found
11 out to engaged in misconduct, financial misconduct that was not
12 in the best interest of the NRA.

13 I thought that was -- brave may not be the right word,
14 but he knew that he was going to be one of the people who was
15 going to be told, You shouldn't be doing this and you're going
16 to have to pay this back which, in fact, did occur. But he, I
17 remember saying to me, he said "I don't care if I lose every
18 friend I have ever had, we will get to the bottom of this and we
19 will fix it and we will save the NRA."

20 And even though we went through a lot of issues from
21 2016 to the bankruptcy filing, I felt then and up until the time
22 he resigned or retired in January, I felt he was the person who
23 could help us steer the ship through the rough waters until we
24 came to the destination which we needed to arrive at.

25 MS. ROGERS: Thank you. Pass the witness.

BP

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S. Froman - by Defendant - Direct/Mr. Fleming

1 THE COURT: Any other direct testimony?

2 MR. CORRELL: No, your Honor.

3 MR. FARBER: No, your Honor.

4 MR. FLEMING: Very brief.

5 DIRECT-EXAMINATION

6 BY MR. FLEMING:

7 Q Hi, Ms. Froman?

8 A Hello.

9 Q I'm William Fleming. I represent Mr. Frazer. Just a
10 very quick question.

11 Have you had occasion to interact with Mr. Frazer
12 during your time and his time at the NRA?

13 A Overwhelmingly yes, a lot.

14 Q In what capacities does that happen?

15 A He -- John Frazer was -- worked for the Institute for
16 Legislative Action at NRA, which is the political arm of NRA
17 when I first came to the board so I dealt with him there.

18 And then when he became -- he went to law school while
19 he was also working for the NRA; and I don't know at what point
20 he actually became our General Counsel and the corporate
21 secretary, but I dealt with him in both those capacities, both
22 as the secretary who deals with the NRA board of directors.
23 He's responsible for the preparation of all the minutes and
24 other documents, notices of meetings. As a committee chair I
25 would have to ask him to notice meetings that I wanted my

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S. Froman - by Defendant - Direct/Mr. Fleming

1 committee to hold.

2 And as the General Counsel of the NRA, it was my
3 responsibility as chairman of the Legal Affairs Committee to
4 obtain reports from him several times a year on what the legal
5 matters were that the NRA was handling through the office of
6 General Counsel.

7 Q And he would brief the Legal Affairs Committee?

8 A Yes.

9 Q And did you find his briefings helpful and informative?

10 A Helpful, informative and very thorough.

11 Q Did you have any kind of exposure to his work on
12 related-party transactions?

13 A Yes. I would ask him questions. If I had questions
14 about myself, should I be reporting something or not reporting
15 something, and he would answer.

16 And I remember him coming up to me and telling me, "You
17 need to be reporting this," so I started reporting it. He took
18 the initiative on that one.

19 Q And did you experience an expansion of the financial
20 disclosure questionnaire during Mr. Frazer's time in office?

21 A Yes, it changed.

22 Q So, from your observations, do you have any views on
23 Mr. Frazer's integrity?

24 A I felt then when he first came into that role and I
25 feel now that he has the highest integrity.

BP

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S. Froman - by Defendant - Direct/Mr. Fleming

1 Q One last question for you. Do you have any view based
2 on your observations of his professional competence?

3 A Not as much because I didn't actually work with him on
4 the underlying matters that were being handled by the office of
5 General Counsel; but I do know that when I went to him with a
6 specific question about a specific matter, he would answer me
7 and he would say, Well, we've hired local counsel for that or
8 we've done something else for this.

9 So, I felt like he knew his limitations based on his
10 experience. I mean, I'm a lot older than him and I had a lot
11 more opportunities for experience, but I felt he was -- he had a
12 good handle on what he was capable of and that he would ask for
13 help from others if he felt he needed it.

14 Q Was he attentive to the NRA's issues?

15 A Yes, very attentive.

16 Q Did he act in the NRA's best interest in your view?

17 A In my opinion, yes.

18 MR. FLEMING: Thanks so much.

19 THE COURT: Okay, cross examination, Mr. Wang.

20 MR. WANG: Good afternoon. May I proceed your
21 Honor?

22 THE COURT: Yes, please.

23

24 (Continued on next page)

25

BP

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S. Froman - by Defendant - Cross/Mr. Wang

1 CROSS-EXAMINATION

2 BY MR. WANG:

3 Q Good afternoon, Ms. Froman.

4 A Good afternoon. And your name?

5 Q My name is William Wang, I'm an Assistant Attorney
6 General with the Attorney General's office.

7 How are you?

8 A Thank you, Mr. Wang.

9 Q You are a past president of the NRA; correct?

10 A Yes.

11 Q And you're familiar with Ms. Marion Hammer; right?

12 A Yes.

13 Q She was also a past president of the NRA; correct?

14 A Yes.

15 Q And Ms. Hammer receives money from the NRA as a
16 consultant or lobbyist; correct?

17 A She has in the past. I don't know if she still does
18 now.

19 Q Mr. Keene is a past president of the NRA as well;
20 correct?

21 A Yes.

22 Q And Mr. Keene has received money from the NRA in the
23 past as well; correct?

24 MS. ROGERS: Objection, outside the scope.

25 THE COURT: Sustained.

BP

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S. Froman - by Defendant - Cross/Mr. Wang

1 MR. WANG: Ms. Froman testified about her speaking
2 engagements.

3 THE COURT: Her own.

4 MR. WANG: These payments go to show the bias
5 within the testimony of the witness along with the fact that
6 other individuals on the board were paid for speaking
7 engagements, as well.

8 THE COURT: That may be true, but it is still not
9 within the scope of the direct.

10 MR. WANG: I'll move on, your Honor.

11 Q Ms. Froman, you received approximately \$45,000 a year
12 from the NRA from 2008 to 2018; correct?

13 A I'm not sure about 2018. It might have been a little
14 less than that, but the answer is yes as to the other years
15 you've mentioned.

16 Q And that amount was paid by a flat fee; correct?

17 A Correct.

18 Q But you thought that that amount was paid for the
19 reimbursement of expenses; correct?

20 A Correct.

21 Q But that would mean that you would have incurred the
22 exact same amount of expenses every month for ten years if these
23 fees were actually for expenses; correct?

24 A I wouldn't agree with that. I think that's an
25 incorrect statement.

BP

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S. Froman - by Defendant - Cross/Mr. Wang

1 Q You were paid a flat amount, correct?

2 A Correct.

3 Q And you created invoices; correct?

4 A My office did.

5 Q And those invoices weren't reimbursements of expenses;
6 correct?

7 A In my mind, yes, they were.

8 Q Were these invoices including airfare, hotel and
9 meals?

10 A No.

11 Q And these payments that you received, you never
12 disclosed them on a financial disclosure form until 2019;
13 correct?

14 A I don't remember the year that I first started
15 disclosing them; but that was the time when Mr. Frazer said to
16 me "You need to start disclosing these."

17 They were disclosed in the 990. They were available
18 to all board members who reviewed the 990s from the time I
19 started receiving them and, indeed, available to members of the
20 public.

21 Q Ms. Froman, I'm just asking you a yes or no question.
22 You didn't disclose these payments until 2019 on a
23 financial disclosure form; correct?

24 A I don't know. If you ask me that question that I
25 didn't disclose them through 2017, I would say yes. I'm not

BP

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S. Froman - by Defendant - Cross/Mr. Wang

1 sure about '18 and '19. If you want to show them to me, that
2 would be an easy way to find out.

3 Q There was no written contract for these payments;
4 right?

5 A Correct.

6 Q You said you know who Marian Hammer is; correct?

7 A Yes.

8 Q And you've spoken with her about board elections,
9 correct?

10 A Many times.

11 Q I'm going to show you a document that has been marked
12 PX 1256 for identification.

13 MR. WANG: May I provide a document to the witness,
14 your Honor?

15 (Handed to the witness)

16 Q Ms. Froman, I'm showing you a four-page document. It
17 is dated January 15, 2018.

18 Does this look familiar to you?

19 A Vaguely.

20 Q I'll represent to you this was -- where it says "Sandy
21 personal," this was how the document was produced to us and we
22 have -- we're redacting any personally identifying information.

23 A Okay, thank you.

24 Q And you said you've had conversations with Ms. Hammer
25 about board elections; correct?

BP

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S. Froman - by Defendant - Cross/Mr. Wang

1 A Many conversations with Ms. Hammer about board
2 elections over the last roughly thirty years.

3 MR. WANG: I move to admit PX 1256.

4 MS. ROGERS: No objection.

5 THE COURT: It is admitted.

6 (Whereupon, at this time Exhibit PX 1256 was
7 admitted and received into evidence.)

8 Q You replied to this e-mail and complimented Ms. Hammer
9 on her message entitled "The Enemy Within," correct?

10 A Yes.

11 Q And this is a long message from Ms. Hammer; but at the
12 end of the message starting at the bottom of page 3 and going on
13 to page 4, Ms. Hammer provides her opinions on which directors
14 she will be voting for; correct?

15 A That's right. It is an endorsement of that slate.

16 Q And she's encouraging other people to vote for those
17 same directors; correct?

18 A Correct.

19 Q You testified that you served on the Nominating
20 Committee; correct?

21 A I served on the Nominating Committee on several
22 occasions.

23 Q And you've also testified that in fact you chaired the
24 Nominating Committee; correct?

25 A Once, yes.

BP

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S. Froman - by Defendant - Cross/Mr. Wang

1 Q Nominating Committee members are elected by the board;
2 correct?

3 THE COURT: Do you want this exhibit to stay up?

4 MR. WANG: We can take this down.

5 A That's correct.

6 Q And for the election of Nominating Committee members,
7 you received a cheat sheet telling you who to vote for;
8 correct?

9 A I don't know what you mean by "cheat sheet."

10 MR. WANG: May I approach the witness with a
11 document, your Honor?

12 THE COURT: You can with the court officer.

13 (Handed to the witness)

14 MR. WANG: I have multiples of this one.

15 THE COURT: Thank you.

16 (Handed up to the Court)

17 Q This is a document that has been marked PX 6009 for
18 identification.

19 A I see it, Mr. Wang.

20 Q There's a telephone number at the top of this document.
21 Obviously, that number will be redacted before it is
22 shown publicly; but does that telephone number look familiar to
23 you?

24 A It is my telephone number.

25 Q And the number next to your telephone number, does that

BP

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S. Froman - by Defendant - Cross/Mr. Wang

1 number look familiar to you?

2 A No, but it says Millie Hallow. I have no reason not to
3 believe that it is.

4 Q And you texted with Ms. Hallow on a regular basis
5 during your time on the NRA board; correct?

6 A I texted with Ms. Hallow many, many times during my
7 service on the NRA board.

8 Q About NRA matters; correct?

9 A Yes, and about her family.

10 MR. WANG: I move to admit PX 6009.

11 MS. ROGERS: No objection.

12 THE COURT: It is admitted.

13 (Whereupon, at this time Exhibit PX 6009 was
14 admitted and received into evidence.)

15 Q The cellphone numbers have been redacted on the screen.
16 (Displayed)

17 In April, on April 13, 2015, you sent a text message to
18 Ms. Hallow; correct?

19 A Apparently, yes.

20 Q And you said, "Millie, no one has given me a cheat
21 sheet --" your words -- "list for the Nominating Committee
22 election."

23 Do you recall that?

24 A I don't recall doing it, but I obviously did.

25 Q And Ms. Hallow responds to you with nine names,

BP

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S. Froman - by Defendant - Cross/Mr. Wang

1 correct?

2 A Yes.

3 Q And then you thanked her; correct?

4 A Yes.

5 Q And this all occurs the morning of April 13, 2015;

6 correct?

7 A Apparently, yes.

8 Q What did you mean when you said "cheat sheet?"

9 A A list of suggested names for election to the
10 Nominating Committee.

11 Q But you didn't use the language "suggestions" here;
12 correct?

13 A You're right. I used the words "cheat sheet."

14 Q Cheat sheet correct.

15 MR. WANG: Your Honor, may I hand the witness
16 another document?

17 (Handed to the witness)

18 MR. WANG: And for the Judge.

19 (Handed up to the Court)

20 MR. WANG: I'm handing the witness a document that
21 has been marked for identification. It was actually on
22 Mr. Phillip's list, WPX 51. This document in its entirety
23 is almost 300 pages. I've just excerpted the first 11 pages
24 and marked it WPX 51A.

25 MS. ROGERS: We have no objections so long as the

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S. Froman - by Defendant - Cross/Mr. Wang

1 version admitted ultimately is complete.

2 THE COURT: Well, you're seeking to admit just this
3 portion, yes?

4 MR. WANG: I have no objection to admitting the
5 entire set of minutes.

6 THE COURT: Okay, it sounds good. It is admitted.

7 (Whereupon, at this time Exhibit WPX 51 was
8 admitted and received into evidence.)

9 Q Ms. Froman, I'm going to direct your attention to WPX
10 51, page 4.

11 A All right, I'm here, Mr. Wang.

12 Q Do you know what these are?

13 A These are the minutes of the meeting of the board of
14 directors of the National Rifle Association for April of 2015.

15 Q And you were present on -- at this board meeting;
16 correct?

17 A Give me a minute to look. I don't remember, honestly,
18 it was --

19 Q Your a name appears five names down from the bottom of
20 the first column.

21 A Yes. I was present. I've only missed three meetings I
22 think the entire time on the board.

23 Q There was no question pending Ms. Froman.

24 I'm going to direct your attention to page 9, and the
25 third full paragraph of page 9.

BP

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S. Froman - by Defendant - Cross/Mr. Wang

1 "The chair called for nominations for election to the
2 Nominating Committee."

3 Do you see that?

4 A Yes, I do.

5 Q And nine names were submitted to the Nominating
6 Committee; correct?

7 A Correct.

8 Q Those are the same nine names you received from
9 Ms. Hallow earlier that morning, correct?

10 A I believe so.

11 Q And let me direct your attention to page 11 of WPX 51A.
12 The bottom paragraph beginning with "returning to the
13 report of the Nominating Committee."

14 "Returning to the report of the Nominating
15 Committee, the chair announced that the following
16 individuals were elected to the 2015/2016 Nominating
17 Committee listed in order of the number of votes received."

18 The same nine names appear here and have been
19 elected by the board to the Nominating Committee; correct?

20 A Correct.

21 Q There's no record in these minutes of a robust debate,
22 correct?

23 A I have not looked at all of the minutes.

24 Q The minutes for the board meeting are in front of you.
25 Can you show me where there's a robust debate?

BP

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S. Froman - by Defendant - Cross/Mr. Wang

1 MS. ROGERS: Objection. He put 7 pages from 300
2 pages in front of her.

3 THE COURT: She didn't say there wasn't anything in
4 the minutes. She just said she hadn't read them.

5 Q There are 11 pages here, and do you want to look
6 through them --

7 A Mr. Wang, I don't know what your question is.

8 Q My question is did a robust debate take place with
9 respect to these nine names?

10 A I don't remember. It was very frequent that we had
11 more than nine names up for election.

12 Q The meeting ended at the last line of this -- these
13 minutes indicate that the meeting ended at 2:17 p.m., April 13,
14 2015; right?

15 A Yes.

16 Q A few hours after you asked for the cheat sheet from
17 Ms. Hallow and she provided it to you; correct?

18 A Yes.

19 MR. WANG: Pass the witness.

20 MS. COUTU: Your Honor, a few questions, please?

21 THE COURT: Sure.

22 MR. CORRELL: Your Honor, we've gone out of order,
23 but I'm happy to let Ms. Coutu go and then I'll go after.

24 MS. COUTU: Can everyone hear me? Okay, great.

25

BP

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S. Froman - by Defendant - Cross/Mr. Coutu

1 CROSS-EXAMINATION

2 BY MS. COUTU:

3 Q Good afternoon, Ms. Froman. My name is Lisa Coutu, and
4 I represent Woody Phillips in this action. Just a couple of
5 questions.

6 Earlier when you were testifying with Ms. Rogers, you
7 mentioned there were some questions regarding the NRA's finances
8 raised in the mid 1990s.

9 Do you recall that?

10 A Yes.

11 Q And those questions were raised by Mr. Knox?

12 A Yes.

13 Q And in order to answer those questions, you went to
14 the finance office of the NRA to get access information; right?

15 A I don't know that I actually physically went to the
16 finance office, but I certainly went to employees in the finance
17 office.

18 Q To employees in the finance office, and did those
19 employees from the finance office provide you access to records?

20 A Yes.

21 Q And were you able to then review those records?

22 A Yes.

23 Q And were there any records that you asked for from
24 those finance employees that you weren't provided?

25 A No.

BP

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S. Froman - by Defendant - Cross/Mr. Coutu

1 Q Were you able to ask them questions regarding your --
2 the questions raise about the NRA finances?

3 A Yes.

4 Q Did they answer them?

5 A Yes.

6 Q And based upon what you reviewed and their answers that
7 they provided, you felt comfortable with the NRA's finances in
8 the mid 1990s; right?

9 A Yes.

10 Q And in the mid 1990s, Mr. Phillips was the CFO and
11 treasurer at the time; correct?

12 A Yes.

13 Q And the treasurer gets elected by the board of
14 directors every single year; right?

15 A That's correct.

16 Q And from 1992 until currently, you've been on the board
17 of directors; right?

18 A Yes.

19 Q So, from 1992 until Mr. Phillips retired in 2018, you
20 elected through the board Mr. Phillips as treasurer of the NRA;
21 right?

22 A That's right.

23 Q And, also, I believe you had mentioned that there was
24 a stock portfolio that increased and was really beneficial for
25 the NRA as well; right?

BP

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S. Froman - by Defendant - Cross/Mr. Coutu

1 A Yes.

2 Q And Mr. Phillips, as the CFO and treasurer, was in
3 charge of that stock portfolio; right?

4 A I believe so.

5 Q Now, switching topics just very briefly. You also
6 mentioned that you had an arrangement with the NRA where you
7 would do speaking engagements.

8 Do you recall that testimony?

9 A Yes.

10 Q And I know that there was not a written contract, but
11 I think you also testified that you were constantly updating and
12 reporting to the board regarding what was happening with your
13 speaking engagements; right?

14 A I was reporting to NRA management what I was doing.

15 Q And then I think you also said that the money that you
16 were paid as a result of those speaking engagements showed up on
17 the Form 990s; right?

18 A Correct.

19 Q And that those Form 990s were available to the board of
20 directors?

21 A Yes.

22 Q Now, was your flat fee available to Mr. Cotton to see
23 when he reviewed the 990s?

24 A I believe so.

25 Q Now, even if there wasn't a written contract, do you

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S. Froman - by Defendant - Cross/Mr. Coutu

1 believe those speaking engagements benefitted the NRA?

2 A Yes.

3 Q How?

4 A I was speaking about the NRA's mission and objectives.
5 I was speaking about the constitution of the United States,
6 especially with respect to the 2nd Amendment. I was talking
7 about training law enforcement members of the military and
8 citizens of good character in the safe and responsible use of
9 firearms.

10 I was talking to people about the many programs that
11 the NRA had, including the competitions programs. I mean, it
12 covered the gamut. I was speaking to women groups about the
13 importance of women being able to, if they wanted to choose to
14 own a gun to choose to own a gun.

15 And all of these things were things that I felt were my
16 duty as director of the association to do outreach about; and if
17 the NRA was willing to help support -- pay my expenses to help
18 support that speaking and the NRA wanted me to continue to do
19 it, I was enthusiastic about doing it. I loved doing it.

20 Q And do you think your speaking engagements led to
21 additional members joining the NRA?

22 A I know they did. I signed some of them up myself.

23 Q Fantastic. And do you think that those speaking
24 engagements also increased possible donations to the NRA?

25 A I believe they did, yes.

BP

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S. Froman - by Defendant - Cross/Mr. Correll

1 MS. COUTU: I pass the witness. Thank you.

2 THE COURT: Mr. Correll.

3 CROSS-EXAMINATION

4 BY MR. CORRELL:

5 Q Ms. Froman, I'm Kent Correll. I represent Mr. Wayne
6 LaPierre. Nice to see you.

7 A Yes, hello.

8 Q In your mind is there a difference between a mistake
9 and misconduct?

10 A Yes, of course.

11 Q And if someone makes an innocent mistake, an honest
12 mistake do you view that as misconduct?

13 A No, not necessarily.

14 Q And mistakes can happen inadvertently; correct?

15 A Yes.

16 Q And mistakes can happen because you've been provided
17 with information that is either incomplete or inaccurate;
18 correct?

19 A Yes.

20 MR. WANG: Objection to the leading.

21 THE COURT: I think this is --

22 MR. CORRELL: It's cross.

23 THE COURT: Overruled.

24 Q For example, if you buy a car off a lease and you pay
25 the amount that you're asked to pay and you're unaware that the

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S. Froman - by Defendant - Cross/Mr. Correll

1 market has gone crazy for used cars, would that fall within the
2 category of misconduct for you or mistake?

3 A If you're unaware, that might be a mistake.

4 Q If you're unaware that there's a \$25 limit on gifts you
5 can give to employees and you submit an expense report with a
6 \$50 gift on it, unaware that there's a rule, is that misconduct
7 or a mistake?

8 A I think that would depend on what your obligations were
9 to inform yourself of the rules and whether or not you acted
10 diligently in informing yourself of what the rule was.

11 Q And if this is a rule that was generally unknown to
12 people within an organization, would that inform your decision
13 on that?

14 A Of course.

15 Q And if the organization has General Counsel, but
16 General Counsel hasn't informed you that there's such a rule;
17 then would that fall into the category of a mistake or
18 misconduct?

19 A Again, it would depend upon whether I have an
20 independent obligation to learn the rules myself separate and
21 apart from what General Counsel might tell me. It's hard to
22 answer the question in the abstract.

23 Q If -- if you're unaware that there's a rule that if you
24 are provided with wardrobe and you retain the wardrobe, that
25 wardrobe should be treated -- you should have to pay for that

BP

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S. Froman - by Defendant - Cross/Mr. Correll

1 wardrobe if your employer has paid for that; if you're unaware
2 of that rule, does that fall within the box of misconduct or
3 mistake?

4 MR. WANG: Objection to the hypothetical.

5 THE COURT: Sustained.

6 MR. CORRELL: I'll ask it a different way.

7 Q If there's a rule that if you're employer pays for
8 wardrobe for you, you should reimburse the employer for that;
9 but you're not informed that your employer has paid for
10 wardrobe, does that fall within the category of mistake or
11 misconduct?

12 MR. WANG: Same objection.

13 THE COURT: Sustained, sustained. She's a fact
14 witness.

15 MR. CORRELL: I understand. I'll ask a fact
16 question.

17 Q As you sit here today, are you aware of the NRA having
18 paid for any wardrobe for Mr. LaPierre?

19 A I am not aware that NRA paid for any wardrobe for
20 Mr. LaPierre.

21 Q And are you aware of whether Mr. LaPierre has paid the
22 NRA for any wardrobe?

23 A I -- I am aware that Mr. LaPierre has paid a lot of
24 money to the NRA to compensate the NRA for expenses paid for by
25 the NRA that Mr. LaPierre had the benefit of.

BP

1 Q And are you aware that Mr. LaPierre went all the way
2 back to the year 2000 looking for any indication of wardrobe
3 that he received that the NRA might have been paid for and wrote
4 a check for to cover that?

5 A I'm not aware of the specific dates. I am aware that
6 a significant sum of money was repaid by Mr. LaPierre for
7 expenses that the NRA has since deemed should have been personal
8 expenses of him and not paid for by the association.

9 (Continued on next page)

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Froman - by Defendant - Cross/Mr. Correll

1 Q And that's gone back all the way to the year 2000 for
2 that?

3 A I don't know how far back it went.

4 Q You eluded to a conversation you had with Mr. LaPierre
5 where he said I don't care if -- in words or substance, I don't
6 care if I lose every friend I've ever made, we are going to go
7 down the principle path and look under every rock and find
8 anything that needs to be fixing, and we are going to fix it, in
9 words or substance; right?

10 MR. WANG: Object to the mischaracterization of the
11 testimony.

12 Q Would you please tell me in your own words --

13 THE COURT: Objection is overruled.

14 Q You testified earlier about a conversation you had with
15 Mr. LaPierre; correct?

16 A Yes.

17 Q Could you remind me of what, you know, the substance of
18 that conversation was in terms of what he said about his
19 commitment or his losing friends if he had to?

20 A When the NRA Board of Directors and the Audit Committee
21 was actively looking into allegations of mismanagement of NRA's
22 financial affairs and allegations that our vendors had stolen
23 from us, I remember Mr. LaPierre saying to me in a one on one
24 conversation, if I lose every friend I've ever had, I will do
25 what is right for the NRA and we will get to the bottom of this.

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Froman - by Defendant - Cross/Mr. Correll

1 And he has done that.

2 MR. CORRELL: Thank you very much, Ms. Froman. I
3 appreciate it.

4 THE COURT: Thank you. Can we release Ms. Froman?
5 Any more questions?

6 MS. ROGERS: No redirect. She is free to go.

7 THE COURT: Thank you very much. You're free to go.

8 THE WITNESS: Thank you, your Honor.

9 THE COURT: All right, folks. We are done for the
10 day. I will next see you on Tuesday. Monday is a court
11 holiday. So thank you very much for your attention. Please
12 remember your instructions, and I will see you bright and
13 early on Tuesday.

14 THE COURT OFFICER: All rise. Jury exiting.

15 (Whereupon, at this time the jury exits
16 the courtroom.)

17 THE COURT: All right. The hours's late. I
18 just -- something to think about. I still believe that it
19 would be extremely helpful to have closing arguments
20 together on the last day without impinging on the days for
21 testimony which I have made pretty clear throughout. A
22 rough and ready way that I have looked at to do that would
23 be 45 minutes for each of the defendants and 60 for the
24 Government. That adds up to four hours. I am open to
25 looking at ways to squeeze a few more minutes out of the day

KM

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1 maybe starting at 9:15, maybe going till closer to one and
2 closer to five. But aside from that, I don't have a lot of
3 flexibility. So I would ask you to -- it's not what anybody
4 asked for or wanted in terms of their hours, but that's my
5 going in budgeting of it, and I would ask you to think about
6 it and start thinking about whether you can hone your
7 presentations down to that level. I will talk to you
8 tomorrow.

9 Yes, I will talk to you tomorrow.

10 MR. CORRELL: Could we get a time check, please?
11 Would you ask for a time check just to see --

12 THE COURT: Well, why don't we -- I rather have it
13 be up to date. So why don't we do a report on the time
14 check at 3:00 tomorrow when we meet to talk about jury
15 instructions.

16 MR. CORRELL: Perfect.

17 THE COURT: That will be in Room 208.

18 (Whereupon at this time the trial was continued
19 until February 9, 2024.)
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In The Matter Of:

People v.

NRA

February 9, 2024

Karen Mangano

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PREME COURT OF THE STATE OF NEW YORK
UNTY OF NEW YORK - CIVIL TERM - PART 3

-----X
OPLE OF THE STATE OF NEW YORK, BY LETITIA
MES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against-

INDEX NO.
451625/20

E NATIONAL RIFLE ASSOCIATION OF AMERICA,
YNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
d JOSHUA POWELL,

Defendants.

JURY TRIAL
60 Centre Street
New York, New York
February 9, 2024

FORE: HONORABLE JOEL M. COHEN,
Justice, and a jury

PEARANCES:

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NOAH PETERS, ESQ.

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1 THE COURT: All right, good afternoon everyone. A
2 couple things to accomplish today.

3 First, based on your letters, I have my ruling on
4 the statute of limitations issues; and then I have -- and I
5 appreciate the rapid efforts to provide comments on the jury
6 instructions. I don't propose to go page by page through
7 every line effort, but I would like to go to the more
8 substantive ones and to just hear what folks have to say
9 about sort of the thematic issues and I -- I don't think
10 there are sort of fundamental structural issues with the
11 instructions, although that may just be politeness on all of
12 your parts. But, hopefully, it's a relatively narrow
13 disagreements on certain things.

14 But, let me just talk briefly about the statute of
15 limitations, and I do appreciate the letters have been very
16 thoughtful and very good. And it is interesting that a case
17 this old has really not had -- we've had motions about
18 almost everything; but no motions even flagging, to my mind,
19 anyway, that there was a debate about the statute of
20 limitations.

21 So, I haven't really started thinking about it too
22 much until the letters started coming in. But, think about
23 it, I have. So, thank you for that.

24 So, let me go through where I am:

25 I start with the CPLR 214, which governs, among

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1 other things, the statute of limitations for actions to
2 recover upon a liability, penalty or forfeiture created or
3 imposed by a statute except as provided in Sections 213 and
4 215. I don't think the exceptions for the most part apply.

5 "A provision does not automatically apply to all
6 causes of action in which a statutory remedy is sought, but
7 only where liability would not exist but for the statute."

8 It is a quote from the Aetna Life case from the
9 Court of Appeals, 67 N.Y.2d 169 (1986).

10 That section, CPLR 214(2), does not apply to
11 liabilities existing at common-law which have been
12 recognized or implemented by statute.

13 "When this is the case, the statute of limitations
14 for the statutory claim is that for the common-law cause of
15 action, which the statute codified or implemented."

16 That's a quote from The People versus Credit Suisse
17 case, 31 N.Y.2d 622 (2018).

18 In making this determination, courts look at the
19 liabilities imposed by the claims, themselves, not simply
20 the statutory authority allowing the attorney general to
21 bring suit.

22 The Court of Appeals in the Cortelle case,
23 C-O-R-T-E-L-L-E, 38 N.Y.2d 83 (1975), the court held that
24 the three-year statute of limitations period did not apply
25 to certain claims brought under the BCL, Business

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1 Corporation Law, and the Executive Law because those
2 statutes, quote, did not make unlawful the alleged
3 fraudulent practices, but only provided standing in the
4 attorney general to seek redress and additional remedies for
5 recognized wrongs, which preexisted statutes. Statutory
6 provisions which apply only additional remedies or standing
7 do not create or impose new obligations.

8 So, then I think that has application here, as
9 well.

10 The contrast, which the defendants rely on for
11 several purposes is the Credit Suisse case which I
12 referenced above, where the court held that claims brought
13 under the Martin Act are governed by CPLR 214(2) and,
14 therefore, a three-year statute of limitations, because the
15 Martin Act was found to create liabilities, including
16 creating a broad definition of fraudulent practices
17 encompassing wrongs not cognizable under common-law and
18 dispensing with requirement to prove scienter or reliance
19 that did not exist at common-law within the meaning of CPLR
20 214(2) so the court found that those claims were governed by
21 a three-year statute of limitations.

22 So, the question is how do we apply all that to the
23 claims we have here?

24 Starting with the ones I think are simplest, I
25 think a three-year statute of limitations does apply under

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1 CPLR 214(2) with respect to the attorney general's claims
2 under the N-PCL Section 715 for related-party transactions
3 as well as the claims under N-PCL 715(b) with respect to
4 whistleblower protections.

5 I think in both cases, starting with the
6 related-party transactions, the statute permits a finding of
7 a violation based solely or at least initially on whether
8 the board approved the transaction in advance. That's an
9 element of the fault, but it doesn't -- I think it is a
10 statutorily created scheme in which liability can be found
11 for failure to follow the statutory process. And since that
12 is a violation that is created by statute, it seems to me
13 that that claim is covered by CPLR 214 and, therefore, is
14 three years.

15 The claims alleging violations of the whistleblower
16 protections is similar in that there's a very specific laid
17 out set of criteria for violation. I have not found or I
18 don't think I've been pointed to any common-law claims.
19 While I suppose maltreatment of whistleblowers could have
20 always been a part of a fiduciary duty claim, I think that
21 the statute lays out elements that are unique to the
22 statute.

23 So, again, because the violation is created by the
24 statute and not a liability found in common-law, I think
25 that those claims or that claim -- I think it's only one --

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1 is governed by the three-year statute of limitations.

2 And, finally, I think the false filing claims under
3 the Executive Law, Section 172 and 175, the statute creates
4 an obligation for every charitable organization which
5 intends to solicit contributions shall, prior to any
6 solicitation, register with the attorney general and make
7 various filings.

8 And, so, I think it's pretty straightforward that
9 the cause of action is created by statute and, therefore,
10 similarly is covered by the three-year statute of
11 limitations.

12 I think a different analysis applies to the
13 remaining claims in the case. The claims under both N-PCL
14 720 and 717, which refer to certain duties of officers and
15 directors as well as the claims under the EPTL which talks
16 about failure to properly administer trust assets are both
17 common-law claims going back a long time, which are codified
18 by statute and which give the attorney general standing
19 which as I mentioned before under Cortelle does not have any
20 separate meaning in terms of creating a new liability. And I
21 think both of those create or simply codify liabilities or
22 existing at common law and just provide some procedural
23 devices for bringing this case.

24 Unlike the Credit Suisse case which I mentioned
25 before under the Martin Act, I think the defendants have

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1 been pretty forthright about that the -- this statute does
2 require a finding of failure to comply with duties. Whether
3 you want to call it fault or not which I think the Grasso
4 court referenced in a general way, but I think that's just a
5 reference to the fact that they're unlike, for example, a
6 common-law claim for unjust enrichment, there has to be some
7 fault on the part of the defendant, and violating a duty is
8 a classic example of that fault.

9 So, I don't think that the Credit Suisse case
10 applies here.

11 So, just going to the EPTL as well, the fact that
12 it creates additional obligations such as registration and
13 reporting obligations does not mean that it was -- that the
14 conduct alleged here was "made unlawful" what was before
15 lawful, which is a reference to the Cortelle case again.

16 So, in my view, Section 214 does not apply to
17 mandate a three-year statute of limitations. So that then
18 leads to, well, what is the statute of limitations for these
19 claims?

20 The general principle is if it's not governed by
21 214(2), you look to what the relevant statute of limitations
22 would be under the analogous common-law action.

23 I will pause for a second to say that the attorney
24 general makes the argument that these claims really fall
25 under CPLR 213(7) which applies to claims brought by or on

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1 behalf of a corporation to recover damages for waste or for
2 an injury to property from corporate officers and directors.

3 I think there is an argument in favor of that and
4 there is some support for it; but my reading is that that is
5 a stronger argument if the attorney general is suing in,
6 essentially, a derivative capacity, explicitly on behalf of
7 a corporation. As was apparently the case in the Spitzer
8 versus Schussel, S-C-H-U-S-S-E-L, case upon which the
9 attorney general relies. That's 7 MISC3d 171, Supreme
10 Court, New York County (2005). That case was -- the caption
11 in fact was that it was brought by or on behalf of the
12 corporation.

13 I think this case is different. I think you'd have
14 to strain to fit this case into that mold. It is true that
15 the -- what the attorney general is seeking here is a
16 monetary recovery in part that would be paid to the NRA; but
17 the fact remains it is brought in a different way.

18 I'm not ruling definitively one way or the other on
19 this because I think there's a more clear way to resolve
20 this. Because the general principle is that if 214 doesn't
21 apply, then you turn either to 213(1), which is the default
22 rule if there's no other statute that applies, it's six
23 years. But, also, to the common-law analysis for breach of
24 fiduciary duty claims. There are various statements in the
25 Appellate courts about the statute of limitations for breach

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1 of fiduciary duty claims. While there's not an entirely
2 straight line through all of them, the First Department has
3 noted that "New York law does not provide any single
4 limitations period for breach of fiduciary duty claims.
5 Generally, the applicable statute of limitations for breach
6 of fiduciary duty depends upon the substantive remedy
7 sought. Where the relief sought is equitable in nature, the
8 six-year limitations period of 213(1) applies."

9 "On the other hand, where suits alleging a breach
10 of duty seeking only money damages, courts have viewed such
11 damages as alleging injury to property to which a three-year
12 statute of limitations applies."

13 That's a quote from the Kaufman case from the First
14 Department, 307 AD2d 113, First Department (2003).

15 I am persuaded having looked at the wrath of cases
16 that have been cited to me that the six-year statute of
17 limitations applies here as to both the EPTL and the N-PCL
18 claims.

19 As to the NRA, for example, just to begin, the only
20 remedy sought with respect to the NRA is equitable, so
21 that's pretty straightforward. The remaining claims against
22 the individual defendants you have to dig a little deeper.
23 But the cases that I have read indicate that here we have a
24 combination of things.

25 The AG is seeking monetary relief, yes; but it is

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1 not the traditional monetary compensatory damages by a
2 plaintiff. It is an action by the attorney general for
3 restitution to the corporate entity.

4 And the courts have applied and looked at that
5 situation in a number of cases, and it indicated that in
6 that situation the combination of equitable remedy and
7 restitutionary monetary awards is sufficiently equitable in
8 predominant nature, that the six-year statute of limitations
9 applies. That includes the Spitzer versus Schussel case.
10 That's the 7 MISC3d 171.

11 So, before the court there through Judge Richter
12 got into the analysis of CPLR 213(7) as to which there were
13 some subsequent criticisms before that, did look just at
14 the more traditional approach and found that "although the
15 relief sought in these claims is a mix of both equitable and
16 monetary remedies, the gravamen of the complaint is
17 equitable in nature and referred to the restitution in
18 nature of the claims."

19 And that has been cited in a number of cases, and I
20 would cite also the First Department case in Dibartolo,
21 D-I-B-A-R-T-O-L-O, 84 A.D.3d 474, First Department (2001)
22 where the court said:

23 "Whereas here, a suit alleging breach of fiduciary
24 duty seeks both equitable relief and money damages, a
25 six-year statute of limitations applied."

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1 Same in the Homapour, H-O-M-A-P-O-U-R case, 182
2 A.D.3d, 426, First Department (2020). The People versus
3 Trump case, 62 MISC3d 500. That's Supreme Court 2018, and a
4 number of others.

5 So, I think the case law supports the notion that
6 where the attorney general is seeking restitutionary
7 monetary relief as well as related equitable relief
8 that satisfies the requirement for the six-year statute of
9 limitations, so I find that the six-year statute applies.

10 One technical point which hasn't been raised and
11 people forget quite often, by executive order statutes of
12 limitations were tolled in the wake of COVID from beginning
13 March 20th -- I think it was March 20th of 2020 through
14 November of 2020; and since this claim was brought in August
15 of 2020, I think the proper measuring point is the beginning
16 of the tolling period under COVID. So, it would be six
17 years backward from March 20, 2020. I think March 20th is
18 the triggering date. I'm looking at my law clerk, but
19 that's the date the announcement came out. I can't remember
20 what the exact date was, but we'll figure that out -- so, it
21 is six years back from March 20.

22 Subject to any tolling and the attorney general has
23 made a number of arguments about tolling, and to make a long
24 story short I'm not persuaded that it applies here or that
25 the evidence presented indicates that it applies here.

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1 Having just said that this is restitution which has
2 an equitable tinge to it, the core behind equitable tolling
3 is really goes back to traditional equitable relief. If a
4 fiduciary is doing something that needs to be stopped, that
5 is the principle fact pattern where long-tail tolling has
6 been found to apply.

7 I think this is just a different kind of case, and
8 I haven't seen any indication that this is the kind of case
9 where the fiduciary duty and all of these monetary claims
10 which is really what the individuals are facing should be
11 subject to the open repudiation doctrine, which would mean
12 that the statute doesn't even apply until essentially after
13 they're removed, which in this case would be a pretty;
14 traumatic expansion.

15 So, I don't think that the authorities cited are on
16 point. And, I do think that the -- because the gravamen of
17 the complaint is equitable in nature tolling -- I'm sorry --
18 it's meant to protect the beneficiaries in the event of
19 ongoing breaches, such as estate administrators, trustees or
20 corporate officers. And, again, I view this as different,
21 both procedural and substantive setting.

22 So, I'm not applying tolling other than the
23 COVID-related tolling. That's my view.

24 I will say two things: One is a -- probably an
25 unnecessary comment. I think it would be legislature has a

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1 lot more to do than listen to me. But I do see that in a
2 situation like this where lots of statutory causes of action
3 end up being subject to a three-year statute, when you build
4 in the fact that the attorney general has to investigate
5 and, you know, here investigation was a year or two; if the
6 legislature wants to give room and space for the attorney
7 general to investigate, it at least might consider whether
8 having an explicit statute of limitations in these
9 individual statutes to provide time for that because in many
10 cases -- and this one may not be one of them -- the fact
11 that the attorney general takes his or her time to bring the
12 action could in some cases eat up most of the statute of
13 limitations period. Anyway, that's just an editorial
14 comment, which caused me to forget my second comment.

15 Oh, while I think the answers to the statute of
16 limitations are pretty straightforward -- although, it took
17 a little bit of thought -- I am aware that my principal job
18 here is to make sure this is the first and only time this
19 case is tried. So, what I would like to do is in the --
20 least with respect to the individual defendants where
21 there's monetary -- potentially monetary damages, I would
22 like the jury verdict form to ask for a damages where a
23 monetary, but then ask the jury to allocate that between
24 three years and six years.

25 So, the damages -- the money they find from

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1 March 20, 2017, to I think the plaintiff is seeking through
2 2022 in the first case, and then also three years for the
3 back. The total number is the six years for those claims as
4 to which it applies, but I could be wrong; and if the
5 Appellate court decides that it should have been a
6 three-year statute, I'm trying to avoid a situation which
7 would require us to have to meet again and do a whole trial.

8 So, I think it makes sense to at least have an
9 alternative so that if they decide that it should be three
10 years, we have the jury's verdict for three years if we need
11 it.

12 All right, sorry for that long windup, but the
13 letters were very, very good, and I wanted to give this the
14 attention it deserved.

15 All right, let's turn to the instructions now.

16 One procedural thing, by the way, by the end of
17 this process I'm sure you're all going to want to make a
18 record of what arguments were made and what arguments were
19 accepted and rejected, so I think we will ultimately -- I
20 will want you to file on NYSCEF the various proposals going
21 back to the first proposals so that someone else can
22 commissurae with me with what the first proposals were, and
23 then we'll even include, obviously, my proposal and your
24 counterproposals so that we have the legislative history.

25 So, let's turn to the draft and I agree with

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1 whoever said that you can work on the verdict sheet after
2 this. I felt like it would make sense to get the
3 instructions pretty tight before we spent too much time on
4 it; but I would get started on it right away because this at
5 least gives you the order in which it is going to be and the
6 basic framework.

7 So, I guess I will to some extent throw it over to
8 the floor to go through the draft to the first thing that
9 you would consider the substantive point as opposed to a
10 drafting suggestion that you'd like me to address.

11 MR. FARBER: Judge, could I address something that
12 came out of your Honor's decision that will impact jury
13 instructions?

14 THE COURT: Yes, you can.

15 MR. FARBER: So, I certainly understand the
16 incentive not to try this case a second time, but it seems
17 that there's some levels of complexity that are going to be
18 at least potentially inserting these instructions by asking
19 the jurors to do what you're suggesting; one of which is
20 that I think they're also asked to consider things like the
21 extent to which if they find certain wrongdoing, the NRA
22 receive value for that, offsets for that.

23 There's a lot of additional calculation they're
24 going to be have to be asked to do, and I suppose there also
25 needs to be some explanation to them. There is going to be

BP

1 an instruction on statute of limitations.

2 THE COURT: Yeah, I don't think it is going to be
3 too hard. I think -- what I'm hopeful, it will be wherever
4 it says, If you found liability, what are the damages and it
5 will be a hundred dollars. Of that amount, how much from
6 this date to the that date and how much this date to that
7 date.

8 So, I don't anticipate it being anymore complicated
9 than that. It may not be easy, but that's what I'd like
10 them to do.

11 Look, if people object to it, I'll certainly
12 listen, but I call it -- I would consider it a worthwhile
13 insurance policy.

14 What's the first page you want to turn to?

15 (Continued on next page)

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BP

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1 MR. FLEMING: Can I just be heard on one point.
2 The only aspect of your Honor's ruling that didn't seem to
3 be addressed was the N-PCL 714 removal claim. So I wasn't
4 sure. It seems to me that would not be a common-law
5 analysis and might be subjected to a three-year statute.

6 THE COURT: Yeah, but I view removal -- I think
7 there has to be a predicate violation of something else in
8 the N-PCL. So I think it's going to be -- at least the way
9 I view it, it would -- they can take into account anything
10 that's within the Statute of Limitations of the underlying
11 N-PCL violations.

12 MR. FLEMING: Understand. So the jury would
13 probably be well-advised to advise us what provision they
14 are hanging their hat on for any removal.

15 THE COURT: I'm going to defer on that for the
16 moment. I want to see how complicated it all gets. I don't
17 think it matters as long as they are aware of what they can
18 consider for each of the violations.

19 So you know, I guess I'm hopeful we can keep it as
20 simple as possible. I mean, as you can see, I tried to in
21 the instructions generally make them a little simpler, and
22 they would be shorter if they weren't 15 point type and
23 double spaced and all that.

24 So what's the first point that anyone would want to
25 argue is substantively enough to get into here?

KM

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1 MS. CONNELL: Your Honor, if I may.

2 THE COURT: Okay.

3 MS. CONNELL: Sure.

4 MR PETERS: Which one are you going to do?

5 MS. CONNELL: I was just going to say all the page
6 numbers, so we could decide that first.

7 Your Honor, for Plaintiff, I believe --

8 THE COURT: I don't have to have the whole list
9 first. Let's just go through it.

10 What's the first page somebody wants to turn to?

11 MS. CONNELL: Page 25 for Plaintiff. These are
12 pages from the Court's draft. I understand there was a
13 later draft circulated.

14 THE COURT: I only want to have in front of me the
15 ones with your comments on it.

16 MS. ROGERS: I think it's -- these microphones are
17 different. I think it's the same, Page 25.

18 THE COURT: Multiple Defendants Entity.

19 MS. ROGERS: The Rule of Law instructions.

20 MS. CONNELL: Overview Claims.

21 THE COURT: Okay. It's Page 24, but that's okay.

22 MS. CONNELL: Your Honor, here, we would just ask,
23 and Plaintiff has asked for an instruction that the NRA is a
24 charitable not-for-profit, and we submitted a letter
25 addressing this. I believe it's NYSCEF 2384.

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1 Under New York State Law, it's a charitable
2 non-profit, and we have heard some, I think --

3 THE COURT: This was the first substantive one that
4 I had on my list too.

5 As I read some of the points from the Defendants
6 and some of what I heard in court this week, they maybe take
7 the position that the only charitable assets that should be
8 considered at least for the EPTL claims are the NRA
9 Foundation assets. I don't know if that's what's driving
10 this. There is comments throughout here on the word
11 "charitable."

12 The Defendants struck "charitable" on almost every
13 page, and you added it in most cases. So is -- what's the
14 legal basis for the proposition that whatever "charitable"
15 means in common parlance for the proposition, that it is --
16 that the entirety of the NRA is a charitable not-for-profit
17 corporation? Where does that come from?

18 MS. CONNELL: Your Honor, with the Court's
19 permission, I'm actually going to kick it to Mr. Shiffman
20 who is the charity expert here, but I wanted to see if this
21 was the first claim to address.

22 THE COURT: Okay. It's a good one because I think
23 it cuts through a lot of comments coming later on as well.

24 MR. SHIFFMAN: I think at the most basic, it comes
25 from the Statute.

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1 THE COURT: Which Statute?

2 MR. SHIFFMAN: Well, first of all, the N-PCL 201(c)
3 provides that -- this is all on that letter brief that Ms.
4 Connell referred to, but in there, 201(c) refers to the
5 different types of charitable organizations. I'm sorry.
6 Different types of not-for-profit organizations under the
7 Statute, and there used to be different classifications
8 under New York Law of Type A, B, C and D.

9 And all Type B not-for-profit organizations at the
10 time that the Statute was realized in 2014, all of those
11 became charitable corporations by definition in the
12 Not-For-Profit Corporation Law and the NRA Certificate of
13 Incorporation, and it's -- at one point, it had to file a
14 certificate type where it had to declare what type it was.
15 It filed a Certificate of Incorporation and a certificate of
16 type that referred to it as a Type B.

17 Under New York Law, that is clear that that is a
18 charitable organization for all purposes under the Statute.

19 THE COURT: It's the entire entity regardless of
20 subsidiary.

21 MR. SHIFFMAN: Yes, because it refers to the NRA is
22 the one that's the Type B corporation.

23 201(c), and we refer to also to some regulations as
24 well that address the same issue. And also under New York
25 Law, besides the fact that it's just by the Type B, it also

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1 -- New York has broader definition of what "charity" is than
2 the specific 501(c)(3) versus (c)(4).

3 Many of the NRA purposes all fit in --

4 THE COURT: Now, are you now shifting over to the
5 EPTL?

6 MR. SHIFFMAN: I am talking about the N-PCL.

7 THE COURT: I want to keep it separate.

8 Are you saying within the N-PCL there are
9 definitions of "charitable" besides the one you just
10 mentioned?

11 MR. SHIFFMAN: There is one in the definition
12 section that refers to the charitable corporate purposes of
13 what are charitable purposes.

14 THE COURT: What is the definition?

15 MR. SHIFFMAN: It includes many of the things that
16 the NRA does.

17 So the definition under 102-3-b, it says,
18 Charitable purpose of a corporation means one or more of the
19 following purposes: Charitable, educational, religious,
20 scientific, literary, cultural or for the prevention of
21 cruelty to children or animals.

22 So it's a little bit circular there, but that
23 definition in our papers --

24 THE COURT: Which of those do you say most clearly
25 describes the NRA at large?

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1 MR. SHIFFMAN: A couple of them. One, charitable.
2 Two, educational.

3 THE COURT: Well, that's the one that's a circle.

4 MR. SHIFFMAN: That's the one that is a circle.
5 It's also educational.

6 If you look at their 990s, they talk about the
7 educational programs they provide.

8 It also -- that definition though, the reason we
9 cited it, that definition matches exactly or pretty close to
10 different types of -- the definition of what a Type B
11 corporation is, the one that they filed for under the
12 New York Statute.

13 THE COURT: Now, is that -- is it possible, and I
14 don't know what the significance of this would be is that if
15 you have an entity that has a subsidiary that is a
16 foundation, that the whole entity has to file, but it's
17 filing only because of the foundation?

18 MR. SHIFFMAN: Well, I don't think the foundation
19 is the subsidiary.

20 But no, the entity has to file because of its
21 purpose, and under the statute, it's considered a charitable
22 organization for all purposes when it files.

23 And some of the things that we go to in this letter
24 which I would refer your Honor to are some of the things
25 from the 990. So the NRA articulates charitable purpose as

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1 firearms safety education and training. It also says that
2 it's to promote public safety, law and order, and it also
3 talks about defending the U.S. Constitution, and that's one
4 of the things we've heard a lot about.

5 And even on the IRS website, we have the cite to
6 some of those links in that letter. Even on the IRS
7 websites, those things are considered charitable, and
8 there's a difference as Mr. Tenenbaum testified between a
9 (c)(4) and a (c)(6).

10 Here, this is a (c)(4) organization, and it really
11 fits squarely not only within those charitable purposes but
12 under the very definitions under New York Law of what a
13 charitable organization is.

14 THE COURT: And again, the specific things on this
15 page is you want me to add a sentence that says, I am
16 instructing you that the NRA is a charitable not-for-profit
17 corporation under New York Law.

18 Now, your point is that as a statutory matter, it
19 says that. And so the question is I suppose, and let me
20 turn to the defendants for a moment here, that the
21 connotation of "charitable", they have certainly suggested
22 is going to confuse the jury.

23 MR. SHIFFMAN: Just one other point. The (c)(4) is
24 a separately registered organization. I believe it's the
25 one that's the subject of this lawsuit in DC where it has --

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1 MS. ROGERS: That's incorrect, your Honor.

2 THE COURT: One at a time.

3 MR. SHIFFMAN: The (c)(4) is a separate
4 organization.

5 THE COURT: What (c)(4)?

6 MR. SHIFFMAN: The (c)(3). I misspoke. The
7 (c)(3), the Foundation is a separate corporation from the
8 NRA. That's the --

9 THE COURT: So it's within the umbrella of the
10 National Rifle Organization. It is not wholly-owned
11 subsidiary of.

12 MS. STERN: In the not-for-profit context, right,
13 there is no such -- there is no such animal as a
14 wholly-owned subsidiary because nothing is owned.

15 So the (c)(3)s that the NRA has in the Foundation,
16 the civil rights organization, those are separate entities,
17 and they have to register if they are going to solicit in
18 New York separately.

19 The NRA (c)(4) just stands alone. Frankly --

20 THE COURT: So when they file the CHAR 500s or
21 whatever, do they have to provide information to you with
22 respect to the Foundation?

23 MS. STERN: The Foundation provides information to
24 us.

25 THE COURT: So it's a separate filing?

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1 MS. STERN: Correct. Correct.

2 THE COURT: Let me hear from the Defendants. I have
3 your letter.

4 MR. SHIFFMAN: There is some other cites in the
5 letter too that deal with the nature of the objection.

6 THE COURT: I think I have only gotten through the
7 first 200 of your letters. I haven't gotten to the second
8 200.

9 MS. STERN: At the risk of you yelling at me, I
10 will just say one more thing.

11 Just for instance, in 715, there is a distinction
12 in the obligations between a not-for-profit corporation and
13 a charitable not-for-profit corporation.

14 THE COURT: There is a distinction where?

15 MS. STERN: In BCL 715. And of course, then there
16 is the issue of the EPTL which we haven't talked about yet.

17 THE COURT: I don't yell at anyone.

18 MS. ROGERS: So where we keep seeing references to
19 "charitable" throughout these instructions, and the NRA has
20 not struck most of them is the context of the EPTL claim.

21 So there's two ways to be a trustee under the EPTL.
22 One is the one that applies to the NRA. That's why we check
23 the box every year.

24 If you hold or administer property that's entrusted
25 under a trust or a will or similar instrument for charitable

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1 purposes, that makes you a trustee.

2 And as your Honor probably knows, you know, there
3 are Wall Street banks that are trustees if I set up a trust
4 for my family there. That doesn't mean the AG has unbounded
5 ability to interfere in the governance of those
6 institutions.

7 The reason that language as a vague and proper
8 administration has survived for so long in trust and estates
9 law is because there's an inherent limiting clarifying
10 principle. That proper administration language applies to a
11 specific corpus of property. In the case of a trust, it's a
12 trust.

13 In the case of the EPTL, it's that property which
14 is entrusted for charitable purposes.

15 THE COURT: And charitable purposes is defined
16 pretty broadly; isn't it?

17 MS. ROGERS: It's defined pretty broadly but in a
18 way that's not broad enough encompassing lobbying which is a
19 lot of what these assets are for.

20 So "charitable purposes" is defined in the EPTL at
21 EPTL 8-1.9 to include I believe it is charitable,
22 educational, religious or benevolent purposes. And then
23 it's also charitable --

24 It's also defined in the N-PCL, Section 102. I
25 believe it's sub 3a, and this is the definition Mr. Shiffman

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1 read out. Charitable, educational, religious or for
2 prevention of cruelty to children or animals. That language
3 is copied and pasted from IRC 501 (c)(3).

4 So to answer your Honor's question about whether
5 the NRA Foundation is a subsidiary of the NRA, it's not.
6 It's an affiliate, but there are charitable funds that flow
7 through the NRA.

8 So when the NRA funds -- for example, the Eddie
9 Eagle gun education program that your Honor has heard about.
10 There are grants from come from the (c)(3), and you heard
11 testimony about -- from Mr. Erstling about how those funds
12 are tracked to insure that every charitable dollar goes to
13 what it's supposed to go to.

14 You also heard testimony from Mr. Cox, one of the
15 Government's key witnesses about how the NRA's Lobbying
16 Division which is part of this (c)(4) part of the entity
17 that's been brought before this Court, the NRA's Lobbying
18 Division Bylaw has separate finances. And those are -- that
19 is the financial bucket out of which Mr. LaPierre's travel
20 and entertainment expenses, a major issue in this case were
21 paid.

22 There is no dispute I don't think under State Law,
23 certainly not under Federal Tax Law that those lobbying
24 funds are not charitable assets. Those are not the kind of
25 funds that the EPTL has ever been designed to regulate.

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1 Calling them charitable assets is effectively
2 making the NRA's political activity illegal which I don't
3 know if that's the specific goal here, the ultimate goal of
4 the lawsuit, but that's -- those aren't charitable funds.

5 So within the NRA, there are buckets of money that
6 are clearly charitably entrusted. Those are the buckets
7 that make us a trustee. Those are the buckets that come in
8 through the foundation or sometimes from a will. We have
9 donors who left money in their will and are used for charity
10 purposes.

11 THE COURT: Now, the Statute as we talked about
12 define charitable -- well, it defines a charitable
13 beneficiary. The EPTL. The beneficiary of a disposition
14 for religious, charitable, educational or benevolent
15 purpose. That's -- I think you referenced that before. And
16 the commentary to the Statute makes the obvious point that
17 it's a pretty darn broad definition.

18 And do you have cases that say that sort of a
19 501(c)(4) is per se not a charitable organization under New
20 York Law?

21 MS. ROGERS: There are many cases for the
22 proposition that charitable and social welfare and lobbying
23 are distinct.

24 THE COURT: For what purpose?

25 MS. ROGERS: So certainly, for federal tax

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1 purposes.

2 But even in New York, at the time the NRA was
3 incorporated, the statutory scheme that Mr. Shiffman cites,
4 Type A, Type B did not exist.

5 So in 1848, and we have a brief, and we filed reams
6 of them, so I'm sorry to direct your Honor back into that
7 pile of them, but if you go through the history of New York
8 charities law and corporation law and New York trust law,
9 when the NRA was created, there were a couple of different
10 statutes that could have been created under. One was for
11 charitable corporations which contained that predecessor to
12 the (c)(3) language. It talked about educational, literary
13 and charitable purposes. That's the definition. That's an
14 1848 New York statute.

15 The NRA was formed in 1871 under a different one
16 for social clubs, and its original purposes are to promote
17 marksmanship, defend the Second Amendment. These are social
18 welfare purposes.

19 So the NRA was not formed as a charitable
20 corporation. It was expressly formed under --

21 THE COURT: You're saying that there's a
22 distinction between social welfare and charity. But what's
23 the basis for saying that those are two distinct sets?

24 MS. ROGERS: Well, one basis is that if there is an
25 entity that actually is formed solely for charitable

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1 purposes like the NRA Foundation, and they spend the money
2 on like 501 (c)(4) activities, they can get in trouble with
3 the Government.

4 THE COURT: Why isn't social welfare charitable?

5 MS. ROGERS: I don't know, your Honor, but this is
6 an archaic distinction of the law, and I think --

7 THE COURT: Well, let's make it less archaic.

8 I mean, I have a Statute that was revamped in
9 2014 --

10 MS. ROGERS: Correct.

11 THE COURT: -- that did away with these in a way
12 that your actual client is defined as a charitable
13 not-for-profit.

14 MS. ROGERS: So the NRA didn't reregister after the
15 Revitalization Act one way or the other, so it never filed a
16 certificate identifying itself as a charitable
17 not-for-profit.

18 The NRA has been around since 1871. It was formed
19 as a non-charitable not-for-profit.

20 THE COURT: Well, it wasn't formed as a
21 non-charitable not-for-profit.

22 MS. ROGERS: It was formed as a social club
23 technically in 1871, so it was not formed -- it was a
24 charitable corporation creature of existence in the law at
25 the time, and that's not what the NRA was.

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1 THE COURT: Well, isn't the distinction at some
2 level charitable could be viewed as not-for-profit? Those
3 could be synonymous.

4 MS. ROGERS: In the vernacular, but in the federal
5 tax law which I understand is not what your Honor is
6 bringing up, but if we are looking how to interpret these
7 vague, squishy statutory words like "charitable," the fact
8 that the N-PCL language is copied from the Federal Tax Code,
9 and the fact that the Federal Tax Code uses that language in
10 a certain way should certainly --

11 THE COURT: Well, it's because there is an
12 important difference. Right. And it's a public policy
13 difference is whether -- and I have learned that through
14 this trial. It's the Government will subsidize donations to
15 certain things and maybe not others.

16 Now, that may be a definition that matters in terms
17 of how we spend our public money, and maybe that for that
18 purpose, they use "charitable" and "social welfare" to mean
19 different things, but it doesn't mean that they are not both
20 charitable. It means that there is some charitable things
21 that the Government is willing as a matter of federal tax
22 policy to subsidize and some things that are just tax
23 exempt.

24 For example, like the NRA, where its income is not
25 subject to taxation. Those are just different tax and

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1 spending policies which to me don't really give me much
2 guidance on whether calling it charitable or not is very
3 meaningful.

4 MS. ROGERS: Well, it's meaningful because there
5 are dozens of places in the law where if there are
6 activities that (c)(4) undertakes which in under federal law
7 are forbidden to charities, for example.

8 THE COURT: Because we have decided as a country
9 not to permit a tax benefit to donate to those entities.

10 It doesn't make them more or less charitable. They
11 are just categorized differently for a very specific
12 purpose.

13 MS. ROGERS: Right; but I think the point is that
14 from a statutory interpretation perspective, and we are
15 asking what does "charitable" mean.

16 THE COURT: And we should be looking at the
17 statutes that matter here. Not the Federal Tax Law.

18 MS. ROGERS: Right. So if we look at the statutes
19 that matter here, one of them, the N-PCL as it's currently
20 drafted was intentionally drafted to align with Federal Tax
21 Law. That's why the language is identical to 501(c)(3).

22 THE COURT: You are going to have to walk me
23 through that.

24 MS. ROGERS: Sure. So let's pull up N-PCL 102.
25 That's the definition section.

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1 THE COURT: When you say "let's pull up," you
2 mean --

3 MS. ROGERS: I don't have a copy of it.

4 THE COURT: I thought you were going to magically
5 make this appear on the screen.

6 MS. ROGERS: No. I'm accustomed to say that during
7 witness examination.

8 THE COURT: I know, but it doesn't work in real
9 life.

10 Which section are you looking for?

11 MS. ROGERS: So if we pull up N-CPL 102. This is
12 definitions. And if you scroll down.

13 THE COURT: Hold on one second. Not there yet.

14 MS. ROGERS: Sub A, and then it's sub -- under A,
15 3-b.

16 THE COURT: 102 a. Say again.

17 MS. ROGERS: And then under "a," there is 3-b where
18 it says "charitable purposes."

19 THE COURT: Yes. I got it.

20 MS. ROGERS: So that language is identical to
21 501(c)(3), and it was written at the time of the
22 Revitalization Act, and it was written to replace this
23 confusing A,B,C,D thing Mr. Shiffman is talking about.

24 They wanted a clear charitable purposes definition,
25 and they chose the one from 501(c)(3).

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1 If you look up 501(c)(3), this is where it comes
2 from. They are contemporaneous commentaries that explain
3 one thing New York was doing in the Revitalization Act was
4 getting rid of this confusing Type A, Type B, Type C, Type D
5 typology.

6 That was actually calling the commentator to say
7 don't incorporate in New York. The non-profit
8 classifications are too confusing. A book club could be a
9 Type B corporation. So they replaced Type B with this. And
10 since this statute was enacted, the NRA has never amended
11 its certificate or ever updated its Certificate of
12 Incorporation to claim charitable purposes.

13 Obviously, we wouldn't because it's a 501(c)(4),
14 and it would be very confusing.

15 THE COURT: What else -- I -- I can't remember the
16 section that Mr. Shiffman cited.

17 MR. SHIFFMAN: 201(c).

18 THE COURT: So that's the one that defines former
19 Part B as charitable?

20 MR. SHIFFMAN: Yes. NRA, although it did not when
21 it was formed in 1870 or whenever it was was not a type B.

22 In 1973, it had to file a certificate type with the
23 State, and it then filed a certificate type that declared
24 that it was a Type B, and we -- that's in the record. I
25 think it's in the docket as I believe 121 and 123 in the

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1 docket NYSCEF 121 and 123. We cite it in our letters.

2 They declared that they were Type B in the
3 seventies. In the 2000's when the types were eliminated, it
4 automatically became a charitable corporation because it was
5 a Type B corporation.

6 And one other thing, and under the EPTL --

7 THE COURT: So in other words, despite the
8 definitions -- I'm repeating this to myself.

9 Despite the fact that the definition in Section 102
10 as Ms. Rogers just pointed out seems to lean on the
11 501(c)(3) words, what 201(c) says, and I'll add the word
12 "notwithstanding." It says, A Type B or C not-for-profit
13 corporation prior -- formed prior to July 1, 2014 shall be
14 deemed --

15 MR. SHIFFMAN: Yes.

16 THE COURT: -- a charitable corporation for all
17 purposes under this chapter.

18 So I'll let you sit down. It's Ms. Rogers' turn.

19 MS. ROGERS: It says all purposes under this
20 chapter.

21 The EPTL is a law about property. That's why it
22 gets away with vague language like "improper
23 administration."

24 THE COURT: One thing at a time.

25 So for the N-PCL, regardless of what else there is,

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1 this pretty much says that based on historical facts,
2 whatever else you might say, it seems to me anyway, it's
3 deemed a charitable corporation for all purposes under the
4 N-PCL. That's what this says to me.

5 MS. ROGERS: It says deemed under the N-PCL, but
6 that's not what the EPTL says.

7 THE COURT: Take them one at a time. I think you
8 started with the N-PCL being 501(c)(3).

9 So the legislature in its wisdom decided that
10 regardless of any of that, you're deemed to be a charitable
11 corporation under this statute if you were historically a B
12 or a C.

13 So now let me -- let me turn your attention to the
14 EPTL which is probably the most important to you.

15 MS. ROGERS: Correct, your Honor.

16 So the EPTL has a broad definition of charitable
17 purposes in it, but that definition, "charitable" -- I
18 believe it's charitable, religious or benevolent is much
19 closer to (c)(3), and that language, there's no Type B
20 legacy grandfathering mechanism in the EPTL.

21 THE COURT: Okay. I'll grant you that so far.

22 MS. ROGERS: The NRA has been around since 1871,
23 and in 1871, the distinction that existed in the law was
24 there are some corporations that are charitable like a
25 charitable trust. Those are educational, scientific and

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1 literary. That's not what the NRA was.

2 The NRA was more like a social club or a fraternity
3 which the EPTL actually distinguishes. The EPTL 8-1.4
4 distinguishes.

5 THE COURT: And benevolent purposes, that's the
6 word that's the broadest in the EPTL.

7 At least I've seen commentary suggesting that it
8 covers a fairly broad swath of things.

9 MS. ROGERS: So I don't know --

10 THE COURT: You certainly wouldn't agree that from
11 your perspective the NRA's purposes are benevolent.

12 MS. ROGERS: Well, if you interpret "benevolent"
13 the way that a lot of commentators interpret "charitable,"
14 the core meaning would be something like handing out homes
15 to orphans which the NRA is not doing.

16 The NRA's inaugural purpose was to create a
17 shooting range and train its members in marksmanship. That
18 creates a social welfare benefit, but not the kind of
19 benefit that a charitable trust in 1848 was designed for.

20 And when the NRA was formed, it was formed as a
21 kind of entity that actually it was not able to inherit
22 property from a charitable bequest the way a charitable
23 corporation could have. That was another distinction that
24 existed.

25 THE COURT: Now, there is no question the NRA files

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1 under the EPTL every single year.

2 MS. ROGERS: Because there are two ways.

3 THE COURT: You think it's just because they have
4 an association with the NRA Foundation?

5 MS. ROGERS: Not just because there is an
6 association, but because they actually do administer some of
7 that property.

8 So the way that the spending works -- so remember
9 in my opening statement I talked about these are the
10 educational programs the NRA does that benefit the public.

11 The way that happens -- there is a couple of ways
12 that happens, and the main way is that the Foundation which
13 receives those tax deductible dollars makes grants to the
14 NRA, and that money has to be carefully tracked to make sure
15 the charitable funds reach their charitable destination.

16 It is these mechanisms within the NRA -- you hear
17 about separate books for the Legislative Action Division.
18 You have these spreadsheets that Mr. Erstling --

19 THE COURT: So you think that if the NRA dispenses
20 with the Eddie Eagle and any other connections to the
21 Foundation's projects could stop -- could stop filing every
22 year with the AG?

23 MS. ROGERS: If it dispensed with the Foundation
24 and --

25 THE COURT: No, not with the Foundation.

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1 MS. ROGERS: Sorry. I was speaking too quickly.

2 If it dispensed with those projects, and there are
3 a couple of other ways that charitable dollars can get in.
4 So there are trusts, there are wills and bequests and the
5 like, but those dollars are also tracked. Those are
6 donor-restricted assets.

7 If we did none of that, if we were just paying
8 overhead for the office plus, you know, lobbying, then we
9 would be a classic non-profit. We would be a classic --

10 THE COURT: Now, aside from your argument about the
11 words "benevolent" and anything else, is there any law
12 whatsoever to support what you just said?

13 MS. ROGERS: So there is -- it's in the federal tax
14 and regulatory context. This is a subject of some
15 controversy because the leading opinion, and we cite this.
16 We cite this. It's an article that we cite in one of our
17 briefs.

18 Essentially, the way -- the way charitable and
19 non-charitable classifications work is the NRA can currently
20 can spend up to 51 percent or 49 percent of its money on
21 purely lobbying and political action.

22 THE COURT: But if I told you you couldn't cite
23 federal tax authorities, what would you say?

24 MS. ROGERS: So if I can't cite federal tax
25 authorities, I would cite New York authority from the time

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1 the NRA was created. And from the time -- because that's
2 obviously most informative as to what kind of entity the NRA
3 came into existence as. And law from that time specifically
4 restricts the NRA's ability to inherit charitably --

5 THE COURT: What about from when the EPTL was
6 created?

7 MS. ROGERS: So the EPTL is a renamed version of
8 the Decedent's Estate Law which was created in the late
9 nineteenth century. And when the Decedent Estate Law was
10 created, it inherited those old provisions of the trust law.

11 MS. EISENBERG: Your Honor --

12 MR. SHIFFMAN: Your Honor, I guess before the NRA
13 can speak from both sides, maybe I can.

14 Can I just point your Honor to --

15 THE COURT: I want to -- we have a lot -- we do
16 have a lot more to cover.

17 MR. SHIFFMAN: This will be very focused, literally
18 two minutes.

19 One, the EPTL addresses the -- this question
20 directly. EPTL 8-1.4a2.

21 THE COURT: Hang on one second.

22 MR. SHIFFMAN: 8-1.4a2.

23 THE COURT: That just references again it's
24 organized for charitable purpose.

25 MR. SHIFFMAN: But it says, Any non-profit

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1 corporation organized under the laws of this State for
2 charitable purposes.

3 We're a not-for-profit organization under the
4 N-PCL.

5 THE COURT: You think that's the link from the
6 N-PCL?

7 MR. SHIFFMAN: Yes. That's not the only link.
8 I'll also refer your Honor to 13 NYCRR Section 90-1 which is
9 a regulation which provides that under the EPTL,
10 "charitable" means a number of things we said before but
11 also includes promoting social welfare and some other things
12 which are in our letter.

13 THE COURT: It's in your letter.

14 MR. SHIFFMAN: That's a direct link, your Honor, to
15 the N-PCL and the corporations that are covered by it.

16 THE COURT: Well, I'll take up Ms. Rogers' point
17 just for a moment. This is interesting language. I would
18 imagine that she will tell me this actually supports her
19 view because it was organized in 1871. That's when it was
20 organized. You were organized originally under the laws of
21 this State for charitable purposes; whereas, I guess she
22 would argue they have now been deemed to be for charitable
23 purposes.

24 MR. SHIFFMAN: Organized could mean when it first
25 happened, but it also could mean as it exists, and it

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1 declared in the 1970's that it was a Type B corporation.
2 And when it declared that, it declared that it's a Type B
3 corporation using those exact same words that fit the
4 definition of a charitable organization.

5 (Continued on the following page.)
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1 THE COURT: So, this is all in your letter. I
2 would -- I mean, I can't believe I'm actually saying it, but
3 if there's anything in that letter that you'd like to give
4 me specific opposition to, I do think it's -- I mean, it is
5 potentially important to the scope of the EPTL claims I
6 suppose. I don't -- it does seem clear to be a charitable
7 corporation under the N-PCL, but I'll certainly listen to
8 the argument.

9 Again, was this part of the motion to dismiss at
10 any point?

11 MS. ROGERS: I don't think it was part of the
12 initial motion to dismiss briefing. It was addressed at
13 some length because I had to go to library to get some
14 statutes from 1871.

15 THE COURT: It wouldn't probably be a dismissal
16 anyway because it depends on -- I mean, even under your
17 reading, there are assets within the NRA that are held for
18 charitable purposes.

19 You're just saying that the evidence that's come
20 in, the improper conduct doesn't go do those charitable
21 assets.

22 MS. ROGERS: Correct, your Honor. And I think the
23 EPTL charge has taken place and it's been informed by
24 property law. It's important that we focus on the property
25 that drives applicability of the EPTL. And their proposed

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1 revisions they make to the charge say things like all of the
2 NRA's assets are charitable assets which if pronounced by a
3 court would be very problematic.

4 THE COURT: Just to round it out, there's no case
5 law that you cite for the proposition that 501(c)(4)
6 entities are not by definition charitable under the EPTL;
7 right?

8 MS. ROGERS: Under the EPTL I don't believe so, but
9 I'd be happy to put in a response to the letter.

10 MR. PETERS: I would just note that this use of the
11 EPTL is quite novel. So, there's only very few cases that
12 attempt to do anything resembling what's going on in this
13 case.

14 THE COURT: Well, I noted that in the online notes
15 of decisions, the main one is this one.

16 Anyway, so we've now thoughtfully considered the
17 first issue in this very long document.

18 MS. CONNELL: Your Honor, as far as the plaintiff
19 goes and if we're moving on to other topics, Mr. Shiffman
20 is indicating there's something he'd like to say on this
21 if you want, but I think that's the point of the main
22 topic --

23 THE COURT: We need to move on.

24 MS. CONNELL: I think that's the plaintiff's main
25 topic. We made some other proposed changes to the -- to the

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1 proposed charges, but I think --

2 THE COURT: It is mostly language stuff as I saw.

3 MS. CONNELL: Exactly. I think that was the
4 largest one for us.

5 THE COURT: So, let's turn to the defendants' list.

6 MR. FARBER: Your Honor, I just wanted to raise a
7 related point to this issue that comes up.

8 THE COURT: Oh, we're back to the charities again?

9 MR. FARBER: We're back to it because it comes up
10 in the EPTL claim for proper administration of charitable
11 assets, so there's a question of how you find charity.

12 The question of what charitable assets are is
13 related to that, and the assumption that the State is
14 making, it's implicit in this argument, is that every asset
15 of the NRA, it's deemed a charity is a charitable asset.

16 THE COURT: I think that is their position.

17 MR. FARBER: Right, and we put in a letter on
18 this --

19 THE COURT: I'm quite sure you did.

20 MR. FARBER: And I just wanted to point out what
21 the sort of statutory problem with that argument is, and
22 this is elaborated on our letter. But in EPTL 8-1.4(e)
23 which talks about the registration and reporting provisions
24 of the section.

25 And they say, "The registration and reporting

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1 provisions of this section do not apply to --" and then
2 there are nine or -- there are a number of items, but if you
3 go down to item 9, it says "any person who in his or her
4 capacity as an officer, director of any corporation or
5 organization mentioned in this paragraph holds property for
6 the religious, educational or charitable purposes of such
7 corporation or organization..." blah-blah-blah.

8 THE COURT: Right.

9 MR. FARBER: That distinction, putting in that
10 language holds it for any of those purposes would be
11 entirely superfluous if all the property the organization
12 held were charitable asset property. So --

13 THE COURT: Well, we've seen in a number of
14 situations where in infinite wisdom people have defined
15 charitable things using the word charitable in the
16 definition. It's true, in several places in the statute.

17 If you look at the definition in 8-1.1, they do the
18 same thing; don't they?

19 MR. FARBER: In 8-1.1?

20 THE COURT: I think, maybe I have the wrong one in
21 mind, but I've seen at least one where the word "charity" is
22 in the definition of the word charity.

23 MR. FARBER: Well, my point is --

24 THE COURT: That doesn't mean the rest of the
25 things on the list are irrelevant.

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1 MS. ROGERS: I'm not arguing if the rest of the
2 things are relevant, but it talks about any person who --
3 forget about the rest of the things.

4 THE COURT: Charitable beneficiary under 8-1.1"
5 "A charitable beneficiary shall mean the beneficiary of the
6 disposition for a religious charitable, educational or
7 benevolent purpose."

8 It's the way they write.

9 MR. FARBER: It's a different point, your Honor.
10 We can strike out the words religious, educational.

11 What this is saying s that reporting provisions
12 don't apply to any person who in their capacity as officer,
13 director, trustee of a charity holds property for charitable
14 purposes.

15 There's -- it's envisioned there's got to be some
16 subset of property --

17 THE COURT: You have a linguistic argument in favor
18 of that, but it is a little bit off to the side I think.

19 MR. FARBER: Thank you, your Honor.

20 MR. CORRELL: Your Honor, if I may?

21 THE COURT: Is it about the charity again?

22 MR. CORRELL: I have a citation for you.

23 THE COURT: Okay, good.

24 MR. CORRELL: It is Consumers Union of U.S., Inc.
25 versus State, 5 N.Y.3d 327. It says, "Empire was never a

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1 501(c) charity. It was a -- it says, "Empire's former
2 federal tax exempt status was based on IRC, Section 501(c)
3 (4). That's social welfare organization. Empire was never
4 a Section 501(c)(3) charity, so the court was drawing a
5 clear distinction between the two entities.

6 THE COURT: For what purpose?

7 MR. CORRELL: I believe it was for cy pres
8 purposes.

9 THE COURT: Was it for purposes of analyzing the
10 statute?

11 MR. CORRELL: I believe it was for purposes of
12 analyzing N-PCL to determine what the correct standard
13 was -- whether assets can be distributed to a similar
14 organization. Let me see.

15 MR. SHIFFMAN: Your Honor, it was for a conversion
16 to a for-profit, and this case is addressed in that same
17 letter that I was mentioning.

18 THE COURT: I've read this case because you cited
19 it before.

20 All right, can we move on?

21 MR. PETERS: Yes, we can, your Honor.

22 THE COURT: What's the next section that the
23 defendants think is substantive?

24 MR. PETERS: Let's go to page 27 and talk about the
25 conduct for directors, officers and employees and the NRA's

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1 responsibility.

2 THE COURT: Yes, that was my next one, too. You
3 want to add another quote from the case I cited.

4 MR. PETERS: That's correct, your Honor. We think
5 that the key distinction that Kirschner is getting at is
6 captured in the -- the sentence that begins, The crucial
7 distinction is between conduct that defrauds the NRA and
8 conduct that defrauds others for the NRA's benefits. In
9 other words, you may find that the adverse interest
10 exception applies with the NRA's agents who committed fraud
11 against the NRA, but you may not find the adverse interest
12 exception applies where others are defrauded for the NRA's
13 benefit and may be -- you know, so I think the distinction
14 is captured there which is that what Kirschner is talking
15 about in terms of, you know, things that incidentally help
16 the entity would be something like inflating the entity's
17 stock price or which was at issue in Kirschner which does
18 do -- does partially in some sense benefit the corporation,
19 right, because the value --

20 THE COURT: No, I get your point. I think there's
21 something to possibly explaining it that way, but you then
22 go on to strike the part that says that even if you have a
23 rogue officer; what we had included was even if that
24 applies. In a situation like this where the harm is not
25 really to third parties, that's not the -- they're not

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1 saying that, you know, some unrelated third party was
2 harmed; but the cause of action here is that the members
3 were harmed. That's who the -- that's who the target, the
4 members and the donors are the ones who the EPTL and the
5 N-PCL are in these relevant circumstances here to protect.
6 It's not whether some unrelated third party was.

7 So, are you saying that, hypothetically, if you
8 have rogue officers doing things that harm the bottom line
9 of the NRA and let's say shareholders, if there were any, or
10 members or whoever wanted to sue and say this is wrong and
11 they wanted to enjoin the NRA to do something, that the --
12 you could not look at the conduct of the NRA board and say
13 they were asleep at the switch, they didn't do what they
14 were supposed to make them -- as Ms. Froman really
15 eloquently put it yesterday in her definition of fiduciary
16 duty, if you have an obligation to know, then you need to
17 find out.

18 Are you saying that if the jury finds that the --
19 obviously, if the board was complicit. But if the board, if
20 it had been complying with its obligations should have known
21 what was going on that, nevertheless, the NRA could escape
22 being found to have violated their of the statutes?

23 MR. PETERS: What we have proposed, I think we
24 don't object to the notion that the board oversees the NRA
25 and that there is a level of -- and that it is relevant and

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1 should be and the jury should be instructed on the duty of
2 care that the board owed. I think our big --

3 THE COURT: Well, you just struck it. You didn't
4 replace it with anything.

5 MR. PETERS: I mean, we do -- there is another part
6 when you go to the EPTL.

7 THE COURT: I heard you argue before -- maybe this
8 is what you're talking about -- is that if the board makes
9 an affirmative decision, then you can bind the NRA to that
10 decision.

11 I'm looking at the board's failure to do something
12 as also a basis for a finding; and it is, I think, a basis
13 for finding liability, certainly as to the board.

14 MR. PETERS: Well, I think what we've spoken about
15 in previous briefs and I think what we put into this
16 combined jury charge is that the standard of culpability for
17 the board should be something like a gross negligence or a
18 care mark-like breakdown of a conscious failure to monitor
19 internal controls, something of that nature.

20 Even in states like -- even in, for example,
21 Delaware which is very persuasive in New York; it is usually
22 articulated -- the standard of culpability for the board is
23 usually articulated as being a gross negligent standard.

24 THE COURT: Now you want me though use common-law
25 principles instead of the statute? Because the duty of

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1 directors under the N-PCL is the same duty as the duty of
2 officers. They have to discharge their respective positions
3 in good faith and with the care an ordinarily prudent person
4 in the like position would exercise under similar
5 circumstances.

6 So, why shouldn't that be the standard? That's
7 what I intended by this language.

8 MS. ROGERS: Your Honor, can I make a quick point?

9 THE COURT: Sure.

10 MS. ROGERS: So, even in Delaware which Mr. Peters
11 is citing, the statutory codification of the business
12 judgment rule is similar. It talks about -- it uses
13 language sounding in negligence, good faith and reasonable
14 care. But all these commentaries on the business judgment
15 rule and the common-law articulation of it, nonetheless,
16 rises to gross negligence or bad faith.

17 So, to reconcile this, we looked up and submitted
18 to your Honor in one of the numerous letter submissions
19 examples of jury instructions in jurisdictions like this
20 that have the statutory codified business judgment rule like
21 ours, where the codification contains negligence language,
22 but the jury instructions contains gross negligence
23 language. So, that's one point I wanted to make.

24 The other point is that the business judgment rule
25 changes when you're talking about a board declining an

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1 offer, making a discrete decision versus when the board is
2 being accused of a broad-brush application of its failure to
3 do or care about anything and the care mark line of cases
4 that Mr. Peters is citing represents Delaware's efforts at
5 articulating in what the standard for a board's abdication
6 should be, and it really does talk about almost conscious
7 failure to monitor. You don't care about internal controls
8 at all. You adopt none or you ignore them.

9 THE COURT: Willful blindness.

10 MS. ROGERS: Willful blindness, bad faith and we
11 cite in one of our letter submissions and would be happy to
12 provide to you there's a Southern District of New York case
13 involving a claim by a bankruptcy trustee of a nonprofit
14 that applies the care mark doctrine.

15 And so it's true that 710, 717 says this, and it is
16 attempting to just be clean and crisp and use the language
17 from the statute; but other jurisdictions with the same or
18 similar statutory language recognize that the way the
19 business judgment rule has evolved is to afford the more
20 corporate deference than that. And to instruct the jury is
21 when we do instruct the juries, using language that differs
22 from just the spare kind of negligence language we see here.

23 MR. PETERS: I think the impact of this is that
24 when you have misconduct that's hidden from the board of
25 directors, it becomes -- when you set up as a large

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1 nonprofit like the NRA is required to do, when you set up a
2 system of internal controls and when people are, you know,
3 hide things and going outside of the internal controls,
4 there's -- it becomes extremely extraordinarily complex and
5 so that's why it's been our position and maybe it was a
6 little harsh to strike out this, the notion of the board
7 overseeing things, which we don't disagree with as
8 Ms. Rogers has said. But our view is that it should be
9 something like a care mark-like bad faith breakdown of
10 internal controls; but it becomes very difficult when you
11 have rogue agents within the NRA who are -- who are hiding
12 things, who are not -- who are not disclosing things to the
13 board so that the board can do its duty.

14 So, there's all sorts of complications which is why
15 we suggest that I think it should be something and, you
16 know, based on the fact that it generally is something more
17 such as a bad faith, you generally have to show bad faith in
18 circumstances like this.

19 THE COURT: Well, I put good and bad faith is in my
20 language.

21 MR. CORRELL: Your Honor, if I may? The definitive
22 statement on the business judgment rule from a unanimous
23 Court of Appeals speaking through Chief Judge Kaye is in
24 Grasso at page 71; and it basically says that the plain
25 language of these provisions reveals a legislative policy

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1 decision to provide officers and directors of not-for-profit
2 corporations with the, quote, business judgment, unquote
3 protections afforded their for-profit counterparts. The
4 legislature specifically provided for the attorney general's
5 role as an overseer of not-for-profit corporations and
6 requires he prove an officer's fault to sustain these
7 claims.

8 So, we need a clear instruction to the jury that
9 the attorney general must prove fault.

10 THE COURT: There is a clear instruction to the
11 jury. That's what breach of duty is. That's what fault is.

12 MR. CORRELL: Your Honor, evidently, it wasn't
13 that clear at this point with the statute because the Court
14 of Appeals in the First Department both had to clarify it
15 and it was a split decision.

16 THE COURT: I understand. Grasso is an important
17 case for lots of reasons. The holding in Grasso is that
18 unjust enrichment, which has no fault, can't be squared with
19 a statute which at that time had its own definition, and the
20 court used various words to describe it, but the statute is
21 what it is. It is not -- Grasso doesn't add words to it or
22 subtract words from it. In fact, the statute is different
23 now than under Grasso.

24 So, either way, I'm not going to use words that are
25 not in there like fault. We're already saying --

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1 MR. CORRELL: Words "knowledge of unlawfulness" are
2 in there in Section 728-2 and we have a stealth 728-2 claim
3 here we're they're seeking a challenging of transfers of
4 assets, but without alleging there was knowledge of
5 unlawfulness on the part of the transferee. As the Court of
6 Appeals --

7 THE COURT: Look, I'm trying to keep it simple.
8 I've got your comments on that.

9 For the NRA, I would at least want to have as a
10 counterpoint to what I wrote, if you think that the
11 relevance of -- in this section which I think is an
12 important section to have in the instructions because one
13 juror already was a little confused about who was
14 representing who -- to have them understand who has
15 responsibility, there needs to be something in here because,
16 otherwise, it sounds like if you have a rogue officer, it is
17 per se immunity for the organization and that I don't think
18 is correct.

19 So, you, apparently, have something in mind to say
20 if the beginning of the sentence is "even if you find that
21 the exception applies, you may still find the NRA liable if
22 you find that --" and I wrote -- "the plaintiff has
23 established that the NRA through its board failed to
24 exercise ordinary care in good faith to oversee the conduct
25 of NRA employees and agents who abandon their interests."

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1 If you have something different to offer that you
2 think is consistent with the statute, then somehow -- and
3 also with Kirschner and the like, let me know.

4 MR. PETERS: We certainly will. Thank you, your
5 Honor.

6 THE COURT: What's the State's view? I didn't ask
7 you on this.

8 MS. CONNELL: Your Honor, we agree with your
9 charge. We thought it walked line correctly. And we
10 addressed the adverse-interest argument that was made at the
11 beginning of this case and was quite an about-face by the
12 parties here. In -- I believe it is NYSCEF 2708, which was
13 a letter we filed on January 13th and at pages 3 to 4,
14 specifically and just to be clear.

15 THE COURT: I mean, I can't promise I can go back
16 through all of this.

17 MS. CONNELL: I don't want you to go back through
18 all of this, your Honor.

19 I would just say the language proposed by the NRA
20 uses terms like defraud. It uses rogue agents. It uses a
21 lot of terms that aren't applicable here, and we're talking
22 about the institutional liability.

23 THE COURT: I do want this to be balanced. I think
24 the -- this probably applies more to the EPTL claims because
25 the claims against the NRA under the N-PCL, I think it's

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1 just the whistleblower and is it related-party?

2 MS. ROGERS: Whistleblower and related-party.

3 THE COURT: This is really about the EPTL.

4 MS. CONNELL: I think it speaks primarily to that.

5 THE COURT: I found based on our research that the
6 standard of good faith and ordinary care of a prudent person
7 is pretty much the standard that has been used for a long
8 time for proper administration. So, that's why I thought
9 that they kind of fit together.

10 So, it is an interesting question because what
11 we're really talk about now is when in the EPTL where they
12 define, let's assume, the NRA -- or not-for-profit
13 corporation for charitable purposes -- we'll not go back to
14 that -- to include the NRA, that can the NRA avoid liability
15 under that statute which, let's assume, applies to them.

16 Assume officers go rogue. Let's take their view of
17 it solely for their own purpose. If you get over that
18 hurdle, can the NRA avoid being found to have improperly
19 administered if the board operating according to its
20 fiduciary duties should have been overseeing this in a way
21 that would have or could have avoided the problem?

22 It seems to me pretty self-evident that there has
23 to be -- that has to be an obligation on a trustee under the
24 EPTL. Otherwise, now, again, is it willful blindness which
25 is the most extreme version of that where you kind of, you

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1 know, you kind of know it but you don't want to ask? Or is
2 it the more general standard of good faith and ordinary
3 care.

4 I'm going to hear from the NRA and maybe the other
5 defendants, but you're okay with the ordinary care, good
6 faith?

7 MS. CONNELL: We're comfortable with it, your
8 Honor. I mean, would it be one hundred percent what we
9 planned for, no; but we think it is walking the line and we
10 accept it.

11 THE COURT: Well, I would be horrified if it was a
12 hundred percent of what you wanted.

13 All right, next, internal policies. Was that one
14 that you -- I don't know if there was a lot on that.

15 MS. CONNELL: Your Honor, that was just a
16 linguistic change by the plaintiff because guidelines isn't
17 really a term that the jury has heard. We've been hearing
18 about internal controls, internal policies, that kind of
19 thing. This is really a language change.

20 THE COURT: I did see in addition it looks to be by
21 the defendants on the subsequent remedial measures, added a
22 phrase that said: "You may also consider subsequent
23 remedial or corrective actions undertaken by the NRA, and
24 the individual defendants in determining whether any
25 transactions or conduct impair the administration of the

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1 NRA's charitable assets.

2 So, that's just broadening that point to include
3 EPTL, I assume, which is I did intend.

4 MR. FARBER: I'm sorry, your Honor, what page are
5 we on?

6 THE COURT: 32 of the last markup.

7 MS. ROGERS: Right, it was just kind of integrating
8 what relevance to subsequent measures.

9 THE COURT: That's fine. I meant it to apply to
10 all claims.

11 What's the next big one?

12 MS. CONNELL: Your Honor, I just want to note
13 plaintiff's objection to that addition. I'm sorry, I didn't
14 realize we were up to that. I would say that this could
15 lead to confusion.

16 Your Honor already held at 2350 and at the 12/14
17 conference at pages 61 to 64, specifically, that the
18 plaintiff does not have to prove anything up to the date of
19 trial. That we're looking at a relevant period here. I
20 think this is confusing.

21 THE COURT: Well, yeah, look, I'll make the
22 language all work together. This whole section about
23 subsequent -- subsequent actions is very clear that the
24 relevant time period is what I'm calling the statute of
25 limitations period or something like that. The time of the

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1 violations.

2 So, all they're saying is that I think that they
3 can consider the subsequent remedial actions in the same
4 way.

5 So, I guess your point is it doesn't repeat that
6 point.

7 And now that I look at it, it may seem by where it
8 is added that it is not relating to at the time of the
9 alleged violations, but I'll take care of that.

10 (Continued on next page)

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1 MS. CONNELL: We want to make sure it's not related
2 to completed violations or it's not going to cure completed
3 violations.

4 THE COURT: Yeah. I'll see if I can fit that in,
5 but I -- now that I look at it, it looks like it's not
6 covered by that which is the whole point of the section.

7 So next, recognizing the time is marching on, maybe
8 there aren't -- maybe it's not anything that important. I
9 know there is a lengthy -- Mr. Correll, I think that your
10 comment has already been raised. There is a comment later
11 on about fault and Grasso, and I have read that carefully.

12 MR. CORRELL: Thank you, your Honor.

13 THE COURT: What's the next thing that anybody
14 wants to raise in person?

15 MR. FARBER: I just want to note my objection to
16 one thing the AG raised on Page 41.

17 THE COURT: Our page numbers are different.

18 What's the paragraph start with?

19 MR. FARBER: It's the carry-over paragraph under
20 Breach of Fiduciary Duty, N-PCL 717.

21 THE COURT: What's the first words of the
22 paragraph?

23 MR. FARBER: "To act in good faith requires
24 directors and officers."

25 THE COURT: Okay.

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4011

1 MR. FARBER: So there is some proposed additional
2 language. It says they also must insure the mission of the
3 organization, etc. I don't think that's consistent with the
4 law, and it applies an affirmative obligation to insure that
5 the organization is doing things, and this Statute applies
6 to their personal conduct. It's also inconsistent, your
7 Honor, with the instructions you have given that there is a
8 difference between complying with internal policies, bylaws,
9 etc. and complying with the Statute.

10 THE COURT: Yeah, I understand that. I understand
11 the point.

12 MS. CONNELL: Okay. Your Honor, we just wanted to
13 add it to make clear that the officers has to act in the
14 best interest and move forward in advance of the mission.

15 THE COURT: I think this sounds more like trying to
16 get back in The Duty OF Obedience. I just think it would be
17 terribly overbroad to suggest to the jury because they might
18 think this. If they find violation of Page 31 of X Bylaw,
19 that means it's a violation of law, and it doesn't. It may.
20 Nor does compliance with it mean that you didn't violate the
21 law. It's the law that matters.

22 I think I tried to balance all of this by saying
23 they can consider violations or compliance as relevant if
24 they want to.

25 This seems to suggest an independent violation of

KM

Proceedings

4012

1 duty if they don't insure compliance with, and I will, you
2 know, to make the point, ellipse out your list of things and
3 say the 5,000 pages of documents you've seen during this
4 trial showing rules and regulations.

5 MS. CONNELL: Your Honor --

6 THE COURT: Because that's what it says.

7 MS. CONNELL: I get that point, and I see the
8 wording could be overbroad when taken that way, but we
9 haven't been talking about 5,000 pages. And as we showed, a
10 lot of those policy books include superseded old policies.
11 We have been talking about I think four point policies.
12 That's all that's at issue.

13 THE COURT: I'm not trying to overcorrect, but it's
14 important that they, you know, really understand that the --
15 or the policies and procedures can be used by either side to
16 make arguments, but they are not law.

17 And so I rather, if I'm going to overdo it in one
18 direction or another, hammer away at the legal obligations
19 and the legal requirements and then say that they have
20 flexibility to consider things like compliance with the
21 Bylaws and the like. You know, the Company can bring, you
22 know, maybe causes of action against a director for not
23 following Bylaws or shareholder might, but that's not what
24 this claim is.

25 Next.

KM

Proceedings

4013

1 MS. ROGERS: The NRA has one on Page 46, Wrongful
2 Related-Party Transactions.

3 THE COURT: Okay. Which paragraph?

4 MS. ROGERS: So we have inserted a paragraph, and I
5 believe Mr. Phillips has as well. There is an exception to
6 this in the Statute for di minimus and ordinary course
7 transactions.

8 THE COURT: I didn't have that in there?

9 MS. ROGERS: Perhaps the drafts got confused, but I
10 think perhaps ours, it didn't, and we added it.

11 THE COURT: Well, yeah. I mean, this should be a
12 -- I thought that I had -- I made a few cuts towards the
13 end. I did not intend to leave out the di minimus, and I'll
14 put that back in.

15 MR. FARBER: And Judge, that flows into --

16 THE COURT: I don't know if you have to have three
17 paragraphs about it, but you know --

18 MR. PETERS: Well, there is two aspects of the di
19 minimus defense. There is di minimus to the corporation,
20 and there is also di minimus to the related party, and so it
21 does require a couple of paragraphs. There is also --

22 THE COURT: Well, the Statute talks about both.

23 MR. PETERS: Yes. And then there is --

24 THE COURT: Why don't you use -- just use the
25 language from the Statute.

KM

Proceedings

4014

1 MR. PETERS: That's what we have done.

2 THE COURT: Okay. If it's in the Statute, I'll add
3 it.

4 MS. CONNELL: Your Honor, can we -- can I finish?

5 THE COURT: Yep.

6 MR. FARBER: The -- this proposed addition here
7 that both we and the NRA suggested, it deals with both -- it
8 was something that dealt with the di minimus exception, but
9 also the fact that a transaction is not considered to be a
10 related-party transaction if it's the type of transaction
11 that would not ordinarily be approved by the Board in
12 ordinary course of business.

13 THE COURT: What does that mean? Is that in the
14 Statute?

15 MR. FARBER: Yes. It's definitional, your Honor.

16 THE COURT: A type of transaction that would not --
17 I see what you mean. If --

18 MR. FARBER: Something that would not ordinarily go
19 to the Board.

20 THE COURT: But is that relevant to any of the
21 actual transactions we have here?

22 MR. FARBER: Yes. I think there is an argument
23 that Mr. Phillips' post-employment consulting agreement is
24 not the sort of thing that a Board of Directors would
25 ordinarily consider.

KM

Proceedings

4015

1 THE COURT: Negotiated by the current sitting
2 treasurer?

3 MR. FARBER: I don't think Boards of Directors
4 routinely approved consulting agreements.

5 They can argue otherwise, your Honor, but I don't
6 think the jury ought to be instructed --

7 THE COURT: If that's what you're aiming at with
8 this, I would not include it.

9 I mean, I -- I think it couldn't be clearer that
10 that is exactly what the Statute is looking for.

11 I mean, let's take a worse example. You know, nest
12 feathering by a current senior executive to have on the way
13 out the door a lucrative contract post-employment I think is
14 absolutely what the Statute is looking at.

15 Now, you know -- so even if I were to add this if
16 you wanted me to, I would add that that transaction would be
17 something that the Board should look at.

18 MR. FARBER: But Judge, I think it was a factual
19 issue that the jury decides about whether you characterize a
20 particular agreement as nest feathering.

21 THE COURT: Well, what would they look at?

22 In other words, if a company recently ignores these
23 things; then therefore, it's not something they should look
24 at or it's what the law says they are supposed to look at.

25 MR. FARBER: I think it's whether a corporation

KM

Proceedings

4016

1 generally in the ordinary course --

2 THE COURT: I think what they are thinking about
3 that it's not something that would ordinarily be approved by
4 the Board is -- it is an off-shoot of di minimus. It's a
5 topic that they wouldn't, but I think it changes
6 fundamentally if it is a personal financial benefit to the
7 corporate treasurer.

8 MR. FARBER: It's an employment contract.

9 THE COURT: It's a post-employment contract
10 negotiated while he was still there. And now maybe if five
11 years after he retired, they wanted to go out and sign an
12 employment contract with him, it would not be something that
13 would rise to the level of the Board, but I just am not
14 buying it on this one.

15 MR. FARBER: I will just add this. The di minimus
16 exception is a separate statutory exception. This is --

17 THE COURT: Well, but I get it that this is a
18 separate statutory exception. What I am disagreeing with
19 you on is that as a matter of law, this could not be
20 considered a transaction that would not be ordinarily
21 approved by the Board unless what you think is that each
22 company gets to set it's own ordinary course of business on
23 which nest-feathering things it has to consider which I do
24 not think is the law.

25 MR. FARBER: Assume that it's not, your Honor.

KM

Proceedings

4017

1 There is still a factual issue as to whether or not
2 corporations generally would consider these things at a
3 Board level, and I would submit they don't.

4 I don't think -- I don't think Boards of Directors
5 sit around --

6 THE COURT: Well, look, like I said, if there was a
7 different related-party transaction that you had in mind
8 where, you know, an argument legally could be made that it's
9 not the kind of transaction that a Board would ordinarily
10 approve in the ordinary course, again, I don't think a
11 company can make it's own ordinary course of laxity and then
12 use it as a defense.

13 MR. FARBER: It's not a defense for the
14 corporation. It's a defense for the individual.

15 THE COURT: Well, either way.

16 So anyway, I get the point, but --

17 MS. ROGERS: Your Honor, very, very quickly on
18 this.

19 I just wanted to -- well, what we are calling the
20 "di minimus" exception shorthand is actually like a
21 three-prong definitional exception in the N-PCL, and that's
22 why we have multiple paragraphs on it, but it's not just di
23 minimus small dollar. It's also transactions that would be
24 offered ordinarily to all NRA's members, for example.

25 THE COURT: Yeah. But what -- what's the point of

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Proceedings

4018

1 adding all of that ornamentation to this?

2 Is any of the transactions that we are talking
3 about things that are offered to all NRA members?

4 MR. PETERS: So yes, one of the things is that the
5 transaction constitutes a benefit provided to a
6 related-party solely as a member of the class of
7 beneficiaries of the corporation intended to benefit as an
8 accomplishment of it's mission.

9 So that would be something like a State Association
10 which the NRA is set up to support State --

11 THE COURT: Well, let me ask you this.

12 If you have -- I don't know. I don't have the list
13 of related-party transactions. I don't know if I have seen
14 it yet or if I have -- it's buried in things.

15 If you have a specific -- I'm trying to keep these
16 instructions targeted. I think there is lots of parts of
17 this di minimus exception. Probably the reason I didn't put
18 it in is because I didn't think any of the transactions
19 could under any conceivable definition of the word being "di
20 minimus."

21 So what's the point of them hearing that there is a
22 di minimus exception if none of them are di minimus? Maybe
23 this is what happened to me on the last go around.

24 I will add parts of the di minimus exception if you
25 can demonstrate to me which related-party -- which

KM

Proceedings

4019

1 related-party transactions that are going to be on the
2 verdict sheet, they could -- that a reasonable jury could
3 conclude are di minimus. I'm not aware of them.

4 MS. ROGERS: So just as a housekeeping matter, we
5 had discussed this on the directed verdict motion, and it
6 came up on whistle blowers, but it's relevant here too.

7 There were a whole bunch of transactions and
8 persons that were listed in the contention interrogatory
9 responses which either no evidence was put in or we contend
10 not enough evidence was put in to require a response, and
11 the Attorney General was going to get back to us with a list
12 they were willing to pare down. If we could get that --

13 THE COURT: I heard a very small number, and I was
14 kind of surprised to hear that the HomeTelos one which
15 people spent a lot of time on is not on the list.

16 MS. ROGERS: It's not a related-party transaction.

17 MS. CONNELL: Your Honor, we agree with you that
18 it's under the definition of the Statute as opposed to the
19 NRA's policies.

20 HomeTelos does not meet the definition of
21 related-party transaction, so I think you could probably cut
22 maybe the portion talking about who is a family member from
23 the related-party transaction.

24 THE COURT: That was the only reason I put it in.

25 MS. CONNELL: I know. And when we saw that, we

KM

Proceedings

4020

1 thought if that's what it's talking about -- it's a
2 conflict-of-interest transaction.

3 THE COURT: So what I need from you then all to
4 determine, which of these statutory permutations are
5 relevant is -- I'm just listening to the evidence as it
6 comes in. I don't know what exactly at all it's about.

7 I heard that one and assumed it was going to be.
8 So give me the list of the related-party transactions and
9 the whistle blowers that you -- again, I'm just trying to
10 remember what the evidence was. But unless -- I guess on
11 this di minimus thing, this must have been my thinking.

12 Unless there is a reasonable argument that the jury
13 could conclude that the di minimus exception applies, I
14 don't see any need to waste their time with it.

15 MS. CONNELL: I agree with that, your Honor. We
16 have to list out the related-party transactions.

17 THE COURT: But if they want to argue that -- well,
18 if any one of them is did minimus, I'll add it.

19 MS. CONNELL: Okay.

20 THE COURT: Or that it was offered to everybody.
21 You know, that other part -- if the -- are the State
22 Association payments on the related-party transaction list?

23 MS. CONNELL: We have -- we have one that is a
24 payment to Mr. King.

25 Most heads of State -- the State affiliates are

KM

Proceedings

4021

1 unpaid.

2 THE COURT: Was Mr. King even part of -- for who?

3 MS. CONNELL: For the NRA.

4 THE COURT: But in your case in chief? No.

5 MS. CONNELL: He was not. But the minutes that are
6 admitted into evidence demonstrate that he was paid, and it
7 was a ratified -- allegedly ratified related-party
8 transaction.

9 THE COURT: Okay. Well, then if that one is one
10 that they want to at least argue is made available to
11 non-insiders on the same terms, then maybe I'll include that
12 one.

13 MS. CONNELL: Right. They would have to show that
14 there are others, and I think there is only one other, Scott
15 Bach, who got some. But just to talk about the di minimus
16 and the people who are intended recipients on benefits.
17 Usually, you're talking about something when you come to the
18 charity's event, you get a cup with a charity's name on it.

19 THE COURT: I know what it is.

20 MS. CONNELL: That's what we're talking about.

21 Your Honor, I just want to -- because I know it's
22 getting late. We do want to raise the clock and schedule
23 time, and we think it's really important.

24 THE COURT: Yeah. I had -- I had an amendment to
25 that myself.

KM

Proceedings

4022

1 Let me get Mr. Correll.

2 MR. CORRELL: This is an over-arching one, but it
3 appears at Page 43 of 81 which is in determining whether one
4 or more of the individual defendants violated their
5 fiduciary duty, you may, and it goes on throwing the word
6 "fiduciary" ahead of "duties."

7 THE COURT: Yeah.

8 MR. CORRELL: It's complicated.

9 THE COURT: You know what, I -- I kind of agree
10 with that. It's breach of duty under the N-PCL. It doesn't
11 use the word "fiduciary."

12 MR. CORRELL: It doesn't use the word "breach."
13 It's violation of duty.

14 THE COURT: Well, whatever.

15 MR. CORRELL: The closer we get to common-law, the
16 closer the camel gets under the tent.

17 THE COURT: I don't really think so because
18 whatever we call it -- I mean, it's an ironic thing that the
19 NRA could -- and at least based on some of the things they
20 have said, you wonder why they haven't, could bring a
21 common-law fiduciary duty claim against anyone they wanted
22 to and could have for however long they knew about it, but
23 the AG is limited to this.

24 And you know, I don't know -- it's not harmful
25 because the duty that they are talking about, you know,

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Proceedings

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1 isn't necessarily the fiduciary duty, but it is a statutory
2 duty. So I'm okay with that.

3 MR. CORRELL: Thank you, your Honor,

4 THE COURT: In terms of tweaking the time, look,
5 Ms. Connell, I know you weren't there when we went through
6 this.

7 MS. CONNELL: I was watching and sprinting to the
8 courthouse, your Honor.

9 THE COURT: What I had intended to at least think
10 about was trying to squeeze more time out of the day because
11 I'm still pretty focused on two things. That I think it
12 would be very helpful to have all the closings together on
13 the same day without impinging on the number of days that I
14 had indicated I would allocate for presentation of evidence
15 because I think inevitably if we do that, it impinges on the
16 defense's case which I'm very disinclined to do given that
17 the Plaintiff's case lasted until the fifth week, admittedly
18 partly because the Defendants put in a fair amount of stuff,
19 but I think what I was going to do, and this may not make
20 you all that thrilled is to say that instead of 60 minutes
21 because I do understand that the allocation that I came out
22 with would be three hours of Defense arguments and then one
23 hour for the Plaintiff. And on top of that, you know, the
24 Plaintiff has the burden of proof on 12 or 13 causes of
25 action, and they would have an hour for that. And a

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Proceedings

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1 defendant facing two causes of action has 45 minutes. It
2 does seem a little bit tilted, and I was again thinking that
3 75 minutes for the plaintiff after each of the defendants do
4 45 minutes means that we have to shorten our breaks and
5 extend our time and everything else. I don't know how many
6 other minutes in the day there are. I think giving less
7 than 45 minutes is going to be hard, but it's been a
8 six-week trial, and these guys have a right to defend
9 themselves.

10 MS. CONNELL: I agree that these guys have a right
11 to defend themselves, but I would like to share one thing
12 that I put together really quickly, if I may, and if I can
13 hand this up to the Court.

14 THE COURT: A demonstrative.

15 MS. CONNELL: A demonstrative. I just want to
16 point out that, and I have a number of them, but the
17 Defendants have used a tremendous amount of time on cross
18 during Plaintiff's case.

19 THE COURT: Well, we counted that.

20 MS. CONNELL: And we counted that.

21 See, when you say we took five weeks to put in our
22 case in chief, if you look at this chart, you will see that
23 a tremendous amount or I think I might have handed you the
24 wrong chart, but a tremendous amount of that time -- I'm
25 sorry. I don't want to --

KM

Proceedings

4025

1 THE COURT: Well, it's the total time through week
2 five in hours.

3 MR. SHIFFMAN: If there's -- if we or if the
4 Defendants take the next two days and put in three and three
5 quarter hours and the Plaintiff puts in 15 minutes, we will
6 be at equal amount of time by the end of next Wednesday.
7 And that means -- so if we then have Thursday, if we have
8 much less left on Thursday --

9 THE COURT: I never promised you entirely equal
10 time. It's just what it is. I can't fit the closing
11 argument in one day if I give everybody two hours. It
12 doesn't work. And then the only alternative is slopping
13 over into Friday which I'm trying to avoid, and I think an
14 hour and 15 minutes is a long time to talk to a jury.

15 MS. CONNELL: I understand it is, your Honor, but
16 this is a complex case with multiple claims against multiple
17 defendants; whereas, you yourself acknowledged the Defense
18 has large -- and the Plaintiff's case in chief have largely
19 been like ships passing in the night.

20 THE COURT: Well, but the difference is they each
21 have to come at it from a different point of view. You have
22 one point of view. And you know, candidly, I think I'm
23 confident you can.

24 So I don't mean this in a negative way, but if you
25 can't boil down your case to an hour and 15 minutes, I don't

KM

Proceedings

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1 know that the jury is going to absorb it any better in two
2 hours.

3 MS. CONNELL: Your Honor, I don't think that we
4 have -- we have -- we have slavishly limited our crosses.
5 We have saved aside two hours because we thought it was
6 necessary. An hour and 45 minutes, fine. But 75 minutes to
7 cover what we need to cover is not sufficient and just to
8 avoid cutting in any time on Friday morning, we would submit
9 to you respectfully is prejudicial to the Plaintiff.

10 We truly have to go through a tremendous amount of
11 evidence and tie up the facts to the law here and some --
12 and sum up, and we need that time, and we have allowed for
13 that time following your directions from the beginning of
14 this case.

15 THE COURT: Well, I did -- right.

16 MS. CONNELL: And your Honor --

17 THE COURT: But the amount wouldn't really quite
18 work.

19 You're saying if you just stopped cross-examining
20 everyone and just saved all of your time for a two-hour
21 argument meaning, what, I give the defendants 20 minutes a
22 piece?

23 MS. CONNELL: No, your Honor. We -- we could start
24 on Wednesday and get done that way, and I'm not asking you
25 to cut off the defendants at all.

KM

Proceedings

4027

1 The defendants can use their time how they want,
2 and by the way --

3 THE COURT: These actually -- now, you're now
4 making a somewhat different point which may make sense.

5 In other words, if -- if the Defendants have run
6 out of time on Wednesday because you haven't done any cross,
7 then I'm not going to let them just go over their half just
8 to put more evidence in.

9 So if -- if that's the way it works and you're down
10 to the point where they have used half the trial subject to
11 the part they want to retain for closing arguments, I'm not
12 going to sort of increase their share of the time. But you
13 don't have a lot of wiggle room.

14 MS. CONNELL: Your Honor, we think we can fit -- we
15 think, first of all, we do have time left for cross. We
16 have been watching this.

17 THE COURT: You know, I'm sort of leaning toward
18 the hour and a half-ish thing, but if -- you would have to
19 get to the point where -- and so what that does, that means
20 so that the Defense would have to start their closing
21 Wednesday afternoon right after everything ends?

22 MS. CONNELL: If we want to not have any piece of
23 closing going on Friday morning, I think yes.

24 Your Honor, having all of these defendants and the
25 plaintiff close in one day when we have averaged about I

KM

4028

1 think four hours and ten minutes of actual effective court
2 time in a given time, that's what may have to happen.

3 So if it starts Wednesday afternoon, that's fine,
4 but if we are splitting time evenly, they should use their
5 time as they want.

6 But I just want to remind you Thursday afternoon
7 right after it was raised that time was running short for
8 Mr. LaPierre's case and that kind of thing, we heard at
9 length about Ms. Froman's childhood, her happy childhood,
10 the bathrooms at Harvard. They can use it as they want.

11 THE COURT: You have also put in hours of video
12 that seemed a little excessive to me, but --

13 MS. CONNELL: A lot of that was their cross.

14 THE COURT: I'm not criticizing anyone's use of
15 their time, but I'm also not -- you know, look, I think it's
16 fair if -- you know, the fact that you cross-examined less
17 doesn't mean they get more time for their case. I guess
18 that's true.

19 Look, there is things -- I will think about it.
20 So -- but the way you would do it I guess since you go last
21 is that any carry over over into Friday would be your
22 closing argument, part of your closing.

23 (Continued on the following page.)
24
25

KM

Proceedings

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1 MS. CONNELL: That's right, your Honor. And if we
2 have to break it into two days, that's what has to happen.

3 THE COURT: Look, I don't need to hear real
4 argument on this because I know what everybody's position
5 is. My goal is to be as fair as possible on the time to
6 present evidence.

7 I didn't mean to cause a substantive harm to either
8 side by my desire to have the closings all in one day.
9 There's something about the neatness of it that I find
10 pleasant and I think for the jury to come in fresh to hear
11 just instructions and get them up into the deliberation room
12 early morning. But, if we have still forty-five minutes of
13 closing to go the next morning, it just pushes it off.

14 Now, is that important enough to substantively harm
15 one of the parties? No.

16 MR. CORRELL: Your Honor, one more thing I would
17 ask you to consider is that the AG gets the last word which
18 is very important and to give them a night to come back on
19 Friday and do the other part of their closing after they
20 have been able to analyze the other parties, would just be
21 horribly unfair and prejudicial.

22 THE COURT: That part I'm not -- look, everybody,
23 all litigators have thoughts about stuff like that. They're
24 going to do whatever good job they're going to do either
25 way. I'll think it over.

BP

Proceedings

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1 So, my bid right now is still 75 minutes to do it
2 all in one day. I'll consider whether an hour and a half,
3 hour and forty-five or something like that, if you have
4 reserved enough time to reserve that.

5 MS. CONNELL: We have.

6 THE COURT: Whether there's a way to work that in
7 without -- I mean, my inclination is not to cut the time
8 that I've given to the defendants. Unless they use -- well,
9 I think forty-five minutes is pretty solid. I'll think it
10 over.

11 MR. FARBER: Judge, can I just add quickly?

12 I think there is -- if forty-five minutes per
13 defendant is three hours, seventy-five minutes is four and a
14 quarter. I know what we normally average during the time,
15 but there are more hours than that that the jury is here;
16 and even if that's extended a little bit, I think this can
17 amply be covered in a single --

18 THE COURT: I think we can mostly do it. Look,
19 what I have in mind -- and then I have to let everybody go
20 here -- is if we get started at 9:15 -- and we also have to
21 think about how much we're cramming into people's heads.
22 But, if we get started a 9:15, go really toward 1:00 for
23 lunch instead of 12:40 and we go toward now, that probably
24 builds in enough time, if nothing else goes wrong, to give
25 the State an hour and forty-five probably.

BP

1 MR. FARBER: Judge, even if you think about
2 starting at 9:30, one summation goes to 10:15. You take a
3 break. You're back at 10:30, do another summation. You can
4 get -- there's enough hours.

5 THE COURT: Count it out for me. Not right now.

6 MR. FARBER: 9:30 to 10:15 --

7 THE COURT: Counsel, I've done a lot of trials
8 here. I know how much time fits in our day. It's five
9 hours almost on the nose, maybe a little bit more of
10 actually human earth time, and that's not counting breaks.
11 So, I can't make or add time.

12 I'll even look into whether I can beg and plead for
13 us to stay a little bit later on Friday -- on Thursday,
14 which I've never been granted. So, I'll -- you're all
15 making reasonable points. I'll do the best I can.

16 MS. CONNELL: Your Honor, can we have the witnesses
17 for the last two days or at least for Tuesday?

18 THE COURT: Well, they can share them with you
19 offline. I've got to let my team go here. Have a good
20 weekend.

21 * * * * *

22 (Whereupon, at this time the trial was adjourned
23 and continued on February 13, 2023.)

24

25

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART 3

-----X

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against-

INDEX NO.
451625/20

THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
and JOSHUA POWELL,

Defendants.

JURY TRIAL
60 Centre Street
New York, New York
February 13, 2024

BEFORE: HONORABLE JOEL M. COHEN,
Justice, and a jury

APPEARANCES:

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NOAH PETERS, ESQ.

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1 THE COURT: The jury will be almost all here. One
2 is running a little late, and they're going to let me know.
3 So I want to use our time efficiently because some of that
4 time was going to be me reading things which is going to be
5 complicated, but a few preliminary things.

6 I have some rulings that I am going to do later on
7 today during our break. I don't want to use the jury time
8 to do that, but some of the motions that have been lingering
9 and some of the letters back and forth have raised some
10 issues, but just some preliminary things.

11 First of all, just to confirm which I mentioned to
12 you I think on Friday. We are going to have an extended
13 trial day on Thursday till 5:30 to accommodate completing
14 the closing arguments on the same day. That will in my view
15 permit a more reasonable division of time between the
16 plaintiff and the defendants which as you recall I initially
17 scheduled as three hours for the defendants and only one
18 hour for the plaintiff.

19 Given that the plaintiff has the burden of proof and
20 has to address all of the claims in the case, that was
21 certainly not an ideal allocation from my perspective, but I
22 was trying to figure out how to make it work. But assuming
23 the plaintiff is conscientious in preserving its time based
24 on the cross-examination over the next two days which they
25 have assured me they will be, I will keep the defendants at

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1 the three hours that I will allocate and use the extra time
2 that we have by extending the trial date till 5:30 to give
3 the AG as close to the two hours they had requested as we
4 can get, and it should work. I still have the defendants at
5 45 minutes each, but we will permit them to allocate that
6 differently if they agree to do so, but that's a lot of
7 time, you know, three hours in total, so I think that should
8 work. So that's my plan for Thursday assuming everything
9 goes right up until then.

10 Two issues for today. First I've seen a letter
11 writing back and forth about the audiotape of the purported
12 2019 meeting at Ackerman McQueen. I don't feel like I need
13 argument on that. I have the letters. I am not going to
14 permit that tape. I'm going to exclude that.

15 The NRA's proffering of an expert witness is both
16 too little and too late. The standard for admitting this
17 kind of evidence as we talked about when it first came up
18 where the providence of the tape can not be proven through
19 traditional means of interrogating the person who recorded
20 the conversation. The test is a stringent one as the Court
21 of Appeals has laid out in the People versus Ely case,
22 E-L-Y, 68 N.Y.2d 520.

23 The standard is it requires clear and convincing
24 proof that the tapes are genuine and that they have not been
25 altered. The Court did suggest that expert evidence can be

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1 part of that showing, but here whether for logistics reasons
2 or whatever, the NRA had an expert seemingly a couple of
3 weeks ago, but the decision to hold off on disclosing the
4 expert until there is essentially no time for any other
5 defendant to prepare to depose that expert or to obtain an
6 opposing expert, in particular, Mr. Phillips, who raised the
7 objection forecloses the NRA from introducing that witness.
8 I might have been willing to make an exception from the
9 traditional rules of expert disclosure for late arriving
10 evidence like this.

11 I have seen some suggestion that the evidence was
12 available in October of 2023, but it may be more likely
13 January. But the onus in this situation was clearly on the
14 party seeking to admit this evidence to get all of that in
15 front of the Court and the other parties as soon as
16 possible, and I'm not even sure late January when the expert
17 report seems to have been done would have been sufficient,
18 but I'm certain that February 12, yesterday with the close
19 of evidence tomorrow is not. The prejudice to Mr. Phillips
20 a purported participant in the conversation is clear. He
21 has no meaningful opportunity to investigate this expert
22 testimony and prepare for cross, and let alone, obtain his
23 own expert. And frankly, the testimony from Mr. Winkler
24 does not add much to the case for admissibility. Although
25 he identified the voices, he himself had doubts about the

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1 accuracy or providence of the tape and all of that is far
2 less substantive than the testimony that was considered not
3 to be as sufficient in the Ely case that was, you know, sort
4 of the leading case in this area.

5 In that case the defendant admitted several of the
6 statements made in the tape, and it was still found not to
7 be admissible. So for all these reasons, this late arriving
8 evidence with, you know, insufficient proof anyway but
9 certainly not sufficient time for the defendant who is the
10 most associated with at least the alleged conversation, I
11 think that the prejudice to that defendant is overwhelming.
12 So that's my ruling on that.

13 I received the expert slides for Mr. LaPierre. I
14 don't know whether there are objections to that or not. My
15 recollection is that way back in December or whenever we
16 talked about this, I indicated that, you know, a defendant
17 could spend some time at trial if it wanted to talking about
18 compensation. I think more as background than anything
19 else, but I would instruct the jury if you go down that path
20 and you decide this is how you want to spend part of the
21 last two days, but I would instruct the jury that there are
22 no claims in this case challenging Mr. LaPierre's salary
23 which seems to be the focus of the expert's analysis. And I
24 would also say that the analysis can not be -- the analysis
25 of the salary can not be used to argue that because he could

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1 have been paid more theoretically that that is a defense or
2 a justification for any statutory violations that the jury
3 may find to have been committed independent of the salary.
4 So that's where I think I came out. That's my recollection,
5 and that's certainly what I think makes sense now having
6 heard the whole case.

7 So are there any objections to the slides other
8 than the one I just described?

9 MS. CONNELL: Your Honor, the State objects. We
10 haven't had the chance to go through the slides to give you
11 particularized objections, but we literally just got the
12 slides at seven in morning. We didn't get 24 hours notice
13 of this witness testifying as your Honor --

14 THE COURT: Is he testifying today or tomorrow?

15 MS. CONNELL: I don't know. I asked repeatedly for
16 clarification. We didn't even know he was on the slate
17 until like 4:00 yesterday afternoon.

18 I just think -- and then -- again, we asked for
19 clarification. I thought we got it from the NRA last night
20 of what today's witness lineup was, and that's what we
21 prepared for so.

22 MR. CORRELL: Your Honor, I'd be happy to call him
23 tomorrow.

24 THE COURT: Okay. Look, I mean, if that's --
25 that's the way I'm going to position it with the jury. I

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1 mean, it's -- I'm really not sure I understand what the
2 relevance is.

3 MR. CORRELL: Your Honor, the relevance is that
4 Letitia James made a statement in the press release the day
5 the action was filed that my client or the NRA paid my
6 client grossly excessive salaries and then they took this to
7 create this false narrative of greed and corruption and
8 exploitation of this corporation. A man who is paid below
9 market is not that man, and that's the relevance.

10 THE COURT: I haven't heard a word about grossly
11 excessive salary in this trial.

12 MR. CORRELL: The third word out of Monica
13 Connell's mouth was "corruption" in her opening statement.

14 Corruption implies exploitation of an organization
15 for personal benefit. There was none. It's a lie, and this
16 evidence tends to rebut that accusation and make the truth
17 of that accusation less likely.

18 THE COURT: Well, we had this long conversation I
19 remember when we argued it, but I assume you're -- would
20 your position be that if you paid an executive less than he
21 or she is worth or that maybe they could have gotten more,
22 that that's somehow a justification or a defense to what
23 would otherwise be unlawful? You know, I don't -- I know
24 you don't agree that that happened, but the whole case is is
25 about whether other benefits that are obtained were not

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1 legitimate, were not approved. But you are not -- I don't
2 think you can argue that the fact that his salary may have
3 been lower than the -- than he possibly could have demanded
4 is a defense to any of that.

5 MR. CORRELL: Your Honor, know intention of doing
6 that.

7 One of the main claims here is that in 2013 which
8 is outside the statutory period, Mr. LaPierre was presented
9 with a letter by the president of the organization asking
10 him to sign a letter to create a long-term relationship with
11 certain compensation so that the organization could have the
12 benefit of his name and likeness going forward. Those
13 amounts were reasonable according to my expert, and the
14 State is claiming that this was some sort of outrageous
15 self-dealing contract that was designed to benefit Mr.
16 LaPierre.

17 THE COURT: Well, my understanding is anyway,
18 they're focusing on the post-employment nature of that. Not
19 the -- I have not heard them ever say that the -- you know,
20 the Board approves salary was -- violated any statute.

21 MR. CORRELL: Your Honor, they are arguing -- they
22 put the \$17 million figure in front of the jury and
23 suggesting that this \$17 million aggregate figure was
24 evidence of gross corruption, and we have got to debunk
25 that. It wasn't. If he had left, he could have

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1 theoretically made the same amount of money anywhere else,
2 and this was something that was presented to him as
3 something that was in the interest of the organization.

4 The letter states the NRA has determined that it's
5 in the best interest of the organization to enter into a
6 long-term relationship with you.

7 THE COURT: This expert is just talking about
8 salary while he was on the job; right?

9 MR. CORRELL: Correct. But what he is saying is
10 that if you look at his position, that a reasonable
11 compensation would be in this range or an amount would be
12 reasonable and that the amount that he was paid was less
13 than that.

14 THE COURT: All right. Well, look, like I said,
15 I'm going to cabin it at least and make sure they are not
16 confused by what they are hearing because -- and if you want
17 to use the dwindling sands of time that we have here to sort
18 of argue something that's not being challenged, I think I
19 have agreed that at a broad level, it's not unreasonable to
20 make the point that his salary was -- which is not
21 challenged was reasonable. That's just I guess a time
22 allocation question for you. So I don't -- I'm still not
23 going to exclude it, but I am going to make this clear to
24 them, you know, that it has -- that it's -- as I said,
25 it's -- by itself, the salary is not being challenged and

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1 that it's -- it would, in any event, not be a defense to any
2 of the statutory violations that are being charged here
3 because I'm not familiar with that it would get to what this
4 expert is talking about.

5 MR. CORRELL: Your Honor, I would have no objection
6 to the first instruction. I would have a strong objection
7 to the latter. It would amount to commenting on the
8 evidence and --

9 THE COURT: Why don't you explain to me how it's a
10 defense or justification to any of the actual claims?

11 MR. CORRELL: Not arguing that it is. What I'm
12 arguing is that it is a relevant fact that should be taken
13 into account in assessing whether this man discharged the
14 duties of his position in good faith and with the care an
15 ordinarily prudent person in a like position would exercise
16 under similar circumstances. It goes to did he do his job
17 and was he paid fairly. Did he ever ask for more? Was he
18 ever paid more than he should have been paid in salary? I
19 think it's a relevant fact that the jury can consider, and I
20 don't think that the Court should denigrate the evidence in
21 any way or to suggest to them that it is anything other than
22 what it is which is a datum which they can take into account
23 or disregard.

24 THE COURT: Take into account in deciding what?

25 MR. CORRELL: In deciding whether Mr. LaPierre

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1 acted in good faith with respect to his job. Whether he did
2 his job honestly. And that's the critical question in this
3 case is did he -- is he an honest man or was he trying to
4 exploit this organization for his own?

5 THE COURT: There is no claim that the salary is
6 the part that was being challenged.

7 Again, I don't want to keep going on and on about
8 it, but I think the -- you know, it may be enough to say
9 that, look, there is no claim in this case about the salary.
10 The claim is about other benefits.

11 MR. CORRELL: That would be perfectly fine with me,
12 your Honor.

13 MS. CONNELL: Your Honor we would just note our
14 objection that it's irrelevant. There is no 515 claim, but
15 otherwise, thank you.

16 THE COURT: Yeah. All right. Those were the
17 logistical points. I have given my law clerk my rulings on
18 the couple of video clips which he will be communicating.
19 There weren't too many objections that were being dealt
20 with, so he will send those to you separately.

21 MR. FLEMING: Your Honor, just one point. On
22 Friday at the end I had wanted to make a comment about the
23 jury charge. In particular, the Executive Law claim. I
24 don't know when the right opportunity would be. I don't
25 know if you prefer me to put in a letter. I just wasn't

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1 sure.

2 THE COURT: I think either during a break or, you
3 know, a letter would probably be best because I want to make
4 sure we are using our court time with the jury, but you
5 know, we will have breaks and the like. I'm hoping to get
6 the revised instructions back around to you tonight. So if
7 it's possible to discuss it on the record, that might be
8 good.

9 MR. FLEMING: It's a short point, and I will be
10 happy to do that whenever is convenient.

11 THE COURT: All right.

12 Officers is the jury ready? Do we know? We are
13 still waiting.

14 Mr. Conley.

15 MR. CONLEY: Yes, your Honor. I just wanted to
16 flag we had sent an email last evening regarding objections
17 that we have to a number of exhibits that have been
18 identified by Mr. Correll that he will use with Mr. LaPierre
19 today.

20 THE COURT: You know, I thought I had gotten to
21 everything. I did not. I'm going to have to --

22 MR. CORRELL: Your Honor, this is an easy one.
23 They are magazines which are self-authenticating as
24 periodicals under the CPLR. There can be no objection to
25 matters such as Time Magazine or GQ with articles featuring

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Proceedings

1 Mr. LaPierre as a leading lobbyist.

2 THE COURT: Self-authenticating maybe. But what's
3 the relevance and why -- are you offering it for the truth
4 of what they say in the articles?

5 MR. CORRELL: No, I'm not, your Honor. What I am
6 offering them for is to see that Mr. LaPierre was on the
7 front cover of a lot of magazine which goes to the security
8 issue. It goes to the success issue. It goes to his
9 visibility.

10 THE COURT: The success issue meaning what?

11 MR. CORRELL: Successful in getting the NRA's name
12 and voice heard in this country.

13 THE COURT: Okay. But you are not going to have
14 dramatic readings from the articles.

15 MR. CORRELL: No. I am going to have a letter from
16 Oprah thanking him for appearing on the show. I am going to
17 have letters from Crossfire, a picture of Mr. Schumer
18 debating with Wayne LaPierre, things that put his job, his
19 life in perspective.

20 They are criticizing his entire life. They are
21 claiming that he ran this place like a scam foundation for
22 45 years. It's just not true. It's a bald face lie, and
23 they know it, and they don't want the stuff to come in
24 because they are afraid the jury will see it and understand
25 who this man really is.

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1 THE COURT: What was the other objections?

2 MR. CONLEY: Aside from the --

3 THE COURT: So the Constitution and the Declaration
4 of Independence.

5 MR. CONLEY: Yes.

6 THE COURT: You're objecting on hearsay grounds.

7 MR. CONLEY: Relevance, your Honor, for those. But
8 the primary objection that we had actually relate to work
9 papers for expenses that Mr. LaPierre has paid back to the
10 NRA. These -- almost all of the work papers were produced
11 well after the close of discovery.

12 THE COURT: Work papers. They are his own work
13 papers or somebody else?

14 MR. CORRELL: I can address that, your Honor.
15 These were papers prepared at the direction of Mr. LaPierre
16 reflecting the documents he looked at, the numbers in the
17 documents and the descriptions that he gave from his
18 recollection refreshed by invoices and expense reports that
19 he used to identify invoices that he wanted to pay so that
20 no one could say that he had received a benefit that he
21 shouldn't have received.

22 THE COURT: Who were they -- who is -- who is the
23 scribe?

24 MR. CORRELL: The scribes were different. At one
25 point, it was Susan Dillon from the Brewer Firm. At one

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1 point it was Lisa Correll a paralegal in my firm, and there
2 may have been -- I think at one point Vanessa Shahidi who
3 works at the NRA may have helped put a spreadsheet together
4 just to try to track the information that he was producing.
5 This was an ongoing process in which Mr. LaPierre was making
6 a good faith effort to go back all the way to 2000 to
7 identify anything that he -- anyone could say he received
8 that he shouldn't have received.

9 THE COURT: When were these prepared?

10 MR. CORRELL: Pardon me.

11 THE COURT: When were these prepared?

12 MR. CORRELL: Over a course of years, I believe. I
13 think they started -- I don't have them in phone of me, but
14 I believe the first one may have been before I was involved
15 in the case.

16 MS. ROGERS: Your Honor, I can speak to that.

17 So these were prepared over the course of years
18 as -- Mr. Correll says and most were produced to the
19 Attorney General in 2022. So there is --

20 THE COURT: Most were?

21 MS. ROGERS: So the late production that they are
22 talking about is this is we have discussed this before. So
23 Sonya Rowling in November gathered up all of these
24 spreadsheets, some of which were a year old and did auditing
25 and forensic testing to make sure, you know, we said this

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1 flight was business and not personal. Let's see where his
2 calendar says he was on that day. That kind of testing.
3 And her testing memoranda with a supporting compilation of
4 these materials of various vintages was produced to the
5 Attorney General in December with an offer of a supplemental
6 deposition of Ms. Rowling. We litigated this when Ms.
7 Rowling testified. The document came in. These are
8 supporting papers.

9 THE COURT: These documents didn't come in then
10 though.

11 MR. CORRELL: I believe that all of the
12 spreadsheets were attached.

13 THE COURT: Spreadsheets. But the ones that you're
14 trying to introduce now were not. If I have already
15 admitted them then --

16 MR. CORRELL: Correct. And this is the underlying
17 foundation that I said I would lay in my case in chief which
18 is Mr. LaPierre telling the jury exactly --

19 THE COURT: The testimony is one thing, but there
20 are some additional notes that you're proving as new
21 exhibits that were not produced until December?

22 MR. CORRELL: I'm not sure of the answer to that.
23 I'll have to check and --

24 THE COURT: Well, that's -- if I have already
25 admitted something, you don't haven't to admit it again.

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1 But if these are documents that were prepared a long time
2 ago, sounds like some of them might have even been prepared
3 before Mr. LaPierre was deposed. But in any event, I don't
4 really understand what the rationale would be for not
5 producing them sooner.

6 MR. CORRELL: In some cases, Mr. LaPierre did not
7 have control over whether they were produced or not.

8 THE COURT: Yeah. I was wondering about the
9 privilege issue around this.

10 Look, I am going to have to look at these in
11 context, and I don't want to spend what will be the next
12 15 minutes debating it while the jury waits. So I'm going
13 to defer ruling on those until -- I'll just have to deal
14 with it when it comes up.

15 MS. CONNELL: I just want to note that those items
16 that were admitted through Ms. Rowling, you admitted them
17 for a very, very limited purpose because it was hearsay on
18 top of hearsay on top of hearsay.

19 You specifically said this is to show that the NRA
20 engaged in some process in December.

21 THE COURT: That's a good reminder. Look, I'm
22 going to -- I'm a little skeptical about this coming in, but
23 I need to look at in context.

24 So jury is ready? Let's get -- what's the first
25 thing up?

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1 MR. CORRELL: Mr. LaPierre.

2 THE COURT: Okay. Let's get the jury.

3 I will just make an evidentiary call when you
4 proffer the exhibits, and I will just look at them real
5 time. I understand the point they were not produced until
6 late, perhaps because of some back and forth with the NRA.
7 I don't know.

8 THE COURT OFFICER: All rise. Jury entering.

9 (Whereupon, at this time the jury entered the
10 courtroom.)

11 THE COURT: Good morning, everyone. Please have a
12 seat. I wanted you to know that I'm very impressed but not
13 surprised that you all braved the weather to get here
14 together today. I appreciate it.

15 One small scheduling thing for this week. As you
16 know, the plan is to have closing arguments on Thursday.
17 And given the number of people who have to do them and my
18 desire to have them all on one day so you can hear them all
19 consecutively, I have gotten permission to stay till 5:30 on
20 Thursday. So just an early heads up. We are going to have
21 sort of an extra half hour to 40 minutes on Thursday night
22 so we can complete the closing arguments and be ready for
23 Friday will just be instructions and then your
24 deliberations. Okay. Rather than breaking them up.

25 All right. Next witness for the Defense.

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 MR. CORRELL: Mr. LaPierre calls Mr. LaPierre.

2 W A Y N E L A P I E R R E, a witness called on
3 behalf of the Defendant, after having been first duly sworn,
4 took the witness stand and testified as follows:

5 THE CLERK: State your name.

6 THE WITNESS: Wayne LaPierre.

7 THE CLERK: Thank you. You may be seated.

8 THE COURT: Good morning.

9 THE WITNESS: Good morning.

10 DIRECT EXAMINATION

11 BY MR. CORRELL:

12 Q Wayne, how are you feeling today?

13 A I'm doing okay.

14 Q Are you -- have you been taking any medication that
15 might affect your testimony today?

16 A I'm not taking it today. I have been taking
17 medication.

18 Q And what kind of medication?

19 A Amoxicillin, Cipro, Artemisia, Minocycline, a whole
20 bunch of drugs for late-stage Lyme Disease.

21 Q And what effect do those drugs have on you when you're
22 talking them?

23 A They make pain -- it's like there is an internal war
24 going on within your body, and it's also going to the
25 neurological receptors between my eyes and my brain which makes

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1 it difficult for me to see. And when the eyes work so hard to
2 see, the brain has a hard time anticipating and can actually end
3 up presenting as dementia.

4 (Continued on the following page.)

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q And does it have any effect on your eyes and your
2 muscle control?

3 A It does. It looks like I'm squinting to see.

4 Q Is it sometimes hard to keep your eyes open?

5 A Yes.

6 Q So, we're going to try and go as long as we can this
7 morning, and the Court has accommodated you by allowing us to
8 start first thing. We're going to try and go as long as we can;
9 and then when we have to stop, we'll continue tomorrow morning,
10 first thing.

11 A Thank you.

12 Q Is there a time of day in which you feel better with
13 this condition?

14 A Yes, in the mornings.

15 Q So, let's start at the beginning. Where were you born?

16 A I was born in Schenectady, New York.

17 Q And how long did you live in Schenectady?

18 A For approximately, five years.

19 Q And where did you go after Schenectady?

20 A My parents moved to Roanoke, Virginia.

21 Q Had your father been employed in Schenectady?

22 A Yes, he had, by the General Electric Company.

23 Q And had your mother been employed in Schenectady?

24 A Yes, by General Electric.

25 Q And had you been employed in Schenectady?

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W. LaPierre - by Defendant - Direct/Mr. Correll

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2 A Not at five years old.

3 Q When you got to Roanoke, what did you do there?

4 A I went to elementary school, junior high school and
5 high school.

6 Q And did you have any work experiences there?

7 A I worked -- I don't think it was paid -- handing out
8 campaign leaflets before I went to -- in high school.

9 Q And did you go on to college?

10 A I did.

11 Q Where did you go?

12 A Sienna College in Loudonville, New York.

13 Q Is there any reason you picked that college?

14 A I know it through my dad, and I was up there visiting
15 it and I liked it and I went there.

16 Q Had he gone there?

17 A Yes, he had.

18 Q When had that college be established?

19 A I think it was established in the mid thirties.

20 Q Would 1937 ring a bell?

21 A I think that would be about right.

22 Q When did your father attend?

23 A He attended before World War II. He went off to the
24 war, and then he came back and finished up at college.

25 Q So, he would have been one of the first students to

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 attend; correct?

2 A One of the earlier years, yes.

3 Q And it was a Franciscan college; correct?

4 A Yes, it was.

5 Q And the Franciscans are an order of the Catholic
6 church, correct?

7 A Yes.

8 Q Was your father Catholic?

9 A Yes.

10 Q Was your mother Catholic?

11 A Yes.

12 Q Are you Catholic?

13 A Yes.

14 Q Are you a practicing Catholic?

15 A Yes.

16 Q Did you have any work experiences when you were in
17 college?

18 A Yes, I did. I unloaded banana boats down at the port
19 of Albany. I sold shoes for a while.

20 In the summers, I worked in the factory, General
21 Electric.

22 Q Were you proud to work in the company that your father
23 worked for?

24 A Yes.

25 Q And your mother worked for?

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 A Yes.

2 Q And were they proud to have their son working in the
3 same company?

4 A Yes, I believe so.

5 Q Tell us about unloading banana boats, what kind of work
6 was that?

7 A Well, the port of Albany was a nonunion port at that
8 point. So you go down and stand in line and if they -- if they
9 saw you out there, a whole bunch of people and they'd say you,
10 you, you; and I ended up getting picked and they got to know me,
11 so I got picked quite often.

12 Q And what time did you have to go up in the morning to
13 get in the line?

14 A About 6:45.

15 Q And how long were the work days?

16 A They were till five o'clock.

17 Q Was it cushy work?

18 A No. You'd be down in the hull of the ship lifting up
19 pallets and lifting up things to be lifted out of the ship.

20 Q What kinds of people were you working with on the ship?

21 A Just average working people that wanted the job like
22 me.

23 Q You said you sold shoes. Did you go door to door?

24 A No. I worked in a Florsheim store in Colony Center.

25 Q Did you do anything else in college, any other work

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 experiences?

2 A I -- as I said, I worked in the summers in the fact
3 /TOEUR at General Electric.

4 Q Did you have any political experience as you were
5 working -- while you were at Sienna?

6 A Yes, I did. I served as an internship for a year in
7 the offices of two state senators in the New York State
8 legislature.

9 Q What were their names?

10 A Senator Stewart and Senator Gallagher.

11 Q What districts did they represent?

12 A They represented Harlem and the Bronx.

13 Q Did you have any exposure to constitutional issues
14 while you were there?

15 A Yes, I did. They were both heavily involved in the
16 civil rights movement. A lot of the civil rights leaders use to
17 come into the office to say hello, Julian Bond. That's how I
18 met Roy Innes with the Congress of Racial Quality and we became
19 lifelong friends.

20 Q Anyone else that you ran into or that came by when you
21 were working as an intern?

22 A Vernon Jordan came by to say hello to the state
23 senators, and some of the boxers, too. Roy Innes was one of the
24 top amateur boxes in the country, also.

25 Q What kind of work did you do as an intern?

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 A Whatever they gave me to do, research, legislative
2 projects, answer mail, answer telephones. It was basically
3 whatever they were looking in turn to do.

4 Q What were you studying at Sienna College at the time?

5 A Political science and education.

6 Q And had you given any thought at that time what you
7 wanted to do when you grew up?

8 A I thought at that time I wanted to be a college
9 professor is what I was thinking.

10 Q And did you graduate from Sienna?

11 A Yes.

12 Q How did you do academically? Did you make the Dean's
13 list?

14 A Yes, I did.

15 Q Did you pursue any education after graduating from
16 Sienna College?

17 A Yes, I did. I went to Boston College for a Master's
18 degree.

19 Q And that is a Catholic college; correct?

20 A Yes, it is a Jesuit college.

21 Q And that's another order of the Catholic church;
22 correct?

23 A Yes.

24 Q What kind of course work did you do at Boston College?

25 A Urban affairs, political science, international

BP

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 affairs, the whole spectrum.

2 Q Was there a formal title for what you did, a
3 concentration or a major, was it government or politics?

4 A It was government, government politics.

5 Q And how long did you spend there working on a Master's?

6 A I was there for a year doing my Master's degree.

7 Q Did you work during that time?

8 A I did some phone banks.

9 Q For whom?

10 A The police.

11 Q Is that an association of police officers?

12 A It is one of the police associations. It was raising
13 money for the officers.

14 Q And what did you do after -- did you get your Master's?

15 A I did.

16 Q And what did you do after that?

17 A I went back down -- well, before I went to Boston
18 College, when I graduated from college, I went down to Roanoke
19 and I worked on a democratic congressional campaign in the 6th
20 District of Virginia for a candidate named Willis Anderson --

21 Q Can I stop you there and just ask what you did on that
22 campaign?

23 A I was a campaign coordinator working on everything from
24 media to covering the district with mail, and direct mail, and
25 leaflets and working on 1.

BP

4059

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q And did the candidate win?

2 A No, he lost.

3 Q What was your next experience in politics?

4 A Well, the campaign manager was a country store owner,
5 and he was named Vic Thomas and he was the -- his store was
6 almost like a social work agency. He helped so many people and
7 I kept saying to him, Vic, you ought to be the candidate. I'm,
8 like, you're better than anybody I've ever seen with people and
9 he's like I don't know. I'm like, you really ought to run; and
10 we went back and forth, and he ran for the state legislature and
11 I worked with him on that campaign.

12 Q How did you help him on that campaign?

13 A I basically did the advertising, the speech writing,
14 the brochures. I walked the entire city of Roanoke with him and
15 along with his wife and his kids going door to door, and he won
16 that race.

17 Q Did you know the city of Roanoke from having grown up
18 there?

19 A I did.

20 Q Did you focus your attention on any particular part of
21 the city or did you help all over the city?

22 A Well, we were all over the city, but we particularly
23 concentrated on the heavily democratic areas, make sure we got
24 on the phone.

25 Q What was the result of that election?

BP

4060

W. LaPierre - by Defendant - Direct/Mr. Correll

1 A It was a multimember district. There were four
2 candidates, and Vic ended up surprising every one because they'd
3 say was going to finish last, and he led the ticket and he won.

4 Q Did you continue to work with him after he was elected?

5 A I did.

6 Q What kind of work did you do for him?

7 A I worked in the legislature doing legislative
8 assistant, as his legislative aide.

9 Q And this is the Virginia state legislature; correct?

10 A Yes, that's correct.

11 Q How long did you stay with him?

12 A Well, I thought I was -- I still what was intending to
13 be a college professor, so I was going to go to Emory. I went
14 down to Atlanta. I decided to go back to Boston College; but I
15 stayed there for a year, and I worked a number of odd jobs.

16 Q And did do you the course work for a Ph.D.?

17 A I did. I went back to Boston College, did the course
18 work for a Ph.D. while I was doing also political consulting
19 work.

20 Q And did you write a dissertation?

21 A I did not. I did not finish a dissertation.

22 Q Why not?

23 A I was doing political consulting. I was on the
24 democratic national committees, national consulting list. I was
25 in Washington. A candidate was interviewing me as to whether he

BP

4061

W. LaPierre - by Defendant - Direct/Mr. Correll

1 wanted to hire me or not, and I had known the NRA people through
2 the legislature with Vic Thomas, the State delegate who was an
3 NRA member.

4 And so I walked across the street from the DNC to say
5 hello to the folks at the NRA I knew, and they were looking for
6 a democrat to come work for them and they offered me a job.

7 Q And did you take it?

8 A I did. I thought about it for awhile because I didn't
9 know about lobbying. I mean, my love was the legislative
10 process, politics and all that; but I thought about it and I
11 took it.

12 Q What about the candidate that was interviewing you to
13 see whether he wanted you as a consultant for his campaign, did
14 you like that candidate?

15 A Yes, but I ended up -- I ended up going to work for the
16 NRA. He ended up going to winning the campaign and served for
17 Congress for a number of years, so I guess he did fine without
18 me.

19 Q What was the first position that you occupied at the
20 NRA, the title?

21 A It was a state liaison. I covered ten states in the
22 northeast part of the United States.

23 Q And who had held that job before you, do you recall?
24 I know it was a long time ago.

25 A I'm not sure because it was the only year before they

BP

4062

W. LaPierre - by Defendant - Direct/Mr. Correll

1 formed the Institute for Legislative Action, so I think I got in
2 on the ground floor.

3 Q And so was your position in the Institute for
4 Legislative Action as opposed to sort of the main NRA?

5 A Yes.

6 Q And could you explain to the jury the difference
7 between the main NRA and the Institute for Legislative Action?

8 A Well, the Institute for Legislative Action is part of
9 the NRA that was set up to do the political legislative
10 activities of the NRA.

11 The main part of the NRA does all the programs. It
12 does the magazines. It has the advancement office. It has the
13 whole general operations division which does the safety
14 training, education, instructors, hunter education, all of those
15 type of programs.

16 Q Where does the lobbying activity occur? Does it occur
17 in the main NRA or ILA?

18 A It occurs in ILA.

19 Q And so your position was director of -- would you tell
20 me again the title, please?

21 A No, not at first. It was state liaison. I was the
22 person that was delegated to work with the members in those ten
23 states, to also work with legislatures, legislatures on the
24 interaction between the members and the legislators and work on
25 the legislation and the politics.

BP

4063

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q Did you work hard in that position?

2 A I did. I really enjoyed it because I got to work with
3 the members, which are the life and blood of that organization.
4 Without the members, it doesn't exist.

5 Q And was your performance recognized in that position?
6 Were you -- did you receive any performance reviews?

7 A I think I did and I -- yes, I believe I did.

8 Q Did you get any -- well, let me ask you this way.
9 Did you feel like you performed the duties of that
10 position?

11 A Yes, I did.

12 Q And how long were you in that position?

13 A One year.

14 Q And then what happened?

15 A I was promoted to director of state local affairs,
16 which was all 50 states in the legislatures.

17 Q And what were your duties in that position?

18 A To supervise the legislative and political activities
19 in all fifty of the states for the NRA working with the other
20 folks in the office that were doing what I used to do, which was
21 handling part of the country. And then also worked with the
22 membership in those 50 states, which as I said is the life,
23 blood of the organization.

24 Q And who did you report to?

25 A I reported to the director of the Institute for

BP

4064

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Legislative Action.

2 Q Who was that at the time?

3 A At that time, it was Neal Knox.

4 Q And did you have any direct line of reporting to anyone
5 else in the organization?

6 A Not a direct line, but I was also kept in very close
7 contact with Harlon Carter who was the EVP of the organization
8 and was very involved in overseeing the entire organization.

9 Q And what do the initials EVP stand for?

10 A Executive vice president.

11 Q How long had he been the executive vice president?

12 A Oh, I don't know. Going back some time in the I think
13 mid 70s. He was there when I arrived.

14 Q And what year was it when you arrived?

15 A January 1st, '78.

16 Q How long did you stay in that position?

17 A I stayed in that position a year.

18 Q Then what happened?

19 A I was appointed director of government affairs for the
20 NRA.

21 Q Is that a job you wanted?

22 A No, not really. I grew up doing the state
23 legislatures, as I said, the politics in the state legislatures.
24 I really enjoyed the states and I wanted to stay working the
25 states as opposed to working at the federal level. But, they

BP

4065

W. LaPierre - by Defendant - Direct/Mr. Correll

1 told me if you want a job tomorrow, it is in the federal
2 affairs, not state and local, so I took it.

3 Q What were your duties in the new job?

4 A It was to oversee the NRA legislative and political
5 operation on Capital Hill and with federal regulatory agencies
6 and all of that.

7 Q And what year was that?

8 A 1980.

9 Q 1980. Did you have any success in that position?

10 A I think so. I mean, I worked hard. I always thought I
11 just let my performance speak for itself, and I guess the two
12 biggest successes we had was I worked with Senator Hatch where
13 there was an issue whether the 2nd Amendment of the constitution
14 was an individual right or whether it applied only the
15 government.

16 So, I worked with Senator Hatch and Senator DeConcini
17 who was the minority democrat on the committee in charge to have
18 the subcommittee on constitution investigate an issue -- they,
19 ultimately, issued a report concluding that it was an individual
20 right, which helped lay the beginning of a scholarship for
21 the 2nd Amendment being an individual right, not a government
22 right.

23 Q Did you begin to receive any recognition for your work
24 on behalf of the NRA in terms of publicity or attention from the
25 press?

BP

4066

W. LaPierre - by Defendant - Direct/Mr. Correll

1 A I did. It was particularly involved with a bill called
2 McClure-Volkmer bill, which it was a complete rewrite of the
3 1968 Gun Control Act, and I had worked with Senator Birch Bayh,
4 a democrat of the Judiciary Committee.

5 We held hearings because the bill was too broad.
6 Everything was a federal felony. If you made the most minor
7 mistake, it was federal felony. There were no misdemeanors.
8 The bill needed to be rewritten to be fair to normal people that
9 made an honest mistake.

10 I worked with the Treasury and Justice Department to
11 get the law enforcement amendments in the bill; and we,
12 ultimately, passed that bill and I received recognition for my
13 work on that bill in the media and the press.

14 Q Would you turn your attention, please, to Tab 60 in
15 your binder Volume 1 of 2, please.

16 This document has been marked for identification, I
17 believe, as -- do we have an exhibit number? WLX 226.

18 Do you recognize that document?

19 A I do.

20 MR. CORRELL: Your Honor, this is a copy of a --
21 the cover sheet of a magazine, which is periodical
22 self-authenticating.

23 I move its admission into evidence.

24 THE COURT: I mean, it is admitted just for the
25 fact that the article was written. I don't think you're

BP

4067

W. LaPierre - by Defendant - Direct/Mr. Correll

1 admitting any of the text for any truth of the matter
2 asserted, just the fact that he was mentioned in an
3 article.

4 (Whereupon, at this time Exhibit WLX 226 was
5 admitted and received into evidence.)

6 MR. CORRELL: Well, that fact and the fact that
7 we're looking at the back of his head on the cover and I'll
8 ask him to identify.

9 Q Do you recognize the person who appears on the cover of
10 this magazine?

11 A I do. That's me with a bad haircut.

12 Q What are you doing in this picture or pretending to do
13 in this picture?

14 A They just wanted a picture of me walking up the stairs
15 of the capital, and it was staged.

16 MR. CORRELL: Can we put this up for the jury,
17 please.

18 MR. CONLEY: Your Honor, we object on relevance and
19 hearsay.

20 THE COURT: Overruled.

21 Q I hate to do this to you, Wayne. Everyone can see the
22 bad haircut now.

23 Would you direct your attention to the words in the
24 upper right-hand side. Do you see that?

25 A Yes.

BP

4068

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q "Taking on Congress the How-to's of Lobbying?"

2 A Yes.

3 Q Is that the article that you were featured in?

4 A Yes.

5 Q And was in else featured in the article?

6 A Yes. I was surprised I was even in the article. I
7 didn't know how I even got there because the other folks were,
8 like, legends in the lobby business. Tommy Boggs, Evelyn Dubrow
9 who represented the unions, and one of the top tax lobbyists in
10 the country.

11 Q If you could turn your exhibit to page 3. You see a
12 strip of photographs.

13 Can you identify the person in that photograph? Just
14 page 3 at the bottom.

15 So, 1, 2, 3 -- there you are. You're on the right page
16 now, left-hand side. It's a film strip excerpt?

17 A On the film strip, yeah, yes, that's a picture of me.

18 Q Okay, and the article here is listed as I believe in --
19 I'm looking for it. The Features, page 23, it says "Thumping in
20 the special interests of John Jenkins talks to four top
21 lobbyists to find ut the tricks of taking on Congress,"
22 correct?

23 MR. CONLEY: Objection, your Honor, to reading
24 hearsay into the record.

25 THE COURT: It is not being offered for the truth

BP

4069

W. LaPierre - by Defendant - Direct/Mr. Correll

1 of anything. It is just the fact that there's an article
2 that he's in about this topic.

3 So, overruled.

4 Q Then, lastly, I would just ask you to flip over to page
5 23.

6 A Yes.

7 Q Tell me -- I guess flip over, that's the beginning of
8 the article, "The Law Choreographers Tips from the Top."

9 And then flip over to page 28, there's another little
10 photograph.

11 Can you identify the person in that photograph?

12 A That's my photograph on that page.

13 Q And what follows underneath that is a little discussion
14 about -- it is an article about you; correct?

15 A Yes, and the legislative and lobbying work.

16 Q And did you sit for an interview for that article?

17 A Yes.

18 Q Have you ever sat for an interview before?

19 A Pretty early on. I had done interviews when I was a
20 state and local lobbyist, but I never sat for an interview like
21 this.

22 Q So, last request is to flip to page 30, and there are
23 other photographs there. Can you tell me who the person is in
24 those photographs?

25 A Yes, those are -- those are photographs of me.

BP

4070

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q So, I wanted to end on a better photograph. All right,
2 so let's close up --

3 THE COURT: I think it's generally true that there
4 are no good photographs in the 1970s of anyone.

5 MR. CORRELL: That is correct, your Honor. We'll
6 stipulate to that. You wouldn't want to see mine.

7 Q All right, if you could flip to the second tab, please.
8 Do you recognize this document?

9 A 61.

10 Q Tab 61, yes.

11 A Yes.

12 MR. CORRELL: And do we have an exhibit number for
13 that? 227, WLX 227.

14 Q Do you recognize this document?

15 A Yes, I do.

16 Q What is it?

17 A That is the report of the subcommittee on Constitution
18 of the United States Senate that I was talking about exploring
19 whether the 2nd Amendment was an individual right of citizens or
20 whether it was only the government's right.

21 MR. CORRELL: Your Honor, I move this into evidence
22 as a public record.

23 MR. CONLEY: Object on relevance, your Honor.

24 THE COURT: Sustained.

25 MR. CORRELL: Your Honor, there was testimony with

BP

4071

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Mr. Cox about whether he knew about this work that was done
2 by the NRA. He said he didn't.

3 This has Mr. LaPierre's handwritten notes on it,
4 and he has personal knowledge that he worked on this and was
5 actively involved in this. This is a public document that
6 is directly relevant to his qualifications to serve as EVP
7 and to the success of his work in this position.

8 THE COURT: There's been no challenge to the -- his
9 qualifications I don't believe.

10 MR. CORRELL: I'll move very quickly through this,
11 your Honor.

12 THE COURT: Sustained. The case is not about this
13 or his qualifications.

14 Q Mr. LaPierre, did you work with the Senate committee on
15 this project?

16 A Yes.

17 Q And was any -- was there any benefit to the NRA that
18 was derived from your work on this project?

19 A Well, I believe we were doing our -- one of our core
20 missions besides the programs and the education. It was
21 advocacy for the right of individual citizens to be able to own
22 a firearm under the constitution.

23 Q Did you receive any recognition for your work on this
24 project?

25 A Not particularly. I think NRA was very, very proud of

BP

4072

W. LaPierre - by Defendant - Direct/Mr. Correll

1 it, and I think it had an impact in terms of helping to lay the
2 scholarship which would later be used in court cases on this
3 issue.

4 Q Did the NRA firearms civil rights legal defense fund,
5 ultimately, reprint this report?

6 A Yes.

7 Q And why?

8 A Because it was a meaningful scholarship in terms of
9 laying the groundwork for, as I said, for research and -- and
10 could be cited in further court cases about the meaning of the
11 2nd Amendment.

12 Q Would you turn your attention to the document behind
13 Tab 62, please.

14 MR. CORRELL: Do you have an exhibit number,
15 please? 227 was marked for identification I believe, so
16 we'll go to the next, 228:

17 Q Do you recognize this document?

18 A I do.

19 Q What is it?

20 A It is a reprint of part of the Senate's subcommittee on
21 constitution report. It was done by the NRA firearms civil
22 rights legal defense fund.

23 Q Was this prepared at your direction?

24 A It wasn't prepared at my direction.

25 Q Who directed this be prepared?

BP

4073

W. LaPierre - by Defendant - Direct/Mr. Correll

1 A I'm not sure.

2 Q Do you recall seeing this when it came out in 1982?

3 A Yes.

4 Q And do you remember using in connection with your
5 efforts to advance the mission of the NRA?

6 A Yes, I think the NRA used it as an advancement of the
7 2nd Amendment meaning to be an individual right. At that time,
8 a lot of the prevailing belief was the 2nd Amendment applied
9 only to the government, not individuals and there were supreme
10 court justices saying that. And we didn't believe that and this
11 was along with a lot of other things, part of the beginning of
12 really laying the legal scholarship for further Supreme -- later
13 Supreme Court cases.

14 MR. CORRELL: Your Honor, move this into evidence.

15 MR. CONLEY: Object on relevance, your Honor.

16 THE COURT: Sustained.

17 Q Did there come a time when you were involved in trying
18 to increase support for the U.S. Shooting team?

19 A Yes. I always tried to increase support for the U.S.
20 Olympic Shooting team.

21 Q Why was that?

22 A One, we were proud of them. They were representing the
23 United States of America. They were great young -- great group
24 of young men and women that needed support.

25 NRA at that time was actually the governing body for

BP

4074

1 the U.S. Olympic Shooting team and, and I think it, it -- I
2 mean, it reflected well on America. It reflected positively on
3 the NRA, the fact the NRA was supporting it.

4 (Continued on next page)

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4075

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q And was there a -- back in those days, can -- you had
2 mentioned magazines before. Did the NRA have magazines that it
3 published back then?

4 A Yes, we did. We published the American Hunter, the
5 American Rifleman, and those were the two big ones back at that
6 time.

7 Q And who was president in 1984?

8 A President Reagan.

9 Q And did you hatch a scheme to try to get him to pose
10 for the cover of Hunter Magazine back then?

11 A We did. We wanted to do a magazine cover with
12 President Reagan, and there was a -- there was a constant battle
13 going on within the Reagan administration between certain people
14 that didn't -- President Reagan was in support of the NRA, but
15 there were certain people that didn't support the NRA or the
16 administration, and they didn't want a picture taken with
17 President Reagan that could be used on the cover. And the U.S.
18 Olympic Shooting Team happened to be coming to town, and there
19 were some folks in the Reagan administration that Faith
20 Whittlesey in particular who said, well, they can't deny a
21 president a picture with the U.S. Olympic Shooting Team, and if
22 that picture is taken, NRA could get a copy of that and you
23 could put that picture on the magazine which is what we did.

24 MR. CORRELL: Your Honor, move admission into
25 evidence of the document behind Tab 63 which is Exhibit 229.

KM

4076

W. LaPierre - by Defendant - Direct/Mr. Correll

1 MR. CONLEY: Object on relevance, your Honor.

2 THE COURT: Sustained.

3 MR. CORRELL: Your Honor, this is relevant to show
4 Mr. LaPierre's growing success in dealing with difficult
5 issues -- political issues on Capitol Hill. I think it's
6 directly relevant to the question of whether he has
7 discharged the duties of his position in good faith and with
8 appropriate care over the length of his 44-year career.

9 I think there is no prejudicial effect to the
10 Government from having this document put before the jury. I
11 think they are entitled to see it.

12 THE COURT: Sustained.

13 Q Would you turn to the third sheet of paper in this
14 document and tell me if you recognize the person in that
15 photograph.

16 A I'm sorry. You lost me. Where are you?

17 Q Wally Schirra.

18 A Yes. He was one of the astronauts that was in featured
19 in On The NRA campaign.

20 Q And what was he On The NRA campaign?

21 A The On The NRA campaign was a campaign that was devised
22 by I believe it was when Harlon Carter was still EVP of the NRA
23 to show that the NRA was normal people of every, as I've said
24 before, on every city block in America, of every race, of every
25 income level, of every occupation, and we -- and it covered the

KM

4077

W. LaPierre - by Defendant - Direct/Mr. Correll

1 -- covered the whole spectrum of America.

2 Q Who came up with that idea?

3 A Ackerman McQueen which was the ad agency at that time
4 that Harlon Carter hired.

5 Q How long had Ackerman McQueen been the advertising
6 agency for the NRA?

7 A I believe Harlon hired him sometime in the
8 mid-seventies.

9 MR. CORRELL: Your Honor, move the admission of
10 this photograph as evidence of work done by Ackerman McQueen
11 who was a central character in this case.

12 MR. CONLEY: Object on relevance, your Honor.

13 THE COURT: Worked on in 1982?

14 MR. CORRELL: Your Honor, they continued to work
15 for the organization long after that. And one of the key
16 allegations here is that Ackerman McQueen was used to
17 conceal expenses.

18 THE COURT: I still don't see the relevance of a
19 1982 photograph. Sustained.

20 Q Mr. LaPierre, did there come a time when you were
21 recognized in your Roanoke Times and World News for your efforts
22 as a lobbyist on behalf of the NRA?

23 A Yes. They wrote an article on me about a local kid
24 that was doing that.

25 Q Would it be fair -- well, it was June 1, 1986 when that

KM

4078

W. LaPierre - by Defendant - Direct/Mr. Correll

1 article appeared?

2 A That's correct.

3 Q And at that point in your career, had you ever had a
4 death threat against you?

5 A I don't know that at that time I had had a death
6 threat. My profile was increasing, but I don't know that I had
7 had a death threat at that time.

8 Q And at that time did you travel by commercial aircraft
9 when you traveled?

10 A Yes.

11 Q And did you have a security detail back then?

12 A No.

13 Q And why was that? Was the issue that you were working
14 on as controversial then as it is now?

15 A It was not controversial.

16 Q Was there bipartisan support for appropriate
17 legislation addressing gun policy issues back then?

18 A Yes.

19 Q And did you work with people on both sides of the
20 aisle?

21 A Yes.

22 Q Ever work with Teddy Kennedy?

23 A I met him several times yes.

24 Q Ever work with Bob Dole?

25 MR. CONLEY: Objection, your Honor. Leading.

KM

4079

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Relevance.

2 THE COURT: Overruled. I'll let you continue doing
3 this background, but I assume we are going to segway into
4 our case.

5 MR. CORRELL: Yes, your Honor, we would move faster
6 if I could just do my show and tell, but I'll try to do it
7 through Mr. LaPierre himself. The jury can see it in
8 photographic form, and we could accelerate by a factor of
9 ten.

10 A My main interaction with Senator Kennedy is when I was
11 in Senator Dole's office one day, and we were trying to get
12 records put into the National Check Bill which is what they do a
13 check before you buy a firearm, and Senator Kennedy walks into
14 Senator Dole's office and says, I can't support this.

15 Q Did he give a reason for why he couldn't support it?

16 A Yes because of the HIPAA laws and the fact that mental
17 health records, he believed should be private and not put into
18 the system.

19 Q So turning to Tab 64 which is WLX 230. Do you
20 recognize that document?

21 A I'm sorry. 64.

22 Q Yes. Behind Tab 64. It says "Virginia" at the top.

23 A Yes. That, as I say, was an article from the city
24 where I grew up, Roanoke, which was talking about me, a local
25 kid that was doing this job.

KM

4080

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q Were your mom and dad still alive at that point?

2 A Yes, they were.

3 Q Did they read the article?

4 A Yes, they did.

5 Q Were they proud of their son?

6 A I think so.

7 MR. CORRELL: Your Honor, if I could just move this
8 into evidence.

9 MR. CONLEY: Object on relevance and hearsay.

10 MR. CORRELL: Your Honor, it shows the role this
11 man was playing early on which later grew into a much
12 broader role with him wearing many, many hats.

13 THE COURT: I don't think that there are any claims
14 disputing that.

15 MR. CORRELL: Your Honor, the claim is that he
16 failed to perform his duty, and they have also raised
17 questions about skill and competence.

18 THE COURT: I don't think that's what the claim is.
19 Sustained.

20 Q Mr. LaPierre, did you ever meet President Reagan?

21 A Yes.

22 Q How many times?

23 A Numerous times.

24 Q Did he ever consult you seeking advice on policy
25 issues?

KM

4081

W. LaPierre - by Defendant - Direct/Mr. Correll

1 A Yes.

2 Q And was it primarily the Second Amendment issue or were
3 there other issues as well?

4 A It was the Second Amendment. It was hunting issues,
5 conservation issues. I actually had a chance to write a speech
6 that -- where he ended up delivering most of the speech to my
7 surprise.

8 Q Was he an environmentalist in terms of preserving land
9 for public use?

10 A Yes.

11 Q And did you have any conversations with about that with
12 him preserving land for access for hunters?

13 A Yes, we did.

14 MR. CORRELL: Your Honor --

15 Q Did you every meet George Bush, the elder.

16 A Yes.

17 Q Did you ever meet Arnold Schwarenegger?

18 A Yes.

19 Q Did he ever meet Al Gore?

20 A Yes.

21 Q Tell me about your relationship about Al Gore.

22 A It was -- it was very positive. When he was a senator
23 from Tennessee, we supported him and I had a relationship with
24 him and I knew Peter Knight, his administrative assistant and we
25 endorsed him in the campaign.

KM

4082

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q Did there come a time when that support changed?

2 A Yes, it did. He wanted -- he decided he wanted to run
3 for president, and he would have to get through some of the
4 primaries like New York, and he -- I got a call from the office
5 saying that they were going to change their position on the
6 issue.

7 Q And how did that affect the decision as to whether to
8 support him or not?

9 MR. CONLEY: Objection. Hearsay.

10 MR. CORRELL: This is his decision, your Honor.

11 THE COURT: Any other ground for the objection?

12 MR. CONLEY: Relevance, your Honor.

13 THE COURT: Sustained.

14 MR. CORRELL: Your Honor, this is this man's day in
15 court, and I have time that I should be able to use however
16 I like.

17 If I want to put matters of what you might think is
18 marginal relevance before the jury, that's certainly his
19 right to do so. I would be happy to move quickly through
20 this, but I take exception to these rulings. I'll try to
21 move on.

22 Q Mr. LaPierre, would you -- did there ever come a time
23 when you appeared on the morning program for CBS?

24 A Yes. Numerous times.

25 Q What was the purpose of appearing on CBS on behalf of

KM

4083

W. LaPierre - by Defendant - Direct/Mr. Correll

1 the NRA?

2 A To be the voice of our members. I always viewed one of
3 the roles of the organization -- as I've said, the life blood is
4 our membership and to be their voice and to amplify their voice.
5 I mean, it's one of the reasons people join any advocacy groups,
6 whether it's Sierra Club, the -- you name it. The NRA -- pick
7 your issue. They join those groups to be their voice.

8 Q Is this something you wanted to do?

9 A No. I've never really been a media guy, but I -- I --
10 it was something I really had no training in, but I understood
11 that if I was going to do my job, it was one of the things I
12 needed to learn and needed to do.

13 Q Did you appear on CNN in this -- I'm talking back in
14 the eighties.

15 A Yes.

16 Q And was there anyone else in the organization that was
17 willing to step up and appeared on TV and speak for the Second
18 Amendment?

19 A No. I was the first person to do media for the NRA,
20 and I continued for a long time to be the only person doing
21 media for the NRA.

22 Q And was that written in the Bylaws that it was your
23 duty to do media for the NRA?

24 A No.

25 Q Was that something that your job just evolved into that

KM

4084

W. LaPierre - by Defendant - Direct/Mr. Correll

1 no one wanted to do?

2 A Yes.

3 Q And did that come at any personal cost to you?

4 A Yes, it did.

5 Q And what was that cost?

6 A Well, as the issue got more controversial, I mean, I
7 gave up my anonymity. People would recognize you everywhere,
8 everywhere, based on the fact they had been watching TV or
9 reading their newspaper, and it -- as the issue got more
10 antagonistic, it became more -- it entailed more controversy.

11 Q Did you ever appear on the Oprah Winfrey show?

12 A Yes, I did.

13 Q When was that?

14 A Oh, my gosh. I can't -- I appeared I think twice on
15 the Oprah Winfrey show, and I think the first time may have been
16 sometime in the late eighties, early nineties. I'm not
17 exactly -- early nineties.

18 Q I'd like to direct your attention to the document that
19 appears behind Tab 628.

20 Do you recognize that document?

21 A Yes, I do.

22 Q What is it?

23 A It is a thank you from Oprah for being on -- a guest on
24 her show.

25 Q Does that refresh your recollection as to the time

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4085

W. LaPierre - by Defendant - Direct/Mr. Correll

1 period in which you appeared?

2 A Well, the letter says August 20, 1990, so it would have
3 been probably a week or two before that.

4 Q And at that time what was your -- the title you held at
5 the NRA?

6 A I was Director of the Institute for Legislative Action
7 which is the political and legislative affairs of the
8 association.

9 MR. CORRELL: Your Honor, I would move the
10 admission of this letter into evidence --

11 MR. CONLEY: Objection.

12 MR. CORRELL: -- to show his growing profile in the
13 national scene. It's relevant to security, and it's
14 relevant to scope of duties.

15 MR. CONLEY: Object to relevance and hearsay.

16 THE COURT: This one, I'll overrule.

17 Is there an exhibit number on this.

18 MR. CORRELL: It would be WLX 231.

19 THE COURT: Are you marking these on the document?
20 All right. I mean, typically when they are not
21 electronically on the document, we have the court reporter
22 do it.

23 MR. CORRELL: We will catch up at the break.

24 THE COURT: It's important that we keep careful
25 notes of these things. Okay.

KM

4086

W. LaPierre - by Defendant - Direct/Mr. Correll

1 MR. CORRELL: Things are moving pretty fast in the
2 trial. We understand that we are doing the best we can.

3 So I move that, and would you please put that up on
4 the screen, the letter from Oprah.

5 Q So at this time you're head of ILA; correct?

6 A Yes.

7 Q And were you doing anything with celebrities at this
8 point to try to assist or to benefit the NRA?

9 A Yes, I was. I was working the Hollywood community.
10 There were folks out in Hollywood that was speaking out against
11 the NRA because people had different opinions. They didn't
12 agree with the NRA. I didn't want to concede Hollywood to the
13 other side. I thought they had a tremendous influence on
14 American cultures. I mean, it's wide -- as I have said, people
15 hire celebrities to do ads for them on all kind of commercials,
16 and there were tremendous amount of people in Hollywood that
17 owned firearms and enjoyed the shooting sports, and I wanted to
18 recruit them and also show that they were participating in the
19 shooting sports as a mainstream activity in American society and
20 also show their identification with the NRA to help keep the NRA
21 in the mainstream of American society which I always felt the
22 NRA -- that's what the NRA is.

23 Q And did you have any success in trying to develop
24 relationships with celebrities on behalf of the NRA?

25 A Yes, we did. We had a lot of success.

KM

4087

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q And can you tell the jury who Charlton Heston is?

2 A Charlton Heston was a legendary actor for the Ten
3 Commandments. He played Moses. He would -- Ben-Hur. All kind
4 of movies in the fifties and sixties. Greatest Show On Earth,
5 he was on that and later on, he did a bunch of shows that
6 younger people tend to remember like Planet of the Apes and
7 Soylent Green which was, you know, kind --

8 MR. CONLEY: Objection.

9 A People would come up to him and say I loved you in
10 Soylent Green. What the heck. I played Moses. You don't
11 remember that?

12 Q Did there come a time when Charlton Heston began to
13 work with the NRA to present shoots for celebrities?

14 A Yes, he did. We started in the late eighties or mid to
15 late eighties with a Charlton Heston Celebrity Shootout in Los
16 Angeles. We invited all kind of celebrities down to it that --
17 and it turned out to be a big success. It was a -- it was a
18 competition, but it was more fun than anything else. It was --
19 but it was a competition.

20 Q Was the purpose to benefit any particular group?

21 A The funds went to the -- many time -- most of the time,
22 the U.S. Olympic Shooting Team.

23 Q Directing your attention to the document that appears
24 behind Tab 69.

25 Do you recognize that document?

KM

4088

W. LaPierre - by Defendant - Direct/Mr. Correll

1 A Yes. That is the program for the Charlton Heston
2 Celebrity Shoot from 1990.

3 Q And --

4 MR. CORRELL: Your Honor, I will move this into
5 evidence.

6 MR. CONLEY: Object on relevance and hearsay.

7 THE COURT: Sustained.

8 Q Was a magazine produced to commemorate the celebrity
9 shoots?

10 A Yes. They did a program, and they did a -- we did a
11 book on it too.

12 Q Was that used to benefit the NRA by increasing its
13 visibility in the Hollywood community?

14 A Yes, it was. It actually showed how many people -- I
15 mean, 40 million people at that time were engaged in the
16 shooting sports, and it -- and it showed -- Hollywood was no
17 different. There were tremendous amount of people out in
18 Hollywood that tended to enjoy the shooting sports.

19 Q Was there another celebrity shoot held in 1991?

20 A Yes.

21 Q And was that also to benefit the United States Olympic
22 Shooting Team?

23 A I believe that -- it probably was. Many of them did.

24 Q Directing your attention to the document that appears
25 behind Tab 70. Do you recognize that document?

KM

4089

W. LaPierre - by Defendant - Direct/Mr. Correll

1 A Yes, that is -- that is the program for the Charlton
2 Heston Celebrity Shoot in 1991.

3 Q Does that refresh your recollection?

4 A Yes, it does.

5 Q Now what, if anything, happened in 1991 that affected
6 you personally with respect to the NRA?

7 A In 1991, I was elected executive vice-president of the
8 organization.

9 Q And do you believe as you sit here today that that was
10 in part due to the efforts you had made on behalf of the NRA up
11 to that moment?

12 A Yes, I do because I actually didn't want the job. I
13 tried to- I wanted to stay in the legislative political area. I
14 really loved the legislative process. I loved the back and
15 forth, the give and take of all of it. I really enjoyed working
16 with all the people I had a chance to work with, and I tried to
17 recruit a number of people.

18 I actually had Congressman John Dingle agree to take
19 the job for one night till his wife talked him out of it, and I
20 talked to people that were high up in the Army, the Navy, tried
21 to get them to do it. People kept saying no, Wayne. Look, you
22 know out -- they know you. The members know you. You have been
23 out doing media. You have been out doing speeches for the
24 members. The membership really knows you. You ought to be the
25 guy, and we will support you, and that's how I ended up being

KM

4090

W. LaPierre - by Defendant - Direct/Mr. Correll

1 the candidate.

2 Q Did you have any reservations about stepping up to the
3 top position of EVP of the NRA?

4 A I did because it really wasn't -- it wasn't my
5 background. It really wasn't what I loved doing to tell you the
6 honest truth and -- but I also knew that there needed to be a
7 strong NRA in terms of membership. In terms of NRA had lost
8 about a half a million members. NRA was running at a deficit.

9 I knew that if the organization as a whole was to
10 succeed, it needed to have a strong NRA. And ultimately, as I
11 have said, even though I tried to recruit other people, that's
12 how I ended up running for the job.

13 Q So would it be fair to say that you put the interest of
14 the NRA ahead of your own interest with respect to that
15 decision?

16 MR. CONLEY: Objection. Leading.

17 THE COURT: I'll give you that one.

18 MR. CORRELL: Thank you, your Honor.

19 THE COURT: You can answer.

20 Q Did there come a time --

21 THE COURT: You can answer it.

22 A I mean, I did because I really wanted to stay director
23 of the Institute For Legislative Action because that was my
24 background. That was my expertise, and that's what I really
25 enjoyed doing.

KM

4091

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q Did there come a time when you -- when the duties --
2 well, let me ask you this.

3 When you took the job, what -- did you have any
4 understanding as to what the official duties of the job were?

5 A Well, before that, it had been basically just managing
6 the internal day-to-day affairs of the association, the
7 magazine, overseeing some of the marketing. It wasn't so much
8 outfacing. It -- when I got in there, I kind of changed the job
9 description.

10 Q And what was the new job description -- what did the
11 job description become?

12 A Well, I felt that as I've said many times before today,
13 the strength of the NRA was in its members. The strength of the
14 NRA was being the voice of its members. I felt that if we were
15 going to be successful and grow the organization, I needed to be
16 out there in front of America, whether it was TV, radio, whether
17 it was newspaper. I needed to be out there doing speeches all
18 over the country. I needed to be out through meeting with
19 donors. I needed to be directly involved with the fundraising,
20 the advertising, the marketing, just everything that involved
21 the outfacing responsibilities to celebrities to mainstream -- I
22 always felt the way the NRA would lose is if it got pushed to
23 the fringe. And I always felt that one of my major jobs at the
24 NRA was to keep the NRA as to what I always believed it was was
25 the mainstream of American Society that supported the right to

KM

1 own a firearm under the Constitution and supported the programs
2 and the shooting sports. And so I expanded into things like
3 that had influence on the culture like NASCAR and the NFL
4 alumni, and I had somebody go to the NBA and I had people -- I
5 still worked Hollywood and all of that out-facing type stuff.

6 (Continued on the following page.)

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4093

W. LaPierre- by Defendant - Direct/Mr. Correll

1 Q Did you also invite people to debate the issue with
2 you?

3 A I did.

4 Q And did you ever invite Congressman Schumer to debate
5 the issue with you?

6 A I did. We debated numerous times.

7 Q Please turn your attention to the document that appears
8 behind tab 71, if you would.

9 Do you recognize that document?

10 A I do. That is a debate with Charles Schumer from "Meet
11 the Press."

12 Q Can you read the date on that, on the bottom?

13 A Yeah, I believe he was a Congressman at the time. I
14 don't think he was yet the Senator, but it would have been 1991,
15 right about the time I was elected EVP.

16 MR. CORRELL: Your Honor, move the admission into
17 evidence.

18 MR. CONLEY: Objection, relevance.

19 MR. CORRELL: It's is relevant to show his rising
20 visibility on increasing security issues. He was becoming a
21 well-recognized face.

22 THE COURT: That's overruled.

23 It is admitted.

24 (Whereupon, at this time Exhibit WLX 234 was
25 admitted and received into evidence.)

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4094

W. LaPierre- by Defendant - Direct/Mr. Correll

1 MR. CORRELL: Would you please publish the --

2 THE COURT: Is there a number?

3 MR. CORRELL: 234.

4 (Shown to the jury)

5 Q Your haircut has improved, but it is now the nineties.

6 All right, could you just very briefly tell us kind of

7 the tone and tenor of those debates? Was it respectful and

8 civil or was it angry people shouting at each other?

9 MR. CONLEY: Objection, relevance.

10 THE COURT: I'll overrule for now. I'm not sure

11 where it is going. You can answer.

12 Q Please answer.

13 A It was civil. I mean, that was a time back in

14 Washington when people didn't all hate each other. I mean, it

15 was a time when democrats and republicans got along with each

16 other, even though they might have disagreed on issues.

17 It was debated where people would disagreed with -- I

18 worked with NRA. They disagreed with me. I could still be

19 friends with them.

20 I mean, I was friends with Sarah Brady. I mean, it was

21 just a different times. It was a better time in my opinion than

22 what it is now.

23 Q Did you work with Sarah Brady to try and find common

24 ground on the gun policy issue?

25 A We did.

BP

4095

W. LaPierre- by Defendant - Direct/Mr. Correll

1 Q And did you have any success with that?

2 A The one we had the -- we ended up disagreeing on what
3 was so-called the Brady bill, which was a wait. It did not have
4 a check. We thought it ought to be with a check without the
5 wait because there were people walking through restraining
6 orders all the time and threatening people, and we thought some
7 people might need to buy a firearm for an immediate threat.

8 So, we put an amendment on that bill to -- when the
9 technology became available to do a check, if you walked into a
10 gun store and you wanted to buy a firearm, they would do an
11 immediate check on your background and if they got a yellow
12 flag, they got an additional three days.

13 Q Did you view as part of your duties as the executive
14 vice president reaching out to communities that were not
15 typically represented previously within the NRA?

16 A I did.

17 Q And what steps did you personally take with regard to
18 that outreach?

19 A Well, I always thought that if -- I mean, the truth is
20 NRA from its beginning was always one of the most diverse
21 organizations in America going back to its founding. I mean,
22 we had African American members going back to the very beginning
23 of the NRA. We probably had Hispanic members, but the media
24 kept trying to characterize the organization as an organization
25 of white men and which it wasn't.

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4096

W. LaPierre- by Defendant - Direct/Mr. Correll

1 I mean, it had a proud history with the African
2 American community going back forever, and I wanted to make it
3 more diverse in terms of women, in terms of Hispanics. I wanted
4 it to look like America.

5 Q Did there come a time when you were invited to attend a
6 dedication of a memorial to African Americans who had served in
7 the armed forces?

8 A I did. NRA, we -- some of our proud members were
9 Buffalo soldiers which were some of the original African
10 American regimens that were formed during the Civil War. They
11 were going to -- Colin Powell was working on dedicating a
12 monument in Leavenworth, Kansas, for the Buffalos, to honor the
13 Buffalo soldiers.

14 So, I got NRA involved with that. We contributed money
15 to that, and it was amazing to me. Some of the Buffalo soldiers
16 actually showed up. And I remember one in particular and I
17 named James Madison, pulled out his membership card. He was
18 94 years old, and he pulled out his membership card from
19 fifty years ago.

20 So, we were proud to be involved in that monument and
21 the dedication of it and proud of those -- to have those Buffalo
22 soldiers as NRA members.

23 Q Did you arrange for the NRA to publicize the dedication
24 ceremony and the group in your official publications?

25 A Yes.

BP

4097

W. LaPierre- by Defendant - Direct/Mr. Correll

1 Q Direct your attention to Tab 72.

2 Do you recognize the document that appears behind that
3 tab?

4 A Yes, I do. That's the article from the American
5 riflemen from our magazines. It went in all of them, and
6 there's actually a picture of the James Madison I was talking
7 about. I said fifty years. It was forty years.

8 Q And the -- how many people received the magazines from
9 the NRA? What's the circulation, do you know? What was it back
10 then?

11 A Well, most of our members did. I think about this
12 time, which would have been -- I think you said it was '92. It
13 probably would have been about just under 3 million.

14 Q Did you see it as part of the mission of the NRA to
15 educate people about the history of the armed forces and their
16 use of firearms?

17 A Yes, that's in the Bylaws.

18 Q And did you see it as part of your mission to support
19 other charitable organizations who were doing good work that
20 shared common interests with the NRA and supported the mission?

21 A Yes.

22 MR. CORRELL: Your Honor, I move this document into
23 evidence.

24 MR. CONLEY: Objection on relevance and hearsay.

25 MR. CORRELL: Your Honor, it goes to mission. It

BP

4098

W. LaPierre- by Defendant - Direct/Mr. Correll

1 goes to profile. It goes to the NRA providing support for
2 other charitable organizations.

3 The attorney general has taken the position that
4 there was something wrong with the NRA providing donations
5 to other organizations, and this is evidence that they did
6 it routinely for years.

7 THE COURT: I still don't see -- it's not that it
8 is uninteresting, but I don't see it having anything to do
9 with the claims in this case. Sustained.

10 I'll let you have the testimony for background, but
11 this is not an admissible exhibit. It has nothing to do
12 with the claims in this case, so sustained.

13 MR. CORRELL: Let me take another try, your Honor.

14 There's an picture of Charlton Heston in here who
15 became the president of the NRA, and this goes to the role
16 that the president -- I'm sorry -- became the president, to
17 the role that the president was asked to play and the
18 question of the scope of Mr. LaPierre's duties is at the
19 heart of this case. The question is, did he do his duty to
20 this organization.

21 And this is part of showing what the duty of the
22 leaders of the organization was.

23 THE COURT: Still sustained.

24 Q Mr. LaPierre, who is Louise Mandrel?

25 A Louise Mandrel was a singer and a performer in country

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4099

W. LaPierre- by Defendant - Direct/Mr. Correll

1 music.

2 Q And did you have any involvement with working with
3 Louise Mandrel to further the mission of the NRA?

4 A Yes, I did. She also enjoyed the shooting sports and
5 NRA worked with Louise Mandrel on a celebrity shoot that was
6 held in Nashville, which was primarily from the country music
7 community and benefitting the Boy Scouts of America.

8 MR. CORRELL: Your Honor, * move the admission into
9 evidence of the document that appears behind -- well,
10 actually let me lay the Foundation.

11 Q Can you turn your attention to the document that
12 appears behind Tab 73.

13 A Yes.

14 Q And do you recognize that document?

15 A Yes. It is a picture of the program for the Louise
16 Mandrel celebrity shoot.

17 Q Is this something that the NRA supported?

18 A Yes.

19 Q Did you view that as part of the mission to support
20 programs like this?

21 A I did.

22 MR. CORRELL: Move its admission into evidence,
23 your Honor.

24 MR. CONLEY: Objection on relevance and hearsay.

25 THE COURT: Sustained.

BP

4100

W. LaPierre- by Defendant - Direct/Mr. Correll

1

2

MR. CORRELL: Your Honor, would this be a good time to break, to take our morning break?

3

4

I can keep going if you'd like. I don't want an uncomfortable jury.

5

6

THE COURT: Well, neither I do.

7

Does the jury need a short break? I see some nodding. Okay, we'll take a short break.

8

9

COURT OFFICER: All rise, jury exiting.

10

THE COURT: It may actually be a little longer than a short break because I have to do a couple of the things with the lawyers here.

11

12

13

(Whereupon, at this time the jury then left the courtroom.)

14

15

(Whereupon, the witness stepped down.)

16

THE COURT: Have a seat.

17

I mentioned earlier I wanted to cover -- I'm trying to use all the time we have here, and this is the only on-the-record time where I can use to give rulings on various things without wasting the jury's time.

18

19

20

21

So, I'm going to run through two motions that are pending and one issue that the parties have been debating in connection with instructions.

22

23

24

The first is the NRA's motion to dismiss the EPTL claims based on vagueness.

25

BP

4101

W. LaPierre- by Defendant - Direct/Mr. Correll

1 This was a pretrial motion to dismiss Motion
2 Sequence 86. We had a memorandum in support. I had
3 deferred the opposition briefing; although, I got briefing
4 on at least a procedural issue through letters and the
5 parties have continued to send me things on this issue, and
6 I think it is ripe for decision since I think I have the
7 NRA's position pretty clearly.

8 The motion is denied on two independent grounds:

9 First, it violates the single motion rule
10 contained in CPLR 3211(e), which states that "no more than
11 one such motion shall be permitted."

12 The NRA moved to dismiss the EPTL claim in
13 June 2022, having previously filed motions to dismiss prior
14 versions of the complaint. In that 2022 motion, the NRA
15 raised a number of challenges to the EPTL claim and the
16 proposed relief sought by the attorney general, but it did
17 not include any argument that the statute was
18 unconstitutionally vague.

19 I denied the motion on the merits, and that ruling
20 was recently affirmed on appeal.

21 That decision is at 222 A.D.3d 498, First
22 Department (2023).

23 The current motion is not based on new facts or a
24 change in the law, and the NRA's vagueness argument clearly
25 could have been asserted in one of its earlier motions to

BP

4102

W. LaPierre- by Defendant - Direct/Mr. Correll

1 dismiss or even for summary judgment, I suppose, but was
2 not.

3 I would cite the Landes case, L-A-N-D-E-S, from the
4 First Department, 137 A.D.3d 694, where the court said
5 "Given that defendants had the full opportunity to raise
6 their current CPLR 3211(a) arguments on their original CPLR
7 3211(a) motion to dismiss, the IAS court correctly denied
8 the motions as violative of the single motion rule of CPLR
9 3211(e)."

10 Instead, the motion was filed on the eve of trial.
11 This is, in my view, precisely the inefficiency that the
12 single motion rule was designed to prohibit. The NRA's
13 suggestion that this motion is a challenge to the court's
14 subject matter jurisdiction is both I think inaccurate and
15 irrelevant. I don't think it is a challenge to subject
16 matter jurisdiction.

17 In any event, the CPLR 3211 simply says that
18 certain kinds of motions don't have to be raised in the
19 answer at the answer stage. You can raise it later. It is
20 not an exception to the single motion rule.

21 In any event, so it doesn't mean that a successive
22 motion under 3211 would be the right vehicle to raise this
23 issue anyway.

24 So, it's procedurally improper first of all. Even
25 if it was not procedurally improper, the motion also fails

BP

4103

W. LaPierre- by Defendant - Direct/Mr. Correll

1 on substantive grounds. In a nutshell, the NRA argues that
2 because the phrase "proper administration" is not defined in
3 the statute, and that the attorney general has not
4 promulgated rules and regulations to elaborate on its
5 meaning, and therefore the statute fails to provide adequate
6 notice or guard against discriminatory enforcement and
7 therefore is unconstitutionally vague.

8 I disagree with that argument. The phrase "proper
9 administration" has been used for many years in the context
10 of trusts and estates, which is the context of the EPTL.

11 I have relied on authorities in that area
12 to develop jury instructions that apply a straightforward
13 standard that has been applied to trustees for many years.

14 By contrast, the cases on which the NRA relies,
15 principally, address the use of the phrase "proper
16 administration" in other statutes as a generic principle,
17 and in some of those situations courts have questioned
18 whether it was clear enough.

19 For example, in *People versus Pickett*, 19 NY2d 170
20 from 1967, the Court of Appeals addressed a statute that
21 criminalized a "wilful act designed to interfere with the
22 proper administration of public assistance" programs. And
23 even there, the court found that any concerns about
24 vagueness could be addressed by construing the statute
25 consistent with the legislative intent to prohibit only acts

BP

4104

W. LaPierre- by Defendant - Direct/Mr. Correll

1 motivated by fraud.

2 Very different in our case. Here, I think we can
3 apply traditional and well-established law imposing a duty
4 of good faith and ordinary care on trustees, and that
5 undermines any argument that the statute is
6 unconstitutionally vague. So, the motion is denied.

7 Next, moving to the motion by the individual
8 defendants for a directed verdict, or at least a portion of
9 that motion that is focused on the EPTL claims brought
10 against those defendants under -- and the motion is for a
11 directed verdict under CPLR 4401. The reminder of the
12 motion is deferred to posttrial, but that branch of the
13 motion is granted.

14 Unlike the NRA's successive motion to dismiss, this
15 motion was brought appropriately at the close of the
16 plaintiff's case at trial. And unlike the NRA's motion,
17 this one has merit as applied to the EPTL claims asserted
18 against the individual defendants, which are in any event
19 largely, if not entirely, duplicative of the remaining
20 claims against them under the N-PCL statute based on exactly
21 the same conduct.

22 Granting this portion of the directed verdict
23 motion will also serve a salutary effect of uncluttering the
24 claims and providing a clearer path for the jury to make its
25 decisions without having though grapple with a morass of

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W. LaPierre- by Defendant - Direct/Mr. Correll

1 similar claims against the same people for the same conduct
2 seeking the same damages, but based on statutes with
3 different names and somewhat different language but the same
4 basic standard of conduct. I'll go through that in a little
5 bit more detail.

6 First, as I mentioned when this motion was first
7 made, I listened intently during the attorney general's case
8 in chief at trial for any evidence that would support a
9 reasonable jury finding that the individual defendants are
10 trustees under the EPTL statute. And "trustees" is defined
11 in relevant part to include individuals "holding and
12 administering property for charitable purposes, whether
13 pursuant to any will, trust, or other instrument or
14 agreement, court appointment, or otherwise pursuant to law
15 over which the attorney general has enforcement or
16 supervisory powers." And I did not at the time and I have
17 not since found any such evidence having been introduced.

18 Obviously, there's no will, trust, other instrument
19 or agreement, or court appointment applicable here. So the
20 only source of a trustee designation would be the general
21 phrase "otherwise pursuant to law."

22 In that regard, the cases on which the attorney
23 general principally relies are readily distinguishable. The
24 first one Schneiderman versus Lower Esopus Riv. Watch, Inc.,
25 which has been sometimes abbreviated as ELRW, the individual

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W. LaPierre- by Defendant - Direct/Mr. Correll

1 defendant there as reflected in the court opinion was sued
2 as an alter ego or that the entity was an alter ego of that
3 individual and he was essentially the sole decisionmaker of
4 the charitable foundation, which itself had failed to make
5 the required filings under the EPTL for years.

6 The AG also relies on People versus Trump, 62
7 Misc.3d 500, Supreme Court, New York County (2018).

8 In that case, the claims were asserted against the
9 named founder of the Trump Foundation and his children who
10 were essentially the board of directors and sole driving
11 forces of the Foundation. Those cases bear very little
12 resemblance to this case.

13 Here, the individual defendants are employees of
14 the NRA. To be sure, they're senior employees and corporate
15 officers even, but employees nonetheless with specified
16 spheres of operation and subject to the overarching
17 governance of the board of directors. While one can imagine
18 a situation which an officer or employee would be so clearly
19 tasked with "holding and administering" charitable assets so
20 as to satisfy the statutory definition, in my view listening
21 very carefully the evidence here does not support such a
22 finding as to these individuals.

23 The attorney general suggests without support in
24 the case law or statute that "each of the individual
25 defendants is a trustee because they played a substantial

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W. LaPierre- by Defendant - Direct/Mr. Correll

1 role in the administration of the NRA and were granted
2 substantial authority over the administration and
3 disbursement of its charitable assets" or because they
4 "manage the organization and administer or control its
5 finances." That's from a letter at NYSCEF 3021 at pages 2
6 to 3. But if the statutory phrase "holding and
7 administering property for a charitable purposes" were so
8 broadly defined it would apply to essentially every officer
9 and many senior employees, essentially, every charitable
10 not-for-profit corporation in the state, likely in the
11 thousands of people. I think it could apply just as easily,
12 for example, to all members of the Finance division of the
13 NRA who were charged with monitoring and overseeing accounts
14 payable and expense reimbursements.

15 Such a vague and boundless definition of "holding
16 and administering" in this context in my view would raise
17 legitimate due process concerns, with those thousands of
18 individuals having no effective notice of their obligations
19 under the statute, as that can be contrasted with the N-PCL
20 statute under which each of them knows or should know that
21 they are bound, what they are bound by when they accept a
22 position as an officer of a not-for-profit corporation.

23 I've read all of the trial court decisions cited by
24 the attorney general in which individuals were found to be
25 trustees based on their employment or association with

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W. LaPierre- by Defendant - Direct/Mr. Correll

1 not-for-profit entities. They uniformly contain little, if
2 any, analysis of the issue; and most of them arose at the
3 motion to dismiss stage, rather than on a trial record as I
4 have.

5 I do want to make clear that this holding is
6 limited to the specific facts and evidence presented in this
7 case and does not suggest a broad restriction against
8 applying the EPTL to corporate officers or directors. Under
9 different circumstances and, more importantly with different
10 evidence, a different result might well be appropriate.

11 Second, and independently, the EPTL claims against
12 the individual defendants are duplicative of the N-PCL
13 claims against those same defendants. The basic factual
14 allegations are the same, the monetary damages are the same
15 and the standard of care based on the traditional definition
16 of proper administration in the estate context is
17 essentially the same as that contained in the N-PCL.

18 Although the attorney general suggests somewhat
19 broader injunctive remedies might be available only under
20 the EPTL, specifically a lifetime ban on working for other
21 charitable organizations doing business in New York, in my
22 view that is not a persuasive basis to retain it as a
23 separate claim.

24 Although all of the individual defendants deny that
25 the attorney general has the authority to seek a lifetime

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W. LaPierre- by Defendant - Direct/Mr. Correll

1 ban on their employment under any of the statutes at issue,
2 Mr. Phillip's counsel makes the correct point that "there is
3 no relief that the plaintiff is seeking under EPTL Section
4 8-1.4 that would not also be recoverable under the court's
5 equitable powers as to the plaintiff's N-PCL claims."

6 That's from their letter at NYSCEF 2925.

7 Third, in looking at the overarching statutory
8 scheme governing charitable not-for-profit corporations, it
9 seems clear that the design is to subject individual
10 officers and directors to the statutory duty of care and
11 liability set forth clearly as to them in Section 717 and
12 720 of the N-PCL and various other sections of that statute.

13 The NRA, by contrast, is not subject to certain of
14 those positions, including 717; but instead is expressly
15 within the definition of trustees contained in the EPTL,
16 with the overarching obligation of properly administering
17 the entity's charitable assets. While again I am not making
18 a broad ruling that officers and employees cannot be
19 trustees, the statutory scheme provides to me a further
20 basis for narrowing the charges so that the individual
21 defendants in this case are answerable for their behavior
22 under the N-PCL and the NRA is answerable for its behavior
23 under the EPTL.

24 Fourth, and last, the winnowing or pruning of these
25 charges also reduces in my view the risk of jury confusion

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W. LaPierre- by Defendant - Direct/Mr. Correll

1 that may arise from having multiple claims against the
2 individual defendants based on the same conduct, seeking the
3 same damages, under the same standards of care essentially
4 with different statutory language.

5 So, I think for all of those reasons, this is one
6 of those cases where the winnowing process I think is
7 appropriate at the directed verdict stage, and it will have
8 a beneficial effect on the case as a whole.

9 So, the directed verdict as to the individual
10 defendants is granted in that limited respect, and those --
11 it's three claims in total, one against each of the
12 individual defendants under the EPTL, it is dismissed.

13 Next, there has been a lot of letter writing
14 recently about the NRA's objections to being labeled in the
15 jury instructions or elsewhere as a "charitable
16 not-for-profit corporation" under the N-PCL and as
17 administering "charitable assets" under the EPTL.

18 With the latter, the NRA's view is that they are
19 only administering charitable assets in the narrow respect
20 of when the NRA's general funds are used in support of NRA
21 Foundation related projects. I find those arguments
22 collectively to be unpersuasive. This late in the game
23 attempt to drastically narrow the scope of the EPTL claim is
24 akin to a belated and inappropriate motion for partial
25 summary judgment. I have several reasons that I'll go

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W. LaPierre- by Defendant - Direct/Mr. Correll

1 through, hopefully, quickly and get the jury back here.

2 First, the N-PCL provides that "a Type B or C
3 not-for-profit corporation formed prior to July 1, 2014,
4 shall be deemed a charitable corporation for all purposes
5 under this chapter." That's from N-PCL Section 201(c).

6 It is undisputed that the NRA was a Type B
7 not-for-profit in New York since at least 1973 at its own
8 election. So, the answer under the N-PCL is clear. It is
9 in fact a charitable not-for-profit corporation under the
10 N-PCL. The attorney general's historical analysis of the
11 NRA's filings since 1973 -- that's captured in part at
12 NYSCEF 2834 -- supports the conclusion that this was a
13 conscious choice of the NRA not to opt for designation as a
14 social club or other type of entity not deemed to be
15 charitable in nature. And I'm not relying on individual
16 intent here, whether they intended one way or another. It's
17 what they did. They made the choice to, to deem themselves
18 a Type B. The NRA's attempt to minimize the effect of that
19 choice made fifty years ago and not changed since then is
20 unpersuasive.

21 Second, the EPTL broadly defines the phrase
22 "charitable beneficiary" to include "the beneficiary of a
23 disposition for a religious, charitable, educational or
24 benevolent purpose." It is one of several ways in which
25 this statute and others sometimes defines the word

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W. LaPierre- by Defendant - Direct/Mr. Correll

1 "charitable" very broadly to include not only the word
2 charitable, but other things and in this one it's quite a
3 broad list. The NRA makes -- and that quote is from EPTL
4 Section 8-1.1(c)(ii).

5 The NRA makes creative arguments going back to its
6 founding argument in 1871 suggesting its original formation
7 as a social club, but the attorney general has the far
8 better argument that the EPTL incorporates the current
9 corporate law definition of the NRA as a charitable entity.

10 The EPTL defines a trustee, for example, to include
11 any nonprofit corporation organized under the laws of this
12 state for charitable purposes. That's from Section
13 8-1.4(a)(2). I see nothing in the EPTL language or history
14 to suggest that for each charitable not-for-profit
15 corporation the law requires us to go back to the original
16 founding documents, whether that be 1871 or whenever it
17 might be for each corporation, rather than the much more
18 obvious source which is the currently binding corporate law
19 which the entity itself chose to be organized.

20 I find support for that in the text of the EPTL
21 itself. There are numerous cross-references in the EPTL
22 statute to the N-PCL statute. Among others, 8-1.1(e) which
23 says "this paragraph shall not restrict in any manner the
24 ability to release or modify restrictions relating to
25 institutional funds under Section 555 of the not-for-profit

BP

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W. LaPierre- by Defendant - Direct/Mr. Correll

1 corporation law. Subparagraph (g) of the same section says
2 that "the provisions of this paragraph shall not apply to
3 any corporation which is subject to Sections 509 through 511
4 of the not-for-profit corporation law." There are similar
5 kinds of cross references in Subsection (j) of that same
6 section.

7 Also, EPTL 8-1.7(2)(b) says that "this section
8 shall not restrict in any manner the appropriation for
9 expenditure or accumulation of the endowment funds as set
10 forth in Section 553 of the not-for-profit corporation law."

11 So, I cite these as examples that the legislature
12 clearly knew how to distinguish obligations under the N-PCL
13 when that was their intention.

14 As to the NRA's related argument that the EPTL
15 effectively adopts the Internal Revenue Code definitions of
16 501(c)(3) corporations, I would point out that the
17 legislature also knew how to incorporate federal tax law
18 definitions when it was their intention to do so in EPTL
19 itself. Section 8-1.8(a) says, for example, "for purposes
20 of this section, a trust means a private foundation as
21 defined in Section 509 of the United States Internal Revenue
22 Code of 1986." So, that's a specific definition of trust
23 for a specific section of the EPTL, and they specifically
24 called that an Internal Revenue Code section. They did not
25 do so in 8-1.4 which is the relevant provision here.

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1 Instead, they opted for incorporation -- they opted
2 to incorporate the state corporate law statute in 8-1.4
3 which for these purposes is the N-PCL under which the NRA
4 plainly is deemed to be a charitable not-for-profit
5 corporation, full stop.

6 (Continued on next page)

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Proceedings

1 THE COURT: In sum, the NRA's argument that it can
2 only be considered a trustee with respect to that portion of
3 its operations in which it holds or administered NRA
4 foundation assets is not supported by the text of the EPTL
5 statute is not supported by any case law. Instead, the
6 definition looks to New York Corporate Law under which the
7 NRA definitively is a charitable corporation.

8 So that concludes my analysis of that. I do
9 appreciate the exceptionally well-written and thoughtful
10 letters. I might appreciate if there were fewer of them,
11 but in seriousness, the scholarship and the thought behind
12 them all was I think very, very good.

13 So I'm sure there are still some other rulings that
14 you're waiting on, but I wanted to get those out while the
15 jury was on a break. I will now give you your biological
16 break. So I ask you to come back as quickly as you can so
17 we can get the jury back.

18 (Whereupon, at this time there was a recess taken.)

19 (Witness resumed the witness stand.)

20 THE COURT: Just to be clear, all other aspects of
21 the motions for directed verdict that was not specifically
22 addressed in what I just said are preserved and deferred
23 until after trial.

24 THE COURT OFFICER: All rise. Jury entering.

25 (Whereupon, at this time the jury entered the

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 courtroom.)

2 THE COURT: Okay. Have a seat, please.

3 Okay. Mr. Correll, you may continue.

4 CONTINUED DIRECT EXAMINATION

5 BY MR. CORRELL:

6 Q Mr. LaPierre, did there come a time in the 1990's when
7 the IRS demanded a confidential list of members from the NRA?

8 A Yes.

9 Q And what can you tell us about that?

10 A Well, about the mid-1990's there was a -- the most --
11 I'm not a accountant. I'm not a CPA, but from what I
12 understand, it was the most intensive audit the IRS does on an
13 organization where they came into our building. They -- I
14 believe they put 12 agents in our building for a period of four
15 years going over everything for a number of years, and that's
16 what happened. And was the -- was it necessary for the NRA to
17 budget funds to defend against this audit?

18 MR. CONLEY: Objection. Relevance.

19 MR. CORRELL: Your Honor, the AG has attacked the
20 spending of money to respond to government attacks on the
21 NRA. This was a government attack on the NRA politically
22 motivated to cause the NRA to spend money. It's part of the
23 playbook for the Government agencies. It's documented, and
24 it's part of their history.

25 It informs his business judgment in making

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 decisions to spend money defending this particular
2 Government attack.

3 THE COURT: Overruled.

4 MR. CORRELL: Thank you, your Honor.

5 Q Was there a budget item for spending in that case?

6 A Yes, there was. It was a large budget item. I believe
7 it was well over \$1 million.

8 Q And did you come to learn of the circumstances under
9 which the audit was ordered?

10 A Yeah.

11 MR. CONLEY: Objection.

12 THE COURT: You can talk about it in principle, but
13 we are not going to have a trial within a trial about
14 whatever was going on back then. That's 30 years ago. So I
15 will sustain the objection that I saw was bubbling up on the
16 left side here.

17 MR. CORRELL: Thank you, your Honor. I will try to
18 do it a different way and more quickly.

19 Q Do you remember making a statement, "I think there has
20 been a tendency to politicize a lot of the federal agencies in
21 the Clinton administration."

22 Do you remember ever making that statement?

23 MR. CONLEY: Objection.

24 THE COURT: Sustained. It's a --

25 Q Let me ask you this.

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 THE COURT: Too far afield.

2 Q After the four-year ordeal, did you believe that --
3 well, what, if any, comfort did you derive from the NRA having
4 gone through that very close scrutiny by the IRS without the IRS
5 having found any substantial deficiencies?

6 MR. CONLEY: Objection.

7 MR. CORRELL: I'll do it another way, your Honor.

8 Q What was the result of the investigation? Was the NRA
9 required to pay the IRS anything?

10 A I believe that the -- Pricewaterhouse who was the
11 auditing firm told us that if NRA paid a -- some \$200,000 tax --

12 MR. CONLEY: Objection. Hearsay.

13 THE COURT: Overruled.

14 A -- on I believe it was some advertising item, they said
15 you'll probably be the only one ever to have paid this, that
16 will conclude the audit. So the NRA decided it was cheaper to
17 do that than to continue with the accounting and legal fees that
18 were falling on NRA with this audit.

19 Q And was that a business judgment that you made as the
20 executive vice-president?

21 A I did not make it. It was made by the -- I believe by
22 the fiscal directors and the Board of Directors and the finance
23 committee. I may have been consulted is. I just don't
24 remember.

25 Q Because you are not a tax lawyer; correct?

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 A Correct.

2 Q And you are not a tax accountant.

3 A Correct.

4 Q Do you recall debating then US Congressman Charles
5 Schumer again in 1997 at a national press club luncheon?

6 A Yes, I do.

7 Q Was that part of your sort of continuing Ali versus
8 Forman events that you would engage in with Mr. Schumer?

9 MR. CONLEY: Objection.

10 THE COURT: I will Ali fought Forman only once but
11 Frazer three times.

12 MR. CORRELL: Right. Ali Frazer. Thank you, your
13 Honor.

14 Q Was it kind of a match, rematch, rematch sort of
15 relationship you had with Mr. Schumer?

16 MR. CONLEY: Objection on relevance.

17 THE COURT: Overruled.

18 A Yes, it was part of my continuing role to be the
19 spokesperson, to be the voice of our membership that I -- as of
20 my job responsibilities.

21 Q Did you think you won those debates?

22 A I think you would -- I think I did a -- I -- I think I
23 represented the NRA and then the voice of our members.

24 I mean, I felt that was my job, and that's what I did.
25 I -- I'll leave it how people felt watching as to whether I won

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 or not. It probably depended on how they felt about the issue.

2 Q Let me turn your attention to other parts of the
3 mission of the NRA.

4 Does the NRA have a museum?

5 A Yes, we do.

6 Q And can you just tell us quickly what that museum is
7 and why the NRA has it?

8 A Yes. It's a wonderful museum. Virtually all the
9 firearms have been donated, and it basically tells the history
10 of firearms ownership in this country going back to a firearm
11 that came over on the Mayflower, and it goes all the way through
12 the various wars, the police firearms, the military firearms,
13 the firearms that were used in motion pictures, and just the
14 historical firearms in the history of the United States.

15 Q And how were those firearms acquired? Were they
16 purchased?

17 A Virtually all of them have been donated by people that
18 would like to have them displayed or by wills and estates that
19 would like them to be displayed.

20 Q One of the claims in this case is that you traveled
21 inappropriately to Budapest, Hungary.

22 Do you remember that question being raised?

23 A Yes, I do.

24 Q And is there a museum in Budapest, Hungary that also
25 collects firearms?

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 A Yes, there is a major museum -- firearms museum.

2 Q When you went to Budapest, was it your intention to
3 advance the interest of the NRA by arranging for an exchange of
4 exhibits between your museum and the other museum?

5 MR. CONLEY: Objection. Leading.

6 Q What, if any, purpose did you have in going to
7 Budapest?

8 A I met with the firearms and military museum there, and
9 we talked about an exchange of firearms that would be displayed.

10 Q And were you able to close that deal?

11 A They said they were interested. I brought back their
12 cards. I handed them to our museum people and told them that
13 they were interested in doing a display exchange.

14 Q Would you please direct your attention to the document
15 that appears behind Tab 76 of your first binder and tell me
16 whether you recognize that document.

17 A Yes, it is a -- it's a -- it's a promotional piece for
18 our magazine. I mean, for our museum.

19 Q Does that museum exist today?

20 A It does.

21 Q Has that museum's funding been cut?

22 A No.

23 MR. CORRELL: Your Honor, I move this into evidence.

24 THE COURT: I'll admit it. It seems to be marked

25 WLX 211.

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4122

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q Mr. LaPierre, let's turn our attention to the 2000's,
2 and thank you for your patience in the walk-through the eighties
3 and nineties.

4 There's been some talk in this case about the NRA
5 straying from its mission by getting involved with things like
6 the NASCAR or the NFL.

7 Can you tell the Court and the jury what your thinking
8 was about using your position as executive vice-president of the
9 NRA to try to cultivate relationships with let's start with
10 NASCAR?

11 A Yes. I mean, I -- as I said, I have always believed
12 that the NRA's strength is the fact it represents the mainstream
13 of this country, that it's the deepest part of the river, and
14 that -- that's been the strength of the organization.

15 I have also always believed that you can't just be a
16 political fighter. I mean, you've got to be culturally
17 relevant. And as part of showing that all of these institutions
18 have an impact on American culture, whether it's NASCAR, whether
19 it's the NFL, whether it's the NBA, whether it's country music,
20 whether it's celebrities, and they also participate in the
21 shooting sports, a lot of them do, and I felt that as part of
22 the showcasing -- part of the NRA mission is to showcase that
23 NRA is culturally relevant. We are part of the mainstream of
24 society, and here's examples of that.

25 So we hosted for years for the NFL alumni. We hosted a

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 sporting clay's tournament at the Super Bowl for them, and that
2 would be -- we actually used -- got to use the NRA -- the NFL
3 logo with the NFL alumni on it.

4 Q So were you -- you weren't going to the Super Bowl just
5 for fun; right?

6 A No. We were going to host the charity event that we
7 were running for them and also to participate in the other
8 activities that they had in terms of meeting donors and meeting
9 other people and make -- build relationships for the NRA.

10 Q Please turn your attention to the document that appears
11 behind Tab 77.

12 Do you recognize this document?

13 A Do.

14 Q Would you tell us what it is?

15 A It's the -- one of the programs for the NFL Super Bowl
16 events that went on during the Super Bowl for the NFL alumni.

17 MR. CORRELL: Your Honor, I move this into
18 admission.

19 MR. CONLEY: Object on relevance and hearsay.

20 THE COURT: Sustained. You can use this as
21 background, but I'm going to try to reserve the exhibits to
22 the events that are at issue in the case.

23 MR. CORRELL: Your Honor, an issue has been raised
24 as to the proprietary of Mr. LaPierre flying to particular
25 locations for particular events.

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 THE COURT: But not this one. In 2000.

2 MR. CORRELL: Your Honor, I'm not sure whether it's
3 generic. I think that there's a generic allegation that he
4 was using NRA funds to go places for personal reasons.

5 THE COURT: The jury is going to be instructed that
6 there is a relevant period of time for the claims and this
7 is before it.

8 MR. CORRELL: Fair enough.

9 Q There was a mention of NASCAR, and we -- I know that on
10 your -- in the Attorney General's case in chief, you were asked
11 a question about -- there was an issue raised about being in a
12 helicopter going to NASCAR, and I won't ask you to go over that
13 again. But can you tell us whether now as you sit here today
14 the NRA is continuing that relationship with NASCAR?

15 A As far as I know, we are. It would be through our
16 Office of Advancement. I know there was a continuing
17 relationship.

18 Q And is that --

19 A I'm not sure of the monetary level.

20 Q Is that something that you still believe is in the best
21 interests of the NRA to pursue?

22 A Yes, I do, on a number of levels.

23 One, a lot of the outdoor community, the shooting sport
24 community are involved in NASCAR.

25 An example that Bass Pro which is one of the major

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 outdoor stores in America. They sponsored not only drivers but
2 they sponsored numerous races. It was a chance to meet donors.
3 In fact, we met one of our largest donors at a NASCAR race at
4 random. He saw me and he wanted to talk, and that's how we
5 built the relationship. And we also were even featured on
6 national TV doing Gentlemen, Start Your Engines with the NRA,
7 and it just helped in terms -- they want to push NRA off to the
8 fringe and say NRA is a bunch of fringe people and you shouldn't
9 support them when it's really a mainstream organization of every
10 religion, every race, every income level, and that's what this
11 reflected again.

12 Q Focusing on the year 2000, what was the level of your
13 profile in 2000?

14 A It was starting to get really raised. Charlton Heston
15 was in the process of beginning to step down, and I was having
16 to take on a lot of that additional profile. I could never be
17 Charlton Heston, but I tried my best to take on what I could.

18 Q So those were some big shoes to fill; fair to say?

19 A Fair to say.

20 Q Did you ever appear on the cover of Washington Post
21 Magazine?

22 A I did.

23 Q What year was that?

24 A I'm not sure. Probably sometime in the early 2000's I
25 would say.

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q I direct your attention to the document that appears
2 behind Tab 78.

3 Do you recognize that document?

4 A I do.

5 Q And what is it?

6 A It's a cover of the Washington Post Magazine, and it --
7 it's a picture of me on the cover.

8 Q And the date is August 6, 2000.

9 Does that refresh your recollection?

10 A Yes, it does.

11 Q And the title of the article that appears is Eternal
12 Vigilance, Wayne LaPierre and the Revival of the National Rifle
13 Association by Michael Powell.

14 Do you see that?

15 A I do.

16 Q What was the revival that was being discussed? Had
17 there been a falling off of membership or revenue or anything
18 like that?

19 MR. CONLEY: Objection, your Honor. This is
20 hearsay. It's not admitted into evidence yet. He is being
21 asked to describe what the article --

22 MR. CORRELL: Move it into evidence, your Honor.

23 MR. CONLEY: We object on relevance and hearsay.

24 THE COURT: I'll admit it just for the fact there
25 was an article but not for the truth of any of the -- I

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 haven't read through the article, but I'm sure it has lots
2 of factual statements.

3 This is again just admitted to show that this
4 existed, and he is on the cover. So for that limited
5 purpose, it's admitted.

6 MR. CORRELL: Thank you, your Honor. May I publish
7 it to the jury?

8 THE COURT: You may. Focusing on, yes, the
9 picture.

10 Q Thank you. And could you tell the Court and Jury what
11 personal knowledge you have as to the status of the National
12 Rifle Association in the year 2000?

13 A Yes. The Board of Directors had fired the two former
14 executive vice-presidents, and the NRA had lost hundreds of
15 thousands of members.

16 The NRA was also running at a substantial deficit, and
17 one of the things that I worked very hard at and succeeded when
18 I came in was turning that around.

19 Q And how did you do that?

20 A I did it by -- in a lot of different -- well, in many
21 different ways.

22 I mean, I worked really hard. I got people that really
23 knew how to fundraise and how to raise members. We worked very
24 hard in terms of advertising and getting the right advertising
25 out there in terms of mainstreaming the NRA.

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 We -- I mean, all kinds of -- I got out there speaking
2 to our members all over the country, being the voice on TV or
3 being out walking everything from outdoor shows to you name it,
4 the invisible, but just -- just really making NRA what -- making
5 -- thanking people and making them feel part of this association
6 and rebuilding the core strength of the organization and the
7 mission, whether it was programs or whether it was advocacy.
8 You name it.

9 Q Is this when The Friends Program started around this
10 this?

11 A I did. I started the Friends of the NRA program which
12 was -- which was -- the idea was to showcase our strength in
13 individual communities.

14 I mean, I have always felt -- I said the strength of
15 the organization is people in these communities all over the
16 country that in their heart love the programs, whether it's
17 safety, training, education, hunter safety, but they also deeply
18 believe they have a right to own a firearm to protect
19 themselves.

20 I mean, most of the times, it's not even used but just
21 having one to be able to protect themselves. And we started
22 banquets all over the country to raise money for the NRA
23 Foundation which would go toward all of these charitable
24 activities, hunter safety, youth safety, Eddie Eagle. What do
25 you do if you see a gun? Stop. Don't touch it. Leave the

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 area. Call an adult. Our 135,000 safety training instructors.
2 But it went into all these type programs, and we ended up with
3 about I think 1,300 dinners in communities all over the country.
4 And you know, it's pretty hard to say this organization is on
5 the fringe and doesn't represent when you see a community in
6 Wichita, Kansas or Portland, Maine where you have 500 people in
7 a room that represent that city. I mean --

8 Q Was it part of your job to go out and attend these
9 dinners?

10 A I attended as many as I could fit into my schedule.

11 Q And how many was that in a typical year?

12 A I don't know. At some point, it was probably one a
13 week. At other times, I did a couple of week. Sometimes I
14 probably didn't do anything. My schedule varied so much. I
15 would do all kind of speeches, political, friends dinners.

16 Q And how did you get to all these places back then?

17 A Back then I was flying commercial.

18 Q And did there come a time when your threat profile,
19 your risk profile changed and you felt you were facing different
20 circumstances?

21 MR. CONLEY: Objection. Leading.

22 THE COURT: Sustained.

23 Q I'll come back to that in a moment. Let's go back to
24 the year 2000.

25 Were you personally involved in any fundraising meeting

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 with donors, stuff like that?

2 A Yes, I always was involved in that.

3 Q And back then was there a time where you met with
4 people from the Beretta family in an effort to raise funds for
5 the NRA?

6 A Yes, I did.

7 Q Could you just tell us quickly about that, if you
8 would?

9 A Well at that time Ugo Beretta who was the patriarch of
10 the family. I mean, he was -- that's a corporation that goes
11 back to 1538, and I -- he would come to the United States, and I
12 met with him when he was in the United States and he did a
13 substantial donation to the organization.

14 Q Would you turn your attention to the document that
15 appears behind Tab 79, please.

16 Do you recognize that document?

17 A Yes, I do.

18 Q What is it?

19 A I used to go out and speak at colleges all over the
20 country and sometimes do debates an college campuses. Sometimes
21 it was just an individual speech. There was a speech I did at
22 Mount Holyoke College.

23 Q And was this -- was any kind of a donation made in
24 connection with that appearance?

25 A No.

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q I'm just looking at the -- there is a mention of
2 Beretta USA Benelli pledges \$1 million to endowment.

3 Do you see that?

4 MR. CONLEY: This is hearsay. The exhibit is not
5 in evidence.

6 MR. CORRELL: I'm just trying to refresh his
7 recollection, your Honor?

8 A I'm sorry. I was on 80. Are you on 79? I'm sorry.
9 You are on 79. I'm sorry. Yes. It's a picture of Mr. Ugo
10 Benelli presenting a million dollars endowment check to the
11 National Rifle Association.

12 Q And was that part of your outreach to Italy and the
13 Beretta family?

14 A Yes, it was. Although at this point the -- I met with
15 him in the United States when he was over here.

16 I have since done interviews with him in Italy. He
17 wanted me -- everyone else had been over there. I hadn't been
18 over there, and they wanted me to come over there, and I worked
19 with Ackerman McQueen, and I did a week-long session with the
20 Berettas, and my wife did interviews with Monique Beretta.

21 Q And is that something that you believed to be in the
22 best interest of the NRA?

23 A Yes.

24 Q Why?

25 A Because the Berettas were big supporters of the

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1 organization. They continue to be big supporters of the
2 organization. It also got them on record with really historic
3 interviews in terms of Ugo Beretta, the founding of the company,
4 the history of the company. It put his wife with a historical
5 document talking about how she got involved and her involvement
6 with the company and all that. So it -- I mean, they were very
7 happy about it. They were happy we did it, and we were happy
8 about it too. I mean, it showed NRA's outreach with the
9 industry.

10 Q Back to Tab 80. Could you just -- do you recognize
11 this document?

12 A I do.

13 Q What is it?

14 A It is a -- it's a sweepstakes we did to raise money for
15 the NRA, and it was based on our relationship with NASCAR.

16 Q I'm sorry. I think I asked you to look at 80, the
17 document.

18 A 80. I'm sorry. Yes, that is the one I was looking at
19 before. I'm sorry. That's -- I used to do a lot of college
20 speeches. I -- I think it's harder to do them now because there
21 is so much -- the atmosphere has changed so much, but I used to
22 do a lot, and this was when I was invited to speak at Mount
23 Holyoke College.

24 Q What year was that?

25 A 2001.

KM

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 THE COURT: They don't have a NASCAR event there;
2 do they?

3 THE WITNESS: No your Honor.

4 THE COURT: I didn't think so.

5 Q So speaking of cars, would you turn your attention to
6 the document that appears behind Tab 81.

7 Do you recognize that document?

8 A I do.

9 Q And what is it?

10 A It is a sweepstakes to attend six Winston cup race
11 weekends.

12 People would enter the sweepstakes. They could enter
13 without making a donation; although, most of them donated when
14 they would enter. So it was a -- it was a money raiser for the
15 National Rifle Association showcasing our relationship with
16 NASCAR.

17 Q And whose idea was that?

18 A It may have been mine. It may have been one of the
19 folks that work with us in the fundraising operation. I'm not
20 sure.

21 Q Did it work?

22 A It did. It did.

23 MR. CORRELL: Your Honor, I move its admission into
24 evidence of the -- of this document. Exhibit Number 243.

25 MR. CONLEY: Objection. Relevance. Hearsay.

KM

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 THE COURT: I'll admit the cover.

2 MR. CORRELL: The cover is fine.

3 THE COURT: Only. What's the exhibit number; 243?

4 MR. CORRELL: May I also just have the third page?

5 It evidenced the sweepstakes portion of this.

6 THE COURT: Yeah. Look, this is a --

7 MR. CORRELL: May 2002.

8 THE COURT: 2002.

9 MR. CORRELL: I'll settle for the cover, your
10 Honor. Thank you.

11 THE COURT: Quit while you're ahead.

12 MR. FARBER: Can we get an exhibit number for the
13 last one that came into evidence?

14 Q Thank you. Now in 2000, did you continue to have
15 debates within 2000's? Did you continue to have debates with
16 Mr. Schumer, then Senator Schumer?

17 A I did.

18 Q Right. And do you recall when in or around October of
19 2002?

20 MR. CONLEY: Objection. Relevance, your Honor.

21 THE COURT: Overruled.

22 A I did many, many, many, many debates with Senator
23 Schumer. I don't recall off my head 2002, but we did a lot.

24 Q Mr. LaPierre, Wayne, would you please direct your
25 attention to the document behind Tab 82.

KM

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1 Tell me if -- tell me what that is.

2 A That is a debate again with Senator Schumer on -- on
3 Meet the Press that we did.

4 Q When did that occur?

5 A October 20, 2002.

6 MR. CORRELL: Your Honor, move the admission of
7 this document into evidence.

8 THE COURT: It's admitted.

9 MR. CONLEY: Object on relevance and hearsay.

10 THE COURT: Overruled. It's admitted. What's the
11 exhibit number; WLX 244?

12 Q At this point in your life, were you seeing more
13 attention being drawn to you or let me put it another way.

14 At this point in your life, what was the threat level
15 like? Were you starting to get attention?

16 A The threat level was starting to get higher. I mean, I
17 think the first time we understood there was a threat level was
18 back during the Unabomber. The FBI came and briefed us that we
19 were targets, and they advised me to register in hotels under a
20 different name.

21 MR. CONLEY: Objection, your Honor. Hearsay.

22 THE COURT: It's not hearsay. It's -- the fact it
23 was said is what it's being offered for, not necessarily
24 that it was true.

25 (Continued on the following page.)

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 THE COURT: Right, that's the purpose of the
2 testimony.

3 MR. CORRELL: Just the notice of an increased
4 threat.

5 THE COURT: That he received those communications.

6 MR. CORRELL: Yes.

7 THE COURT: So, overruled.

8 A If I was leaving, I'd try to go out a back door and
9 things like that; but in 2002 the threat levels were really
10 starting to go up.

11 Q Did that have any effect on your decision making with
12 respect on how you traveled?

13 A Yes, it did. I mean, it started -- I still travelled a
14 lot commercial; but if there was a threat level on a particular
15 period, the security people would advise me to travel private.

16 Q And that's a decision that you believed you had
17 authority to make?

18 A Yes, based on their advice.

19 Q Did there come a time when you were featured in
20 Doonesbury?

21 A Yes.

22 Q And can you -- what can you tell us about that?

23 A All I can tell you is Gary Trudeau did a cartoon and
24 poking fun at us, and I actually thought it was pretty funny.

25 Q I'll direct your attention to the document that appears

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 behind Tab 83.

2 Would you tell me what that is?

3 A That is the Doonesbury cartoon.

4 MR. CORRELL: Your Honor, move its admission in
5 evidence to show the level of national attention and
6 notoriety or celebrity or exposure or whatever you want to
7 call it Mr. LaPierre was being subjected to at this point in
8 time.

9 MR. CONLEY: Objection. Relevance, your Honor.

10 THE COURT: Overruled.

11 MR. CORRELL: Thank you, your Honor. May we
12 publish that?

13 THE COURT: What's the exhibit number?

14 THE TECHNICIAN: WLX 245.

15 MR. CORRELL: 245.

16 (Whereupon, at this time Exhibit WLX 245 was
17 admitted and received into evidence.)

18 (Displayed)

19 MR. CORRELL: Give the people a moment, see if they
20 think it is funny.

21 Q While we do that, I'm going to ask you to tell us a
22 little bit more about NRA programs. Was there something called
23 NRA Sports?

24 A Yes.

25 Q What was that?

BP

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 A That was a labelling of a division of the NRA where we
2 did all our shooting programs, our training programs, our hunter
3 safety programs, our hunting education programs. We decided to
4 brand it NRA Sports.

5 Q And did you marry that up with your relationship with
6 the NFL alumni?

7 A We did. We branded that up with the relationship of
8 the NFL alumni NRA Sports brand.

9 Q Would you direct your attention to the document that
10 appears behind Tab 84.

11 Do you recognize this document?

12 A I do.

13 Q What is it?

14 A It is, again, in conjunction with the Superbowl where
15 we ran the Sporting Clays Tournament for the NFL. It is the NFL
16 alumni with the NRA Sports brand during that, during that event.

17 Q And did this help you with your celebrity outreach
18 program?

19 A Yes, it definitely did. I mean, we became very close
20 to a lot of the NFL alumni. We formed relationships with them.
21 We were on stage during their dinner, which has since been
22 changed to NFL Honors when the NFL took it over, which they run
23 during the Superbowl. And we -- we ran some on the NRA ads in
24 programs with Karl Malone and with Steve Largent, and it was --
25 again, it was an integrated marketing of our brand with other

BP

4139

W. LaPierre - by Defendant - Direct/Mr. Correll

1 brands and showcasing the mainstream of the shooting sports that
2 we were a big part of the mainstream of American culture which
3 would make people more willing to join, more willing to donate
4 and showcase the shooting sports and what the NRA was about.

5 Q Who's Karl Malone?

6 A Karl Malone -- well, he was a second leading scorer in
7 NBA history. I think LeBron James is now past him, so I think
8 he's the third leading scorer in NFL history -- in NBA history.
9 I think I said NFL. He was a proud NRA member. I formed a
10 relationship with him. I asked him if he would do an on the NRA
11 ad for us and he said he would.

12 He ended up running and serving on our board of
13 directors for years. And we ran the ad with him in virtually
14 all college and pro preseason football magazines to showcase the
15 NRA.

16 Q And was that a successful campaign for the NRA?

17 A Extremely successful.

18 Q Did you view that as being in the interest of the NRA
19 to maintain that relationship?

20 A Absolutely. There were one or two newscasters who were
21 inappropriately trying to characterize the NRA as racist even,
22 and which is the last thing the NRA ever was going back to its
23 founding, and I wanted to showcase diversity, what we were
24 about, and that was part of our core DNA.

25 MR. CORRELL: So, your Honor, I'd like to move into

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 evidence or offer into evidence the document that appears
2 behind 84 just to show the part of the program, admission of
3 Sporting Clays with the NFL alumni. Just the cover page is
4 fine.

5 THE COURT: 2003?

6 MR. CORRELL: Yes, we're accelerating now. We're
7 approaching --

8 THE COURT: Not fast enough. Sustained.

9 Q Did you do anything with golf, the sport of golf? Did
10 the NRA do anything with golf?

11 A I don't think we did actually.

12 Q Would you direct your attention to the document that
13 appears behind Tab 85.

14 Do you see that document?

15 A I do.

16 Q What is it?

17 A The NFL Alumni Superbowl of Golf. They would have in
18 addition to their shooting event, they would have a golf
19 tournament; and NRA as part of that event had a team in that
20 golf tournament.

21 Q And are you a golfer?

22 A Not very good, but, yes, I've golfed. I don't play
23 very much.

24 Q And there's an allegation in this case that you belong
25 to a golf club. Do you remember hearing that?

BP

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 A That's right.

2 Q Was there any business purpose for you belonging to
3 that golf club?

4 A Yes, I could entertain donors. I could entertain folks
5 at that club.

6 Q Did there come a time when you were told that the laws
7 had changed and that the organization could no longer pay for
8 golf clubs?

9 A Yes.

10 MR. CONLEY: Objection, hearsay.

11 THE COURT: Well, it was leading, but --

12 MS. ROGERS: Object to the extent it calls for a
13 legal advice.

14 THE COURT: Well --

15 MR. CORRELL: I can do it another way, your Honor,
16 if you prefer.

17 THE COURT: Sure.

18 Q Do you still belong to the golf club?

19 A Yes, I do.

20 Q And do you pay your own dues?

21 A Yes.

22 Q And before that, did you ever charge any dues to the
23 NRA that you believed that you weren't entitled to charge to the
24 NRA?

25 A No. But when our new treasurer came in, he told me the

BP

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 law changed and it was not appropriate to have NRA pay any --

2 MR. CONLEY: Objection, hearsay, your Honor.

3 THE COURT: There's no question pending, so...

4 Q Did there come a time when the NRA treasurer spoke to
5 you about the issue of golf club memberships?

6 A Yes.

7 MR. CONLEY: Objection, leading.

8 THE COURT: Overruled on that. So, you're just
9 pursuing this as to what his understanding was?

10 MR. CORRELL: Correct.

11 THE COURT: Whether it is true or not is not the
12 issue. You're just saying from his personal -- this is -- .

13 MR. CORRELL: I can do it even more --

14 THE COURT: Okay, I think given the relevance
15 standard, I'll let you get his state of mind based on what
16 experts or advisors told him.

17 Q Did you receive information from an officer of the NRA
18 relating to the issue of whether it was appropriate for you to
19 charge dues for your golf club to the NRA?

20 MR. CONLEY: Objection, your Honor.

21 THE COURT: Overruled.

22 A Yes.

23 Q And what was the information you received?

24 A He said that the law had changed and it was no longer
25 appropriate to charge social club dues to the organization; and

BP

4143

W. LaPierre - by Defendant - Direct/Mr. Correll

1 if you wanted to continue that, you needed to pay -- any of
2 that, you needed to pay it on your own.

3 Q And before that, had the fact that the NRA was allowing
4 or was providing social club memberships to certain executives
5 disclosed in the 990; do you know?

6 A I'm not sure, but I think it was well-known.

7 Q Thank you. So, let's talk about country music and that
8 outreach program. The -- if you could direct your attention to
9 the document behind Tab 86.

10 Could you tell us what that is?

11 A That is another NFL Alumni Superbowl Sporting Clay
12 Event or alumni weekend where we ran the Sporting Clay
13 Tournament for the NFL alumni. We attended the events the held
14 NFL alumni, and Hank Williams, Jr., was a performer at the
15 event.

16 Q And was that part of an effort to combine your contacts
17 in the country music industry with your contacts in the NFL to
18 advance the interest of the NRA and its mission?

19 MR. CONLEY: Objection, leading.

20 Q Was the purpose of the NRA supporting this effort?

21 A Well, again, music has a tremendous influence on
22 American culture. I mean, all you have to do is look at Taylor
23 Swift right now as to what she's doing with American culture,
24 and there was a tremendous amount of people in the country music
25 community that enjoyed the shooting sports that support the 2nd

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 Amendment and we thought that it would be in NRA's interest to
2 develop a relationship with all of them.

3 We actually developed a brand called NRA Country where
4 we started working with artists, and they started to get
5 involved with us. They started to talk about many of them first
6 learned to shoot through an NRA training program, and it was
7 just a natural combination of brands that I think furthered the
8 NRA as part of the mainstream of American culture which
9 benefitted the NRA in terms of people willing to join, people
10 willing to donate and people willing to feel proud of their
11 membership.

12 Q Please direct your attention to Tab 86, the document
13 behind it and the -- can you flip through.

14 You had mentioned Karl Malone. Do you see a photograph
15 of Karl Malone in there?

16 A I do.

17 Q Can you tell us is this the -- the part of the campaign
18 you had talked about earlier that you had arranged, that you
19 managed to get Karl Malone to do for the NRA?

20 A Yes. I mean, it's part of Karl Malone speaking out
21 about the NRA's safety, training and education and he's worked
22 with groups like 4H and Boy Scouts and American Legion and how
23 he was proud of his involvement with us. Growing up in
24 Louisiana, and Karl loved to hunt and he was proud of his
25 membership and proud of the organization.

BP

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 MR. CORRELL: Your Honor, I'd like to move this
2 document into evidence.

3 MR. CONLEY: Objection, relevance, hearsay.

4 THE COURT: Sustained.

5 MR. CORRELL: Your Honor, this is highly relevant.

6 THE COURT: It is a 2007 promotion?

7 MR. CORRELL: Yes. Your Honor, this was part of a
8 continuing effort by Mr. LaPierre --

9 THE COURT: Continuing into the relevant period?

10 MR. CORRELL: Yes.

11 THE COURT: So then do something from the relevant
12 period.

13 MR. CORRELL: Your Honor, I'd like to show
14 continuity. There are allegations in the case that
15 Mr. LaPierre was utilizing NRA funds for improper purposes,
16 like, traveling to the Superbowls and other sporting events.

17 This shows that this is an integral part of the
18 NRA's effort to reach out to all communities in order to
19 advance its mission. This is critically important evidence,
20 and it is not prejudicial to the Government.

21 THE COURT: I don't think it is prejudicial either,
22 but it's just -- there's a limit to how many documents we
23 can sort of include in the record. You could have one of
24 these for every year. So, you're saying this is just an
25 exemplar?

BP

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 MR. CORRELL: An exemplar, yes, your Honor.

2 THE COURT: In 2007?

3 MR. CORRELL: Yes, your Honor.

4 THE COURT: You can have the cover page again.

5 MR. CORRELL: May I have the photo as well?

6 THE COURT: Sure.

7 MR. CORRELL: Thank you, your Honor. May we
8 publish that?

9 THE COURT: What's the exhibit number?

10 THE TECHNICIAN: WLX 248.

11 MR. CORRELL: 248, your Honor.

12 (Displayed)

13 Q So, that's Hank Williams referred to on the front
14 cover?

15 A Yes.

16 Q Can we flip over to the photograph of Karl Malone. How
17 long did that ad campaign continue?

18 A I think that ad campaign with Karl probably continued
19 for about -- about ten years.

20 Q And did it become part of the centerpiece of your
21 outreach of -- in support of your mission?

22 A Yes, it did. I mean, he was very proud of the NRA. I
23 mean, he had one of his agents wasn't that crazy about him doing
24 it; but I called Karl and he's like, "Look, I want to do it.
25 I'm proud of this. This is part of what I'm about."

BP

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q And did he actually show up for board meetings?

2 A He did not show up for board meetings.

3 Q Did he show up for events like Sporting Clays or any of
4 the other things you guys did?

5 A He used to do that. He used to show up at hunting
6 shows all the time, things like that.

7 He, he would do -- I remember when Gilbert Arenas who's
8 with the Washington Wizards did something really stupid with a
9 firearm. He took a firearm into the locker room and that was a
10 really negative bad thing, and I called Karl and said, Hey,
11 look, would you go on ESPN and talk about this is not what a
12 good, responsible American firearms owner does and please talk
13 about that because it is being portrayed; and he said,
14 Sure, I'll do it."

15 Q And did he do it?

16 A He did.

17 THE COURT: Just, the jury, you've heard me
18 reference relevant periods a couple of times. I don't want
19 that shrouded as a mystery. You'll hear about it in the
20 instructions. For some of the claims, it runs from early
21 2014 through roughly 2022; and for other claims, it starts
22 in early 2017 all the way through.

23 Now, you will also hear me say that I've allowed
24 evidence in from both before that period and after; and I'll
25 explain to you that you can consider it if you think it is

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 relevant to things that occurred during the period, but I
2 didn't want you to hear relevant period and start wondering
3 what I meant.

4 I'll give you a lot more information about that at
5 a later time, but that's roughly some claims 2014, some
6 claims 2017.

7 All right, go ahead.

8 Q Mr. LaPierre, would you please direct your attention to
9 a document that appears behind Tab 88.

10 Do you recognize this document?

11 A Yes, I do.

12 Q What is it?

13 A It's a letter from GQ magazine saying that I happened
14 to be included in their article.

15 Q And what article was that?

16 A It was an article on the -- well, I'm reading their
17 wording, "The 50 Most Powerful People in DC," is what it said.

18 Q What's the date on this document?

19 MR. CONLEY: Objection, your Honor. This is
20 hearsay. It is not in evidence.

21 THE COURT: He can say what the date is.

22 A The date is --

23 THE COURT: What tab do you want him in?

24 MR. CORRELL: 88.

25 THE COURT: He's not in -- yeah, it is the cover

BP

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 letter.

2 A Oh, August 14, 2007. Thank you.

3 Q And was this accompanied by a copy of the magazine?

4 A Yes, it was.

5 Q And who appeared on the cover of the magazine?

6 A President Obama.

7 Q Were you listed as among the 50 most powerful people in

8 DC?

9 A Yes, I was.

10 Q This is 2007. How was your risk profile in 2007?

11 A It was continuing to grow. I mean, it was continuing
12 to get the higher, I mean --

13 MR. CONLEY: Objection, foundation.

14 THE COURT: It is not quite a fact question when
15 you phrase it that way.

16 MR. CORRELL: I can rephrase, your Honor.

17 Q In 2007, what was your understanding, if any, as to the
18 circumstances that you were facing in terms of personal risk
19 because of the work you were doing as the executive vice
20 president of the NRA?

21 A The personal risk part -- and I was thankful for the
22 work in the organization that had security in the building and
23 cared about security; but the higher profile I became, I mean,
24 people have strong feelings about this issue and I think I had a
25 well-founded belief that the higher profile I became, the

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 more -- the higher the risk profile became because there was
2 antagonism growing around this issue much more so than 15 years
3 before that.

4 Q Fair to say that you had become somewhat of a
5 lightening rod?

6 MR. CONLEY: Objection, leading.

7 THE COURT: Overruled.

8 A Yes.

9 Q Fair to say you've become somewhat of a target for
10 criticism?

11 A Yes.

12 Q Please direct your attention to the document that
13 appears behind Tab 89.

14 Do you recognize that document?

15 A I do.

16 Q What is it?

17 A It is a picture with President -- Mrs. Bush and
18 President Bush.

19 Q Did you cultivate a relationship with Barbara Bush and
20 President Bush?

21 A I did.

22 Q Why did you do that?

23 A Because it was, it was -- it was good for the National
24 Rifle Association who I worked with to have a relationship with
25 the President of the United States.

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 MR. CORRELL: Your Honor, I would move into
2 evidence the document, the photograph that appears behind
3 the tab.

4 MR. CONLEY: Objection, relevance, your Honor.

5 THE COURT: Sustained.

6 MR. CORRELL: Your Honor, it is evidence --

7 THE COURT: Sustained.

8 Q Did you have a relationship with anyone else in the
9 Bush family?

10 A Yes, I did. The one I was actually closest to was Jeb
11 Bush.

12 Q And what was the nature of your relationship with Jeb
13 Bush?

14 A I saw him a lot more. He was very down-to-earth and
15 very nice, and I just developed a relationship with him and it
16 continued when he was governor.

17 Q Did you ever go out to the Bush family ranch?

18 A Yes, I did.

19 Q And where is that?

20 A It was in Texas.

21 Q Crawford, Texas?

22 A Yes.

23 Q How many times did you go out?

24 A I think I was there once.

25 Q Did you ever cultivate a relationship with Chuck

BP

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 Norris?

2 A Yes.

3 Q And just can you tell us quickly why and how?

4 A Chuck Norris used to come to some of our shooting
5 events. He had a charity called "Kick Drugs out of America,"
6 where he was trying to discourage drug usage and NRA had an
7 involvement in terms of that charity, also.

8 Q And what was the nature of the involvement?

9 A I think we attended it. We may have given a
10 contribution to the charity. Chuck Norris used to come to some
11 of our events.

12 Q Was the building of that relationship something that
13 you saw as in the best interest of the NRA?

14 A Yes. Again, I mean, he was a very identified celebrity
15 in an American culture; and as I said many times before, I mean,
16 celebrities have a big influence on American culture.

17 It would -- it would not only benefit the organization
18 with a relationship, but benefit what we stood for, the
19 shooting sports, the 2nd Amendment, the freedom to own and all
20 of that.

21 Q Did you pursue that relationship because you saw that
22 it was in your own personal interest to have a relationship with
23 Chuck Norris?

24 A No. It was in the NRA's interest.

25 Q Did you ever go out drinking with Chuck Norris?

BP

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 A No, I didn't.

2 Q Because you don't drink, right?

3 A I don't drink.

4 Q Please direct your attention to the document that
5 appears behind Tab 93.

6 Do you see that document?

7 A Yes, I do.

8 Q What is it?

9 A It's -- it is the NRA 500. It is a sponsorship of
10 NASCAR race that the NRA was involved with.

11 Q Is that one of the -- the date on this is 2013. Do you
12 see that?

13 A I do.

14 Q Is this one of the events that you would helicopter to
15 in order to get around the backed up traffic?

16 A Yes, it was.

17 Q Why did you do that? Why didn't you just go by car?

18 A Because cars were backed up for miles, and it would
19 take you hours to get out there at that point. I mean, NASCAR,
20 this was at the height of the NASCAR popularity; and it was just
21 the most convenient way to get there. I also at times we drove,
22 too. We didn't helicopter every time.

23 Q When you helicoptered, did you view that as an
24 appropriate expense given the time constraints and the need to
25 get in and get out safely?

BP

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 MR. CONLEY: Objection, leading.

2 THE COURT: I'll overrule this one. Go ahead.

3 A Yes, many people did get in that way. This was the one
4 where we also had Karl Malone as the -- I don't know the master
5 of ceremonies, but he dropped the green flag and did "Gentlemen
6 Start Your Engines."

7 MR. CORRELL: Your Honor, move admission of this
8 document into evidence.

9 MR. CONLEY: Objection, relevance.

10 MR. CORRELL: It is evidence of the NRA's
11 relationship with the NRA -- sorry -- with the NASCAR and
12 with the benefit to the NRA that came from Wayne's efforts
13 to get Karl Malone involved and working with the NRA on its
14 mission.

15 THE COURT: Overruled. What exhibit number?

16 THE TECHNICIAN: WLX 255.

17 THE COURT: WLX 255.

18 (Whereupon, at this time WLX 255 was admitted and
19 received into evidence.)

20 MR. CORRELL: May I publish it to the jury, your
21 Honor?

22 THE COURT: Sure.

23 (Displayed)

24 MR. CORRELL: Can we go to the first page and then
25 scroll slowly through to the pages where Karl Malone

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 appears. Can you stop there.

2 Q Who's the person in the picture with Karl Malone? You
3 can look up at the screen.

4 Do you recognize that person?

5 A I don't based on the -- I don't.

6 MR. CORRELL: Okay, could you please scroll on.

7 (Scrolling)

8 Q Just stop there for a moment. Does this refresh your
9 recollection as to what you were doing at that race or at that
10 event? Is this one you attended?

11 A Yes, I attended. They would -- we would come out on
12 stage before the crowd. We would present a check to the charity
13 that the organization would do. We would invite many, many of
14 our donors to the race to come and build relationships with
15 them.

16 Governor Perry would -- came to this one, and it was
17 just a very positive thing in terms of NRA being involved in
18 the -- another example of NRA being involved in the mainstream
19 of American culture with all of these cultural activities that
20 have an impact on America.

21 Q So this was in 2013, correct?

22 A Yes.

23 Q And was this one of the circumstances that caused you
24 to start to think about whether the NRA might be better off with
25 a home in Texas?

BP

4156

W. LaPierre - by Defendant - Direct/Mr. Correll

1 MR. CONLEY: Objection, leading.

2 THE COURT: Overruled.

3 A I don't know that this was. I mean, Texas is one of
4 our big membership states. So is New York, actually, along with
5 California; but we have a tremendous amount of our donors are in
6 Texas. I think we have 400,000 members in Texas or more, and
7 it's a very welcoming state to the NRA.

8 MR. CONLEY: Objection to a friendly environment to
9 the NRA, your Honor.

10 A It's a very friendly environment to the NRA. I mean,
11 politically it's also a friendly environment.

12 THE COURT: We're going to take our lunch break.
13 We'll reconvene at 2:15.

14 COURT OFFICER: All rise, jury exiting.

15 (Whereupon, at this time the jury then left the
16 courtroom.)

17 MR. CORRELL: Your Honor, I think that after lunch,
18 we're going to proceed with other witnesses and then we'll
19 presume with Mr. LaPierre tomorrow morning, first thing.

20 MS. CONNELL: Are we going to go with Mr. Frazer
21 and then Mr. Phillips, I'm sorry, just to confirm?

22 MS. ROGERS: We're going to go with Mr. Frazer and
23 given the ruling on the audiotape, I think we may skip --
24 we'll update you after lunch on Mr. Phillips.

25 MS. CONNELL: Can you let us know as soon as

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1 possible?

2 MS. ROGERS: Yes.

3 MS. CONNELL: And then after Phillips or no
4 Phillips, the audiotapes? I mean the depositions?

5 MS. ROGERS: Likely, yes. I'll let you know. I'll
6 confirm that after lunch.

7 MS. CONNELL: And who's calling Mr. Frazer?

8 MS. ROGERS: Mr. Frazer is calling Mr. Frazer.

9 THE COURT: All right, thank you.

10 (Whereupon, at this time a luncheon recess was then
11 taken.)

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Proceedings

1 A F T E R N O O N S E S S I O N

2 * * * * *

3 THE COURT: So I had one logistical issue to raise
4 about Mr. LaPierre's dividing up his testimony the way we
5 are doing it.

6 Given that tomorrow is scheduled to be the last day
7 for evidence to come in, we need to operate so that there is
8 a fair opportunity to do cross-examination and so that --
9 you know, we have spent this morning, and we got to 2013.
10 And so I just don't want us to end up in a situation where
11 there is not sufficient time for all the other things. I
12 don't know what you all have ready to do, but I don't want
13 to be faced with something at the end of when he can testify
14 and he hasn't had a chance to do cross, and there is no
15 other day for it to happen. Because if that happens, that's
16 a problem, and it could lead to striking of his direct.

17 MR. CORRELL: I understand, your Honor, and I'm
18 going to try to accelerate and tighten the timeframe
19 tomorrow.

20 THE COURT: And the other defendants are -- because
21 I don't know how you have all divided this up, but this
22 -- at this pace this is going to be a lot of time that's
23 left is this one witness.

24 MR. CORRELL: It will be a faster pace, your Honor.

25 THE COURT: Well, for you, but there is a lot of

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Proceedings

1 other folks who I don't know who is asking questions at the
2 end of this, but I just want to flag that.

3 All right. So what's next?

4 MR. CORRELL: Your Honor taking your comments to
5 heart, I have decided not to call Mr. Graham the
6 compensation expert and that will provide some greater
7 flexibility.

8 THE COURT: Okay. So what's the next witness going
9 to be? Mr. Frazer?

10 MS. CONNELL: If I can just raise something.

11 While we were at lunch, the NRA's counsel let me
12 know that they had switched some of the witnesses around.
13 We had an objection to one of the switching. I think we
14 have reached an agreement, but I just wanted to let the
15 Court know I believe we are going to go with Mr. Frazer and
16 then perhaps Mr. Spray's videotape. And then if the Court
17 would like to begin with John Commerford, they have a
18 witness they have, and we would cross him tomorrow after Mr.
19 LaPierre, I guess.

20 MS. ROGERS: So we object to the characterization
21 of switching witnesses around. Mr. Commerford travel from
22 out of town. He was disclosed yesterday at 3:41 p.m. We
23 intended to call him after Mr. Frazer. There were some
24 additional documents that were disclosed later and as an
25 accommodation to the AG, we were willing to not use those

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1 documents today.

2 MS. CONNELL: Your Honor, yesterday -- not to put a
3 fine point on it, but the defendants have had dozens and
4 dozens of witnesses on their list, something like 60
5 witnesses on their list. I think at one point it was up to
6 90, and we have been asking them just to let us know who is
7 coming.

8 Yesterday we were sent multiple videos. We got
9 different witnesses -- multiple emails. We got different
10 witnesses and different orders. It makes us scurry around
11 trying to prepare for them.

12 Then after asking clarification on when people
13 would be closing their cases, what witnesses would be going,
14 was there an agreed upon order, Mr. Peters sent an email to
15 the Court yesterday afternoon laying out of order, and we
16 prepared for that order which made it seem like Mr.
17 Commerford had no shot of going today.

18 At 7:10 last night we got a bunch more documents
19 from Mr. Commerford, and I will note one of the documents
20 from Mr. Commerford is a document that's hotly contested.
21 It's the December 2023 risk assignment COSO situation that
22 Ms. Rowling performed, and we had no prior notice of Mr.
23 Commerford coming until he was put on the witness list in
24 mid-December. No notice he has any connection to that.

25 We are entitled to at least 24 hours to prepare,

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1 and this is not a fair opportunity. So even as of last
2 night and this morning, we were left with the view that
3 after Mr. Frazer, Mr. Arulanandam would go, and then we
4 would be basically at the end of the day.

5 So your Honor, we would just ask that the plaintiff
6 not have to cross-examine Mr. Commerford today, that it's
7 not fair, that it's not in the spirit of the 24-hour rule.

8 We gave the defendants as much time as we possibly
9 could, often more than 24 hours. We understand everyone is
10 working hard, but this is too much, and we have videos ready
11 to go. We should begin with the video.

12 MS. ROGERS: Your Honor, respectfully, these are
13 mischaracterizations. 24 hours was given. It's more notice
14 than we received at many junctures during plaintiff's case.

15 We have multiple defendants jostling there to put
16 in cases in a much shorter period of time. We have already
17 agreed not to use any of the documents disclosed yesterday
18 evening which plaintiff had less than 24 hours notice, so
19 this hotly contested document that Ms. Connell just
20 described, she knew before she described it that it wasn't
21 on the table. It wasn't going to be used.

22 We should be able to present our case in the order
23 and the sequence that we think is best for us, and this is a
24 witness with two documents who was disclosed the day before.
25 He's is traveled from out of town. We would like to get him

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Proceedings

1 up and down today if we can. We may not be able to, but we
2 would at least like to take a shot.

3 THE COURT: It's a little unfortunate you all
4 haven't been quite as kind to each other as I would have
5 liked and partly I'm sure that's just because everybody is
6 working hard, and it's a little more chaotic on the defense
7 side because you are not all rowing in necessarily the same
8 direction. So I know this. I think by the time we get
9 through -- so it's Mr. Frazer and then straight into this
10 next guy or is it something else?

11 MS. ROGERS: That's the plan. And it's Mr.
12 Fleming's case, but I expect Mr. Frazer to be substantial,
13 so we would probably not get to Mr. Commerford until the
14 second half of the second half of the day.

15 THE COURT: And then may not be able to get to
16 cross either.

17 MS. ROGERS: Correct.

18 THE COURT: Your Honor.

19 MS. CONNELL: Your Honor, then it seems fair enough
20 to play with the deposition of Spray and he raises that
21 question or that problem.

22 THE COURT: Well, look, I'm inclined not to --
23 well, what I really don't want to do is spend so much time
24 talking about it that we can't actually do it, so I'm going
25 to let them proceed in the order they have. This doesn't

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Proceedings

1 sound like a seismic witness really.

2 MS. ROGERS: Not seismic. He just traveled in the
3 snow.

4 THE COURT: This is -- it is a little -- the grating
5 thing is having 80 people on your witness list and narrowing
6 them 24 hours really is not cricket in my opinion, but I'm
7 just, you know -- I'm not going to start shifting people
8 around and telling some -- who is he? Is he an employee?

9 MS. ROGERS: He is an NRA employee. He works under
10 Mr. Cox, and he remains in that deficient. Just -- we dealt
11 with 5,200 exhibits which is the same principle.

12 THE COURT: Yeah. That was the -- that was the
13 evil on the other side. Look, I --

14 MS. CONNELL: Your Honor, just --

15 THE COURT: I'm not going to change the order. I
16 -- if I get the feeling that -- so is what you're saying to
17 me, Ms. Connell, that now you are going to be prepared to
18 cross-examine this guy?

19 MS. CONNELL: If I just heard that the risk
20 assessment is out and he is not going to be questioned on
21 that, that makes it easier. But yes, essentially, your
22 Honor, we are going to be having to kind of take it with
23 less preparation than we had wanted to which is unfortunate
24 and unfair, and I just want to say, you know, we gave a list
25 of witnesses we intended to call in order. We tried to let

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Proceedings

1 them know as soon as possible if there was any change.
2 Often days ahead. We tried to follow that order well in
3 advance. And while we had 5,000 documents on a document
4 list, the defendants have collectively I think over 3,000,
5 and we have given them as much notice as possible and where
6 they have asked for an accommodation, we have tried to make
7 it.

8 THE COURT: My bone to pick is among the 5,000 are
9 a bunch of documents that you then later objected to. So
10 there is -- it hasn't been perfect. No trial is perfect.

11 Let's proceed with, you know, who you told them at
12 3:00 yesterday, and we will take that document out and we
13 will move on. So let's get the jury.

14 MS. ROGERS: Your Honor, to be clear, so we are
15 going to proceed with the documents we disclosed at
16 3:00 p.m. yesterday, and whatever documents she is
17 contesting, that was contested later is out.

18 MS. CONNELL: That includes the risk assessment?

19 MS. ROGERS: It was disclosed at three.

20 MS. CONNELL: 3:41 p.m.

21 THE COURT: I'm going to let them call the witness.

22 MS. ROGERS: Thank you, your Honor.

23 (Whereupon, at this time the jury entered the
24 courtroom.)

25 THE COURT: Please have a seat. As we have done a

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Frazer - by Defendant - Direct/Mr. Fleming

1 couple of times, Mr. LaPierre is going to come back and
2 finish his testimony in the morning as an accommodation.

3 And so the next witness is going to be who for the
4 defense?

5 MR. FLEMING: I call Mr. Frazer.

6 J O H N F R A Z E R, a witness called on behalf of
7 the Defendant, after having been first duly sworn, took the
8 witness stand and testified as follows:

9 THE CLERK: State your name.

10 THE WITNESS: John Frazer.

11 THE CLERK: Thank you. You may be seated.

12 THE COURT: Good afternoon.

13 DIRECT EXAMINATION

14 BY MR. FLEMING:

15 Q Good afternoon, Mr. Frazer.

16 A Good afternoon.

17 Q So it's February, and we have never gotten a chance to
18 meet you.

19 So where do you live currently?

20 A I live in Virginia.

21 Q And who do you live with?

22 A My wife and kids.

23 Q Where did you -- where were you born?

24 A In Manhattan.

25 Q And did you grow up in Manhattan?

KM

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Frazer - by Defendant - Direct/Mr. Fleming

1 A I did.

2 Q For how long?

3 A 17 years till I went away to college.

4 Q Until college?

5 A Right.

6 Q Can you just take us briefly through your education
7 starting with actually out of curiosity where you were educated
8 in Manhattan?

9 A Sure. So I went to a couple of the local public
10 schools. I grew up on the Lower East Side right off the FDR
11 Drive, grew up, went to a couple of the local public schools.
12 They have been renumbered, at least one of them, and then went
13 to Hunter College High School. That's when I used to take --
14 change buses out here on the corner. And then I went to Bowdoin
15 College and on to graduate school.

16 Q Did you happen to coincide with Lin-Manuel Miranda when
17 you were at Hunter?

18 A I was after Justice Kagan and before Lin-Manuel.

19 Q Too bad.

20 So after college, can you take us through your work
21 history before you began working at the NRA?

22 A Sure. So after college, my initial plan coincidence
23 like Mr. LaPierre, I was going to be a political science
24 professor. So I went to the University of Virginia graduate
25 program. I got a master degree, left there, decided that the

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Frazer - by Defendant - Direct/Mr. Fleming

1 academic research wasn't really my thing. I spent about two and
2 a half years working for remodeling companies mostly in Northern
3 Virginia, briefly in Oregon. That was kind of a formative
4 experience because I got to know a lot of experience that hadn't
5 been in the graduate school public, a lot of NRA members, and
6 that kind of set me on that path and eventually answered an ad
7 in the Washington Post.

8 Q Well, before you get there, can you just describe what
9 remodeling is?

10 A We did kitchens, bathrooms, additions, basically.

11 Q So you developed skills at being handy?

12 A I. Was a carpenter's helper. Yes, I still have my
13 tools.

14 Q Now, we have heard a lot or at least some about your
15 history -- early history first 20 years at ILA; right?

16 A Yes.

17 Q Okay. I would like to just have you explain just
18 aspects of that portion of your career and that is how you came
19 to go to law school.

20 A Sure. So after working in an entry-level job and then
21 kind of working my way up in a couple of different roles, I was
22 working in the Federal Affairs Division on Capitol Hill and
23 doing a lot of legislative drafting and analysis and obviously
24 advocacy. That was the job. And one can day while I was -- I
25 was walking with the Executive Director of ILA at the time and a

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Frazer - by Defendant - Direct/Mr. Fleming

1 man named James Baker, we were walking back from a meeting on
2 Capitol Hill, and he -- and he said, you ought to go to law
3 school. You're actually better at it than most of these lawyers
4 we just met with. So I took that as a compliment, but it took
5 me a couple of years to really -- for it to really sink in, and
6 I started law school in Fall of 2004.

7 Q And did the NRA pay some portion of that?

8 A The NRA is a tuition-reimbursement program. There is
9 an IRS limit on it, but it covered about half of my tuition.

10 Q Did you go to law school during the day or night?

11 A I went to a night program at George Mason in Virginia.

12 Q How long did it take to go graduate from a night law
13 program?

14 A Four years.

15 Q During that four-year period, did you continue working?

16 A I did.

17 Q Where were you working?

18 A I was by that time -- well, first semester, I was still
19 at Federal Affairs, the end of the first semester. So beginning
20 of '05 roughly, Chris Cox had asked me to come back in a
21 management role at headquarters. I was the deputy director of
22 the research and information division. And about halfway
23 through law school, the director retired, and I became -- I was
24 promoted to be director.

25 Q Did any other important event of your life happen

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Frazer - by Defendant - Direct/Mr. Fleming

1 during this period of time that you were in law school and
2 dealing with the new job?

3 A I got married.

4 Q Okay. So I'd like to now turn from your personal
5 history. Well, let me ask you. So can you take the jury
6 briefly through leaving the NRA and then coming back?

7 A Sure. So in end of 2012, early 2013, a former NRA
8 lawyer who had gone into pretty successful private practice was
9 appointed as a judge -- state judge in Fairfax, Virginia where
10 NRA headquarters is, and that opened up spaces in an
11 office-sharing arrangement with a couple of people who were
12 practicing in the Second Amendment and Firearms Law field, and
13 an opportunity to pick up some of the now Judge Gardner's
14 clients potentially. So it was kind of a once in a lifetime
15 opportunity. I decided to take it.

16 Q So before you move on, before you left for private
17 practice, were you offered any incentive to stay at ILA?

18 A Sure. Yeah, I met with Chris Cox and told him my
19 decision, and he said, give me a couple of weeks to try to
20 change your mind, and I met with him and his deputy, a man named
21 David Layman, and couple of weeks later, I came back and they
22 offered me about a 30 percent raise and a promotion title was I
23 think Director of Legal Affairs.

24 Q Had that position or that title existed before that
25 moment?

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Frazer - by Defendant - Direct/Mr. Fleming

1 A No. It would have been a newly-created position.

2 Q All right. So back to private practice.

3 Did there come a time when you left private practice?
4 And if so, why?

5 A There was. The -- you know, I had a great time
6 representing my clients. I liked my client. I enjoyed the
7 experience, but Jim Porter was the president of the NRA at the
8 time, and as you heard previously, he asked me to consider
9 running for secretary of the association when Major Land
10 announced that he would be retiring.

11 Q Okay. And at or about that time, can you tell us were
12 you approached about another position as well?

13 A Sure. So in the initial conversation with Mr. Porter
14 in late Summer of 2015 or -- 2014 -- excuse me, he -- you know,
15 he is a long-time attorney, and he noted that in the corporate
16 world, it's pretty common for the general counsel of an
17 organization to also be the corporate secretary or vice versa
18 which wasn't something the NRA had had, but it was something
19 that was apparently being considered. And as the discussions
20 continued, and I met -- I talked with Mr. Phillips at one point
21 and with Mr. LaPierre on a couple of occasions, the idea came
22 about that I would be hired initially as general counsel and
23 then later elected secretary.

24 Q And that's what happened?

25 A That's exactly what happened.

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Frazer - by Defendant - Direct/Mr. Fleming

1 Q All right. So we have covered a lot of territory with
2 you after plaintiff called you. So I'm going to address certain
3 discrete topics.

4 Do you recall that the NRA entered into an agreement
5 subsequently with the Allegiance Creative Group?

6 A I do.

7 Q What precipitated the renegotiation of that contract?

8 A What precipitated the renegotiation of the contract was
9 that it was going to expire, and we took that as an opportunity
10 to also address other issues that surrounded that, like the fact
11 that there had been contracts with three different business
12 entities, MMP, Allegiance and Concord Social was the third. And
13 to also get a substantial decrease in the overall fees.

14 Q Okay. Who negotiated that contract?

15 A It was an arm's-length negotiation so a little bit of a
16 legal term, but it was a negotiation between our outside lawyers
17 and their outside lawyers primarily with some involvement by NRA
18 staff and presumably staff on their end, but I don't know that.

19 Q And can you place the timeframe when those negotiations
20 occurred?

21 A It was really throughout the Summer of 2022, Spring and
22 Summer, I would say.

23 Q Now, do you recall testimony from Ms. Rowling in this
24 case that Mr. LaPierre was walled off from those negotiations?

25 A I do.

KM

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Frazer - by Defendant - Direct/Mr. Fleming

1 Q To your knowledge, was he in fact walled off?

2 A Yes.

3 MS. STERN: Objection, your Honor. Lack of
4 foundation.

5 Q I'm going to get to that?

6 MS. STERN: Well, he previously testified that it
7 was handled by outside counsel.

8 MR. FLEMING: I asked him -- well, your Honor, I
9 asked him to his knowledge was Mr. LaPierre walled off.

10 THE COURT: Well, maybe you can ask the fact
11 questions building up to that and we can see whether it's
12 his knowledge or hearsay.

13 MR. FLEMING: Okay.

14 Q What's the basis of that knowledge?

15 A Yeah. So there was a widespread understanding in the
16 executive -- among the executives who were involved in that that
17 Mr. LaPierre because of all of the allegations in this case, in
18 particular, about his relationship with the McKenzies, that he
19 shouldn't be involved in this transaction or this negotiation.
20 And from my observation, he wasn't.

21 Occasionally, I would be in his office meeting with him
22 about, you know, some other issue, and he would say, how are
23 things going on the MMP negotiations. And I would give him very
24 limited answers like it's still going or still -- they are still
25 talking. You know, they are meeting Tuesday. That kind of

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Frazer - by Defendant - Direct/Mr. Fleming

1 thing.

2 MR. FLEMING: Okay. So can we call up PX 2426 which
3 is at Tab 20 in your binder, and this is in evidence so the
4 jury can see it.

5 Q So Mr. Frazer, do you see PX 2426?

6 A I do.

7 Q My question to you is why is Mr. LaPierre named as the
8 responsible officer at the top?

9 A I think the reason for that is that -- is that this
10 sheet -- on the sheet you need to list a responsible --

11 MS. STERN: Objection, your Honor. Lack of
12 foundation again.

13 THE COURT: Yeah. It's -- you have to kind of
14 figure out why he -- did he put his name on there or have --
15 you know, that kind of foundation to be helpful.

16 Q Well, Mr. Frazer, do you have an understanding of why
17 he is on there?

18 A I can speak to our general understanding and practice
19 of filling out these forms after doing a bunch of them.

20 Q Please do.

21 A You know, calls for listing a responsible officer. So
22 generally, the practice is to list an NRA officer within whose
23 chain of command this contract would fall. So the membership
24 division reports directly to Mr. LaPierre. So Mr. LaPierre
25 would be the responsible officer that falls under;

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Frazer - by Defendant - Direct/Mr. Fleming

1 Q And do you recall testimony about invoices and owners
2 of invoices?

3 A I do.

4 Q Okay. Would that responsible officer fit into that
5 owner concept?

6 A Yeah. I mean, it could be or it could be the
7 membership division, for example.

8 Q Okay. We can take that down.

9 So Mr. Frazer, can you describe what role your general
10 counsel's office plays in the review and/or authorization of the
11 NRA's contracts?

12 A Sure. So basically, we are supposed to review any
13 contract that any division of the NRA enters into, and it can be
14 anything from, you know, a multi-million dollar membership or
15 fundraising solicitation type of contract like you just saw to
16 a, you know, motor scooters at our show. That was one of the
17 first ones I saw when I came back on board.

18 Q So what generally do you look for and do when contracts
19 come to your office for review?

20 A Basically, my office manager functions as a traffic cop
21 for them, basically making sure that everything that comes in
22 gets referred to an appropriate attorney for review and
23 shepherding through the process and making sure that it's
24 tracked.

25 Q How many attorneys are in the general counsel's office?

KM

4175

Frazer - by Defendant - Direct/Mr. Fleming

1 A Five currently I believe.

2 Q All right. Now is the role that you just described
3 different for contracts that are in excess of \$100,000?

4 A No. It can be big or small. They are all supposed to
5 be reviewed and the process is basically the same.

6 Q Okay. And when you review a contract, do you
7 personally do anything different if it's over \$100,000?

8 A I'm usually -- you know, I'm usually more likely to be
9 looking at the bigger ones, but if I happen to look at a smaller
10 one, it's not really different. It's just -- it may require a
11 little closer attention because it's typically going to be for a
12 more sophisticated services or higher risk involved, but we are
13 going to look at things like whether the -- whether -- making
14 sure that the NRA interests are protected in whatever way is
15 relevant to the contract.

16 Q So you divided up in the general counsel's office the
17 review of contracts equally among you and your staff or is it
18 different?

19 A It's primarily the staff because, I'm managing and
20 delegating, but the -- but -- and staff handles things according
21 to their areas of expertise.

22 Some people have more experience with financial
23 transactions. Some people have more experience with
24 intellectual property, copyright and trademark issues.

25 Q How experienced is your staff in the OGC?

KM

4176

Frazer - by Defendant - Direct/Mr. Fleming

1 A I tried to add it up from memory, and at the time that
2 I came in, I had -- on the staff I think I had about 85 years
3 worth of total experience not counting myself and not counting
4 our former general counsel Bob Dowlut who had retired, but he
5 was still on retainer. He had 35 plus years of experience.

6 Q And can you describe what that arrangement was with Mr.
7 Dowlut?

8 A When he retired at the end of 2014, he got an annual
9 retainer contract with the NRA which I think he made pretty full
10 use of with a lot of significant projects.

11 Q And did he help you early on in 2015 with anything in
12 particular?

13 A Sure. He helped me really from day one, but he -- but
14 in -- in early to mid-2015 he started working on projects to
15 help address some recent changes in New York Law.

16 Q And we talked about that earlier with respect to the
17 conflict of interest policy.

18 A That was one significant project he worked on.

19 Q Okay. Now, when you started in 2015 as general
20 counsel, did you rely on the experience of your staff?

21 A Oh, absolutely.

22 Q So let's discuss payment of invoices. There's been
23 some -- a lot of testimony on this, and I just want to be as
24 clear as we can.

25 A Sure.

KM

4177

Frazer - by Defendant - Direct/Mr. Fleming

1 Q So you heard Mr. Erstling describe the process?

2 A I did.

3 Q All right. In your words, tell us what you understand
4 the process to be?

5 A Sure. So not surprisingly, given his job, Mr. Erstling
6 and the fact that he is a really diligent guy, Mr. Erstling gave
7 an excellent description of how the invoice approval process
8 works right now, but the mechanics have been and the substance
9 is the same in terms of who receives invoices and what their
10 responsibilities are. The mechanics have been -- have changed a
11 lot.

12 Pre-Covid, they were piles of paper. And one of the
13 accounts payable accountants would come to my office with his
14 blue plastic folder. I still remember it. And it would have
15 a -- like a couple of inch stack of invoices and supporting
16 documents, and they would be -- there could be typically two
17 rubber stamps on them. One would say, and I think you have seen
18 these on a couple of exhibits. One would say "goods and have
19 been received," and that would be signed by the person who -- we
20 use the term contract owner. That would be signed by somebody
21 who actually has the responsibility of using the goods or
22 services or who is involved in the dealings directly with the
23 vendor.

24 And then the second stamp would have two lines and
25 that's for approval by two officers. If it's a contract over

KM

4178

1 50 -- not a contract. Excuse me. An invoice for payment of
2 over 50,000.

3 (Continued on the following page.)
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4179

J. Frazer - by Defendant - Direct/Mr. Fleming

1 Q Okay, and if there was an invoice for less than 50,
2 would it have those two officers' signature lines?

3 A No, no.

4 Q Now, do invoices generally come to you for approval
5 ever?

6 A Invoices for services that are contracted through the
7 office of General Counsel or the secretary's office. So, for
8 example, if there's an invoice for a hotel bill for a board
9 meeting that falls under the secretary's office and I would see
10 that anyway.

11 Legal bills for law firms that are used by the office
12 of General Counsel would come to me whether they're for 500
13 bucks or 5,000 bucks or 500,000 bucks.

14 Q And is it fair to say that those invoices that you just
15 described are the invoices where your office is the owner of
16 them?

17 A Yes.

18 Q Do any other invoices come to you?

19 A Yeah, the other ones that come to me are the ones that
20 come to us under that financial control policy requiring two
21 officers' signatures for an invoice over 50,000.

22 Q And are those --

23 A Excuse me -- yeah, I'm sorry, invoice. I wanted to
24 make sure I didn't say contract.

25 Q Are those invoices for which your office is the owner?

BP

4180

J. Frazer - by Defendant - Direct/Mr. Fleming

1 A No, most of them aren't.

2 Q Well, if one of them was and it was over 50,000 and it
3 originated in the General Counsel's office, let's say, would you
4 sign it twice both as owner and officer?

5 A No, I think the original signature would be enough.

6 Q So, I want to talk about the second category where it
7 comes to you for officer signature where you're not the owner.

8 What, if anything, do you do to satisfy yourself that
9 it is appropriate to approve payment?

10 A Sure. I look at the invoice. I make sure I have some
11 understanding of what the -- who the vendor is and what the
12 nature of the goods or services are and look at -- and then make
13 sure that it has all the necessary approvals; and if it doesn't
14 on the face appear strange or unusual, I'll sign off on it.

15 Q Now, if it does not have all the signoffs, what do you
16 do?

17 A If it doesn't have all the signoffs, I would send it
18 back.

19 Q If it has all the signoffs, is that an automatic for
20 you that you would sign it as an officer?

21 A No. I would still ask questions if I thought there was
22 something that needed to be asked about.

23 Q Can you give the jury an example of one where there is
24 nothing odd about it and another where there might be something
25 odd about it?

BP

4181

J. Frazer - by Defendant - Direct/Mr. Fleming

1 A Sure. I'll give you an example of one I looked at
2 yesterday, just to show you the routine type of practice.

3 While I was on the train up here I logged on to the
4 invoice approval system, PN 3 that Mr. Erstling mentioned. And
5 I think the first invoice in the list in my inbox there was for
6 printing of books. There were student handbooks for the basic
7 pistol class. It is their most popular class in education and
8 training division. Every student gets a helpful book that
9 covers all the basics of pistol safety and shooting and so on.

10 And from time to time, we need to restock the
11 inventory, so we ordered 14,000 books and it was about \$99,000
12 so it is in the over-50 category and it comes to me.

13 As I looked at the routing information. I see that it
14 has a signoff from a -- actually, it has a note attached in the
15 system from a purchasing assistant who's verified that the
16 shipment was actually received at the warehouse. And then it
17 goes to the director of the purchasing division, Lisa George,
18 and she signed off on it. And I can't remember if that went to
19 Ms. Rowling first or me first. We're usually the two doing the
20 signoffs.

21 But, in any event, I've got an invoice. The purchasing
22 division is responsible for buying the books. It said that the
23 books have been received, and so I signed off on it.

24 Q When you say Ms. Rowling and you usually are the two,
25 you're talking about the two officer signoffs?

BP

4182

J. Frazer - by Defendant - Direct/Mr. Fleming

1 A Correct, correct.

2 Q Because it is greater than 50,000?

3 A Correct.

4 Q We've seen invoices in this case that relate to
5 Ackerman McQueen out-of-pocket invoices or OOP invoices. Do you
6 see that?

7 A I do.

8 Q Did it ever happen that an Ackerman OOP invoice came to
9 you for officer approval?

10 A Probably.

11 Q Let me ask you a preliminary question. Were you ever
12 the owner of an Ackerman OOP invoice?

13 A No.

14 Q Who's the owner of the Ackerman OOP invoices?

15 A When I saw these come through -- and, remember, the
16 Ackerman relationship dissolved before we had any electronic
17 approval system. So those were coming through in usually a
18 stack of other Ackerman invoices, but they would typically be
19 signed off on by either Woody Phillips -- I'm sorry -- on the
20 goods and services have been received section, they have been
21 signed off either by Woody Phillips or by one of the staff on
22 his behalf.

23 Q And is that because the treasurer department was the
24 owner of that relationship?

25 A They were the business liaison with Ackerman in those

BP

4183

J. Frazer - by Defendant - Direct/Mr. Fleming

1 terms.

2 Q And when you saw that say Mr. Tedrick had signed, did
3 that give you assurance this was okay for approval?

4 A It did. Because I had an understanding that that was a
5 task that had been delegated by Mr. Phillips. Similarly, if
6 Ms. Supernaugh signed off, she would usually write something
7 like "LS per tel-con with WHP."

8 So it's indicating she had talked with Mr. Phillips.

9 Q So, I'd like to switch topics and talk about
10 related-party transactions.

11 Is there a committee at the NRA that is authorized to
12 approve related-party transactions?

13 A Yes.

14 Q What committee is that?

15 A The Audit Committee.

16 Q When did that happen?

17 A In January -- in January 2016 when the new
18 conflict-of-interest policy was adopted.

19 Q Is that this conflict-of-interest policy we spent time
20 talking about in this case?

21 A Yes.

22 Q That you and Mr. Galla put together?

23 A Correct.

24 Q How -- so, can you describe how that document is
25 authorized by the Audit Committee?

BP

4184

J. Frazer - by Defendant - Direct/Mr. Fleming

1 A I don't have it right in front of me at this moment;
2 but, basically, it says that substantial -- the related-party
3 transactions are conflict-of-interest transactions that should
4 be reviewed by the Committee.

5 Q Well, let's turn to Tab 21, PX 421, which is in
6 evidence, and if we could turn to page 26 of 300.

7 A Okay. I'm there.

8 Q Okay. So, could you describe in response to my last
9 question of how it happened that the Audit Committee became
10 authorized to address related-party transactions?

11 A Yeah, so our understanding after reviewing New York law
12 as we worked through this policy was that this was a function
13 that could be delegated to a committee, and so it was delegated
14 to a committee.

15 And, and as the policy indicates material facts about
16 conflict of interest need to be disclosed to the Audit
17 Committee, it is in the middle of the page. And then at the
18 bottom of the page it notes that the -- and goes into some
19 further detail about the mechanics of that disclosure on the
20 disclosure form that we talked about, and then at the bottom of
21 the page it says "Audit Committee will review the transactions
22 and determine whether to approve or ratify them."

23 Q Okay. And this policy was adopted when by the board?

24 A January 2016.

25 Q And since January 2016, has, to your knowledge, the

BP

4185

J. Frazer - by Defendant - Direct/Mr. Fleming

1 board and the NRA as a whole followed the procedures set forth
2 in this policy?

3 A Yes.

4 Q So after this -- the passage or the adoption by the
5 board of this policy, did you take any steps to get the Audit
6 Committee to consider related-party transactions?

7 A I did. At the first audit since this was adopted in
8 January '16, the first Audit Committee after that the March 2016
9 meeting, I discussed with the committee about how setting up a
10 framework for reviewing these transactions and how to handle
11 certain types of issues.

12 Q And do you remember when that Audit Committee meeting
13 occurred?

14 A That was the March 2016 meeting.

15 Q And do you recall what the Audit Committee did at that
16 meeting?

17 A Well, I remember there was specifically discussion
18 that's mentioned in the committee report I think about how to
19 deal with something that we -- a little bit off beat that we had
20 fairly often, which kind of two categories:

21 One were transactions where the NRA pays a director in
22 the ordinary course of NRA business to -- at a very small
23 amount, like, you know some of our directors not surprisingly
24 have a lot of experience in competitive shooting and so go to
25 our rifle and pistol matches and referee matches for -- I don't

BP

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J. Frazer - by Defendant - Direct/Mr. Fleming

1 know -- 15, 20 bucks an hour and for a few days. They're hired
2 on the same terms as anyone else, and that's kind of minimal.

3 And then the other category we have, which I don't
4 really see that much in other nonprofits, but I hear about is
5 situations where the board members are paying us. And that's,
6 that happens because we have -- we, historically, have had some
7 board members who are in the firearms or ammunition or outdoors
8 industry who want to exhibit their products at annual meetings
9 so they're buying booth space or they want to advertise in our
10 magazines so they buying ads. So, they're paying us and they're
11 paying the same rate as anyone else would. So, the committee
12 said it's not a conflict, that it's helping the association.

13 Q The two examples you just gave, are those exceptions to
14 the what qualifies for related-party transactions?

15 A Yeah, they are -- I believe that they are.

16 Q Can you go to your binder and point to the jury by
17 section where, if at all, those are discussed, those exceptions?

18 A Sure. I would point to page 27 of 300, and it is right
19 in the middle of the page.

20 Q The paragraph beginning "Approval is usually?"

21 A Correct.

22 MR. FLEMING: Can we highlight that paragraph.

23 Q Can you just describe, you know, briefly for the jury
24 what this paragraph is talking about?

25 A Sure. So, what it is saying is that the Audit

BP

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J. Frazer - by Defendant - Direct/Mr. Fleming

1 Committee doesn't need to look at certain types of transactions
2 and then it lists some of those types. One of them is de
3 minimis transactions, I think that's a term that was used in the
4 opening arguments.

5 Q Let me stop you. These are the minimal payments you
6 just talked about?

7 A Right, the ones I just talked about would be an
8 example, yeah.

9 The second is these transactions or activities
10 undertaken in the ordinary course of business, and that's kind
11 of a flexible category; but, basically, saying that if staff
12 would normally hire something to be done, they -- that there's
13 not necessarily an obstacle to having a board member do it.

14 Q Let me stop you there. So, we've seen transactions in
15 quotes with rifle and pistol associations.

16 Do you recall those?

17 A Yes.

18 Q Is that an example of ordinary course type of
19 transaction?

20 A It could be. I mean, the NRA, historically, has given
21 what are called state assistance grants to state -- affiliated
22 organizations in states to help carry out the mission.

23 Q And where the Audit Committee considers and evaluates
24 and either approves or disapproves of a transaction with, for
25 instance, a state rifle and pistol association, is that

BP

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J. Frazer - by Defendant - Direct/Mr. Fleming

1 necessarily an indication that it's a related-party transaction?

2 A Not necessarily.

3 Q So why would the Audit Committee do that?

4 A Just out of an abundance of caution in a lot of cases.

5 Q Okay, so I interrupted you. Can you continue to take
6 the jury through this.

7 A Sure. So, class C is benefits provided to a related
8 party solely as a member of a class that the NRA intends to
9 benefit as part of the accomplishment of its mission.

10 So to put it in shorter terms, we call that the class
11 of beneficiaries exception. What that means is, for example,
12 I'm a member of a gun club in northern Virginia. It's got
13 shooting ranges and fishing ponds and stuff like that.

14 And I go -- when I go there, there is a banner up that
15 says that the chapter has received grants from the NRA
16 Foundation. So, it is a related organization so it falls under
17 the Audit Committee policy. It just happens that an NRA officer
18 and probably a bunch of employees are all members there, but
19 that doesn't mean that the club got a special deal because
20 the Foundation gives thousands of these grants all over the
21 country.

22 Q Okay. And are (d) and (e) sort of related exceptions?

23 A They are. I would call them actually kind of --
24 they're similar to the ordinary course of business exception.

25 So, (d) is transactions related to compensation of

BP

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J. Frazer - by Defendant - Direct/Mr. Fleming

1 employees or reimbursement of expenses.

2 So, if a board member drives to a board meeting and
3 puts in an expense report for mileage and meals, and, you know,
4 other check baggage fees and other routine stuff, that's not a
5 conflict of interest. That doesn't need to go to the Audit
6 Committee. It's just a normal practice.

7 Q So --

8 A And then the last one is officer compensation because
9 approval of compensation of the elected officer is covered in
10 the Bylaws, which are higher level than this.

11 Q Okay. And all of this was a detour from your
12 discussion about the March Audit Committee meeting, so I'd like
13 to direct your attention back to there.

14 You were describing what had happened at that meeting?

15 A I did.

16 Q Can you continue with that.

17 A So, we discussed some of the de minimis and ordinary
18 course type of activities and non-conflict activities, but then
19 we -- and then we, also, discussed the need to do a more
20 comprehensive review, gather information on more significant
21 transactions that were out there and do a comprehensive look at
22 them later in the year.

23 Q So, I'd like to show you tab 17 in your binder, PX 2586
24 in evidence so the jury can see it.

25 (Displayed)

BP

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J. Frazer - by Defendant - Direct/Mr. Fleming

1 Q Mr. Frazer, I'm going to direct your attention to the
2 final two pages of this exhibit.

3 A Okay.

4 Q Do you recall what the final two pages reflect?

5 A Yeah, this is -- this is an attachment as part of the
6 minutes that reflects the board -- excuse me -- the Audit
7 Committee's September 2016 consideration of related-party
8 transactions.

9 Q And were you present for that meeting?

10 A I was.

11 Q What, if anything, did you do at that meeting?

12 A I had prepared -- I had prepared a version of this, of
13 this attachment to guide the discussion; and I just went through
14 it, and the committee discussed each of the -- each of the
15 individuals or transactions on the list and at the end voted
16 that they were fair, reasonable and in the best interest of the
17 NRA.

18 Q So, let me ask you specifically about three of them.

19 Did the transactions considered include those -- well,
20 withdrawn.

21 Did the transactions not only considered, but approved
22 include those for Dave Butz, Sandra Froman and Marion Hammer in
23 September of 2016?

24 A Yes.

25 Q Now, what did the Audit Committee do with respect to

BP

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J. Frazer - by Defendant - Direct/Mr. Fleming

1 those three transactions?

2 A Yeah, so all three -- what all three of them had in
3 common was that they all had been -- these relationships with
4 these board members had all been in place for a number of years.
5 So, they -- to my recollection, all predated the change in New
6 York law in -- that took effect in 2014.

7 And, so, the -- so to my mind, there wasn't a problem
8 with them having existed before; and what the committee was
9 doing was ratifying what had happened in the past and then
10 approving them to go forward in the future.

11 Q When you say "ratify," explain what you mean?

12 A Ratification is a legal term for approval after the
13 fact.

14 Q Okay. And your understanding was -- well, withdrawn.

15 Was your intent -- your intent that the Audit Committee
16 not only ratify, but approve in advance, as you just said?

17 A Yes.

18 Q Now, do you have any understanding of when Mr. Butz's
19 arrangement had originated?

20 A At least 2008, I think.

21 Q Okay.

22 A I may be wrong.

23 Q How about Ms. Froman and then same question for
24 Ms. Hammer?

25 A Ms. Froman, I think a little earlier; and Ms. Hammer,

BP

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J. Frazer - by Defendant - Direct/Mr. Fleming

1 for Unified Sportsmen of Florida at least, much earlier.

2 Q And all that predated the revitalization law in 2014?

3 A To the best of my recollection, yes.

4 Q So, we could take that down, and I would direct your
5 attention to Tab 6 in your binder.

6 MR. FLEMING: This is for identification, so the
7 jury should not see this.

8 THE COURT: You're just going to use the binder for
9 this one?

10 MR. FLEMING: Yes, good idea.

11 THE COURT: As long as the other lawyers have it.
12 I don't know if they have a binder?

13 MS. STERN: I do. Sorry?

14 MR. FLEMING: You have a binder?

15 MS. STERN: Yes, I have a binder.

16 Q So, Mr. Frazer, do you recognize the document that's
17 been marked for identification as JFX 66A?

18 A I do.

19 Q What is it?

20 A It is the minutes of the December 7, 2017, Audit
21 Committee meeting.

22 Q And were you present for this meeting?

23 A I was.

24 Q Did you make any presentation at this meeting?

25 A I did.

BP

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J. Frazer - by Defendant - Direct/Mr. Fleming

1 Q Have you seen this document before?

2 A I have.

3 Q Was it -- to your knowledge, was it created at or about
4 the time of that meeting?

5 A Yes.

6 Q Was it the ordinary practice of the NRA's audit
7 secretary to make minutes of this sort?

8 A Yes.

9 Q And are these minutes kept in the ordinary course of
10 business at the NRA?

11 A Yes.

12 MR. FLEMING: I move its admission, your Honor.

13 MS. STERN: Objection, your Honor. He hasn't
14 established who created this document. His questions were
15 in broad generalities.

16 MR. FLEMING: It's a business record.

17 THE COURT: All right, is your argument that as
18 General Counsel he's not in a position to know the ordinary
19 course of business in creating these records?

20 MS. STERN: He did not establish that -- I'm sorry.

21 He did not establish what the ordinary course of
22 business was in creating records at this period of time, and
23 there's been a fair amount of testimony in this case and an
24 awful lot of documents, different versions of the same types
25 of documents and so it is quite unclear.

BP

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J. Frazer - by Defendant - Direct/Mr. Fleming

1 THE COURT: Well, look, since he didn't sign this
2 one, I mean, can you establish whether he has enough
3 involvement in this particular process given his job that he
4 can testify as to how these were created?

5 MR. FLEMING: I can, very similar to the other
6 document we talked about, but...

7 Q Mr. Frazer, do you know how this document came to be
8 created?

9 A Sure. Like the September -- it was very similar to the
10 September 2016 minutes. The format is a little bit different;
11 but, basically, I helped Mr. Tedrick write the section on
12 related-party transactions, and then he, I believe, inserted it
13 into a standard format of meeting minutes.

14 Q And did he, to your understanding, edit the document if
15 at all based on what happened at the meeting, or did you help
16 him write it after the meeting?

17 MS. STERN: Objection, compound.

18 MR. FLEMING: I'll ask it different.

19 Q When you testified that you helped Mr. Tedrick write
20 this, did you help him write it before or after the December 7th
21 meeting?

22 A I don't remember if it was before or after. I may have
23 had some of the material about the related-party transactions in
24 advance.

25 Q And did you have discussions with Mr. Tedrick about its

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J. Frazer - by Defendant - Direct/Mr. Fleming

1 contents at anytime?

2 A I did.

3 Q And did you have discussions with him prior to him
4 signing it?

5 A Yes.

6 THE COURT: I'll admit it. I think he's in a
7 position based on prior testimony to be able to testify as
8 to how these kinds of records are made and created.

9 It is admitted as JFX 66A.

10 (Whereupon, at this time Exhibit JFX 66A was
11 admitted and received into evidence.)

12 MR. FLEMING: We can publish it.

13 (Displayed)

14 Q So, Mr. Frazer, first question I have for you is were
15 the transactions reflected in JFX 66A in fact addressed by the
16 Audit Committee at the December 7, 2017, meeting?

17 THE COURT: Based on his attendance.

18 MR. FLEMING: Based on his attendance independent
19 of the document, except to the extent reflects the
20 transactions recorded.

21 A Yes.

22 Q And that's based on your personal knowledge and
23 recollection; right?

24 A Correct, yes.

25 Q And now do you see the entry for David Keene?

BP

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J. Frazer - by Defendant - Direct/Mr. Fleming

1 A I do.

2 Q Who is David Keene?

3 A David Keene then and now is an NRA board member and
4 past president.

5 Q And what happened at the December 7, 2017, Audit
6 Committee meeting with respect to Mr. Keene?

7 A So, at some point before this meeting, I became aware
8 that Mr. Keene had been paid \$4,000 a month in support of these
9 speaking engagements, which I think we heard testimony about
10 before and -- and the, you know, gathered information about that
11 and discussed it with the committee and the committee asked what
12 I took to be intended as an approval -- as a ratification of
13 the -- this had been going on since March so it was, you know,
14 roughly eight months worth of transactions, and then approval of
15 it to continue.

16 Q Now, when was it disclosed to you that Mr. Keene had
17 this arrangement?

18 A I don't remember the exact date. It was some time --
19 this was December, so it was sometime fairly soon before the
20 meeting. Late, late fall.

21 Q Okay, and what, if anything, did you do upon receiving
22 disclosure that a transaction had been entered into without
23 pre-approval?

24 A I gathered more information about, about the amount of
25 the payments, the nature of the speaking engagements. I think

BP

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J. Frazer - by Defendant - Direct/Mr. Fleming

1 by this time I had actually attended one of his speeches.
2 The -- but and then I reminded the appropriate parties that
3 transactions like this in the future would need approval in
4 advance rather than ratification after the fact.

5 Q Okay, changing topic.

6 Do you oversee the Audit Committee?

7 A No.

8 Q Do you have any responsibility with respect to ensuring
9 that a related-party transaction is fair, reasonable and in the
10 best interest of the NRA?

11 A That's a determination that's made by the committee.
12 All that we on the staff can do is bring the information to the
13 committee; and in some cases, maybe advocate for the transaction
14 if it's important to whoever is the operational person in that
15 business area.

16 Q Do you have a vote on these transactions?

17 A No.

18 Q Who has the vote on these transactions?

19 A The committee members.

20 Q And how many committee members are there?

21 A Five.

22 Q Does the committee, the Audit Committee have any
23 responsibility to oversee you?

24 A They're all board members. So they all, ultimately,
25 vote on reelecting me as secretary. They elect to set my

BP

4198

J. Frazer - by Defendant - Direct/Mr. Fleming

1 compensation. Currently, two of them are the president and one
2 of the vice presidents.

3 Q So, they're your bosses; right?

4 A Yes.

5 Q It's not the other way around?

6 A Absolutely.

7 Q All right. Now, once you were provided the Audit
8 Committee with notice of the transaction or conflict, what
9 further responsibility do you have at that point with respect to
10 that transaction or that conflict?

11 A I would assist them in whatever way they see fit,
12 whether that's to help bring in someone else to explain the
13 situation, to help look for additional documents as I did with
14 Lieutenant Colonel North; but it is really -- it's really their
15 job once they have that.

16 Q Let me ask you a related question, you mentioned
17 Lieutenant Colonel North.

18 Do you have any authority or power to prevent the Audit
19 Committee from considering a transaction?

20 A No, they can consider -- I mean, the whole point of the
21 way that the Audit Committee is set up and appointed is that
22 there's supposed to be an independent committee of the board and
23 have a lot of independent power to oversee NRA policies.

24 Q Now, it's been raised that the Audit Committee
25 considered Lieutenant Colonel North's employment agreement with

BP

4199

1 Ackerman McQueen. Do you recall that?

2 A I do.

3 Q And there's been a question raised about whether it was
4 appropriate for the Audit Committee to consider that arrangement
5 with only a contract summary.

6 Do you remember that?

7 A I do.

8 Q Can you describe for the jury what I'm talking about
9 when I say "contract summary?"

10 A Sure. So, basically, going into the September 2018
11 meeting, the -- several people, including me, had been trying to
12 get the actual contract or details about the contract so that
13 the committee and the NRA board could fully understand it, and
14 hadn't met with much success, but we did -- our outside counsel,
15 Steve Hart, did get from Ackerman a short summary of some key
16 points of the contract which the committee -- the committee
17 considered.

18 The conflict-of-interest policy says that the committee
19 has to evaluate the material facts, material terms and that was
20 what we understood to be the -- what the committee understood to
21 be the material terms as best we could get them at the time.

22 (Continued on next page)

23

24

25

BP

4200

J. Frazer - by Defendant - Direct/Mr. Fleming

1 Q Now, if you thought it was prudent for the Audit
2 Committee to hold off on considering a transaction waiting to
3 get some further information, you could advise them of that;
4 right?

5 A Sure.

6 MS. STERN: Objection. Leading.

7 THE COURT: Overruled.

8 Q But I want to be clear. Do you have any power to stop
9 them from considering, if they want to?

10 A I can only -- you know, Major Land always used to --
11 used to come, and wanted to put lawyers in our place that
12 lawyers should be advisors, not deciders. And if they -- you
13 know, they -- once they have -- once the committee has the
14 information, they can proceed as they see fit.

15 Q So I want to change topics again.

16 Do you recall there coming a time in the Spring of 2019
17 when the NRA was the subject of unfavorable news stories?

18 A I remember it well.

19 Q Okay. What, if anything, did you do when those stories
20 came out?

21 A So really in early 2018 into 2019 and ever since when
22 there have been any kind of unfavorable stories that -- not just
23 that normal type of unfavorable stories, but the unfavorable
24 stories about legal or governance issue, I would try to address
25 them and evaluate whether, you know, is this something that's

KM

4201

J. Frazer - by Defendant - Direct/Mr. Fleming

1 new. Is this something that we know anything about? Is this
2 something that requires further investigation? If it needs
3 further investigation, who is in the best position to do it?
4 Should it be done in-house? Should it be delegated to outside
5 counsel? Where does it fit in the big picture?

6 Q And in this period --

7 MS. STERN: Your Honor, I just want to raise the
8 fact that during the course of discovery, Mr. Frazer
9 repeatedly asserted privilege over his role with respect to
10 investigation development being allegations of wrongdoing.
11 And so in the interest of being consistent with that, I'm
12 just raising and flagging the issue as we proceed down this
13 path of inquiry.

14 MS. ROGERS: We object to this objection. This
15 question is one that he can answer without raising any sword
16 and shield issues. We have -- he's answered so many
17 questions within the scope of this question over the four
18 years of being dragged through investigative and then
19 litigation discovery that the objection is frivolous and
20 it's a frivolous speaking objection designed to disrupt the
21 testimony.

22 MS. STERN: Actually, your Honor, I think that we
23 can point to even a document that's in the binder of
24 documents that Mr. Frazer's counsel identified to us which I
25 believe a week ago the NRA objected to on privilege grounds.

KM

4202

J. Frazer - by Defendant - Direct/Mr. Fleming

1 So I'm just flagging it for the Court and in all good faith.

2 MR. FLEMING: Your Honor, may I be heard?

3 The point of this is not so much to get into
4 privilege but just to show Mr. Frazer's responsiveness.
5 That's it.

6 THE COURT: Overruled.

7 Q So in this period of time, in the Spring of 2019 when
8 these unfavorable news articles are coming out -- well,
9 withdrawn. I believe I asked the question.

10 So can I have you turn to Tab 3, and this is just for
11 your binder. Don't put it up yet. This is PX 1801 for
12 identification, and it is absent of the spreadsheet that Ms.
13 Stern was just talking about.

14 But I would ask you if this refreshes any memory or can
15 help you tell us what, if anything, you were doing around this
16 timeframe.

17 MS. STERN: Excuse me, Mr. Frazer.

18 Mr. Fleming, I just didn't hear what you said. Did
19 you say it was absent the spreadsheet?

20 MR. FLEMING: Yes. I have left the spreadsheet out
21 because there was an objection.

22 MS. STERN: You're offering only the covering
23 email?

24 MS. ROGERS: The NRA has no objection to the cover
25 email, and we have no objection to Mr. Frazer testifying to

KM

4203

J. Frazer - by Defendant - Direct/Mr. Fleming

1 what he did. Only about legal advice.

2 THE COURT: Okay.

3 Q Did you understand the question?

4 A Could I have the question again.

5 Q Yeah. Well, I'll paraphrase it.

6 So this email -- does the content of this email help
7 you tell us what, if anything, you were doing in Spring of 2019
8 with respect to investigating these news articles?

9 A Yes, it does.

10 Q Can you tell us what that was?

11 A Sure. So just in general --

12 MS. STERN: Noting our objection for the record.

13 THE COURT: Overruled.

14 A Just in general terms, what this reminded me of is that
15 in April 2019 at the Board meeting in Indianapolis, Mr. Cotton
16 who at the time was the Chairman of the Audit Committee still as
17 he had been for several years but he wasn't yet an NRA officer,
18 so he was a rank and file Board member and committee chairman
19 came to me and said we have had all these negative articles.
20 Can you put together a list of the allegations that are out
21 there and just at a high level what we are doing about them or
22 what we know about them just to make sure we are on top of
23 everything essentially.

24 Q With respect to that list, were you doing anything
25 about them to figure out what these issues were?

KM

4204

J. Frazer - by Defendant - Direct/Mr. Fleming

1 A Yeah. I worked with my executive assistant at the time
2 to develop a spreadsheet that listed some of the key allegations
3 that were out there in the media and described, you know, status
4 of investigation or whether we had already determined something
5 to be incorrect or, you know, whatever according to the
6 situation.

7 Q Okay. And do you recall there coming a time in or
8 about the Summer of 2019 when Esther Schneider approached you
9 about issues that had been raised in unfavorable news articles?

10 A I do.

11 Q Okay. And do you recall testifying that you actually
12 had spent 40 minutes talking to her?

13 A Correct.

14 Q Were these the same issues that -- the ones you had
15 been investigating that you're speaking to Ms. Schneider about
16 in that call?

17 A A lot of them, yes.

18 Q So changing topics. Do you recall a question during
19 the plaintiff's redirect of their expert Mr. Hines?

20 THE COURT: Counsel, can we -- now that you're
21 moving on to a new thing, can we take our short break for
22 the afternoon.

23 MR. FLEMING: Yes.

24 THE COURT: We are going to take a short break. We
25 will come back in a few minutes.

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4205

J. Frazer - by Defendant - Direct/Mr. Fleming

1 THE COURT OFFICER: All rise. Jury exiting.

2 (Whereupon, at this time the jury exits
3 the courtroom.)

4 THE COURT: I just want -- have a seat. Just a
5 couple of things I wanted to talk about. And Mr. Fleming, I
6 know you wanted to raise some things, but before we get to
7 that, logistics for tomorrow.

8 We have had a couple of days where there is a
9 little bit of a chaos and miscommunications and none of that
10 can happen tomorrow. Okay. There is no rain date. So you
11 need to be very tightly coordinated on which witness is
12 coming next.

13 I also don't want us to start a witness that we
14 can't finish. So I just need you all to really focus on
15 insuring that we have a -- you know, a smooth end of day
16 where the defendants can rest and get us going to the next
17 day. So I don't know how that's going to work, but you have
18 all had plenty of time to think about it. So it's very much
19 incumbent upon the defendants to plan out what they are
20 going to do and how long they are going to take and how many
21 hours everybody has left before the bell rings.

22 The plaintiff hasn't stood up yet today, so their
23 hours haven't been used yet today. So I'm just -- I don't
24 have a particularly constructive advice about how to do it.
25 I just don't want to hear people yelling at each other about

KM

4206

J. Frazer - by Defendant - Direct/Mr. Fleming

1 tomorrow, well, they didn't tell me this or I didn't get
2 enough notice. We are at the end.

3 I got a letter with the related-party transaction
4 list, and I wanted to ask just a couple of questions, and
5 I'm trying to figure out how logistically to do this.

6 MS. STERN: Before we turn to the related-party
7 transaction list, just very quickly, if we can just -- we
8 got an email at 2:18 from Mr. Peters with the roster for
9 tomorrow. I just wanted to see if this is agreed upon by
10 the defendants.

11 THE COURT: I don't want to do this in front of me.

12 MS. STERN: Okay.

13 THE COURT: Whatever that is, I saw that and I took
14 that as the -- that's what prompted me to ask.

15 I don't know how to put this politely. I don't
16 want to hear about about this. I want you to all make this
17 work. I can't really micromanage, especially toward the end
18 when there is no maneuverability about moving somebody to
19 the next day. So I'm sure you will be able to work it out.

20 I just wanted to ask a couple of questions about
21 the related-party list. The one that I had a question about
22 was the one that had been just listed as Member Marketing
23 Partners. And so I see the description here, and I'm just
24 trying to see how this fits within the statutory definition
25 of a related-party transaction.

KM

4207

J. Frazer - by Defendant - Direct/Mr. Fleming

1 Does anybody on the State side -- can you explain
2 that to me? Because it's -- it has to be a transaction, and
3 the transactions I assume you're talking about here are the
4 contracts between the NRA and these vendors.

5 Now, I can see how the conflict-of-interest policy
6 might be implicated in general. But what's the -- are you
7 saying because there were these separate spreadsheets -- I
8 mean, the McKenzies are not related parties. They are not
9 relatives. So you seem to be arguing that Mr. LaPierre is
10 financially interested in the vendor relationship because of
11 some other things that are going on where they go on yacht
12 trips and all that.

13 Is there any law that says that that falls within a
14 related-party transaction? Because that's not the usual
15 party set up for a related-party transaction.

16 MS. STERN: I think that in the enforcement of the
17 715, as you well know, there is not a lot of developed case
18 law under the N-PCL 715 but in other enforcement actions,
19 the office has brought 715 violations and obtained assurance
20 of discontinuance where the arrangement is essentially a --
21 a benefit called a kickback from the vendor and that creates
22 the financial interest. And I would be happy to provide the
23 Court with that assurance of discontinuance involving a
24 similar --

25 THE COURT: Well, that's not really law. I mean,

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4208

J. Frazer - by Defendant - Direct/Mr. Fleming

1 let's start with language of the statute; right.

2 Where do you get -- where does that come from?

3 Does that authority come from -- you know, kickback -- I get
4 a kickback.

5 In other words, if there was a -- and I view a
6 kickback as, you know, under the contracts with the NRA,
7 there was a separate and secret contract where every million
8 dollars the vendor gets, Mr. LaPierre gets \$100. That's not
9 what you have here. That would be a transaction in which he
10 is interested because he is getting a seemingly direct
11 benefit. I'm having some trouble understanding how this
12 fits into that definition.

13 So you're just saying -- well, I'll just leave it
14 at that. I don't really see how this fits within the
15 statutory definition of a transaction in which they have a
16 financial interest. I get it. I mean, there could be --
17 there is a separate conflict-of-interest policy section of
18 the statute, but that's not what this is. Right?

19 So you're just saying in the past, you have
20 enforced it, but that, you know, we are now on trial here.
21 And so I have to have a legal rationale for it, and I don't
22 really understand the argument for that one.

23 MS. STERN: Your Honor, I guess I would just --

24 THE COURT: Doesn't company -- the way the
25 related-party transaction process works is you have a

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4209

J. Frazer - by Defendant - Direct/Mr. Fleming

1 transaction and then you should know based on the four
2 corners of the -- I think it's transaction or other
3 arrangement. You should know from the arrangement that this
4 is -- there is a related-party who has an interest in it.

5 This one is one where the only interest that you're
6 raising is that separately they have this friendly
7 relationship where they get all these fancy perks.

8 So I'm just trying to figure out how that's one
9 contractual arrangement.

10 MS. STERN: Well, I mean, I think as we explain in
11 the letter and that there is a relationship between the
12 contracts and the receipt of these substantial --

13 THE COURT: You haven't -- there's been no evidence
14 that -- this may sound ridiculous, but there is no
15 contractual term vis a vis the NRA that says among other
16 things you have to give these benefits to our CEO. That's
17 not part of the arrangement with the NRA. Just separately
18 they do these things which you have sort of suggested is a
19 conflict of interest, but the conflict of interest is more,
20 you know, selecting them.

21 Now, you make this point in your chart that you
22 sent me that while there seems to be a relationship between
23 when these boat trips happened and the increase in the fees.

24 MS. STERN: Correct.

25 THE COURT: So is that the evidence that it's all

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4210

J. Frazer - by Defendant - Direct/Mr. Fleming

1 part of one deal in that it's a quid pro quo that they only
2 got the next transaction because of the boat trip?

3 MS. STERN: It's all part of the same scheme, yeah.

4 MR. CORRELL: Your Honor --

5 MS. STERN: I think in Mr. Connell, his
6 examination, he showed the relationships between --

7 THE COURT: I remember that.

8 MS. STERN: -- the changes in the financial terms
9 of the transaction.

10 THE COURT: Isn't that sort of post hoc ergo
11 proctor hoc?

12 MR. CORRELL: Yes, it is, your Honor.

13 THE COURT: Definition of related-transaction --
14 related-party transaction is as I think Mr. Farber pointed
15 out to me the other day, is that it's a transaction that
16 would not be customarily reviewed by the Board or Boards of
17 similar organizations. And I noticed in your list were
18 things like, you know, Ms. LaPierre's hair and makeup.

19 Is it your position that that is the kind of thing
20 that would normally be reviewed by the Board of Directors.

21 MS. STERN: Under their policy, it would be.

22 THE COURT: Because it's a related-party
23 transaction or because --

24 MS. STERN: And raises a conflict of interest. The
25 very policy that we were just going through with Mr. Frazer.

KM

4211

J. Frazer - by Defendant - Direct/Mr. Fleming

1 THE COURT: So it's a related -- so the statute
2 says that it's not a related-party transaction if it's not a
3 transaction that would customarily be reviewed by the Board.

4 I assumed what that means is if it was an unrelated
5 party transaction, we wouldn't review it. In other words,
6 it's the kind of -- whether it's di minimus or something
7 else that, you know, people are not going to the Board for
8 review of. You view it more as it's customarily reviewed by
9 the Board because the internal guidelines here provide that
10 all related-party transactions get reviewed by the Board.

11 MS. STERN: Yeah, because that's their own
12 internal. That's the standards that they have set.

13 MS. ROGERS: Let me be heard briefly.

14 THE COURT: Let me just finish with them.

15 Now, another one that I just was looking at.
16 Millie Hallow's son doing music service. Is that something
17 that rises to the level of a related-party transaction under
18 this definition?

19 MS. STERN: It was in fact reviewed by the Board,
20 your Honor.

21 THE COURT: Well, that's a different question;
22 right.

23 The statutory definition which is what I have to
24 apply, you know, has a carve out which at least it seems to
25 me is designed to incorporate a couple of different things.

KM

4212

J. Frazer - by Defendant - Direct/Mr. Fleming

1 One, if it's not customarily reviewed and also if
2 it's di minimus. So is the financial impact of these music
3 services more than di minimus?

4 MS. STERN: I hate to sort of punt on the question,
5 but I'm the wrong person to answer that question --

6 THE COURT: Okay.

7 MS. STERN: -- right now, but -- so I'm sorry about
8 that.

9 THE COURT: Yeah. I mean, I understood the rest of
10 the list.

11 There is a bunch of Board member transactions.
12 They are not enormously large, but I think -- and I also
13 view transactions with current officers for post-employment
14 as sort of inherently the kind of things that Boards do look
15 at, but those few seemed a little odd for the list.

16 So I mean, I'm going to think about it.

17 MS. STERN: I would just sort of point out how are
18 the parties that are involved in these transactions and that
19 they are -- for instance, Millie Hallow, her role in the
20 organization being Mr. LaPierre's long-time advisor and
21 confidant and the idea of getting special treatment is sort
22 of -- that's really at the heart of --

23 THE COURT: Well, but that's circular; right? In
24 other words, it's a related-party transaction because it's a
25 related-party transaction. That sort of takes away those

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4213

J. Frazer - by Defendant - Direct/Mr. Fleming

1 sub-paragraphs about things that are specifically defined as
2 not being.

3 So by definition, the way the statute is written,
4 at least as I read it, you start with the idea that it
5 otherwise meets definition of related-party transaction, but
6 the statute says, however, it's not a related-party
7 transaction if one of these four things is true.

8 So you seem to be saying that, well, the fact that
9 it's a related-party is why it's subject to review, but that
10 would make those exceptions meaningless.

11 MS. STERN: Well, it's also the nature of the --
12 what are they contracting them for.

13 So if it's something that looks like it's a, you
14 know, gimme to somebody's son or daughter, that's what
15 raises the regularly of it.

16 THE COURT: I understand that it's -- it may be
17 troubling or it may be sort of odd, but I have to kind of
18 understand. The legislature carved certain things out. So
19 something that would otherwise be a related-party
20 transaction. So it has all of those problems. They are
21 saying to me or to all of us that it's not -- it says except
22 that a transaction shall not be a related-party transaction
23 if any one of these four things is true. One of which is
24 that it's di minimus. Two of which is that it would not
25 customarily be reviewed by the Board or the Boards of

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4214

J. Frazer - by Defendant - Direct/Mr. Fleming

1 similar organizations in the ordinary course of business.
2 And this is the part or -- that carve out is -- and is
3 available to others on the same or similar terms. So that
4 carve out has to have both things. So even if it's -- you
5 know, the hair stuff would not be ordinarily reviewed. It's
6 not in the exception unless it's that and also offered to
7 others. So I get that.

8 So anyway, I'm. I don't -- some of these ones on
9 the list didn't get a lot of air time during your case, so
10 I'm not familiar with what they are, but I am now certainly
11 going to include all the exceptions in the instructions that
12 Mr. Farber was urging me to include because some of these
13 clearly raise at least a potential for falling within one of
14 them because you now have a couple in here that are not the
15 big dollar ones and -- but I am still interested -- I
16 don't -- I'm not looking for more letters, but I'd like to
17 get a little better understanding for the big one which was
18 the MMP.

19 MS. STERN: Okay.

20 THE COURT: How that's a related-party transaction
21 is a little unclear to me. So let me just get -- I know we
22 are wasting time here, but let me let the people who are
23 standing up -- Ms. Rogers wanted to talk first.

24 MS. ROGERS: Very just briefly.

25 The extent that they are alleging MMP is a

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4215

J. Frazer - by Defendant - Direct/Mr. Fleming

1 related-party transaction, all the evidence they have put in
2 is that boat trips happened, and Mr. -- and the contract was
3 amended in the same or subsequent year, and there were
4 frequent boat trips and frequent contract amendments. So
5 that's the sum of the evidence. Then we think we should get
6 a directed verdict on that.

7 Even assuming -- even if MMP, the type of financial
8 interest that the statute contemplates is sort of elucidated
9 by the definition of related-party which talks about owning
10 35 percent of the company. That's the type of interest that
11 the framework of the N-PCL had in mind. That's in N-PCL 102
12 sub A sub 24.

13 THE COURT: Well, definition of related party is
14 23. Definition of related-party transaction is 24.

15 MS. ROGERS: So they don't match up exactly, but
16 they clearly interlock. And so what type of financial
17 interest creates this related-party relationship, it's 35,
18 and that's the type of financial interest that the statute
19 seems attentive too. So it doesn't seem -- it doesn't seem
20 sufficient.

21 THE COURT: Well, no. I mean nobody is saying MMP
22 is a related party.

23 MS. ROGERS: We understand, your Honor, but I think
24 it's sort of indirectly --

25 THE COURT: No. Their point here is they are

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4216

J. Frazer - by Defendant - Direct/Mr. Fleming

1 saying that effectively the NRA's contract with MMP includes
2 a payment to Mr. LaPierre, an implicit one.

3 MS. ROGERS: And they put in no evidence of that is
4 the only response.

5 Separately, I believe that the record will show
6 that the hair and makeup services were offered to others so
7 that Ms. LaPierre was one of several ladies on the Women's
8 Leadership Forum who received that service.

9 Finally, with respect to Millie Hallow. We
10 discussed how the son's music services might not be
11 customarily reviewed by the Board. It's also important to
12 note that Millie Hallow does not meet the statutory
13 definition of a key person; and therefore, does not meet the
14 statutory definition of a related party.

15 What they've established at best is that she was a
16 trusted and favored secretary who received a low six figure
17 salary, but the type of stake in the organization that makes
18 you a key person, the type of control with the statute says
19 you have to be on par with the director or officer. A very
20 connected secretary just simply doesn't meet the standard.

21 THE COURT: Okay. I want to move this fast because
22 I need to get them back in here, and I need to hear from Mr.
23 Fleming.

24 MR. CORRELL: Well, I agreed with her arguments,
25 and there are other points which is they didn't assert this

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4217

J. Frazer - by Defendant - Direct/Mr. Fleming

1 against Mr. LaPierre in their complaint.

2 THE COURT: This may be one -- is it asserted
3 against Mr. LaPierre or just against the NRA? This one.
4 This one may be both.

5 MR. CORRELL: And your Honor, they asserted one
6 claim, the tenth cause of action under 715. Now they are
7 trying to add more that they didn't allege, they didn't give
8 us discovery of. They have complained over and over
9 again --

10 THE COURT: They don't have discovery to give you.
11 These are all discovery from the NRA and from you. They
12 don't -- they weren't parties to the transactions.

13 MR. CORRELL: Your Honor, we could have moved to
14 dismiss these at the threshold.

15 THE COURT: Your point is it's not in the
16 complaint.

17 MR. CORRELL: It's not in the complaint, and it's
18 not a related-party transaction. This is --

19 THE COURT: The yacht trips aren't in the
20 complaint?

21 MR. CORRELL: They are in the complaint, but they
22 are not alleged as a cause of action under 715.

23 THE COURT: Doesn't the -- doesn't the -- that
24 section of the complaint incorporate all the factual
25 allegations?

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4218

J. Frazer - by Defendant - Direct/Mr. Fleming

1 MR. CORRELL: Yes, but it doesn't assert them as a
2 cause of action against him. It says it's a conflict of
3 interest, but it doesn't say it's a related-party
4 transaction. They don't seek any damages.

5 THE COURT: I'm going to think about the list and
6 see whether there is any on there that I don't think should
7 be.

8 MS. ROGERS: Can I say really --

9 THE COURT: His is a whole different thing, and we
10 may not have time to do it.

11 MR. FLEMING: So there is two things.

12 In the Executive Law charge in particular on
13 Page 64 of 81 which relates to the false filings against
14 Frazer, I had included additional language adding basically
15 at the end, and I wrote in haste "knew or should have
16 known." It struck me later, and what I wanted to raise on
17 Friday was that I think the more appropriate language would
18 be if your Honor was inclined to add a scienter requirement
19 is "knew or believed," and the reason for that is that's the
20 certification that Mr. Frazer --

21 THE COURT: The problem is that there is no
22 reference to a scienter requirement in the statute, and I
23 don't think that anybody has cited to me any case law that
24 would impose one.

25 MR. FLEMING: Well --

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THE COURT: It's false filing.

If you were the one, and there is something about you are the one who either makes the statement or whatever -- I noticed that nobody had cited any cases. I thought about it. But is there a -- some sort of intent requirement or negligence requirement? And I didn't see any basis for including one.

(Continued on the following page.)

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Proceedings

1 MR. FLEMING: I would say this. There's the false
2 filing charges against two defendants, the NRA and Frazer.

3 With respect to Frazer, the complaint is absolutely
4 crystal clear that the basis for including him is his
5 certification in the CHAR500, that he knew or to the best of
6 his knowledge and belief the attachments were true, correct
7 and complete.

8 THE COURT: So, it would have to be the
9 certification is false because --

10 MR. FLEMING: Right, and I know that there's,
11 there's a -- in the statute, it talks about being
12 responsible for the statement and your Honor had written --
13 and I think correctly so -- that responsible means cause and
14 maybe that takes care of the scienter part. Causing the
15 false statement, maybe that takes care of it, but it is --
16 there is this tension there with respect to the charge
17 against the individual.

18 THE COURT: All right, I'll think it over.

19 All right, I'm sorry to burn our whole break there,
20 but let's get the jury.

21 MS. STERN: Your Honor, could we have the briefest
22 break to just use --

23 THE COURT: Yes, give them a two-minute warning,
24 Officer. Thank you.

25

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Proceedings

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2

MR. CORRELL: Your Honor, I would just say a couple of things. That Susan LaPierre who is not a defendant and no claims were asserted against her, so it would be a little late to try to join her as a party after the trial.

3

4

5

6

THE COURT: Well, again, I don't know whether that is included as against Mr. LaPierre or is it against the NRA?

7

8

9

10

MR. CORRELL: They are making it quite clear that they're asserting these claims against Mr. LaPierre even though they didn't put it in the complaint. It is just wrong.

11

12

13

(Whereupon, at this time a short recess was then taken.)

14

15

16

(Continued on next page)

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25

BP

4222

J. Frazer - by Defendant - Direct/Mr. Fleming

1

2

(Whereupon, at this time witness,

3

JOHN FRAZER, having been previously sworn/affirmed by the

4

Clerk of the Court, resumed the witness stand and testified

5

as follows:)

6

COURT OFFICER: All rise, jury entering.

7

(Whereupon, at this time the jury then entered the

8

courtroom.)

9

THE COURT: All right, please be seated. Thank

10

you.

11

DIRECT-EXAMINATION

12

BY MR. FLEMING: (Continuing)

13

Q So, Mr. Frazer, I'll go back to my last question.

14

Do you recall a question that the plaintiff on their

15

redirect of their expert witness, Mr. Hines, asked regarding

16

Question 28A of Part 4 of the 2016 Form 990?

17

A I think I do, yes.

18

Q I turn your attention to Tab 23.

19

MR. FLEMING: And I and call up the 2016 990, which

20

is in evidence.

21

(Displayed)

22

Q Before we turn the page, Mr. Frazer, who signed this

23

990?

24

A It was signed by Woody Phillips as an NRA officer and

25

Jim Sweeney, our paid preparer.

BP

4223

J. Frazer - by Defendant - Direct/Mr. Fleming

1 Q And that's the same Mr. Sweeney we've talked about
2 before?

3 A It is.

4 Q If I could direct your attention to Part 4 of the form
5 and Question 28A.

6 A I see it.

7 Q What is asked by Question 28A of Part 4?

8 A So, Question 28 asks "If the organization was a party
9 to a business transaction with one of the following parties;"
10 and then, "A, is a current or former officer, director, trustee
11 or key employee."

12 Q And what did the NRA check in response to that
13 question?

14 A The NRA said "no."

15 Q We just finished looking you'll recall at the 2016
16 related-party transactions minutes.

17 Do you recall that?

18 A I do.

19 Q And certain transactions with directors, in fact,
20 occurred in 2016?

21 A That's correct.

22 Q Should the NRA have checked that box "yes?"

23 A You know, I think we would have relied on the advice of
24 Mr. Sweeney on that and Emily Cummins in house who worked on the
25 990s at the time. But I think, also, if you look at the -- at

BP

4224

J. Frazer - by Defendant - Direct/Mr. Fleming

1 the instructions for the form itself and for Schedule L, Part 4
2 it, the answer kind of makes sense.

3 Q I'm going to ask you to turn to your binder, Tab 24,
4 which is an Exhibit JFX 59A marked for identification.

5 I just ask you what that document is?

6 A It is the IRS Instructions for Form 990, the core form
7 itself.

8 Q And if you could just generally describe for the jury
9 what these instructions are?

10 A It is a fairly long document, which the IRS gives
11 definitions of terms and then it goes really section by
12 section and line by line trying to explain how to answer each
13 question.

14 Q And could you leaf through that and see if you believe
15 the NRA should have answered that box "yes" or whether they were
16 correct in answering it "no?"

17 MS. STERN: Objection, your Honor. I think we're
18 asking him to provide his legal advice on interpreting the
19 tax law requirements here.

20 MR. FLEMING: I can establish he's not a tax
21 lawyer. This is part of his diligence when he reviews
22 990s.

23 THE COURT: Well, that's a different question. If
24 you were going to ask him when you reviewed the 990 and
25 certified it, did you look at this and this and this, that's

BP

4225

J. Frazer - by Defendant - Direct/Mr. Fleming

1 a fact question.

2 You're asking -- what you're asking him to do is
3 look at it and tell us now what he thinks.

4 MR. FLEMING: Poor question.

5 THE COURT: Which one of those are you doing?

6 MS. STERN: The witness just testified somebody
7 else did the tax preparation.

8 THE COURT: Well, this witness is also responsible
9 for other things he may have done.

10 So, go ahead.

11 Q Mr. Frazer, do you review the 990 after it is created
12 by the internal and outside accountants?

13 A It's been different from year to year, but currently, I
14 review usually several drafts of it.

15 Q And how about in 2016, what was your practice?

16 A In 2016, I relied as I think everyone did on Emily
17 Cummins and on the outside preparers, but I would review
18 whatever I was asked to review or if I was looking through it
19 and thought I had a question.

20 Q Generally, do you refer to the IRS instructions when
21 you're doing your review?

22 A Constantly.

23 Q Now, do you have any understanding from your general
24 practice now whether there's sort of a guiding principle for
25 what gets disclosed on Schedule L of the Form 990?

BP

4226

J. Frazer - by Defendant - Direct/Mr. Fleming

1 A Sure. So the Schedule L has to do with several
2 different distinct categories of dealings with officers,
3 directors and key employees. They're known as disqualified
4 persons in the Federal Tax Code.

5 Q Does the IRS in its instructions to your recollection
6 give instructions about what, if anything, should be put on
7 Schedule L and if not, why not?

8 A Sure. There's a whole separate instruction booklet for
9 Schedule L.

10 Q Before we get to the Schedule L instruction, is there
11 any profit to be gained by looking at the, in your view, the IRS
12 general instructions with respect to Question 28A or is it
13 better to go to Schedule L instruction?

14 A I mean, I think if you're trying to answer a question
15 about something that might or might not be on Schedule L, you
16 have to look at both.

17 Q Well, if I could turn your attention the Tab 25 and ask
18 you what that document is.

19 A It's the 2016 Schedule L instructions.

20 Q And so, can you -- I mean, I don't know what you would
21 do, but what would you do to try to figure out whether a
22 question was correctly answered or not answered?

23 A I would go to the instructions for that question.

24 Q So, can you do that for the jury and explain kind of
25 what you're doing while you're doing it?

BP

4227

J. Frazer - by Defendant - Direct/Mr. Fleming

1 A Sure. So, the core form instructions on Question 28
2 say this might or might not be on Schedule L, Part 4, so --

3 MS. STERN: Objection to reading from the document,
4 which is not in evidence at this point.

5 THE COURT: Overruled. First of all, I'm not sure
6 we know -- we now have two exhibits open. Which one are you
7 talking about?

8 Q Can you explain which one you're looking at?

9 A I'm in Tab 25, the Schedule L instructions.

10 THE COURT: You haven't introduced these. Do you
11 want to?

12 MR. FLEMING: Can I, yes? They are public
13 documents.

14 THE COURT: They are admitted. 25 which is the
15 Schedule L instructions and JFX 59B; and 24, which are the
16 instructions for Form 990 are JFX 59A and they are both
17 admitted.

18 (Whereupon, at this time Exhibit JFX 59A and JFX
19 59B were admitted and received into evidence.)

20 Q So, you're looking at JFX 59B right now; right?

21 A Yes.

22 Q And so just continue, can you tell us what you're
23 looking at and what your thoughts are on this question?

24 A So, I'm looking at the Part 4 instructions which talk
25 about what you have to report regarding business transactions

BP

4228

J. Frazer - by Defendant - Direct/Mr. Fleming

1 involving interested persons -- I'm sorry, I said disqualified
2 persons. It was interested persons, and then there are also
3 some exceptions.

4 Q Okay, and take us through kind of what you think are
5 the salient points in these exceptions.

6 A So, generally speaking, in the -- what needs to be
7 reported is there's a whole list; but, basically, business
8 transactions with officers, directors, key employees and their
9 relatives, where the total payments exceeded a hundred thousand
10 dollars or there's a lot of others.

11 Q Okay.

12 A So a hundred thousand is basically the threshold.

13 MR. FLEMING: Can we publish JFX 59B on the screen,
14 please.

15 Q What page are you on?

16 A Page 4, bottom of the page.

17 Q On page 4, bottom of the page.

18 (Displayed)

19 Now, in the "Exceptions" paragraph right in the middle
20 column, do you see that?

21 A I do.

22 Q Does it say anything about where these types of
23 transactions should be disclosed?

24 A It says don't report -- you go down to the boldface
25 compensations. "Don't report the following in Part 4." And one

BP

4229

J. Frazer - by Defendant - Direct/Mr. Fleming

1 of the things you don't report is compensation that's reported
2 on Form 990, Part 7, Section A unless it is to a family member
3 of another person in that section.

4 Q And did you have an understanding of whether the
5 transactions that were greater than a hundred thousand dollars
6 were disclosed in Part 7, Section A?

7 A I believe they were.

8 Q If we could go back to Tab 23, which is the 2016 990,
9 and go to page 9 of 55.

10 A Okay.

11 Q Mr. Frazer, do you see that, do you see the entry for
12 Mr. Butz?

13 A I do.

14 Q And what does that disclose?

15 A It reports that he received \$150,000 in reportable
16 compensation in 2016.

17 Q And if you could turn to page 14 of 55, please.

18 And what does that disclose that's over a hundred
19 thousand dollars?

20 A It discloses that Ms. Hammer received \$206,000 in
21 reportable compensation.

22 Q Okay, and you could take that down.

23 If I could turn you -- your attention to Tab 12. This
24 is a 2011 Form 990.

25 A Okay.

BP

4230

J. Frazer - by Defendant - Direct/Mr. Fleming

1 Q And we can pull it up, please, and turn to page 5 of
2 69, please.

3 A Okay.

4 Q Mr. Frazer, how did the NRA answer Question 28A in
5 2011?

6 A It checked "no."

7 Q And have you had occasion -- I don't want to belabor
8 the jury's time. Have you had occasion to look through the 2011
9 990 to see if there were transactions over a hundred thousand
10 dollars in that year?

11 A I believe there were.

12 Q And were they disclosed in Part 7, Section A?

13 A Yes.

14 Q And have you had occasion to look at the same questions
15 for the 990 in 2012?

16 A Yes.

17 Q Same answers?

18 A Yes.

19 Q And '13?

20 A Yes.

21 Q And '14?

22 A Yes.

23 Q And '15?

24 A Yes.

25 Q And who signed the tax returns in those years?

BP

4231

J. Frazer - by Defendant - Direct/Mr. Fleming

1 A I believe it was always Woody Phillips and Jim
2 Sweeney.

3 Q And did you -- do you know if the organization -- do
4 you know from personal knowledge whether the organization relied
5 on Mr. Sweeney's expertise on these questions?

6 MS. STERN: Objection.

7 THE COURT: Overruled.

8 A I know that Emily Cummins who I worked -- who was the
9 person in the treasurer's office who I worked directly with, had
10 very high praise for Mr. Sweeney's skills; and he died sadly
11 after first came back to the NRA and she was just devastated.

12 Q I have a couple more topics for you.

13 What department at the NRA is responsible for
14 solicitation of funds?

15 A The larger part of that would be the membership
16 division, which raises membership dues and additional
17 contributions on top of dues, like membership upgrades and just
18 add-on contributions, you know, roundup your dues, that kind of
19 thing.

20 And then the other division that has a major
21 fundraising role is the Office of Advancement, which is
22 responsible for the higher dollar -- higher donor net worth
23 individuals and then the Institute for Legislative Action does a
24 lot of its own fundraising.

25 Q Have you ever worked for the Membership Division?

BP

4232

J. Frazer - by Defendant - Direct/Mr. Fleming

1 A No.

2 Q Have you ever worked for the Advancement Division?

3 A No.

4 Q Now, you did work in ILA; right?

5 A I did.

6 Q Did you ever solicit funds for ILA?

7 A I reviewed fundraising letters as to factual accuracy
8 and make sure they were expressing our legislative and political
9 positions, but I never actually signed them or asked for money.

10 Q So, another topic.

11 Do you recall discussing earlier when you first were
12 here receipt of a directors and officers insurance policy in
13 August of 2021?

14 A I do.

15 Q And you testified you received that policy in
16 August 2021; right?

17 A I did.

18 Q Was that testimony correct?

19 A No, I misremembered the month.

20 Q When did you actually receive the D&O policy?

21 A Late September, on or around September 28th.

22 Q Do you recall whether September 28th was after
23 Mr. Marshall had filed an ethics complaint against you?

24 A Yes, it was about a week after he filed the complaint.

25 Q So, to be clear, at the time he filed the ethics

BP

4233

J. Frazer - by Defendant - Direct/Mr. Fleming

1 complaint, you did not even have the insurance policies at that
2 time?

3 A That's correct.

4 Q Another topic, last topic.

5 Did the New York Attorney General ever speak to you
6 during its investigation of this case?

7 A No.

8 Q Now, they filed this case on August 6th, 2020. Is that
9 right?

10 A Yes.

11 Q Can you describe for the jury how you found out that
12 you were named as a defendant in this case?

13 A Yeah, while I was driving into work, I got -- to the
14 office that day, I got a call giving me a heads-up that the
15 attorney general may -- was having a press conference and that
16 it might be announcing some action against the NRA. There was
17 another issue that it might have been as well.

18 So at the -- at the scheduled time, I found it
19 streaming online somewhere, and I watched the news conference
20 and learned I was being named as a defendant.

21 Q Did you hear anything else during that press conference
22 that pertained to you?

23 A The attorney general referred to me and the other
24 then -- the other three defendants -- Mr. Powell was still in
25 it -- as using the NRA as our personal piggybank.

BP

4234

J. Frazer - by Defendant - Direct/Mr. Fleming

1 Q Did you come to understand that those comments at the
2 press conference were reduced to news articles?

3 A It's been quoted in numerous articles.

4 Q How has that event affected personal and work
5 relationships in your life?

6 A It's very stressful personally, obviously. It's also
7 something that my family, my wife and kids worry about. And
8 beyond that, it's been very painful, frankly, to see friends and
9 people that I respect, see social media posts quoting, posting
10 approving of this article, these articles; and saying, Oh, this
11 is terrible. These people all need to be thrown out or
12 whatever, and these people in some cases that I have known for
13 years.

14 Q Let me ask you a direct question about your benefits
15 received from the organization.

16 Apart from your employment compensation, have you
17 gotten a penny from the NRA?

18 A No, just salary and approved benefits.

19 Q How is your employment compensation determined?

20 A The Office of Compensation Committee makes a
21 recommendation to the board every fall for the upcoming year,
22 and then the board votes on it at the same meeting in,
23 typically, September.

24 Q Are you forbidden from having any involvement in that
25 process?

BP

4235

J. Frazer - by Defendant - Direct/Mr. Fleming

1 A Yes.

2 Q And do you comply with that prohibition?

3 A Yes. Wayne and I and the treasurer, Ms. Rowling now
4 and Ms. Spray and Mr. Phillips before all step out of the room
5 when that discussion is happening.

6 Q Now, you serve on two positions at the NRA; correct?

7 A Yes.

8 Q Secretary and General Counsel?

9 A That's correct.

10 Q Prior to 2015, can you describe for the jury whether
11 those two positions were staffed by separate people?

12 A Always.

13 Q And were they compensated separately?

14 A Yes.

15 Q And is your compensation at the NRA equivalent to a
16 combination of those two persons salaries?

17 A No, it's probably less than half of what the two
18 combined were in 2014.

19 Q So, are you talking about when you first started in
20 2015 or now?

21 A Then and now. My salary has actually gone down since I
22 started.

23 Q Now, can I call up for identification -- actually, I'll
24 just turn you to Tab 4, and ask you if you recognize this
25 e-mail?

BP

4236

J. Frazer - by Defendant - Direct/Mr. Fleming

1 A I do.

2 Q Is that your e-mail at the top?

3 A It is.

4 Q And is this something you wrote?

5 A It is.

6 MR. FLEMING: I move its admission, your Honor.

7 MS. STERN: No objection.

8 THE COURT: It is admitted, PX 2231.

9 Q Ms. Frazer, what is going on in this e-mail?

10 A This is an e-mail from early January of 2021. It is a
11 few days before the board meeting that was held that month that
12 you've heard some other testimony about; and what was going on
13 was that I had become aware from talking to Mr. LaPierre and
14 Mr. Spray that the Office of Compensation Committee would be
15 meeting again. And this is the winter meeting which is not
16 where they would usually consider compensation, so to back up a
17 second, I'll explain.

18 This is 2021. In 2020, when COVID hit, we were all
19 worried about the financial impact of the NRA; and so the NRA
20 imposed an across-the-board 20-percent pay cut on all levels of
21 employees. And those people whose compensation was set by the
22 board or who had employment contracts all signed voluntary
23 amendments or agreements to agree to that reduction. And
24 Mr. LaPierre actually took a 30-percent cut.

25 But, then as things kind of started to normalize and we

BP

4237

J. Frazer - by Defendant - Direct/Mr. Fleming

1 had -- we figured we were going to be okay, we started restoring
2 salary to pre-COVID levels, and they gave the managers
3 discretion about how to do that.

4 My position was to give -- was to restore it from the
5 bottom up, so the lowest paid employees would get their pay
6 restored first. So, I was still at the 20-percent reduction.
7 When I found out that they were talking about basically a
8 full -- I think it was a full restoration at this time and I
9 think they were also talking about the retention bonuses that
10 were discussed earlier; I said, Well, wait a minute. If the
11 staff isn't getting everything back quite yet, I want to put a
12 cap on what restoration I get. And so I sent this e-mail to
13 Carolyn Meadows as the Chairman of the Office of Compensation
14 Committee and also to Craig Spray because he would be
15 responsible for managing any funds.

16 Q In speaking to the retention bonus that was testified
17 about earlier, did that ever happen?

18 A There was never any -- never a retention bonus was
19 never paid to me, and there was never a pay restoration.

20 Q Mr. Frazer, have you ever asked for a raise from the
21 NRA?

22 A No.

23 MR. FLEMING: I have nothing further.

24 THE COURT: Okay, any other parties have any direct
25 testimony?

BP

4238

J. Frazer - by Defendant - Direct/Ms. Rogers

1

2

MS. ROGERS: Direct.

3

THE COURT: Direct, okay.

4

DIRECT-EXAMINATION

5

BY MS. ROGERS:

6

Q Good afternoon, Mr. Frazer.

7

MS. ROGERS: Can the jury hear me? Okay.

8

A Good afternoon.

9

Q Mr. Frazer, you testified earlier that to your understanding, Mr. LaPierre was walled off from the renegotiation of the MMP contract; right?

12

A Yes.

13

Q But you also testified that from a business perspective, his -- he oversaw the division that owned that contract; right?

16

A Right.

17

Q Can you just explain to the jury to your understanding the distinction between those two things?

19

A Sure. So -- so Mr. LaPierre was, ultimately, in the chain of command above MMP or Allegiance or any of those companies and was a primary user of their services. You know they're writing speeches for him. They're working with him on direct mails, strategies, digital fundraising and so on; but that doesn't mean that he was necessarily involved in negotiating the contract. In fact, he specifically wasn't

25

BP

4239

J. Frazer - by Defendant - Direct/Ms. Rogers

1 involved in negotiating the contract.

2 Q So, would Mr. LaPierre have been involved in deciding
3 how much MMP got paid?

4 A Not in the course of that contract negotiation or
5 after.

6 Q You also testified a moment ago with your counsel that
7 your compensation and other compensation started to be restored
8 after COVID; right?

9 A Yes.

10 Q But yours was never restored to pre-COVID level right?

11 A That's right.

12 Q Do you have an understanding as to whether other
13 officers' compensation was restored to pre-COVID level?

14 A Some of them were restored, at least partly; but I
15 don't know if any of them were ever restored fully.

16 Q Mr. Frazer --

17 MS. ROGERS: Actually, can we bring up for
18 identification DX1-0241.

19 I only have one hardcopy of this document, but I
20 don't expect it to be controversial.

21 Q Let me know when it is on your screen.

22 THE COURT: You have to turn the screens off, I
23 guess.

24 MS. ROGERS: Any objection?

25 MS. STERN: No objection.

BP

4240

J. Frazer - by Defendant - Direct/Ms. Rogers

1 Q Mr. Frazer --

2 THE COURT: You can turn it back on. It is
3 admitted.

4 (Whereupon, at this time Exhibit DX1-0241 was
5 admitted and received into evidence.)

6 Q Mr. Frazer -- well, we'll put it up.

7 (Displayed)

8 Can you describe for the jury what this document is?

9 A It is a sign-in sheet for one of the compliance
10 training seminars.

11 Q About how many compliance training seminars would you
12 estimate the NRA has had for staff only, not counting the
13 board?

14 A I've lost count over the last five years.

15 Two or three a year, I must have -- I must have done
16 six to eight, eight of them just for the staff.

17 Q Do you have an understanding as to roughly what
18 percentage of the senior staff have been compliance trained?

19 A At this point, I would say it is a hundred percent of
20 the senior staff.

21 Q Would you say they have been trained once or many
22 times?

23 A Most of them many times.

24 Q So, we heard that the NRA implemented compliance
25 training. We heard Mr. Phillips testify that the NRA is looking

BP

4241

1 at things and directing at things and correcting things and we
2 heard the term course correction --

3 MS. STERN: I object to the attorney --

4 THE COURT: Yes, sustained.

5 Q But we've also seen, would it be fair to say, that
6 there were still some loose ends going into 2020; right?

7 A Oh, sure.

8 Q Does that surprise you?

9 A In -- in a big organization with four to five million
10 members and several hundred staff, seventy-six board members,
11 numerous non-board committee members and a lot -- and hundreds
12 of vendors, no. There's a lot of moving parts.

13 (Continued on next page)

14

15

16

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18

19

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21

22

23

24

25

BP

4242

Frazer - by Defendant - Direct/Ms. Rogers

1 Q All right. I want to talk more about related-party
2 transactions. And you reviewed with your lawyer the NRA's
3 related-party transaction policy that was in Tab 21 of your
4 binder which is PX 421, and I believe the policy starts on
5 Page 17 of 300. If you can turn there for ease of reference.

6 A We are in Tab 21?

7 Q I am looking for the first page of the policy, and my
8 pagination was different than yours.

9 MS. STERN: 24 of 300, I believe.

10 Q 24 of 300.

11 Mr. Frazer, can you explain to the jury within the
12 meaning of the NRA's policy the difference between a conflict
13 and a related party?

14 A Sure. A related-party transaction I think you have as
15 a subset of a conflict. So you draw a big circle. Conflicts of
16 interest would be anything where there might be some reason to
17 judge -- to question a relationship.

18 You know, is there an independent -- a loss of
19 independence, something like that. And then a related-party
20 transaction is a much narrower category where there is a direct
21 financial or business interest at stake.

22 Q All right. I want to walk through a few transactions
23 and I don't want you to testify about legal advice you gave the
24 NRA, but I would like you to testify about how you analyzed each
25 of these transactions and whether you considered them to be

KM

4243

Frazer - by Defendant - Direct/Ms. Rogers

1 related-party transactions under this policy or not. Okay?

2 A Right.

3 MS. STERN: Your Honor, I object. The witness just
4 previously testified that this is a function for the Audit
5 Committee, and in fact, said that that's not his role.

6 MS. ROGERS: He testified that his role is not to
7 determine ultimately whether the transaction is fair,
8 reasonable and in the best interest of the National Rifle
9 Association.

10 THE COURT: How do you distinguish the testimony
11 you're asking for from him as the general counsel giving his
12 legal view?

13 MS. ROGERS: Well, I think he can give his
14 interpretation of the policy without giving advice about the
15 law.

16 THE COURT: Even though the policy --

17 MS. ROGERS: Well, the policy, we argue was drafted
18 to fit the law, but the witness can testify we would argue
19 about how he understood this policy, and he did have a gate
20 keeping function for bringing it to the Audit Committee for
21 them to evaluate.

22 MS. STERN: I think they also just elicited
23 testimony that sending something to the Audit Committee does
24 not indicate that there is -- but the distance between him
25 as general counsel providing his interpretation of this

KM

4244

Frazer - by Defendant - Direct/Ms. Rogers

1 policy which they say is equivalent to the legal standard.

2 THE COURT: Well, let me just ask.

3 MS. STERN: There is no light between those two
4 things.

5 THE COURT: Was he permitted to testify about this
6 question that you're asking now in discovery.

7 MS. ROGERS: I can't recall an instance in discovery
8 where they asked Mr. Frazer do you consider this contract a
9 related-party transaction. Maybe they can recall one.

10 MS. STERN: I don't remember the particulars of the
11 testimony in that regard so.

12 THE COURT: I'm just having trouble figuring out
13 why this isn't him giving his legal opinion because this is
14 effectively the -- this is the statutory definition.

15 MS. ROGERS: I would say it's his policy opinion,
16 and the jury -- the jury can obviously be instructed that he
17 is not telling them what the law is or whether each
18 transaction is legal, but he gathers up these
19 questionnaires, brings them to the Audit Committee. He
20 drafted this policy.

21 THE COURT: I just -- I think that internally,
22 wouldn't he be giving legal advice to people about what the
23 policy means?

24 MS. ROGERS: Right. So I'm certainly not asking
25 him -- I'm not asking him to testify, for example, I told

KM

4245

Frazer - by Defendant - Direct/Ms. Rogers

1 the Audit Committee they don't have to worry about this one
2 or I explained why this one complied with the New York Law.

3 I'm instructing him not to testify to that end, but
4 I am hoping to elicit testimony about how he interpreted the
5 application of the policy he drafted to specific
6 transactions that came across his desk that the NRA's
7 accused of mishandling and the NRA relied on this executive
8 to help it handle.

9 MS. STERN: Your Honor, I just don't see how that
10 could be squared with the testimony that his counsel just
11 elicited.

12 THE COURT: That's a different question.

13 MS. STERN: Otherwise, he is just giving a legal
14 opinion.

15 THE COURT: No, I don't think that's necessarily
16 true.

17 MR. FARBER: Judge, I mean, there is also a
18 question of whether the relevance -- if this is all that he
19 is doing, the question for this jury on these things is
20 going to be whether they violate statutes or what this
21 means. But his sort of looking at this --

22 THE COURT: I don't think I can separate this from
23 his legal opinion. So sustained.

24 Q All right. Well, I'll ask you this.

25 Mr. Frazer, do you recall hearing testimony about a

KM

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Frazer - by Defendant - Direct/Ms. Rogers

1 post-employment contract that was in effect for Mr. LaPierre
2 back in 2018?

3 A Yes.

4 Q Can you explain to the jury whether that contract was
5 rescinded?

6 A It was.

7 Q What about Ackerman's out-of-pocket expenses? To your
8 knowledge, did the NRA treat those as related-party
9 transactions?

10 A No.

11 Q What did the NRA do in 2018 when information surfaced
12 about Ackerman's out-of-pocket expenses?

13 A We started trying to get more information about it,
14 demanding information from Ackerman and asking to audit their
15 books.

16 MS. ROGERS: Let's pull up for identification PX
17 2333.

18 THE COURT: It's not in any book?

19 MS. ROGERS: It's not in a book. It's a
20 spreadsheet.

21 THE COURT: Okay. Pull it up.

22 Q Mr. Frazer, do you recognize this spreadsheet?

23 A I do.

24 Q And let's go to the key observations tab.

25 Mr. Frazer, what is this spreadsheet?

KM

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Frazer - by Defendant - Direct/Ms. Rogers

1 A This is a spreadsheet prepared by the forensic
2 accounting firm Forensic Risk Alliance that we retained a couple
3 of times, but this one was to review the Ackerman's
4 out-of-pocket expenses.

5 Q Did you rely on this spreadsheet in the ordinary course
6 of your work?

7 A Yes.

8 Q What -- without revealing legal advice you gave, what
9 did you use the spreadsheet for?

10 A It was part of the process that we went through that
11 ultimately resulted in litigation against Ackerman.

12 MS. ROGERS: I offer its admission?

13 MS. STERN: Objection, your Honor. This is
14 hearsay.

15 THE COURT: Seems right to me.

16 MS. ROGERS: The witness relied on this document in
17 commencing litigation.

18 THE COURT: It's not a business record of the NRA.
19 So in relying in the ordinary course is not what makes it
20 admissible. It's a drafter preparing it, and they were in
21 the ordinary course which this wouldn't be. This was an
22 assignment they were working on, and it has all sorts of the
23 factual findings.

24 MS. ROGERS: But we would argue, your Honor, the
25 fact that this work was done, the fact that the NRA hired

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Frazer - by Defendant - Direct/Ms. Rogers

1 forensic accountants to create this exhaustive analysis of
2 the expenses being paid goes to the NRA's diligence as to
3 these expenses.

4 THE COURT: There's been testimony about their
5 retention of these guys, and that's fine; but this --
6 admitting this is admitting their findings which is hearsay.
7 So sustained.

8 Q Mr. Frazer, after you hired forensic accountants to
9 review the Ackerman out-of-pocket expenses, what did the NRA do?

10 A We further -- well, first we sued them to demand their
11 books and records, and I was actually -- there was actually two
12 suits. One in Virginia and one in Texas. And then it was also
13 used in some later investigations.

14 Q Were the particular findings by the forensic
15 accountant -- strike that. What's McKenna?

16 A McKenna Associates. McKenna and Associates is a
17 fundraising consulting firm in Virginia.

18 Q To your knowledge, how far back did the NRA's
19 relationship with McKenna go?

20 A I want to say 2013 or 2014. Something like that.

21 Q Before Josh Powell joined the NRA?

22 A That's correct.

23 Q But the NRA started paying McKenna more in 2018 than it
24 had previously; right?

25 A Yes, we did.

KM

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Frazer - by Defendant - Direct/Ms. Rogers

1 Q Do you know of any reasons why the NRA might have paid
2 McKenna more in 2018 than before?

3 A Yes.

4 Q Can you explain those to the jury?

5 A Sure. So McKenna was originally retained at a fairly
6 low rate to do identification of high net worth donors or
7 potential donors and donor networks that we could work with to
8 raise funds for the association; and -- but -- but because of
9 the relationships that they had developed during 2018 when we
10 started facing loss of financial -- financial relationships like
11 banking and insurance due to government investigations and
12 litigation and potential litigation, we -- we started using
13 McKenna -- McKenna's contact for their contacts in that type of
14 area to start rebuilding some operations or developing new
15 options in terms of how to structure our membership insurance
16 programs.

17 Q Now, eventually it came to light that Josh Powell's
18 wife had been hired as a contractor by McKenna; right?

19 A Yes.

20 Q And you were present at the Audit Committee meeting
21 when the Audit Committee reviewed that transaction; right?

22 A I was.

23 Q Can you describe for the jury what the NRA did about
24 that?

25 A Yeah. The NRA -- I'd have to look at the Audit

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Frazer - by Defendant - Direct/Ms. Rogers

1 Committee minutes to remember all of the details, but basically
2 the Audit Committee reminded Mr. Powell and anyone else that
3 they needed to make timely disclosure of that type of
4 relationship, and I think they demanded a further review of the
5 relationship.

6 Q To your knowledge, was the relationship subsequently
7 limited?

8 A It was. It was -- we reached an agreement with them to
9 resolve some outstanding billing that we had concerns about.
10 Basically, reviewed their bills for reasonableness and not to --
11 to make sure they weren't duplicative, made a discounted
12 payment, and then eventually reduced them to their original
13 fundraising role, and finally terminated them all together.

14 Q What is Jim Powell Photography?

15 A Jim Powell is Josh Powell's father, and he is a
16 professional photographer.

17 Q And in 2018, you learned that Mr. Powell had been hired
18 originally through Ackerman McQueen to photograph an NRA
19 shooting competition; right?

20 A I'm not sure if that was the original thing. I think
21 Ackerman had hired him to shoot some NRA event, but then the NRA
22 also hired him directly.

23 Q Did you assist the Audit Committee in evaluating
24 whether those transactions were fair and reasonable?

25 A I did.

KM

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Frazer - by Defendant - Direct/Ms. Rogers

1 Q Can you describe for the jury the diligence you
2 performed to insure that those transactions were fair and
3 reasonable?

4 A I got information and presented it to the Audit
5 Committee regarding the rates that Ackerman billed for Mr.
6 Powell and for another photographer or photographers that they
7 had used for NRA events, figured out how many hours they had
8 worked and what the hourly rate worked out to.

9 I don't remember the numbers, but I remember them being
10 comparable, and that was presented to the committee.

11 Q Did your office ever determine to treat Millie Hallow
12 as a related party of the NRA?

13 A No.

14 Q Why?

15 A Because there are definitions in New York Law and in --
16 she wasn't an NRA officer or director ever.

17 Q And Mr. Frazer, I'm going to tell you to testify about
18 your policy, not about New York Law.

19 A Sure. But then there was also a definition of key
20 employee in the policy, and Ms. Hallow just didn't meet the
21 definition.

22 Q But she was a pretty influential secretary; right?

23 A She was an important assistant to Mr. LaPierre, no
24 doubt.

25 Q So why didn't she meet the threshold?

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Frazer - by Defendant - Direct/Ms. Rogers

1 A Because the threshold is basically that the person is
2 controlling a substantial part of the organization in terms of
3 revenue or expenses or employee head count.

4 Q Marion Hammer is a gun lobbyist; right?

5 A She is.

6 Q She is also a related party of the NRA because she is
7 on the Board; right?

8 A That's correct.

9 MS. STERN: Objection to leading.

10 THE COURT: I'll let you go for one more.

11 Q Mr. Frazer, can you describe for the jury your
12 understanding as to whether or not the NRA in addition to Ms.
13 Hammer pays other gun lobbyists who are not on its Board?

14 A Sure. The NRA from my experience in ILA, I can tell
15 you the NRA hires contract lobbyists at the federal and state
16 level depending on whether a person has an important
17 relationship that we might want to take -- make use of.

18 Q So the -- would it be fair to say the NRA makes
19 payments to many gun lobbyists in the course of its business?

20 A I don't know how many at any given time. It goes up
21 and down, but it's definitely ordinary course of business from
22 where I stand.

23 Q Mr. Frazer, of your job as secretary is to oversee
24 procedurally the NRA's Board elections; right?

25 A It is.

KM

4253

Frazer - by Defendant - Direct/Ms. Rogers

1 Q Can you describe for the jury the processes that are
2 followed to insure that NRA elections are free and fair?

3 A Sure, and I'll keep it brief because it is a
4 significant amount of time that we spend on it. But basically,
5 you start with a nominating process. That starts with each year
6 with the election of the nominating committee. The nominating
7 committee consists of six directors and three outside people
8 just to make sure that we have a fresh perspective.

9 The nominating committee gets suggestions based on a
10 two-page magazine spread that runs every July to ask people to
11 suggest -- suggest potential nominees, and people suggest their
12 friends. They suggest themselves. They suggest celebrities.
13 They suggest, you know, whoever they want. And then any of
14 those people who are eligible are forwarded to the nominating
15 committee when it meets in late summer, typically. And then --
16 and then -- but that's not -- and the nominating committee votes
17 on a slate of people to put on the ballot, but that's not the
18 only way to run because you can also run by petition.

19 So if you are passed over by the nominating committee
20 or if you also want to say if you are also a choice of the
21 members, you can circulate petitions, and the number of
22 signatures you need to get varies, but it was 382 this year. So
23 you get a few hundred signatures from your fellow members saying
24 that you should be on the ballot and you are also qualified.
25 You are on the ballot, and you run side by side with the

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Frazer - by Defendant - Direct/Ms. Rogers

1 nominating committee candidates.

2 We go through a whole process of ballot tabulation by
3 an outside auditing accounting firm, and the results are
4 announced to the members.

5 Q But how can the election be free and fair if we have
6 seen text messages referring to a crib sheet of whom the
7 directors might want to vote for?

8 A For the nominating committee that is? Yeah, they can
9 talk about who they want on the nominating committee, and they
10 can suggest their preferred candidates, but there is also
11 nothing to prevent anyone else from making nominations from the
12 floor, and I've seen that happen actually. And you know, you
13 have a competitive election -- actually, the time I recall
14 Marion Hammer was the one that didn't get elected.

15 Q And so you've seen those nominations from the floor
16 succeed?

17 A Yes.

18 Q Would it be fair to say that critics of the NRA's
19 leadership have successfully run on the floor and been elected?

20 A For the nominating committee?

21 Q Or for the Board.

22 A Not for -- not -- for the Board, absolutely, yes.

23 Q MS. ROGERS: Nothing further.

24 THE COURT: We have a few more minutes, but if you
25 want to use it.

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4255

Frazer - by Defendant - Direct/Mr. Correll

1 Is this direct?

2 MR. CORRELL: Yes.

3 DIRECT EXAMINATION

4 BY MR. CORRELL:

5 Q Good afternoon, Mr. Frazer.

6 A Good afternoon.

7 Q First question, was -- did Wayne LaPierre receive
8 anything under the 2018 contract you referred to before?

9 A Not that I know of.

10 Q It's actually not a 2018 contract. It was an amendment
11 to a contract that was originally signed in 2013; correct?

12 A That's right.

13 Q And then it was amended again in 2015; correct?

14 A I believe that's right.

15 Q And amended again in 2016; correct?

16 A I don't remember the specific dates, but sounds right.

17 Q And then superseded in January of 2021; correct?

18 A Yes.

19 Q Okay. And was there any loss of corporate assets due
20 to that contract?

21 A Nothing was ever paid under the contract.

22 Q And that's because it didn't become effective unless
23 and until he left the organization; correct?

24 A Yes.

25 Q And he never left.

KM

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Frazer - by Defendant - Direct/Mr. Correll

1 A Right. Until recently.

2 Q Until recently.

3 And there was never any loss to the -- of corporate
4 assets due to that contract; correct?

5 A No.

6 Q Did Mr. LaPierre -- was his salary every restored to
7 the full pre-Covid level?

8 A I don't know if it was. I don't know what restoration
9 he received, but my understanding is he was still at a reduced
10 salary.

11 Q And he actually took a pay cut like you did to make
12 sure other people subordinates could get paid?

13 A Right. It was across the board or more.

14 Q And whose decision was that?

15 A His.

16 Q And your decision was independent to also take a --

17 A I mean, it was a collective decision of the leadership
18 that everyone would take at least 20 percent top to bottom.

19 MR. CORRELL: Thank you.

20 THE WITNESS: Thank you.

21 MR. FARBER: No questions, your Honor.

22 THE COURT: Okay. Will you need more than five
23 minutes which I'm not suggesting you don't. Do you want to
24 do that tomorrow?

25 MS. STERN: I think so, your Honor.

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Proceedings

1 THE COURT: All right. We will break tonight and
2 we will meet tomorrow at 9:30. See you all. Travel safely.

3 THE COURT OFFICER: All rise.

4 (Whereupon, at this time the jury exits
5 the courtroom.)

6 MR. FARBER: Judge, can I raise something briefly?

7 THE COURT: Yes. I just wanted to note that today
8 was an exhibit of how things can be slower than they are
9 anticipated to go. Things can go more slowly than
10 anticipated, and that's what I was trying to signal for
11 tomorrow that you have to be conservative in what you plan
12 to introduce because we certainly didn't get to this third
13 witness that we were talking about, and we are not even done
14 with this one, and the AG hasn't even asked any questions
15 yet.

16 So you need to -- I guess I'll say particularly on
17 the defense side -- just get yourself organized so that
18 you're not -- that you can finish the witnesses who are
19 already up and that you don't start a witness that can't be
20 finished. And you probably know by now how much time the AG
21 has left. If it wants to preserve two hours or so, it's
22 probably not that much, but a little bit.

23 MS. STERN: It's an hour.

24 THE COURT: Well, if it's an hour, then you have to
25 make sure that all your directs are -- leave at least an

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Proceedings

1 hour in combination. So plan for at most three hours of
2 direct testimony. Three hours of direct and defense cross.

3 So anyway, I'm just doing math for you, but I'm
4 just -- I watched today go more slowly than you all
5 anticipated.

6 What was the issue?

7 MR. FARBER: It's another organizational issue,
8 Judge.

9 So tomorrow, testimony is going to end and then
10 closings are going to be on Thursday.

11 THE COURT: Yes.

12 MR. FARBER: I would ask that the Court direct that
13 if there are any -- if any party is going to use
14 demonstratives -- I'm not talking about, you know, admitted
15 exhibits but something that hasn't been admitted, that they
16 should be exchanged by say 6:00 tomorrow so that we are not
17 getting them, you know, at midnight or at 7:00 a.m. the
18 morning that we are doing summations.

19 THE COURT: Yeah. Well, look, I'm going to caution
20 folks that everything that's in these demonstratives at this
21 point now should be tied to an admitted exhibit. Right.
22 So -- and I would recommend having the citation on the -- on
23 there which, you know, in my experience, there should not be
24 objections because at the beginning of the trial, you don't
25 know exactly what's going to be admitted. Now you do.

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Proceedings

1 MR. FARBER: I'm not talking about -- and I don't
2 have any need to see if they are going to use --

3 THE COURT: Well, what else could an objection be
4 if it's not based on inadmissible evidence?

5 MR. FARBER: Well, I mean, there can be -- they
6 used a whole slide deck in their opening that had -- none of
7 it had things that were going to be admissible evidence, and
8 it was argument that they were making. So there is argument
9 that gets put into demonstratives so --

10 THE COURT: Argument is okay at this level; isn't
11 it?

12 MR. FARBER: Well, yes, some argument is. Some
13 arguments is objectionable.

14 What I am saying is if there is content that's
15 going to be -- that they are proposing to display to the
16 jury that's not exhibits or transcript cites that are in
17 evidence, I think it ought to be shown to us in advance.

18 THE COURT: Well, look, I think you should be
19 sharing these because it's just good hygiene so that nobody
20 wants to be surprised with -- look, I will be very
21 disappointed if there are objections during closing. That
22 just should not happen. I don't recall a lot of that
23 happening during the openings. Maybe my memory is just
24 faulty, but I really don't want -- for this to work,
25 Thursday has to be clean. It has to be done in a

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Proceedings

1 professional way where nobody is jumping up and down. There
2 is no ambiguity about what's admissible. Fair argument
3 based on the admissible evidence. I really don't expect
4 objections.

5 And even, you know, the related-party transaction
6 we were talking about before, you know, it's -- you should
7 expect in the next iteration of the jury instructions that
8 all that stuff about assuming illegality or assuming that
9 these are related-party transactions, that's gone.

10 It's going to say the jury has to determine for
11 each one on the list is it a related-party transaction. If
12 it was it -- if if it was a related-party transaction, was
13 it approved. And if it wasn't approved, was it ratified.
14 So there is -- each step. So for each one of those -- and
15 again, just -- I like the verdict form to be revised. I
16 don't know whether we have the wherewithal to do it so that
17 instead those descriptions that are in there, it has to have
18 a little more to tell them exactly who the alleged related
19 party is. But anyway, that's just what was on my mind as I
20 was trying to do three things at once here.

21 So yeah. Look, exchange them. But if you do it
22 the right way, there should be no objections, and I really
23 -- I'm hoping not to have to have intermediate something as
24 straightforward as this. You know, everybody knows what's
25 been admitted and what hasn't been. So just don't do it.

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1 MR. FARBER: Thank you, your Honor.

2 THE COURT: The short answer to your question is it
3 should be 24 hours, and the only way to do that is to be --
4 you know, ideally, it would be tonight; right. That's --
5 otherwise, it's not going to be 24 hours.

6 MS. ROGERS: I think the difficulty, all the
7 testimony isn't in yet. So I had discussed with Ms. Connell
8 exchanging demonstratives sometime tomorrow night.

9 THE COURT: That's fine. You're saying do it.
10 Everybody's working on them is going to be doing trial, so
11 it's going to be late. It's just like another crummy night.

12 MR. FARBER: Ms. Connell is not here. Excuse me.
13 I don't need to see their exhibits. It's demonstratives
14 that I was concerned about. I'm not going to object to any
15 exhibits that they put into evidence. It's all designed to
16 avoid making objections during summation, but that's the
17 only reason I bring it up.

18 THE COURT: I guess I'll say again. Maybe and
19 hopefully you just to be do unto others as you would have
20 them do unto you. You are both facing the same thing.
21 There is not a lot of time. So it's going to be exchanged
22 the night before, and you're going to have to make a quick
23 decision. You can't assume I'm going to be sitting at home
24 waiting until two in the morning or at all to mediate
25 disputes because there shouldn't be any. If there are, then

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1 somebody is doing something sort of odd which I don't
2 expect.

3 All right. I'm going to now try to get you the
4 jury instructions, at least Version 2.0, and hopefully final
5 or near final, and I don't know what's going on with the
6 verdict forms because my team has been working on them, and
7 I haven't really seen a draft yet, so I'm going to try to
8 see how far I can get on that as well.

9 All right. See you tomorrow.

10 (Whereupon at this time the trial was continued
11 until February 14, 2024.)

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART 3

-----X

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against-

INDEX NO.
451625/20

THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
and JOSHUA POWELL,

Defendants.

JURY TRIAL
60 Centre Street
New York, New York
February 14, 2024

BEFORE: HONORABLE JOEL M. COHEN,
Justice, and a jury

APPEARANCES:

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THE COURT: Mr. Farber, you wanted to raise something?

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MR. FARBER: Yes, your Honor. So, Question 2A in the draft verdict sheet which relates to the breach of duty claim against Mr. Phillips asks whether the plaintiff prove by a preponderance of the evidence that at anytime between March 20, 2014, and May 2, 2022, Mr. Phillips failed to discharge the duty of his office; and that's what the Court is finding as the relevant period.

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The issue with Mr. Phillips is it is undisputed that he retired from the NRA at the end of 2018; and so asking the jury to make a finding about that for a period beyond that and having scrutinized his conduct for a period beyond that when he had no duties to the NRA after December -- at least December 31, 2018. The actual date may be a little earlier because, I believe, he --

18

19

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THE COURT: Yeah, I understand that point. I don't have a particular problem with changing that.

21

22

23

24

MR. FARBER: Thank you. THE COURT: I mean, I think where we would put in is that date paren., the date his retirement, just so the --

25

MR. FARBER: I think that's the right way to do it,

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1 your Honor.

2 THE COURT: The other?

3 MR. FARBER: The second point is on the
4 related-party transaction. There's a provision saying that
5 if the jury -- asks the jury to find if Mr. Phillips'
6 conduct was willful, there's a basis for awarding additional
7 damages.

8 As, your Honor, the draft instructions provide that
9 to find willfulness, they have to find that he did something
10 with knowledge that it was unlawful; and I submit there's no
11 evidence in the record that would support such a finding
12 with respect to Mr. Phillips on that transaction.

13 So, I -- I think that should be stricken from the
14 charge as to him.

15 THE COURT: Yeah, I -- that one, there's been a lot
16 of in evidence this case and --

17 MR. FARBER: Well, if the State can point to some,
18 then we might have a basis for it; but I'm aware of none.

19 THE COURT: The State went through all of the
20 Bylaws and procedures and policies and, yet, they weren't
21 followed. So, I mean, it is not that heavy a lift to show
22 that, you know, it was a transaction that was covered by the
23 policy and by law. He is the treasurer, and the fact that
24 the policy and the procedures weren't followed, that -- I
25 don't think that instruction requires somebody to know

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1 anything more than what they were doing when intentional and
2 whether they complied with the law or not is something the
3 jury can I think -- if they find there was a violation at
4 all -- which who knows -- but if there was
5 one, and it wasn't -- he didn't accidentally sign the
6 agreement.

7 MR. FARBER: No, your Honor's instruction goes
8 beyond that. It says it has to be knowledge that his
9 conduct was wrongful. So, it's not just that it is
10 intentional, not just that he consciously entered into it;
11 but did so knowing it was wrongful and I don't think there's
12 any evidence of that.

13 THE COURT: Well, the statutory violation of
14 wrongful includes not getting the appropriate approvals, and
15 whether it was fair to the NRA. I -- I think that one is
16 more fair game.

17 MR. FARBER: Thank you, your Honor.

18 THE COURT: I am -- I did go back and look at the
19 complaint, however; and I think Mr. Correll makes a fair
20 point that the complaint -- and I know there were
21 interrogatories later -- is very broad in terms of the
22 related-party claim against the NRA and it sort of creates
23 sort of everything that came before it.

24 But, the related-party claims -- related-party
25 transaction claims against Mr. LaPierre and Mr. Phillips are

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1 actually sort of narrow in the complaint, and they talk
2 about just the post-employment agreements.

3 So, I'm not sure what the -- now, again, the MMP
4 relationship, that's all fair game for the case at large,
5 both for the improper administration as well as the breach
6 of duty claims because there's a lot in that relationship;
7 but it is not pled as part of the related-party transaction
8 claim against Mr. LaPierre.

9 MR. SHIFFMAN: Your Honor, we will be putting in a
10 letter on this very shortly this morning. It was identified
11 in the contention interrogatories.

12 THE COURT: Well, the contention interrogatories, I
13 guess there was notice that it could be part of the claim
14 against the NRA. It still leaves the substantive question
15 of whether it is related-party transaction at all.

16 MR. SHIFFMAN: Well, the letter will address that.

17 THE COURT: Well, anyway, I'm a little wary of
18 that.

19 MR. SHIFFMAN: I think the Trump case, again, is on
20 point on that one there. There was a financial interest
21 that was a result of Mr. Trump directing his Foundation to
22 make donations on behalf -- grants on behalf of his
23 campaign, and Judge Scarpulla found --

24 THE COURT: That's a little more direct than this.

25 MR. SHIFFMAN: Not really, your Honor. There was

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1 no -- he benefitted his campaign by having his foundation
2 make grants to veterans charities without the money ever
3 touching the campaign's --

4 THE COURT: His personal -- yeah, I mean, this one
5 is at least another step removed.

6 In other words, it's -- there's no -- I think the
7 evidence is is that there was this relationship and then
8 there were these personal relationships where, certainly,
9 benefits were provided by MMP and maybe that's a conflict of
10 interest under a different provision and maybe it has
11 something to do with violation of duty.

12 MR. SHIFFMAN: I think, your Honor, there's also
13 evidence that Mr. LaPierre was involved in the arranging for
14 the contracts and that there's temporal relationships
15 between amendments and the times of the gifts. I think
16 Mr. Conley took him through some of those transactions.

17 THE COURT: But there is still the matter of the
18 complaint, right? I mean, the complaint wasn't amended, and
19 the complaint wasn't -- I expected it to sort of -- I
20 remember reading the NRA part and it was sort of everything,
21 and then I was struck I think that that particular claim is
22 pretty narrow.

23 MR. SHIFFMAN: Your Honor, it is only a claim
24 that -- it's just a different legal theory. It is
25 identified in the contention interrogatories. There's clear

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1 law that the pleadings can be amended to conform to the
2 evidence; and when there's just a legal theory that there's
3 no real prejudice, no discovery that would be needed here.
4 It is Mr. LaPierre's own conduct. This was identified
5 in the contention interrogatories as related-party
6 transaction.

7 THE COURT: As to him? Because, again, from a
8 pleading perspective, it is part of the claim against the
9 NRA, I guess, because that loops in everything; and then you
10 can, in your contention interrogatories, give life to what
11 you pled against the NRA. Again, whether it substantively
12 is a related-party transaction is a different question; but
13 did you specifically say, oh, and this -- in words or
14 substance, this also amends our claim against LaPierre?

15 MR. CORRELL: It did not, your Honor, and we did
16 not take it that way.

17 THE COURT: I'll wait for the letter, but the
18 related-party transaction in the NRA letter I saw came in at
19 whatever, four in the morning or the usual time, makes the
20 point. It is a statutory claim. It has very specifics,
21 series of definitions and everything else; and, again, you
22 can make the claim under different parts of the N-PCL that
23 are broader because it is in the complaint. The facts are
24 in the complaint.

25 It just seems a bit of a stretch to, also,

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1 separately as a related-party transaction.

2 MR. SHIFFMAN: Your Honor, the legislative intent
3 when it amended the statute in particular was to broaden and
4 make it apply -- I think that's as Justice Scarpulla found
5 -- to also all self-dealing.

6 Financial interest is a very broad term. It
7 doesn't talk only about a counterparty to a transaction. He
8 has an interest in any transaction -- the language is
9 transaction or other arrangement. It is very broad
10 language.

11 The legislative history -- which Justice Scarpulla
12 cites -- makes it clear it was intended to be very, very
13 broad language.

14 THE COURT: With all respect, I don't find the
15 Trump case a very good analogy to what's going on here.

16 Is the jury here? Let's get on with our last day.
17 I know the NRA has arguments you want to make on this point.
18 Let's hold on to those.

19 MS. ROGERS: There was a small administrative item,
20 too, and I think Mr. Fleming might have a related point.

21 There were Forms 990 and board minutes that were on
22 the exhibit list that haven't come in. We were hoping to
23 stipulate to put them in at the end of our case. They're
24 tax returns and board minutes. They don't seem
25 controversial.

BP

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Proceedings

1 THE COURT: That makes sense.

2 MR. FLEMING: In fact, your Honor, I did reach a
3 stipulation with the Government last week about the 990s.

4 THE COURT: It is hard to believe there are 990s
5 that aren't in, yet, but that's fine.

6 MR. FLEMING: I forgot to put them in officially
7 yesterday.

8 THE COURT: Your case hasn't closed. Look, I
9 strongly encourage for things like 990s and official board
10 minutes, but I'd like to introduce them in the jury's
11 presence.

12 MS. ROGERS: We understand.

13 THE COURT: So, you can gather those together; and,
14 hopefully, if there's agreement, then I'll be happy to
15 introduce them in mass. I don't know if you're going to use
16 them for anything?

17 MS. ROGERS: Just wanted a complete record.
18 They're board minutes and --

19 THE COURT: You want to be able to reference them
20 in closing?

21 MS. ROGERS: Yes, yes. And people have testified
22 things that happened at board meetings, and they were on the
23 exhibit list and just didn't get used with witnesses.

24 THE COURT: Yeah, I kind of vaguely remember doing
25 something similar with the State.

BP

4272

Proceedings

1 MS. ROGERS: Correct.

2 THE COURT: So, we're not --

3 MS. STERN: Sorry, I wanted to just respond to
4 Ms. Rogers' point.

5 I think we got this list very late last night. We
6 responded if you could focus us on what you really need to
7 get in. It is a very long list.

8 THE COURT: Oh, is it?

9 MS. STERN: Yes, it is quite lengthy. I think we
10 would like to at least eyeball them and not wholesale put in
11 every board meeting.

12 THE COURT: Look, so you're saying these things
13 have been mentioned or referenced?

14 MS. ROGERS: Well, board meetings over the years
15 have been referenced sometimes specifically and sometimes
16 people say we had a board meeting, everyone was in the room.
17 We had elections, they were free and fair.

18 THE COURT: The only concern I have is putting
19 things into the trial record that the jury and I never see
20 other than to hear their numbers; and then sort of say
21 however many years in the future, well, this was in the
22 record and it supports X, Y or Z is a little much if the
23 jury is not hearing anything about them.

24 But, given what these are, which are 990s as a
25 group, seem to be controversial. Anyway, I'm hoping can you

BP

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Proceedings

1 work it out.

2 What's the length of this?

3 MS. ROGERS: The list is lengthy because each board
4 book is voluminous, so we've produced them as Part 1, Part
5 2, Part 3 covering the relevant period -- relevant statutory
6 period.

7 THE COURT: Well, how I do determine in mass
8 whether these are relevant to anything?

9 MS. ROGERS: To the extent this is a lawsuit about
10 NRA's corporate governance that has an evidentiary record
11 spanning decades --

12 THE COURT: Look, if the jury is not hearing it,
13 this is all kind of a meaningless exercise.

14 MS. ROGERS: Let us get you a winnowed list this
15 morning. I do think for completeness the board minutes at
16 least from the board meetings that were discussed should be
17 in.

18 THE COURT: That was a very important last piece,
19 that if, if things have been discussed in front of the jury
20 and just there was, you know, we forgot to sort of say, Oh,
21 by the way, this is the board minutes that were referred to,
22 that's fine. But, bringing in things that nobody has ever
23 heard about and just having me dump it into the trial record
24 seems not --

25 MR. FARBER: And, Judge --

BP

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Proceedings

1 MS. STERN: Sorry, Judge --

2 MR. FARBER: Can I please?

3 MR. STERN: I'm sorry, Mr. Farber.

4 MR. FARBER: Judge, I had a similar objection to
5 the State's in the similar position. I've not had a chance
6 to review this massive stuff; but while I recognize the
7 business records exception to the hearsay rule for board
8 minutes. Generally, my concern is not knowing what's in
9 them, there might be hearsay within hearsay, things are
10 that, you know, prejudicial and improper for other reasons.

11 So, for that reason --

12 THE COURT: It would have to be something that was
13 discussed in the trial for it to just -- for it to come in.
14 I don't think that because the trial is about governance we
15 can admit in mass all board books for all meetings during
16 the relevant period.

17 If there's something you wanted the jury and me --
18 because this is a dual trial, I mean, you're also trying
19 this to me. I've always sort of rejected that in bench
20 trials where people sort of dump stuff in at the end and
21 say, We didn't mention any of this to you. By the way,
22 here's this other 10,000 pages that we need you to consider
23 in your decision.

24 I don't think that's really appropriate.

25 MS. ROGERS: All I would say, your Honor, is that

BP

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Proceedings

1 there have been discussions during trial about how board
2 meetings are conducted, how things happen, people run from
3 the floor, does the nominating committee always vote the
4 same way; and not all of these discussions have been
5 anchored to the transcript, the board meeting on May 5,
6 2011, right?

7 So these are going to be -- a lot of these are
8 going to be relevant in a way that isn't pin-cited to a
9 meeting on a date, but is still --

10 THE COURT: Let's continue this conversation at the
11 first break. I want to get to the jury because we have a
12 lot to do.

13 I'll think about it, but I think there has to be
14 more of a tether than that for me to -- look, if it's by
15 consent I suppose, but it doesn't seem to be; I'm fine with
16 filling in things that, Oh, we meant to put this in during
17 X and so transcript testimony, but we forgot. This is
18 something different.

19 All right, shall we get the jury?

20 MR. FARBER: Judge, do you want the witness on the
21 stand?

22 THE COURT: Sure, that will help.

23 We're going to move with alacrity today, yes?

24 MR. CORRELL: Yes, we are, your Honor.
25

BP

4276

W. LaPierre - by Defendant - Direct/Mr. Correll

1 (Whereupon, at this time the witness,
2 Wayne LaPierre, having been previously duly sworn/affirmed
3 by the Clerk of the Court, resumed the witness stand and
4 testified as follows:)

5 THE COURT: Good morning.

6 THE WITNESS: Good morning, your Honor.

7 MR. CORRELL: Your Honor, may we have the court
8 officer deliver the binders to the witness? Then, your
9 Honor, may I approach with your set?

10 (Handed to the witness)

11 THE COURT: There's more?

12 MR. CORRELL: Yes, your Honor. We're not going to
13 use all of them.

14 (Handed up to the Court)

15 THE COURT: You got your lifting in today.
16 This is not the same two from yesterday?

17 MR. CORRELL: Pardon me?

18 THE COURT: This is not the same binders from
19 yesterday?

20 MR. CORRELL: There's one binder from yesterday
21 right at the end, and then there are two new ones which
22 we're going to use a few documents from there.

23 THE COURT: Okay. So, I have four now?

24 MR. CORRELL: You should have four.

25 THE COURT: Okay.

BP

4277

W. LaPierre - by Defendant - Direct/Mr. Correll

1 MR. CORRELL: And we should be on the last five
2 tabs of the Volume 2 of yesterday.

3 THE COURT: There's no requirement to use each tab,
4 by the way.

5 MR. CORRELL: I have skipped many.

6 THE COURT: We still haven't gotten to the 2014
7 yet.

8 MR. CORRELL: We're almost there.

9 THE COURT: Am I correct that the Government still
10 has roughly an hour before the closing?

11 MS. STERN: My understanding is that we believe
12 that we have more than an hour; but the other side thinks
13 we have an hour, so we're not going to fight to the bitter
14 end.

15 THE COURT: All right, we'll call it an hour.

16 Proving again that gas expands to fill the size of
17 whatever container you put it in. If I had given you
18 twelve weeks, I'm sure the last day of the 12th week we'd be
19 scrambling to finish.

20 MR. CORRELL: Your Honor, I would point out that
21 Mr. LaPierre has consumed a grand total of seven hours to
22 the AG's forty hours.

23 THE COURT: I'm not criticizing anyone.

24 COURT OFFICER: Is the Court ready to receive the
25 jury?

BP

4278

W. LaPierre - by Defendant - Direct/Mr. Correll

1 THE COURT: Yes, sir.

2 COURT OFFICER: All rise, jury entering.

3 (Whereupon, at this time the jury then entered the
4 courtroom.)

5 THE COURT: Good morning, everyone. Please have a
6 seat.

7 Okay, we're going to toggle back to finish
8 Mr. LaPierre's testimony.

9 So, Mr. Correll, I think you're still up.

10 DIRECT-EXAMINATION

11 BY MR. CORRELL: (Continuing)

12 Q Good morning, Mr. LaPierre.

13 A Good morning.

14 Q How are you feeling today?

15 A I'm fine, thank you.

16 Q I'd like to move quickly through this last binder that
17 we had yesterday, the second binder.

18 If you could direct your attention to Tab 94 and the
19 document that appears behind that.

20 Do you recognize that document?

21 A I'm sorry?

22 Q Tab 94.

23 A I'm going to it right now. Yes, I do.

24 Q What is it?

25 A It is a -- it is one of the NASCAR races that NRA

BP

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 sponsored with a -- with Tony Stewart and, obviously, wanted
2 Johnny Bass of Bass Pro Shops in there in the winner's circle.

3 Q And was Bass Pro Shops an organization that has a
4 relationship with the NRA?

5 A Yes, they were. They let us recruit members in their
6 stores. We actually have a museum in their store in
7 Springfield, Illinois, and we have displays in their National
8 Wild Life Museum in Springfield.

9 Q Do you believe that maintaining that relationship is in
10 the interest of the NRA?

11 A Absolutely. It is an important relationship, and it's
12 been official to the NRA.

13 MR. CORRELL: Move its admission in evidence, your
14 Honor. I just want to publish it. It is a one-page photo.

15 MR. CONLEY: Objection, relevancy, hearsay.

16 THE COURT: I don't really understand the
17 evidentiary value of just a picture like this.

18 MR. CORRELL: Your Honor, the AG has raised an
19 issue as to whether Mr. LaPierre breached his duty by going
20 to NASCAR events in a helicopter.

21 THE COURT: So, this is just a picture of a NASCAR
22 event. How does that --

23 MS. ROGERS: It is a picture of Mr. LaPierre at a
24 NASCAR event with one of the major supporters of the NRA
25 documenting the fact that his time spent on relationships is

BP

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 developing benefits to the NRA, and he's not just going to
2 raise this for fun.

3 THE COURT: If you want one as an exemplar, that's
4 fine; but I'm not going to just move them all in.

5 MR. CORRELL: Just one, your Honor.

6 THE COURT: Overruled. Put it up there, if you
7 want.

8 (Displayed)

9 Q Mr. LaPierre, please direct your attention to Tab 95
10 and the document that appears behind that. Do you recognize
11 that document?

12 A Yes, I do. It is an another Texas Motor Speedway
13 NASCAR event that NRA participated in with a -- we had a
14 sporting clay shoot for their charity, and we -- we took donors
15 there and we -- we were visible in front of everyone.

16 Q And did you use that opportunity to communicate with
17 prospective members of the NRA through a letter contained in the
18 magazine or program that was distributed in connection with that
19 race?

20 MR. CONLEY: Objection, leading.

21 THE COURT: Overruled.

22 Q I direct your attention to page --

23 A Yes, I see it. We did. We had a letter in the
24 program.

25 MR. CORRELL: Your Honor, move the admission of

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 this document and the letter demonstrating its relevance to
2 show that Mr. LaPierre was communicating through NASCAR with
3 members and prospective members.

4 MR. CONLEY: Objection on relevance and hearsay.

5 THE COURT: Sustained.

6 MR. CORRELL: Your Honor, it also --

7 THE COURT: Sustained.

8 MR. CORRELL: Your Honor, there's another reason
9 why it is relevant.

10 Mr. LaPierre was photographed for the purpose and
11 he was -- his image was featured in this magazine, and one
12 of the issues in this case is whether he violated his duty
13 by signing -- to the NRA by signing a letter that gave the
14 NRA the right to use his image and likeness and
15 communicating with members.

16 This is an exemplar of how the NRA used his image
17 in soliciting members and donors.

18 MR. CONLEY: And, your Honor, I also object to
19 Mr. Correll testifying. I think --

20 THE COURT: Sustained. Let's just keep moving.

21 MR. CORRELL: Your Honor, I take exception.

22 THE COURT: Fine.

23 MR. CORRELL: And I will move through the rest of
24 these exhibits. I object to the apparent effort by the
25 AG to delay and obstruct this examination.

BP

4282

W. LaPierre - by Defendant - Direct/Mr. Correll

1 THE COURT: I disagree that's what they're doing.

2 Go ahead.

3 Q Turn to the next tab, Tab 96, please. Do you recognize
4 that document?

5 A I do. It is "Time Magazine" where they recognize --
6 I'm reading the cover -- "The Hundred Most Influential People in
7 The World."

8 Q Were you listed as one of the hundred most influential
9 people in the world?

10 A I don't think anybody really believes that, but somehow
11 I was. It just shows you how crazy some of these things are.

12 Q Direct your attention to page 12 of this document. Do
13 you see that?

14 A Yes, I do see it.

15 Q And you see where it says "Leaders?"

16 A Yes.

17 Q And there are eleven people listed there. Do you see
18 that?

19 A I do.

20 Q And this lists you as one of the eleven leaders,
21 correct, of the hundred most influential people in the world;
22 correct?

23 A Yes, it does.

24 MR. CORRELL: Your Honor, move this into evidence.

25 It is "Time Magazine." It is evidence that he's perceived

BP

4283

1 as a leader nationally.

2 THE COURT: Can we just limit to the part rather
3 than having the entire magazine as an exhibit?

4 MR. CORRELL: Yes, your Honor. I would also say
5 there are three pages that are relevant pages; the cover,
6 page 12 and page 62.

7 THE COURT: The article?

8 MR. CORRELL: Yes.

9 THE COURT: I'll admit it.

10 MR. CONLEY: Object on relevance.

11 THE COURT: Overruled. If you just limit it to the
12 relevant pages.

13 (Whereupon, at this time the Exhibit WLX 258 was
14 admitted and received into evidence.)

15 MR. CORRELL: Thank you, your Honor. May we
16 publish the cover, please?

17 THE COURT: Yes.

18 (Displayed)

19 MR. FARBER: Judge, do we have an exhibit number?

20 THE COURT: Good point.

21 MR. CORRELL: It has been marked for identification
22 as WLX 258 in my binder, your Honor.

23 THE COURT: Okay.

24 MR. CORRELL: And I think electronically, as well.

25 (Continued on next page)

BP

4284

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q And Mr. LaPierre, would you note under the leader --
2 the list of leaders you see the name Barack Obama.

3 A Yes, sir, I do.

4 Q You see the name Wayne LaPierre?

5 A I do.

6 Q Kamala Harris?

7 A Yes.

8 Q Elena Kagan?

9 A Yes.

10 Q Joe Biden?

11 A Yes.

12 Q And Pope Francis?

13 A Yes, I do.

14 Q Did it give you any pleasure to know that you were
15 listed in the same article as Pope Francis?

16 A I don't know how that would even happen, to tell you
17 the honest truth, but it was -- it was interesting, and it's --
18 I don't know. It just shows you -- it just shows you people do
19 crazy things in terms of making up these lists.

20 Q And it says by Ted Nugent. So does that indicate that
21 Ted Nugent did a little piece on you for this?

22 A Honestly, I have no idea.

23 Q Okay. Who is Ted Nugent, by the way?

24 A He is a performer and a singer.

25 Q And does he have an affiliation with the NRA?

KM

4285

W. LaPierre - by Defendant - Direct/Mr. Correll

1 A There was a time when he was on the NRA Board. He no
2 longer is.

3 Q Directing your attention to the Tab 97, the document
4 behind Tab 97. Actually, let me go back to the -- just the date
5 of the Time Magazine. It's May 8, 2013.

6 Do you see that?

7 A Yes, I do.

8 Q And what was the threat level to you at this time, if
9 you can recall?

10 MR. CONLEY: Objection, your Honor. Vague.

11 THE COURT: He can answer his perception.

12 A It was -- it was horrible. I had -- that was the week
13 or two after I had been swatted at the house where somebody
14 co-opted our phone number and called in and told the police that
15 I had killed my wife and she was bleeding out and I would shoot
16 the first police officer that showed up at the house, and it was
17 -- it was horrible.

18 The police called me, and as I said, Turn on all the
19 lights and come out with your hands up, and I didn't know what
20 was going on. My wife was running around crying and upset, and
21 I finally -- I finally honestly decided I -- just whatever, and
22 I said, I'm going to come out with my hands up out the front
23 door, and I did that, and the police were all running toward me
24 with their guns drawn, and it was -- it was -- I mean, those are
25 the most dangerous situations not only for the citizen but for

KM

4286

W. LaPierre - by Defendant - Direct/Mr. Correll

1 the police because they don't know what they are walking into,
2 and it was the Fire Department was there too, and -- and it
3 was -- and then the docking starting of stealing all our
4 financial information and putting it back on the black web.

5 Q Did you have any security at your home at the time?

6 A That's -- yes. NRA had started security. No, there
7 wasn't security at the home. I believe NRA had cameras at the
8 home at that point.

9 Q And did that affect your view as to the level of
10 security that you needed to have going forward?

11 A Yes, it did. That was the beginning of the harassment
12 that started, not only on the street or restaurant or airports,
13 but it started at the house.

14 Q And who was the head of security at NRA at that time?

15 A Russell Gordon.

16 Q Did people call him Russ?

17 A They did.

18 Q And did he -- did you get any information from him
19 about how you needed to change things to address this new
20 development?

21 MR. CONLEY: Objection. Calls for hearsay.

22 MR. CORRELL: Just notice of what he was told. Just
23 information.

24 THE COURT: Overruled. That's what they started to
25 say, that threat level and the harassment level was so high

KM

4287

W. LaPierre - by Defendant - Direct/Mr. Correll

1 that I needed to travel private.

2 They were also worried about if I got in an
3 airplane and some -- like what's happening on the street.
4 Somebody started harassing me or threw a cup of coffee at me
5 on the plane or started screaming at me, everybody would
6 pull out their cell phone and start taking pictures of it,
7 and it would end up on the evening news with one hundred
8 million dollars of negative publicity against the
9 organization.

10 Q Did you make a decision at that point to act on the
11 recommendation and start flying private exclusively or almost
12 exclusively?

13 A Yes, I did. I trusted the security people. I had no
14 reason to not to trust them, and I didn't think there was
15 anything inappropriate about it given what I was going through
16 personally, my family with the threat level.

17 Q Did you believe that you had the authority to make that
18 decision?

19 A I did on the recommendation of our security director.

20 Q And did you believe that you had any obligation to seek
21 a resolution from the Board authorizing you to travel in that
22 manner?

23 A I did not.

24 Q Did you later learn that questions had been raised
25 about your authority to travel private?

KM

4288

W. LaPierre - by Defendant - Direct/Mr. Correll

1 A I learned when the Attorney General of New York filed
2 their suit, that they raised that, that there was apparently a
3 regulation that I had no idea about, and yes, that's when I
4 learned it.

5 Q And after you learned that, what, if any, steps did you
6 take to address the issue and resolve it?

7 A NRA security director started -- did a survey in 2019
8 and then they presented it to the Board of Directors in 2020.

9 Q And did the AG raise any issues about your wife
10 traveling with you on the plane sometimes?

11 A Yes. My wife was involved for the Women's Leadership
12 Forum. She was a volunteer -- well, she actually started it I
13 think around 2005 as a volunteer, and they raised -- they raised
14 issues about her traveling with me.

15 Q And did Women's Leadership Forum events usually get
16 scheduled at or around the time of conventions?

17 A There was a big lunch at the convention that my wife
18 hosted as a volunteer. Colleen, our family member actually
19 worked for the NRA, was involved working with her on that as
20 were several other women.

21 In a period of ten years which is why I didn't think a
22 big deal about either my wife or Colleen moving around to places
23 in terms of traveling, they raised \$59 million in cash and about
24 112 in planned giving.

25 Q Did there come a time when you decided to go back

KM

4289

W. LaPierre - by Defendant - Direct/Mr. Correll

1 through expense reports and travel records to identify any
2 flights that you thought or that you wanted to pay for in order
3 to respond to the AG criticism that you should have been paying
4 for some of those flights or part of these flights?

5 MR. CONLEY: Objection. Leading.

6 THE COURT: Overruled.

7 A Well, it started even before the AG. When I -- after I
8 received that call from Tom King about the Attorney General of
9 New York Schneiderman, I decided to -- wanted to do a complete
10 review of the entire NRA to make sure we were in compliance with
11 all the policies, procedures and Board of Directors. Also, with
12 the New York Non-Profit Law, and I said at the very beginning of
13 that -- I said, look, if there is any accounting, any
14 calculation, any mistake, anything I didn't do right, I want to
15 pay it back. So that's when I -- we -- we started a review
16 of -- all of that took several years to finish it up, but I
17 ended up paying back anything that was an accounting error or a
18 calculation, a mistake I made. Anything like that we found, I
19 paid back.

20 Q What was the process you followed to identify charges
21 that you wanted to pay back?

22 A It was a long -- I went through all the CAA invoices
23 which were the airline invoices. I went through -- I hired an
24 accounting firm with a tax attorney that worked on the process,
25 particularly in terms of the 4720 forms. I went through all my

KM

4290

W. LaPierre - by Defendant - Direct/Mr. Correll

1 expense accounts, each one expense account by expense account
2 matching each trip with CAA invoices with business purpose of
3 the trip or whether it was something personal to it and matched
4 everything up together, and then turned it all over to the
5 treasurer's office. They did their own calculations with their
6 own tax attorney, and they made their analysis of it.

7 Q And in following that process, were you relying on your
8 recollection as to the purposes of trips as well as the
9 indications reflected in the expense reports?

10 A Yes.

11 Q And at the conclusion of that process, were you
12 confident that you had done all you reasonably could to identify
13 items that you wanted to pay back in order to square things up
14 with the NRA?

15 A Yes, I was confident that we had covered everything,
16 anything that could possibly be an issue and that I could look
17 in the mirror and actually facing God saying I have done
18 everything I can to make this right and square it up.

19 I mean, when I started down this process, I said to
20 myself not only in relation to this, but I said of reviewing
21 everything -- reviewing everything with the NRA, every person,
22 myself, every vendor, if I lose every friend I ever made, if I
23 lose every relationship I've ever made, I don't care. This is
24 what we're going to do because I'm going right down this path
25 and nothing is going to stop me.

KM

4291

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q Did you end up writing a series of checks to the NRA to
2 cover these expenses?

3 A Yes, I did. I couldn't believe it, but if you added
4 everything up, it came over a million dollars.

5 Q Was some portion of that interest?

6 A I paid -- I paid all the interest on it, and I paid all
7 the federal taxes on it. It -- I mean, all of it ended up being
8 in relation to things I was doing with the NRA that there was an
9 accounting mistake, a calculation, a mistake I made, something I
10 didn't know about. But regardless of what it was, I squared it
11 up.

12 Q And did you follow this process with respect to things
13 other than flights?

14 A Yes. I followed -- again, I had no idea, but my wife
15 in -- particularly, in building the Women's Leadership Forum,
16 she would send out gifts to prospective donors, to donors, baby
17 gifts, holiday gifts, birthday gifts to keep in touch with them,
18 to build the relationship.

19 I would send out gifts to donors also. We would -- I
20 would send gifts to employees during the holidays just as good
21 will, and I didn't realize that I actually had put them on all
22 my expense reports and turned them into the NRA, but there was a
23 \$25 limit on what you could give as a gift, and I wasn't aware
24 there was a \$25 limit. So we went -- I went through every
25 expense report going back to 2011 and any gift that was over

KM

4292

W. LaPierre - by Defendant - Direct/Mr. Correll

1 \$25, I paid the entire thing back to the NRA.

2 Q Did you follow this same process with car services?

3 A Yes, I did. I went through -- with the help of a
4 paralegal, I went through every single expense report. I went
5 through the car invoices in terms of transportation, and if
6 there was any stop that I took that might not be related to the
7 NRA while I was doing the trip, I ended up paying the whole
8 thing. I just said I'll pay the whole thing back, and I paid it
9 back.

10 Q Anything else that you went looking for?

11 A Well, there were things that I were completely unaware
12 of that came to the attention in terms of the New York AG's
13 suit, like there was hair and makeup for the Women's Leadership
14 Forum.

15 My wife who was the volunteer chair as I said, hosted
16 the big women -- women's lunch at the national convention where
17 there were 6, 7, 800, 900 people in the room. She was hosting
18 it. It was filmed, and there was hair and makeup for not only
19 for her but some other women used it also, and then they did
20 summits where they would invite the women donors at various
21 times of the year. There was hair and makeup for that as well
22 as.

23 MR. CONLEY: Objection, your Honor. Foundation.

24 Mr. LaPierre testified he wasn't aware of this.

25 MR. CORRELL: Your Honor, that's an improper

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 objection.

2 THE COURT: Well, I guess I just caution that in
3 answering, if you can focus on your personal knowledge. I
4 mean, if there are certain things you learned either from
5 your wife or others, if you can distinguish between those
6 and things that you observed and did yourself. But aside
7 from that, you can proceed.

8 THE WITNESS: Yes, your Honor.

9 MR. CORRELL: Thank you, your Honor.

10 A Yes, I knew that there was hair and makeup services
11 being provided for those Women's Leadership events. I also saw
12 it again when the Attorney General's Office filed the complaint
13 against the NRA, and I just decided to take it off the table and
14 pay it all back.

15 Q And were these services -- were the women that attended
16 these events, did they include members of the NRA?

17 A They did.

18 Q And were these services made available to other women
19 who were members of the NRA?

20 A Other women that were on stage at the event ended up
21 using those services also. I don't know how many. I know some
22 did.

23 Q How about men who had to appear on stage?

24 A The men had their own hair and makeup over at -- it was
25 mostly at the forum or at the members' meeting. Those were the

KM

4294

W. LaPierre - by Defendant - Direct/Mr. Correll

1 other two big events, and NRA provided hair and makeup services
2 for all of those events. They involved women too, but most of
3 the -- not all, but most of the people, speakers at those events
4 were men, but not all.

5 Q And so did you pay for all of that as well?

6 A I did not. That was never raised by anyone or no one
7 ever seemed to have a concern about it. It didn't make any
8 sense to me but --

9 Q So you concluded that the AG was not asking you to pay
10 for the mens' makeup on the theory that your wife had used that
11 makeup; is that fair to say?

12 A My wife did not speak at those other events, but that's
13 true.

14 Q Okay. How about wardrobe? Did you go looking for any
15 expenses relating to wardrobe?

16 A I did. It came to my attention as we were doing the
17 review of anything going back, that back in 2000, 2001, 2002 and
18 2003 when Charlton Heston was getting out of the role as
19 spokesperson and I was stepping into the role, that there
20 were -- there was wardrobe that the advertising agency suggested
21 I go get, and I didn't realize it at the time, but it was billed
22 back to the National Rifle Association and NRA paid for it. So
23 I reimbursed the NRA for that also including interest on it
24 and --

25 Q Do you recall how much the amount was for the suits

KM

4295

W. LaPierre - by Defendant - Direct/Mr. Correll

1 themselves approximately?

2 A It -- over 4 or 5 years, it was like 90,000.

3 Q And what was the interest going back to 2000 or
4 wherever it was?

5 A I believe if you added in the interest, the entire
6 figure came to \$251,000.

7 Q Was there anything else that you wrote checks for to
8 the NRA?

9 A Yes, I did. There were -- I had purchased, and I think
10 maybe one or two other people did, cars off of lease.

11 If I had a lease car and the lease was coming up, I --
12 I was interested in purchasing the vehicle. So I -- I called
13 the NRA or Lisa George, the person in the purchasing that was
14 responsible and said, what does it cost to buy the car off
15 lease, and I was provided the figure, and I bought the car off
16 lease.

17 Q And when you did that, did you believe that that figure
18 was correct?

19 A I did. I asked what does it cost to buy this car off
20 lease, and she -- she gave me a figure, and that's the check
21 that I wrote.

22 Q Did you later learn that that -- that that figure might
23 not have been correct?

24 A Yes, I did. I was -- totally to my surprise because I
25 ended up buying two vehicles over a period of 8 or 9 years off

KM

4296

W. LaPierre - by Defendant - Direct/Mr. Correll

1 lease, and I later learned that apparently there was some
2 negotiation struck by the treasurer's office with a car
3 dealership where the car dealership -- where somebody had
4 been -- bought a car off lease. It was at a -- at a lower
5 price, and I didn't realize that when I bought the car off
6 lease.

7 In fact, I might have not even bought it off lease had
8 I known that, but when I found that out, what I -- I did, and I
9 think what at least one other person did is we squared it up and
10 I paid the higher figure on what it would have cost originally
11 to buy the car off lease at the higher figure. I paid that back
12 on both -- both of the vehicles I bought off lease.

13 Q Did you also look for lodging that was reflected on
14 invoices or business expense reports to see whether there was
15 anything you wanted to repay to square things up with the NRA?

16 A I did. If there was any lodging on there that said --
17 ended up on someone else's card, if they went in and put their
18 card down because they were trying to protect me in terms of
19 security and that ended up being billed back to the NRA, I
20 squared that up.

21 There was a hotel bill at one of the conventions where
22 I originally saw the invoice. A lot of it wasn't mine, but
23 on -- when I saw the NRA, it just said WLP. So even though I
24 thought about -- I thought at least half of it wasn't mine, I
25 just -- I didn't have any proof that it wasn't -- WLP because no

KM

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 one could find that invoice that I saw. So what I ended up
2 doing was just paying that entire charge.

3 Q As you went through this process, did you have any
4 default rule as to if you weren't certain as to the business
5 purpose, you know, what you would do with that particular
6 invoice or expense?

7 A I wanted to completely be -- do the right thing. I
8 wanted to be completely squared up. I didn't want there to be
9 any doubt about it. So if there was any doubt, I was -- I was
10 over-inclusive. I paid -- I erred on the NRA's side.

11 Q Did you identify any small items, things like phones or
12 like something like that that you tripped across as you were
13 going through this process?

14 A Yes. Anything like that also, cell phone, something
15 like that, I squared up also.

16 Q And I think there was some reference earlier to Apple
17 TV or something like that.

18 Do you recall that?

19 A I do, and I -- still looking at those now and thinking
20 about them, I don't think they had anything to do with us.

21 I think that -- it obviously said WLP. I don't think
22 they had anything to do with us. I think they were
23 inappropriately put on there by somebody.

24 Q So that could have been a mistake or as far as you
25 know, you don't know how that happened; is that fair to say?

KM

4298

W. LaPierre - by Defendant - Direct/Mr. Correll

1 A I don't know how that happened, and I don't think we
2 were -- I or my wife received that.

3 If I had, I would have repaid it. If I did, I would
4 have repaid it.

5 Q Is there anything else you can think of that you paid
6 for through this process?

7 A Well, as I said, I mean, my -- my wife was working with
8 the Women's Leadership Forum. She was never, as I said, paid a
9 penny for it. It was all volunteer, but my -- my wife's
10 sister's daughter was working as an employee. So there were
11 times when I wanted to get her to a place, and I didn't see
12 it -- think it was inappropriate at the time given what they
13 were doing, how much -- how much money they were raising. What
14 I know now is that shouldn't have been done, and I paid the
15 entire charge of the airplane.

16 There was another about three times where I wanted to
17 move my wife to get to a place on this, and I -- she was the
18 only one on the plane, and I paid the entire charge of the plane
19 back to the organization.

20 There was one time where I didn't realize -- I mean,
21 they thought I had lung cancer. It turned out to be a false
22 diagnosis, but I was out in California, and they moved -- they
23 -- they booked my wife's sister's daughter and her daughter to
24 come out there and see me, and I ended up paying that entire
25 charge for the plane and the hotel. I didn't even realize they

KM

4299

W. LaPierre - by Defendant - Direct/Mr. Correll

1 were coming.

2 Q You didn't authorize that?

3 A I did not authorize that, and I didn't know about it.
4 My wife didn't know about it.

5 Q Who made that arrangement?

6 A Gayle Stanford.

7 Q And did she call you first?

8 A No.

9 Q Did she call you afterwards?

10 A No.

11 Q Did there come a time when you appeared before the
12 Audit Committee of the NRA to talk about the process you had
13 went through to identify these expenses that you wanted to
14 cover?

15 MR. CONLEY: Objection, your Honor. Outside the
16 scope of discovery.

17 THE COURT: I think the testifying about the
18 process analysis is okay. I think there is some meeting no
19 information was provided about.

20 MR. CORRELL: I had said in my case in chief I would
21 lay -- Mr. LaPierre would come and say what he said at the
22 meeting, and that is what he is doing.

23 THE COURT: Right. I just -- there may be some
24 areas where for whatever reason discovery wasn't given as to
25 the meeting minutes, and so there's been no obligations for

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4300

W. LaPierre - by Defendant - Direct/Mr. Correll

1 anyone to probe what at least was recorded, so I may not
2 permit you to go all the way through to that level of
3 detail, but you can continue.

4 MR. CORRELL: Thank you, your Honor.

5 Q Can you tell the jury in sum and substance what you
6 said to the Audit Committee at that meeting?

7 A I told the Audit Committee that -- I went in. I had a
8 meeting with the Audit Committee. I told them that -- what I've
9 said here when I started down this process. I wanted to -- if
10 there was any mistake, accounting error, calculation that I made
11 where I received some benefit I shouldn't have received, I
12 wanted to pay it back.

13 I told him I had gone through this process of looking
14 at everything that I talked about here including hiring an
15 accounting firm. I had turned all of that calculations over to
16 the treasurer's office. The treasurer's office had done their
17 own analysis with their own tax accountants, and I had my
18 analysis. They had their analysis. The treasurer's office did,
19 and I told the Audit Committee this was everything that I wanted
20 to square up with the NRA to the point where I got-- I received
21 no advantage even if -- even if I was unaware of it, but I did
22 receive an advantage.

23 MR. CONLEY: I am going to object again. Referring
24 to documents that were produced late and that we haven't had
25 a chance to have discovery on it.

KM

4301

1 THE COURT: Overruled. I would just ask maybe
2 after this, you can put the timeframe around when this
3 occurred because just for my benefit and maybe the jury's.

4 Q When did this occur, Mr. LaPierre?

5 A It was in December of 2023. There was one last
6 calculation that I presented to him that just been discovered
7 recently by the Institution for Legislative Action which was
8 some old expense reports that they had misplaced that they had
9 just discovered, and I went through those. And if there were
10 any gifts on there, I -- I added those up and repaid them. That
11 was the last payment.

12 (Continued on the following page.)

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4302

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q What did that payment come to, approximately?

2 A I can't -- maybe 15,000, something like that. I'm not
3 sure to tell you the truth. May have been less.

4 Q I'd like you to direct your attention to Tab 16 in
5 another binder -- well, why don't we do this.

6 MR. CORRELL: Your Honor, I'd like to finish up
7 with this binder and get it off of everyone's hands. I just
8 have a few things I'd like to ask him about, and then go on
9 to checks that you actually wrote.

10 THE COURT: You're the pilot.

11 MR. CORRELL: Thank you, your Honor.

12 Q Please turn your attention to Tab 98 in Volume 2 of 2
13 from yesterday.

14 Do you recognize this document? It's been marked for
15 identification as WLX 260.

16 A Yes, I do.

17 Q What is it?

18 A It is an article that was prepared for the magazines
19 which went through legislative accomplishments of the
20 organization over the years, political accomplishments.

21 Q Did you have any involvement in the preparation of this
22 document?

23 A I did. When I went down, I went down to publication
24 and they had a writer there with me; and I went through it off
25 the top of my head with him because I had lived it and I

BP

4303

W. LaPierre - by Defendant - Direct/Mr. Correll

1 remembered it. So I -- I just went through this year, this is
2 what happened; this year, that's what happened; this year,
3 that's what happened. Went through it year by year.

4 Q Is this a fair representation of words you spoke to
5 this writer and asked to record in this document for use by the
6 NRA?

7 A Yes, it is. He probably made it a little bit more
8 eloquent than what I said, but he's a good writer; but, yes,
9 this is a fair representation of what I --

10 MR. CONLEY: I apologize, the Realtime stopped.

11 MR. CORRELL: I think the witness finishing his
12 question is more important than you seeing realtime.

13 So I would ask in the future that you allow
14 the witness to finish before you complain about now having
15 realtime.

16 THE COURT: Bonnie.

17 THE COURT REPORTER: Yes, Judge, it will take me
18 ten seconds.

19
20 (Brief pause)

21
22 (Continued on next page)

23
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BP

4304

W. LaPierre - by Defendant - Direct/Mr. Correll

1

2 Q I'm sorry, Mr. LaPierre, for the interruption. Would
3 you like to finish your answer?

4 A I think -- I think that is the answer that I went
5 through it. He -- he wrote it up. He -- it is -- this is what
6 we ended up with.

7 Q And you believe this is a fair representation of what
8 you said in sum and substance?

9 A Yes, I do.

10 MR. CORRELL: Your Honor, move it into evidence
11 please. I'd like to publish it to the jury.

12 MR. CONLEY: Objection, relevance, hearsay.

13 THE COURT: It is clearly hearsay.

14 MR. CORRELL: Pardon me?

15 THE COURT: It is clearly hearsay. If you wanted
16 to, you can ask him all these fact questions, but there's no
17 hearsay exception for something like this.

18 So, sustained.

19 MR. CORRELL: Your Honor, I'd like to offer it on
20 another theory of relevance, which it is relevant to show an
21 exemplar of the work product he created on behalf of NRA and
22 sent to members with regard to the truth.

23 It shows the breadth of his responsibility and
24 shows the scope of his duties.

25 THE COURT: Sustained still.

BP

4305

W. LaPierre - by Defendant - Direct/Mr. Correll

1 MR. CORRELL: Exception.

2 Q Please turn your attention to Tab 99. Do you recognize
3 this document?

4 A I do. It is a -- it is a book that the NRA put
5 together about the accomplishments of the organization and the
6 programs with the association and all that.

7 Q Did you have any involvement in the preparation of this
8 publication?

9 A I knew they were doing it. I may have talked with
10 them. I did not have a lot of involvement with this one.

11 Q Is this an example of a communication that the NRA made
12 with members and donors and prospective donors to advance the
13 interest of the NRA and the mission of the NRA?

14 A Yes, it is. This was prepared not only for our
15 members, but also who are the bread and butter -- bread and
16 butter of the association. I mean, they make it work everyday,
17 as folks would send in \$40 for a membership or \$30; but this
18 book was also prepared to send anyone that might be a high donor
19 or prospect to show the accomplishments of the organization.
20 It --

21 Q Can you explain to the jury your view as to the
22 importance of finding high donors for the NRA?

23 A Well, as I've said, I mean, the real bread and butter
24 of our association -- I mean, I always say whenever I meet
25 anybody on the road, people would say thanks to me; and I'd go,

BP

4306

W. LaPierre - by Defendant - Direct/Mr. Correll

1 no, it is not me. It is you. I mean, they'd run me out of town
2 in five minutes if it weren't for you.

3 I mean, the power of the organization is not that
4 building in Washington. It is people around the country, but it
5 is important to find higher donors as other organizations have
6 because it -- it takes money to pay for all the programs, all
7 the magazines, the legislative advocacy, everything the
8 organization does. And if you find some higher donors, that
9 takes some pressure off of the folks that are constantly, you
10 know, because they believe in it sending in 5, 10, 15, 30, 45
11 dollar checks.

12 So, it is important for an organization to be strong to
13 have those high donors, particularly when it comes under
14 financial pressure. The finances of the NRA tend to waiver
15 depending on the atmosphere, depending on what the organization
16 is going through.

17 Q Does it also depend on politics, who's in office?

18 A It does. I mean, it is the same with every
19 organization in the country. I mean, I think that if -- apart
20 from the program stuff that goes on day to day, the safety
21 training, education that stuff; the political stuff varies by
22 the threat and by -- by who's in office.

23 So, if somebody is in office that's opposed to what an
24 organization stands for, people tend to give more. If someone
25 is in office that supports what an organization stands for,

BP

4307

W. LaPierre - by Defendant - Direct/Mr. Correll

1 people tend to give less.

2 So, what the high donors do is they tend to round it
3 out when you're in one of those low periods.

4 Q Does the economy also have an effect on the importance
5 of a high donor for an organization like yours?

6 A It has a big effect on the -- on the 5, 10, 20, 35, 40
7 dollar donors, yes.

8 Q And what effect is that?

9 A Well, they're going on in their day-to-day lives and
10 they're trying to pay their gas bills, and they're trying to buy
11 food and take the family to dinner; and that probably is more
12 important than sending a check to some organization, whatever
13 the organization stands for.

14 MR. CORRELL: Your Honor, I move into evidence the
15 document that's been marked WLX 261, that appears behind Tab
16 99.

17 It is the last one in the book, and I promise I
18 will not offer anymore of these exemplars into evidence.

19 MR. CONLEY: Objection, relevancy, hearsay.

20 THE COURT: I don't understand the relevance.

21 MR. CORRELL: Again, it represents a compendium of
22 work that's put together for the organization in connection
23 with members and high donors. It is relevant to
24 Mr. LaPierre's efforts to find high donors, including by
25 traveling with the McKenzies and going to Hollywood and

BP

4308

W. LaPierre - by Defendant - Direct/Mr. Correll

1 doing these shoots and things.

2 It is part and parcel of what he does. It
3 represents part of the performance of his duty, which is an
4 issue in this case.

5 THE COURT: Yeah, I just don't think the document
6 itself -- I mean, I've allowed him to testify about all he
7 does and all of that; but as I flip through this, there's
8 all sorts of -- I mean, it is hearsay.

9 I know you're putting it in not for hearsay
10 purpose. You're putting it in, I guess, just to show that
11 it was done; but there's no real dispute that all this kind
12 of work gets done. It doesn't mean that all of them become
13 trial exhibits, so I can't see any relevance to this.

14 So --

15 MR. CORRELL: Your Honor, if I may make one last
16 attempt. It shows the breadth of his duties. He
17 occupies -- well, one question in this case is whether he's
18 discharged the duties of his position appropriately. One
19 question is what was his position? What were his duties?
20 And I think this is evidence of the breadth of his duties
21 and the success, with which he has --

22 THE COURT: This is an example of exercise of
23 duties that nobody is questioning. I mean, this is just --
24 I understand the point, but sustained.

25 MR. CORRELL: May I have at least the cover sheet?

BP

4309

W. LaPierre - by Defendant - Direct/Mr. Correll

1 THE COURT: No. The jury has a lot of documents to
2 cope with in this case, and I'm only admitting the ones that
3 I think are relevant to the claims and defenses.

4 Q Mr. LaPierre, please turn your attention to Tab 16 of
5 Volume 1 of 2 from the new binders that were put before you
6 today.

7 Actually, if you would turn to -- yes, tab 16.

8 A Yes, I have it.

9 Q Do you recognize this document?

10 A Yes, I do.

11 Q What is it?

12 A That is the -- I believe that's the first check I wrote
13 to the NRA in terms of the -- to cover the -- the charges that
14 when I said I wanted to make good on everything even if it was
15 the accounting, calculation, a mistake, whatever; I wanted to
16 make it square with the NRA and I think that's the first check I
17 wrote.

18 Q And what is the date on that check?

19 A November 12th -- November 16, 2020.

20 Q It says "20" there, but you meant 2020; right?

21 A Yes.

22 Q And the bank cashed it anyway; correct?

23 A They did.

24 Q Could you --

25 MR. CORRELL: Your Honor, I move this --

BP

4310

W. LaPierre - by Defendant - Direct/Mr. Correll

1

2 Q Well, there's something below that, an indication that
3 says "processed November 16th."

4 Do you see that?

5 A Yes, yes, I do.

6 Q What does that indicate to you?

7 A Well, to me it was indicating it was processed by the
8 bank.

9 Q So it was cashed?

10 A Yes.

11 MR. CORRELL: Your Honor, move DX1-0514 into
12 evidence if it hasn't been admitted already.

13 MR. CONLEY: Your Honor, object on lack of
14 foundation.

15 MR. CORRELL: He wrote the check, your Honor.
16 That's about as good a foundation you could get.

17 THE COURT: Are you questioning the authenticity of
18 it?

19 MR. CONLEY: No, your Honor, and it is not with
20 respect to the check. It is with respect to the -- what's
21 beneath the check.

22 THE COURT: Overruled. It is admitted and this is
23 DX1-0514.

24 MR. CORRELL: Correct.

25 (Whereupon, at this time the Exhibit DX1-0514 was

BP

4311

W. LaPierre - by Defendant - Direct/Mr. Correll

1 admitted and received into evidence.)

2 Q Mr. LaPierre, would you turn to Tab 21 of your new
3 binder and the document that appears behind that tab.

4 Do you recognize that document?

5 A Yes, I do.

6 Q What is it?

7 A That is another check that I wrote in terms of what I
8 said at the start, if it was anything, I wanted to make it good.
9 I wanted it squared up with the NRA. Even if I was unaware of
10 it, that I wanted to square it up and this is -- I think this is
11 the second check I wrote.

12 Q What's the date on that check?

13 A November 30, 2021.

14 Q And what's the amount?

15 A \$233,276.05.

16 MR. CORRELL: Can we go back and put up the first
17 check and publish it to the jury, please.

18 Actually, I want to move this one into evidence,
19 your Honor.

20 THE COURT: It is admitted.

21 MR. CORRELL: If we could publish the first one and
22 then the second, please.

23 (Displayed)

24 Q Mr. LaPierre, would you direct your attention, please,
25 to Tab 28 of your binder. That will be Volume 2. Take your

BP

4312

W. LaPierre - by Defendant - Direct/Mr. Correll

1 time.

2 A I'm sorry, these are big binders. Tab 28?

3 Q Yes, sir. Do you recognize that document?

4 A I do.

5 Q What is it?

6 A This is the check that I wrote to the NRA for the
7 additional amount that I later found out from the treasurer's
8 office should have -- should have -- well, should have been
9 paid, but I didn't -- it is not the figure I was quoted. But to
10 the square up that 2013 Jeep that I bought off lease, that was
11 the additional amount with interest that -- that, that should
12 have been paid if I've been given the right figure.

13 MR. CORRELL: Thank you. Move it into evidence,
14 your Honor. It DX1-0515.

15 MR. CONLEY: No objection.

16 THE COURT: It is admitted.

17 (Whereupon, at this time the Exhibit DX1-0515 was
18 admitted and received into evidence.)

19 Q I'd like to next direct your attention to Tab 30 of the
20 binder you have before you.

21 Do you recognize that document?

22 A I do.

23 Q What is it?

24 A It is another check that I wrote. The same thing, to
25 square up with NRA anything I said at the start, if, if it -- if

BP

4313

W. LaPierre - by Defendant - Direct/Mr. Correll

1 it was some benefit that came to me on a calculation or
2 accounting calculation or a mistake that I was unaware of, it --
3 that squared up a bunch of different things as I remember. It
4 was some airfare. There were some gifts. There were -- I think
5 hair and makeup might have been in that, stuff like that.

6 Q Was lodging and iPhone in this?

7 A Yes, I believe so.

8 MR. CORRELL: Your Honor, move the admission of
9 this document into evidence.

10 THE COURT: It is admitted. It is DX1-0505?

11 MR. CORRELL: Correct.

12 (Whereupon, at this time the Exhibit DX1-0505 was
13 admitted and received into evidence.)

14 Q Mr. LaPierre, if you would please direct your attention
15 to Tab 38 and the document that appears behind that tab. Do you
16 recognize this document?

17 A I do.

18 Q What is it?

19 A It is another check that I wrote to square up
20 everything with the NRA --

21 THE COURT: I think your microphone went off.

22 THE WITNESS: Yes, your Honor.

23 THE COURT: Press the power button on the bottom
24 there. Turn it on.

25 THE WITNESS: Thank you.

BP

4314

W. LaPierre - by Defendant - Direct/Mr. Correll

1 A Yes, it is a check that I wrote to square up the -- the
2 transportation reimbursement where I -- if I made a stop or did
3 something, it wasn't entirely with the NRA, I just paid the
4 entire amount.

5 MR. CORRELL: Your Honor, move this into evidence.

6 MR. CONLEY: Your Honor, objection to everything
7 but the check. No objection to the check.

8 THE COURT: Yeah, there's some writing below it.
9 Some of it is his, some of it is not.

10 MR. CORRELL: Happy to just have the check, your
11 Honor.

12 THE COURT: Okay, can you do that?

13 MR. CORRELL: Can we publish this on the screen?

14 THE COURT: DX1-0796 admitted for the check.

15 (Whereupon, at this time the Exhibit DX1-0796 was
16 admitted and received into evidence.)

17 MR. CORRELL: Can we publish the last check, so
18 we're up to speed here. Please publish this for a moment.

19 (Displayed)

20 Q While that's happening, Mr. LaPierre, would you please
21 direct your attention to Tab 42 and the document behind it.

22 Do you recognize that document?

23 A I'm sorry, I'm still trying to get there.

24 THE COURT: Big binders. I feel your pain and your
25 paper cuts.

BP

4315

W. LaPierre - by Defendant - Direct/Mr. Correll

1 THE WITNESS: Thanks, your Honor.

2 A Yes.

3 Q So and what is it?

4 A This is the -- the check that I wrote to -- back when
5 we discovered in going through this review, this 360 review that
6 there were some wardrobe charges going back to 2000, 2001, 2002,
7 2003 and 2004. I had no idea they charged the NRA and I ended
8 up reimbursing the organization with interest for those charges.

9 MR. CORRELL: Your Honor, I move the admission of
10 this document into evidence, DX1-0798.

11 THE COURT: It is admitted.

12 MR. CORRELL: Thank you.

13 (Whereupon, at this time the Exhibit DX1-0798 was
14 admitted and received into evidence.)

15 Q Mr. LaPierre, if you could now direct your attention to
16 Tab 44 --

17 THE COURT: Do you want --

18 Q The document that appears behind it as Ali publishes
19 the last one on the screen.

20 THE COURT: She did.

21 Q Do you recognize that document?

22 A Yes, I do.

23 Q What is it?

24 A It is the final check that I talked about that when --
25 when the Institute for Legislative Action found that some

BP

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 expense reports that they -- they misplaced and they discovered
2 them in -- well, shortly before that, and I went through those
3 to see if there was anything on there that -- under what I've
4 been going through should have, should have been paid to the
5 NRA, and it was for -- it was for some of those gifts that were
6 over \$25 that went to donors and -- or, or maybe a vendor that I
7 wanted to keep good relationships with or employees during the
8 holiday season.

9 Q Did you believe that these gifts were in the interest
10 of the NRA?

11 A Yes, I did.

12 Q And was the purpose to help build or maintain
13 relationships with people who were valuable to the NRA?

14 A Yes, it was. I felt and my wife felt that they were
15 the glue that kind of held things together. And in terms of
16 relationships, I mean, you're not going to get a donation if you
17 don't have a relationship with a person; and it helps solidify
18 the relationships and it also helps I thought solidify
19 relationship with staff that I gave gifts to. And if I did one
20 with a vendor, I thought it helped solidify a relationship.

21 Q Do you have a secretary or assistant?

22 A I do.

23 Q What's her name?

24 A Andre Fisher.

25 Q How long has she been with you?

BP

4317

W. LaPierre - by Defendant - Direct/Mr. Correll

1 A Oh, gosh. She started with the NRA out of high school
2 working for Harlin Carter who was the EVP back in the seventies.
3 She's just retired. I think she's been with me for
4 twenty-five years maybe.

5 Q And did you believe it was important to the NRA to
6 provide continuity in relationships with employees who were
7 providing assistance to executives?

8 MR. CONLEY: Objection, leading.

9 THE COURT: Overruled.

10 A Yes, I did. I thought that -- that continuity was
11 important. I thought that, yes.

12 Q Her father is a marine correct? Andre's father is a
13 former marine?

14 A He was.

15 Q Was he a member of the NRA, as well?

16 A I'm not sure.

17 Q Is she a member of the NRA?

18 A Yes.

19 MR. CORRELL: Your Honor, I can't recall whether I
20 moved this one into evidence.

21 THE COURT: Which one?

22 MR. CORRELL: This is Tab 44, DX1-0845.

23 THE COURT: I don't know that you did, but I'll
24 admit it.

25 MR. CORRELL: Thank you, your Honor.

BP

4318

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q And now --

2 (Whereupon, at this time the Exhibit DX1-0845 was
3 admitted and received into evidence.)

4 MR. CORRELL: Will you publish it, please.

5 THE COURT: DX1-0845.

6 Q Would you direct your attention the Tab 47, please.

7 A Yes.

8 Q Do you recognize this document? You had said that was
9 the last check, the previous one; but do you want to revise that
10 answer.

11 A Yes. Obviously, this is the last one that covered --
12 covered those last invoices that ILA found.

13 Q And this was to cover a recalculation -- recalculated
14 interest rate --

15 A I'm sorry, you're right. It was -- what this was was
16 when our treasurer, Sonya Rowling, testified to that on that
17 wardrobe going back to 2000, 2001, 2002, she initially did the
18 wrong interest calculation. She did, I guess, a short-term
19 interest calculation and she came back and said that she
20 had made an error; that it should have been the long-term
21 interest calculation, which raised the amount of interest by
22 this amount.

23 Q Now, you had engaged the firm, an accountant named Drew
24 Cheney, an accountant and lawyer Drew Cheney to assist you in
25 making sure you were all squared up with the IRS; correct?

BP

4319

W. LaPierre - by Defendant - Direct/Mr. Correll

1 MR. CONLEY: Objection, leading.

2 THE COURT: Overruled.

3 A Yes.

4 Q And they had performed a calculation and you had
5 provided that to Sonya Rowling; correct?

6 A Yes.

7 Q And it was Sonya Rowling who noted that -- who
8 requested that a long-term rate be used rather than a short-term
9 rate; correct?

10 MR. CONLEY: Objection, hearsay.

11 Q Does that refresh your recollection as to whose error
12 that was?

13 A That is correct. Sonya said and told me and she
14 told -- she explained to the Audit Committee that initially she
15 had made the calculation based on a short-term interest rate and
16 it should have been based on a long-term interest rate, and this
17 was the additional amount that it should have been.

18 Q And she was using the calculation that had been
19 provided by the accountant mistakenly; correct?

20 A Yes.

21 Q And when she identified the error, did you resist the
22 recalculation in any way?

23 A No, I didn't.

24 Q I want to change topics.

25 MR. CORRELL: Did we move that into evidence? I

BP

4320

W. LaPierre - by Defendant - Direct/Mr. Correll

1 don't think we did. Please, may we have that admitted into
2 evidence?

3 THE COURT: It is admitted. DX1-0504.

4 MR. CORRELL: Would this be a good time to take a
5 morning break? I can go longer if you'd like. I'm going
6 to be changing topics and it's going to go for a little
7 bit.

8 THE COURT: If it's a good time for the morning
9 break. All right, we'll take a short break.

10 COURT OFFICER: All rise, jury exiting.

11 (Whereupon, at this time the jury then left the
12 courtroom.)

13 (Whereupon, at this time the witness stepped down.)

14 THE COURT: You can have a seat.

15 Were we in the midst of a discussion we were
16 supposed to continue at the break? I don't recall.

17 MR. FARBER: I'm sorry, your Honor, I didn't hear
18 the question.

19 THE COURT: I remember cutting off a conversation
20 before the jury came in and said we would continue it at the
21 break.

22 MS. ROGERS: So, your Honor, there were board books
23 that we wanted to offer into evidence, and I think we've
24 narrowed these to a shorter period of 2017 to present; and
25 almost all of these board books correspond to relevant

BP

4321

W. LaPierre - by Defendant - Direct/Mr. Correll

1 events because of the density of relevant transactions and
2 events during these years.

3 So, we will have -- we can introduce them through
4 Mr. Frazer. He can identify them. He's the secretary, or
5 we can just stipulate to put them in if they're willing to
6 stipulate or the Court is willing to let us put them in.

7 MS. STERN: Your Honor, I just -- I'm not sure that
8 you've seen these board books.

9 THE COURT: I'm sure that I haven't.

10 MS. STERN: There are hundreds and hundreds of
11 pages, and they have reports from every committee,
12 thirty-some-odd committees. I mean, there's a ton of
13 stuff --

14 THE COURT: I think the board books -- I thought
15 about it. There's been testimony about whether the board
16 members are receiving information and the process has been
17 part of. And so I, I think there is -- if it's during the
18 relevant period at least, there's some relevance to the
19 process; and having said that, I don't know what I'm biting
20 off by just accepting them. But, you all are the ones who
21 are supposed to take a look at it and let me know if there's
22 something in there that is either prejudicial or to either a
23 defendant or to the plaintiff or whoever. I have no way of
24 knowing that.

25 So, I think I would agree that there's a base level

BP

4322

1 of relevance to showing if it does the kinds of documents
2 board members receive, and so then the only question about
3 admissibility is whether somehow it is outweighed by some
4 other concern.

5 (Continued on next page)

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1 MS. STERN: Could we at least have the opportunity
2 to look at the sort of reduced list that Ms. Rogers referred
3 to, and I'll ask one of my colleagues --

4 THE COURT: Yeah. Absolutely. I think it needs to
5 be done by the end of the day because they have to put it in
6 at the end of their case.

7 MS. STERN: We certainly can do that.

8 MS. ROGERS: That's all on the DX list, and the
9 plaintiff has copies, and we sent them a chart with the
10 dates.

11 THE COURT: Your codefendants also might want to
12 take a look at them.

13 MR. FARBER: That's correct, your Honor, and there
14 are thousands of exhibits that have been noticed in this
15 case. We got this list -- I forget whether it was late last
16 night or this morning that has a lot of stuff on it.

17 So telling me that we have had them already doesn't
18 mean that I can sit here and intelligently -- first of all,
19 I haven't reviewed them because they are not part of
20 anything that was narrowed to the extent we can call it was
21 done last night narrowing until then.

22 THE COURT: Let me put it this way. The formal way
23 this gets done is you have a witness. They go through it,
24 you know, and I admit it in the normal course. I can't
25 admit it by stipulation unless people have had a chance to

KM

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1 look at it. So we will have to do it one way or the other.
2 You know, I -- I'm not going to admit it sight unseen unless
3 the parties have had a chance to look at it and sense any
4 objections.

5 MR. FARBER: And I'm open to a stipulation if I am
6 given something narrower that I can actually look and access
7 in this short time.

8 THE COURT: I get it. I don't know whether it was
9 hundreds or thousands of pages. It's a lot to swallow on
10 the last day of evidence. So I'll see how you all can do.
11 I don't know what else I can say. I mean, it's coming in
12 the last day without a lot of notice. But typically, this
13 kind of thing is done when, oh, you know, we talked about
14 this, and I forgot to put it in.

15 So I think, Ms. Rogers, you're going to have to
16 count on the good will of your fellow litigants here.

17 MS. ROGERS: I place great faith in the good will
18 of my fellow counsel.

19 THE COURT: I do know during the lunch break you
20 guys are going to be busy doing other things that are
21 important to me including the jury verdict sheet which is
22 mission critical.

23 All right. I'll see you in a minute.

24 (Whereupon at this time there was a recess taken.)

25 MS. STERN: Your Honor, may I raise something

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4325

1 please?

2 So we've just gotten notice from the NRA that they
3 have again changed their list of witnesses for today from
4 what we last heard and what the Attorney General's team
5 prepared for today, and we are having just a constant
6 switching of witnesses.

7 THE COURT: Well, it's all in one day. Do you mean
8 just different parts of the day or are they putting
9 witnesses on that wasn't on the list before?

10 MS. STERN: They are putting back on witnesses that
11 they had taken off.

12 MS. EISENBERG: That's incorrect, your Honor. We
13 are talking about Mr. Commerford. He was going to go last
14 night, and we just didn't get to him.

15 THE COURT: Okay

16 So they are all people who have been on the list.
17 They are just -- everybody I am sure is streamlining to try
18 to get through this.

19 Now we are all being -- a little positive thinking
20 is good, I guess, but you know, we are still in the middle
21 of the direct of Mr. LaPierre. We haven't finished Mr.
22 Frazer who has to not only finish direct but get -- go
23 through cross, and you are now lining up people behind them
24 who have to go through direct and cross. You're just going
25 to have to keep in mind that however long this goes on,

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W. LaPierre - by Defendant - Direct/Mr. Correll

1 that's less time available for all of that.

2 MS. EISENBERG: Understood, your Honor.

3 For what it's worth, Mr. Commerford will be less
4 than 20 minutes.

5 THE COURT: It just has to also have time for
6 cross. I mean, I don't know how much it's going to be, but
7 you're going to have to regroup all of you at lunchtime and
8 figure out how this is all going to play out because the
9 afternoon, as you know, is two hours and change, and it's
10 11:15, and we are not done with direct. So you can tell
11 time as well as I can.

12 All right. Let's let the jury come back. The
13 witness, Mr. LaPierre.

14 (Witness resumed the witness stand.)

15 THE COURT OFFICER: All rise. Jury entering.

16 (Whereupon, at this time the jury entered the
17 courtroom.)

18 THE COURT: Welcome back. Have a seat, everyone.

19 MR. CORRELL: May I proceed, your Honor?

20 THE COURT: Yes, sir.

21 CONTINUED DIRECT EXAMINATION

22 BY MR. CORRELL:

23 Q Mr. LaPierre, before the break I had asked you a
24 question about who calculated the -- recalculated the interest
25 using a long-term rate versus a short-term rate, and I was a

KM

4327

W. LaPierre - by Defendant - Direct/Mr. Correll

1 little unclear in your answer.

2 Has your recollection of who did the calculation -- was
3 it Nick Porto or was it Sonya Rowling?

4 A It was the treasurer of the NRA Sonya Rowling.

5 Q And do you know whether she had done that after Nick
6 Porter had calculated it according to that -- that long-term
7 formula or whether she did it independently of his?

8 A In all honestly, I'm not sure.

9 Q Okay. But as far as you know, the calculation was done
10 appropriately and to the satisfaction of Sonya Rowling. Is that
11 a fair statement?

12 A Yes, that's what she said.

13 Q Thank you. Just quickly, before we move on to the new
14 topic, did anyone ever tell you that there was anything wrong
15 with any of your expense reports?

16 A No.

17 Q And how long have you been working for the NRA?

18 A I worked there 45 years.

19 Q And when was the first time anyone suggested that there
20 might be something wrong with your expense reports?

21 A When we started to go through the 360 analysis, they
22 started talking about the gifts that were on there that were --
23 should have been paid for by me.

24 Q And I know we don't have a lot of time, but I wanted to
25 ask you briefly because there's been some discussion before

KM

4328

W. LaPierre - by Defendant - Direct/Mr. Correll

1 about a conversation you had with Tom King. That was one of the
2 things that kicked off the 360-degree review.

3 Can you give us your recollection of that conversation
4 with Tom King about his conversation with Attorney General
5 Schneiderman?

6 A Yes. I mean, Tom called me at the office and told me
7 that he had been called by the Attorney General of New York
8 General Schneiderman who told him that there was a lot of
9 pressure being put on the Attorney General's Office and the
10 Government in New York State to target the NRA, and that he
11 suggested that -- I remember him saying that particularly
12 New York Non-Profit Law has been changed. It's very detailed,
13 and you'd be wise to take a good look at it to make sure you're
14 in compliance because if -- you want to be in compliance if
15 you're looking at --

16 THE COURT: Just a caution for the jury. This has
17 multiple levels of hearsay in it. The only part that I'm
18 admitting it for its communication to Mr. LaPierre so that
19 he heard this from someone and then whatever he -- however
20 it affected him, but whether Mr. King in fact heard it from
21 somebody else and whether that other person in fact said
22 what Mr. King heard him say, you don't have any of those
23 people here right now anyway. So this is just for the fact
24 that Mr. LaPierre heard it or is testifying that he heard
25 it.

KM

4329

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q Mr. LaPierre, how did that affect you?

2 A Well, I listened to Tom, and I particularly heard the
3 word "compliance," and as I said, I mean, I concentrate on all
4 the outward facing stuff for the organization, what I do, and I
5 have gone through a whole list before and I thought that, well,
6 it makes a good sense to go through the organization and take a
7 complete look at whether NRA's in compliance with the policies
8 and procedures of the Board and also whether it's in compliance
9 with New York Non-Profit Law. I didn't know whether there was
10 investigation coming or not, but it just made good sense to me.
11 So I called our attorney Steve Hart who was the attorney of the
12 Board.

13 MS. ROGERS: Objection. Just going to caution the
14 witness not to testify about privileged conversation with
15 lawyers.

16 Q You can testify about calling him and what you did
17 after you called him, but you can't testify as to what you said
18 to him or what he said to you.

19 A What I did is we hired Morgan Lewis which was one of
20 the top non-profit law firms in the country to start looking at
21 NRA in terms of its procedures and its governance and state and
22 local and national law.

23 Q And I will leave this subject for my colleague Sarah
24 Rogers to explore on her direct.

25 I would like to move on to another subject which is the

KM

4330

W. LaPierre - by Defendant - Direct/Mr. Correll

1 question of the so-called LaPierre post-employment agreement
2 that you signed in 2013.

3 So I'd like to first just ask you what, if anything,
4 you can recall about an agreement that you signed in 2013.

5 A President Jim Porter came to me and along with the
6 counsel Steve Hart to the Board, and -- but it was President
7 Porter that talked to me in particular and said we would like to
8 present you with -- with this employment agreement, and if you
9 agree, we'd like you to sign it and --

10 Q And was Jim Porter a lawyer at the time?

11 A Yes, he was.

12 Q And was he chairman of the Board at the time?

13 A He was president of the organization.

14 Q Doesn't that make you also the chairman of the Board?

15 A Yes, I guess.

16 Q Is that the terminology?

17 A Yes.

18 Q Do you use different terminology?

19 A I think they use "President."

20 Q Was he also a member of the officers' compensation
21 committee?

22 A Yes, he was.

23 Q And was he the chairman of the officers' chairman
24 compensation committee?

25 A Yes, he was.

KM

4331

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q And what, if anything, did he say to you about the --
2 this proposed agreement?

3 MR. CONLEY: Objection. Hearsay.

4 THE COURT: Overruled.

5 A He said we'd like to present you with this. We -- we
6 think it's in the interest of the organization, and we'd like
7 you to sign it, and it -- I signed it.

8 Q Let me direct your attention to Tab 5 and the document
9 that appears behind that. Tab 5 is Volume 1 of 2 of the new
10 binders. Tab 5, and it's Defendant's Exhibit WLX 15.

11 Would you take a moment to look at that and tell me if
12 you recognize it.

13 A Yes, I do. That's the employment agreement that you're
14 talking about.

15 THE COURT: This has been introduced under another
16 number; right?

17 MR. CONLEY: Yes, your Honor. This has been
18 admitted as Plaintiff's Exhibit 2500.

19 MR. CORRELL: Yes.

20 THE COURT: So at least we have a cross-reference
21 for it.

22 Q Please take a moment. It's a 1, 2, 3, 4-page letter;
23 correct?

24 THE COURT: Is there a way to use the PX, whatever
25 it is, 2500. I rather not have another one introduced as

KM

4332

W. LaPierre - by Defendant - Direct/Mr. Correll

1 the same because --

2 MR. CORRELL: Okay. Absolutely. I will refer to
3 this as PX 2500.

4 THE COURT: Thank you.

5 Q It's now published before the jury.

6 Would you direct your attention to, first of all, the
7 letterhead.

8 This is -- do you recognize that letterhead?

9 A Yes, I do. It's NRA letterhead.

10 Q That's the official letterhead of the National Rifle
11 Association of America at the time; correct?

12 A Yes.

13 Q And that's James Porter's name in the upper-right-hand
14 corner?

15 A Yes, it is.

16 Q And you see the date?

17 A I do. It's December 1, 2013.

18 Q And does that refresh your recollection as to when this
19 was presented to you?

20 A Yes.

21 Q And it is addressed to you at the National Rifle
22 Association, 11250 Waples Mill Road.

23 Is that the address of the headquarters?

24 A Yes.

25 Q Could you please read the first sentence of this letter

KM

4333

W. LaPierre - by Defendant - Direct/Mr. Correll

1 starting with, "Dear Wayne."

2 A The National Rifle Association NRA or association has
3 determined that it is in the best interest of the association to
4 enter into a long-term contractual relationship with you.

5 Q Did you take that statement at face value?

6 A Yes, I did.

7 Q And after reading that statement, did you rely on that
8 statement in deciding whether or not to sign this agreement?

9 A Yes. Yes, I did.

10 Q And did you view Mr. Porter as reliable?

11 A Yes, he was president of the organization.

12 Q And did you review -- did you view him as competent?

13 A Yes.

14 Q And did you understand that he was member of the
15 officers' compensation committee, and in fact, the chairman of
16 the committee?

17 A Yes.

18 Q And did you have any knowledge that would cause you to
19 -- cause your reliance on that statement to be unwarranted?

20 A No.

21 Q And did you read the statement -- read this letter,
22 when it was -- I'm sorry -- presented to you?

23 A Yes, I did.

24 Q Could you read the next sentence, please.

25 A "It is with great delight that I am writing to extend

KM

4334

W. LaPierre - by Defendant - Direct/Mr. Correll

1 to you an offer of employment with the National Rifle
2 Association once your term as an officer has ended."

3 Q And did you rely on that statement as well?

4 A Yes.

5 Q Okay. And did your term of office end -- well, let me
6 ask you this.

7 Has your term as an officer ended?

8 A My term as an officer ended at the January Board
9 meeting in 2024. I retired for health reasons.

10 Q And these were the health reasons you described to the
11 jury earlier at the beginning of your testimony?

12 A That's correct.

13 Q The -- does it say, and I will read this for you just
14 to make it faster.

15 "It can be said that you are exactly the kind of
16 intelligent and enthusiastic individual who will contribute
17 significantly to the NRA over the next five years. The NRA
18 recognizes your essential role in the leadership and continuing
19 growth of this organization and takes this action to assure that
20 your talents will remain available to the NRA and focused on our
21 mission."

22 Do you see that?

23 A I do.

24 Q Did you read that at the time?

25 A Yes.

KM

4335

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q And did you believe that this was the reason you were
2 being offered this employment contract?

3 A Yes.

4 Q And this came on the heels of -- closely on the heels
5 of you being recognized as one of the top 50 -- I forget the
6 language -- Most Influential People in the World in Time
7 Magazine; correct?

8 A Yes; although the -- the reason I believed that they
9 were doing it was the fact that I had spent so much -- the years
10 -- the years out there with our membership. I spent so many
11 years doing television in terms of with our -- in front of the
12 country, and I believe they particularly were interested in the
13 value I brought to the organization in terms of all of that
14 identification with the membership and with supporters of.

15 Q And did you have any understanding as to whether this
16 would benefit the NRA by allowing the NRA to use your image and
17 signature and name in going forward in the event that you were
18 to leave the NRA to raise -- for purposes of raising money?

19 A Yes. That's why I believed actually that they were
20 offering me this contract.

21 Q And what, if any, understanding did you have at this
22 point as to how valuable your signature was on letters to
23 members for fundraising purposes?

24 A Well, I knew -- I knew that it -- it's all integrated
25 in a way -- it's all integrated marketing together, and I knew

KM

4336

W. LaPierre - by Defendant - Direct/Mr. Correll

1 that the fact that I -- ever since Heston by now for 13 years,
2 he's been the voice of the organization in front of the country
3 and was out there doing speeches, doing speeches all over the
4 country, doing friends' dinners all over the country, thanking
5 our membership, staying in close contact with them and doing all
6 kinds of debates and that were put in front of our membership.

7 I knew that all of that made a difference in terms of
8 how people respond when they get a letter and it has your
9 signature on it. It's why the -- so -- and I knew the success
10 we were having in raising money based on -- based on those
11 -- those signatures.

12 Q And what kind of success was that?

13 A We -- we had tremendous success. Over between just
14 2011 and 2023, we raised \$1.7 billion off of -- off of direct
15 mail and digital.

16 MR. CONLEY: Objection. Lack of foundation.

17 MR. CORRELL: Your Honor, he was the EVP of the
18 organization raising the funds. It was within his duty to
19 understand.

20 THE COURT: Overruled.

21 MR. CORRELL: Thank you, your Honor.

22 Q And did most of those letters go out under your
23 signature?

24 A They did. Some of the ILA letters -- in fact, most of
25 the ILA letters went out under the signature, the ILA director.

KM

4337

W. LaPierre - by Defendant - Direct/Mr. Correll

1 The signature of the PDF went out -- under my signature -- the
2 PDF; although, I occasionally did some of them also.

3 Q Did a letter ever go out under the signature of Oliver
4 North?

5 A Yes.

6 Q How did those letters do compared to the other letters
7 that were sent out?

8 A It did not work.

9 Q What do you mean by it didn't work?

10 A It didn't -- it didn't provide a return on the
11 investment which surprised me to tell you the truth. I thought
12 it would have worked.

13 Q And did you spend more money on the letter than you got
14 back in terms of return?

15 A I don't think we broke even on it.

16 Q Okay. If you could just take a moment and look at the
17 first term. It says "compensation."

18 Do you see that?

19 A Yes.

20 Q At the time did you believe that that was fair,
21 reasonable compensation for -- or would be -- if you left for
22 the use of your image and likeness and signature in connection
23 with fundraising?

24 A Yes, I did.

25 Q And take a look at -- if you would flip through to the

KM

4338

W. LaPierre - by Defendant - Direct/Mr. Correll

1 -- so to the job description. It's at the top of the second
2 page.

3 Do you see that?

4 A Yes.

5 Q And I'll read it. It says, Job description. You will
6 be an employee. Your employees will include fundraising for and
7 promoting the NRA generally. You may promote or solicit funds
8 for other Second Amendment organizations with excess -- with
9 express approval of the executive vice-president or officers of
10 the Board. Solely during the term of this agreement and upon
11 your approval, the NRA may use your image and name for
12 fundraising purposes; and it goes on to say, however, nothing in
13 this employment agreement shall be construed to bar you from
14 protecting your right to the exclusive use of your name or image
15 against infringement by any party or parties.

16 So did you understand from this agreement that you
17 would also be required to continue to do things other than just
18 allowing the NRA to use your image?

19 A Yes, I did. I mean, basically I would be still working
20 as a full-time employee raising money for the organization. Not
21 only with fundraising letters and things like that but going on
22 the road and meeting with donors and building relationships and
23 trying to bring them into the NRA as members and as donors.

24 Q Is this something you asked for, this agreement?

25 A No.

KM

4339

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q Whose idea was it?

2 A I assume it was President Porters's. I didn't ask for
3 it. They presented it to me.

4 Q Was anyone else involved in presenting this to you?

5 A As I remember, it was -- it was simply Jim Porter and
6 the general counsel of the Board Steve Hart.

7 Q And I see that there is a signature on there for Wilson
8 Phillips.

9 Do you see that?

10 A Yes, I do.

11 Q And does that refresh your recollection as to whether
12 or not Mr. Phillips was involved?

13 A I don't remember Mr. Phillips being involved when they
14 presented it to me; although, he -- he -- he at some point
15 signed it. He might have -- I just don't remember.

16 Q Does that appear to be his signature?

17 A Yes, it looks like it.

18 Q Did there come a time when that agreement was amended?

19 A Yes.

20 Q And when was that?

21 A I believe when Allan Cors was president of the
22 organization.

23 Q I'd like to direct your attention to Tab 6 in your
24 binder which is admitted as PX 337.

25 Do you recognize this document?

KM

4340

W. LaPierre - by Defendant - Direct/Mr. Correll

1 A I do. It is another extension of this agreement that I
2 hadn't remembered this that was proposed by Mr. Porter.
3 President Porter.

4 Q And was it your understanding that it was still -- that
5 the determination that it was in the best interest -- let me
6 read the exact language -- that the determination that it was in
7 the best interest of the association for the association to
8 enter into a long-term contractual relationship with you was
9 still a valid determination?

10 A Yes.

11 Q And did you sign this?

12 A I did.

13 Q And did Mr. Phillips sign this?

14 A Yes, he did.

15 Q And was Mr. Porter still both the president and the
16 chairman of the compensation committee at the time?

17 A Yes, he was.

18 Q At the time did you believe that any further approvals
19 were necessary in order to -- for this agreement to be properly
20 documented?

21 A I didn't.

22 Q And the original back in 2013, did you believe that any
23 approval beyond that was necessary for it to be properly
24 documented?

25 A I didn't. It was presented to me by the president of

KM

4341

W. LaPierre - by Defendant - Direct/Mr. Correll

1 the organization and the chief counsel of the Board, so I
2 didn't.

3 Q Did you believe it was fair and reasonable and in the
4 best interests of the NRA to enter into this agreement with you?

5 A Yes, I did. I had so many years, as I said, of being
6 out there on the road, speaking with the membership, building
7 relationships with the membership, being the TV spokesperson,
8 literally being everywhere with our membership to the point they
9 all called me Wayne. No one called me Mr. LaPierre. I mean, it
10 was Wayne, Wayne, Wayne, and I kind of had this -- I never
11 intended to have it, but I ended up kind of in this unusual
12 role.

13 Q Did you ever view it as a quote "poison pill?"

14 A No.

15 Q Do you know what the term "poison pill" means?

16 A I did not until the Attorney General's Office started
17 to refer to it in terms of their complaint.

18 Q Do you know now what a poison pill is?

19 A I assume it's some type of agreement that the person,
20 in this case being me, could hold over the head of the
21 association. That's the way I interpret it now.

22 Q Did you -- was that your intent in entering into this
23 agreement?

24 A No, not at all.

25 Q Did you ever hold it over the head of anyone in the

KM

4342

W. LaPierre - by Defendant - Direct/Mr. Correll

1 organization?

2 A I never did. I never even asked for it.

3 Q Did the words "poison pill" ever emerge from the mouth
4 of Mr. Porter at any point?

5 A No.

6 Q Did they ever emerge from your mouth?

7 A No, I never even heard the term before.

8 Q Did they ever emerge from Woody Phillips's mouth?

9 A No.

10 Q So this is something that emerged from the mouth of
11 some lawyer working for the Attorney General of the State of New
12 York; correct?

13 MR. CONLEY: Objection.

14 THE COURT: Sustained. Only because I don't
15 remember where it came from or when.

16 It wasn't during this trial; was it?

17 MR. CORRELL: It's in the complaint, your Honor, I
18 believe.

19 Q So it emerged from the pen of the person who or from
20 the keyboard of whoever drafted the complaint. Would that be a
21 fair supposition?

22 A That -- that's correct.

23 Q Stating more simply, you hadn't seen the word anywhere
24 until it appeared in the complaint; correct?

25 A I had not.

KM

4343

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q And hadn't heard the term?

2 A I had not.

3 Q Could you direct your attention to Tab 8. Do you
4 recognize that document?

5 A I do.

6 Q What is it?

7 A This is another extension that the president of the NRA
8 and the chief counsel to the Board came to me with -- to extend
9 that agreement for many more years.

10 Q And this extended the terms of the original agreement;
11 correct? It extended the original agreement; correct?

12 A Yes.

13 Q And so did you have any understanding as to whether the
14 NRA still believed that it was in the best interest of the
15 association to enter into this with you?

16 A Yes. That's why I believed they presented it to me.

17 Q And at the time you signed this, did you believe it was
18 in the best interest of the association for you to sign it?

19 A Yes, I did, given -- given the close bond I had with
20 the membership and how that translated into memberships and
21 donors and all that.

22 Q Please take a look at the document behind Tab 9.

23 Do you recognize that document? It's admitted as PX
24 572.

25 A I do.

KM

1 Q Is that your signature on the last page of the
2 document?

3 A Yes, it is.

4 Q Now if you look up above it where it says, In witness
5 whereof, it says, the party here to have dually executed this
6 agreement as of January blank, 2020.

7 Do you recognize that?

8 A I do.

9 Q This was actually executed in January 2021; correct?

10 A Yes, it was.

11 (Continued on the following page.)

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KM

4345

W. LaPierre - by Defendant - Direct/Mr. Correll

1 Q So, that's a typographical error?

2 A That's correct.

3 Q And was it your intention by signing this agreement to
4 supersede the agreement that was signed in 2013?

5 A Yes, it was. I had told Mr. Cotton that in thinking
6 about it, I felt that this agreement that was signed on
7 April 30, 2018, really in looking at it and thinking about it
8 was a burden on the association; and I told Mr. Cotton in 2019
9 that I thought they ought to -- they ought to tear it up and
10 that's the way I felt about it. It had become a burden on the
11 association.

12 Q Is this something that was prepared at your request to
13 effectuate that desire to essentially cancel and rescind this
14 contract?

15 A I did. In fact, when I did my deposition with the
16 attorney general's office in June of 2020, I thought this had
17 already been torn up. I was surprised it was still in effect.

18 But, then, I worked with my counsel in terms of coming
19 up with this new agreement that was ratified by the board and
20 superseded any other agreements in January 2021.

21 Q And in this agreement, you did agree to give the NRA a
22 one-way option to use your image and likeness going forward if
23 they chose to; correct?

24 A If they chose to.

25 Q But there was in obligation on the NRA to do that,

BP

4346

W. LaPierre - by Defendant - Direct/Mr. Correll

1 correct?

2 A No.

3 Q And they said --

4 A No.

5 Q They said if they chose to do that, they would pay you
6 \$500,000 a year; correct?

7 A If they chose to do it.

8 Q Right, so at that point the board valued the use of
9 your image and likeness in name for fundraising purposes at
10 \$500,000 a year; correct?

11 MR. CONLEY: Objection, leading.

12 MR. CORRELL: It's reflected in the contract, your
13 Honor.

14 THE COURT: You can answer.

15 A If they chose to do it.

16 Q And that didn't require you to perform any of the other
17 services that you would have had to perform as an employee;
18 correct?

19 A No. They would -- it would -- it would be used in
20 terms of fundraising for the association.

21 Q And did you ever receive a penny under this agreement,
22 under the prior agreement?

23 A I never received a penny under any of the agreements.

24 Q And did -- was any -- were any assets of the NRA
25 transferred to anyone else other than you in connection with

BP

4347

W. LaPierre - by Defendant - Direct/Ms. Rogers

1 that agreement?

2 A No.

3 Q Was there any loss to the NRA due to that agreement?

4 A No.

5 Q Was there any waste of corporate assets due to that
6 agreement?

7 A No.

8 Q So, that agreement was -- had zero impact on the NRA;
9 is that correct?

10 A It had zero impact because none of them went into
11 effect.

12 MR. CORRELL: Thank you, your Honor. Pass the
13 witness to the NRA.

14 MR. CONLEY: Just for clarification, is this
15 direct?

16 MS. ROGERS: This is direct.

17 DIRECT-EXAMINATION

18 BY MS. ROGERS:

19 Q Good morning, Mr. LaPierre.

20 A Good morning.

21 Q I'm sorry I had to interrupt your testimony earlier
22 with the privilege issue. I'm going to ask you to walk a fine
23 line that we lawyers have to pay attention to, which is you can
24 testify about what you did; and if what the NRA did was hire a
25 lawyer, you can say that. Just don't testify about legal advice

BP

4348

W. LaPierre - by Defendant - Direct/Ms. Rogers

1 you asked the lawyer for or what they told you is legal or what
2 they told you wasn't. Okay?

3 A Okay.

4 Q All right, so you testified earlier that in 2017 or
5 2018 you heard from Tom King that the former attorney general,
6 Eric Schneiderman, was feeling political pressure to target you;
7 right?

8 MR. CONLEY: Objection, leading.

9 Q Do you recall that testimony?

10 A And target the NRA.

11 Q Right, and you said one thing that the NRA did in
12 response was hire a well-known law firm, Morgan Lewis;
13 right?

14 MR. CONLEY: Objection to counsel testifying.

15 THE COURT: We're trying to get a lot of things
16 done today, so I'm going to be a little more flexible about
17 this method of questioning.

18 So, go ahead.

19 Q You can answer.

20 A We hired Morgan Lewis.

21 Q To your knowledge, did the NRA also hire tax lawyers?

22 A Yes, I believe they did.

23 Q To your knowledge, did the NRA also hire forensic
24 accountants to comb through all of those out-of-pocket expenses?

25 A Yes, we did.

BP

4349

W. LaPierre - by Defendant - Direct/Ms. Rogers

1 Q To your knowledge, did the NRA also pay its auditors to
2 do special procedures targeting their allegations?

3 A Yes, NRA did.

4 Q To your knowledge, did the NRA also hire other
5 fundraising firms to make sure that what the McKenzie entities
6 were doing was cost effective?

7 A Yes, they did.

8 Q To your knowledge, did the NRA also hire compensation
9 consultants to make sure that what it was paying its executives
10 was fair?

11 MR. CONLEY: Objection to the leading and, also,
12 the timeframe is unclear.

13 Q During the time period relevant to this case from the
14 time you heard Eric Schneiderman was targeting you to the time
15 you were dragged into court; did to your knowledge, did the NRA
16 also hire compensation consultants to make sure that it was
17 paying its executives fairly?

18 MR. CONLEY: Objection.

19 THE COURT: Overruled.

20 Q You can answer.

21 A Yes, I did.

22 Q And to your knowledge did the NRA also hire security
23 experts to make sure that the security measures being taken for
24 you were appropriate?

25 A Yes, it did.

BP

4350

W. LaPierre - by Defendant - Direct/Ms. Rogers

1 Q All right. Let's talk a little bit more about David
2 McKenzie and specifically a company called ATI, Associated
3 Television International.

4 We heard testimony yesterday, do you recall, that for
5 every -- for contract management purposes at the NRA, every
6 contract has an owner.

7 Do you recall that?

8 A Yes.

9 Q Do you agree with that testimony?

10 A Yes.

11 Q Would it be fair to say for those purposes you were the
12 owner of the ATI relationship?

13 A Yes.

14 Q Did ATI tell you that it kept billing the NRA for the
15 Crime Strike show years after Crime Strike stopped being filmed?

16 A No, they didn't.

17 Q Now, I know you're not a lawyer, but do you have an
18 understanding of what fraud is?

19 A I have a general understanding of that.

20 Q Do you generally understand that this was a fraud on
21 the NRA?

22 MR. CONLEY: Objection, your Honor.

23 THE COURT: Overruled.

24 A Yeah, I found out during the 360 that they were
25 distributing it, but they weren't making new episodes; and I was

BP

4351

W. LaPierre - by Defendant - Direct/Ms. Rogers

1 shocked when I saw bills still coming in and I worked with our
2 treasurer, Craig. He terminated the relationship. I encouraged
3 him to do that and wound it down and terminated it.

4 Q The NRA was the victim of that fraud; right?

5 A NRA paid -- paid invoices that I can't explain that
6 looked like they took advantage of the NRA.

7 Q And when that fraudulent scheme came out during your
8 360 review, it was terminated; right?

9 MR. CONLEY: Objection.

10 THE COURT: Yeah, I'll let the leading work, but --

11 MS. ROGERS: I'll stop if that helps.

12 THE COURT: Let's try to reel it back a little bit.

13 Q Mr. LaPierre, when that scheme came out, what
14 happened?

15 A I -- I was working with our treasurer, Craig Spray.
16 I -- Craig Spray wound down the relationship and terminated it.

17 Q So, would it be fair to say that when that billing came
18 to light, it was ended?

19 A Yes.

20 Q All right, Ackerman out-of-pocket expenses, that's what
21 you hired the forensic accountant to look at; right?

22 A Yes, our treasurer, our secretary and our General
23 Counsel hired FRA.

24 Q Right. Now, do you have an understanding as to whether
25 Ackerman under its contract was supposed to bill the NRA for

BP

4352

W. LaPierre - by Defendant - Direct/Ms. Rogers

1 anything that you had not approved in writing?

2 A Not under the contract.

3 Q And you were an owner of that contract; right?

4 A Yes.

5 Q But Ackerman didn't tell that you it was billing the
6 NRA for the expenses you described; right?

7 A They did not.

8 Q Would it be fair to say that the NRA was the victim of
9 that fraud?

10 A Yes.

11 Q Would it be fair to say when that fraud was revealed in
12 2018, the relationship ended?

13 MR. CONLEY: Objection.

14 A Yes.

15 THE COURT: You have a continuing objection. If
16 there's something different that happens, I'll be there.

17 MR. CONLEY: Thank you, your Honor.

18 A It ended in 2019.

19 Q After the audit started in 2018?

20 A Yes.

21 Q We talked about the travel agent, Gayle Stanford. Did
22 you authorize her to charge the NRA an extra ten percent on each
23 of your flights?

24 A No.

25 Q Would it be fair to say that that was a fraud on the

BP

4353

W. LaPierre - by Defendant - Direct/Ms. Rogers

1 NRA?

2 A Yes.

3 Q And what happened when the NRA's board learned about
4 that fraud?

5 A NRA, initially, it put that out to bid, and
6 Ms. Stanford was terminated.

7 Q You also talked this morning about a time when you
8 thought you had cancer and you went to the Mayo Clinic; right?

9 A Yes.

10 Q And Tony Makris of Ackerman who was then one of your
11 best friends went with you; right?

12 A Yes.

13 Q While you were laying on the gurney in the cancer
14 clinic, Tony Makris asked you to sign extensions to two Under
15 Wild Skies contracts; right?

16 MR. CONLEY: Objection, your Honor. Counsel is
17 testifying.

18 Q Well, all right, Mr. LaPierre tell -- tell the jury
19 about the circumstances you were in when Tony Makris asked you
20 to sign those two contracts?

21 A They -- they thought I had lung cancer. I -- it was
22 the morning I was going to have the needle biopsy, and it was
23 actually on the stairs that Tony presented me with the contract.

24 Q Now, when you signed the contract that he gave you at
25 the cancer clinic, there was not a business case analysis;

BP

4354

W. LaPierre - by Defendant - Direct/Ms. Rogers

1 right?

2 A There was not.

3 Q And it would be fair to say that while you were busy
4 getting a needle stuck in you because you had cancer, you didn't
5 tell the board what was going on; right?

6 A I did not. I thought it would end up going through the
7 process.

8 Q You testified at a deposition that that was a fraud
9 against the NRA; right?

10 A I'm sorry?

11 Q I'll ask it this way. Would you agree with me that
12 Tony Makris committed fraud against the NRA?

13 A Yes, Tony -- not -- in relation to the show, I thought
14 it was a good show. I thought Ackerman McQueen thought it was a
15 good show. We thought it would provide viewers to the NRA TV
16 network.

17 It turns out what he ended up doing was we had an
18 agreement with Tony could do sponsorship events to promote the
19 show, to promote NRA's hunting brand. He did those at numerous
20 shows for week long with people that attended the shows.

21 He could also take donors and take celebrities on
22 hunts, and it -- and he had -- he had supplementals to do that.

23 When we started to do the 360, we asked for backup on
24 all of the supplementals, backup because they were supposed to
25 be for actual costs; and what he had ended up doing was suing

BP

4355

W. LaPierre - by Defendant - Direct/Ms. Rogers

1 immediately for and anticipatory breach of contract and the
2 relationship ended.

3 Q You would agree with me that the NRA was the victim of
4 Tony Makris's conduct; right?

5 A Yes, I would.

6 Q And you would agree with me that when that came to
7 light as part of the 360, the relationship ended; right?

8 A It ended.

9 Q The last conversation you and I had in front of this
10 jury, I asked you about some things that were mistakes that
11 shouldn't have happened.

12 Do you recall that?

13 A Yes.

14 Q I asked you about some flights and some gifts; right?

15 A Yes.

16 Q And you testified that those transactions shouldn't
17 have happened, and you were acting outside of your authority
18 when you did it; right?

19 MR. CONLEY: Objection.

20 Q Do you recall that testimony?

21 A Yes, I, I -- and I have repaid the association for all
22 of those. I thought that -- I didn't know that they were
23 inappropriate at the time, but --

24 THE COURT: There's no question yet.

25 Q You gave me that testimony?

BP

4356

W. LaPierre - by Defendant - Cross/Mr. Conley

1 A Yes.

2 Q Even though you knew they would try to use it to hurt
3 you; right?

4 A Yes.

5 Q Why?

6 A Because it was the truth.

7 Q Thank you.

8 MS. ROGERS: Pass the witness.

9 THE COURT: Any other direct testimony?

10 Okay, plaintiff for cross.

11 CROSS-EXAMINATION

12 BY MR. CONLEY:

13 Q Almost good afternoon, Mr. LaPierre.

14 A Good afternoon.

15 Q Just getting situated.

16 All right, you previously testified that you began the
17 course correction in late 2017; correct?

18 A Yes.

19 Q And this lawsuit was commenced in August of 2020;
20 correct?

21 A That's correct.

22 Q And so that's about three years into your course
23 correction; correct?

24 A Yes.

25 Q And you read the complaint in this action; correct?

BP

4357

W. LaPierre - by Defendant - Cross/Mr. Conley

1 A Yes.

2 Q And you'd agree that the complaint contained numerous
3 allegations that you improperly spent NRA funds on private
4 flights for family?

5 A The complaint said that.

6 Q And you'd agree the complaint alleged that you
7 improperly expensed gifts to the NRA?

8 A The complaint said that.

9 Q And you'd agree that the complaint contained
10 allegations that the NRA improperly paid for makeup and hair
11 services for your wife, Susan; correct?

12 A Yes, the complaint said that.

13 Q And that the NRA had improperly paid for luxury lodging
14 for your niece; is that right?

15 A The complaint said that.

16 Q And it also contained allegations that you had Tony
17 Makris join you on a trip to the Mayo Clinic and have the NRA
18 pay for yours and his lodging at the Four Seasons; correct?

19 A Yes, it said that.

20 Q Isn't it true that at the time this complaint was
21 lodged against you in August of 2020, three years into your
22 course correction, you had not made any repayments to the NRA;
23 is that correct?

24 A We were doing the -- I think the first check that we
25 went through, wasn't it April 19th or something like that? I'm

BP

4358

W. LaPierre - by Defendant - Cross/Mr. Conley

1 not sure. I know I was in the process of working on it.

2 Q But this was a yes or no question, Mr. LaPierre.

3 Isn't it true that the time the complaint was lodged
4 against you, you had not made any repayments to the NRA?

5 A I'm -- that may be. I'm not exactly sure when the
6 first check was written as I sit here.

7 MR. CONLEY: Could we pull up DX1-0514.

8 THE COURT: Is somebody doing that?

9 (Displayed)

10 A I just found it. You're correct.

11 Q And this was your first repayment, correct,
12 Mr. LaPierre?

13 A Yes, it was.

14 Q And this was three months after the enforcement action
15 was commenced against you; correct?

16 A That's correct.

17 Q And it is three months after the complaint was lodged
18 against you detailing all the allegations that we just went
19 through; right?

20 A Yes, that's correct.

21 Q And this first repayment was for private flights,
22 correct?

23 A Yes, that's correct.

24 Q But you don't know how the amount of your repayment was
25 calculated; correct?

BP

4359

W. LaPierre - by Defendant - Cross/Mr. Conley

1 A No, that's not -- I went through all the CAA invoices.
2 I went through the expense reports in terms of the trips. I
3 worked with the accounting firm that I had hired, and then the
4 treasurer's office also looked at it. They worked with a Arif
5 in terms of their office in terms of calculating the interest
6 and they looked at it, also.

7 Q Isn't it true you don't know what expenses the NRA
8 reviewed in coming up with this repayment amount?

9 A I know what I reviewed. I don't know everything the
10 NRA looked at. I assume they looked at everything.

11 Q In coming up with this figure?

12 A Yes.

13 Q You testified in this action, correct?

14 THE COURT: The deposition, you mean?

15 MR. CONLEY: Yes.

16 Q You were deposed in this action; right?

17 A Yes, I was.

18 Q And you swore an oath to tell the truth?

19 A I did.

20 MR. CONLEY: Jesse, could you pull up LaPierre's
21 litigation deposition at 322, lines 9 to 16.

22 (Video played)

23 Q You had no role in calculating the amount that would be
24 repaid to the NRA; correct?

25 A I went through the business -- the purposes of the

BP

4360

W. LaPierre - by Defendant - Cross/Mr. Conley

1 trips. I went through all my expense reports. I also worked
2 with the accounting firm that I had hired. This final figure
3 was -- was the NRA looking at the interest figure and looking at
4 their calculation of all that.

5 Q Your role in looking at the business purpose was to sit
6 in a room with Susan Dillon at the Brewer firm and go through
7 what the purposes of what various flights were; correct?

8 A That's correct.

9 Q And what date range were the flights that you walked
10 through?

11 A I apologize, what do you mean by the term date range?

12 Q What period of time did the flights cover that you
13 reviewed?

14 A Initially, it was from 2015 through 2019, and we did
15 it --

16 Q You went through this process of reviewing the flights
17 in 2020; correct?

18 A I probably -- I'm not sure.

19 Q And you flew private for several years before 2015;
20 correct?

21 A That's correct.

22 Q And in determining what charges to include in the first
23 \$300,000 repayment to the NRA, no flights were considered before
24 June of 2015; correct?

25 A In the first batch. In the second batch, we went back

BP

4361

W. LaPierre - by Defendant - Cross/Mr. Conley

1 to flights beginning in -- beginning January 1st, 2012.

2 Q In the second batch?

3 A Yes, that's correct.

4 MR. CONLEY: Could you please pull up the
5 Defendants' Exhibit 508.

6 THE COURT: Is that 1-508?

7 MR. CONLEY: Yes, I'm sorry, DX1-508.

8 A I'm sorry, which tab is that?

9 THE COURT: That's on the screen.

10 (Displayed)

11 THE WITNESS: I see, your Honor.

12 Q And, Mr. LaPierre, is this the repayment that you're
13 referring to with other flights?

14 A Yes, I believe so.

15 Q You're aware that the NRA has paid close to \$13 million
16 for private flights from 2012 to 2019, correct?

17 A I don't know the exact figure. I know they required me
18 to fly private whether it was personal or business.

19 Q And when you say they required you to fly private,
20 you're referring to the verbal direction that you received from
21 Russ Gordon; is that right?

22 A Russ Gordon and then Jim Staples and then our current
23 security director, right.

24 Q And this other repayment here, this was in November of
25 2021; is that right?

BP

4362

W. LaPierre - by Defendant - Cross/Mr. Conley

1 A Yes, that's correct.

2 Q And that would be four years into your course
3 correction; correct?

4 A Yes, it would be.

5 Q And if we could turn to Defendant Exhibit 505, which I
6 believe is Tab 30 in your book.

7 A Okay.

8 THE COURT: It may be a different book, but. Is it
9 on the screen?

10 MR. CONLEY: Yes. That might be easier,
11 Mr. LaPierre.

12 THE COURT: Look at the one on the screen.

13 THE WITNESS: Yes, it is a big book.

14 Q So, this is another repayment that you made to the NRA;
15 is that right?

16 A Yes, it is.

17 Q In September of 2022?

18 A Yes.

19 Q And what was this repayment for?

20 A I think this one was for a combination of the -- the
21 hair, the makeup. We talked about maybe some of the lodging,
22 some of the gifts, things like that.

23 Q And these are all various expense categories that were
24 alleged against you in the attorney general's complaint;
25 correct?

BP

4363

W. LaPierre - by Defendant - Cross/Mr. Conley

1 A Yes, they were.

2 Q And this is five years into your course correction;
3 correct?

4 A That would be correct.

5 Q And if we could turn to Defendants' Exhibit 796, which
6 I think is Tab 38, but the screen might be easier.

7 (Displayed)

8 A I see it.

9 Q This is another repayment that you made to the NRA,
10 correct?

11 A Yes, it is.

12 Q And what was this repayment for?

13 A This, I believe, was for the transportation services.

14 Q For the black car services?

15 A Yes, that would be correct.

16 Q And you're aware that the NRA has paid millions in
17 black car services since 2012; correct?

18 A I'm not aware of what they paid.

19 Q You also have repaid the NRA for suits that were --
20 billed the NRA through Ackerman McQueen; correct?

21 A Yes, I did.

22 Q And you repaid this in September of last year;
23 correct?

24 A Yes, I did.

25 Q And that's a few months before this trial started, is

BP

4364

W. LaPierre - by Defendant - Cross/Mr. Conley

1 that right?

2 A Yes, it is.

3 Q You were aware before last September that the NRA had
4 been billed for these suits, right?

5 A I did not find that out until we were doing the course
6 correction at some time about the middle of the course
7 correction that came up. I didn't find that out at the
8 beginning. I found that out some time later.

9 Q You recall -- I'm sorry. When did you find out?

10 A I'm not sure when I found out. It was something that I
11 didn't know about, and I was surprised when I was told about it.
12 It was later on.

13 Q Right, and in 2019 you testified that the NRA had paid
14 for these suits; correct?

15 A Not that I remember.

16 Q Do you recall being deposed in the Ackerman litigation?

17 A Yes.

18 Q And you were deposed in 2019, correct?

19 A Yes.

20 Q And you swore to tell the truth in that testimony?

21 A Yes.

22 MR. CONLEY: Jesse, could you pull up LaPierre's
23 Ackerman deposition September 24, 2019.

24 THE COURT: Any particular page?

25 MR. CONLEY: Page 211 to 212.

BP

4365

W. LaPierre - by Defendant - Cross/Mr. Conley

1 (Displayed)

2 Lines 24 to page 212, line 14.

3 Q So the question:

4 "QUESTION: Okay, so the bill -- then your
5 understanding is that the arrangement that you had worked
6 out with Ackerman McQueen is that once they received the
7 bills from Zegna, they would transmit those bills to the NRA
8 for reimbursement?

9 "ANSWER: That's what I -- that's what I believe
10 happened.

11 "QUESTION: Okay. When the NRA got the bill from
12 Ackerman McQueen for those Zegna expenses, so the NRA was
13 aware that these were for your clothing attire; correct?

14 "ANSWER: I'm sure that our treasurer was aware of
15 that."

16 And you repaid the NRA for suits that the NRA had
17 paid for through Ackerman McQueen a few months ago, right?

18 A Yes, I did. But, counselor, what you're talking about
19 here is completely different from that other payment.

20 These -- this deposition here is in reference to -- I
21 was doing all the television for the NRA at that point. Angus
22 McQueen didn't like the clothes I wore. I always wore a blue
23 suit. He wanted me to get other suits, all different colors,
24 all different styles. They had me go on something they set up
25 with Zegna, that store to pick out wardrobe. The bills went

BP

4366

1 directly to Ackerman McQueen.

2 I thought at that point they might have gone to the
3 NRA. It turns out they testified in the bankruptcy under oath
4 that they never charged the NRA for any of that. They were
5 simply part of their advertising role in terms of it being the
6 person who worked -- Leon Grand (phonetic).

7 What we later found out was that there were some suits
8 going back to 2000, 2001, 2002, and 2003 that they did bill the
9 NRA for and those are the ones that I repaid.

10 (Continued on next page)

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BP

4367

W. LaPierre - by Defendant - Cross/Mr. Conley

1 Q So you repaid the NRA for other suits that Ackerman had
2 billed the NRA for; is that right?

3 A Yes, going back to 2000 to 2004, I believe.

4 Q You testified earlier about some of the gifts that you
5 had reimbursed for; correct?

6 A Yes.

7 Q You did an expense, among other things, a gift for your
8 niece's husband; correct?

9 A I'm not sure if I did. I repaid it. I've repaid all
10 the gifts.

11 Q And you were -- you repaid gifts for -- purchased for
12 Millie Hallow; correct?

13 A Yes, I have repaid every single gift.

14 Q And gifts that you purchased for Gayle Stanford?

15 A Yes. I repaid all those.

16 Q And Tony Makris?

17 A Yes.

18 MR. CONLEY: Pass the witness.

19 THE COURT: Okay. Any other defendants? First the
20 other defendants who haven't asked any questions yet for
21 cross.

22 MR. WERBNER: No.

23 THE COURT: Any redirect?

24 MR. CORRELL: Are we now talking cross?

25 THE COURT: We are talking redirect.

KM

4368

W. LaPierre - by Defendant - Redirect/Ms. Rogers

1 MS. ROGERS: I have a bit more redirect.

2 MR. CORRELL: I am passing the witness

3 THE COURT: Okay. No redirect for Mr. Correll and
4 redirect for Ms. Rogers.

5 REDIRECT EXAMINATION

6 BY MS. ROGERS:

7 Q Mr. LaPierre, you testified just now with the Attorney
8 General that you didn't start repaying flights until either 2019
9 or 2020; right?

10 A I believe that's correct.

11 Q And you testified also that you repaid those flights
12 using invoices from CAA, the jet charter vendor; right?

13 A Yes.

14 Q Do you have any understanding as to how the NRA got its
15 hand on those invoices and how long it took?

16 A I know they were trying to get them for quite a while.
17 I'm not sure exactly how long it took, but I know it wasn't an
18 easy process from what I heard.

19 Q Now, we also talked about your expense reports.

20 A Yes.

21 Q Did the NRA refuse to pay any of your expense reports?

22 A Yes, they did.

23 Q About how much money do you recall if you recall did
24 the NRA just refuse and you had to eat?

25 A I think they were late. They were several years, and

KM

4369

W. LaPierre - by Defendant - Redirect/Ms. Rogers

1 it was -- I believe it was close to \$200,000.

2 Q There was some -- there was some different testimony
3 earlier about these Zegna suits that Angus McQueen told you to
4 buy, whether you paid for them or not.

5 Do you recall that?

6 A Yes.

7 Q Or whether the NRA paid for them or not. Do you recall
8 that; right?

9 A NRA did not pay for the ones that the Attorney
10 General's counsel put on the screen.

11 Q And they asked you about their complaint and
12 allegations in their complaint about suits.

13 Do you recall that?

14 A Yes.

15 Q So have you formed a view sitting here today having
16 gone through all these records about whether the allegations in
17 their complaint concerning suits were true or false?

18 A They were false.

19 Q Now, how did you form the view originally that the NRA
20 had not paid for the suits?

21 A Bill Winkler the treasurer of Ackerman McQueen during
22 the bankruptcy testified under oath that they did not charge NRA
23 for the suits.

24 Q And later you discovered there was some other subset of
25 suits that had been charged for; is that right?

KM

4370

W. LaPierre - by Defendant - Recross/Mr. Conley

1 A I found out later on.

2 Q That's when you made the repayment?

3 A Yes, as part of the 360, we were looking at everything
4 we could possibly find to look; and yes, found that going back
5 to 2000.

6 Q Now in the earlier year before the 360, your expenses
7 were paid out of ILA; is that right?

8 A Yes.

9 Q That's the NRA's lobbying division; right?

10 A Yes. That's the (c)(4) lobbying division.

11 MS. ROGERS: Thank you. No further questions.

12 THE COURT: Anything further from the State?

13 MR. CONLEY: Just one question. I don't want to
14 say that.

15 THE COURT: I was going to say careful.

16 RECROSS EXAMINATION

17 BY MR. CONLEY:

18 Q Mr. LaPierre, did you prep for your testimony today
19 with Ms. Rogers?

20 A No.

21 Q Did you prep for your testimony today with anyone from
22 the Brewer Firm?

23 A I talked -- well, not since I started testifying, but
24 over last weekend, I talked with -- I talked with Bill Brewer
25 and I talked with my counsel Kent Correll.

KM

4371

J. Frazer - by Defendant - Cross/Ms. Stern

1 MR. CONLEY: That's all, your Honor.

2 THE COURT: Okay. Thank you, sir. You can step
3 down.

4 Mr. LaPierre, you're all set.

5 (Witness excused.)

6 THE COURT: Okay. Do we have another witness we
7 can start?

8 Oh, Mr. Frazer. Mr. Frazer, if you would.

9 So just to remind myself, you finished with your
10 direct and now we are on to other testimony?

11 MR. FLEMING: I think all the defendants' table
12 finished with Mr. Frazer's direct.

13 THE COURT: Oh, okay. And so it's just for cross
14 now.

15 MR. FLEMING: That's right.

16 THE COURT: So Mr. Frazer, just a reminder. You
17 are still under oath from yesterday. Yes?

18 THE WITNESS: Absolutely, your Honor.

19 THE COURT: Ms. Stern, you may continue.

20 MS. STERN: Thank you, your Honor.

21 CROSS-EXAMINATION

22 BY MS. STERN:

23 Q Good afternoon, Mr. Frazer.

24 A Good afternoon.

25 Q So we meet again. So between the last time we did this

KM

4372

J. Frazer - by Defendant - Cross/Ms. Stern

1 and today, did you prepare for your testimony?

2 A I did.

3 Q Did you prepare for your testimony with anyone other
4 than your own attorney Mr. Fleming?

5 A Yes, I did.

6 Q And who was that?

7 A I met with Ms. Rogers.

8 Q Okay. And did you discuss the testimony that you've
9 given in this latest juncture of the trial?

10 A I did.

11 Q And did you discuss -- tell me what you discussed.

12 A We reviewed documents and potential lines of questions
13 and answers.

14 Q And you discussed your answers?

15 A We discussed some answers, but of course, my answers
16 are my own.

17 Q Okay. So yesterday you testified about attending Audit
18 Committee's meetings in 2016 and 2017.

19 Do you remember that?

20 A I do.

21 Q Okay. Can we turn to Tab 35 in the binder that has my
22 handwriting on it or -- and to JFX52 which is in evidence. And
23 can we turn to the Audit Committee report for September 10 to
24 11, 2016, please.

25 MS. STERN: Jesse, that's the got the number 219 at

KM

4373

J. Frazer - by Defendant - Cross/Ms. Stern

1 the bottom of the page.

2 THE COURT: It's up there.

3 Q Okay. Are we all in the same place. Okay.

4 So Mr. Frazer, this is the Audit Committee report for
5 meetings -- for a meeting on September 8, 2016; right?

6 A Yes, it is.

7 Q Okay; and turn to -- at the bottom of the page, it's
8 signed by Mr. Cotton; right?

9 A It is.

10 Q And he was the Chair of the Audit Committee; right?

11 A That's correct.

12 Q So you testified yesterday that this meeting
13 September 8, 2016 which is recorded and reported in this report,
14 that there were certain transactions with Board members that
15 were considered by the Audit Committee; right?

16 A Yes.

17 Q And your testimony is that they were approved both
18 retroactively ratified and in advance; right?

19 A That's correct.

20 Q And just looking at this report though, this is the
21 report that is given to the whole Board; right?

22 A I believe it was.

23 Q That's the purpose of this report; right?

24 A Yes.

25 Q Okay. At the bottom of the page, it talks about

KM

4374

J. Frazer - by Defendant - Cross/Ms. Stern

1 disclosure of financial interest related-party transactions.

2 Do you see that?

3 A I do.

4 Q Okay. And it states, "The committee reviewed financial
5 disclosures regarding transactions between the NRA and its
6 officers, directors and other related parties;" right?

7 A I do. Yes.

8 Q There is nothing there that says anything about any
9 transactions being ratified; right?

10 A That's correct 4.

11 Q And nothing about any transactions being approved going
12 forward?

13 A That's correct.

14 Q No mention of Sandy Froman?

15 A Right.

16 Q No mention of Dave Butz; right?

17 A Right.

18 Q Okay. No mention of Marion Hammer; right?

19 A That's right.

20 Q Okay. And you testified that the basis for your
21 knowledge that those transactions with Board members Marion
22 Hammer, Ms. Froman, Dave Butz, that they were both ratified and
23 also approved going forward is because you were at the meeting;
24 right?

25 A Because I was at the meeting and participated in that

KM

4375

J. Frazer - by Defendant - Cross/Ms. Stern

1 discussion, yes.

2 Q Okay. So just looking at the top of the Audit
3 Committee report, you are not noted as being at that meeting;
4 are you?

5 A No, I'm not.

6 Q Okay. So Steve Hart though, he was there; right?

7 A My recollection is that he was, yes.

8 Q Okay. But you're not even noted; right?

9 A That's correct.

10 MS. STERN: Okay. You can take that down, Jesse.

11 Q Well, we are actually going -- yep. Okay. Can we take
12 a look at PX 2586 which you -- which is put into evidence
13 yesterday, I believe. It is in evidence. I know that. It's
14 Tab 17 in the binder that Mr. Fleming gave you. But we can also
15 put it up on the screen. Okay. And can you bring that up. Oh,
16 that's it.

17 Okay. So in PX 2586, we are looking at a document
18 that's also the report of the Audit Committee; right? Do you
19 see that?

20 A Yes.

21 Q And it has the same date, September 10 through 11,
22 2016; right?

23 A It does.

24 Q And also reports on the September 8, 2016, Audit
25 Committee meeting; right?

KM

4376

J. Frazer - by Defendant - Cross/Ms. Stern

1 A Correct.

2 MS. STERN: Okay. So let's look down to the bottom
3 of the page.

4 Jesse, if you can go to the next page. Before we
5 get to that. Okay. Jesse, below that. I just want to get
6 to the signature block.

7 Q Not signed; right?

8 A That's right.

9 Q Right. Okay. And then Jesse's done a side by side
10 here.

11 Have you done that? See if we can do that.

12 So we have JFX52 and -- sorry. This is not the right
13 page. We want to go to the September 10 to 11, 2016 report.

14 Okay. Signed by Mr. Cotton. And we just discussed the
15 discussion of related-party transactions.

16 And now let's look at the one that you discussed, the
17 exhibit that you discussed with the jury yesterday, PX 2586.
18 And we can turn to the next -- okay.

19 So Page 1 of this one at the bottom of the page, there
20 is a discussion of a variety of transactions; right?

21 A There is.

22 Q Okay; and then if we go to the next page, Jesse, on
23 2586, there is discussion of transactions that you testified
24 about --

25 A Yes.

KM

4377

J. Frazer - by Defendant - Cross/Ms. Stern

1 Q -- at this meeting where you're not noted as being
2 there. And you testified that these transactions were approved,
3 and this is a version of the report that's not signed; right?

4 A That's correct; although, looking at this --

5 Q No. That was my question. The version of the report
6 is not signed; right?

7 A That's what we are looking at.

8 A Yes.

9 Q Thank you. We can take that down.

10 So the documents that you talked about yesterday, 2586
11 -- PX2586 which has a version of the Audit Committee report that
12 you and I just looked through; right?

13 A Yes.

14 Q Is it your testimony that that document -- and you have
15 it in front of you -- is the record of what the Audit Committee
16 considered when it was according to you approving transactions
17 for Sandra Froman, Marion Hammer, Dave Butz, Lance Olson,
18 Mercedes Schlapp, Mark Skelton? Those are all Board members;
19 right?

20 A They are, and -- I'm sorry, but I'm not sure I followed
21 your entire question. Excuse me.

22 Did your ask me if the -- if what is the record of what
23 the committee looked at?

24 Q The content of the documents that are attached to the
25 email that's 2586, PX 2586.

KM

4378

J. Frazer - by Defendant - Cross/Ms. Stern

1 A Okay, but that's not in front of me right now.

2 Q I'm sorry. It's right in your binder. We were just
3 looking at it. It's Tab 17 of Mr. Fleming's binder.

4 THE COURT: He doesn't have Mr. Fleming's binder
5 and neither do I.

6 MS. STERN: He does.

7 A I see it now. Thank you for helping clarify that.

8 Q Sorry. So that's my question.

9 Is that the record --

10 A It is.

11 Q -- of what they considered?

12 A It is.

13 Q Okay; and that is the record of what they considered to
14 ratify those transactions?

15 A It is a record of -- of what the committee found with
16 respect to those transactions after going through all of them in
17 person.

18 Q Okay. So my question is is the record of what they
19 considered in coming to that conclusion --

20 A I'm sorry. I'm not sure I follow your question.

21 Q Does this document, the Audit Committee report and this
22 document that you called the Audit Committee Related-Party
23 Transaction Review September 26 Language For Minutes, does this
24 document reflect what the Audit Committee considered in coming
25 to the determination that you said was made at that meeting?

KM

4379

J. Frazer - by Defendant - Cross/Ms. Stern

1 A This is what the committee considered, but of course,
2 the committee members bring their own perspective, information,
3 experience with the individuals, and I know there were
4 discussions about some of these transactions beyond what's on
5 the page.

6 Q This is the -- this is the record though that the NRA's
7 maintained; right? That's according to you.

8 A That's correct.

9 MS. STERN: Okay. Thank you. We can take it down,
10 Jesse.

11 Q So the secretary of the Audit Committee is the person
12 that's responsible for maintaining the records of the Audit
13 Committee; right?

14 A That's correct.

15 Q Again, and that was Mr. Tedrick during the period that
16 we have been talking about 2016, 2017?

17 A That's correct.

18 Q Okay. Mr. Tedrick was the secretary for -- until when?

19 A Until September of 2018.

20 Q Okay. So where does Mr. Tedrick maintain the records?

21 A In his own files.

22 Q And what kind of files?

23 A I'm not sure exactly how Mr. Tedrick maintains;
24 maintained his files electronically, paper or both.

25 Q So how do you know that he maintains them in his files?

KM

4380

J. Frazer - by Defendant - Cross/Ms. Stern

1 A Because when I have a -- well, actually, yesterday, we
2 saw an exhibit where I asked him to send me something back to
3 me, and he did.

4 Q So if you need something from the Audit Committee's
5 records, their minutes, their reports, you would go to Mr.
6 Tedrick?

7 A Unless I already have a copy in my own files, I would,
8 yes.

9 Q So during this period of time, he had the files; right?

10 A He had his own files of it, yes.

11 Q Okay. But you don't flow if they are hard copy; right?

12 A That's right.

13 Q You don't know if they are electronic?

14 A That's right.

15 Q Do you know if he takes --

16 A Well, actually correct. I know some of them are
17 electronic because he's emailed them to me.

18 Q Do you know -- does he take the copy that's been signed
19 and scan it in and put it in a folder? Like tell me what you
20 know about that.

21 A I don't know exactly how he does it; but of course, the
22 signed copy is also scanned in the secretary's office for
23 inclusion in the final Board minutes.

24 Q And did Mr. Tedrick put his electric -- you said now
25 you remembered he has them electronically because you have asked

KM

4381

J. Frazer - by Defendant - Cross/Ms. Stern

1 for them.

2 A Right.

3 Q So are those available on a central NRA network that
4 somebody else could access?

5 A Yes, they could be accessed through the Information
6 Services Division, and I have also given instruction to all
7 committee secretaries more recently than this that all of their
8 records need to be stored on a shared drive rather than a local
9 hard drive so that they would be accessible to others.

10 Q When did that direction occur?

11 A I don't remember exactly. Within the last couple of
12 years.

13 Q After our lawsuit was commenced?

14 A Yes.

15 Q Okay. And is there any kind of like index of what are
16 the records of the Audit Committee?

17 A I don't know what -- again, I don't know if Mr. Tedrick
18 has created anything like that or if Mr. Tedrick created
19 anything like that when he was the committee secretary.

20 Q So you are the secretary of the NRA; right?

21 A Yes.

22 Q And you are responsible for -- we talked about this
23 before -- maintaining the policies of the NRA; right?

24 A That's right.

25 Q And so it's very important to have an official record

KM

4382

J. Frazer - by Defendant - Cross/Ms. Stern

1 of what policies exist; right?

2 A Yes.

3 Q And it's very important to have an official record of
4 what the Audit Committee did; right?

5 A That's right.

6 Q The Audit Committee is a very important committee in
7 the oversight and management of the operations of the NRA;
8 right?

9 A Sure.

10 Q Okay. And who is the current secretary of the Audit
11 Committee?

12 A David Warren.

13 Q Do you have any personal knowledge as to whether Mr.
14 Warren has a repository of the audit committees's records?

15 A Mr. Warren keeps his own records; but whenever I have
16 asked him for anything, he's readily provided them.

17 Q And my question is does he have a repository of the
18 Audit Committee's records, not just Mr. Warren's own records?

19 A I mean, when I say "his records," I mean his records of
20 the Audit Committee. He certainly has records. He has a lot of
21 responsibility, so he has records of other stuff, but that's not
22 what we're talking about.

23 Q Okay. So I think you have already said that from time
24 to time you have had to go to Mr. Tedrick to go get copies of
25 historical records from the Audit Committee; right?

KM

4383

J. Frazer - by Defendant - Cross/Ms. Stern

1 A I can recall one occasion at least.

2 Q Okay. And you've done that to also track down whether
3 transactions were actually reviewed and approved by the Audit
4 Committee; right?

5 A No. Usually, it's to confirm my own recollection or I
6 think in one case, it was to -- I think I was out of the office
7 and didn't have access to the network. And so I was asking for
8 something to be sent to me to double check.

9 Q So it's your testimony that you have never gone back to
10 go Mr. Tedrick to get a copy of a record to determine whether or
11 not a transaction had been acted upon by the Audit Committee?

12 A I don't think so because I don't think there was ever
13 any doubt in my mind about one.

14 Q Okay. Can we turn to I think this is Tab 1 in your
15 binder. Tab 1 in Mr. Fleming's binder, PX 1916, and it's not
16 yet in evidence.

17 Mr. Frazer, so this is an -- there is an email here to
18 you from Rick Tedrick.

19 Do you recognize this email?

20 A I do.

21 MS. STERN: I offer to admit it.

22 THE COURT: I'm sorry. Which binder are we in now?

23 MS. STERN: I'm sorry. We are in Mr. Fleming's
24 binder, and it's the first Tab, and it's PX 1916.

25 Can we bring in up on the screen for the judge.

KM

4384

J. Frazer - by Defendant - Cross/Ms. Stern

1 THE COURT: I gave back that binder. I forgot that
2 we weren't done with all that stuff.

3 MS. STERN: I only have the one copy.

4 THE COURT: I can look on the screen. Is there any
5 objection to this?

6 MS. EISENBERG: No objection, your Honor.

7 MR. FLEMING: No objection.

8 THE COURT: All right. It's admitted.

9 Q So Mr. Frazer, this is an occasion where Mr. Tedrick is
10 sending you copies of some minutes; right?

11 A Correct. And I think this is what I was thinking of
12 earlier. I thought we had seen it yesterday.

13 Q Oh, okay.

14 So in 2021, he sent -- in November 2021, he is sending
15 you a copy of minutes from 2017; right?

16 A Yes.

17 Q Okay. And so we turn to the next page. This is what
18 he sends you; right?

19 A Yes.

20 Q This is an unsigned copy of minutes; right?

21 A That's correct.

22 Q Okay; and this is what he says are the minutes; right?

23 A That is why I asked him -- apparently asked him for the
24 minutes, and that's what he sent me.

25 Q In 2021, this is what he says are the minutes; right?

KM

4385

J. Frazer - by Defendant - Cross/Ms. Stern

1 A Right.

2 Q Okay. And you are going back to Mr. Tedrick who is no
3 longer the secretary at this point; right?

4 A That's correct.

5 Q But you are going back to him to get what you're asking
6 for the official minutes.

7 A I did because -- because he was the secretary at that
8 time and I knew he would have it electronically.

9 Q Okay. And so if we can turn to -- sorry, your Honor --
10 in the binder that you don't have, JFX 66A, but that was
11 admitted into evidence yesterday.

12 THE COURT: It was. I remember that.

13 Q Can we bring that up? Okay. And so this is a copy of
14 minutes that you offered yesterday.

15 These -- where did these come from?

16 A These are -- are -- could I see the whole document?

17 Q Sure. And you have it right there. It's Tab 6 in your
18 binder from your counsel.

19 A Okay. Okay. Yeah, this is the signed copy. I just
20 want to make sure.

21 Q Right. So where did this come from?

22 A I'm not sure where that -- I know it was collected in
23 this litigation. I just don't know exactly where it -- where it
24 was collected from.

25 Q Well, actually, you said it was collected in this

KM

4386

1 litigation. But there is no Bates numbers on this document; are
2 there?

3 A I mean, I assumed it was collected in this litigation,
4 but I don't know exactly how that happened.

5 (Continued on the following page.)
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KM

4387

J. Frazer - by Defendant - Cross/Ms. Stern

1 Q So, you actually don't know where this document came
2 from. You just know that it has Mr. Tedrick's signature on it;
3 right?

4 A That's correct.

5 Q And you don't know when he signed this document?

6 A No, I don't.

7 Q Could have printed it out in 2021 when he sent you it
8 and signed it and scanned it; right?

9 A I'm not going to speculate.

10 Q Right, but you don't know?

11 A I don't know.

12 Q Okay.

13 MS. STERN: Turning to JFX 52 in evidence. I think
14 we can just pop that one up. If we can turn to the Audit
15 Committee report for January 13 to 14 of 2018.

16 (Displayed)

17 Q So, we're just talking about this December 7, 2017,
18 Audit Committee meeting; right?

19 A Yes.

20 Q So, Mr. Frazer, this is a copy of the report of the
21 Audit Committee that reflects that meeting; right?

22 A Yes.

23 Q And you see that in the second paragraph, the Audit
24 Committee met in Fairfax on December 7, 2017; right?

25 A Right, via conference call, yes.

BP

4388

J. Frazer - by Defendant - Cross/Ms. Stern

1 Q And this is another meeting where you said there were
2 transactions that were reviewed and approved, right, by the
3 Audit Committee?

4 A That's right.

5 Q And you know that because you were there; right?

6 A That's right.

7 Q Okay, but you're not noted as being at that meeting;
8 are you?

9 A Actually, I am.

10 Q No, let's take a look at the second paragraph.

11 (Displayed)

12 Right?

13 A Oh, I'm sorry. I was looking at the first paragraph;
14 but, no. Although, like the September meeting it says other
15 members were in attendance.

16 Q As you just pointed out in the January 11, 2018,
17 meeting, they did note your presence; didn't they?

18 A They did.

19 Q But not at the meeting that you testified about; right?

20 A I can't account for Mr. Tedrick's drafting.

21 Q This is the official Audit Committee report; right?

22 A It is.

23 Q And it is signed by Mr. Cotton at the bottom of the
24 page; right?

25 A That's correct.

BP

4389

J. Frazer - by Defendant - Cross/Ms. Stern

1 Q And there's nowhere in this report which goes to the
2 full board that says anything about any transactions being
3 reviewed and approved by the Audit Committee, any related-party
4 transactions; right?

5 A Well, if we take down the call out, let me see the
6 whole document.

7 Q I think you have a hardcopy there if you wanted to look
8 through it.

9 A Well, it does say -- it does say that I provided an
10 update on related-party transactions. It is not clear which
11 date it is referring to there.

12 Q Doesn't say anything about any transactions being
13 reviewed and approved, right?

14 A No, it doesn't.

15 Q Or any transactions being reviewed and ratified;
16 right?

17 A That's right.

18 Q Okay, thanks.

19 Oh, actually, going back -- we can go back to it, but
20 JFX 66A, the document that we looked at that you say are the
21 minutes of the meeting; is that the record of what was
22 considered by the --

23 A I'm sorry, can we have that again or point me to the
24 tab?

25 Q Sure, okay. We can pull it up, as well. It is behind

BP

4390

J. Frazer - by Defendant - Cross/Ms. Stern

1 Tab 6.

2 A Oh, okay. Got it.

3 Q Okay. So, my question is is this the record according
4 to you of what the Audit Committee considered when it took
5 the actions that you say occurred at this December 7, 2017,
6 meeting?

7 A It's what the Committee recorded. Again, my
8 recollection is that there was discussion that went beyond
9 what's laid out on these pages.

10 Q This is the report that exists according to you in the
11 NRA's records?

12 A Correct.

13 Q Okay, thank you.

14 So, just change of subjects. You've had a lot of
15 questions about the MMP --

16 THE COURT: Counsel, we're just about -- we're
17 going to -- are you nearly done or?

18 MS. STERN: No, I'm going to be ten more minutes.
19 Do you want me to try? I know we're very tried on time.

20 THE COURT: If you can finish in ten, we'll push
21 the time toward closer to one than we usually have just to
22 try to get today done.

23 MS. STERN: I'll do my best.

24 THE COURT: Okay.

25 Q So, we -- we heard about a renegotiation of the MMP

BP

4391

J. Frazer - by Defendant - Cross/Ms. Stern

1 contract, right?

2 A Right.

3 Q And that renegotiation occurred after Mr. LaPierre had
4 disclosed that he was receiving yachting trips and vacations
5 with the McKenzies; right?

6 A That's right.

7 Q And you weren't personally involved in those
8 negotiations; right?

9 A I wasn't involved in negotiating with directly with MMP
10 or with MMP counsel. Those were counsel-to-counsel discussions
11 as I testified, but I did speak with our counsel and other staff
12 on our end about it.

13 Q Okay. And Mr. LaPierre -- your understanding of
14 Mr. LaPierre's supposed recusal from that process was by virtue
15 of what Mr. LaPierre told you, right?

16 A It was based on my personal observation of the process
17 and the occasional discussions of it that came up with
18 Mr. LaPierre.

19 Q Your personal observation was also through other
20 people?

21 A Was -- was that everyone who discussed it all expressed
22 an understanding that Mr. LaPierre couldn't be involved, wasn't
23 involved and we were all trying to keep it that way.

24 Q But within the NRA's own internal review process,
25 Mr. LaPierre continued to be considered the responsible officer

BP

4392

J. Frazer - by Defendant - Cross/Ms. Stern

1 for the transaction; right?

2 A That's right.

3 Q And he was still in the chain of command on that
4 relationship, right?

5 A Yes.

6 Q Okay. The Audit Committee never reviewed that
7 renegotiated contract, did it?

8 A I thought they did, but as sitting here, I'm not a
9 hundred percent sure.

10 Q What's the basis for your belief that they did?

11 A I think I remember an Audit Committee meeting around
12 that time, but I --

13 Q An Audit Committee meaning around what time?

14 A Around -- around or during the renegotiation.

15 Q So, you testified as the corporate representative of
16 the NRA in this litigation, right?

17 A Yes.

18 Q And when you testified as the corporate representative,
19 you swore to tell the truth, right? Took an oath to tell the
20 truth?

21 A I did.

22 Q And you did, right?

23 A Yes.

24 MS. STERN: Jesse, can we bring that up.

25 (Video played.)

BP

4393

J. Frazer - by Defendant - Cross/Ms. Stern

1 Q Thank you.

2 MS. STERN: And just, your Honor, for the record
3 because I understand these aren't transcribed, I just wanted
4 to put in the pages.

5 It is Mr. Frazer's corporate representative
6 deposition, page 955, line 15, to 956, line 13.

7 Q Yesterday, Mr. Frazer, you were asked about financial
8 transactions with McKenna.

9 Do you remember that?

10 A I do.

11 Q So, at some point the McKenna relationship you
12 testified expanded from doing primarily consulting on
13 fundraising to include also other kinds of business consulting;
14 is that right?

15 A That's correct.

16 Q And Josh Powell was the point person at the NRA
17 overseeing that business relationship; wasn't he?

18 A Largely, yes.

19 Q And, particularly, the expansion of it to do the
20 business consulting work; right?

21 A Yes.

22 Q And his wife, Colleen Gallagher, was hired by McKenna
23 to be a subcontractor to McKenna and senior advisor to McKenna
24 while doing that work; right?

25 A Yes.

BP

4394

J. Frazer - by Defendant - Cross/Ms. Stern

1 Q And you're aware that Ms. Gallagher was Mr. Powell's
2 wife; right?

3 A At some point, I was introduced to her as his wife,
4 yes.

5 Q And you didn't raise any issues about the related-party
6 transaction; right?

7 A I don't remember exactly when I met her first in
8 relation to when that work was occurring.

9 Q But you didn't bring it to the Audit Committee when you
10 learned that, right?

11 A When -- after Mr. Powell disclosed that his wife was
12 working for McKenna, he did disclose it and we did bring it to
13 the Audit Committee.

14 Q But my question, Mr. Frazer, was did you bring it to
15 the Audit Committee when you discovered that relationship?

16 A Um, I don't remember who exactly brought it up at the
17 Audit Committee meeting, but it was thoroughly discussed.

18 Q Mr. Frazer, do you recall, yourself, bringing it to the
19 Audit Committee? Not Mr. Powell. I'm asking about you.

20 A As I just said, I don't remember exactly who brought it
21 up at the committee meeting.

22 Q The cost of the services that were being paid to the --
23 the amount being paid to McKenna during the period July 2016 to
24 fall 2018 was, approximately, close to two and a half million
25 dollars; right?

BP

4395

J. Frazer - by Defendant - Cross/Ms. Stern

1 A I don't know the dollar amount.

2 Q It was a sizable contract; right?

3 A It was a sizable amount of business, but not all of the
4 contract, no.

5 Q Sorry?

6 A I said it was a sizable amount of business. I'm not
7 sure the size of the contract.

8 Q The transaction was, ultimately, ratified by the Audit
9 Committee, right?

10 A It was with the caveat that it should be re-reviewed
11 and dealt with.

12 Q But it was ratified by the Audit Committee, right?

13 A Yes, yes.

14 Q And the Audit Committee records on that would
15 accurately reflect what the amount of the contract fees were, at
16 least at that time; right?

17 A They should. I just don't have personal knowledge.

18 Q There was no written contract for a big portion of what
19 McKenna was providing; right?

20 A That's right, and that was one of the concerns that the
21 whistleblowers had raised.

22 Q But it was ratified even though there was no written
23 contract; right?

24 A Well, the Committee's report would explain what was
25 ratified.

BP

4396

J. Frazer - by Defendant - Cross/Ms. Stern

1 Q My question was it was ratified despite that there was
2 no written contract, right?

3 A What was ratified to my recollection was the -- the use
4 of McKenna's services during Ms. Gallagher's employment. I
5 don't recall that the Committee looked at the amounts.

6 Q So, the Committee didn't address the fact that there
7 was no contract; right?

8 A I don't remember.

9 Q Sorry, no written contract?

10 A I'm sorry, Ms. Stern, I just don't remember one way or
11 the other.

12 Q Okay. There was no written contract with David Keene,
13 board member who was being paid; right?

14 A Well, there -- there was at some point, yes.

15 Q At what point?

16 A In, I believe, 2019.

17 Q In 2019 there was a written contract?

18 A Yes.

19 Q Okay. And Sandra Froman, she had no written contract
20 either; right?

21 A Not that I'm aware of.

22 Q And David Butz, he was operating without a written
23 contract for a period of time; right?

24 A I'm not sure about that. I know at one point he had a
25 contract that had an automatic renewal provision, and I'm not

BP

4397

J. Frazer - by Defendant - Cross/Ms. Stern

1 sure when that went in or out. And, actually, later there was
2 definitely a written contract after we renegotiated it to a
3 daily rate rather than annual or monthly fee.

4 Q And that was later -- that was after the attorney
5 general's investigation began; right?

6 A I don't think so.

7 Q You think it was before the investigation began?

8 A I thought it was in 2019 -- I thought it was 2019.

9 Q You were asked --

10 A Maybe beginning 2020, but it was before the -- it
11 was -- I'm sorry, it was before the lawsuit began, and I'm not
12 sure in relation to the investigation.

13 MS. STERN: Your Honor, I'm feeling very -- a lot
14 of pressure for the jury to have lunch, and so I had hoped
15 to --

16 THE COURT: Yes, let's take a break. We'll
17 reconvene at 2:15. Thanks, everyone.

18 COURT OFFICER: All rise, jury exiting.

19 (Whereupon, at this time the jury then left the
20 courtroom.)

21 MR. CORRELL: Your Honor, could we get a time
22 check so we know? We're getting down to the minutes, I'm
23 afraid.

24 THE COURT: Let me know the results when you get
25 back.

BP

4398

J. Frazer - by Defendant - Cross/Ms. Stern

1 Good luck on the verdict sheet. I'm counting on
2 you. I am counting on you.

3 * * * * *

4 (Whereupon, at this time a luncheon recess was then
5 taken.)

6 (Continued on next page)

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BP

4399

Proceedings

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AFTERNOON SESSION

* * * * *

THE COURT: I got a quick report from my law clerks which is not entirely encouraging, but the end is near. So we need to get your comments condensed and to us as soon as you can.

For what it's worth in my view, the related-party transaction part of the verdict sheet is where most of the convoluted and hard to organize things came in. I don't think it is substantively that hard. It is just kind of tricky to figure out how to describe it in a way that won't confuse them. Anyway, comments as soon as you can.

One thing I wanted to have you at least be thinking about, logistically, because this has happened in almost every jury trial I've had, the jury goes to deliberate. The first thing they do is send a note down asking for fifty documents. And more times than I care to admit, the lawyers then begin scrambling to go find them.

But, in the last few I've told the lawyers in advance get hardcopies of at least the exhibits that got a lot of attention. Just have at least two copies here on Friday so that you don't have to go back to your office, you don't have to do all sorts of things; and we can at least get them quickly the documents that they're likely to ask

BP

4400

Proceedings

1 for.

2 So, I know that's, logistically, takes a lot of
3 copying, getting things ready. I would suggest two copies
4 so they don't all have to look at the same one.

5 MS. EISENBERG: Your Honor, may I raise a quick
6 issue in connection with the closing?

7 THE COURT: Yes.

8 MS. EISENBERG: The NRA requested that the NYAG
9 identify the alleged misstatements for the 15th claim
10 because we don't know which specific statements they will
11 argue in their closing; and we need to know that because
12 they go last. Because there are eight different alleged
13 misstatements that have been featured in testimony, but in
14 the complaint they feature over twenty.

15 THE COURT: And there were no contentious
16 interrogatories to flush that out?

17 MS. EISENBERG: There were, but as the
18 related-party transaction experience shows just because they
19 listed them in contentious interrogatories doesn't mean
20 they're actually going to ask the jury to return a verdict
21 on.

22 THE COURT: Oh, you mean they may not use all of
23 them?

24 MS. EISENBERG: Exactly, and we only have
25 forty-five minutes for our closing and don't want to be

BP

4401

Proceedings

1 focussing on the misstatements --

2 THE COURT: Why don't we do it this way; it is all
3 of them in the contentious interrogatories, unless they're
4 telling you they're withdrawing some? That's the way I
5 would do it because if they wanted to add one that's not in
6 the contentious interrogatories, I'd have a problem with
7 that for lack of notice.

8 But if they haven't -- I mean, I did ask that with
9 the related-party transactions and it turned out there were
10 a bunch that they're not pursuing, whistleblowers, there's a
11 bunch they're not pursuing. I think it would be helpful to
12 me to know, you know -- I guess I would say you need to tell
13 the other side if there are any misstatements for claim 15
14 that you identified that you're not pursuing, I think it is
15 reasonable for me to know that and, certainly, the other
16 side.

17 MS. EISENBERG: Thank you, your Honor. And then we
18 have the same request with regard to the first cause of
19 action where they claim that property was improperly
20 administered that subsumes conflict of interest and the like
21 and, again, we have no understanding what they will be
22 arguing in closing.

23 THE COURT: Well, look -- I think that's arguably
24 the broadest claim, and I think any evidence that came in
25 during the trial would be fair game for that; unlike the

BP

4402

Proceedings

1 related-party transaction where it is a specific event or
2 the misstatements where it is a discrete thing, I mean
3 that's what discovery was supposed to be for, to tell you
4 what the claims are.

5 So, I think, you know, they opened, they explained
6 what their claims were going to be. I think my main concern
7 is that you not be surprised by things that have never been
8 disclosed as opposed to being over prepared.

9 MS. EISENBERG: Your Honor, thank you for
10 considering my request.

11 Just to be clear, conflicts of interest are very
12 much like related-party transactions. In fact, they listed
13 them on the same contentious interrogatories.

14 For example, HomeTelos, your question was was that
15 a related-party transaction; and they said, no, it violates
16 the conflict-of-interest policy, but not the law.

17 And, so they're quite capable of identifying
18 specific transactions that they allege were tainted by
19 conflicts of interest even if they were not related-party
20 transactions under 715.

21 So, we would request given that we only have
22 forty-five minutes and given that they go last and we don't
23 have rebuttal, that they identify specific transactions that
24 they intend to feature in their closing argument as
25 violative of that policy.

BP

4403

Proceedings

1 MS. STERN: Your Honor, as you said, this is --
2 we're in trial. This is not discovery. There's not a basis
3 for asking us to lay out a roadmap. We've all been sitting
4 here for six weeks. They know what the evidence is, and we
5 want to focus on getting the rest of today done and getting
6 ready for proper process --

7 THE COURT: The roadmap has been laid out in the
8 openings. You can only use admissible evidence, so I'm not
9 going to create some new rule of procedure that requires
10 them to map out their closing in advance.

11 But I do think that it is a fair request on where
12 you have specifically listed out in contentious
13 interrogatories ten things. If you know now that you're not
14 going to pursue them, I'd like to know that for purposes of
15 my instructions because as you've heard during your lunch
16 meeting, I mean some of these things, like the post
17 employment agreement, it seems pretty clear from the
18 testimony that there's probably no damages so I don't -- I
19 need to know whether I need an instruction in advance on
20 which depends on what the claim is going to be.

21 Now, that's more acute with transactions specific
22 claims, but I don't think it is unfair that if you know now
23 you're not pursuing certain of the statements you said you
24 were pursuing before, you should let them know.

25 MS. STERN: Certainly, your Honor.

BP

4404

Proceedings

1 THE COURT: All right --

2 MR. CORRELL: Your Honor, I wasn't able to get a
3 consensus of where we are on the clock. I think if you ask
4 that question, you might get that information.

5 THE COURT: All right, where are we on the clock?
6 I saw -- it seemed to me it was not that far from an hour
7 because Mr. Conley started just about at twelve and there
8 were some breaks while Mr. Frazer finished and then we
9 finished at one.

10 So, it's I would imagine something like
11 forty minutes, to something like forty minutes or so that
12 you used this morning?

13 MS. STERN: I think so.

14 MS. EISENBERG: Fifty-two minutes, your Honor.
15 Fifty-two minutes today.

16 THE COURT: That's your count?

17 MS. EISENBERG: That's correct, your Honor.

18 THE COURT: I thought it was somewhere in the
19 forty, forty-five range.

20 All right, so you still have a little bit to go and
21 we should stop talking then.

22 Let's get the jury, please.

23

24 (Continued on next page)

25

BP

4405

J. Frazer - by Defendant - Cross/Ms. Stern

1

2

(Whereupon, at this time the witness, John Frazer, having been first duly sworn/affirmed by the Clerk of the Court, resumed the witness stand and testified as follows:)

3

4

5

THE COURT: My caution about not calling a witness that we can't finish.

6

7

8

MR. CORRELL: Your Honor, that's my concern. I have one more witness to call, my expert, and I'm afraid of getting bumped. I have a very low time count compared to the NRA and Frazer and --

9

10

11

THE COURT: Well, who gets to choose because the State only has a few minutes, I guess, left.

12

13

I don't know, have you all talked about who the next witness is?

14

15

MR. CORRELL: We have.

16

THE COURT: Is it yours?

17

MR. CORRELL: Well, no, it is not.

18

19

MR. PETERS: We've discussed the schedule with the other side and with Mr. Correll. We are going to try as hard as we can to get through Mr. Commerford, the Spray video and Mr. Lapham. That's the order of operations right now.

20

21

22

23

So, the sooner we get to it, the more likely I think it is to happen.

24

25

MR. CORRELL: My preference, your Honor, would be

BP

4406

J. Frazer - by Defendant - Cross/Ms. Stern

1 to have Mr. Lapham go next and for me to call my expert, who
2 I expect will be fifteen minutes.

3 THE COURT: Which expert is that?

4 MR. CORRELL: It is an expert on custom and
5 practice with respect to reliance by corporate executives on
6 treasurers and other people and, also, he's a damages
7 expert.

8 THE COURT: And who is Lapham is he the security
9 one?

10 MR. PETERS: So, Mr. Lapham is head of security in
11 the NRA, and he is awaiting -- we sent the order to the
12 other side and to the Court, and we've always said, included
13 Mr. Commerford and Mr. Lapham --

14 THE COURT: This is not you versus the plaintiff
15 issue. This is an intra-defendant issue.

16 MR. CORRELL: Mr. Lapham is critical to us --

17 THE COURT: Sure, everyone is critical, and the NRA
18 I would imagine has had a lot more of the time on the
19 defense side.

20 MR. CORRELL: Yes, they have.

21 THE COURT: I think you get priority for your next
22 witness.

23 MR. CORRELL: Thank you, your Honor.

24 MS. STERN: Your Honor, one thing, that is on his
25 is the expert that Mr. Correll referred to, we did not get

BP

4407

J. Frazer - by Defendant - Cross/Ms. Stern

1 24-hours notice that he was putting him back on the list.

2 MR. CORRELL: Your Honor, there's some confusion
3 around that. The NRA purported to be communicating for me,
4 and I didn't see the communication. As soon as I learned
5 that that hadn't been disclosed, I disclosed it. I think
6 they got 22-hours notice instead of 24. He has no
7 demonstratives and no documents.

8 THE COURT: Raise your hand if you remember me
9 saying I didn't want chaos today.

10 MR. CORRELL: This isn't chaos, yet, your Honor.

11 THE COURT: I look forward to when that occurs
12 then.

13 Let's get started with getting this finish and then
14 move on from there. Then you have one small witness for the
15 NRA, and the next one is going to be --

16 MR. PETERS: We have three things that we're trying
17 to get accomplished, and I'm confident that we can get all
18 three of them accomplished, which is Commerford, Lapham and
19 Mr. Spray. We have to do all three. I think we're all in
20 agreement.

21 I understand --

22 THE COURT: The clock is ticking, so let's go.
23 Let's get the jury in.

24 COURT OFFICER: All rise, jury entering.

25 (Whereupon, at this time the jury then entered the

BP

4408

J. Frazer - by Defendant - Cross/Ms. Stern

1 courtroom.)

2 THE COURT: All right, please have a seat.

3 MS. STERN: May I continue, your Honor?

4 THE COURT: Yes, please.

5 CROSS-EXAMINATION

6 BY MS. STERN: (Continuing)

7 Q Mr. Frazer, yesterday you testified about some
8 financial transactions with Marion Hammer; right?

9 A Yes.

10 Q And you referred to Marion Hammer as a gun lobbyist?

11 A I don't know if I used that term.

12 Q Did you refer to her as a lobbyist?

13 A She is a lobbyist.

14 Q So Marion Hammer, she was getting paid by the NRA, she
15 had three different streams of revenue from the NRA; right?

16 A At one time, yes.

17 Q And she was being paid for consulting services, right?

18 A That's correct.

19 Q And the consulting services contract was something that
20 had to be ratified; right?

21 A Yes.

22 Q And she was being paid anywhere between \$160,000 a year
23 to about \$220,000 a year; right?

24 A I don't remember the low end, but I do recall the high
25 end, 220.

BP

4409

J. Frazer - by Defendant - Cross/Ms. Stern

1 MS. STERN: Can we pull up JFX 52, page 27 of the
2 PDF and we're at the September 8th to 9th, 2018 Audit
3 Committee report.

4 Q Pretty familiar with this document, right?

5 A I do see it.

6 Q Okay. And we're looking at the paragraph in the report
7 that's addressing Marion Hammer.

8 Are you with me?

9 A I see it.

10 Q And does this accurately reflect what the Audit
11 Committee considered in addressing Marion Hammer's consulting
12 services agreement?

13 A As with the others, this is what the committee put on
14 the record, but there were, obviously, other discussions in the
15 meeting.

16 Q And there's no discussion in this document about
17 considering any alternative transactions; right?

18 A No, because it refers to her unique experience.

19 Q Okay, we can move on from that. Thank you.

20 MS. STERN: Can we turn to Plaintiff's Exhibit 421,
21 which is the policy manual.

22 Q I think it is 21 in your -- Tab 21 in your binder.

23 A It is.

24 Q I fear that this is not the binder that the Judge has.
25 This is in evidence. We looked at it many times.

BP

4410

J. Frazer - by Defendant - Cross/Ms. Stern

1 I just wanted to ask you about the related party and
2 conflicts-of-interest policy at page 27 of 300 I believe it is.

3 A Okay, I'm there.

4 Q And we're looking at the policy that you took a hand in
5 drafting, right?

6 A Yes, ma'am.

7 Q And this -- let's see. On the bottom of the number
8 page 20, the next page. Okay, where are we?

9 Can you turn to the paragraph that says "In the event?"
10 Do you see where I am?

11 A I see it, yes.

12 Q Okay. And so "In the event the NRA or a covered person
13 in error enters into or otherwise participates in a
14 conflict-of-interest transactions that requires pre-approval by
15 the NRA Audit Committee pursuant to this policy, such
16 transaction shall promptly upon discovery of such error be
17 presented to the NRA Audit Committee for its review."

18 That's what you decided that the policy should require;
19 right?

20 A That's the policy the board adopted, yes.

21 Q And then the Audit Committee has some options of what
22 it can also do, right? It can review it, but then there is some
23 other options, right?

24 A That's correct.

25 Q And one of those options is take a disciplinary action,

BP

4411

J. Frazer - by Defendant - Cross/Ms. Stern

1 right?

2 A That's right.

3 Q And no disciplinary action was ever taken with respect
4 to Mr. LaPierre; right?

5 A That's correct. I mean, obviously, he agreed to repay
6 various items, but no disciplinary action in a personnel sense.

7 Q Just repaying what he misused is not a disciplinary
8 action, right? That you would just expect in the ordinary
9 course just to make the NRA whole; right?

10 A I would.

11 Q Okay. You were asked some questions yesterday about
12 your compensation. Do you recall that?

13 A Yes.

14 Q So, your compensation has to be reported on the NRA's
15 Form 990 each year; right?

16 A That's correct.

17 Q By virtue of your role as General Counsel and
18 secretary; correct?

19 A As secretary for sure.

20 Q And if somebody wanted to see what your compensation
21 was in any given year, they could go to Schedule J in the Form
22 990; right?

23 A That's correct.

24 MR. STERN: Can we pull up PX 225.

25 THE COURT: Counselor, you have your thoughts on

BP

4412

1 the time; right?

2 MS. STERN: Yes, I do.

3 THE COURT: I would just ask the defendants to
4 start thinking about allocating the remaining time in the
5 afternoon for hard stops for each of the witnesses that you
6 want to do. I mean hard stops, because there's not going to
7 be a lot of cross. So you should start writing those down
8 and I will enforce them.

9 Go ahead.

10 MS. STERN: PX 225, which is in evidence, and if we
11 can go, Jesse, to page 45 of 102.

12 Q And that's Schedule A that we're looking at; right?

13 A It is.

14 Q And this is for 2021?

15 A Yes, that's correct.

16 Q In 2021, your total comp with all of your benefits,
17 right, nontaxable benefits retirement is \$348,924; right?

18 A That's correct.

19 Q And that's the reduced comp that you said that you took
20 during the COVID period; right?

21 A That's the reduced salary. And then other things,
22 like, employer paid health insurance and 401k matches and other
23 fringe benefits, yes.

24 (Continued on next page)

25

BP

4413

Frazer - By Defendant - Redirect/Ms. Eisenberg

1 MS. STERN: Okay. Thank you. I have no further
2 questions. Pass the witness.

3 THE COURT: Okay. Anything further?

4 MR. CORRELL: Cross.

5 MS. EISENBERG: I just have redirect for Mr.
6 Frazer.

7 MR. CORRELL: I have one question on cross.

8 THE COURT: Then cross goes first. So don't do your
9 time allocations until after all this is all over.

10 CROSS-EXAMINATION

11 BY MR. CORRELL:

12 Q Mr. Frazer, how long have you been at the NRA?

13 A Well, I originally started in 1993, so 31 years minus
14 my time is private practice.

15 Q During your tenure has it been the practice of the NRA
16 to punish people for honest mistakes?

17 A No.

18 MR. CORRELL: Thank you.

19 MS. EISENBERG: May I proceed, your Honor.

20 THE COURT: Please.

21 MS. EISENBERG: Good afternoon. Can you hear me?

22 Thank you very much.

23 REDIRECT EXAMINATION

24 BY MS. EISENBERG:

25 Q Good afternoon, Mr. Frazer.

KM

4414

Frazer - By Defendant - Redirect/Ms. Eisenberg

1 A Good afternoon.

2 Q You previously testified about the ratification of
3 related-party transactions. Do you recall that?

4 A I do.

5 Q And is it your understanding of the law that the
6 ratification defense is available up until the point when the
7 Attorney General makes a request for documents related to the
8 transaction?

9 MS. STERN: Objection.

10 MR. FARBER: Objection.

11 THE COURT: Sustained.

12 Q Did there come a time when the Attorney General served
13 a subpoena on the National Rifle Association?

14 A Yes.

15 Q Do you recall when that was?

16 A Well, there were a couple of them. I believe the first
17 was around June 2019.

18 Q Let's show Mr. Frazer, counsel and the Court what we
19 will mark as DX1-1089 for identification.

20 MS. STERN: Your Honor I think this is going beyond
21 the scope.

22 THE COURT: We don't know yet since it hasn't
23 started.

24 MS. STERN: The NRA did a direct already.

25 THE COURT: This is redirect.

KM

4415

Frazer - By Defendant - Redirect/Ms. Eisenberg

1 Q Mr. Frazer, do you recognize the document in front of
2 you?

3 A I believe so, yes.

4 Q What is it?

5 A It's a copy of the subpoena issued sometime -- well,
6 this -- sometime before June 28, 2019.

7 Q Let's take a look at the second page.

8 Does it provide the date of the subpoena?

9 A It does. June 3, 2019.

10 MS. EISENBERG: May I, your Honor, move to admit
11 this in evidence?

12 MR. FARBER: No objection.

13 THE COURT: Yes, it's relevant to the ratification.
14 So admitted.

15 MS. EISENBERG: Thank you. Let's display the
16 subpoena to the jury.

17 THE COURT: Have you marked it?

18 MS. STERN: DX1-1089. It's admitted.

19 MS. EISENBERG: Thank you, your Honor.

20 Q Mr. Frazer, and just to show the members of the jury,
21 where on this subpoena do we see the date on which it was
22 issued?

23 A The date is on the last page. On the signature page.
24 The last.

25 Q Which is the second page of the exhibit?

KM

4416

Frazer - By Defendant - Redirect/Ms. Eisenberg

1 A That's right.

2 Q And is it in the paragraph that starts with the words
3 "Witness the Honorable Letitia James?"

4 A That's correct.

5 Q The date is June 3, 2019; is that correct?

6 A That's correct.

7 Q Let's display for Mr. Frazer, the Court and for the
8 moment just counsel what's been identified as DX 1-0517.

9 Mr. Frazer, do you recognize this document?

10 A I do.

11 Q What is it?

12 A It's a -- it's an Audit Committee meeting report dated
13 July 30, 2022.

14 MS. EISENBERG: Your Honor, at this point the NRA
15 moves to admit DX1-0517 in evidence.

16 THE COURT: Any objection?

17 MR. FARBER: Is it just the one page that was on
18 the screen?

19 MS. EISENBERG: That's correct, your Honor.

20 THE COURT: There was no second page?

21 MS. EISENBERG: That's correct.

22 MR. FARBER: No objection.

23 THE COURT: It's admitted.

24 Q Let's display this for the members of the jury.

25 Mr. Frazer, does this refer to a teleconference audit

KM

4417

Frazer - By Defendant - Redirect/Ms. Eisenberg

1 committee on a particular date?

2 A It does. It refers to July 30, 2022.

3 Q And in the paragraph which is the second from the
4 bottom where it says "moved," can you please read that into the
5 record?

6 A It says, "Moved, the committee unanimously approves the
7 memorandum of understanding between the National Rifle
8 Association and the MMP companies as presented."

9 Q Do you recall Ms. Stern asking you whether or not the
10 Audit Committee was involved in the approval of the new MMP
11 contract?

12 A I do.

13 Q Does this document show that it was?

14 A It does.

15 Q Let's take a look at DX 1-0506.

16 THE COURT: Is this also for identification or is
17 this already in?

18 MS. EISENBERG: Actually, I'm not sure. Let's set
19 that aside. My colleagues can look it up for us, and we can
20 just move on for the moment.

21 Q Let's take a look at DX 1-0432 for identification.

22 Mr. Frazer, just to orient you, this is an email thread
23 containing two email messages and several attachments.

24 Do you recognize this family of documents?

25 A I do.

KM

4418

Frazer - By Defendant - Redirect/Ms. Eisenberg

1 Q What are they?

2 A They are a set of documents related to the -- to an
3 Audit Committee action in September -- in or around
4 September 2016 in which the committee as an alternative to a
5 meeting gave unanimous written consent to a related-party
6 transaction.

7 MS. EISENBERG: Your Honor, at this point the NRA
8 moves DX 1-0432 into evidence.

9 MR. FARBER: Could we have a copy to review?

10 THE COURT: Any objection on the Plaintiff side?

11 MS. STERN: No objection, your Honor.

12 MR. FARBER: No objection, your Honor.

13 No objection.

14 THE COURT: It's admitted.

15 Q So we can publish it for the members of the jury, and
16 if you can just walk the members of the jury through the top
17 page.

18 A Sure. So what this reflects from what you can see on
19 the screen is that in the message at the bottom, I'm writing to
20 Rick Tedrick to check on the status of the written approval
21 request on this contract with Bart Skelton. Bart Skelton sadly
22 passed away a few months ago was an NRA Board member for several
23 years, and there was a proposed contract for him to write
24 articles for the NRA publications.

25 Q Thank you, Mr. Frazer.

KM

4419

Frazer - By Defendant - Redirect/Ms. Eisenberg

1 Let's take a look at the second page of the exhibit.

2 Who is this email from and to whom is it addressed?

3 A The email is from Rick Tedrick who was the secretary of
4 the Audit Committee at the time, and he is addressing it to the
5 members of the Audit Committee at the time with copies to me,
6 Mr. Phillips, Ms. Cummins who was in the treasurer's office and
7 himself.

8 He sends it through a secure email portal that we use
9 from time to time, and it requests the -- as you can see, it
10 says that in the discussion shortly before this about
11 related-party transactions, the committee had inadvertently left
12 out a pending issue, and we pointed out that the committee could
13 approve it by unanimous consents and asked for that consent or
14 if people had any questions.

15 Q Is it fair to say that Mr. Tedrick states that this was
16 accidentally left out?

17 A That's correct.

18 Q While presenting the transactions with Board members
19 for committee approval; right?

20 A Yes.

21 Q Do you remember Ms. Stern asking you whether or not you
22 in fact attended the September 2016 meeting?

23 A Yes.

24 Q Do you remember her implying that in fact you did not?

25 MS. STERN: Objection, your Honor.

KM

4420

Frazer - By Defendant - Redirect/Ms. Eisenberg

1 THE COURT: Overruled.

2 A No. I had attended that meeting.

3 Q Do you recall her questioning imply?

4 A Yes. Her implication that I didn't attend.

5 Q How does that document that we are looking at right now
6 relate to her question?

7 A It relates to the fact that I was at the committee. I
8 went through the list of transactions with the committee. In
9 the course of doing that, we missed -- missed one that was on
10 the list. It was actually advance approval as I recall rather
11 than ratification, and we wanted to go back and make sure that
12 we had corrected that error.

13 Q Ms. Stern was provided with a copy of this document in
14 discovery; correct?

15 MS. STERN: Objection, your Honor.

16 THE COURT: Sustained.

17 Q Did the defendants list this document on their exhibits
18 list?

19 MS. STERN: Objection, your Honor.

20 THE COURT: Also sustained. This is a fact
21 witness.

22 Q Let's take a look at DX 1-0506 for identification.

23 Do you recognize this document?

24 A I do.

25 Q What is it?

KM

4421

Frazer - By Defendant - Redirect/Ms. Eisenberg

1 A It's the Contract Review Signature Sheet for the -- it
2 says Membership Marketing Partners, but it was really Allegiance
3 Creative.

4 MS. EISENBERG: The NRA moves to admit DX 1-0506 in
5 evidence.

6 MS. STERN: I thought this was already admitted
7 yesterday.

8 THE COURT: It kind of looks familiar.

9 MR. FLEMING: There's a version. I can't say it's
10 exactly -- yesterday -- actually, already in evidence even
11 prior to my examination yesterday. PX 2426.

12 THE COURT: All right. So it's in evidence. You
13 can use it.

14 MS. EISENBERG: Let's display it for the members of
15 the jury.

16 Q Mr. Frazer, does this is document that we have up on
17 the screen show that the president, the first vice-president and
18 the second vice-president signed the Contract Review Signature
19 Sheet for the new MMP contract?

20 A It does.

21 Q Finally, let's take a look at PX-438 for
22 identification.

23 THE COURT: So you need to shut the screen down
24 again.

25 MS. EISENBERG: Thank you.

KM

4422

Frazer - By Defendant - Redirect/Ms. Eisenberg

1 Q Mr. Frazer, do you recognize this document?

2 A I do.

3 Q And let's take a look at the second page of the
4 exhibit.

5 Do you recognize that?

6 A I do.

7 Q What is this family of documents?

8 A It's a contract and a transmission email contract with
9 David Keene to engage in speaking engagement and advocacy,
10 outreach between the NRA and Mr. Keene, and there is the cover
11 memo, if we can go back to that -- is an email in which I think
12 if we scroll down -- I am sending back -- could we go to the end
13 of the the attachment for a moment? It should be a signature
14 page, I think.

15 Well, I'm sorry. It wouldn't be that far down. Sorry.
16 There is some long attachments to this.

17 THE COURT: It was the agreement raised on cross?

18 MS. EISENBERG: I'm sorry.

19 THE COURT: Was this agreement raised on
20 cross-examination.

21 MS. EISENBERG: Yes. They asked specifically isn't
22 it true that there was no contract wasn't reached with Mr.
23 Keene.

24 A Thank you for your patience. I just want to make sure
25 this is a signed copy.

KM

4423

Frazer - By Defendant - Redirect/Ms. Eisenberg

1 This is an email where I'm sending Mr. Keene a
2 fully-signed copy of the agreement with him it looks like
3 September 2019.

4 MS. EISENBERG: At this point the NRA moves to
5 admit PX 438 in evidence.

6 THE COURT: It's admitted.

7 MS. EISENBERG: Let's show the members of the jury
8 the signature page which is on Page 8 or maybe 9 of 15. And
9 let's scroll to the second page of the exhibit which is the
10 first page of the consulting agreement.

11 Mr. Frazer, thank you very much.

12 Your Honor, I'll pass the witness subject to our
13 discussion about those Board books. I think we are still
14 discussing that with our colleagues.

15 THE COURT: Okay.

16 MR. FLEMING: Very briefly.

17 As we spoke about this morning, I have reached a
18 stipulation with the Plaintiffs for the admission of four
19 990s.

20 THE COURT: Okay.

21 MR. FLEMING: And so those would be JFX30, JFX31,
22 PX 222 and PX -- I'm sorry. JFX 33.

23 THE COURT: Without objection, those are all
24 admitted.

25 MR. FLEMING: I would also call up PX 2249, please.

KM

4424

Frazer - by Defendant - Redirect/Mr. Fleming

1 THE COURT: That's in evidence.

2 MR. FLEMING: Well, there is a duplicate of a
3 document that Ms. Eisenberg just brought up.

4 THE COURT: Okay.

5 MR. FLEMING: And I have one question on it and
6 literally one question. Well, after identifying it.

7 REDIRECT EXAMINATION

8 BY MR. FLEMING:

9 Q Mr. Frazer, is this document a replica of what you were
10 just shown by Ms. Eisenberg?

11 A It is.

12 Q And if we can scroll down to the exhibit number,
13 please. You see a PX 2249?

14 A I do.

15 Q Do you understand that to be a Plaintiff's Exhibit?

16 A I do.

17 MR. FLEMING: Thank you.

18 THE COURT: Okay. Anything further?

19 MR. PETERS: No, your Honor.

20 THE COURT: All right. So you're free to step
21 down.

22 MR. PETERS: We have the time allocations for you.

23 THE COURT: Why don't you hand them up.

24 You're doing it this way. Okay. I'm not sure what
25 that means.

KM

4425

Frazer - by Defendant - Redirect/Mr. Fleming

1 MR. PETERS: These are our time calculations. We
2 are going to have Mr. Commerford go on at 3:00 p.m., and we
3 anticipate he will finish at 3:20. Then we will have the
4 Spray deposition clip. That will start 3:20 and end at
5 3:55. Then we will have the Meadows clip. That will begin
6 at 3:55, end approximately 4:10. Then we will have two more
7 witnesses. We will have Mr. Lapham. We expect him to
8 finish at 4:25 and then we will have 20 minutes for Mr.
9 Rabin.

10 THE COURT: So you're assuming zero minutes of
11 cross across the board which is maybe a little aggressive,
12 but 4:25 gives us still a little bit of wiggle room.

13 That also means the jury has to be comfortable.

14 Let's just see how we do.

15 Which one is your witness.

16 MR. CORRELL: Rabin.

17 THE COURT: I would suggest putting -- you can do
18 the same scrambling of numbers, but I don't want to leave
19 yours till last.

20 MR. CORRELL: Thank you, but I also need Mr.
21 Lapham, so I would prefer to keep this order and just hue to
22 it if we could.

23 THE COURT: Well, all of these numbers assume no
24 cross at all which is not reasonable.

25 MR. PETERS: How about -- we can't cut time off the

KM

4426

Frazer - by Defendant - Redirect/Mr. Fleming

1 videos.

2 THE COURT: How about we not talk anymore and we
3 will just do -- it's 3:00.

4 Call your next witness.

5 MS. EISENBERG: Your Honor, the NRA calls John
6 Commerford, your Honor.

7 THE COURT: Is he in the room or is somebody going
8 to get him?

9 MS. EISENBERG: He is right outside the courtroom.
10 I would suggest that if possible you end a little sooner on
11 each of these and just preserve flexibility.

12 MR. PETERS: Understood, your Honor.

13 THE COURT: Remember this is still trial and not
14 speed dating.

15 MR. CORRELL: I can call Mr. Rambin right now while
16 we wait for Mr. Commerford.

17 THE COURT: I thought you needed to wait for
18 Lapham.

19 MR. CORRELL: That was my preference.

20 THE COURT: I am the catcher. You guys are the
21 pitchers.

22 MR. PETERS: We are going to call Mr. Commerford.
23 He will be here momentarily.

24 THE COURT: Okay.

25 MR. PETERS: I might go try to chase him down.

KM

4427

Commerford - by Defendant - Direct/Ms. Eisenberg

1 THE COURT: I don't want to lose you. Then we will
2 have to send somebody after you.

3 J O H N C O M M E R F O R D, a witness called on
4 behalf of the Defendant, after having been first duly sworn,
5 took the witness stand and testified as follows:

6 THE CLERK: State your name.

7 THE WITNESS: John Samuel Commerford.

8 THE CLERK: Spell your last name.

9 THE WITNESS: C-O-M-M-E-R-F-O-R-D.

10 THE CLERK: Thank you. You may be seated.

11 MS. EISENBERG: Your Honor, may I proceed?

12 THE COURT: Yes, please.

13 DIRECT EXAMINATION

14 BY MS. EISENBERG:

15 Q Good afternoon, Mr. Commerford.

16 A Good afternoon.

17 Q And what do you do at the NRA?

18 A I am the chief of operations for the NRA Institute for
19 Legislative Action.

20 Q How long have you been in that position?

21 A I started in that role in November of 2019.

22 Q And how long have you worked at the NRA?

23 A I started originally in August of 2007 as an intern.

24 Q Where did you go to college?

25 A I went to Hofstra University.

KM

4428

Commerford - by Defendant - Direct/Ms. Eisenberg

1 Q How did it come about that you became an intern at the
2 NRA?

3 A I took part in a State University of New York
4 internship program in conjunction with Hofstra University on my
5 final semester at college.

6 Q Is the Institute of Legislative Action a part of the
7 NRA?

8 A Yes, it is.

9 Q Is it fair to refer to ILA as a division of the NRA?

10 A Yes, it is.

11 Q And what is the mission of ILA?

12 A We inform our members and give them a voice on
13 legislative, informational issues and in legal issues in the
14 courts.

15 Q As you became the chief of operations in 2019, did
16 there come a time that you undertook certain steps to insure
17 that the NRA complies with laws, regulations and internal
18 policies?

19 A Yes, I did.

20 Immediately after Jason Ouimet took over as executive
21 director of NRA/ILA, he tasked me with this role in the Fall and
22 Winter of 2019.

23 Q Jason Ouimet replaced Mr. Cox; is that fair?

24 A Yes, he did.

25 Q After Mr. Cox left?

KM

4429

Commerford - by Defendant - Direct/Ms. Eisenberg

1 A That's correct.

2 Q Did you do as Mr. Ouimet requested?

3 A Yes, I did.

4 Q Please describe the process.

5 A I did a complete review on all of our existing
6 contracts and vendors including whether we were in compliance
7 with existing NRA procedures, whether the vendors were
8 performing their duties as expected or whether they just needed
9 to continue from a business need.

10 Q With regard to those that you decided that you needed
11 to continue, what, if anything, else did you do?

12 A We processed each and every contract at the end of 2019
13 and make sure they were in compliance with our signature
14 process. Especially for contracts over \$100,000 requires quite
15 a few signatures.

16 We actually made sure that we had the maximum
17 signatures on each of these contracts.

18 Q And to the extent you decided to eliminate certain
19 vendors, did that help realize certain savings?

20 A It did. We were able to save our members approximately
21 a little more than \$4 million a year on an annualized basis.

22 Q While Mr. Cox was the head of ILA, is it fair to say
23 that he used ILA money to purchase sports tickets?

24 A Yes. NRA/ILA did have season sports tickets to the
25 Washington Nationals, Washington Wizards and Washington

KM

4430

Commerford - by Defendant - Direct/Ms. Eisenberg

1 Capitals.

2 Q Once Jason Ouimet replaced Jason Cox and you became
3 chief of operations, what happened to those tickets?

4 A At the end of those contracts, they were not renewed.

5 Q They were not renewed?

6 A They were not.

7 Q What, if anything, did you do to insure that the
8 employees of the NRA, specifically ILA in your instance are
9 aware of the mechanism for reporting concerns through the
10 whistleblower hotline?

11 A We provide something as simple as a QR code that's
12 placed in high traffic areas within our Institute for
13 Legislative Action office floor at NRA headquarters and our
14 federal affairs office.

15 Q Did you personally take part in insuring that that
16 information is readily available?

17 A Yes, I did. I literally was the one that taped the
18 signs up in the high traffic areas?

19 Q As the chief of operations at ILA, are you familiar
20 with ILA's reimbursement policies?

21 A I am.

22 Q What if someone submits a reimbursement request that is
23 late?

24 A If it's longer than 30 days which is stricter than
25 standard NRA policy, it's rejected.

KM

4431

Commerford - by Defendant - Direct/Ms. Eisenberg

1 Q What if it is timely but the employee fails to provide
2 information that justifies the business purpose of the request?

3 A Through our digitized system, there is an ability for
4 them to appeal, but it would be rejected.

5 Q After Mr. Cox left the NRA, has anyone at ILA used
6 private jets to travel for business?

7 A They have not.

8 Q How do you travel?

9 A Coach.

10 Q And what's your preferred hotel?

11 A Prefer Marriott chain hotels.

12 Q And from time to time, do you also review and revise
13 policies to insure compliance with laws and regulations?

14 A Yes, we do.

15 Q Can you give us an example of a recent policy update?

16 A Compliance is a huge factor at what we do at the
17 institute involving federal elections communication, compliance.
18 We've outsourced that program to a professional firm to make
19 sure we are 110 percent in compliance on everything we do.

20 We also make sure our staff in ILA attend the
21 compliance training seminars offered by NRA's Office of General
22 Counsel, and if they miss those, we make sure they have the
23 opportunity to do a makeup class.

24 Q Let's go back to your discussion about the mission of
25 ILA. I believe you said that it consists of legislative, legal

KM

4432

Commerford - by Defendant - Direct/Ms. Eisenberg

1 and fundraising activities. Did I get that right?

2 A And informational as well.

3 Q To the extent you engage in informational activities,
4 is that in support of the legal and legislative activities?

5 A Yes. We communicate to our members so they are better
6 aware and able to take part in the legislative and political
7 process to support our mission.

8 Q Please describe what you are referring to when you say
9 legislative.

10 A We provide representation and voice for our members at
11 the state and local level as well as on Capitol Hill.

12 Q Please describe what you mean when you refer to
13 political activities.

14 A We also provide a voice for our members and inform them
15 on issues related to endorsements for political candidates but
16 mainly to inform them on which lawmakers or candidates support
17 the reasons that they joined NRA which is their Second Amendment
18 rights.

19 Q Are you familiar with whether or not ILA has separate
20 bank accounts from the rest of the NRA?

21 A I am.

22 Q And what is the answer?

23 A We are financially segregated from the NRA with
24 separate accounts as required by our Bylaws.

25 Q Has that been the case since 2013 when you returned to

KM

4433

Commerford - by Defendant - Direct/Ms. Eisenberg

1 the NRA?

2 A Yes, it is.

3 Q And how are you confident that that's the case?

4 A I have personally been involved with fundraising issues
5 through our expense reimbursement policies. I directly see the
6 checks to see that they are a separate account.

7 Q Where does the money in ILA's bank account come from?

8 A There is a few main sources of revenue for the
9 institute. One is direct mail fundraising. Another is through
10 individual donors. Another is through estate gifts and wills
11 and also from the NRA itself.

12 Q Sometimes money goes out of ILA accounts to the rest of
13 the NRA; is that fair?

14 A That's correct.

15 Q And sometimes money comes from the NRA to ILA; right;

16 A That's also correct.

17 Q Setting that aside and focusing on the donors part.
18 When donors donate money to ILA, for what purpose do they donate
19 money?

20 A To support our main issues, legislative issues, legal
21 issues and helping us inform our members.

22 Q We have heard during this trial about certain programs
23 run out of the General Operations Department such as Eddie
24 Eagle, Refuse To Be A Victim.

25 Is ILA in any way involved with Eddie Eagle?

KM

4434

Commerford - by Defendant - Cross/Mr. Wang

1 A We are not.

2 Q Is ILA involved in any way with the Refuse To Be A
3 Victim program?

4 A It is not.

5 Q Hunters For The Hungry?

6 A We are not.

7 Q Is ILA involved in any of the programs run out of the
8 General Operations Department?

9 A We are not.

10 Q And what is your mission again -- focus of your mission
11 again?

12 A Legislative issues, legal issues and informing our
13 members, especially on the political arena.

14 MS. EISENBERG: Thank you very much, Mr.
15 Commerford. I'll pass the witness.

16 THE COURT: Any cross exam?

17 MR. WANG: Very briefly, your Honor.

18 THE COURT: Okay.

19 CROSS-EXAMINATION

20 BY MR. WANG:

21 Q Good afternoon, Mr. Commerford.

22 A Good afternoon.

23 Q My name is William Wang. I am an Assistant Attorney
24 General with the New York State Attorney General's Office.

25 Just a brief question. On your direct testimony with

KM

1 Ms. Eisenberg you talked about various activities focused on
2 compliance.

3 Do you remember that?

4 A That's correct.

5 Q All of those activities were performed after 2019;
6 correct?

7 A In the Fall and Winter of 2019 into 2020.

8 MR. WANG: Pass the witness.

9 THE COURT: Anything further?

10 MR. CORRELL: Nothing here, your Honor.

11 (Continued on the following page.)
12
13
14
15
16
17
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20
21
22
23
24
25

4436

Proceedings

1

2

THE COURT: Do you want to continue with your next -- actually, I'm sorry, sir. I forgot about that. You're free to step down.

4

5

THE WITNESS: Thank you, your Honor.

6

(Whereupon, at this time the witness was then excused.)

7

8

THE COURT: I was going to ask, although you actually were a little short of your time, which is good.

9

10

You have two witnesses on video?

11

MR. PETERS: Correct.

12

THE COURT: And two live witnesses. Right now everything still going according to time. So, I guess we can just keep going.

14

15

So, call your next witness by video.

16

MR. PETERS: The NRA calls Mr. Craig Spray.

17

THE COURT: Okay, so, we have a -- is it all videotape?

18

19

MR. PETERS: It is all videotape.

20

THE COURT: All right, so this one we're going to sit and watch.

21

22

(Whereupon, at this time the video was played.)

23

THE COURT: Okay, I'm going to suggest that maybe we switch -- first of all, to get out of the back-to-back video, do the two live witnesses; and if something happens,

24

25

BP

4437

C. Lapham - by Defendant - Direct/Ms. Eisenberg

1 either the jury needs a break and we need to delay, we can
2 always possibly move -- the Meadows is what, fifteen minutes
3 of video? I think we'll fit it in, but if the worst
4 happens, we can always play it in the morning, but I'm
5 hoping to avoid that.

6 So, Mr. Correll, who's your witness or who's the
7 next witness?

8 MS. EISENBERG: The NRA calls Mr. Lapham.

9 THE COURT: Okay, can we go get Mr. Lapham.

10 MS. EISENBERG: He's right outside. I already
11 confirmed it.

12 THE COURT: I appreciate you sticking with me
13 today. If anyone needs to --

14 JUROR: Stretch.

15 THE COURT: Stretching is good.

16 I figured a back-to-back video would be a lot.

17 C H R I S T O P H E R L A P H A M

18 called as a witness in behalf of the Defendant,
19 and after having been first duly sworn/affirmed by the
20 Clerk of the Court, took the witness stand and
21 testified as follows:

22 THE CLERK: State your name.

23 THE WITNESS: Christopher Lapham.

24 THE CLERK: Spell your last name.

25 THE WITNESS: L-A-P-H-A-M.

BP

4438

C. Lapham - by Defendant - Direct/Ms. Eisenberg

1

2

MS. EISENBERG: May I proceed, your Honor.

3

THE COURT: Yes, you may.

4

MS. EISENBERG: Thank you.

5

DIRECT-EXAMINATION

6

BY MS. EISENBERG:

7

Q Good afternoon, Mr. Lapham.

8

A Good afternoon.

9

Q What do you do at the NRA?

10

A I am the managing director of security.

11

MS. EISENBERG: Can the members of the jury hear
the witness? Perfect.

12

13

Q How long have you been the managing director of

14

security?

15

A Since May of 2023.

16

Q And previous to that, did you ever provide executive

17

security detail to Mr. LaPierre?

18

A Yes.

19

Q In what capacity was that?

20

A I was a contractor that provided executive protection

21

for the NRA executives of the NRA, in particular, Mr. LaPierre
since 2011.

22

23

Q So, that was between 2011 and 2023; right?

24

A Yes.

25

Q Who during the 2011 through 2023 time period was your

BP

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C. Lapham - by Defendant - Direct/Ms. Eisenberg

1 contact at the NRA?

2 A My contacts at the NRA were Gordon Russell, Linda
3 Bradford and Jim Staples.

4 Q Fair to say those gentlemen are your predecessors?

5 A Yes.

6 Q When you provided executive security protection for
7 Mr. LaPierre in the years between 2011 and 2023, how frequently
8 did you work for the NRA then?

9 A It would differ. So, there were years that I could
10 have done about 80 days a year, other days could have been about
11 50 days a year.

12 Q When you helped with the executive protection for
13 Mr. LaPierre during those years, was it important for you to
14 assess the threat that Mr. LaPierre faced in order to carry out
15 your job?

16 A Yes.

17 MS. STERN: Objection, leading.

18 THE COURT: Overruled.

19 Q Did you say yes?

20 A Yes.

21 Q What did you do in order to assess the threat that
22 Mr. LaPierre faced?

23 A To do my job well, I would have to be familiar with the
24 threats that would come in towards any employee of the NRA,
25 which would include Mr. LaPierre. I was made aware of those,

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C. Lapham - by Defendant - Direct/Ms. Eisenberg

1 those threats which were coming in via internet, social media
2 postings, telephone calls, voice mails, United States postal
3 mailings, and the like. And through those years and still today
4 I still keep up with the -- those threats and monitoring those
5 threats that come in.

6 Q Without getting into any graphic language, can you just
7 give us a sense of the intensity and the frequency of the
8 threats?

9 A They are pretty intense. We're not going to hide
10 anything. The NRA, you know, they're pretty polarizing. So
11 with that, you're going to get feedback from people that don't
12 agree with it. And in today's age and date of social media and
13 the like and, you know, people are pretty nasty. So, the
14 threats that come in are pretty intense and they are pretty
15 frequent.

16 Q Based on your assessment of that information, what did
17 you determine to be the level of threat faced by Mr. LaPierre
18 since you started providing executive protection for him?

19 MS. KANDEL: Objection, timeframe.

20 THE COURT: Have we established that timeframe?

21 MS. EISENBERG: Yes. 2011, your Honor.

22 THE COURT: Continue.

23 A Can you repeat that now?

24 Q I'd be happy to. Since 2011, did you form a view as to
25 the level or the degree of threat that Mr. LaPierre faced based

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C. Lapham - by Defendant - Direct/Ms. Eisenberg

1 on your review of the various types of information that you just
2 described?

3 A Absolutely, yes.

4 Q What was your conclusion?

5 A With an objective assessment on that, absolutely the
6 threats were pretty serious; and I feel especially in my role
7 today it is my responsibility -- not only my responsibility, but
8 the responsibility of the NRA to keep Mr. LaPierre and his
9 family safe.

10 Q You would agree that not every executive vice president
11 of every not-for-profit corporation needs to travel by private
12 charter; right?

13 A Yes.

14 MS. KANDEL: Objection.

15 THE COURT: Overruled.

16 MS. EISENBERG: Thank you, your Honor.

17 Q Is there anything about the security threat faced by
18 Mr. LaPierre that makes it highly advisable or necessary for him
19 to fly private?

20 A Yes.

21 Q Please explain.

22 A On a public flight, even if I put Mr. LaPierre in first
23 class, front seat surrounding him by security, everybody is
24 going to be sitting facing forward. You're not going to see any
25 threat that comes up to you.

BP

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C. Lapham - by Defendant - Direct/Ms. Eisenberg

1 Me, personally, if that was me doing executive
2 protection, if they said, hey, this is what you're going to do,
3 I wouldn't do it. I don't want to get hurt. This is a very
4 polarizing company. It's a very polarizing person.

5 Nobody saw the, you know, from the 911 flights, the
6 attacks that happened there and people got killed on those
7 flights. It would be disastrous. I would never do that.

8 Q Throughout the time that you provided security detail
9 to Mr. LaPierre, did you believe that flying private was a
10 necessary way to mitigate the risk that he faced?

11 MS. KANDEL: Objection, your Honor, foundation.

12 THE COURT: I'm allowing leading more today just
13 because we're trying to get through a few things, so
14 overruled.

15 Q Was your answer yes?

16 A Yes.

17 Q Have you done any executive protection work for any
18 other not-for-profit corporations?

19 A Yes.

20 Q And are you familiar with any other not-for-profit
21 corporations that permitted their executives to fly private?

22 A Yes.

23 MS. EISENBERG: Thank you very much, Mr. Lapham.

24 No further questions.

25 I'll pass the witness.

BP

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C. Lapham - by Defendant - Cross/Ms. Kandel

1 MR. CORRELL: No questions, your Honor.

2 THE COURT: Anything further? Any cross?

3 MS. KANDEL: Yes, your Honor.

4 THE COURT: Ms. Kandel, you're familiar with the
5 time situation?

6 MS. KANDEL: Yes, your Honor.

7 CROSS-EXAMINATION

8 BY MS. KANDEL:

9 Q Good afternoon, Mr. Lapham.

10 A Good afternoon.

11 Q My name is Erin Kandel, and I represent the People of
12 the State of New York in this action.

13 A Great to meet you.

14 Q You just testified that you were hired by the NRA in
15 May of 2023; is that right?

16 A Correct.

17 Q And you were hired as the managing director of
18 security; right?

19 A Yes.

20 Q And prior to that time, you were not an NRA employee;
21 is that correct?

22 A Correct.

23 Q You were a contractor as you testified, right?

24 A Yes.

25 Q And you testified that you worked about 80 days a year

BP

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C. Lapham - by Defendant - Cross/Ms. Kandel

1 at maximum before you were hired as the managing director?

2 MS. EISENBERG: Objection, mischaracterizes his
3 testimony.

4 THE COURT: Overruled.

5 A Can you repeat that?

6 Q And you testified that you worked about at most 80 days
7 a year when you were working as a contractor, is that right?

8 A Correct, give or take.

9 Q And while you worked as a contractor, you didn't have
10 any decision-making authority with respect to NRA's security
11 policies; is that right?

12 A Correct.

13 Q And --

14 MS. KANDEL: Actually, no further questions. Thank
15 you.

16 THE COURT: Thank you.

17 Anything else?

18 All right, sir, thank you very much. You can step
19 down.

20 (Whereupon, at this time the witness was then
21 excused.)

22 THE COURT: Mr. Correll, do you have your next
23 witness?

24 MR. CORRELL: Yes, I do, your Honor. Your Honor, I
25 call Mark Ramin.

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Proceedings

1 THE COURT: Can we get Mr. Rabin, court officer,
2 please.

3 MR. CONLEY: I wanted to briefly raise one issue
4 with respect to Mr. Rabin.

5 Mr. Correll disclosed a supplemental report for
6 Mr. Rabin on his exhibit list for trial, which we received
7 a hardcopy of a few days before trial; and that supplemental
8 report contains a couple opinions that is analyzing and
9 summarizing Form 990 data. And both because of the timing
10 and also because with respect to one of the opinions, it's
11 of similar character to what was precluded with respect to
12 Dr. Harris.

13 We'd ask that Mr. Rabin not be permitted to
14 testify on those issues.

15 THE COURT: Well, two things. First of all, the
16 report, itself, I assume, is not being offered into
17 evidence.

18 MR. CORRELL: That's correct, your Honor.

19 THE COURT: That's generally not admissible.

20 I don't really know what you're talking about, so
21 I'm going to have to just assess it when I see it; but if
22 it's sort of a statistical analysis based on how many people
23 in the world report things, I certainly found that to be
24 not -- I mean, I kept out certain expert evidence. If this
25 is the same thing, then I would obviously keep it out. But

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4446

M. Ramin - by Defendant - Direct/Mr. Correll

1 if it's different, then I'll listen. We'll have to decide
2 as we go.

3 M A R K R A M B I N

4 called as a witness in behalf of the Defendant,
5 and after having been first duly sworn/affirmed by the
6 Clerk of the Court, took the witness stand and testified as
7 follows:

8 THE CLERK: State your name.

9 THE WITNESS: Mark Ramin, R-A-M-B-I-N.

10 THE COURT: Thank you, sir. Good afternoon. Step
11 close to the mike because it is a little soft.

12 THE WITNESS: Okay, how's that?

13 DIRECT-EXAMINATION

14 Q Mr. Ramin, would you please introduce yourself to the
15 jury.

16 A Sure. My name is Mark Ramin. I'm a CPA. I'm from
17 Texas. I have kind of a specialized practice in financial
18 investigations, litigation matters, damages assessments.

19 Q And what are you an expert in?

20 A I would say you know, obviously, business, accounting
21 and what I said in terms of my specialty in the litigation
22 matters.

23 Q What is your background?

24 A I -- I'm a graduate of the University of Texas. I got
25 a Bachelor's degree in accounting.

BP

4447

M. Ramin - by Defendant - Direct/Mr. Correll

1 Q Did you study business administration, as well?

2 A That's correct.

3 Q And what work experience have you had?

4 A So, after I got out of college, I sat for the CPA exam,
5 got my license and then I worked for large public accounting
6 firms in the auditing practice. And then over time, I moved
7 more into doing this type of financial investigation, litigation
8 matters.

9 Q And were you engaged to conduct a review in this case
10 and to offer opinions?

11 A Yes.

12 Q And were you -- could you tell us what work you did in
13 order to form a basis for those opinions?

14 A Sure. I looked at a lot of the information that was in
15 production in this matter and also read testimony from
16 depositions and, and then a lot of the -- a lot of my focus was
17 on financial information, the 990s, the audited financial
18 statements, the management letters issued by the independent
19 auditors.

20 Q And have you been following this trial?

21 A Yes.

22 Q Have you read the transcript of this trial to date?

23 A Yes, I've -- and then I've been here the last two days;
24 but, yeah, I've followed the trial pretty closely.

25 Q And what opinions are you prepared to offer if the

BP

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M. Rambin - by Defendant - Direct/Mr. Correll

1 judge qualifies you as an expert?

2 THE COURT: Well, just the topics at this point.

3 Q What topics?

4 A The topics would be business organizations, the role of
5 a CEO in that. And then, also, about economic damages sought
6 against Mr. LaPierre.

7 Q How many business organizations have you worked with?

8 A Hundreds.

9 Q Have you had an opportunity to observe the CEOs in
10 those corporations interact with other officers or employees?

11 A Yes.

12 Q Have you been in a position to observe them interacting
13 with accountants?

14 A Yes.

15 Q Outside auditors?

16 A Yes, other experts. Outside, you know, things like
17 attorneys, compensation specialists.

18 Q And so the -- is one of the topics that you would offer
19 an opinion on the reasonableness of a CEO relying on
20 information, statements, opinions, reports, financial statements
21 prepared or presented by others?

22 A Yes.

23 Q And is -- are the other topic that you would opine on
24 is whether based on what you've seen in this case there's a
25 reasonable basis for calculation of damages?

BP

4449

M. Rambin - by Defendant - Direct/Mr. Correll

1 A That's correct.

2 MR. CORRELL: Your Honor, I move his admission --
3 his qualifications as an expert.

4 THE COURT: One question. On the reasonableness, I
5 think I permitted the other experts to talk about best
6 practices and not give an opinion on was the driver
7 negligent going through the red light, kind of thing.

8 MR. CORRELL: Fair enough. It would be on custom
9 and practice and based on his review, the conduct he's seen
10 is consistent with custom and practice.

11 THE COURT: Okay, any objection?

12 MR. CONLEY: Your Honor, we do not object to
13 Mr. Rambin's qualification as an accountant. We do object
14 to qualifications speaking on industry standards in a
15 non-sector.

16 THE COURT: I'll permit it and leave it for cross,
17 brief as though it may be.

18 You can proceed.

19 Q Mr. Rambin, would you give us a summary of your
20 opinions, please?

21 A My, my -- on the first point it's my opinion that it is
22 a standard practice. That's why organizations have -- have an
23 organization chart and have various areas of responsibility
24 because the CEO can't do everything. It is just physically
25 impossible.

BP

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M. Rambin - by Defendant - Direct/Mr. Correll

1 And as we've heard from Mr. LaPierre and a lot of
2 people, he didn't spend a lot of time in the building. He was
3 out on the road doing public affairs and being the face of that
4 organization. So, that's -- that's especially, I think,
5 important in this situation.

6 Q And what evidence did you see in the record that led
7 you to that conclusion?

8 A Just seeing the overall structure of the organization,
9 the fact that you have a CFO, General Counsel. You've got a lot
10 of different heads of different divisions of the organization;
11 and then seeing that they're using outside auditors that they --
12 you know, outside counsel, outside professionals on
13 compensation.

14 You see all those things. So there's a reason that,
15 you know, one person can't do everything.

16 Q And is in your experience have you observed executives
17 hire people that they believe are reliable and then trust them
18 to do their jobs?

19 A Sure.

20 Q And is it to take a baseball analogy, is it like you
21 hire first baseman to play first base; you hire second baseman
22 to play second base and so on?

23 A Yeah, that's a good analogy.

24 Q And you don't necessarily want to have a pitcher
25 playing in the outfield, right, or vice versa?

BP

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M. Ramin - by Defendant - Direct/Mr. Correll

1 A Unique player.

2 Q Let's go to the question of damages. Did you take a
3 look at the record to inform your opinion as to whether there's
4 a basis for calculation of damages in this case with respect to
5 Mr. LaPierre?

6 A Yes.

7 Q And what did you do?

8 A Well, I looked at all the information that's been made
9 available to me, and I see nothing that has specifically
10 identified damages that resulted from any act or inaction of
11 Mr. LaPierre.

12 Q And did you take into account the fact that
13 Mr. LaPierre had identified certain things that had been
14 accounted for in one way that where issues arose as to whether
15 they should be accounted for a different way? Did you look at
16 any of that?

17 A Certainly. I assume, you're referring to the amounts
18 that were repaid?

19 Q Yes.

20 A And, yeah, I've looked through that. I heard his
21 testimony about it and -- excuse me -- Ms. Rowling's testimony
22 was important to me. She went through it with fine tooth comb.
23 She probably shouldn't didn't use that term, but she did a memo
24 about it and testified about it. So, I felt pretty confident
25 that, that had been well addressed.

BP

4452

M. Ramin - by Defendant - Direct/Mr. Correll

1 Q And in your opinion, based on your background, did you
2 think that was an appropriate process that Mr. LaPierre followed
3 to, to identify things that he wanted to pay back and to make
4 sure those were paid back with interest calculated
5 appropriately?

6 A Sure. You know the fact that he went back, he had an
7 outside accountant do it. I think that that's real helpful; and
8 then the fact that he had the CFO look at it closely as well and
9 to the extent that she had other people assist as well.

10 Q Is there anything else you think you could tell the
11 jury to help understand the evidence in this case and reach a
12 just result in this case?

13 MR. CONLEY: Objection.

14 THE COURT: Maybe we can target it a bit.

15 Q Anything else that you can tell based on your
16 experience that you think might be helpful to the jury?

17 MR. FARBER: Objection. You just can't ask a
18 witness to tell the jury what it thinks it is going to be
19 helpful.

20 THE COURT: Yeah, I mean, is there a way to make it
21 a little more targeted than that?

22 MR. CORRELL: Yes, I can, your Honor.

23 Q Is there anything else you would like to say to the
24 jury?

25 MR. FARBER: Objection.

BP

4453

M. Ramin - by Defendant - Cross/Mr. Conley

1 MR. CONLEY: Objection.

2 THE COURT: It's probably the same thing. My guess
3 is this isn't the first time you've talked to him, so you
4 may know what's coming next. Maybe you can target it.

5 MR. CORRELL: I honestly don't, your Honor. I
6 think we can leave it there.

7 Thank you very much, Mr. Ramin. Thank you for
8 being with us.

9 THE COURT: Okay, any cross examination from the
10 State?

11 MR. CONLEY: Briefly, your Honor.

12 CROSS-EXAMINATION

13 BY MR. CONLEY:

14 Q Good afternoon, Mr. Ramin.

15 THE COURT: Is that on?

16 MR. CONLEY: I think it is now.

17 THE COURT: Much better.

18 Q Mr. Ramin, you're being paid to testify in this case,
19 correct?

20 A My firm is getting compensated for my time.

21 Q And what is your hourly rate?

22 A 525.

23 Q And how much has your firm been paid for this
24 engagement?

25 A Probably a little over a hundred thousand.

BP

4454

M. Ramin - by Defendant - Cross/Mr. Conley

1 Q When you were deposed in this action, you testified
2 that the money that Mr. LaPierre had repaid to the NRA was a
3 receivable; right?

4 A Yeah, ultimately, that's right.

5 Q And as a receivable, you believe that it didn't cause
6 harm to the NRA; correct?

7 A That's correct.

8 Q And --

9 A Let me -- with the fact that there was interest paid,
10 as well.

11 Q Right, but you believe that the NRA -- the money that
12 Mr. LaPierre repaid the NRA was just a receivable even before he
13 paid the money back; correct?

14 A Well, there was -- at the time I was testifying about
15 it, there was a demonstrated -- that was a demonstrated pattern.

16 Q This is a yes or no, Mr. Ramin. You believe that the
17 money that Mr. LaPierre repaid the NRA was just a receivable
18 even before he paid the money back to the NRA; correct?

19 A That's the way it worked out.

20 Q And you believed that it was a receivable regardless
21 whether Mr. LaPierre intended to pay the money back at the time
22 that he spent it; correct?

23 A I'm more -- his later intent was more important to me.

24 Q If Mr. LaPierre didn't intend to pay the money back,
25 that would have caused damage to the NRA?

BP

4455

M. Ramin - by Defendant - Cross/Mr. Conley

1 A Potentially.

2 Q And you'd agree that when an executive at a
3 not-for-profit diverts money away from the not-for-profit's
4 mission, that harms the nonprofit; right?

5 A It depends on the materiality. I don't think the
6 numbers we're talking about here are the type that had an
7 overall impact on the mission of the NRA.

8 MR. CONLEY: No further questions.

9 THE COURT: Okay, anything else?

10 MR. CORRELL: No, your Honor.

11 MR. FARBER: No, your Honor.

12 THE COURT: Okay, thank you, sir. You're free to
13 step down.

14 (Whereupon, at this time the witness was then
15 excused.)

16 THE COURT: I think I should have used this timer a
17 lot sooner. No, everybody is doing a great job today.
18 Thank you.

19 All right, the next witness?

20 MR. PETERS: The NRA calls Carolyn Meadows by video
21 deposition.

22 THE COURT: Video or audio or combination?

23 MR. PETERS: It will be a video, video and audio.

24 THE COURT: Let's finish up.

25 (Whereupon, the video was played.)

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THE COURT: Can you pause that for one second?
This is fifteen minutes, is that right? Fourteen minutes,
okay.

(Whereupon, the video continued to play)

(Continued on next page)

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Proceedings

1 THE COURT: I believe that's the final witness.

2 MS. EISENBERG: Your Honor there is certain Board
3 books that we move to admit in evidence. And in the event
4 anyone objects, we'd like to get them in through Mr. Frazer
5 as previously noted.

6 THE COURT: Yeah. I have seen some email traffic
7 saying that the Attorney General objects on the grounds of
8 authenticity and foundation.

9 MS. EISENBERG: Right. So we would call Mr. Frazer
10 just to get that in, if that's the objection.

11 MS. STERN: Your Honor, they have already called
12 Mr. Frazer. All of the parties have already called him.

13 MR. PETERS: No. Mr. Frazer called Mr. Frazer.

14 MS. STERN: No. There was direct examination of
15 Mr. Frazer and a redirect by Ms. Eisenberg this afternoon.

16 THE COURT: I'm not really going to stand on
17 ceremony about something like this. The documents you want
18 to get in are all, Ms. Eisenberg, Board materials?

19 MS. EISENBERG: Yes, they are all Board books.

20 THE COURT: And the sole purpose of calling Mr.
21 Frazer, if you can, is to identify them as authentic and
22 business records?

23 MS. EISENBERG: That is correct.

24 MR. CORRELL: Your Honor, I would call him if
25 necessary.

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Proceedings

1 THE COURT: Look, I'm -- I have discretion to let
2 you call him again. I assume this is really necessary, but
3 -- and it will be very short or you know -- I mean, just --
4 are these -- these are long documents.

5 Are you going to just look at the ones that are in
6 green on your email that the other defendants don't object
7 to or are you going to do the entire list?

8 MS. EISENBERG: Your Honor, I was going to do
9 certain ones because I feel like I have to do them one by
10 one to get in at least some before we run out of time.

11 THE COURT: Well, the email you sent me, there were
12 five that you said that the defendants had no objections to.
13 Are those the five you wanted to get in?

14 MS. EISENBERG: So there are five that defendants
15 don't object to, but the NYAG does, and then the overall
16 list contains around 20 because the Board meets three times
17 a year, so we have three sets of Board books for every year,
18 and there are certain ones --

19 THE COURT: Your plan is to submit the entirety of
20 all Board books for the whole period?

21 MS. EISENBERG: My plan is to move to have -- admit
22 the ones that I have time to authenticate with Mr. Frazer or
23 I can just show him the first page of each one and have him
24 ask him whether he recognizes it to be a Board book for the
25 particular --

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Proceedings

1 THE COURT: And what -- what's -- by listing these
2 in green, that means that one or more of the others object
3 to the rest of them?

4 MS. EISENBERG: Mr. Farber wasn't comfortable
5 consenting to them coming in because he wanted additional
6 time to review them.

7 MR. FARBER: Well, Judge, I -- during court today,
8 I reviewed the ones that the NRA gave me, and I gave back
9 them and told them I had no objections the ones I reviewed.
10 I think that's more than five. I didn't keep a record of
11 which ones I reviewed.

12 I have no objection to any of the ones that I
13 reviewed which is what I told them, but I do object to any
14 ones that I haven't had a chance to review.

15 THE COURT: The only issue I have is, look, the
16 purpose as I understand is at least in part to show the
17 process.

18 MS. EISENBERG: Correct, your Honor.

19 THE COURT: And I'm wondering whether there is a
20 way to do that without, you know, essentially sight unseen
21 just tons of documents just moving into evidence which then,
22 you know, is part of the trial record, and there is no real
23 limitation on it, and none of us -- at least, I don't, and
24 several of the parties don't know what's actually in them
25 substantively. So if all we are doing is -- it's designed

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Proceedings

1 in part to show the jury that the Board members received
2 lots of information as opposed to going through each one
3 saying, well, this document says this, this document says
4 that.

5 MS. EISENBERG: Yes, your Honor. I think it's a
6 little bit of each.

7 There are specific ones that are approvals or
8 and/or ratifications of related-party transactions with the
9 Audit Committee reporting that to the Board.

10 There is also the rescision of Oliver North's
11 contract with Ackerman. There is also a report of the
12 Security Operations Committee. So there are certain
13 features of some of these Board books.

14 THE COURT: But none of these were used with
15 witnesses when those topics came up; right?

16 MS. EISENBERG: That's correct, your Honor.

17 I mean, they may have been used for iterations.

18 THE COURT: Look, I mean we can discuss it a little
19 bit more, but I'm not comfortable with them coming in for
20 substantive purposes without some sort of a vetting as to
21 what's in them because I have no idea whether there could be
22 hearsay embedded within some of them. So that's why I was
23 really pressing for stipulation because then I have some
24 objective indication that there is nothing in there that's
25 objectionable on some other grounds. So I don't think that

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Proceedings

1 just having a foundational, a broad level would be enough
2 for me to admit them.

3 MS. EISENBERG: Your Honor, if I may. Would it be
4 possible to have -- agree that they are not coming for the
5 truth of the matter asserted, only to evidence the legal act
6 of approval or ratification or only to evidence that a
7 report was made?

8 THE COURT: Well, I mean, the ones that you're
9 using to show validation and approval, that is a substantive
10 use. That's -- and you know, we have seen a lot of Board
11 minutes and Audit Committee minutes on these approvals, so I
12 think that whatever you intended to use with witnesses
13 you've used, and I don't know that -- I mean, it's not
14 intended as a document dump, but I don't have the ability to
15 assess all of that as one lump.

16 MS. EISENBERG: What about just four documents?
17 May I try to ask Mr. Frazer about just four of those?

18 MS. STERN: Your Honor, can I be heard before we
19 get to a witness in the last few minutes which we believe
20 that they are already out of time if they want their three
21 hours for their closing, but this is highly prejudicial.

22 They have had a long time to put in documents that
23 show what the Board did or didn't do. There have been
24 extensive reports from the Audit Committee. They are in the
25 record. They had an opportunity to do that. And to load

KM

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Proceedings

1 the record -- these are hundreds of pages. There is all
2 sorts of --

3 THE COURT: I agree. I agree. I just -- I think
4 if this was sort of an easy thing, I would be willing or if
5 it had been documents that came up and that just we forgot
6 to move them in, but they were shown or I would -- I would
7 as a courtesy allow them to come in in sort of a shortcut
8 way, but you know, it's -- there's honestly been plenty of
9 time to get in anything that's important, and I don't think
10 anything of utility is going to be given to the jury to just
11 say, well, all right. I have now admitted this hundreds of
12 pages here without any context or explanation.

13 I -- you know, I don't see how making that part of
14 the trial record does anybody any good. So I think, you
15 know, unfortunately there has to be an end, and the end of
16 introduction of evidence I think has come. So in the
17 absence of -- you know, frankly, it seems like a lot of
18 people are objecting to this procedure. I'm not comfortable
19 doing it just based on foundation and authenticity, so I'm
20 going to deny the request.

21 All right. With that, anything further from the
22 defendants?

23 MR. WERBNER: No, not -- your Honor, not from Mr.
24 Phillips.

25 THE COURT: Meaning?

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1 MR. FARBER: Mr. Phillips rests.

2 MR. PETERS: The NRA rests.

3 MR. CORRELL: Mr. LaPierre rests.

4 MR. FLEMING: And finally, Mr. Frazer rests.

5 THE COURT: Okay. Well, that was very restful.

6 So we are going to try to maximize our time
7 tomorrow as best we can. We are going to do the closing
8 arguments as I mentioned. We have leeway if we need it, and
9 I suspect we might go till 5:30.

10 I would like to even potentially get started at a
11 tiny little bit earlier than we usually do. I don't know --
12 is it possible to get here -- I'm not sure when they let you
13 in the building so that we could start 9:15, 9:20 as opposed
14 to 9:30.

15 When do you usually get to the jury room?

16 VOICES FROM THE JURY BOX: Nine.

17 THE COURT: All right. So we will -- we will try
18 to get started as close to 9:15 as we can.

19 Does that work for everybody?

20 MR. FARBER: I think 9:30 is a safer bet just on
21 experience getting into the building for everybody, your
22 Honor.

23 MR. PETERS: Line can be very long.

24 THE COURT: I'm telling you what I'm thinking.

25 Usually we say we start at 9:30, and I usually

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1 don't get you out here until 9:45. So if I say 9:15, I'm
2 hoping to start at 9:30. I'm revealing State secrets here.
3 So we are going to shoot for 9:15, and I'm just trying to
4 accelerate everyone's time clock so that we can start as
5 close to somewhere between 9:15 and 9:30 as possible.

6 Okay. Look forward to seeing you all bright and
7 early.

8 Have a good night.

9 THE COURT OFFICER: All rise. Jury exiting.

10 (Whereupon, at this time the jury exits
11 the courtroom.)

12 THE COURT: Okay. Can we just -- okay. Have a
13 seat.

14 So please, get me your comments as quickly as you
15 can on the verdict sheets and the instructions.

16 One thing I have been mulling. I talked to my law
17 clerks, and I have heard there was at least one strenuous
18 view in favor of this, and I think there is some sense to
19 it. The order of the claims that I listed in the
20 instructions and then followed in the verdict sheet didn't
21 really have any magic to it. It was just the way it came
22 out. I can see the logic which I think somebody suggested
23 to -- you know, claim one is the EPTL claim, so I'm fine
24 reordering the instructions and the jury verdict form so
25 that it follows the order that the complaint follows

KM

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1 starting with the EPTL. I think N-PCL is next.

2 MR. CORRELL: It is. The second claim is the
3 second cause of action 717, 720 against Wayne LaPierre.

4 THE COURT: And then the third would be the
5 Executive Law; right?

6 MR. CORRELL: That's correct, your Honor.

7 THE COURT: All right. I don't see any --

8 MS. STERN: I don't remember the order exactly, but
9 715 claims I think are in there and then Executive Law
10 claims.

11 THE COURT: Yeah. I'll -- but anyway, EPTL first.
12 N-PCL second. Then Executive Law third. I'm fine with
13 that.

14 I have seen that the government has taken a few of
15 the related-party transactions off the list. You know, my
16 inclination at this point now is the one that I had been
17 looking at was the MMP one, and while I think the argument
18 is strained and the burden obviously is on the State to
19 prove that there was some sort of connection between
20 benefits given to individuals and the transaction itself,
21 I -- I don't think I can say that it's irrational for
22 someone to conclude that given the timing of some of the
23 things, what happened, and the magnitude, you know so --

24 MR. CORRELL: May I be heard on that? I think
25 that's a mistrial, your Honor. The -- the claim was not

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1 asserted against Mr. LaPierre. It was slipped in on the
2 last day of trial that he was deprived of notice.

3 THE COURT: I'm sorry. You know what, I was
4 thinking on the merits of that.

5 Has the State responded in any way as to why I
6 should permit it if it's not in the complaint?

7 I was focusing on the merits.

8 MS. STERN: We have put in a letter this morning on
9 that.

10 THE COURT: All right. Well, I will look at that
11 issue again because that did -- I'm sorry for jumping the
12 gun on that. The -- I think that is an issue I want to take
13 a look at because that does go more to notice than to the
14 merits.

15 And again, I think that the -- it's a somewhat
16 tenuous connection, but I -- you're right, Mr. Correll. I
17 was -- so many issues are coming at me at so many different
18 ways that I forgot the number of different arguments you had
19 on that one.

20 MR. CORRELL: Thank you.

21 THE COURT: I'll take another look at that, and we
22 will have time -- we don't have time to affect the closing
23 argument, I don't think. I'll try to give you an answer
24 before they start.

25 MR. FARBER: Judge, one thing that we did discuss

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1 before, but just as a reminder, we raised with the Court and
2 I believe your Honor was going to inform the jury before
3 closing argument about the counts that had been dismissed or
4 that were no longer part of the case.

5 THE COURT: That's on my list.

6 MR. FARBER: Thank you, your Honor.

7 MR. PETERS: And we also have put in our letter
8 that we don't believe that there's been anything close to
9 evidence showing that Millie Hallow was a key person within
10 the meaning of the statute. So you know, with all issues
11 back on the table, we hope -- we don't think there is any
12 basis for the kind of MMP ownership theory or financial
13 interest theory or Ms. Hallow.

14 MS. STERN: That's also addressed in our letter
15 this morning, and we withdrew it. Just to be clear though,
16 we withdrew the Hallow from the list because of the Statute
17 of Limitations issue. So it's in the letter that we sent
18 this morning.

19 MR. PETERS: Oh, okay. Thank you.

20 THE COURT: Makes me feel better is somebody else
21 is missing these letters.

22 MS. STERN: I'm going to raise an issue that I
23 think maybe the other side won't object to is that we would
24 like to propose to bring in coffee for the jurors tomorrow
25 and lunch on Friday.

KM

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1 THE COURT: I actually don't know whether there is
2 any policy regarding bringing sort of more food products
3 that are not water to the jurors. I'll find out.

4 I mean, I think it's nice, but I -- I just don't
5 know the answer to that.

6 MR. PETERS: Will they know the origin of the gift
7 they are receiving?

8 MR. CORRELL: On a mere serious note, the
9 allegation that hair and makeup is somehow a related-party
10 transaction was not in the complaint here, so my same
11 objection holds to that.

12 THE COURT: Right. Well, I'll read the letters and
13 let you know. I mean, it's not ideal for us to be working
14 on the verdict form during the closing argument, but it's
15 not unheard of. I don't think any of these issues
16 fundamentally affect the instructions because the
17 instructions are not going to list the related-party
18 transactions.

19 MR. CORRELL: There was one final issue that came
20 up in the conference which was my request that we stick as
21 close to -- closely as possible to the text of the statute
22 and rather than paraphrasing and transposing terms.

23 I know that instead of -- it may seem
24 insignificant, but instead of duty of care and good faith,
25 it should be --

KM

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1 THE COURT: The report that I got was that you
2 preferred the language before I monkeyed around with it this
3 morning. So that's --

4 MR. CORRELL: I'm not sure what I was looking at
5 because things are flying at me pretty fast too.

6 THE COURT: Yeah. I was -- actually, the only
7 reason I made the change this morning is because by
8 referring to whatever the duty is, I wanted to make sure the
9 language was broad enough to encompass the business judgment
10 rule part of the statute as well which is why I just said
11 violating the statute was really the overarching message,
12 but it appeared to get bad reviews; although, not to my face
13 which I appreciate.

14 I'll look -- I'll talk to the team upstairs who I
15 appreciate. And look, not that I -- you know, we may have
16 to have another little conclave over lunch where we hammer
17 out the last pieces of it, and that one I will go to, and I
18 hope not because I want to just be able to have everybody
19 focus on the closing.

20 MR. FLEMING: Your Honor, just if I may be heard, I
21 believe I'm going first in the morning. And so the issue
22 that I raised with your law clerks about the Executive Law
23 and the removal of the portion of the statute that says for
24 removal of a person for violation of that law, they have to
25 be responsible for the statement. And then also --

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1 THE COURT: The point I wanted to make to you and I
2 think I made this before is I haven't found any law anywhere
3 in the statute or cases that would give me anything to hang
4 on to to graft a -- some sort of an intent element to that
5 claim, and I'm happy to see any and review any cases you
6 have, but right now, it's just a -- if your responsible for
7 the statement and the statement's inaccurate, that's all you
8 need.

9 MR. FLEMING: Well, I was -- I understand from your
10 clerks that your Honor considered my request for scienter
11 element, and that's fine.

12 I was talking about a portion of what was in your
13 original charge which quoted from the statute which says
14 that a person to be removed from office needs to be
15 responsible for the statement, and that's no longer in your
16 charge.

17 THE COURT: You mean, the removal part? The removal
18 statute or the Executive Law?

19 MR. FLEMING: Well, it's the Executive Law, and the
20 penalty is, and I'm paraphrasing here, but that the Attorney
21 General can sue to seek removal of a person of an officer,
22 director, person responsible for the statement for the false
23 statement.

24 THE COURT: This is in the Executive Law?

25 MR. FLEMING: It's in the statute.

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1 THE COURT: Which statute?

2 MR. FLEMING: Section 175 of the Executive Law.

3 THE COURT: I thought they were only seeking
4 removal under the section of the N-PCL.

5 MR. FLEMING: No. No, they are seeking banning Mr.
6 Frazer.

7 THE COURT: If it's in the statute, I'll take a
8 look at that with my team. I need to let the court staff
9 go. I'll see you all tomorrow.

10 (Whereupon at this time the trial was continued
11 until February 15, 2024.)

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART 3

-----X
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against-

INDEX NO.
451625/20

THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
and JOSHUA POWELL,

Defendants.

JURY TRIAL
60 Centre Street
New York, New York
February 15, 2024

BEFORE: HONORABLE JOEL M. COHEN,
Justice, and a jury

APPEARANCES:

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1 THE COURT: All right. Good morning, everyone. I
2 know we have a lot to accomplish today, so I have a few
3 decisions to give you resolving things that we have been
4 battling back and forth both on the record and through
5 subsequent letters.

6 We -- before I get to that, I have all your
7 comments on the jury instructions and the verdict form.
8 Last night and early this morning, I have input all the ones
9 that I'm accepting, making changes. My team is upstairs
10 getting those all ready to circulate. I'll highlight a
11 couple of things though substantively now.

12 So first of all, related-party transactions. I
13 have read with great interest the letters and the statutes
14 and just as an aside, right now what I am giving you are
15 decisions. I'm not asking for argument. I've gotten the
16 argument. I promise you I have read everything you've
17 written, and no, I didn't forget that really great footnote
18 that had a reference to some case from 1860.

19 But having reviewed all of that, my first
20 conclusion is that the MMP vendor arrangement did not morph
21 into a related-party transaction simply because the owners
22 gave subsequent gifts or benefits. I don't think -- well
23 anyway, the conduct might give rise to other violations of
24 the N-PCL in connection with the relationship specifically
25 under the breach of duty claims but not under the specific

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1 terms of the related-party transaction provisions of the
2 statute.

3 The question here boils down to whether a
4 reasonable jury could conclude that Mr. LaPierre had a
5 financial interest in the agreement or broader arrangements
6 between the NRA and the MMP entities.

7 First observation is certainly not in the
8 traditional sense of a direct financial stake which is the
9 normal situation. The question here is whether it can be
10 construed as indirect financial stake sufficient to trigger
11 the specific provisions of the statute as opposed to simply
12 the over-arching provisions relating to the duty of officers
13 or even the conflict-of-interest rules.

14 In thinking through it, I have tried to imagine
15 where the line would be crossed if things like gifts or
16 benefits provided by the vendor to the company to an
17 employee rendered a vendor contract a related-party
18 transaction. So vendors do lots of nice things for clients.
19 You know, is a really nice dinner enough. Two? Three?
20 Ten? I don't know when you would find that at some point
21 the relationship is sufficiently generous that you cross
22 over from a transaction that might involve breach of duties
23 somewhere along the line to an actual related-party
24 transaction triggering all sorts of corporate requirements
25 of Board approval and the like. I think it is quite a

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1 slippery slope the way the Government is arguing it here.

2 You know, the rest of the related-party
3 transactions are, you know, much more straightforward by
4 contrast.

5 To give due respect to the statutory language, I
6 think it has to be more than what is asserted here with
7 respect to MMP so that the company and the individual has
8 some objective basis to determine whether Board approval
9 must be sought for the vendor agreement itself.

10 The Trump case which the Attorney General makes
11 quite a lot of is to me quite different. There, involved a
12 foundation question which made a specific bequest chosen by
13 the campaign and for which the campaign claimed credit. And
14 again the Trump case is to me a poor analogy generally
15 because the Foundation really there is essentially viewed as
16 a personal asset of the individual. It's much more akin to
17 an alterego than a vendor/client relationship. There is no
18 suggestion of that kind of a relationship between Mr.
19 LaPierre and the MMP people. They are friends. They
20 obviously -- there is all sorts of, you know, allegedly
21 lavish benefits that came along with it, but I just do not
22 see how it squares with the statutory language where you
23 look for a financial interest in the vendor arrangement.

24 And separately, even if I thought this would be a
25 related-party transaction, I would not exercise my

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1 discretion to permit amendment at this late stage to add
2 this as a related-party transaction against Mr. LaPierre.
3 It could be against the NRA if it was -- otherwise met the
4 standard, but the Court has discretion as to whether to
5 permit amendments to conform to the evidence. They are
6 permitted for sure, but the Court always has discretion and
7 especially when it's being done at trial.

8 In my view, the related-party transaction claims
9 were pled very seemingly, specifically that the NRA there
10 was a long incorporated by reference list of all sorts of
11 transactions, and then the claims against Mr. LaPierre and
12 Mr. Phillips were very targeted to the post-employment
13 agreements.

14 So in any event -- so this transaction, the MMP is
15 out both for the NRA and Mr. Phillips. It's just not a
16 related-party transaction. I don't think a reasonable jury
17 could conclude otherwise.

18 The other one that was on the list I believe for
19 Mr. LaPierre was the hairstyling expenses. That one, you
20 know, I think arguably is a related-party transaction.
21 The -- although, Mr. LaPierre is not a party to it, I think
22 there is at least reasonable inference that he gets a
23 financial benefit out of certain expenses being paid for.
24 The -- there is certainly an argument that it's not a board
25 level kind of transaction and that the service was made

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1 available to others, but I don't think the evidence is
2 conclusive on that, and both sides can argue it to the jury.
3 But again, as I said before, only as to the claim against
4 the NRA, I'm not granting an amendment at trial to add this
5 to the seemingly carefully pled allegations against Mr.
6 LaPierre personally. So I'm amending the verdict sheet to
7 move the -- that claim to the chart describing the NRA
8 claim.

9 And so the only related-party transaction I think I
10 have left for Mr. LaPierre is the post-employment agreement,
11 that 2018 amendment I think is what you've pled, and so
12 that's that issue.

13 Next is Mr. Frazer's arguments with respect to the
14 Executive Law. I have continued to mull this over reviewing
15 the arguments, the documents, the statute, and Mr. Frazer
16 through counsel has argued several times that there should
17 be some sort of a mens rea element to the claim. I have
18 pushed back pointing out that there is no precedent
19 supporting it, but as I've looked, I think that what's --
20 what's really going to on is -- is that it's just a
21 reflection that that claim doesn't come up, and there is
22 just not a lot of law one way or the other as to how to do
23 it. So I think a deeper dive was required.

24 I conclude when you put everything together that
25 the proper standard for finding an individual responsible

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1 for an incorrect corporate filing is whether he knew or
2 should have known that the filing contained material
3 misstatements.

4 First of all, I did note that the complaint itself
5 makes that allegation. The complaint says that Mr. Frazer
6 is named in this claim which I think is the 15th cause of
7 action based on his certification and pleads specifically
8 that he knew or should have known that there were
9 misstatements in the filing. So the AG presumably believed
10 that was a relevant consideration. But beyond that, the
11 certification which is really the crux of the claim and is
12 part of the filing materials attest that the filing is
13 accurate to the best of his knowledge.

14 So I think when you put all that together, it
15 provides support that if you're going to hold an individual
16 certifier liable under the Executive Law which can lead to
17 things like removal, although not in front of this jury, I
18 think it's not a strict liability kind of a standard. I
19 think it has to be that the certification essentially is
20 also false, and I think the most rational way to apply that
21 and have some sort of the personal obligation there is to
22 use the words that the Attorney General used in the
23 complaint.

24 So I have added a "knew or should have known"
25 element to the claim against Mr. Frazer in my soon-to-be

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1 revised instructions.

2 I do note that Mr. Frazer has mentioned Section 175
3 of the Executive Law which references potential injunctive
4 relief, that is, removal if the individual is "responsible"
5 for causing the violation. I actually don't think that part
6 is relevant to the instructions here. The only for-cause
7 removal claim that the jury is going to be considering based
8 and all of our pretrial work in my opinion is under the
9 Not-For-Profit Corporation Law. 706, I think it is. And
10 that's the only one that's in the instructions.

11 This jury is not going to be asked whether there is
12 cause for removal. I think that is a phase two issue. If
13 the jury finds that he violated 172, then I think it would
14 be up to me to determine whether that remedy which is a
15 non-monetary remedy applies.

16 So the third thing I wanted to tell you -- so
17 that's that. I -- after hearing the testimony yesterday and
18 then also doing some cross checks to make sure that the
19 instructions and the verdict form were consistent, I noticed
20 that we didn't have an instruction about how to provide a
21 credit for repayments made by Mr. LaPierre as part of the
22 damages analysis.

23 The first thing I did in the damages analysis, by
24 the way, is include the traditional language which I didn't
25 have it in there. The fact that I'm giving them a damages

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1 instruction doesn't mean they should find damages. That's
2 sort of standard language. But as to the credit here, what
3 I have drafted in substance, and I just wanted to give you
4 notice since it's not something you've seen before, and I
5 think you'll see why based on the testimony yesterday I feel
6 like it's worth explaining. Here's what I have.

7 During the course of the trial, you have seen and
8 heard evidence regarding payments made by Mr. LaPierre to
9 the NRA with respect to prior transactions or events.

10 If you find Mr. LaPierre liable for damages on any
11 claim, you must determine whether and to what extent he is
12 entitled to a credit for amounts he has previously repaid to
13 the NRA to compensate for such damages.

14 Mr. LaPierre bears the burden of proving
15 entitlement to such a credit. To be entitled to a credit
16 against damages awarded in this case, Mr. LaPierre must
17 prove first that a payment was made; second, Mr. LaPierre
18 must prove that the payment compensated the NRA for some or
19 all of the damages for which you found him to be liable.

20 For example, if you found Mr. LaPierre liable with
21 respect to a transaction occurring on January 1, 2018,
22 payment made by Mr. LaPierre to compensate the NRA for
23 losses sustained in connection with that very transaction
24 can be subtracted from your damages award in this case.
25 That would avoid the NRA obtaining a double recovery.

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1 On the other hand, if Mr. LaPierre's previous
2 payment was made to compensate the NRA for a different
3 transaction occurring on say January 1, 2013, that is prior
4 to the relevant period and not part of your verdict in this
5 case, he would not be entitled to a credit for that payment
6 against damages sustained in the 2018 transaction.

7 In that situation, awarding full damages for the
8 2018 transaction would not be a double recovery by the NRA.
9 That's the end of that.

10 I have already had instructions saying that, you
11 know, you can consider prior repayments and the like as part
12 of the good faith and all of that, but this is just in terms
13 of damage calculation. It just seems to me they need to
14 understand it's not -- you know, let's say it's a million
15 dollars. You just don't lop a million dollars off of what
16 they award. There has to be a connection between the
17 damages awarded and the amount repaid. So I thought that
18 was a missing piece that I added.

19 Final thing, I received a formal request for jury
20 instruction from Mr. LaPierre's counsel this morning, and I
21 think as required, I need to give you an answer before the
22 closing arguments.

23 I'm denying the request for this jury instruction
24 which again to be clear, I understand why you did it in
25 writing because that's what the statute talks about. These

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1 are all consents that I have seen in comments to the
2 instructions. I'm going to continue to adhere to the --
3 with respect to describing what the duty is under the
4 statute, I think my proposed instructions just faithfully go
5 through what the statute requires, and I think the
6 references to other concepts that are not in the statute
7 really would not be appropriate to add.

8 So you've made your record. You have asked for
9 that instruction. I'm going to adhere to the instruction
10 that I have now circulated a few times and will circulate
11 again this morning.

12 Okay. I think those are the preliminaries I had.
13 And as I said, hopefully, we will circulate to you what I
14 consider the final instructions. I will certainly listen if
15 somebody has a comment or objection with respect to
16 something new that has been added. I do not need to hear
17 the same comments that were made. If I didn't accept them,
18 don't assume that it's that I didn't know about it. I
19 considered it and I rejected it or I accepted many of them
20 including for the NRA's benefit. There was a -- I took out
21 the parenthetical reference to members, and I think I added
22 that and hadn't really thought it was controversial, but
23 since it is, I took it out. But there are all sorts of
24 other things that you'll see, but I took a lot, and I didn't
25 accept all of them.

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1 So I assume in terms of the allocation of time,
2 first of all, have you all agreed who is going first, second
3 third and fourth. I don't need to to mediate that.

4 MR. CORRELL: Your Honor, I don't know that there's
5 been agreement, but I think we should follow in reverse
6 order. That's how I am planning to present.

7 THE COURT: Well, look, I don't think there is a
8 rule. I just -- I don't want to scrum running up to the
9 microphone so.

10 MR. CORRELL: There is a rule.

11 THE COURT: Well, the rule is plaintiff and
12 defendant inverted. It doesn't talk about within
13 defendants.

14 MR. CORRELL: It actually does, your Honor.

15 MS. ROGERS: Your Honor --

16 MR. CORRELL: It says in the reverse order of the
17 presentation, and it says each party shall have the right,
18 so it really turns it over on its head.

19 THE COURT: All right. Well, that's fine with me.

20 MS. ROGERS: If I may suggest something. I think
21 the only two parties with significant demonstratives are the
22 NRA and the Attorney General.

23 We had discussed exchanging those last night, but
24 we weren't able to reach an agreement on when so we still
25 have not, and we need to both update them I suspect to

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1 reflect the verdict form changes. So the NRA would be happy
2 to go last among the defendants which would give us time to
3 exchange.

4 THE COURT: That would happen under Mr. Correll's
5 thinking also.

6 Look, I guess it makes sense if you want to do it
7 that way. In terms of the allocation, I put 45 across the
8 board for each. I said I was -- if the parties wanted to
9 have it divided up differently, I would do that. But are
10 you keeping with 45 each?

11 MR. CORRELL: I'd like my 45, your Honor.

12 THE COURT: Okay.

13 MR. CORRELL: I may not use it all.

14 THE COURT: Then what was the order then? It's
15 going to be -- is it Frazer first? Is it the way you're
16 sitting; Frazer than Phillips?

17 MR. FLEMING: It appears that way.

18 THE COURT: Frazer, Phillips, LaPierre, NRA and
19 then AG.

20 All right. I assume you'll be keeping track of
21 your time. I will be doing it too. We have -- you know, I
22 don't know if you want a five-minute warning from me or not.
23 I don't know if you have some other way of keeping track of
24 what you're doing.

25 MR. FLEMING: I would like a five-minute warning in

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1 case I lose track.

2 THE COURT: I will do my best. If I don't, somebody
3 from the side can throw something at you.

4 All right. Everyone else ready to go?

5 All right let's get the jury. I will mention the
6 fact there are three claims that have been narrowed.

7 MS. CONNELL: With regard to the removal claim, I
8 think this is not in the charges or the instruction; but
9 would it be okay if the State made reference to the fact
10 that the scope and length of any removal will be determined
11 by the Court?

12 MS. ROGERS: I think if we utilize that, then the
13 NRA would want the ability to suggest that this is not just
14 a finding of their cause. This is a finding of these people
15 being kicked out of their jobs.

16 THE COURT: I think it's better not to leave it to
17 them to speculate as to what's happening next. We haven't
18 really talked about them having a second phase. Nobody knew
19 about that. I think it's clear enough the way it is
20 recommending cause removal is accurate.

21 MR. CORRELL: I object to the inclusion of a
22 determination of whether there was cause for removal of Mr.
23 LaPierre. He's gone. I think the element of -- one element
24 of that cause of action is that you actually be an officer.

25 MS. CONNELL: Your Honor, the other thing, and I'm

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1 sorry to bother you, the last thing. There's been a lot of
2 talk about dissolution in the NRA.

3 Could the Court make clear that that's not an issue
4 in this trial?

5 THE COURT: That's -- I had planned on saying that.
6 I'll make that as part of the same discussion with
7 narrowing, but I'll just say that you have heard about that.
8 It was in the case originally. It's no longer in front of
9 you. It's no longer in the case.

10 MR. CORRELL: Yes, but your Honor, Mr. LaPierre --
11 I'm entitled to talk about it as one of the circumstances.

12 THE COURT: Yes. The reason I let that stuff come
13 in is because it's -- it became relevant to decisions that
14 were made at a time when it was in the case. So it was just
15 part of the factual story. But I think they may not know
16 that it's no longer in the case.

17 All right. Let's bring them in.

18 THE COURT OFFICER: All rise. Jury entering.

19 (Whereupon, at this time the jury entered the
20 courtroom.)

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Proceedings

1 COURT OFFICER: All rise, jury entering.

2 (Whereupon, at this time the jury then entered the
3 courtroom.)

4 THE COURT: Good morning, everyone. Please have a
5 seat. We got here almost about when I thought we would get
6 started.

7 So, starting this morning and throughout the day
8 you're going to be hearing closing arguments. As I
9 mentioned during opening instructions, just remember closing
10 arguments are not evidence, the arguments of counsel. All
11 the evidence is in now and admitted and in front of the you.

12 A couple of the notes on the scope of the case. It
13 happens a lot during trials and cases, frankly, that claims
14 start narrowing, and there's a couple claims that were --
15 have been narrowed and are no longer in front of you.

16 There were claims against the individual defendants
17 under two different statutes. One was the -- is the
18 Not-For-Profit Corporation Law and one is the Estates,
19 Powers and Trusts law. And at this point now, since
20 essentially they were charging the same conduct and seeking
21 mostly the same things, I've concluded that it can just be
22 the claim under the Not-For-Profit Corporation Law; and the
23 claim under the EPTL as to the individual defendants no
24 longer is going to be in front of you. From your
25 perspective, all that does is make the jury verdict form

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Proceedings

1 shorter. And, so, since you heard about that, those claims
2 in the openings, I didn't want you to be confused when you
3 didn't hear about them in the closings.

4 The EPTL claims still exist as to the NRA, but not
5 as to the individual defendants; and the individual
6 defendants still have claims under the Not-For-Profit
7 Corporation Law, and then there's one claim under the
8 Executive Law, which we'll get to when we do the
9 instructions.

10 Another thing, during the course of the trial there
11 was reference to a dissolution claim to dissolve the NRA.
12 That was in the original complaint back in 2020. It no
13 longer is. So, that is not in the case. It is nothing for
14 you to -- nothing for you currently to think about. It is
15 part of the story. So some people have brought it up during
16 the course of the trial to explain various things that were
17 done, but it is not in the case.

18 So, you know the claims that are in the case and
19 that is not one of them.

20 All right, and, again, just a reminder that we
21 have the flexibility to go past five today to five-thirty or
22 so. I suspect we'll need to do that.

23 MR. CORRELL: Your Honor, if I just may request
24 that you also instruct as to the other claims that are no
25 longer in the case that went out with the dissolution

BP

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Defendant Summation/Mr. Fleming

1 claims; in particular, the unjust enrichment claim?

2 THE COURT: The only reason I'm meaning the
3 dissolution is because it came up, and the other claims did
4 not. During the course of a lawsuit claims come and go, and
5 so all you need to worry about is what's in the case now.

6 All right, we're going to -- with closing arguments
7 as I mentioned, we're going to do it in reverse order of
8 what you heard in the beginning of the trial.

9 So, we're going to start this time with Mr. Frazer.

10 THE COURT: All set. Mr. Fleming, you may start.

11 SUMMATION BY

12 MR. FLEMING:

13 MR. FLEMING: Good morning. I guess it is true
14 that the last shall be first after all.

15 As you know, I'm standing up for John Frazer. I
16 don't know that there's anymore to say that hasn't already
17 been said. I, also, don't know whether you want to hear,
18 quite frankly, anything further.

19 You've heard it all. I've watched you listen
20 attentively, impressively. For this, speaking for John and
21 myself, I can only express our sincere thanks. You're doing
22 a great thing. You're sitting to judge a person in a
23 critical moment of his life.

24 In the beginning of the case I ventured a
25 prediction. I said I recognized how annoying and what an

BP

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Defendant Summation/Mr. Fleming

1 imposition this is, an extraordinary one, six weeks,
2 six weeks; but I said -- and I may be wrong, I may be
3 presumptuous -- but I said that you would grow to value this
4 experience. You'll remember it. It will be important to
5 you because a great thing has been requested of you.

6 It is incredibly important to John Frazer and his
7 family. You've sacrificed six weeks of your life to listen
8 to a case brought by the Attorney General of the State of
9 New York against John. So, what you're being asked to do is
10 bigger than yourselves and that makes it great.

11 Now is the time for the case to be yours. I have
12 tried my best to show you John Frazer's unrelenting good
13 faith in the affairs pertaining to the National Rifle
14 Association. I've tried to clarify issues for you. I hope
15 you think that that's true. I've tried to explain why
16 plaintiff's case has no merit against him and why you should
17 return a verdict in John's favor.

18 But now the case is being given to you at last, and
19 I ask and I know that you will give it the great care it
20 deserves.

21 So, this is the last time I will get to speak on
22 behalf of John. The plaintiff gets to go last here. Those
23 are the rules and they may raise things I have no
24 opportunity to speak to or rebut, so I need you to do me a
25 favor. I need you to keep our invoice in your head. I need

BP

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Defendant Summation/Mr. Fleming

1 you to make them explain things to you. I believe we had a
2 factual response to everything they raised, but now we won't
3 have that opportunity to do that anymore.

4 So, I need you to carry us with you; and when or if
5 they raise something, okay, think what we would say, think
6 how we would respond to it because every time they raise
7 something, there was an answer.

8 Now, I told you in the opening to use your common
9 sense, your other natural gifts, your experiences to
10 analyze, think, scrutinize everything. Judge the facts of
11 this case using your gifts is all we need. It's all we
12 need. Use your natural reason and your judgment and that
13 will be plenty for us.

14 Now, plaintiff -- I think you know this, but I'm
15 emphasizing this -- they have the burden of proof. Ask
16 yourselves have they proven their allegations? I told you
17 in the beginning of this case, six weeks ago, there's one
18 issue in this case we believe: Good faith.

19 Did John Frazer act in good faith and use
20 appropriate care? More precisely, the plaintiff has the
21 burden of proving to you, proving to you that John Frazer
22 has failed to discharge the duties of his office in good
23 faith with the care an ordinarily prudent person in a like
24 position would exercise under similar circumstances; have
25 they proved that? Have they come even remotely close to

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Defendant Summation/Mr. Fleming

1 proving that?

2 I submit that the evidence in this case establishes
3 that John has acted at all times, at all times in the best
4 interest of the organization he serves. I submit there is
5 no evidence that he has acted in his own interest and that
6 he has subordinated the interest of the organization to his
7 personal interest.

8 You've heard this evidence, everything. You've
9 seen John. John Frazer is the walking embodiment of good
10 faith; and, yet, we're still here fighting an adversary that
11 you heard publicly alleged that he used the NRA for his
12 personal gain without any evidence and, indeed, contrary to
13 fact and in the process destroyed valuable relationships,
14 personal and work relationships and still now wants you to
15 remove him from his job and livelihood and take away every
16 penny that he richly earned.

17 I was struck yesterday, yesterday, that we still
18 see this instinct, this opposition to what seems clear to
19 me.

20 It was in the questioning yesterday, which you all
21 heard, where the plaintiff seemed to be challenging
22 Mr. Frazer that whether he was telling the truth about his
23 attendance at the September 2016 Audit Committee meeting.
24 He was there. He testified. Ms. Rowling testified that
25 way. Mr. Cotton said that these transactions were all

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Defendant Summation/Mr. Fleming

1 approved in 2016. John, of course, was an eyewitness
2 present there and, yet, he was being questioned as if he's
3 just making it up and this was all because his name wasn't
4 recorded on a document having been there that someone else
5 had written. Even though, as you know, he had orchestrated
6 the very policy, the conflict-of-interest policy that was
7 passed in January 2016, which enabled these Audit Committee
8 considerations of related-party transactions; and even
9 though the testimony was clear that he presented to the
10 Audit Committee all of these related-party transactions; and
11 even though Ms. Rowling said she was present, and even
12 though she said and John said and Mr. Cotton said they took
13 place and that she, Ms. Rowling, finalized the minutes that
14 Mr. Frazer had put together.

15 This was uncontroversial testimony. It had already
16 been established and, yet, there was this pushback.

17 Now, if it was to suggest that Mr. Frazer doesn't
18 deserve credit for his work in helping these related-party
19 transactions to be considered by the Audit Committee, that's
20 fine. John is not interested in credit. He doesn't even
21 want credit. If you asked him, he'd probably deflect
22 credit; but fairly all he wants is not to be accused of not
23 acting in the best interest of the NRA because that would
24 not be true.

25 So, if plaintiff wants to give credit to someone

BP

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Defendant Summation/Mr. Fleming

1 else for this undoubtedly positive development, so be it,
2 fine. Let them have that.

3 The important point is that it happened. It was a
4 positive development for the organization and that
5 Mr. Frazer supported it and worked to help make it happen.
6 He told you the Audit Committee's intent at that time was to
7 ratify old contracts. You heard this. These were contracts
8 created 2008 or earlier, well before the law changed that
9 occurred and to approve them going forward.

10 And you'll remember, I sat up here and struck out
11 time after time after time trying to get this document into
12 evidence so that you, the factfinders, would have a fact
13 that you could consider and should consider. I was opposed
14 every step of the way.

15 Meanwhile, while they're fighting me to keep this
16 document out, there is this counterfactual, non-reality
17 suggestions taking place that these transactions weren't
18 approved until 2017 at the earliest from Ms. Froman. That
19 Mr. Butz had not been approved in advance until 2019. And
20 there's even one time when I was asking Mr. Hines trying to
21 get the document in through him and was unsuccessful, they
22 got up and said -- I'll tell you they said, disclosing
23 amounts someplace else within this 990 was not the same as
24 having the NRA's Audit Committee approve a related-party
25 transaction in advance; and, meanwhile, they had all the

BP

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Defendant Summation/Mr. Fleming

1 documents showing that that's exactly what had happened.

2 So, yesterday, I was struck with this question.
3 What does this say about their case? They brought a case
4 seeking the corporate death penalty, and they included John
5 Frazer sight unseen -- never spoken to before -- in a
6 massive filing; and now it appears they're fighting to keep
7 facts from you, the factfinders, the sole reason you're here
8 for six weeks is to find the facts and they're trying to
9 keep facts away.

10 Is this now their case who? Has the good faith
11 here?

12 I don't want to bore you, so I'm going to go
13 quickly through stuff I think you know so well by now.

14 In 2014, the new law was passed. In 2015, John was
15 hired. In 2015, that first year he worked to create a new
16 policy which would bring the organization in compliance with
17 the law, he did so. It was passed by the board in
18 January 2016.

19 The plaintiff, themselves, say that the policy is
20 comprehensive, and it covers conflicts of interest more
21 broadly than were required by New York law.

22 Those are unchallenged facts.

23 He also in 2015 started to enhance the
24 questionnaire for the self-disclosures that is required by
25 directors and others to disclose potential conflicts of

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Defendant Summation/Mr. Fleming

1 interest that can then be considered by the Audit Committee
2 and the board.

3 He, also, in that year began working with the
4 accountants, the internal accountants -- if you'll recall --
5 to develop this crosschecking system because the accountants
6 knew whoever was paid money out of the organization and if
7 they recognized the name of a director, let's say, who
8 hadn't disclosed on the financial disclosure questionnaire
9 that he had a transaction, the accountants knew him, would
10 say, John, look Director X got a payment you might want to
11 look into it. He worked to do these things. Good faith.

12 We saw after the January 2016 policy was adopted by
13 the board immediately. At the March 2016 Audit Committee
14 meeting, the Audit Committee for the first time considered
15 these related-party transactions.

16 There's an Audit Committee report at JFX 52. I'm
17 just going to give you numbers. I just can't burden you
18 with too many documents. You've seen them all already. I
19 trust you'll remember these. That said in March that they
20 cleared the underbrush. They got rid of those transactions
21 that qualified for exceptions; and they deferred, if you
22 remember, the more substantial transactions to our next
23 Audit Committee meeting in September. That's what it said.

24 That in September, not surprisingly, this is the
25 document we preferred to get in, they considered these

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Defendant Summation/Mr. Fleming

1 transactions; and they voted to approve them as fair,
2 reasonable and in the best interest of the NRA in compliance
3 with the legal requirement. That Document was PX 2586.

4 They also met in December 2017 which I showed you.
5 That's document JFX 66A. That's where there was a 2017
6 transaction that had been entered into by Mr. Keene. You
7 may remember David Keene. Mr. Frazer found out about it in
8 the late fall, brought it immediately to the Audit Committee
9 and they voted to ratify that transaction.

10 Quick footnote: Mr. Frazer also explained that in
11 the early years because of his reading of this -- the bible
12 for parliamentary procedure called Robert's Rules of order.
13 He interpreted that a committee of the board should decide
14 what it decides. It can keep minutes of the details of what
15 they do, but they need not burden the record for the board
16 with all the detail. Robert's Rules said that. It says --
17 what he testified to is that it said tell the board what was
18 done, not what was said. And that's what they did.

19 So, for two years they had minutes and a report.
20 The Audit Committee had Audit Committee minutes and an Audit
21 Committee report, and the report would go to the board and
22 it didn't include the detail that was in the minutes.

23 That in 2018, as you all saw, it changed. They
24 decided to merge the two documents. No longer were there
25 minutes and a report. It was one document, a report that

BP

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Defendant Summation/Mr. Fleming

1 had the detail, straightforward.

2 Now, I just talked about the early years, 2015,
3 2016, Mr. Frazer's first two years in this position. This
4 was before the 360-degree review that you've heard about
5 that Mr. LaPierre ordered when he found out that the organs
6 of New York State Government were aimed at the NRA. He said
7 he wanted a full evaluation of the organization's policies
8 and procedures, turning over every rock.

9 But even though what I've told you about of the
10 earlier years, which may not even come into consideration
11 with you with the work you need to do for some of these
12 claims, they're still important. Because they're important
13 to an evaluation of John Frazer's good faith. They're
14 important to his reputation, to his good name. It matters
15 to who he is as a person. It does, because he does things
16 the right way and always has. That's why these charges are
17 so unfair.

18 You've heard the expression, no doubt, that
19 character is what you do when no one is looking. I say it
20 is no less true that good faith is what you show about your
21 priorities when no one is looking; and in 2015 and 2016, the
22 man was doing his job and doing it well.

23 In -- it wasn't until 2017 that all of a sudden it
24 was a concern that outsiders are looking at this
25 organization.

BP

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Defendant Summation/Mr. Fleming

1 In those early years, and in those later years, as
2 always was, John's priority -- singular -- priority was the
3 best interest of the National Rifle Association. There's no
4 evidence to the contrary. Proved it over and over and over
5 again.

6 Again, I'll go quickly. Compliance training
7 seminars, they instituted those. In his own words, he
8 hammered, quote/unquote, people to improve responsiveness
9 and timeliness. Before, people weren't always disclosing,
10 okay.

11 The plaintiff says to Mr. Cotton when he testified,
12 "You were getting this through John Frazer." Mr. Cotton
13 says, "No, you've got it wrong. John didn't know about it
14 because people weren't disclosing."

15 So, they did these seminars, hammered people. They
16 are hat a hundred percent now and have been for awhile.

17 Ms. Rowling testified. I asked her, Are these
18 compliance seminars helpful? She said they have resulted in
19 getting, quote, a lot more questions now from people based
20 on those seminars of what's appropriate or what's not,
21 including from board members. They call me directly. Good
22 faith.

23 You may have noticed all the plaintiff's objections
24 to introduction of evidence. Hopefully, you noticed how few
25 objections came from us. What does this say about the --

BP

4500

Defendant Summation/Mr. Fleming

1 their confidence in their case? You're the factfinders.

2 You need the facts. We welcomed the evidence.

3 Innocent men are calm. Innocent men are not tense. We have
4 nothing to hide. Do they? It is a fair question.

5 So, I'll move on. 2017, Mr. LaPierre orders his
6 360-degree review. The new treasurer, you remember
7 Mr. Spray, you've heard him a couple of times -- testified
8 that Mr. Frazer was a good partner whose work on the
9 360-degree review was, quote, a big help in getting us
10 forward.

11 In July, 2018, you heard about a group of
12 whistleblowers from the NRA Financial Services Division,
13 internal accountants coming forward with issues that they
14 called their Top Concerns. Let's look at evidence of this.

15 You saw Mr. Frazer met with those whistleblowers.
16 The whistleblowers were going to an Audit Committee meeting
17 on July 30th. They were nervous about it. They made their
18 presentation formally to the Audit Committee on July 30,
19 2018. Mr. Frazer met with them beforehand.

20 You saw a document, JFX 13. You saw the Document.
21 One of the relationships they listed in their Top Concerns
22 was called an arrangement called Grassroots Behavioral. At
23 that meeting before July 30th, John Frazer said, Don't make
24 anymore payments to Grassroots Behavioral. You saw the
25 document.

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4501

1 After the July 30th Audit Committee meeting,
2 immediately after, that night two of the Audit Committee
3 members, as you recall, had to leave early because they had
4 flights. John was the one gathered up the notes, gathered
5 up the key information, put it in a FedEx package, sent it
6 out that night to both of them, followed up with phone calls
7 with them to brief them on what had happened.

8 Ms. Rowling and Mr. Erstling, who you'll remember,
9 both of the whistleblowers testified Mr. Frazer was active
10 and attentive to their concerns. As you heard in abundance,
11 Mr. Frazer played a supportive, if not instrumental and
12 central role, in the followup to that whistleblower event.

13 He worked with Craig Spray who as I said called
14 him a great help. He did not call him a great hindrance.
15 He did not call him an obstacle. He said nothing of that
16 sort.

17 The point I'm making is that John Frazer is not
18 acting in bad faith. He's not opposing improvements of the
19 organization. He's not protecting the status quo. He's
20 helping. I'm not here to argue that John should be put on a
21 pedestal, that he should be given a medal for any of that
22 that he's responsible for all this, I'm not arguing that.

23 (Continued on next page)

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4502

Defendant's Summation/Mr. Fleming

1 MR. FLEMING: I am arguing that the man has acted
2 his whole life in good faith, and it's true in this case
3 because there is no evidence to the contrary.

4 Whistleblower Mike Erstling testified that Mr.
5 Frazer spearheaded compliance and related-party
6 transactions. You heard the testimony. He characterized
7 John's role in the improvements at the organization as
8 "pretty significant". He said "I believe Mr. Frazer has
9 been a great partner for me. You know, I've worked with
10 him. I've conducted compliance seminars with him. He's
11 helped me tremendously on the 990 and the 990T which I've
12 just taken over. So his review on these matters has been
13 excellent." That's a whistleblower talking.

14 There's is been evidence of Mr. Frazer helping
15 investigate Ackerman McQueen. You have heard about all
16 this. Okay. I don't know what we want to call it. That
17 was the cancer that needed to be cut out. And who was
18 helping? John Frazer was helping to do it. Again, playing
19 a key role. He hired a forensic accounting firm FRA to look
20 into the out-of-pocket expenses that you've heard so much
21 about.

22 As we saw with Mr. Hines, I stood there and took
23 you through the graph. The MMP expenses began to be
24 controlled almost immediately after that July 2018
25 whistleblowers meeting. And ultimately in 2022 when they

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Defendant's Summation/Mr. Fleming

1 were able finally to renegotiate a new contract, those
2 expenses started to decrease.

3 Mr. Hines admitted in 2019 when unfavorable
4 articles began to be released about the NRA, probably from
5 Ackerman McQueen, but it doesn't matter, the testimony and
6 the evidence is that John began immediately to investigate
7 all of the issues raised in these articles, that he was
8 working with the Audit Committee chairman Mr. Cotton on
9 this, that he kept a list of investigations and their status
10 and spoke to him about it. Good faith. Good faith.

11 So you've also heard about his treatment of
12 internal complaints because the NRA -- and you heard it from
13 Mr. Cox was going through a change, a very chaotic change.
14 There was a lot going on.

15 So first, Lieutenant Colonel Oliver North; okay.
16 You saw him testify. You've heard so much about this, and
17 mention of Mr. North should be -- should include a man named
18 Richard Childress because they basically signed all the
19 letters together.

20 Okay. So though president of the NRA, Mr. North
21 had an undeniable conflict of interest. No question about
22 it. He was employed by Ackerman McQueen, the NRA's biggest
23 vendor, and the NRA and John were trying to get to the
24 bottom of that to find out what his relationship -- what his
25 contract really was all about, and you heard so much about

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Defendant's Summation/Mr. Fleming

1 it. It took like nine months to get the contract, and it
2 was John who was pursuing it. He was trying to satisfy his
3 duty to determine the extent of a conflict of interest.
4 Even though this was the NRA president. I don't think that
5 point could be emphasized enough. Okay. It doesn't matter
6 that it was the NRA president. He had a conflict, and John
7 was pursuing it. Good faith.

8 So the evidence establishes irrefutably that the
9 very day that John was finally going to see this contract,
10 February 26, 2019, as seen in the email between John and
11 Ackerman McQueen's lawyer, okay, which is JFX 118 -- you'll
12 remember the testimony. Ackerman wouldn't show the contract
13 to NRA without Mr. North's approval. North wouldn't show
14 the contract to the NRA without Ackerman's approval. It
15 went like that for nine months. You remember this.

16 So on February 26, finally is the day he is going
17 to get the contract. On that day within hours of John
18 seeing this contract, Mr. North issues a complaint that the
19 Brewer Law Firm had not been properly engaged by the NRA
20 because the NRA had not followed to the letter its
21 procurement policy. Okay. Didn't get signatures and things
22 of that nature.

23 So what does John Frazer do? Putting all
24 reasonable suspicions aside that maybe Mr. North is not
25 being genuine in his complaint given the timing, puts that

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Defendant's Summation/Mr. Fleming

1 all aside, treats it like any other complaint immediately
2 with seriousness. That day or maybe the next day he engages
3 a law firm to give an opinion about whether the NRA's in
4 violation of its policy. Taking it seriously. Responding
5 immediately.

6 Do we recognize a pattern yet? Within 23 days, the
7 outside law firm specialist issued its legal opinion which
8 resolved the issue. It confirmed that the Board had in fact
9 approved the engagement because it knew about it. It had
10 paid under it. It had essentially ratified and waived any
11 -- any violation of the policy. So that issue was resolved.

12 Now, this is important. The law firm also in its
13 opinion provided guidance to Mr. North. You want to get rid
14 of the Brewer Firm? Here's how you do it. You go to a
15 committee of the Board which you are the president. You can
16 call on 48-hours notice and you can get it done. He never
17 did it.

18 Instead of taking that principle path, he starts to
19 complain about the size of the Brewer bills. And you
20 remember Ms. Froman. She spoke to Mr. North and she said he
21 was like a robot. He just kept saying, they are too high,
22 they are too high. And she kept saying, well, why do you
23 say that? He said, they are just too high. So she started
24 to discount him.

25 Now, lastly, I will tell you that same February 26,

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Defendant's Summation/Mr. Fleming

1 2019 date, John Frazer did something else. He sent an email
2 to Mr. North, and he said, you want to see the bills? Here
3 are the bills. They are in my office. The ones you don't
4 have a conflict on, come see them any time. Guess what?
5 Those bills are still there. He never came.

6 Now, maybe Mr. North was enlisted by Ackerman to do
7 its bidding. John learned when he saw the contract that
8 North had a superior obligation of loyalty to Ackerman than
9 he did to the NRA. And Ackerman was certainly incentivized
10 to salvage this lucrative relationship, and you may find
11 they were nasty enough to do it in the way that they did it.
12 Whatever the reason, Mr. North's behavior shows it was never
13 a serious complaint. And even if it was, John Frazer
14 responded as he would to any real complaint the same way as
15 he does with all things. It's good faith.

16 Now, you heard Mr. Cox. He explained all that, and
17 it's really sort of simple. Ackerman was unhealthy in his
18 words. They were untouchable in his words, and the Brewer
19 firm was clearly at odds with Ackerman. So there was this
20 tension. And as I asked him, the untouchable, the unhealthy
21 was finally being touched and helped and brought back to
22 health. The cancer was being cut out, and it's really that
23 simple. But there is a lot of fallout from things like that
24 including this case because this is what engendered all of
25 the news articles. This is what engendered the

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Defendant's Summation/Mr. Fleming

1 investigation. All of it.

2 Anyway, I'm getting off this topic in a second.
3 The Brewer invoices were a non-issue anyway because even
4 though Mr. North was complaining about it, John knew and had
5 already orchestrated a way that these things be reviewed.
6 He was reviewing the bills for reasonableness. Craig Spray
7 was reviewing the bills for reasonableness, and there was
8 even the insurance company that was reimbursing a portion of
9 these legal bills that hired -- the insurance company hired
10 their own lawyers to look into this. The insurance company
11 which we all know -- we all know insurance companies. You
12 pay them. You make a claim and then they are nowhere to be
13 found. Right. Same thing here. They have every incentive
14 not to pay. They even went to the expense of hiring a law
15 firm to review these bills. No doubt to try to cut them.
16 Even they reimbursed them almost in their entirety.

17 You heard about how this whole story ended with Mr.
18 North's extortionist demand, and he declined again to run
19 for president of the NRA. So there were other complaints.

20 Plaintiff likes to call them whistleblower
21 complaints. I don't think they are whistleblower
22 complaints. Within weeks of these newspaper publications
23 which John was already investigating, as I told you, and as
24 the documents said and as the witnesses said, directors
25 started raising this stale information. These news article

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Defendant's Summation/Mr. Fleming

1 come out in or around April.

2 In June or July, directors are raising questions
3 about what is in these news articles. This is public
4 information. This is not new. And you heard about all
5 these things.

6 You saw Ms. Schneider get up here. You know, she
7 represented apparently a group of directors that were trying
8 to find out what this information or, you know, about the
9 allegations made in these newspaper articles. John, she
10 said, we're being stifled. Our information is being
11 stifled. It's not being sent to where it needs to go. John
12 takes it and sends it to the highest level of the
13 organization, to the president and two vice-presidents.

14 In fact, she admitted that. She also says, Can I
15 talk to you. John calls her. They speak for 40 minutes.
16 He explains to her that he is looking into all these things,
17 that there is a process, that they are undergoing it. She
18 didn't want to hear it. She wanted to be argumentative.
19 That's his testimony. But is this stifling of information
20 or is this responsiveness by a person who acts the same way
21 all the time? All the time.

22 So in the end, Ms. Schneider conceded that Mr.
23 Frazer was a lovely man and admitted that she voted for him
24 every time. And so I don't know. You guys are the fact
25 finders. I will leave that one to you to try to figure out.

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Defendant's Summation/Mr. Fleming

1 Okay. You remember Mr. Rocky Marshall. This is
2 Mr. Marshall who, you know, is a very sure-of-himself
3 person. He would figure it out. He would fix the NRA after
4 a quick review of boxes and boxes of data which guess who
5 sent it to him on request. John.

6 Then later -- and by the way, Mr. Marshall was a
7 director for all of about nine months. But later when John
8 delivers news to the directors, the happy news that they
9 have secured directors' and officers' insurance even in the
10 face of this case, Mr. Marshall is impatient. He wants to
11 review that document right away. And John tells him two
12 things.

13 He says, first, our internal policy and direction
14 from above, from his bosses, the directors is that you've
15 got to come to headquarters to view financially sensitive
16 documents. And as John testified, Mr. Cotton had told him
17 that this is a financially sensitive document, and you have
18 got to make sure that people come and view it. That's point
19 one. Point two, he tells Mr. Marshall I don't have the
20 policy yet. Nevertheless, there is an email. Mr. Marshall
21 writes back, and you can see it. That's unacceptable. Let
22 me move quickly.

23 So you know, long story short. Mr. Marshall files
24 a ethic complaint against John before he's even gotten that
25 insurance policy to show it to him. John it brings to the

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Defendant's Summation/Mr. Fleming

1 Audit Committee meeting in Charlotte. Mr. Marshall who says
2 that he was horrified that in an age of Covid he would have
3 to fly to Virginia to see that document, he flies to
4 Charlotte to the attend the Board meeting. John brings the
5 document with him to show him. He never asked for it.

6 Look, you know, I'm running out of time. So let me
7 just be really quick. There is a false statements charge.
8 Okay. This is the worst charge of all. There is one person
9 charged with false statements in this case. One person.
10 John Frazer. He is not an accountant. He is not -- he is
11 just a lawyer; and the 990, we went through the painstaking
12 explanation of how it's put together. Internal accountants.
13 Outside accountants. Experts.

14 You remember Mr. Sweeney. You remember Steve
15 Schulman. You remember all of these legends as they are
16 called who put it together. And Plaintiffs made an
17 accusation of certain falsities in the 990. I think what we
18 tried to show you is historically, you know, before John
19 even got there, it was all treated a certain way. Tax
20 returns are arcane and these instructions are very
21 complicated. We took you through the instructions. Like I
22 said, we have got nothing to hide. We kept showing you why
23 there were reasons for this business judgment. Okay. And
24 yet, they charge him, a non-accountant with false statements
25 in these 990s. It's just not right.

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4511

Defendant's Summation/Mr. Fleming

1 So look, I am cutting through a lot, but let me say
2 this. I'll just close. Plaintiff says that they represent
3 the People of the State of New York, and I submit to you
4 that's not right because the people of the State of New York
5 are you. Okay. You are the people of the State of New
6 York, and I ask you to be great for this moment. Forgive
7 me.

8 The proper discharge of your duties is justice. It
9 sounds highfalutin, but it's not, and justice matters to me
10 a lot. It matters to John, and I believe and suspect and
11 trust, it matters to all of you too. So we have asked you
12 to be just in this cause and I'm touched because I have full
13 confidence from my observations of your attention to which
14 as I said was so impressive to me. I have confidence that
15 that's what you'll do.

16 So I thank you on behalf of John Frazer who has
17 been my honor to represent. I ask you send him home with
18 his good name and reputation which he richly earned. Do not
19 send him home in disgrace because he doesn't deserve it. I
20 ask you to return a verdict in his favor against Plaintiff
21 because these claims against him are not warranted.

22 Thank you.

23 THE COURT: Thank you, Counsel. What I suggest we
24 do is maybe a stretch break. We will do two of these.
25 These are each 45 minutes. Then we will take a full break

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Defendant's Summation/Mr. Fleming

1 after the next one, and then we will do two more.

2 So why don't you maybe get organized for Mr.
3 Phillips.

4 (Whereupon, at this time there was a pause in the
5 proceedings.)

6 THE COURT: Okay. Mr. Farber, are you all set?

7 MR. FARBER: One moment.

8 MR. FARBER: Ladies and gentlemen, on behalf of Mr.
9 Phillips who is sitting right there as he's been for almost
10 the entire trial, on behalf of my colleagues Ms. Coutu and
11 Mr. Werbner, thank you for your time and attention over
12 these past six weeks.

13 What we thought would make sense this morning would
14 be for me to begin by explaining to you why the evidence
15 shows that Mr. Phillips did not violate either of the New
16 York State laws that the New York Attorney General claims he
17 did, and Mr. Werbner is then going to outline for you why
18 none of the conduct by Mr. Phillips that the State is
19 challenging even caused any damage to the NRA. We have
20 limited time to speak to you as you have seen, so we are not
21 going to be able to go through every single piece of
22 evidence or discuss every witness in this long trial.

23 In fact, many of them have little or nothing to do
24 with Mr. Phillips who as you know retired from the NRA back
25 in 2018 before much of what is at issue here even occurred.

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Defendant's Summation/Mr. Fleming

1 And instead, what we are going to do and what I am going to
2 start by doing is to focus on the key points so that you can
3 see why the State's claims against Mr. Phillips both fail.
4 And to do that, I want to start by focusing you on what Mr.
5 Phillips is actually accused of. And there's been a lot of
6 testimony in this case. And although Judge Cohen will
7 describe a number of claims against the various defendants
8 here, there are only two claims left in this case against
9 Mr. Phillips, and the primary one is that Mr. Phillips
10 violated a -- allegedly violated his duties to the NRA of
11 care and good faith.

12 In addition, the State also claims that Mr.
13 Phillips caused the NRA to enter into what they say is an
14 illegal related-party transaction by executing a
15 post-employment contract with him. I'll come back to that
16 claim later, but I -- first I want to address the breach of
17 duty claim that I discussed a moment ago. And to start
18 with, ladies and gentlemen, let me just be clear, and I
19 think the evidence here has been clear.

20 Mr. Phillips did not breach any duties to the NRA
21 at any time. He devoted more than 25 years of his life to
22 that organization helping Mr. LaPierre to build that
23 organization into what it had never been and whether one
24 likes its politics or not, it became a far larger, far more
25 impactful organization when Mr. Phillips left it in 2018

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4514

Defendant's Summation/Mr. Fleming

1 than when he started there in the early 1990's.

2 Now, I said the same thing to you during my opening
3 but now you've seen the evidence, and I want to go through
4 that evidence with you and talk about what it shows.

5 And first, I'd like to look at the key transactions
6 that the State is basing its case on. The first of those
7 involves MMP. And as to Mr. Phillips, the criticism against
8 him is that he approved increases in fees beyond what the
9 MMP contract provided for, and that he did not get all the
10 proper approvals for those increases. But the evidence is
11 clear, ladies and gentlemen. From Mr. Phillips' standpoint,
12 these increases were well worth it. The scope of MMP's
13 services grew enormously over the years, and I'm going to go
14 through with you briefly some of the exhibits you have even
15 seen in this case. You have seen them already, so I'm not
16 going to spend a lot of time on them. I'm just putting
17 these up here primarily as reminders. And you will hear you
18 will have the opportunity to look at any of the exhibits you
19 want with you during your deliberations, but this is the
20 memo that was prepared describing the scope of the increase
21 in services, how MMP's responsibilities grew over time. And
22 you'll see at the top, the MMP entities now were arranging
23 all digital marketing for the NRA membership. You see they
24 expanded. And the third one there, membership acquisition
25 efforts. It goes on to talk about marketing efforts for the

KM

4515

Defendant's Summation/Mr. Fleming

1 NRA Office of Advancement's planned giving programs.

2 The second bullet from the bottom talks about
3 managing the NRA's email list, it's extensive work that
4 never took place when this relationship began. And the
5 evidence also showed, ladies and gentlemen -- the undisputed
6 evidence showed the tremendous value that the NRA got from
7 those expanded services, the huge fundraising dollars that
8 MMP brought to the NRA. As Mr. LaPierre testified, in some
9 years MMP raised more than \$200 million for the
10 organization. And remember, it wasn't just Mr. Phillips's
11 view that those increased fees to MMP were justified. You
12 heard testimony from both Mr. Spray by video and from Ms.
13 Rowling from that witness stand about how they each reviewed
14 those increases after the fact, and they also concluded that
15 they were justified.

16 Now, beyond that, it's important to remember that
17 Mr. Phillips was not some rogue employee off doing things on
18 his own in any respect. He approved those increases in
19 scope and payment for MMP at the direction of his boss Mr.
20 LaPierre, and Mr. LaPierre himself testified about that, and
21 this is just an example of the -- from the transcript.

22 You'll see he was asked on several occasions, you
23 have approved increases in the scope of work for the MMP
24 entities. Correct? Mr. LaPierre said, yes, we did. And he
25 said, and when you approved increases in the scope of work

KM

1 for MMP, that would increase the fees that MMP would charge.
2 Right? And Mr. LaPierre said, correct. I would have
3 discussions with them regarding the additional scope of
4 their duties, and then they would talk to our treasurer's
5 office. In those days that was Mr. Phillips about the --
6 about how that would increase fees, and Mr. Phillips carried
7 out what he was asked to do.

8 (Continued on the following page.)

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Defendant Summation/Mr. Farber

1 (BY MR. FARBER)

2 But, finally, and perhaps most significantly,
3 Mr. Phillips got nothing out of this relationship
4 personally. I mean, there's been a lot of testimony about
5 free yacht trips that Mr. LaPierre and his family took on
6 Mr. McKenzie's yacht; but that was Mr. LaPierre, not
7 Mr. Phillips.

8 The evidence is undisputed that the only trip that
9 Mr. Phillips took on a yacht of Mr. McKenzie's was this one
10 here that you're seeing. The one that he paid for with his
11 own money, this \$25,000 check that he wrote for the race to
12 erase MS for a yacht trip that Mr. McKenzie donated to that
13 charity. That's MMP.

14 Let me talk about the second issue for a moment
15 that the AG's office has criticized, these out-of-pocket
16 expenses that were billed by Ackerman McQueen. And, here,
17 the criticism of Mr. Phillips is that he had Ackerman
18 McQueen bill certain expenses, including some of
19 Mr. LaPierre's travel as a single line item without
20 supporting detail. Well, you heard why that was done, too.
21 There was serious concerns for Mr. LaPierre's safety and the
22 need for confidentiality about his travel plans.

23 Now, you know, you've heard multiple witnesses talk
24 about how the NRA's controversial political positions have
25 created a lot of enemies; and Mr. Supernaugh, when she

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4518

Defendant Summation/Mr. Farber

1 testified, told you that it was an organization with
2 hundreds of employees and there was a legitimate concern
3 that someone with -- and these were her words -- wandering
4 eyes would leak sensitive internal information.

5 And she, also, told you in her testimony that the
6 lack of detail or backup on that invoice wasn't a problem
7 for the NRA or its Financial Services division because
8 Ackerman retained all the backup and the NRA could and did
9 audit it; and you know that that happened because
10 Mr. Winkler explained to you Mr. Phillips and Mr. Tedrick,
11 who was acting in Mr. Phillips direction and in later years
12 NRA lawyer, Steve Hart, all did that, all went and audited
13 those records, themselves.

14 On top of it, here, too, there was nothing in this
15 for Mr. Phillips personally, nothing for him in this
16 out-of-pocket billing arrangement. And the testimony of
17 their expert, Mr. Hines, brought that out.

18 So, I want to remind you this is one of these
19 charts that they put into evidence that shows all these
20 various expenses on the out-of-pocket expenses, and
21 Mr. Hines was asked, Well, do any of these relate in any way
22 to Mr. Phillips? And he talked about parking fees to
23 Mercury Group, and here's the slide that he used and I know
24 it is a little hard to read on this, but you'll see it is
25 parking.

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4519

Defendant Summation/Mr. Farber

1 (Displayed)

2 And this part of parking which he said was about 2
3 to 3,000 dollars in parking expenses which as you heard the
4 testimony related to times when Mr. Phillips would go and
5 park at Ackerman McQueen's headquarters on business for the
6 NRA. That's the only line item that relates to him.

7 Next, they talked to you about Gayle Stanford and
8 the private flights that she arranged for Mr. LaPierre.
9 Well, Mr. LaPierre needed to fly privately for security.
10 You've heard multiple witnesses talk to -- I think as
11 recently as yesterday you heard one of the witnesses,
12 Mr. LaPierre's expert explain the need for that. There were
13 legitimate security reasons to keep his itineraries and
14 destinations confidential. And, yes, Ms. Supernaugh would
15 and did modify the invoices that Ms. Stanford sent before
16 sending it through the payment process system because the
17 same concern for leaks that we were talking about a moment
18 ago.

19 But, again, Ms. Supernaugh explained to you that
20 the actual invoices, the ones that she got from
21 Ms. Stanford, she always retained them and they were always
22 available for outside auditors or anyone else who needed to
23 review those to see the underlying detail.

24 Now, there was certainly plenty of testimony in
25 this case and some other evidence about the fact that

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Defendant Summation/Mr. Farber

1 Mr. LaPierre may have taken advantage of this system for
2 private travel to arrange flights for friends and family.
3 But, ladies and gentlemen, those are not Mr. Phillips'
4 trips, okay; and there's no evidence that Mr. Phillips knew
5 at the time that Mr. LaPierre was doing any of that, if in
6 fact he was. That was the third thing.

7 What's the fourth? Well, you heard evidence and
8 the attorney general's office criticizes him for the
9 supplemental invoices relating to Under Wild Skies, and you
10 heard, ladies and gentlemen, what those were for. This was
11 the additional payments that went to Tony Makris's company
12 in connection with the TV shows and having to do with
13 hunting that he put on for the NRA.

14 Well, you also heard why these supplemental
15 invoices, what services they were for. Mr. Makris, in
16 addition to putting on these programs, would arrange for
17 high-net rally donors, prospective donors to come on these
18 hunts; and this was a vehicle for attracting high net-worth
19 individuals to be potential donors to the NRA. And that
20 benefitted the NRA and they chose Mr. Makris for this
21 because of the extensive connections that he had in his
22 network of people who would be able to do that and
23 Mr. Phillips gave you a prominent example of this.

24 Okay, he talked to you about a wealthy donor named
25 Robert Petersen who gave a \$50 million gun collection to the

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Defendant Summation/Mr. Farber

1 NRA, and that's now housed in the National Firearms Museum.
2 And when Mr. LaPierre testified, Mr. Correll introduced this
3 exhibit. This is a brochure from the National Firearms
4 Museum, and you'll see on this next one the Robert Petersen
5 Gallery. Robert A. Petersen is the individual that
6 Mr. Phillips testified to about who gave this \$50 million
7 gun collection, and that's what the NRA was getting out of
8 these -- this work that Mr. Makris was doing on top of
9 simply the television productions.

10 And, again, once more, there was nothing in this
11 for Mr. Phillips. He didn't go on these hunts with Tony
12 Makris; and while, yes, Mr. Makris was like a brother to
13 Mr. LaPierre -- those were the words Mr. LaPierre used -- he
14 was just a business acquaintance to Mr. Phillips.

15 Finally, there's been evidence and the attorney
16 general's office criticizes Mr. Phillips for his role in
17 payments on consulting contracts. Okay, on all of these the
18 NRA got value for them. I don't have the time to go
19 through each every individual one that they criticize, but
20 I'm going to give you two examples just so you can see what
21 I mean.

22 They talked about Dave Butz. You remember Dave
23 Butz. He's the former NFL player. He got paid to serve as
24 a shooting instructor, a roving ambassador, essentially, for
25 the NRA. Ms. Supernaugh testified about him, and I think

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Defendant Summation/Mr. Farber

1 about how he even instructed her on how to shoot firearms.

2 They, also, criticized the consulting arrangement
3 with Grassroots Behavioral Science. This was Brad O'Leary's
4 company. Mr. O'Leary was the predecessor to MMP in the
5 membership marketing business.

6 Well, you heard both Ms. Supernaugh and
7 Mr. Phillips explain to you how Mr. O'Leary was,
8 essentially, a marketing genius, an extremely talented
9 individual; and he continued to do research for the NRA and
10 continued to do fundraising for the NRA even after that
11 business was transitioned.

12 So, I've talked to you about these issues at the
13 heart of the case that they criticize Mr. Phillips for, and
14 point out how Mr. Phillips isn't benefitting personally from
15 any of them.

16 So, what do they say he benefitted from personally?
17 Well, really two things they criticize him for:

18 First, is the contract that the NRA entered into
19 with a company called HomeTelos, and this is the company you
20 see on the slide. If you can't, it is hard to read; but
21 this was for a contract for software development for the
22 NRA's website to support a program called NRA Outdoors
23 Outfitters that they were bringing in house. It had been
24 done by an outside service.

25 Ladies and gentlemen, this was a legitimate

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Defendant Summation/Mr. Farber

1 contract, okay, that the NRA received value for. If you go
2 look, there's a contract review sheet. It has all the
3 required approvals, legal review from the office of General
4 Counsel, the Executive Vice President, Mr. LaPierre signed
5 it. The President at the time, I think that was Mr. Porter,
6 he signed it. Alan Cors, who was the First Vice President
7 signed it.

8 And, ladies and gentlemen, the testimony that
9 you've heard, the evidence you've seen is that the head of
10 IT at the NRA, Tony Hayes, chose HomeTelos on the merits.
11 It had nothing to do with the fact that Ms. Richards, one of
12 the principals, was a former girlfriend of Mr. Phillips.
13 There's no evidence of that.

14 And take a look, ladies and gentlemen, you saw
15 this, what the Audit Committee found when it went back and
16 examined the contract, okay.

17 The conclusion that the Audit Committee came to
18 when they went back and looked at this was that they
19 determined that the engagement was fair, reasonable, it was
20 in the best interest of the NRA when undertaken.

21 And they also reported here that you see at the
22 top, the NRA's managing director information services, Tony
23 Hayes, advised that he interviewed HomeTelos before engaging
24 it, determined that the vendor's proposal was satisfactory
25 and its pricing was reasonable, relative to pricing of

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Defendant Summation/Mr. Farber

1 similar services.

2 And he did that when he was unaware of the
3 relationship between Mr. Phillips's friend and HomeTelos.
4 He wasn't influenced by that at all.

5 And, then, in item five, he reports:

6 That HomeTelos satisfactorily performed the
7 services for which it was engaged. And based on all of
8 that, the Audit Committee came to a determination that it's
9 fair and reasonable in the best interest of the NRA to
10 ratify and approve the HomeTelos engagement.

11 That was the Audit Committee shared by Mr. Cotton
12 who's sitting there in the audience. You remember the poor
13 man had to testify, I think, over a course of a week, three
14 or four different days; but he's been nice enough -- welcome
15 back, Mr. Cotton -- to and join us here this morning. And
16 this was the Audit Committee meeting back in the days when
17 he was chairing the Audit Committee, and that was the
18 conclusion that he and his committee reached after looking
19 at this. And that wasn't something that Mr. Phillips needed
20 to disclose to the Audit Committee, by the way, or get
21 special approval for.

22 The NRA has a related-party transaction policy. I
23 reviewed that with you -- in fact, I think it was maybe when
24 Mr. Cotton was testifying -- and it is clear that this
25 policy doesn't include former girlfriends or current ones,

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Defendant Summation/Mr. Farber

1 for that matter; and it was perfectly reasonable for
2 Mr. Phillips to rely on that policy to mean what it said.

3 The Audit Committee only reviewed that policy later
4 on and approved it at an abundance of caution because of the
5 hypersensitivity that the resulted from the warning that
6 Tom King, remember the board member from New York testified
7 that he received from then attorney general, Eric
8 Schneiderman.

9 The fact that Mr. Phillips embraced that effort and
10 disclosed it in an abundance of caution, which is -- which
11 is what's reflected on these minutes, that doesn't mean that
12 he needed to get approval in the first place.

13 So, what's the second thing that they criticize him
14 for? Mr. Phillips post-employment consulting agreement,
15 okay. That's what they claim is an improper related-party
16 transaction. They claim that Mr. Phillips caused the NRA --
17 that he caused the NRA to enter into it.

18 But, ladies and gentlemen, Mr. Phillips did not
19 represent the NRA when he signed this agreement. It is
20 undisputed that he acted at arms length. He had his own
21 lawyer, Mark Dycio. The NRA had a lawyer. Not Ms. Rogers
22 or her firm, but Steven Hart who you've heard testimony
23 about, and Mr. Phillips signed on his own behalf there on
24 the right, and the National Rifle Association executed -- it
25 was executed by Pete Brownell there down at the bottom and

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Defendant Summation/Mr. Farber

1 Mr. Brownell at the time was the President of the NRA and
2 was also signed by Carolyn Meadows who you heard testify a
3 couple different times by video who was then the First Vice
4 President and has been an Audit Committee member, claiming
5 that this transaction, there's something wrong about this.
6 That Mr. Phillips caused the NRA to enter into a
7 related-party transaction, that's somehow improper because
8 he may not have gotten the right approval for it is the
9 ultimate nitpicking by the attorney general's office.

10 They criticize him for not presenting this contract
11 to the board for approval in advance. That wasn't for him
12 to do. It would have been wholly inappropriate for
13 Mr. Phillips to be the person to present this contract to
14 Mr. Cotton and ask for him to be acting on behalf of the NRA
15 to approve a contract that he was a counterparty to. That
16 was for Mr. Brownell, as President, or Ms. Meadows, as First
17 Vice President or Steve heart as their lawyer to do. Had he
18 done that himself, you would have been hearing them complain
19 about the conflict of interest he had in presenting and
20 asking for approval for a contract with himself.

21 None of this is to say that Mr. Phillips was
22 perfect or didn't make mistakes. I told you that, also, in
23 my opening. And, and Mr. Phillips himself candidly admitted
24 to you during his testimony that there were payments that he
25 signed off on that did not have all the necessary approvals,

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Defendant Summation/Mr. Farber

1 contracts that were entered into orally instead of in
2 writing. And he was open with you about the fact that some
3 of those, yes, they did violate internal NRA policies and
4 procedures; but there's a big difference, a huge difference
5 between violating a NRA policy and violating the law.

6 Now, tomorrow, Judge Cohen is going to instruct you
7 on the law and it's his instructions and not my statements
8 that govern, but listen closely and I expect that in his
9 instructions you will hear him tell you that a finding that
10 individual defendant's conduct or a transaction violated an
11 NRA Bylaw, rule, guidance or policy does not necessarily
12 mean that the conduct or the transaction violated the
13 statute. And, Mr. Phillips's conduct did not.

14 Ladies and gentlemen, Mr. Phillips was focused on
15 the big picture. That's what he was doing to fulfill his
16 duties to the NRA, what he needed to do to fulfill his
17 duties to the NRA. He had broad, wide-ranging
18 responsibilities. Again, Mr. Cotton, among others, went
19 through these with you. As treasurer and CFO, he had
20 responsibilities that included not just overseeing payments,
21 but all financial reporting, tax, budgeting. He had to
22 report at regular board meetings, Audit Committee meetings,
23 Finance Committee presentations.

24 And what that meant, ladies and gentlemen, is that
25 Mr. Philips, himself, could not and did not do a detailed

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Defendant Summation/Mr. Farber

1 review of every contract or invoice; and that's not a CFO's
2 or treasurer's job. What he did do was he built a
3 well-qualified team basically from scratch that he relied
4 upon: CPAs, trained CPAs like himself, people like Rick
5 Tedrick, Sonya Rowling, Michael Erstling whose job it was to
6 be the first line of defense. And that system, that
7 management system worked during his 25-year run as CFO and
8 treasurer, the NRA grew enormously.

9 Now, look, Mr. LaPierre, obviously, deserves the
10 lion's share of credit for that growth and development;
11 but Mr. Phillip's work with him was instrumental to it, as
12 well. And, and I'm -- I wanted to call up this slide for a
13 minute.

14 You'll remember I -- it came up during
15 Mr. Phillip's testimony, and this is the slide that shows
16 the changes in the NRA from 1991 when he started to 2018
17 when he left. And at the top, you see how, for example,
18 cash and cash equivalents grew from only about \$194,000 to
19 over \$30 million. The bottom total assets increased by
20 \$202 million.

21 You see at the bottom there, net assets -- the
22 bottom of the first block I should say increased by over
23 \$140 million.

24 Total grants, go down to the second block, total
25 grants which were nonexistent had exceeded \$398,000,000.

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Defendant Summation/Mr. Farber

1 There were 22 million in 2018 alone.

2 You'll see at the very bottom under assets not in
3 financials, the documented plan gifts which was something
4 that the NRA didn't even have in 1991, a program that
5 started under Mr. Phillips and under Mr. LaPierre, that that
6 came to over \$300 million.

7 And then finally at the bottom, what's perhaps the
8 most important metric for a membership organization, look at
9 how the membership grew. It more than doubled over the
10 course of those years.

11 Now, when Mr. Phillips retired in 2018, his
12 successor did things differently. Okay, Mr. Spray, the
13 ex-navy officer testified by video, was much more
14 detail-oriented, much more procedurally focused. You heard
15 Mr. Erstling testify about how he preferred that style to
16 Mr. Phillips. He didn't like the fact that Mr. Phillips
17 rarely met with him personally, or that Mr. Phillips in
18 later years was often working from Dallas instead of from
19 NRA headquarters in Fairfax.

20 And that may be Mr. Erstling's preference, but I
21 think we've all seen over the past few years that jobs can
22 often be done, particularly office jobs, can often be done
23 remotely every bit effectively as they can be done in
24 person.

25 Look, I'm not here to tell you that Mr. Spray's

BP

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Defendant Summation/Mr. Farber

1 approach or Mr. Phillips' approach, that one was better or
2 worse than the other. They were different. Okay, but that
3 doesn't make one right or one wrong. And Mr. Phillips'
4 style, his management system as CFO and treasurer worked for
5 the NRA when he was there. It furthered the NRA's mission,
6 which is precisely what Mr. Phillips' fiduciary duty
7 required him to do.

8 His focus on the big picture, building donors,
9 building revenue, building memberships, enabling programs,
10 allowed the NRA to thrive in an era of growth.

11 But when circumstances changed, ladies and
12 gentlemen, they did change when the NRA faced the prospect
13 of regulatory assault and recognized the need to be
14 hyper-attentive to procedure, Mr. Phillips embraced that
15 change. As Mr. LaPierre and Ms. Supernaugh both explained
16 that effort, so-called 360 review or course correction that
17 you've heard a lot about, that began in 2017 when
18 Mr. Phillips was CFO and treasurer. Mr. Spray was not hired
19 until several months into 2018. In fact, Mr. Phillips was
20 instrumental in his hire. It began in 2017 on his watch.

21 And, later, in 2018, it was Mr. Phillips who sent
22 out the letters to vendors demanding information. This is
23 an example of the one to MMP, about auditing files, books
24 and records from August of 2018; and you'll see, here's a
25 second letter to MMP. And I haven't highlighted this part,

BP

4531

Defendant Summation/Mr. Farber

1 but you'll see, this is in the first sentence talking about
2 how the NRA intends to strengthen its position for
3 documentation and verification of compliance of vendor
4 assets. These were letters that came from Mr. Phillips who
5 jumped into this effort with both feet.

6 Those efforts, okay, that willingness to embrace a
7 new way of doing things is just further proof of how
8 Mr. Phillips always put the NRA first and was willing to do
9 whatever he needed to do in order to advance its mission.

10 Now, I should probably stop there; but before I do,
11 I want to address one thing that Ms. Connell brought up in
12 her examination of Mr. Phillips: His declining to answer
13 questions at his bankruptcy deposition based on his rights
14 under the Fifth Amendment of the constitution because I
15 think it underscores just how empty the State's case is of
16 actual evidence.

17 They can't prove that Mr. Phillips, in fact,
18 violated the law. So, instead, they want to suggest to you
19 that his exercising that constitutional right is evidence
20 that he did something wrong. That's simply not true, okay,
21 and you heard from multiple witnesses about the threats that
22 the attorney general, herself, Letitia James had made, how
23 she referred to the NRA as a terrorist, criminal
24 organization.

25 Ladies and gentlemen, Mr. Phillips was not a party

BP

4532

Defendant Summation/Mr. Werbner

1 to that bankruptcy case in which he was deposed so he had no
2 reason to do anything at all; and what he did, he did what
3 anyone would do in those circumstances. He followed his
4 lawyer's advice and he took the Fifth.

5 And you also heard him testify that when he was
6 fully deposed in this case, by all of them, you heard him
7 answer he gave testimony; and you also heard him answer all
8 of Ms. Connell's questions and everyone else's for all the
9 other lawyers on that witness stand in open court in front
10 of you. He did that, ladies and gentlemen, because he did
11 nothing at all wrong.

12 With that, thank you for allowing me the privilege
13 of addressing you. Thank you for giving me your attention,
14 and I'm going to turn the podium over now to Mr. Werbner.

15 SUMMATION BY

16 MR. WERBNER:

17 MR. WERBNER: Your Honor, I don't think I'll need
18 it, but could I have a one-minute warning if I get that
19 far?

20 THE COURT: Okay.

21 MR. WERBNER: May it please the Court.

22 THE COURT: It sure does.

23 MR. WERBNER: Good morning, folks.

24 I want to start at the outset because I'm talking
25 about damages, I want to make something very clear. The

BP

4533

Defendant Summation/Mr. Werbner

1 fact that I'm talking about damages in no way suggests a
2 that there was liability in this case. I have a duty to
3 cover all the questions that you might be asked, and you're
4 going to be asked about three things I think when you hear
5 from the judge tomorrow. They're going to sort of be
6 numbered A, B and C. I don't know if it is 2A, or 2B or 2C.
7 That will be determined by the judge in the instructions in
8 what's called the verdict sheet.

9 But 2A or 3A, whatever it is called in the papers
10 in series, A is going to ask has the plaintiff proven by the
11 preponderance of the evidence that Woody Phillips violated
12 his duty of good faith and care?

13 I believe you're going to answer that no, they have
14 not proved that he violated his duty of good faith; and if
15 you do, you will not answer questions B and C that ask about
16 whether there was harm and what amount of damages, if any,
17 there was.

18 But, I want to address with you the questions about
19 harm and damages.

20 I think that there's a fatal, fundamental flaw in
21 the plaintiff's case about damages. They say that there was
22 millions and millions and millions of dollars of harm caused
23 to the NRA by Mr. Phillips' actions and that's just not
24 true.

25 They made a fundamental mistake because they called

BP

4534

Defendant Summation/Mr. Werbner

1 only one witness, their million-dollar man, Mr. Hines. He
2 got over a million dollars to testify in this case; but all
3 he did was tabulate from the general ledger and from the
4 bank statements various sums of money. He never analyzed
5 whether Mr. Phillips had caused any damages to the
6 organization.

7 And I have the transcript from page 3162. I asked
8 this million dollar man when I questioned him, he danced
9 around a little bit and I had to be a little aggressive in
10 my questioning. I apologize for that. Hold that against
11 me, not Mr. Phillips.

12 But, I had to ask him:

13 "Sir, can you tell us what damages, if any, were
14 caused by Woody Phillips; yes or no?"

15 He said, "I have not calculated damages."

16 And then I said, "And, therefore, you can't say
17 what damages, if any, Woody Phillips caused the NRA;
18 correct?"

19 "Again, I haven't calculated," he said. "I can't
20 say because I haven't performed that analysis."

21 So, they have not brought you any evidence in the
22 case to show what the damages, if any, were caused by Woody
23 Phillips. They made a mistake by not doing that. Probably,
24 because there were no damages.

25 Mr. Phillips acted in good faith, but they

BP

4535

1 wanted -- if they wanted to, they should have brought a
2 witness to say I've looked at all the numbers, I've done all
3 the tabulations and the damages caused by Mr. Phillips
4 were X. They never did that, and I think the reason is
5 clear is because there aren't damages that were caused by
6 Woody Phillips.

7 Ladies and gentlemen, Woody Phillips always acted
8 in good faith. That's essentially undisputed. You saw from
9 Lisa Supernaugh who worked with him for twenty-one years
10 when she testified about a list and an e-mail of
11 transactions without a written contract. She was very
12 convincing and compelling when she looked at you and told
13 you that he always acted in good faith. That he always
14 served the mission of the NRA.

15 (Continued on next page)

BP

4536

Defendant's Summation/Mr. Werbner

1 MR. WERBNER: It's essentially undisputed. Not one
2 witness came to tell you and say that Woody Phillips acted
3 in bad faith. Not one witness did that. And not one
4 witness showed that it -- he was the cause of any damages.

5 Ladies and gentlemen, Woody Phillips acted loyally
6 to the NRA. That's almost undisputed as well. He was loyal
7 to the NRA throughout his 25-year career, and he never
8 intended to do any harm to the NRA. There is no proof that
9 he ever wanted to harm the NRA, and he didn't harm the NRA,
10 and he didn't profit in any way.

11 Does that make any sense?

12 They want -- the Plaintiff wants you to award
13 millions, maybe ten of millions of dollars against Woody
14 Phillips. They say it's restitution, but he never took any
15 money. The money they want from him is not going to go to
16 the Attorney General or to the Plaintiff or the State of New
17 York. It's money they want him to pay to the NRA. Millions
18 of dollars. But he never took any money.

19 The only indication in his 25-year career what he
20 did was get a salary for those 25 years, and then he had a
21 legitimate consulting agreement so that he would be
22 available to answer any questions and to do whatever he
23 needed to do to aid in the transition to Mr. Spray.

24 Folks, Woody Phillips is a good man, and Woody
25 Phillips acted honorably throughout his career at the NRA.

KM

4537

Defendant's Summation/Mr. Werbner

1 The State wants to put him in bankruptcy, ladies and
2 gentlemen, and he doesn't deserve it. Please don't do that.
3 Woody Phillips doesn't deserve to be made penniless. The
4 evidence doesn't support that, and that's what the Plaintiff
5 is going to ask you to do. Thank you.

6 THE COURT: Thank you, sir. We are going to take a
7 break now.

8 For my master plan of the day to work, we need to
9 restart before 11:30 so maybe a ten-minute break if we can
10 do it.

11 THE COURT OFFICER: All rise. Jury exiting.

12 (Whereupon, at this time the jury exits
13 the courtroom.)

14 THE COURT: One logistical thing I wanted to let
15 you know. There is a -- you can sit. There is a -- one of
16 the regs permit me either on my own motion or to have a copy
17 of the instructions -- the written instructions go to the
18 jury as long as I certify that it's correct, and I'll do my
19 best to read it the way it's written. Sometimes I can't
20 help myself. But even if I do that, it just says -- and
21 this is 22 NYCRR 220.11. It says if it's not the transcript
22 that we are giving them, I have to certify that it's a
23 correct copy of the instructions, but also says that I
24 should afford the parties an opportunity to be heard about
25 whether they have an issue with that.

KM

4538

Defendant's Summation/Mr. Werbner

1 Does anybody care one way or the other? I just
2 feel like if we are going to give it to them, it would be
3 handy for them to be able to refer to it in the jury room.

4 MS. CONNELL: Your Honor, Plaintiff agrees that the
5 instructions should go back with the jury, and we trust the
6 Court with regard to the certification. It's fine.

7 THE COURT: Anyone on the defense side have a
8 problem? I mean, look --

9 MR. FARBER: No objection.

10 THE COURT: They can ask for the transcript.

11 MR. CORRELL: No objection.

12 MS. ROGERS: No objection.

13 MR. FLEMING: No objection.

14 THE COURT: Okay. Great. Let's be back here in
15 five minutes.

16 (Whereupon at this time there was a recess taken.)

17 THE COURT: Counsel, before we get the jury, I had a
18 brief chat with the juror who has the plan -- the travel
19 plans next week, and I told her that we'd check in with her
20 tomorrow, but that my rule is if whoever is going to be in
21 the jury and deliberating, has to stay through the entirety
22 of the entire thing even if it goes into next week. And so
23 I asked her to think about it. And if her position is she
24 can not do that or will not do that, I would chat with you
25 all and we would decide whether it makes more sense to just

KM

4539

Defendant's Summation/Mr. Werbner

1 excuse her before deliberations start and just have her be
2 one of the extras. I don't want to be in a situation where
3 we have six, and we know already there is a risk of her not
4 coming. So I made it very clear that she will -- if she is
5 in the group of six, she will not be excused to travel. So
6 I need to know before that happens. And so I said that I
7 would address it with you initially, but that I would talk
8 to the juror tomorrow. So I think we discussed this. My
9 view is that's not a risk that's worth taking. So we will
10 talk about it.

11 You know, I assume you don't mind me checking in
12 with her tomorrow and see just one on one what her position
13 is going to be.

14 MR. FARBER: No objection.

15 MS. ROGERS: No objection.

16 MS. CONNELL: No objection.

17 THE COURT: If anybody has a different view as to
18 what we should do if the response is, well, look, I'm
19 leaving on X day whether you want me to or not, you know, my
20 view is that's an unavailable juror. If anybody has a
21 different view, I'd like to know it. Okay.

22 MR. FARBER: Our view is the same.

23 MS. ROGERS: Likewise.

24 MS. CONNELL: Agree, your Honor.

25 THE COURT: I wanted to keep everybody around at

KM

4540

Defendant's Summation/Mr. Werbner

1 least till today because, well, what would we do if somehow
2 we lost four other jurors and we needed all six, but we
3 thankfully at this point are in a position where we have
4 extras.

5 All right. Let's get the jury.

6 If things go well, we will have both closings at
7 1:00, and we might not even next need the extra time.

8 THE COURT OFFICER: All rise. Jury entering.

9 (Whereupon, at this time the jury entered the
10 courtroom.)

11 THE COURT: Okay. Welcome back. Have a seat.
12 Please have a seat. All right. Next up is Mr. Correll for
13 Mr. LaPierre.

14 MR. CORRELL: Good afternoon. Good morning, I
15 guess. I'm speaking for Mr. LaPierre. You've met Mr.
16 LaPierre.

17 When I spoke to you for the first time at the
18 beginning of the case, I said that I would introduce you to
19 Mr. LaPierre. You would meet him, and he would tell you
20 what he knew and when he knew it, what he did and why he did
21 it and what he did to fix the mistakes that he made.

22 Mr. LaPierre built the NRA. Not single handedly.
23 He had the help of others. He had the help of Woody
24 Phillips who was there from almost the beginning. John
25 Frazer came in and helped, and he trusted them. He relied

KM

4541

Defendant's Summation/Mr. Werbner

1 on them. He believed they were competent, and he received
2 information from them periodically that led him to believe
3 that all is well, that everything was running as it should
4 be running. Sadly, he never received notice of some of the
5 things that became an issue with the Attorney General's
6 Office, things like how to handle payments on car leases,
7 how to deal with gift -- gifts to employees, whether or not
8 wardrobe was an expense that he should cover or that the
9 association should cover.

10 He was focused on the big picture. He was on the
11 road. He was focused on building relationships because he
12 knew that that was what he was good at. He was not an
13 accountant. He was not a lawyer, but he knew people and he
14 enjoyed being with people. He enjoyed meeting members. He
15 enjoyed listening to them. He enjoyed speaking for them.
16 That's what he was really interested in. He wasn't
17 interested in building a big pile of money for himself. He
18 wasn't interested in trying to get money secretly through
19 some back-door arrangement with the association.

20 He probably could have made a lot more money doing
21 something else as a high-priced consultant in Washington.
22 He was at a very early age one of the top lobbyists in
23 Washington. If he had wanted to make a fortune, he could
24 have. He could have bought a yacht if he wanted one.
25 Probably could have bought a plane if he wanted one, but

KM

4542

Defendant's Summation/Mr. Werbner

1 what he did was he devoted himself to a cause, and that
2 cause was freedom, one element of freedom which was the
3 Second Amendment, the right to protect yourself against
4 aggressors and even the Government, if necessary.

5 So this may be the most important case in the
6 country right now, and I do not exaggerate. Its been
7 followed in the press. You haven't been able to read it,
8 but when you're finished, you will be able to read it. It's
9 testing the limits of Government's power to intrude in
10 private lives, and that's a fight that Wayne LaPierre has
11 been fighting since he was out of college and since he was
12 -- since he came to work for the NRA. It's really about
13 fighting for everyone who feels that there should be limits
14 to what the Government can do to private citizens, and he's
15 paid an incredible price for that.

16 You've heard that Letitia James called the
17 organization he works for or worked for and helped build a
18 terrorist organization. A terrorist organization. Four
19 million of her fellow Americans, she called terrorists. And
20 she promised to destroy it. She said to people, if you give
21 me money and you give me votes and you give me power, I will
22 use that power to destroy this organization, and she set out
23 to do that. She got elected. They gave her money. They
24 gave her votes. They gave her power, and this is how she
25 used it.

KM

4543

Defendant's Summation/Mr. Werbner

1 Mr. LaPierre had to fight back. He had to fight
2 back not for himself because he didn't think he had done
3 anything wrong. He had to fight back for the four million
4 members who trusted him, to fight for them, to speak for
5 them, to be their voice in Washington and elsewhere. That's
6 the fight that he's been engaged in. Its been the fight of
7 his life, and he has engaged in it despite a debilitating
8 physical condition that has plagued him for the last four
9 years, but he was not willing to step down and leave and
10 leave this organization undefended against this attack.

11 Now, you heard the testimony. A call from Tom King
12 who said he got a call from Eric Schneiderman who said I
13 don't like what I'm seeing, and I'm summarizing. Sum or
14 substance. But that pressure is building for an attack by
15 the State of New York on the NRA, and I don't think it's
16 right. You need to prepare for it. The law has changed.
17 Probably no one's in compliance. You need to make sure that
18 you're doing everything right because this has been
19 identified as a vulnerability, and they are going to come
20 for you. He didn't know whether that was right or wrong,
21 when it would come -- when the attack would go come, if it
22 came, but he did exactly the right thing. He hung up the
23 phone. He called -- I guess he picked up the phone and
24 called a lawyer and said -- told them what happened, and
25 then hired a firm that was known for its non-profit practice

KM

4544

Defendant's Summation/Mr. Werbner

1 to look into the matter.

2 What do we need to do to comply? Are we in
3 compliance? If not, what do we need to do to get in
4 compliance. He understood he had to build a bull-work
5 against a government intrusion. It wasn't the first time he
6 had had to fight for the association and its members. There
7 had been an attack before from the federal government in an
8 administration that was hostile to the organization and that
9 was upset that -- that -- at the success that the
10 organization was having in elections. So this was nothing
11 new.

12 He did the right thing. He gave instructions. He
13 gave directions to look at everything, turn over every stone
14 and to look at him because he wanted to know whether there
15 was anything he might have done that needed to be fixed that
16 should have been done a different way.

17 You heard about the efforts that he went to
18 identify things that he had done. You heard about the
19 process. You heard about how long it took to get documents
20 to figure out what needed to be paid or what he wanted to
21 pay. You also heard about the threat level that he was
22 facing throughout the more recently but beginning early on
23 in his career, actually beginning in the the 2000's. And
24 you heard about the security people telling him that he
25 needed to travel private.

KM

4545

Defendant's Summation/Mr. Werbner

1 The Attorney General has taken a position that as
2 if the law prohibited private jet travel by people who work
3 for not-for-profit corporations. It doesn't. It's not in
4 the not-for-profit corporation law. It doesn't say people
5 who work for not-for-profit corporations can not fly
6 private.

7 You heard an expert -- the Attorney General's
8 expert admit that the PGA Tour requires their top executives
9 office to fly private for security reasons, for efficiency
10 reasons, for privacy reasons, and you saw the 990. I think
11 I put it up for you that showed that -- that they require
12 their executives to travel that way. It was perfectly
13 reasonable for Mr. LaPierre to rely on the information from
14 security experts or when they told him you need to start
15 flying private. Whether it's business, whether it's
16 personal, you need to do that.

17 Now, did he think that if he was flying to a
18 convention and his wife accompanied him sitting in an empty
19 seat so that she could do an event for the Women's
20 Leadership Forum that that had some tax consequence that he
21 needed to be aware of? He just didn't know. It never
22 crossed his mind.

23 When the review started and the issue came up, he
24 promptly performed appropriate calculations and started
25 writing checks to cover that piece of that travel.

KM

4546

Defendant's Summation/Mr. Werbner

1 The Attorney General has suggested to you that
2 every private flight that was taken was somehow a personal
3 flight. It wasn't. The evidence shows that he was
4 traveling all over the country legitimately on NRA business.
5 It was in the interest of the NRA for him to do that.

6 You heard testimony from Craig Spray that he was
7 raising \$10 million a month. When it looked like the NRA
8 might have to close its doors, you heard Craig Spray say he
9 pulled a rabbit out of the hat. He gave them the freedom
10 they needed to keep functioning while they got their house
11 in order and they got through the choppy water.

12 The Attorney General doesn't want you to think
13 about the benefits Mr. LaPierre has brought to the NRA. The
14 Attorney General doesn't want you to think about the money
15 he's raised for the NRA. They don't want you to think about
16 the relationships he has built for the NRA. They want to
17 put a picture of a yacht up on the screen and tell you that
18 there is something wrong with his sending an invitation, to
19 accompany the McKenzies on a cruise in the Mediterranean
20 where he knew he was going to be introduced to people that
21 were in a position to advance the interests of the NRA.

22 They want you to think that flying out to Hollywood
23 to meet with celebrities was something he was doing for his
24 own private benefit to benefit himself not, the NRA, but you
25 saw the results of the effort that he made. He was in a way

KM

4547

Defendant's Summation/Mr. Werbner

1 a visionary. He was -- he understood influencers before
2 "influencers" was a word. He was dealing with influencers
3 in Hollywood and elsewhere before there was an internet,
4 before there was TikTok, before there was anything. He got
5 it. He was a genius not only from a political science and
6 government standpoint, but from a marketing and messaging
7 and relationships standpoint.

8 The organization was lucky to have him, and he is a
9 one-of-a-kind individual. You met him. He is not the
10 arrogant, greedy, exploitive person that the AG has tried to
11 make him out to be. You can see that for yourself. He sat
12 here for day after day after day struggling with illness to
13 tell you the story, to tell you the truth, and I think you
14 heard it.

15 All the AG can do is criticize and bring in a
16 million dollar man Mr. Hindsight Mr. Hines who sat in a arm
17 chair critiquing the quarterback on the field when he's
18 never played football. The man has never been on the field.
19 He has never been in LaPierre's shoes. He has probably
20 never had a death threat. He's probably never had someone
21 throw a couple of coffee at him. He's probably never had to
22 deal with that kind of psychological stress really and stand
23 in there and continue to fight.

24 So the AG doesn't want you to look at the heroism.
25 They don't want you to look at the freedom he's put forth.

KM

4548

Defendant's Summation/Mr. Werbner

1 They don't want you to look at the four million Americans
2 that he has represented and spoken for.

3 Letitia James wants to take their right to select
4 their leader away from them. In fact, even though he is no
5 longer the executive vice-president of the NRA, they are
6 going to ask you to find whether there is cause to remove
7 him or whether there was cause to remove him. It's vicious.
8 It's inappropriate. But you're going to be asked to do
9 that.

10 The fact is that Letitia James set out to destroy
11 the organization, and she knew the best way to do that was
12 to try to destroy Wayne LaPierre because he was head of the
13 organization. It was critical to the organization. She
14 wanted to decapitate the organization, and that was for
15 political reasons.

16 So when you look at the evidence, look at it
17 through the lens of a government official who has made
18 promises to people who gave her money for her campaign, who
19 gave her votes, who gave her political support and send this
20 team of lawyers out looking for something, anything they
21 could use to try to discredit him, to try to embarrass him,
22 to try to humiliate him, and they joined forces with a
23 powerful organization that was a vendor that was stealing
24 from the organization. Stealing from the NRA. And she
25 would have you believe that she cares about the NRA and that

KM

4549

Defendant's Summation/Mr. Werbner

1 she wants to get money for the NRA so it could go back to
2 the NRA.

3 Does that make any sense to you? She called it a
4 terrorist organization. Why is she using public resources
5 to try to get money to put into a terrorist organization?
6 It doesn't fit. It doesn't make sense. What's happening
7 here is a travesty, and I'm sorry for becoming passionate
8 and maybe I don't want to overstate it, but you have to
9 understand the context in which this investigation was
10 opened, the context in which this action was brought. And I
11 say that for a reason. They are criticizing Mr. LaPierre
12 for exercising his business judgement to try to get some
13 protection from the federal government, from a federal judge
14 by instructing bankruptcy counsel to take appropriate steps
15 to seek any protection he could get for the organization
16 from the federal government from an impartial federal judge
17 knowing that the bankruptcy process is the most transparent
18 and open process in the world. You have to open all of your
19 books to the world to the bankruptcy court. Anyone can come
20 in and ask questions, and it's the -- it's the ultimate
21 transparency because nothing can be hidden. Nothing can be
22 hidden. So the suggestion is that there was some benefit to
23 Mr. LaPierre that he was trying to achieve personally by
24 talking to bankruptcy counsel, consulting with a Special
25 Litigation Committee, and after doing that, making a hard

KM

4550

Defendant's Summation/Mr. Werbner

1 decision to try to get whatever protection he could get for
2 his organization from this State that was attacking him.
3 They fault him for that are.

4 They are going to ask you to hold him liable for a
5 violation of law on the theory that he was not acting in the
6 best interest of the organization. They may try to take the
7 word "lack of good faith" out of the judge's opinion in the
8 bankruptcy and try to tell you that that somehow meets the
9 standard for imposing liability on him under the
10 not-for-profit corporation law. It doesn't. You have to
11 make your own decision.

12 Was Mr. LaPierre acting in good faith when he did
13 that? Was he acting honestly? Was he acting with sincerity
14 of intention? Was he acting to try to protect the
15 organization he had helped build?

16 He was born in 1949. He's 74 years old. That's
17 half as old as the NRA which is 150 years old. He's been
18 with it for a third of its life, and it was under attack by
19 the State of New York.

20 It would have been a dereliction of duty for him
21 not to make the hard decision knowing that he would take the
22 heat, and he made that decision by himself after seeking
23 information from appropriate professionals, from counsel,
24 particularly highly qualified bankruptcy counsel and from
25 the Special Litigation Committee who were disinterested and

KM

4551

Defendant's Summation/Mr. Werbner

1 approved of the path, the course of action that he was
2 thinking about taking.

3 So when they talk to you about that, keep that in
4 mind. Why was he doing that? What possible benefit could
5 he have achieved from that? He didn't believe that this
6 action would stop. It wouldn't. Not with respect to him.
7 Not with respect to the NRA.

8 What he thought was that he could lay the
9 foundation for moving the organization to Texas where it
10 would be in a friendly environment.

11 The change in the law that has been discussed in
12 this case, the Non-Profit Revitalization Act of 2013 was
13 designed to create a friendly environment for not-for-profit
14 corporations in this country, in this State.

15 The AG is using that law in exactly the opposite
16 way to create a hostile environment for organizations that
17 she doesn't like that support candidates that are opposed to
18 candidates from her party. It's a pervasion of the statute.
19 It's a pervasion of justice, and that's what we are seeing
20 here.

21 So I'd like you to think of the evidence in the
22 following light. Is it -- is the evidence really supporting
23 the theory -- this narrative that the Attorney General is
24 trying to sell to you, that Mr. LaPierre was in this for his
25 own benefit, that he was in it for the money, that he was

KM

4552

Defendant's Summation/Mr. Werbner

1 greedy? Or was he in this for the right reasons; to fight
2 for the members, to fight for freedom, to fight for the
3 Second Amendment. And now more and more, to fight for the
4 First Amendment, to fight for the right to speak freely, to
5 fight for the right to associate freely.

6 Let's talk about some facts in the case. The -- we
7 went through the 2013 agreement that he's been criticized
8 for signing. You heard evidence that he didn't receive a
9 penny from that, and over time he got uncomfortable with it
10 and said, look, I think it's a burden. Let's tear it up.
11 It was torn up.

12 So in talking to you about that deal which forms
13 the basis for one of their claims, ask yourself was there
14 any harm to the association as a result of this agreement.
15 Did he get a penny out of it. Did he get any benefit out of
16 it? I think you'll conclude that the answer is no.

17 You heard Mr. Fleming speak eloquently about John
18 Frazer. Mr. LaPierre had been criticized for hiring John
19 Frazer. They said Frazer -- Mr. Frazer was incompetent. He
20 was inexperienced, that this was an attempt by Mr. LaPierre
21 to get someone he could control and manipulate.

22 Ask yourself if that makes sense. You have met Mr.
23 Frazer. You have heard from him. Is he that person? And
24 is Wayne the person who were would hire someone to be
25 incompetent and then rely on that person to cover that

KM

4553

Defendant's Summation/Mr. Werbner

1 important base?

2 Same thing with Mr. Phillips. Mr. LaPierre relied
3 on information from Mr. Phillips, and the evidence is that
4 Mr. Phillips was functioning as a treasurer and CFO without
5 any indication of any problem.

6 You heard Mr. Erstling say that he never spoke to
7 be Mr. LaPierre. You heard others say that they didn't
8 speak to Mr. LaPierre. It appeared that the treasury
9 function and the CFO function was being performed well.

10 And when the Top Concerns memo surfaced, when
11 people came forward, what did Mr. LaPierre do? He gave
12 direction to run it down. It doesn't matter who -- who they
13 were looking at. They needed to look at everyone. The
14 testimony is clear on that. Everyone says that. Mr. Spray
15 said the 360 review couldn't have been done without Wayne
16 LaPierre. Of course, it couldn't. He was the EVP. He gave
17 the direction. He set the tone. He said go for it. Look
18 at everything. Look at me.

19 The AG, their basic claim is that Wayne LaPierre
20 failed to discharge the duty of his position in good faith
21 and with the care an ordinarily prudent person in a like
22 position would exercise under similar circumstances.

23 Let's talk about a like position. Is there a
24 position like this that you can think of in this country?
25 It is unparalleled. It is unique, and that is no

KM

4554

1 exaggeration. There's never been a position like this given
2 the number of roles he's had to play, TV, radio, speeches,
3 debates, politics, interacting with influencers all over the
4 world.

5 They fault him for accepting an invitation to
6 travel with the McKenzies. They fault him for accepting an
7 invitation to stay on a boat in a time when the threat level
8 was so high he couldn't go home.

9 (Continued on the following page.)

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KM

4555

Defendant Summation/Mr. Correll

1 (BY MR. CORRELL)

2 He couldn't go anywhere. A friend said, Look, my
3 boat is down in the Bahamas. If you want to go down there,
4 you'll be safe. He says, yes. He was not thinking for a
5 minute that this was something that he needed to disclose,
6 to tell people where he was going and when he was going to
7 be there. He went.

8 In retrospect, you heard him. He's acknowledged
9 that that was a mistake, that he shouldn't have done it and
10 he hasn't done it since. But, there's no evidence that that
11 had any effect on his judgment, in his dealings with David
12 McKenzie or the company. You've heard that many people
13 looked at that arrangement and concluded that it was a good
14 arrangement, it was good for the NRA.

15 Even the fee increases were appropriate fee
16 increases. They were justified. And they don't want to
17 talk about how much money MMP brought in for the NRA. Over
18 a hundred million dollars in some years. And when they
19 stopped bringing in that much money because the economy
20 changed in COVID, the fee was adjusted. They brought no one
21 in to tell you to testify that in their view the NRA could
22 have gotten a better deal elsewhere, that they could have
23 shopped it around and gotten it for less at the same level
24 of quality. There's no testimony to that effect because it
25 is not true. It is not true.

BP

4556

Defendant Summation/Mr. Correll

1 So, it's about criticism. It's about criticism of
2 a man who is actually in the arena, and it is about --
3 excuse me -- it is about an attempt -- it is about an
4 attempt to get that man out of the arena and that is really
5 the purpose of this action.

6 They're asking to ban the man for life from
7 nonprofit service. What they're asking is that they want a
8 ban so that he cannot work for any nonprofit anywhere in the
9 country, if he conducts any activities in New York. Why
10 would you do that to a 74-year-old man who has retired and
11 is ill? They want to take him off the field because he
12 succeeded to too much. So, it is not a lack of success in
13 leading this organization.

14 It is the success in leading the organization that
15 has caused Letitia James to bring this action. Now, where
16 is Letitia James? I don't see her. We've been here for six
17 weeks. If case were so important to her, why wouldn't she
18 be here? I'll tell you why. I would have called her as a
19 witness and asked her why she did this, what she had in
20 mind, what were her purposes? She didn't show up.

21 So, I can't think at this point of what else might
22 be -- you might want to know, but I will echo Mr. Fleming's
23 remarks that this is my last time to talk to you and when
24 we're done, the attorney general is going to be able to
25 stand up and she's going to be able to say a lot of stuff

BP

4557

Defendant Summation/Mr. Correll

1 knowing that I won't be able to respond.

2 So, just like Mr. Fleming, think it through, be
3 skeptical. Ask yourself if I were standing here or
4 Mr. Fleming were standing here, what the response would be
5 when they say the evidence shows this or the evidence shows
6 that? In your mind, hold them to a high standard of proof.
7 They brought this case. They have accused Mr. LaPierre and
8 others of misconduct.

9 Ask the hard question, have they made their case?
10 Have they proved this case? Have they carried their burden?

11 I submit to you that they haven't, not with respect
12 to Mr. LaPierre. I submit to you that they have concocted
13 this story of greed and selfishness that is just not borne
14 out by the proof.

15 You should return a verdict in Mr. LaPierre's favor
16 of no liability. He acted in good faith with honesty and
17 with sincere intention. He acted with care. He selected
18 people carefully. He trusted them. And if he's at fault,
19 it's for trusting, perhaps trusting people too much,
20 trusting Angus McQueen, trusting Tony Makris who he thought
21 of as a friend. He is -- he's a trusting individual because
22 he looks for the best in people. He believes the best about
23 people and he -- and he gives people free reign to do their
24 jobs.

25 You heard him say that his philosophy was to work

BP

4558

Defendant Summation/Mr. Correll

1 hard and let his performance speak for itself. His
2 performance speaks for itself. This organization survived
3 and thrived for many years under his leadership. When
4 concerns were raised, he addressed them. He addressed them
5 appropriately and timely, turning things over to lawyers
6 and professionals.

7 He received reports from Woody Phillips every year
8 about audits. He asked him, How are the audits going? And
9 the answer was always fine. And when he said, How did the
10 audit turn out? The answer was always, It turned out great,
11 no material deficiencies, clean audit.

12 When a CFO with no accounting background hears
13 that, that's not a red flag. That's a green flag. That
14 says all's well; and it means I can get back on the plane,
15 back in a car, out on the road and get back to meeting with
16 members and doing my job, which is raising the money to fund
17 all these programs.

18 Relationships is the word I will leave you with
19 because that's in his view -- that was in his view the key
20 to building this organization, brick by brick over a long
21 period of time; and those relationships take time to mature.
22 Genuine close relationships don't happen immediately. You
23 may meet someone. You may circle back a year later and
24 fifteen years later, someone may give you \$50 million worth
25 of firearms for your museum. That's how it works.

BP

4559

Defendant Summation/Mr. Correll

1 Mr. LaPierre was always out looking for a big
2 donor, a big donor like Michael Bloomberg who could support
3 the organization as he said in a way that would take some
4 have the burden off the smaller donors. It was a smart
5 idea. It was -- it was a reasonable strategy.

6 His business judgment was good on the big things.
7 His judgment failed him on some of the little things. When
8 he realized on how it would look to people and they thought
9 that the NRA was paying for a flight for someone in his
10 family, he paid it. You saw the checks, a million dollars.
11 And went back to the year 2000, which is beyond the period
12 that's even at issue in this case. He didn't have to go
13 back that far. He did it because he wanted to. He wanted
14 to square it all up.

15 So, I'll 11 you with this thought: That as with
16 Mr. Frazer, you're here to judge a man and his life and to
17 decide whether he's the man that the AG says he is, which
18 he's not; or whether he's the man you saw on the stand and
19 whether he's the man that you see through the evidence,
20 through the eyes of other people who knew him and worked
21 with him.

22 This is a story made up by someone with an agenda,
23 someone who wanted him out of the game, out of the arena,
24 off the field, out of the league, banned for life.

25 Who in the world seeks a judgment banning someone

BP

4560

Defendant Summation/Mr. Correll

1 for life from nonprofit service? It is unheard of. It is
2 un-American and it is just wrong.

3 So, when you pull out that verdict sheet, I'm -- I
4 will ask you to deliberate, talk about it; but I hope when
5 you get through that process, you will check the box "no" on
6 liability and stop there.

7 If you get past that -- and I'm not suggesting you
8 should -- ask yourself the same question that Mr. Werbner
9 suggested you ask, which is has Wayne LaPierre caused any
10 harm to this organization? Has he received any money that
11 he hasn't already paid back? Is there anything he got that
12 he hasn't squared up? The answer to that is clearly no.
13 They haven't put on any evidence that he received any
14 benefit that he was not entitled to.

15 There are big focuses on the airplanes. Well,
16 remember Mr. Cox said, well, he flies by prop planes as
17 if you could get from here to LA on a prop plane. It would
18 take you two days.

19 It was a cost benefit analysis and security was the
20 biggest benefit. There was also productivity and efficiency
21 and privacy that allowed Mr. LaPierre to accept the
22 corporation's provision of this charter travel, which was
23 disclosed in the 990s every year with a description of why.
24 So, the idea that he was trying to hide this from anyone
25 is -- should be rejected. The Internal Revenue Service knew

BP

4561

Defendant Summation/Mr. Correll

1 it, the AG knew it and these reports were placed before the
2 board.

3 So, when they talk to you about flights, just
4 understand the law doesn't prohibit it. The board of
5 directors were informed of it through the 990s. The AG
6 knew about it since 2009 and never called up and said, hey,
7 we see that you've checked the box for charter travel.
8 Who's traveling? Where? How much? They never did it.

9 It never happened until Letitia James made a
10 promise to use her office to come after the NRA. That's
11 when the AG suddenly got interested in whether the -- the
12 NRA was providing charter travel to Mr. LaPierre.

13 It is the first time they got interested in car
14 service. How do you get from point A to B without car
15 service? And does the law require that it be a white car or
16 a blue car or a red car? No. People travel. They use
17 whatever ground transportation is available. If you have a
18 security detail, you cannot ride in
19 a smart car. You would have to have a little fleet of smart
20 cars to get people where they're going.

21 That's not how the real world works. So I ask you
22 to think, use your common judgment, use your common sense,
23 use your collective intelligence to ask the question how
24 could he do the job he did without traveling a lot and
25 without being conscious of the security issue and making

BP

4562

Defendant Summation/Mr. Correll

1 sure that he was safe and he got there on time and was
2 productive?

3 So, thank you for your patience. Six weeks, this
4 has been a long trial; and I just hope that -- when I walked
5 in the courthouse today, I looked up and it says "The True
6 Administration of Justice is the Firmest Pillar of Good
7 Government," and I try to look at it every time I come in to
8 the courthouse because I say that's why I'm here.

9 George Washington wrote that and right now, you are
10 the firmest pillar of good government. You are going to
11 decide how far government can intrude into the life of a
12 private individual because of what that individual said on
13 behalf of others, because of who he has associated with and
14 you will be the bull work against government intrusion. You
15 will have to decide on the facts of this case what the facts
16 are, what the truth is and whether you are going to allow
17 the government to make you a part of this.

18 Thank you.

19 THE COURT: Thank you, Mr. Correll.

20 Stretch break while we change.

21 (Brief pause)

22 THE COURT: Let's get resettled, please.

23 COURT OFFICER: Come to order. Keep your seats in
24 the gallery.

25

BP

4563

Defendant Summation/Ms. Rogers

1 THE COURT: All right, everybody all ready? Okay.
2 Counselor, you may proceed.

3 SUMMATION BY

4 MS. ROGERS:

5 MS. ROGERS: All right, ladies and gentlemen, good
6 morning. Can you hear me okay? This will be the last time
7 I have to ask you that.

8 It's been a long six weeks and a short six weeks
9 for all of us. It's been long for you because you had to
10 pause your normal lives and trudge through the snow to be
11 here with us to get justice done. My client and I are so
12 grateful to you for that.

13 And it's been short, it actually flew by for me
14 because it turns out that six weeks is a really short
15 capsule in which to condense a story that lasts six years.
16 It's been six years since 2018 when the NRA whistleblowers
17 who you met on that witness stand, Sonya Rowling and Mike
18 Erstling, came forward whether their colleagues, the NRA
19 Audit Committee, and raised concerns. It's been six years
20 since the NRA heard from the Government that there was
21 political pressure to leverage recent changes in nonprofit
22 law to hurt the NRA.

23 It has been six years since that Audit Committee
24 listened to those whistleblowers, leaned in, sent letters,
25 fired vendors, hired forensic accountants, got rid of old

BP

4564

Defendant Summation/Ms. Rogers

1 executives, brought in new ones, filed some lawsuits,
2 settled some and set things right.

3 I showed you the slide on the first day we met.
4 You are the sole judges of the facts in this case, and so
5 you have the power and the responsibility to separate facts
6 from fiction. You heard some true stories and you heard
7 some false narratives, and it is now your power and your job
8 to tell those apart.

9 So now that all the evidence is in, let's look at
10 what the facts show and what they don't.

11 I stole this PowerPoint slide from the attorney
12 general. This is from the PowerPoint presentation they
13 showed you on the first day of our case. This is a list of
14 things they said they were going to prove.

15 Yesterday on screen and today on screen, actually,
16 you've seen some images of some checks written to the NRA by
17 Mr. LaPierre. But on the very first day of this case, the
18 Government wrote some checks they could not cash, and here
19 they are.

20 The Government promised to prove that the NRA
21 failed to properly administer itself and its charitable
22 assets. Now, the Judge will tell you tomorrow what that
23 means; but I expect that as part of what the Judge tells you
24 will be two important things:

25 First, I expect that you'll be asked to consider

BP

4565

Defendant Summation/Ms. Rogers

1 whether the NRA and all these transactions and all these
2 disputes and all these facts you've heard where the NRA was
3 trying to pursue the legitimate purposes of its nonprofit;
4 and I expect that you'll be asked to consider whether in
5 trying to pursue those legitimate purposes, the NRA board of
6 directors, which is the seats of the NRA's corporate
7 governance, acted in good faith and with ordinary care.

8 And I expect the Court to tell you that to win on
9 this claim, to cash that check, the Government will have to
10 show not just that the NRA made some business decisions that
11 you might make differently with 20/20 hindsight; but that
12 the NRA failed as a trustee of its mission, its purposes and
13 its donations, and that is a high burden and they can't meet
14 it.

15 Now, the second thing they promised to prove to you
16 is that the individuals sitting over there breached certain
17 duties to the NRA. Now, that's not a claim against my
18 client, so I won't spend too much time on it; but I want to
19 point something out.

20 In bringing that claim, the Government admits that
21 the NRA is the victim of quite a bit of a misconduct against
22 the NRA, which the Government alleges; and that's a phrase I
23 want you to keep in your minds.

24 As they get up this afternoon after lunch and talk
25 about misconduct they've alleged, which they think they can

BP

4566

Defendant Summation/Ms. Rogers

1 prove; ask yourself whether it is misconduct against the
2 Government, against a third party, ask yourself whether
3 Ackerman McQueen who they like so much is really the victim
4 here or ask whether it is misconduct against the NRA?

5 The fact that they have sued for breaches of duty
6 to the NRA and want you to award money damages payable to
7 the NRA tells you all you need to know about what the
8 Government deep down admits concerning who's the victim and
9 who's the perpetrator in this case.

10 When the jury writes a note to the judge, the judge
11 shares them with the lawyers. So, knowing at the earliest
12 days of this case one of the jurors wrote a note asking why
13 the NRA's lawyer -- that's me -- sometimes seems to be going
14 against her own company?

15 The truth is that in this case, in these six years
16 the years and some of the years preceding them, there was
17 misconduct against the company, against my client, against
18 the NRA; and as an advocate for the company, it is my job to
19 be honest with you about that. But, misconduct against the
20 NRA is not an offense by the NRA.

21 Now, the third thing that they promised to prove
22 that they must prove, that they can't prove, is that the
23 NRA engaged in something called related-party transactions.

24 You heard me ask Mr. Frazer yesterday -- and the
25 judge will instruct you tomorrow -- concerning the

BP

4567

Defendant Summation/Ms. Rogers

1 difference between a conflict of interest and a
2 related-party transaction, and the short answer is that a
3 conflict of interest is a really broad category; and
4 sometimes a corporation has to act on it, and sometimes they
5 don't. Sometimes it is enough to be aware of it and
6 disclose it.

7 A related-party transaction is a much narrower
8 technical category where certain criteria needs to be met.

9 So, it is not illegal, the Judge will advise you --
10 and you should listen to him and I'm predicting what he
11 might say -- it is not illegal for a nonprofit to do
12 business that someone who's close to it. In fact, that
13 happens a lot in a nonprofit world.

14 But if the person close to the nonprofit is the
15 person participating in a business deal that's large, that's
16 not in the ordinary course of business, not something the
17 company does all the time. And that it involves a
18 sufficient amount of money and it meets certain other
19 criteria, than the board has to evaluate that transaction to
20 ensure that it is fair. And if the board evaluates it after
21 the fact, they have to also evaluate why it happened in the
22 first place.

23 You will hear that for the very small number of
24 transactions they have thrown at you that actually meet the
25 related-party transaction definition, the NRA board acted

BP

4568

Defendant Summation/Ms. Rogers

1 perfectly appropriately as Mr. Frazer's counsel discussed
2 earlier with respect to all those transactions that were
3 approved in 2016 properly any document they tried to keep
4 from you.

5 All right, the fourth claim on the slide, the
6 fourth check they can't cash is the one that personally
7 offends me the most. It is the claim that the NRA
8 mistreated whistleblowers.

9 In fact, you met real whistleblowers, people who
10 came forward who said it was scary and they did it any ways
11 and they spoke out with respect to misconduct involving
12 people who had more power than they did, and they were
13 listened to.

14 The attorney general tried to undermine the
15 credibility of one whistleblower by asking on cross whether
16 he was promoted, received a promotion after blowing the
17 whistle. You're damn right he did. So did Sonya Rowling
18 who sits now in the chair that Mr. Phillips use to occupy.

19 Finally, the NRA and Mr. Frazer are accused of
20 making materially false statements in regulatory filings.
21 The evidence doesn't support that claim either. What the
22 evidence actually shows and what you've heard and what we'll
23 go back over briefly today is that there were
24 inconsistencies in some tax returns where the box wasn't
25 checked for a compensation paid to a board member. But if

BP

4569

Defendant Summation/Ms. Rogers

1 you flip the page, there's a list of compensation paid to
2 board members. And you heard from several outside
3 accountants about how the NRA fixed that. They bought
4 software that checked to make sure that the schedule and the
5 check box lined up.

6 That is not an example of someone telling a
7 materially important lie on a government document that would
8 affect how a serious stakeholder, like a donor via fund,
9 which Mr. Tenenbaum mentioned or like a donor or a member
10 would receive that document.

11 That is an inconsistency and, certainly, not the
12 kind of inconsistency, by the way, that anyone would
13 knowingly or intentionally put in a document because if
14 you're going to lie in governance or your donors about
15 whether you're doing these kinds of transactions, you
16 wouldn't list them all in detail and then forget to check
17 the box.

18 All right, so did they prove any of these claims
19 against the NRA? Obviously, no. But since they want to
20 talk about how the NRA is administered, let's talk about
21 it.

22 You saw during trial evidence about the NRA's
23 corporate governance which is robust and extensive. There
24 are 76 elected directors who represent NRA members. They
25 come from all walks of life. I introduced you on the first

BP

4570

Defendant Summation/Ms. Rogers

1 day of trial to Kim Rhode, an olympic athlete, who's NRA
2 inducted. He's been a sheriff. He has been a lawyer. He
3 has been a CPA. He's another NRA director. He's with us
4 now. You, also, met Ms. Froman on the stand, a Stanford and
5 Harvard lawyer who brings those skills to bear on the NRA
6 board.

7 These are diverse -- this is a diverse and highly
8 accomplished group. You have an Audit Committee in charge
9 of overseeing internal controls that meets almost monthly
10 and you have 39 committees total.

11 We cited a lot of documents on the bottom of this
12 slide. Everything I show you today is annotated with proof
13 you saw. When you're in the jury room, if want to see any
14 of these documents again, any of the testimony again, you
15 can ask the Court for it. As Mr. Frazer's lawyer told you,
16 we're not afraid of the facts. We didn't try to keep
17 documents out of the record because the documents tell the
18 story that is true.

19 All right, I expect to hear and I already heard a
20 combination of two things from the Government. When we talk
21 about what the NRA did when this information came to light,
22 I have already heard and I expect to hear a combination of
23 the refrain "too little too late" and "too much too soon."
24 You either spent too much money on lawyers and filed too
25 many lawsuits and separated from too many people, you didn't

BP

4571

Defendant Summation/Ms. Rogers

1 give Chris Cox his golden parachutes. That's one of their
2 accusations. And then out of the other side of their mouth
3 they accuse us of waiting too long, not acting enough, not
4 going to scorch earth enough. Why didn't you sue
5 Mr. Phillips? Why didn't you sue Mr. LaPierre?

6 Those are the questions I expect to hear from them
7 during closing. If you hear it, don't fall for it. I'm
8 going to tell you what we actually did. I'm going to review
9 what the evidence shows you we actually did and when and how
10 and why.

11 The truth is that a story that lasted six years
12 began in the sprint of 120 days.

13 I'm going to try to make this laser -- it is not
14 working. I'm going to do this again.

15 So, summer 2018, Ms. Rowling and Mr. Erstling, whom
16 you met on that witness stand, come forward to the Audit
17 Committee with their concerns list. They -- the speaking
18 out was facilitated by the new CFO the NRA hired, that's the
19 Top Concerns Memo. The Audit Committee members are
20 flabbergasted and they act immediately. Letters go out to
21 hundreds, hundreds of NRA vendors which are the focus of the
22 Audit Committee concerns.

23 Now, you heard Ms. Rowling say that although she
24 was ultimately supported and affirmed by the NRA, speaking
25 out was scary at first and one reason is that one target of

BP

4572

Defendant Summation/Ms. Rogers

1 that Top Concerns list was Ackerman McQueen. The,
2 advertising agency whom -- who you saw Mr. Cox e-mailing
3 with his friends, saying I have too much control over the
4 NRA, right, the deep state of the NRA, these were
5 accountants working the Finance Department who probably
6 thought they had much less power than Ackerman McQueen, and
7 they came forward any ways. And Ackerman McQueen, along
8 with MMP, this other fundraising vendor you've heard about,
9 were primary targets of these letters.

10 The NRA demanded information; and when they didn't
11 receive enough, they sent in auditors and hired forensic
12 accountants. So from that point forward -- this is
13 Mr. Sullivan's demonstrative that he showed you his
14 timeline. From that point forward, the compliance efforts
15 which had always existed in some form of the NRA really
16 kicked into gear.

17 And, by the way, another refrain I expect you to
18 hear from the Government is that the NRA's compliance
19 efforts were sort of a death bed conversion, that the former
20 attorney general had warned us we were about to face a
21 political prosecution; and so we made a show of tightening
22 things up. But, the Government doesn't start investigating
23 the NRA until the middle of 2019. All of these efforts
24 really start with the whistleblowers coming forward in 2018.

25 That's the catalyst. That's the spark, and from

BP

4573

1 that point on, employees start paying things back or getting
2 fired. You're either part of the problem or you're part of
3 the solution. That was the message from the Audit
4 Committee. The message was delivered, and it was acted
5 upon.

6 Now, the NRA decided that Mr. Frazer was part of
7 the solution. We think the Government's claims against him
8 are unfair. The false filing claims are unfair, and a lot
9 of what Mr. Fleming said regarding this allegation that
10 Mr. Frazer used the NRA as a personal piggybank is unfair
11 and wrong. The NRA trusted Mr. Frazer, and he remains part
12 of our family.

13 Mr. LaPierre at certain points had been part of the
14 problem, and he remained part of the family because he
15 committed in some senses more than anyone to be part of the
16 solution.

17 (Continued on next page)

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BP

4574

Defendant's Summation/Ms. Rogers

1 MS. ROGERS: You heard Ms. Froman testify. She was
2 a sophisticated lawyer that was brought into the NRA by Neal
3 Knox who hated Mr. LaPierre, by one of this dissident
4 directors. She was brought into the NRA by one of those
5 anti-establishment factions. She voted to keep Mr. LaPierre
6 in power, and she said, and I'm paraphrasing slightly that
7 he knew -- he knew if we fearlessly investigated all the
8 misconduct against the association, we might find some
9 things implicating him, and he ordered it anyway.

10 He committed to put the interests of the NRA before
11 his own, and that is what being part of the solution meant,
12 and that is why the Board kept Mr. LaPierre in power until
13 it was time to transition.

14 All right. We only looked at this document
15 together briefly during the early part of this case, but I
16 want to remind you of it. It is one of the most important
17 documents in this case.

18 So after the Audit Committee hears from the
19 whistleblowers and leans in in the Summer of 2018, as I've
20 just narrated, letters go out to all these vendors including
21 one of the most powerful vendors, Ackerman McQueen, and
22 Ackerman McQueen responds with a letter sent from outside
23 counsel to outside counsel because they don't want the
24 accountant seeing it that says, look, everything at Ackerman
25 is legal. All these documents are fine, but you should stop

KM

4575

Defendant's Summation/Ms. Rogers

1 asking for them because you might create a paper trail that
2 New York State might see.

3 You have heard a metaphor used in a couple of other
4 closing statements that the NRA was turning over rocks to
5 find problems and fix them. That the NRA was turning over
6 rocks to find problems and fix them.

7 To mix metaphors for a moment, this letter is
8 Ackerman saying there are bodies buried under these rocks,
9 and you should leave those bodies and these document here
10 with us in Oklahoma where New York can't get them because if
11 you persist with your demands for transparency, if you
12 demand that we give you all the receipts for all the money
13 we spent, you are going to find some things that might hurt,
14 that might hurt some of your executives, and the NRA.

15 If the NRA fit the caricature they are going to
16 draw for you of a corrupt charity that does business in
17 smoke-filled back rooms at cigar bars handing out sweetheart
18 deals to insiders that isn't really committed to compliance,
19 the NRA could have stopped right there. Because if you look
20 at this letter in the jury room, you'll see that it gives
21 the NRA all the superficial assurances it could have, and
22 this letter says everything is fine. All the expenses
23 comply. Don't create a paper trail. Don't dig.

24 Because the NRA was committed to doing the right
25 thing, because the NRA Board was committed to properly

KM

4576

Defendant's Summation/Ms. Rogers

1 administering this charity's assets in furtherance of its
2 mission, the NRA dug.

3 All right. You heard a little bit about this from
4 Mr. Phillips, but I want to talk briefly about what happened
5 in the years leading up to this, the six years that brought
6 us here. The truth is in the six years leading up to the
7 whistleblower outcry in the Summer of 2018, the NRA
8 flourished. The NRA did spectacularly well. The NRA
9 membership more than doubled.

10 You heard that the NRA's payments to one of its
11 membership servicing vendors, MMP, that does mass mailing to
12 the members increased during this time. Well, the number of
13 members increased steeply too.

14 In the six years leading up to the Government
15 targeting the NRA for political reasons, the NRA became a
16 formidable political force. And you might not like the
17 NRA's politics. I told you the first day we met that for
18 many years of my life, I did not like the NRA's politics.
19 But when you're asked to evaluate whether the NRA was
20 behaving consistently with its legitimate purposes or
21 whether it was a proper trustee of that charitable purpose,
22 the answer is yes. The answer is that the NRA's members and
23 donors got what they paid for, and this is not a scam,
24 fly-by-night charity, but this is a very successful and
25 formidable non-profit.

KM

4577

Defendant's Summation/Ms. Rogers

1 All right. You've heard the phrase "tone at the
2 top." The tone at the top has changed because personnel have
3 changed.

4 Josh Powell is a name you heard from both me and
5 Ms. Connell on the first day of this case. They originally
6 had said they were going to call him as a witness. They
7 originally sued him, but they let him off the night
8 before -- well, two days before trial, so he is not part of
9 this case. But Josh Powell is part of the problem. The NRA
10 demanded money back from him, and he's gone.

11 John Frazer's still with us. Mr. Phillips retired.
12 Mr. LaPierre stuck out the course correction that he
13 ordered -- that he ordered knowing it would hurt him and
14 then resigned. And we have a new interim EVP now about whom
15 they presented you no evidence whatsoever about any
16 misconduct, any spending, any use of private jets. Mr.
17 Arulanandam is in that chair until the Board finds a
18 professional CEO.

19 We have Bob Mensinger. He didn't testify to you,
20 but he is the new managing director of compliance. You
21 heard about who is going to be -- who is in the process of
22 becoming a compliance officer who reports independently to
23 the Audit Committee which is exactly what their corporate
24 governance said was the best possible practice.

25 All right. You met Mr. Cotton and Mr. Coy. Both

KM

4578

Defendant's Summation/Ms. Rogers

1 are accountants who serve on the Audit Committee. Both
2 received high marks from the outside accountants who are
3 paid to be independent in evaluating the transparency of
4 their communication, and they were transparent with you on
5 the witness stand. I hope that you were able to see that.
6 These are honest men.

7 All right. On this slide, I'm showing you some
8 documents from the case. I'm also showing you a picture of
9 the son rising over the Roman Colosseum and showing you that
10 for a reason.

11 The Colosseum like the NRA is old. The Colosseum
12 is just a little bit older. NRA is about 150 years old.

13 You heard me ask Mr. Frazer the other day if the
14 NRA was so committed to fixing things -- starting in 2018,
15 if the NRA was so committed to redressing the misconduct
16 against the company, then why were there still some loose
17 ends in subsequent years. And Mr. Frazer told you, this is
18 an old large organization, and it's true. The NRA is more
19 than a century old. The NRA has 76 directors. The NRA has
20 millions of members. The NRA has reams of policies and
21 procedures. Each one of these tax returns that the NRA had
22 to scrutinize and perfect is hundreds of pages long. So
23 change takes time, and that's the sun rise element of this
24 picture. Change takes time which means that a course
25 correction is much more like a sunrise than like a light

KM

4579

Defendant's Summation/Ms. Rogers

1 switch. And as you sit in the jury room and review this
2 evidence, I think you will see the sun rising starting in
3 2018.

4 I want to talk briefly about what's on this slide.
5 We've got the letters to vendors, Ackerman McQueen,
6 Associated Television, Under Wild Skies. These were
7 powerful vendors. These were -- all the invective they'll
8 throw at you about vendors ruling the NRA, about vendors
9 being over paid.

10 In that whistleblower concerns' memo, there's a
11 phrase in there, the whistleblowers are concerned that
12 management is subordinating judgment to vendors, letting
13 them call the shots too much.

14 With Mr. Cox, I showed you an email that led to him
15 testify that it was unhealthy for the vendor Ackerman to
16 have so much control. These vendors that had too much
17 control over the NRA are the ones that the NRA pretty
18 fearlessly pursued and severed in 2018.

19 Associated Television owned by David McKenzie owns
20 the yacht you heard about or at least indirectly owns the
21 yacht you heard about. They were cut off at 2018.

22 And you heard Mr. LaPierre testify that Associated
23 Television committed a fraud against the NRA that was
24 concealed from the NRA that did not benefit but only hurt
25 the NRA, and it was put to an end as soon as the Board

KM

4580

Defendant's Summation/Ms. Rogers

1 learned.

2 Another thing the Board did as soon as it learned,
3 and you'll see in those September, 2018 Audit Committee
4 minutes is the Board ordered compliance seminars.

5 So when the Board ratified related-party
6 transactions, when it says, this deal is fair, but it should
7 have been documented more, and here's what we're going to do
8 to make sure that doesn't happen again without proper
9 advance documentation is when the Board does that, it also
10 sits down and says here are the procedures we're going to
11 implement.

12 And one procedure the Board committed to implement
13 were these compliance trainings which it already started and
14 they continued.

15 I showed you with Mr. Frazer yesterday that long
16 list of names of people who signed and attended those. Mr.
17 Frazer testified that to his knowledge all senior staff have
18 been trained at least once, and most of them, many times.

19 All right. Let's talk about who you heard from. I
20 don't know if you remember it, but I remember it from the
21 first day of this case. I told you in my opening statement,
22 Watch who the government sides with and watch who they
23 expect you to believe.

24 So the Government put up two witnesses from
25 Ackerman McQueen, this vendor that even their own other

KM

4581

Defendant's Summation/Ms. Rogers

1 witnesses called corrupt, that Mr. Cox, subordinate in an
2 email called as "chosen," who wanted to run everything.
3 They give you Mr. Winkler; right.

4 Mr. Winkler who sent all those out-of-pocket
5 expenses invoices to the NRA who testified under oath that
6 the Zegna suits were never billed to the NRA and then it
7 turns out they were, that's who's testifying for the
8 New York Attorney General.

9 Lieutenant Colonel North testified for the New York
10 Attorney General. He signed a contract worth \$7 million
11 with Ackerman McQueen.

12 Now the most important piece of Mr. North's
13 testimony -- I'll get to the rest of it in a moment, but the
14 piece that lingers for me the most is when I asked him,
15 Isn't it true, Lieutenant Colonel -- I asked him -- I was
16 standing right over here -- that the NRA asked you to
17 choose. Once the NRA and Ackerman were at war, the NRA
18 asked you to choose Team Ackerman or Team NRA, and you
19 refused, and he said yes.

20 That was the breaking point ultimately with
21 Lieutenant Colonel North. He's on Team Ackerman, and it
22 turns out that Team Ackerman is Team New York Attorney
23 General.

24 All right. We also heard from Rocky Marshall and
25 Esther Schneider. I'll get to both of them later.

KM

4582

Defendant's Summation/Ms. Rogers

1 We also heard from Phillip Journey. Phillip
2 Journey who ran a website professionally raising money for
3 NRA, getting members to pay him to oppose the Attorney
4 General, and when he collected all their money, he flipped
5 and testified for the Attorney General. And he gave that
6 money to a 505 (c)(3) that he borrowed from a friend he said
7 he knew well, but on the witness stand indicated -- on the
8 witness stand claimed not to know whether that friend had in
9 fact been convicted of a felony tax fraud. That's who he
10 was giving NRA's members money to. That's who they put in
11 front of you.

12 Who did we put in front of you? We put in front of
13 you Mr. Cotton, the sheriff, the accountant, the cop, the
14 lawyer who sits on the Audit Committee whose never been
15 accused of taking a penny from the NRA who is independent.

16 We put in front of you Ms. Froman. Ms. Froman who
17 from her time at Harvard Law School has been the kind of
18 person who speaks when something is wrong. Ms. Froman who
19 was friends with Judge Journey, who was friends with Neal
20 Knox, who was friends with many critics of the NRA
21 leadership, but said that she too chose to support Mr.
22 LaPierre for a few years in this instance because Mr.
23 LaPierre had committed to do what was right even if it hurt
24 him.

25 We gave you Mr. Coy. Mr. Coy whose been on the

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4583

Defendant's Summation/Ms. Rogers

1 Audit Committee for decades. Mr. Coy who said he forced
2 himself to take seriously the allegations of an anonymous
3 whistleblower even when that whistleblower made painful,
4 antigay comments against an NRA employee. He had to do his
5 duty to investigate that letter, and he did.

6 We put in front of you Congressman Bob Barr.
7 Again, not accused of taking any money. We put in front of
8 you Mr. King who was friends with the former Attorney
9 General who comes from the era that Mr. LaPierre described
10 where Democrats and Republicans could be friends.

11 Mr. King, they faulted for receiving a \$90,000
12 salary which is not very much in New York as some of you
13 know to run the New York affiliate of the NRA, a New York
14 affiliate that's been spectacularly successful including at
15 the Supreme Court.

16 We put in front of you two real live whistleblowers
17 whom the NRA listened to and protected and promoted, Sonya
18 Rowling and Mike Erstling.

19 No whistleblowers -- no real whistleblowers
20 testified for the Government in this case. All right.

21 So what did you hear from the whistleblowers.

22 You heard some concerns in the Summer of 2018 that
23 were pretty significant. All of these concerns you heard
24 were investigated and addressed. So senior -- all right.
25 You heard about senior management overrides of internal

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4584

Defendant's Summation/Ms. Rogers

1 controls.

2 Senior management has now changed, and the managers
3 who remained had to commit to get on board with the
4 compliance review or get out of the way.

5 Josh Powell is gone. Mr. Frazer is still there.
6 That's a good thing. All right.

7 You heard a concern from whistleblowers about
8 judgment being subordinated to vendors. Those vendors were
9 put through the ringer. Ackerman McQueen eventually
10 declared a blood feud against the NRA. The NRA fearlessly
11 dug into Ackerman's documents and today NRA and Ackerman are
12 no longer in business together. All right.

13 And you heard a concern about vague and deceptive
14 billing. That's another thing the whistleblowers brought
15 up, and that's another think the Audit Committee when they
16 learned of it immediately acted upon with demand for more
17 detailed billing.

18 All right. And what do you hear from the same
19 whistleblowers today?

20 You hear from Ms. Rowling who came forward even
21 though it was scary to raise concerns about overrides of
22 internal controls. You hear from her that after she came
23 forward, the NRA which is properly administered by its
24 careful Board acting in good faith, the NRA appropriately
25 fixed that situation. There are no internal overrides.

KM

4585

Defendant's Summation/Ms. Rogers

1 Mr. Erstling, another whistleblower, asked if he
2 experienced any reprisals or retaliation. No. He's moved
3 up within the organization.

4 All right. And what you heard from the top cops in
5 the Audit Committee, you heard that they apply their
6 training as professors of accounting, ethics and as law
7 enforcement officers to supervise controls of the NRA, and
8 they've done that very energetically and effectively. There
9 were reams of Audit Committee reports and minutes in the
10 evidence that you will be allowed to request in the jury
11 room. Request any one of those Audit Committee reports and
12 you'll see the committee acting diligently.

13 All right. I told you to remember the phrase
14 "misconduct against the NRA."

15 The truth is, the reason that some instances of
16 misconduct against the NRA persisted for a few years before
17 they were addressed starting in 2018 is because they were
18 concealed from the NRA.

19 Now you heard Mr. LaPierre testify right there
20 yesterday that billings by Associated Television, that
21 entity that was cut in November of 2018, that out-of-pocket
22 expenses by Ackerman, that the ten percent surcharge and
23 other improperly private jet-related expenses billed by a
24 travel agent, that all of these were fraudulent schemes
25 against the NRA.

KM

4586

Defendant's Summation/Ms. Rogers

1 Well, the essence of fraud is that it's a lie. The
2 victim doesn't know about it, and if you're trying to
3 judge -- if you're trying to judge whether the NRA was in on
4 any of these schemes, whether the NRA wanted to be fleeced
5 by Ackerman McQueen, if you're looking at the NRA's good
6 faith, one of the best ways to look at that is to look at
7 what the NRA did when they discovered the fraud, and that
8 timeline I've laid out for you starting in 2018, and all of
9 the documents we're footnoting on these slides answers that
10 for you.

11 What the NRA did when it discovered the fraud was
12 it dug in. It turned over even the rocks it was warned not
13 to touch. It did this at tremendous cost. It took risks
14 for the benefit of the association and its mission. And Mr.
15 LaPierre for his part repaid millions of dollars with
16 penalties and interests to the NRA.

17 All right. Mr. Phillips. You have heard from his
18 counsel. It's up to you to judge Mr. Phillips' good faith.
19 I'm not asking you to do that.

20 The reason I'm talking to you today about Mr.
21 Phillips is that for years Mr. Phillips who was hired from a
22 a reputable accounting firm and had a duty to tell the NRA
23 if anything was wrong did not report to the Board. He went
24 before the Board on numerous instances. He was before the
25 Audit Committee and the Finance Committee all the time but

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Defendant's Summation/Ms. Rogers

1 did so without mentioning any of these issues of which he
2 was aware.

3 Mr. Phillips suffered a brain injury and was
4 working remotely part of the time. So again, it's up to you
5 to judge his good faith, but it was up to the NRA, and it
6 was the NRA's prerogative, and it was the NRA's right to
7 rely in good faith on what its top accountant was telling
8 it. And at the minute those whistleblowers came forward,
9 the minute the NRA saw a single red flag, a single
10 indication that the reports being delivered by Mr. Phillips
11 might be leaving important things out, the NRA left no stone
12 unturned.

13 All right. Oh, one more thing. The Government has
14 insinuated in some of their cross that the NRA should be
15 faulted for not suing Mr. Phillips.

16 One difference between Mr. Phillips and some of the
17 -- and Chris Cox who they offer as their witness and some
18 other former employees is when the NRA stopped paying Mr.
19 Phillips, right, he had a post-employment contract, that the
20 NRA stopped paying and cut off. When the NRA cut that off,
21 Mr. Phillips didn't sue the NRA.

22 So that's -- that's the reason that the NRA --
23 that's one reason the NRA has not engaged in a court battle
24 with Mr. Phillips the way we were with some of these
25 witnesses the AG has sponsored for you as trustworthy.

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4588

Defendant's Summation/Ms. Rogers

1 All right. We talked a little bit about Lieutenant
2 Colonel North.

3 Lieutenant Colonel North. It's incredible. They
4 put forward a high expert commenting to you on related-party
5 transactions, and his job was to add up lots of big numbers
6 and put it on the screen to make the NRA look bad. And he
7 left off the biggest number of all which is Lieutenant
8 Colonel North's contract with the ad agency, the "Ass Clowns
9 For Anything" according to Mr. Cox, his contract with
10 Ackerman McQueen.

11 Ackerman McQueen the same ad agency that sent that
12 letter warning the NRA not to create a paper trail by
13 getting justification for its expenses.

14 All right. You heard Colonel North take the
15 witness stand and tell you that he was a whistleblower who
16 had been retaliated against because he asked to see the
17 legal invoices for my firm, the outside firm that was
18 looking into Ackerman, and Mr. Frazer wouldn't give them to
19 him. He faulted Mr. Frazer. He accused him of hiding
20 documents.

21 And then I put this email up on the screen where
22 Mr. Frazer says, Hey, Lieutenant North, you can come look at
23 the invoices any time. They are in my office. You can't
24 look at the ones that are about you, but that's only three
25 of a whole bunch. You can look at all of the others.

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4589

Defendant's Summation/Ms. Rogers

1 Colonel North claimed to have no recollection of
2 that email. I don't know if he was actually surprised by it
3 or if he just left it out of his testimony because it was
4 inconvenient for him.

5 All right. You heard from Chris Cox. This is --
6 this was a great underrated moment of this trial. So Chris
7 Cox on direct with the Government because they sponsor him
8 as their witness, right, he testified that he flies coach
9 and favored hotel is Marriott. And then we see the email
10 he's been sending the NRA as part of his salary
11 negotiations; right. And I asked him, Mr. Cox, did you ever
12 ask the NRA to pay travel expense relating to activities
13 involving you and Eric Trump and Don Junior, and he said no.
14 No. No. No. And then I showed him this, and it says
15 travel including Shikar for Don and Eric. I said who are
16 Don and Eric? And he said, oh, those are the president's
17 sons. Right. So I don't know if there's a difference
18 between Eric Trump and Don, Junior and the president's son.
19 I'm just a lawyer. Not a lobbyist. Maybe someone can
20 explain that distinction to me, but I would submit to you
21 that Mr. Cox while a talented beltway lobbyist is not a
22 credible witness.

23 We also heard Mr. Cox say that the private flights
24 he requested were very different than the ones he was
25 faulting Mr. LaPierre for taking because these were smaller

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4590

Defendant's Summation/Ms. Rogers

1 planes, and you the jury are the judges of each witness'
2 credibility, so I will let you decide for yourself how much
3 credibility you give that.

4 Mr. Cox testified for two days. And on the first
5 day I asked him, are you sure -- are you sure that as a part
6 of your salary negotiation, you never asked to be fired.
7 And he said, oh, no, I never asked to be fired. And then he
8 takes the witness stand the second day knowing he's going to
9 be crossed, and he said I want to correct something. I
10 actually ask to be fired. That's Mr. Cox. He was asking --
11 he was asking for it.

12 Oh, no. Here we go, all right. This was really
13 fun. Mr. Tenenbaum. So he was the Government's best
14 practices expert, and there were two moments of his
15 testimony that I want to remind you guys about. The first
16 related to purported whistleblower Esther Schneider.

17 So when Mr. Tenenbaum on the stand testifying about
18 whistleblower policies and practices, I walked over here to
19 my colleague Ms. Eisenberg, and I acted out a piece of
20 testimony we had just seen about a conversation between a
21 Board member Carolyn Meadows and Esther Schneider, their
22 whistleblower that happened around the time Ms. Meadows
23 declined to pick Ms. Schneider for a committee. I replayed
24 this with Ms. Eisenberg, and I said to Ms. Eisenberg what
25 their whistleblower said to her colleague which is, You're a

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4591

Defendant's Summation/Ms. Rogers

1 stupid fucking bitch. And the most candid moment of
2 testimony we saw from Mr. Tenenbaum was his disgusted
3 reaction to it. He almost sputtered. He turned and said,
4 well, that's not blowing the whistle. And you know what? I
5 agree with the Government's expert on that. That's not
6 blowing the whistle.

7 But there was another really fun moment in the
8 cross-examination of their expert, and that's when I read
9 aloud to him some text relating to whistleblower policy. So
10 I read these words, and I suspect you will see the same
11 words in the instruction the judge gives you.

12 I asked him, Mr. Tenenbaum, a whistleblower is
13 someone who reports actions that is illegal, fraudulent or
14 violation of a policy, right?

15 Now, Mr. Tenenbaum was paid to be a witness for the
16 Government, and he thought I was reading from an NRA policy.
17 So he gave the answer he was paid to give which is, Oh, no.
18 That's not an adequate whistleblower policy. I would want
19 much more.

20 I asked him, you know, well, isn't that the exact
21 same text as New York Law that my client is supposed to be
22 abiding by? And he said, oh, I don't know.

23 All right. Let's talk about their other expert.
24 So they put a forensic accountant in front of you who adds
25 up a bunch of dollar amounts he finds on invoices, but

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Defendant's Summation/Ms. Rogers

1 didn't check to see if any of those invoices were actually
2 paid or whether they were refunded, and he doesn't check
3 until the night before he testifies whether any of them are
4 duplicates. Right. So he admitted on cross that he had a
5 spreadsheet of six pages of flights he thought were wrong or
6 he had included in his damages figure, and that spreadsheet
7 shrunk from six to three. It got cut in half as soon as
8 opposing counsel pointed out a basic error in it.

9 Mr. Hines admitted that forensic accountants are
10 paid to be careful. He was not careful because he was not
11 paid to be careful in this case. He was paid to generate
12 numbers that would make the NRA look bad.

13 Well, who looks bad now?

14 All right. Mr. Hines also put a graph in front of
15 you showing how much payments to MMP the membership vendor
16 increased. I have overlaid those payments where the blue
17 bars with the NRA's own revenue growth which Mr. Phillips
18 showed you in one of his exhibits. So again, ask yourself,
19 is the NRA paying -- ask yourself is the NRA paying more to
20 fundraise from an email its members because Mr. LaPierre
21 went on the boat or because the membership doubled in size?
22 Both of those are fair inferences. They have the burden to
23 prove that it's the insidious one. I would submit to you
24 that it's the obvious one.

25 Okay. So let's talk about the other experts.

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4593

Defendant's Summation/Ms. Rogers

1 Remember I told you, you can hear -- you will hear one of
2 two, possibly both of these from the Government.

3 You will hear that we did too little too late or
4 too much too soon too expensive.

5 We hired four different finance and accounting
6 experts who come and provided opinions to you in this case
7 and we're glad we did. Each of them was important.

8 Ryan Sullivan is a business analytics economist.
9 He is paid by businesses to help them make complicated high
10 stakes decisions. Like he was paid by the NBA to help to
11 figure out how to structure a contract with the players'
12 union, and he talked to you about reasonableness and
13 prudence and materiality, how -- you know, what kind of
14 factors should you think about when you're putting yourself
15 in the shoes of a business decision-maker. He evaluated the
16 NRA's compliance efforts and endorsed them firmly.

17 You heard from Amish Mehta. He is an outside
18 auditor. He is paid to be independent and even a little bit
19 adversarial, not to be management's friend. He is paid to
20 look at the books and insure they are in order.

21 He testified that the NRA's conflict of interest
22 controls and seminars were more robust than many of his
23 other clients.

24 Then you heard from Matthew Lerner. Matthew Lerner
25 is an internal auditor. He is not like Mr. Mehta. He is

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4594

Defendant's Summation/Ms. Rogers

1 not paid to come in and be an independent third party. He
2 is paid to work inside a company and design internal
3 controls for it to help to make its compliance environment
4 better. He thought -- he thought the NRA's control
5 environment was effective.

6 Then you heard from Bruce Blacker. He is a
7 forensic accountant like Mr. Hines. I asked him, Mr.
8 Blacker, would you ever in your work as a forensic
9 accountant do what Mr. Hines did and add up numbers on a
10 bunch of invoices without checking to see if they were
11 actually paid or whether they were duplicates or not. And
12 he said no, I would never do that in the real world.

13 He also testified to something that I would submit
14 applies to every single professional who works for the NRA.
15 Certainly, it applies to me.

16 When you work for a controversial organization, an
17 organization that is so despised by the regulator that they
18 try to impose the death penalty on it and take all of its
19 money, that's a very -- that's a very high-stakes business
20 decision.

21 And you heard both Mr. Plotts and Mr. Blacker, two
22 different independent accountants testify that they vetted
23 the NRA more strictly -- more strictly than another charity
24 like say if the Red Cross had tried to hire them because
25 they knew that any opinions or books they produced for the

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1 NRA would be attacked as inaccurate. They knew they would
2 be scrutinized.

3 (Continued on the following page.)
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Defendant Summation/Ms. Rogers

1

2 (BY MS. ROGERS)

3 MS. ROGERS: All right, and you heard from Ms.
4 Cullen. She is an expert at tax accounting, and she
5 testified to the steps the NRA takes to review its tax
6 filings to ensure they are not false, but that they are
7 actually true and accurate.

8 Can the jury still hear me? Okay, great.

9 Mr. Plotts was a very important witness.

10 There were two documents you looked at from him,
11 and one was completed in 2019 which is on the screen, and
12 another was completed in 2020 right after they filed their
13 lawsuit.

14 So, the NRA is hiring an auditor to look at its
15 books and sign off on its audit financial statements and put
16 yourself in a position of an auditor that's being hired, you
17 know, you know that the client trying to hire you to sign
18 its financials is going to be attacked and is going to be
19 accused of corruption whether they're innocent or guilty.
20 You know that accusation is coming. So, you have to vet
21 that client very carefully, and Mr. Plotts did. Mr. Plotts
22 interviewed accountants at the NRA, not just the higher ups.
23 He interviewed front line employees in what he called fraud
24 interviews. Mr. Plotts reviewed the attorney general's
25 allegations in 2020. Mr. Plotts found the NRA to be very

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Defendant Summation/Ms. Rogers

1 transparent understanding the issues and making all the
2 right efforts.

3 And if you ask for this document in the jury room,
4 you will see a long list of what he called special
5 procedures, special testing that Mr. Plotts performed to
6 make sure, for example, the travel invoices had proper
7 support, that related-party transactions were being handled
8 appropriately.

9 He looked at every allegation in that complaint,
10 including specific vendors they made allegations about and
11 tested it because he wanted to be confident, right. That he
12 wouldn't end up like Mr. Hines' former firm, Arthur
13 Andersen, which was the accountant for Enron, that he
14 wouldn't end up being dragged into something like that,
15 having signed off on financials that weren't true.

16 THE COURT: Just a head's up, we're closing in on
17 the end. I'm giving you some of Mr. --

18 MS. ROGERS: I was going to take the nine minutes
19 that Mr. Phillips had.

20 THE COURT: Well, I had already been counting
21 that.

22 MS. ROGERS: I was going to go to one, if that's
23 okay?

24 THE COURT: Just short of one, yeah.

25 MS. ROGERS: Let's talk about what you're actually

BP

4598

Defendant Summation/Ms. Rogers

1 going to be deciding in the jury, room and I don't have a
2 copy of the -- oh, one more thing.

3 Related-party transactions, they first ask for
4 information about them in June 2019. That would become
5 important when you see the charge.

6 All right. So, I don't know for sure what your
7 jury verdict form will look like, but I have a feeling it
8 will look a little bit like this; and this is how the NRA
9 would like you to fill it out.

10 So, these related-party transactions are simply not
11 grounds for liability on the part of the NRA. Most of these
12 transaction, Mr. Butz, Ms. Froman, Ms. Hammer, these were in
13 place years, years before New York enacted legal
14 requirements about them; and once New York did enact legal
15 requirements as Mr. Frazer's counsel told you, the NRA met
16 in 2016 and reviewed and approved these, then ratified them
17 in more detail later.

18 Marion Hammer, you've heard a lot about her. Their
19 witnesses and our witnesses call her a legendary gun
20 lobbyist. She's very effective. You heard testimony that
21 the NRA pays lots of gun lobbyists, not just Ms. Hammer.
22 You heard no evidence, none, that she's paid more than
23 anybody else or she's overpaid for any of the work she
24 does.

25 All right, Oliver North, this was a transaction

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4599

Defendant Summation/Ms. Rogers

1 that had a lot of problems with it. The Audit Committee
2 ratified it based on a disclosure of what they thought were
3 the material terms. As soon as they learned that there
4 were additional and different terms of this transaction,
5 that the deal wasn't what it seemed, they rescinded it which
6 is exactly what the related-party transaction law
7 contemplates. Okay, and that's the document you saw showing
8 that they rescind it, rescinded in full.

9 Josh Powell, a disgraced departed executive. There
10 were two related-party transactions involving him.

11 Mr. Frazer testified about how he personally
12 researched a few thousand dollars that were paid to
13 Mr. Powell's father to photograph a shooting event. He
14 researched it and made sure it was the same that was paid to
15 other photographers.

16 There was, also, a vendor camped McKenna that hired
17 Mr. Powell's wife; but the NRA had been paying McKenna for
18 years before Mr. Powell came into the picture, and it put
19 very careful limits on the McKenna relationship after the
20 Powell situation was discovered and then Powell was gone.

21 All right, whistleblowers. I'm going to ask you to
22 find, first, if the NRA had -- had a compliant whistleblower
23 policy.

24 So, the Court will tell you tomorrow that under
25 New York law, any nonprofit is required to have a

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4600

Defendant Summation/Ms. Rogers

1 whistleblower policy with certain provisions and the policy
2 doesn't have to match those verbatim; but it has to be
3 substantially equivalent.

4 This is in general what your whistleblower policy
5 has to do, and this is, in general, what the NRA
6 whistleblower did. And how do we know that? Because the
7 NRA whistleblower policy worked. Whistleblowers came
8 forward and they were listened to. Even an anonymous
9 whistleblower complaint by a deranged homophobe, was taken
10 serious enough for the Audit Committee to investigate and
11 confirm that the numbers in it were false.

12 So, the whistleblower policy complied with the law
13 and we know that because it served its purpose.

14 Whistleblowers were treated very well at the NRA.
15 You met two of them. This is -- Colonel North was probably
16 the most powerful person at the NRA at the time that he
17 styled himself as a whistleblower in a disingenuous way; but
18 Sonya Rowling and Mike Erstling weren't, but they took a
19 risk, and they were protected.

20 There's someone named Richard Childress whose name
21 you've heard more in the closing arguments than any other
22 time in this trial because the AG put no evidence about him.
23 He's also not a whistleblower. He was a director who
24 cosigned some of Colonel North's letters; and when Colonel
25 North did not winning his battle for control of the NRA, so

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4601

Defendant Summation/Ms. Rogers

1 Mr. Childress resigned.

2 We talked about Mr. Journey. Mr. Journey made a
3 disingenuous accusations in the bankruptcy that the NRA was
4 a non-compliant charity, and then he policed money from NRA
5 and directed it to a convicted felon.

6 Mr. Knight, no evidence on him. Not even sure if
7 you will see him on the verdict sheet, but he's not a
8 whistleblower. Same with Mr. Malone. No evidence at trial.
9 He resigned from the NRA on his own terms, not someone who
10 was retaliated against, not someone who was treated
11 adversely.

12 Now, in order to cover that evidentiary gap, I
13 expect you to hear from the Government this afternoon that
14 even if these NRA directors who they're saying were
15 whistleblowers, they weren't fired. They weren't punished.
16 They weren't silenced, but people were mean to them on
17 Facebook, all right. That's not the kind of adverse action
18 that the judge will instruct you that a whistleblower
19 violation contemplates.

20 The truth is and the truth you heard from the
21 witness stand is that the NRA board vigorously disagrees all
22 the time. Ms. Froman testified they had disagreements at
23 meetings going late into the night, more like a parliament,
24 a traditional corporate board. These are fiery opinionated
25 gun right advocates and sometimes they disagree; but

BP

4602

Defendant Summation/Ms. Rogers

1 ordinary disagreements about people who have the same amount
2 of power in an organization who are both directors is not
3 whistleblower retaliation.

4 Whistleblower retaliation is much closer to what
5 Colonel North tried to do, which was shut down the
6 investigation into the corrupt advertising agency that was
7 paying him \$7 million.

8 Rocky Marshall was never denied information. He
9 tried to throw Mr. Frazer under the bus and claim that
10 Mr. Frazer would not provide him with a copy of the NRA
11 insurance policy. In fact, the testimony and documents show
12 that Mr. Frazer bent over backwards to give this man every
13 document he wanted, and this man never bothered to come and
14 look at them. He made no effort to rejoin the board, and
15 the board didn't reelect and he could have tried to run
16 again and he didn't.

17 We talked board Colonel North, talked about
18 Ms. Schneider.

19 All right, Mr. Spray. Mr. Spray was the CFO of the
20 NRA who came after Mr. Phillips and before Ms. Rowling. You
21 saw video testimony from both sides on Mr. Spray. You saw
22 that Mr. Spray left the NRA. That it wasn't his decision to
23 leave when he did, but that he had been thinking of leaving
24 and that he asked the NRA to say he was leaving for health
25 reasons.

BP

4603

Defendant Summation/Ms. Rogers

1 Mr. Spray had serious health reasons to leave the
2 NRA; and even after he left the NRA, you heard, you heard
3 the NRA's accountant, Mr. Plotts, testify after Mr. Spray
4 left he called him up because he thought this is someone I
5 want to talk to. He was in a senior financial role and he
6 just left. What might he know that I should know to guard
7 my findings on the NRA? And he heard from Mr. Spray what
8 you heard from Mr. Spray, which is that Mr. Spray was
9 supported by upper management in the compliance reform he
10 implemented and he thought the NRA was on the right track,
11 and we've given you all the citations to that because that's
12 what's in the record and that's what the facts show.

13 All right, Mr. Frazer's counsel talked to you a bit
14 about the allegedly false filings that we made, so I won't
15 belabor it.

16 Inconsistencies are not lies. The fact that you
17 could fix this issue by having software checked to make sure
18 that every page is attached is exactly the same. Shows that
19 a serious audience reviewing that filing to get information
20 about the nonprofit would know there was something in there
21 relating, for example, to compensation for board members and
22 that's the test for materiality.

23 All right, and you'll be asked about the
24 administration of the NRA's charitable assets. I expect
25 this to be a long several paragraphs; and the parts of it I

BP

4604

Defendant Summation/Ms. Rogers

1 want to highlight for you is that you will be considering
2 whether the NRA in doing what it did was pursuing its
3 legitimate purposes, was trying to advance the mission.

4 You will be asked whether the NRA board acted in
5 good faith, whether they wanted what was best for their
6 association and whether they exercised care.

7 And, remember, ordinary care is not looking back
8 with 20/20 hindsight. One thing Mr. Tenenbaum, their
9 government expert said that I really credit, is he called it
10 the in-their-shoes test.

11 When you're evaluating ordinary care, you have to
12 imagine that you stand in the shoes of the NRA's board of
13 directors when it is making these decisions with whatever
14 limited information and whatever incentive it had.

15 And the part of good faith and ordinary, the Court
16 will tell you they can rely on outside experts. And you
17 heard Mr. LaPierre testify yesterday, gave you lists tax
18 lawyers, regular lawyers, tax accountants, auditors,
19 forensic accountants, a list of experts that were hired by
20 the NRA because it was willing to go every mile to get it
21 right.

22 And you will be asked to consider in the jury
23 charge whether misconduct that happened was by the NRA or
24 against the NRA, and I think the testimony is unequivocal on
25 that.

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4605

Defendant Summation/Ms. Rogers1
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All right, first day we met, we heard hours of opening statements; and then at the very end, I talked to you for about ten seconds about self-defense and about my experience in self-defense. And the Attorney General objected all over the place. They didn't want you to hear that stuff or think about it; and the reason is and it is true, this has not been a case about the rights to buy a gun. That's not what this case is about, but this was very much a case about self-defense, about the right to defend yourself and the choice to do it, because that's what the NRA did.

The NRA was told by whistleblowers that it faced threats, threats from corrupt vendors and negligent executives who are taking advantage of it. The NRA was told by the attorney general's predecessor that there was mounting political pressure to attack the NRA even if it hadn't really done anything wrong; and the NRA leaned in and double-downed and that board defended itself. They left no stone unturned. They hired lawyers and during this trial you heard them faulted for doing that. They shouldn't have spent money on lawyers to fix the organization or to defend themselves from us. That's what the government is telling you.

And another thing the Government is telling you

BP

4606

Defendant Summation/Ms. Rogers

1 today, they're going to ask to you find cause for removal
2 of executives. They're asking you to tell the NRA, You
3 don't get to choose your own leaders. You don't even get to
4 choose your own lawyers. The Government gets to choose for
5 you.

6 I talked to you the first day of this case about
7 the differences between a scam charity, the kind that we
8 want the government to protect us from, the kind that holds
9 out its hand collecting alms for the poor and then
10 improperly administers that money by spending it, private
11 benefits for themselves.

12 We talked about differences between that kind of
13 scam and the nonprofit like NRA that pursues its legitimate
14 purposes and confronts the real risks of fraud and abuse
15 that every large organization does. What matters what's
16 dispositive isn't whether that risk existed. It was how the
17 NRA acted when it came to light.

18 The first words you heard from the attorney
19 general, the first day we met she said this is a case about
20 corruption. But I ask you, if this is a case about
21 corruption, why would the attorney general seek to impose
22 the corporate death penalty on a nonprofit that an
23 independent and public accountant found was governed better
24 than 75 percent of other charities? Why? If this is a case
25 about corruption, it wasn't corruption by the NRA.

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Defendant Summation/Ms. Rogers

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Thank you.

THE COURT: All right, thank you, counsel.

We're going to take our break. We'll reconvene a little after 2:15.

COURT OFFICER: All rise, jury exiting.

(Whereupon, at this time the jury then left the courtroom.)

(Whereupon, at this time at luncheon recess was then taken.)

* * * * *

(Continued on next page)

Plaintiff Summation/Ms. Connell

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AFTERNOON SESSION

* * * * *

THE COURT: Ms. Connell, you may proceed.

MS. CONNELL: Thank you very much, your Honor.

SUMMATION BY

MS. CONNELL:

MS. CONNELL: Ladies and gentlemen of the jury, what happens when someone is caught in the act, when someone is caught with their hand in the proverbial cookie jar? When they are caught literally with their hand in the cookie jar with crumbs on their face, on their clothing, what are they going to do?

What does our common sense and life experience tell us they're going to do?

Well, first, they're going to deny about where there's evidence that they have been caught in the act. That won't work.

So, what are they going to do next? They're going to deflect. They're going to try and get you to think about anything but what happened to those cookies, what was going on when those cookies were being eaten. They're going to blame it on others. They're going to point the finger at other people and blame anyone but themselves.

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Plaintiff Summation/Ms. Connell

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They're also going to decide that a good offense is the best defense. They might say why are you even watching this cookie jar? What difference does it make? Why are you looking at me? Leave me alone. They might try and minimize what they did. That's natural. We've seen this in our everyday life when people do something wrong. They will say, well, it wasn't that big a deal. It was a few cookies. What's the harm? It is a small harmless violation. It's a foot fault, right.

And then when none of these work, they're going to come to the final step. They're going to say, you know what, I get it. What I did was wrong. I understand. I won't do it again. You don't have to keep watching me. Everything is fine.

But, ladies and gentlemen, when you're caught in the act, when you're being watched by a government regulator, when you've been found in the middle of committing illegal conduct; saying you're sorry now, saying maybe you'll put back a couple of those cookies doesn't mean you didn't take the cookies.

If a burglar took something from someone's home, got caught, got arrested and said, Hey, I'm sorry I'll, return some of the stuff, maybe. I won't do it again. Okay, that's a positive step, that's good; but that doesn't

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4610

Plaintiff Summation/Ms. Connell

1 mean they're not responsible for the burglary.

2 What you have seen in this case, in this trial and
3 I think we've seen that at times the cases are talking past
4 each other, is exactly this. Although, the defendants are
5 not kids and we're not talking about a cookie jar. We're
6 talking about something much more serious. We're talking
7 about hard-earned funds donated to a charity. We're talking
8 about the trust of NRA donors and members, and the trust of
9 people in general in charities.

10 Even though that's what we're talking about, like
11 the kid in this metaphor, like somebody putting their hand
12 in a cookie jar, the defendants have done each of the steps
13 that I talked about. They have deflected. They have blamed
14 each other. They have said that their violations are true;
15 but now they understand. Again, stopping illegal conduct
16 after you're caught, after you're being watched does not
17 make your conduct disappear.

18 Please keep your eye on that ball.

19 Again, we're not saying that efforts to reform are
20 unimportant. We're not -- they are important. The need for
21 reform is important in that they follow through, that's
22 important. It doesn't mean illegal conduct didn't occur,
23 and I'm going to talk to you about that reform, that course
24 correction.

25 Think about whether the evidence the defendants

BP

4611

Plaintiff Summation/Ms. Connell

1 have put on in this case disproves the illegal conduct that
2 plaintiff has shown, and I'm going to walk you through some
3 of that illegal conduct.

4 Think about whether when defendants told the same
5 story when it was convenient for them and when they pointed
6 the finger at each other when that was more convenient for
7 them.

8 Instead of disproving most of the allegations
9 alleged by plaintiff; for example, instead of disproving
10 that the defendants illegally approved conflict-of-interest
11 payments to the MMP entities without contracts that support
12 those payments, without necessary approvals, without
13 ensuring that they're getting good services -- and we'll
14 talk about that in a second -- in support of those payments.
15 They didn't focus on that.

16 What did they do? They went on the offense.
17 That's what a lot of the closings you've heard about today
18 were. The closings were about how this is a witch hunt.
19 That the attorney general said that they're terrorist
20 organizations, the same attorney general who's trying to get
21 money back that was wrongfully taken from the NRA to give
22 back to the NRA. How does that make sense that this is
23 wrong?

24 They are a charity regulated in New York and even
25 by their own admission they have done things wrong. This

BP

4612

Plaintiff Summation/Ms. Connell

1 witch hunt defense is not a defense. When we said, Hey,
2 you've been paying insiders and you need to make sure that
3 you're doing the right thing, you need to make sure you're
4 approving that; they looked at their records, they are
5 paying insiders, they have been.

6 When we said you have sweetheart deals to vendors,
7 they're a conflict of interest, turns out we were right.

8 When we said you're hiding your payment by passing
9 them through a vendor so people can't see that you're paying
10 for thousand-dollar-a-night hotels, permanent electronics
11 for executives and their families.

12 That turned out to be true. That's not a witch
13 hunt. That's the truth. And this witch hunt narrative
14 that's not a defense, I just want to take that off the table
15 right at the beginning.

16 The defendants whole defense of this course
17 correction starts not because of an internal driving
18 commitment to compliance. It starts by their own admission
19 with a 2017 call from the former Attorney General of the
20 State of New York, Eric Schneiderman, telling them,
21 essentially, you better put your house in order.

22 If that call hadn't been made, if this
23 investigation hadn't been commenced, if we weren't on trial
24 now do you believe that much of the reforms that they're
25 touting now would even have taken place? I would suggest to

BP

4613

Plaintiff Summation/Ms. Connell

1 you the answer is no.

2 Finally, we heard a lot of talk about witnesses in
3 this case; but the State's case -- and that means the people
4 the State puts on, with the exception of two experts whose
5 qualifications were not doubted and two witnesses for
6 long-time vendors of the NRA were entirely current and
7 former NRA directors and employees.

8 These are the people who care about the NRA's
9 mission, who care about its success; and they came in here
10 to tell you about what they saw that was wrong and what was
11 truly going on in the NRA. And I would point out that our
12 witnesses that we called include John Frazer, Sonya Rowling,
13 Michael Erstling, Craig Spray and others.

14 And to the extent that counsel tries to imply that
15 Ackerman is Team NYAG, we didn't pick Ackerman. We don't
16 support Ackerman engaging what the NRA now says is
17 fraudulent conduct.

18 The contracts with Under Wild Skies were
19 fraudulent. The payments to Tony Makris were fraudulent.
20 The payments to Ackerman were fraudulent. The NRA wants to
21 pretend that's something that happened to them, somehow,
22 someday. That's not an accident.

23 We're going to walk you through the timeline.
24 That's conduct they chose. Those are vendors they chose.
25 They chose to engage in the out-of-pocket expense

BP

4614

Plaintiff Summation/Ms. Connell

1 reimbursement process. They chose to engage in these type
2 of conduct. So, when we call in a witness from Ackerman to
3 testify, that's the witness that the NRA chose to do
4 business with for two decades.

5 That's not team NYAG. That's their -- that's their
6 vendor. That's the people they stood behind for years until
7 it got to be inconvenient for them.

8 In sum, the documents for the most part, the bulk
9 of it, 99 percent of this case is proven by the NRA's own
10 documents, by their own witnesses, by the documents of the
11 vendors they chose to do business with. That's where this
12 evidence comes from.

13 So the non-defense of this is a witch hunt should
14 be taken off the table right now.

15 Now, let's go back to something we heard a lot
16 about in these openings.

17 When I stood before you six weeks ago, I started
18 out and the first sentence I said to you was, "This case is
19 about corruption."

20 Well, let me tell you something, this case is about
21 corruption. It is. It is about the misuse of charitable
22 funds that we've proven were spent for things, like, private
23 jets -- and we'll talk about why that was wrong --
24 limousines and black cars, Glam Squad, meaning hair and
25 makeup expenses, up to see \$60,000 expenses that we can

BP

1 document. Five-star hotels, hundreds of thousands of
2 dollars of suits from a store in Beverly Hills, million
3 dollar deals to insiders, payments to loyal board members
4 and pervasive violations of internal controls.

5 (Continued on next page)

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Plaintiff's Summation/Ms. Connell

1 MS. CONNELL: The Defendants in this case are the
2 NRA, and let me stop for one second because we have had a
3 little slight of hand here.

4 A corporation, the NRA, any company, Apple, any
5 company, it's an idea. It's a legal concept. A corporation
6 acts only through its people. It is liable for the actions
7 of those people.

8 The judge will explain the law to you, but the NRA
9 will have to prove that it is not liable for the actions of
10 Wayne LaPierre, Wilson Phillips, John Frazer and other
11 executives whom it allowed to violate the law. It can not
12 walk away and say the NRA didn't know about what they were
13 doing or the NRA is not responsible for it.

14 Wayne LaPierre was the EVP of the NRA until
15 February 1, 2024. He left with no discipline, no
16 suspension, under his own steam. They can not walk away
17 from his conduct. He was the man who led and controlled the
18 NRA with the band of loyal insiders for over 30 years.

19 The other defendants are, of course, Wayne
20 LaPierre, John Frazer and Wilson Phillips, and they helped
21 create this culture of corruption. They helped carry out
22 this corruption. They didn't do it by themselves. They had
23 help. There were key loyal and entrenched Board members at
24 the NRA who have been there for decades, at times who have
25 supported, covered for and insured Wayne LaPierre's

KM

4617

Plaintiff's Summation/Ms. Connell

1 continued control and dominance. And now that he's gone,
2 they are still in control. Every one of them is still with
3 the NRA, every single one of them, and you have seen a lot
4 of names. You have seen Mr. Cotton. You have seen Ms.
5 Froman. And let's talk about this for one second. I just
6 want to step aside -- step out of this for one second.

7 I said a corporation acts through its people, and
8 that's true. People are complicated. People are not always
9 just one thing. They are not -- you can be someone who
10 cares about the NRA and still wrongfully takes its money and
11 spends it at the same time. You can be someone who is a
12 good or nice person but fails in their fiduciary duties at
13 the same time. You can be someone who is smart,
14 accomplished, well-meaning like Ms. Froman who came up and
15 testified, who is impressive by any standard, but who still
16 does things that maybe she shouldn't.

17 Remember when she was questioned about the cheat
18 sheet -- about the cheat sheet that helped keep Wayne
19 LaPierre in control? We heard so much testimony about the
20 free and independent nominating committee, but you saw that
21 she was told -- she was given a cheat sheet, told who to put
22 on that nominating committee. That's who ended up being on
23 the nominating committee, and you will see -- you saw
24 evidence. I will go through some of it, that that
25 nominating committee controls the Board of the NRA.

KM

4618

Plaintiff's Summation/Ms. Connell

1 So these key loyal Board members helped and cover
2 for LaPierre. They helped and covered for the entrenched
3 leadership. I mean, they are the entrenched leadership.
4 They help and cover for the misconduct. They have taken
5 part in some of the reforms.

6 Again, we are going to talk about those reforms,
7 but they have also taken part in steps that have allowed the
8 NRA to get to the point that it's at.

9 Remember discussing safeguards in place to protect
10 charities and assets? You have seen evidence that each of
11 the first four of these have been pervasively violated or
12 violated or breached by the defendants. You've seen
13 breaches of fiduciary duties. You've seen rampant
14 violations of internal controls. They have been referred to
15 as nitpicking.

16 I would suggest to you that not getting required
17 approvals for contracts under which say a treasurer could
18 get paid millions of dollars is more than nitpicking. It's
19 more than just a little mistake. It's in violation of the
20 trust that the NRA and its member should be able to put in
21 the treasurer.

22 You've seen whistleblowers violations, and we're
23 going to talk about those. We're going to talk about false
24 statements on the NRA's regulatory tax filings.

25 At the beginning of this case I talked to you about

KM

4619

Plaintiff's Summation/Ms. Connell

1 the import of each of these. I'm not going to go through
2 all of that again, but I'm going to say that as we talk
3 about the evidence in this case, keep in mind how each of
4 these safeguards has been overridden by the defendants.

5 Plaintiff has presented evidence that tens of
6 millions of dollars in payments that Wayne LaPierre has
7 approved to his friends, supporters and loyalists without
8 written contracts, without necessary approvals, without
9 deliverables, without any clear indication of what services
10 and goods the NRA is supposed to get in response, and I want
11 to stop there again for a second and say this.

12 You have heard a lot of conclusory statements.
13 David Keene made speeches. He's a great speaker. He may be
14 a great speaker. Why is he paid a flat rate? How many
15 speeches did he make in any given year? Did he make a
16 speech every year? Should he have been paid the amount he
17 was paid by the NRA or would a better practice have been
18 that he actually delivers goods and services and the NRA
19 gets the value of its bargain? That's not what happened
20 here. He is a supporter and a friend of Wayne LaPierre, a
21 former president of the NRA, and he was paid a flat rate for
22 years. As was Sandy Froman. I'm sure she's an excellent
23 speaker. I'm sure she knows a lot about Second Amendment
24 law, but she was paid a flat rate as a portion of the
25 expenses of her law office business, and we don't know --

KM

4620

Plaintiff's Summation/Ms. Connell

1 you didn't hear one witness say how many speeches did she
2 give. Who else could they have gotten for less money?
3 Those were not reimbursable for cost. They were average
4 monthly rate.

5 She testified, yeah, I got about \$3,700 a month.
6 We don't even know if she did a speech in some years. She
7 got paid that because she was a loyalist. A LaPierre
8 loyalist.

9 And the violation of internal controls stopped us
10 and stopped the NRA of what was delivered, what was supposed
11 to be delivered and what they are paying for.

12 In fact, you heard from Mr. LaPierre yesterday that
13 the NRA was defrauded -- those were the NRA's words. Those
14 are his words -- under some of the agreement he and Mr.
15 Phillips got the NRA involved in. These are some of the
16 arrangements to which Mr. Frazer turned a blind eye, and
17 we'll talk about that.

18 You have seen evidence that is sometimes shocking,
19 sometimes lurid, I think, but I suggest to you that most of
20 it is sad. Most of it is sad.

21 This is not a case as Mr. Correll said in his
22 opening statement about Government intrusion into personal
23 lives. This is a case about whether when people donate
24 money to a charity, that money should go to the mission of
25 the charity or if it should go to buy -- I don't know --

KM

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Plaintiff's Summation/Ms. Connell

1 very expensive hair and makeup services for Susan LaPierre
2 or should it go to pay for Mr. Phillips to commute without
3 Board approval from Dallas where he is working as CFO and
4 treasurer of the NRA or should it go to pay for Tyler
5 Schropp the head of advancement to stay in hotels that cost
6 a fortune in violation of NRA travel and approval processes.

7 The NRA let all of this happen for years. That was
8 a failure to safeguard charitable assets in their care.
9 They allowed the Defendants' conduct to continue, and that's
10 what this case is about.

11 When we first started talking weeks ago, in my
12 opening statement I talked about how could somebody like
13 LaPierre and his entrenched leadership, his friends maintain
14 control. How can they get away with this for decades? And
15 I talked about the four S's, self-serving management,
16 spending, secrecy and suppression.

17 You have seen evidence of all of them. We don't
18 have time to walk through all of the examples, but I'd like
19 to talk about one that was one that came up in other
20 counsels' closing statements. This is Oliver North.

21 Oliver North and the NRA engaged in an illegal
22 related-party transaction. Let's be clear about that. They
23 did.

24 Now, let's look at who helped that transaction
25 along because it is a textbook example of how Wayne LaPierre

KM

4622

Plaintiff's Summation/Ms. Connell

1 maintained control of the NRA using people he hand-picked
2 and put into their position because they would help him out,
3 how he used suppression, secrecy and spending to get what he
4 wanted and maintain control.

5 Oliver North -- and by the way, when we talk about
6 this one example where there is a -- where there are
7 contested facts, I am going to use Defendants' facts, and I
8 am going to show you that Plaintiffs still should win in
9 this case.

10 So Oliver North was a long-time Board member,
11 friend of LaPierre. He was in Wayne LaPierre's wedding.

12 Remember, according to Tom King in late 2017, the
13 NRA had been warned that it may be subject to Government
14 scrutiny.

15 You heard Colonel North and others testify that in
16 late 2017, early 2018, then NRA president Pete Brownell
17 decides he will not run for a second term. Wayne LaPierre
18 is in trouble. He knows the NRA is being looked at. He
19 knows the NRA is in trouble. North and others said the NRA
20 was being looked at for possibly ties or even appropriate
21 ties to Russia. Brownell is stepping in. LaPierre could
22 step back and just let this whoever the normal election
23 process turns out to be the next NRA president, he could let
24 that play out. That's not what he does because he can't
25 risk that lack of control. He goes to his playbook, and he

KM

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Plaintiff's Summation/Ms. Connell

1 does what he's done when he's backed into a corner.

2 If you remember in the late nineties, he was facing
3 a challenge to his power, and he went and got Charlton
4 Heston to be the president of the NRA. This time he turns
5 and looks around. He finds Oliver North. He's successful
6 especially in the conservative circles on television. He
7 has a successful career. He's making a lot of money at Fox
8 News, and he gets a lot of votes for the Board when he runs
9 for the Board. He is high profile.

10 What does Wayne LaPierre say to Oliver North? He
11 says, I need you as president. You have to be president. I
12 need you as my next president. We need somebody like you,
13 and there's nobody else like you.

14 Oliver North testified to this that he was
15 solicited by Wayne LaPierre. You didn't hear anyone deny
16 it. It wasn't denied. It's an admitted fact.

17 You heard Oliver North for good or for ill be
18 upfront with Wayne LaPierre, and he knew it was a volunteer
19 position and he wouldn't do it as a volunteer. He wasn't
20 going to leave his high-paying job to take a volunteer
21 position, and he needed health insurance for his wife who
22 was suffering from a really serious and terminal illness at
23 the time. And he said, I can't take it without a job. I
24 can't take it. Nobody contested that.

25 And what happened? Wayne LaPierre said, I'll take

KM

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Plaintiff's Summation/Ms. Connell

1 care of that. I'll take care of it. And Wayne did. Wayne
2 said, I've got to have you as the next president of the NRA,
3 and I can make that happen, and at the end of it, Wayne did
4 take care of it. Again, North was clear. I need to be
5 employed. I couldn't be an outside contractor. I have to
6 be an employee to get health insurance. And LaPierre made
7 sure he did.

8 Let's think about that for a second. The head of a
9 charity is going to go dictate who is going to be the next
10 Board president of that charity. He is going to use a
11 vendor, Ackerman McQueen, to secure multi-million dollar
12 employment for that new president, and he's going to have
13 the NRA pay for that. He's going to back door it. He's
14 going to pass through those costs. Why? It's secrecy.
15 It's hiding. It's hiding that payment through the NRA by
16 the NRA through Ackerman McQueen.

17 The next thing you know, and by the way, notice
18 about this employment agreement, there is something that
19 should jump right out at you. It says "Employment
20 Agreement" right across the top. Okay. This is important
21 because if you remember a year later, Josh Frazer is going
22 to say, well, we didn't understand he was an employee. We
23 thought he was an independent contractor, and that makes all
24 the difference. We will talk about that in a second.

25 So the next thing you know without preparing a

KM

4625

Plaintiff's Summation/Ms. Connell

1 nomination packet, without going to the nominating
2 committee, without being interviewed, without campaigning,
3 North is made the next president of the NRA. Wayne said he
4 would take care of it, and he took care of it. He was
5 installed.

6 The NRA says it was somehow tricked. Again,
7 because they thought he was an independent contractor. But
8 even if we take the uncontested evidence here, right; even
9 if we take Josh Frazer's testimony that he didn't get a copy
10 of the employment agreement and the Audit Committee didn't
11 get a copy of the employment agreement, we have uncontested
12 testimony from Oliver North, and he said that he gave Wayne
13 a copy of the employment contract. Wayne was in the room
14 when it was signed. Wayne got a copy.

15 Guess who else got a copy? Wilson Phillips. He
16 said Melanie Montgomery of Ackerman handed him an envelope
17 that had the employment agreement in it. He assumed it was
18 the executed version. So they both had a copy of an
19 agreement that said "Employment Agreement" across the top.

20 LaPierre knew about the agreement and the nature of
21 the agreement. He was at the meeting where it was signed.
22 Phillips knew about the agreement. It was executed in May
23 of 2018, and it was a related-party transaction. It was not
24 approved in advance. This is during the course correction.

25 The course correction has begun. The 360-degree

KM

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Plaintiff's Summation/Ms. Connell

1 review has begun, and Wayne LaPierre just got his friend a
2 multi-million dollar deal.

3 In September 2018, the Audit Committee meets to
4 retroactively ratify that transaction. The judge is going
5 to explain the law to you, but when the Audit Committee
6 wants to retroactively ratify something, it has to meet some
7 fairly stringent requirements.

8 It has to look at whether the agreement is fair and
9 reasonable. It has to consider alternative transactions.
10 It has to document and look at where was the failure, why
11 wasn't this approved in advance. You are going to see that
12 none of that was done here.

13 The Audit Committee didn't call Oliver North and
14 ask him the questions. They didn't call Wayne LaPierre and
15 ask any questions. John Frazer testified they did not have
16 a copy of the contract but only a summary. But taking
17 Frazer's version as the truth, if having that contract was
18 so important, wouldn't you expect the general counsel, the
19 highest legal officer of a corporation and the secretary of
20 the Board to raise a concern about it; to raise an issue; to
21 say, Hey, I need to know what this contract says. We need
22 to look at its terms. We need to be clear.

23 He doesn't do -- he didn't do that. Does he take
24 any steps to try and block the ratification? No.

25 You saw those minutes at PX 2983. You can ask for

KM

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Plaintiff's Summation/Ms. Connell

1 them. It does not indicate that this is a provisional
2 approval. It does not indicate it's a provisional based
3 upon meeting North's contract. And you can take a look on
4 the first page of PX -- of this document, PX 2983, and you
5 will see that there were no less than three attorneys
6 present. Steve Hart, outside counsel; John Frazer and Sarah
7 Rogers of the Brewer Firm.

8 You heard that Frazer has input and feedback into
9 the minutes of the Audit Committee at times, and a lot of
10 counsel made reference to attempts by the Attorney General
11 to object to certain minutes or documents going into
12 evidence. You're right we did.

13 When there's evidence that a document might not be
14 the genuine article, where it might not be authentic, where
15 it is not what it says it is, where it's a self-serving
16 document that is not reflected in what was reported to the
17 Board, you bet we're going to object to that. There is
18 nothing wrong with that. And I want to point out to you
19 that the evidence that you should consider in making your
20 decision is the evidence that's admitted in this case that
21 you find believable. It's not the argument of attorneys,
22 you and me. It's not the objections or discussions about
23 the evidence. It's the evidence put in this case, the
24 testimony and exhibits you find believable.

25 Again, Mr. Frazer said that he could not get a copy

KM

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Plaintiff's Summation/Ms. Connell

1 of the North contract. Again, taking this as true, taking
2 Mr. Frazer's testimony as true that he asked for it and he
3 couldn't get it, why didn't he do something? Why was he so
4 passive? Why acquiesce?

5 Again, if you look at that exhibit, you will see
6 that he was actually the secretary of the Audit Committee at
7 that meeting. Why didn't he note that failure in the
8 minutes? In the report. Excuse me. Because he acquiesced
9 and enabled LaPierre's friend to get a lucrative
10 related-party contract.

11 Ask yourself was the GC an officer who's holding
12 the NRA to the law, who's trying to stop inside baseball or
13 who is showing undivided loyalty to the NRA? No. No, it's
14 not.

15 And by the way, to breach a fiduciary duty doesn't
16 mean you have to take money from the charity and put it in
17 your own pocket. You can also fail to object or fail to try
18 and stop obvious breaches. You can fail to stop or take
19 action when you see someone harming the organization you're
20 supposed to have undivided loyalty to.

21 After that, Lieutenant Colonel North talked about
22 serving as president. He talked about showing up. He
23 talked about doing the job. You heard about him starting to
24 have concerns. He talked about members complaining about
25 cuts to mission services. We will talk about evidence that

KM

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Plaintiff's Summation/Ms. Connell

1 shows that.

2 He talked about members worrying about spiraling
3 costs at the NRA. He ultimately asked Craig Spray for some
4 breakdowns of that cost and he was flabbergasted by the
5 legal spend.

6 He asked to see invoices. He -- and there is
7 documents in front of you. He found that the spending on
8 legal was \$19 million in one year for the Brewer Firm alone.

9 Now, no one is saying the NRA can not defend
10 itself. No one is saying the NRA can not spend money as it
11 sees fit. But when a Board officer says that's a lot of
12 money, I have legitimate concerns about it, and you can read
13 the exhibits I'll list for you that outline his concerns,
14 he's allowed to ask to see those invoices, and he's allowed
15 to ask for an outside independent audit which is what he and
16 Richard Childress and at a time Carolyn Meadows do.

17 Please ask to see PX 390, PX 334 and PX 4942 and PX
18 1683.

19 When Oliver North would not drop asking about the
20 legal spending, and Defendants try and say, well, he
21 couldn't see it because there is a conflict of interest, he
22 couldn't see it because there was a -- he worked for
23 Ackerman, so there was a problem. That's not really
24 conflict that would prevent the president of an organization
25 from looking at legal invoices. But even if it were, he was

KM

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Plaintiff's Summation/Ms. Connell

1 asking for an outside independent audit. They could have
2 just proceeded with that and avoided the conflict. That was
3 not done, and you heard evidence, you have heard people say
4 a forensic audit was performed. The Brewer bills were
5 audited.

6 Have you seen any evidence of that? You haven't
7 because it wasn't done.

8 You heard Mr. Cotton testify that in one case one
9 insurance company looked at a couple of bills before they
10 paid them. That is not an independent audit of the
11 \$19 million in spending that Colonel North was concerned
12 about.

13 Colonel North also complained with Richard
14 Childress about other things, like allegations of corruption
15 that were being launched in the newspapers, in news articles
16 and in material that was being released by Ackerman McQueen.
17 And he asked for formation of a committee, and he asked that
18 that be looked into. His requests were ignored.

19 At this point Oliver North is a whistleblower.
20 It's uncontested. So what happens? He's ignored. He's
21 ignored.

22 It's true the NRA did look into the first complaint
23 they had which is whether the Brewer Firm and Richard
24 Childress and Carolyn Meadows had which is whether the
25 Brewer Firm was properly retained. You can look at the memo

KM

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Plaintiff's Summation/Ms. Connell

1 that was prepared on that, and it was found that they were
2 not, but his request for an outside audit were ignored, and
3 he told you why, and this also was uncontested, and it's
4 pretty shocking.

5 Colonel North said that Wayne LaPierre told him
6 only Brewer could keep him out of an orange jumpsuit. Only
7 Brewer could keep him out of jail. So leave him alone.
8 Stay in your lane. That's a salaried officer of a charity
9 speaking to the Board president saying, stay in your line.
10 Mind your business. Don't ask questions about the guy who
11 is going to keep me out of jail for my conduct within this
12 charity. And you didn't hear that contested.

13 When he refused to let up, that's when the
14 suppression and the whistleblower retaliation began. I
15 would urge you again to look at PX 1313A and 1789.

16 At the member meeting in Indianapolis in 2019,
17 North learned for the first time that LaPierre would not
18 support his and Richard Childress' renomination as Board
19 officers.

20 He talked about how Childress actually yelled at
21 LaPierre about it. He said not only are you not supporting
22 it, you have spoken to every member of the nominating
23 committee. We're not going to be renominated. They know
24 they're out. They can't get reelected on a petition at the
25 last minute. They are gone. LaPierre's control worked.

KM

4632

Plaintiff's Summation/Ms. Connell

1 North is out. And this shows the suppression. This is how
2 LaPierre and his circle of supporters maintained control
3 within the NRA. LaPierre did not deny any of this. He
4 couched it as a failed "coupe attempt" quote unquote, but
5 there was no evidence that anyone was coming for his job.
6 There is no evidence that North was trying to become EVP.
7 LaPierre -- I mean, North was perceived as disloyal to
8 LaPierre, and his days were numbered.

9 And then what happens? North says he returns to
10 his home. He starts to live life as normal. He is still a
11 Board member. In May 2019, just about a year after the
12 contract went into effect, suddenly the Audit Committee
13 springs into action and looks at the contract again, the
14 same one it had ratified in September 2018. You can see
15 this exhibit. They revisit it again, and this time, they
16 find it is a conflict of interest. The same arrangement,
17 the same contract set up by Wayne LaPierre.

18 And this time -- and you can see -- by the way,
19 that's PX 517. You can ask to review it. That's not where
20 the retaliation, where the intimidation, the harassment and
21 retaliation stop.

22 And by the way, I think counsel pejoratively said,
23 Well, just because you get yelled at in a spirited debate,
24 that's not retaliation.

25 The law prevents intimidation, harassment and

KM

4633

Plaintiff's Summation/Ms. Connell

1 retaliation, and I would submit to you that what happened to
2 Colonel North, even though he engaged in illegal
3 related-party transaction was clearly whistleblower
4 retaliation.

5 First, his contract was revised and not ratified.
6 Then he faced an ethics complaint by no other than Tom King,
7 one of the NRA witnesses loyal to LaPierre who appeared
8 here.

9 And you saw some of Tom King's texts talking about
10 members of the floor wanted reform. Remember he said, get
11 me their names. Get me their names. There are ways to
12 neutralize people. That's the Tom King you heard from.

13 In any case, Tom King files an ethics complaint
14 against North. North has to hire an attorney. He has to
15 fight against that. That takes time.

16 What follows is two separate lawsuits brought by
17 the NRA against North. The first one is before he even
18 asked for payment of attorney fees, he let the NRA know,
19 hey, I've incurred attorneys' fees responding to a subpoena
20 in congressional matters. I might ask for payment. They
21 bring an action for declaration.

22 The second one is for a declaration that they can
23 oust him as a member. That's what we heard North testify.
24 So he's subject to two lawsuits. North was retaliated
25 against a whistleblower. I'm sorry I spent a long time

KM

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Plaintiff's Summation/Ms. Connell

1 talking about this example. I'm not going to spend as much
2 time speaking about other pieces of evidence, but this is a
3 textbook example of how NRA leadership is willing to shell
4 out the millions, using vendors to hide it, that these
5 elections are under the control of LaPierre and his
6 entrenched leadership, that they're willing to use
7 suppression, intimidation, harassment and retaliation to
8 quiet those who would threaten them and that they took part
9 in the efforts to spread NRA money to friends of Wayne
10 LaPierre. And that's all in the space of one year. And
11 this is while the course correction is underway that this
12 takes -- this takes place.

13 So we spent some time on the story of Colonel
14 North. I want to move on from there and talk about a little
15 bit about the corruption. I'm not going to go through
16 everything again, but I'd like to go through some of the
17 things just to make sure you see that what we told you we
18 would show, we showed.

19 Let's talk about travel expenses. You know the NRA
20 has a travel policy that prohibits charter travel without
21 prior written authorization. It requires that travel on
22 behalf of the NRA be in the most cost-effective manner
23 necessary. It's uncontested that LaPierre violated this
24 policy for years. It is uncontested. You didn't see a
25 Board authorization letting him fly by private jet. It is

KM

4635

1 uncontested that that is not the most cost-effective way for
2 LaPierre to travel. Did that stop LaPierre? Not at all.

3 We put in evidence about his use of private jets
4 for both business and personal reasons. And by the way, I
5 wanted -- I want to avoid a little bit of gaslighting that's
6 going on here.

7 Whether LaPierre was using private jets for
8 business or personal reasons does not matter. He violated
9 the travel policy. Could he be entitled to a credit for the
10 cost of a plane -- of a commercial plane ticket? Maybe.
11 But he can't take NRA funds, take private jets and fly all
12 around to wherever he wants. That's a violation of the
13 NRA's policy. I submit to you it's a misuse of the NRA's
14 charitable assets. You don't have to believe me. You can
15 look at his conduct. You can look at his conduct.

16 If he had a security need for those flights, what
17 could he have done? He could have talked to the Board.

18 (Continued on the following page.)
19
20
21
22
23
24
25

KM

4636

Plaintiff Summation/Ms. Connell

1 (BY MS. CONNELL)

2 Could have talked to the board, could have asked
3 for the formation of a security committee. He could have
4 said let's address the best way to keep me safe and let me
5 do my job. He could have said let's cost out the best and
6 most secure travel. Let's see how we can get this done and
7 keep the record safe.

8 Did he do that and get a board resolution approving
9 that? He did not.

10 What did he do? He booked travel through his
11 private travel agent verbally, not in e-mail. Not using the
12 NRA's travel agent, right?

13 Woody Phillips asked her to split the billing into
14 two companies. So, she billed for the same services, same
15 person, same location. She billed through two companies,
16 GS2 and I.I. and I.S. and she sent those invoices to three
17 different cost centers. She sent them to the NRA, the NRA
18 ILA and Ackerman McQueen.

19 And at LaPierre's request she removed some
20 information from them. What information did she remove from
21 her invoices? All of the travel details? No. She removed
22 information about trips to Nebraska where LaPierre's niece
23 lives and trips to the Bahamas. Why? Woody Phillips told
24 you. He said, yeah, he was worried about water cooler
25 gossip. He was worried about people at the NRA seeing how

BP

4637

Plaintiff Summation/Ms. Connell

1 money's spending.

2 So, let's go back, I'm sorry if we can, to slide
3 37. I'm sorry, about that Jen, I was jumping around a
4 little bit.

5 Mr. LaPierre spent millions of the NRA -- I'm
6 sorry, I'd like to go back to the jet trips, too.

7 Mr. LaPierre spent millions of NRA funds on private
8 jet travel. We showed he spent over a million dollars on
9 flights he wasn't even on. We showed you he spent over
10 \$600,000 in private jet travel to the Bahamas alone. We
11 showed that this went on year after year after year.

12 And there are a couple of other things that
13 undercut the security detail, and I'm not poo-pooing that
14 Mr. LaPierre might be subject to threats, not at all; but
15 there's a way to handle it secretly flying you and your
16 friend around to Bahamas while using charitable funds was
17 not the way to do it. It was a violation of the charity's
18 own rules.

19 But, if it was for security, why didn't
20 Mr. LaPierre tell his security detail when he was flying to
21 the Bahamas? He didn't. He testified that he didn't.

22 If we can have Slide 49, if that's okay. Actually,
23 48, I'm sorry.

24 He said he didn't get board approval, and he didn't
25 tell his director of security about his trips on the yachts

BP

4638

Plaintiff Summation/Ms. Connell

1 in the Bahamas.

2 And we heard from Chris Cox, the head of the NRA
3 ILA, who is subject to security threats and he flew
4 commercial. There were some jokes or something about him
5 suggesting prop planes. He did say that he considered when
6 those private flights were needed, what would be an
7 economical way to do it; but Chris Cox sat here and
8 testified that he continued to fly commercial.

9 And I want to say something about Chris Cox's
10 testimony. Counsel made some representations about
11 Mr. Cox's testimony about him asking to get fired, about
12 some hunting trips or something with the President's son.

13 Please go back and look at Chris Cox's testimony
14 and judge for yourself if what counsel represented he said
15 is what he really said.

16 If for security he had to fly private, why was
17 Mr. LaPierre okay flying commercial when he went on his paid
18 luxury vacations with the McKenzies, which he did over and
19 over and over again?

20 Again, legitimate security needs could have been
21 properly handled, not through the secrecy and obfuscation he
22 promoted.

23 Another example of how LaPierre created this
24 culture of corruption within the NRA is with regard to the
25 MMP entities. We are so familiar with them, I'm sure; but I

BP

4639

Plaintiff Summation/Ms. Connell

1 think it bears repeating that it involved deception, lying
2 to the NRA in violation of his duties and will also show
3 that this arrangement demonstrates a breach of both
4 Mr. Phillips' and Mr. Frazer's duties.

5 LaPierre year and year after year filled out his
6 financial disclosure form. The disclosure forms that
7 Mr. Frazer is so proud of, Mr. Frazer beefed up these forms,
8 right? That's a good thing. Mr. Frazer distributed these
9 forms. That's a good thing. Mr. Frazer collected these
10 forms and recorded so he got a hundred percent return in
11 some years. That's a great thing.

12 But, year after year after year, Mr. LaPierre lied.
13 This is a simple question. Have you gotten a gift
14 gratuitously, personal favor of entertainment with a retail
15 price of fair market value, it makes sense, of \$250
16 essentially from any member? Year after year he answered
17 that question no.

18 It wasn't until 2021 on the day he was testifying
19 in the bankruptcy proceeding that he had commenced for the
20 NRA, that he partially disclosed his conflict of interest
21 with McKenzies; and his disclosure opened up the fact that
22 he had been accepting gifts from them for years.

23 So, what happened? As part of the course
24 correction, of course you'd expect that they'd investigate
25 it, the NRA's sprang into action. It immediately looked at

BP

4640

Plaintiff Summation/Ms. Connell

1 why wasn't this disclosed sooner? What effect had this on
2 business relationships? What are we going to do about
3 setting the Tone from the Top, about the blatant violation
4 of our conflict-of-interest policy?

5 What does Mr. Frazer do? He doesn't recall. You
6 know, we asked him if he even talked to Mr. LaPierre about
7 it. No, he didn't. He just -- that's the NRA's top lawyer.
8 What does he do about it? Nothing.

9 Back to Mr. LaPierre were there trips worth more
10 than \$250? Yes, and it wasn't just a trip where he flew
11 down for business purposes with Mr. McKenzie to talk
12 business. It was Susan LaPierre's girls week that you heard
13 testimony about. It was vacations. It was Colleen
14 Sterner's wedding, Mr. LaPierre's niece.

15 And what was Mr. McKenzie getting in return? We
16 submit to you that you can -- I'm sorry, you passed the
17 pictures of the yacht, which you can look at. I think we
18 can agree can be pretty luxurious, a very nice gift to get.

19 What was Mr. McKenzie getting in return? Well,
20 let's take a look. For example, in May 2015, May 27th to
21 the 30th, LaPierre visited the McKenzies. Earlier that
22 month, Susan LaPierre had spent some time on their yacht.

23 The next business day after LaPierre's visit to
24 California with the McKenzies, there's an increase to the --
25 in the fees paid to MMP and Concord by a hundred thousand

BP

4641

Plaintiff Summation/Ms. Connell

1 dollars a month. This was not an isolated instance. It
2 continued. The next instance was in January 2016. LaPierre
3 spent time with the McKenzies in December and in
4 January 2016 there was another \$100,000 increase. It
5 happened in August and September of 2016. There was a
6 visit, and it is followed by 190,000 dollar a month
7 increase. This timing is undeniable.

8 If we look in a timeline in 2013, the LaPierre's
9 niece's wedding is on the Yacht Illusions. And the meetings
10 continue. They're on the lower half of this timeline, and
11 the increases in the monthly rates paid to the MMP entities
12 are in the top, and they both go in one direction. They
13 increase.

14 Of course, LaPierre could not engage in these
15 arrangements with MMP on his own. You saw evidence,
16 Mr. Hines walked you through it. We admitted the documents
17 that the MMP contracts were approved after they had already
18 been executed, after they had already been signed that the
19 approvals were based on false terms.

20 The approvals indicated there was a ten percent cap
21 in the monthly payments. There was not. The approvals
22 contained multiple fraud risk indicators; and, yet, MMP was
23 paid millions of dollars, the entity MMP, millions of
24 dollars above the contract rate year after year. How? With
25 the help of Mr. Phillips. He carried out Mr. LaPierre's

BP

4642

Plaintiff Summation/Ms. Connell

1 intention. He paid these invoices without contractual
2 support.

3 You heard from Mr. Hines again how these -- the
4 fraud risk indicators that were present here, the overly
5 complex transactions. I want to take you back and remind
6 you the MMP entities were three companies operating in the
7 same office space, with the same management, same employees,
8 same owners, inside the NRA headquarters; but they're paid
9 through three different companies. That's a fraud risk
10 indicator you heard Mr. Hines explain it.

11 So, I won't walk you through the fraud risk
12 indicators and the violations of internal controls that were
13 rampant in this arrangement.

14 I would like to say one thing. You heard Ms.
15 Rogers comment MMP and say that the NRA was paying for good
16 services. That the NRA got services from NRA. Well, it
17 should from MMP. It should. It's a vendor. The NRA,
18 hopefully, is getting something, right?

19 But let's take a look at whether the NRA was
20 getting what it should. It wasn't until 2022 -- I'm not
21 great at math, but I think that's about five years after the
22 course correction began that the NRA actually renegotiated
23 its deal with MMP, that it actually did something that was
24 an attempt at least at arm's length negotiation.

25 And what happened? It ended up with a 46 percent

BP

4643

Plaintiff Summation/Ms. Connell

1 decrease in the amount it was paying MMP for the same
2 services, with more favorable terms. Ask to see the
3 agreement that approved it. By the way, one of which was
4 signed by Mr. LaPierre; but ask to see the agreement that
5 approved it. They support that. Same services, more
6 favorable terms, 46 percent decrease.

7 It is fair to say that had LaPierre hadn't been
8 friendly with the McKenzies, if he had not been receiving
9 these lucrative gifts, the NRA could have gotten the benefit
10 of that bargain much, much sooner.

11 Let's go on to just a few other examples of the
12 corruption, the out-of-pocket expenses or OOPs. This is an
13 arrangement made with Ackerman McQueen. The NRA calls Bill
14 Winkler, the representative from Ackerman, who testified
15 briefly Team AAG. Again, we used him largely to admit
16 documents; but it was LaPierre, Phillips and the NRA who set
17 this process up and kept it going year after year. Was it
18 for security? More gas lighting. That's flat gas lighting.

19 We saw through Eric Hines, an accountant and the
20 only accountant in this case who actually opened the NRA's
21 books, actually looked through these invoices, actually did
22 any kind of forensic accounting work. One mistake of his is
23 was pointed out; but he actually looked at this. He
24 actually looked at what was going on and he said millions of
25 dollars of these OOP expenses had no support for them

BP

4644

Plaintiff Summation/Ms. Connell

1 whatsoever, no paperwork, of the two something million
2 dollars of OOP expenses for which he could find some
3 support. They showed lots of expenditures that had nothing
4 to do with OOP -- with security, excuse me.

5 Six weeks ago Mr. Tenenbaum, Plaintiff's expert on
6 governance told you he had never seen an arrangement where
7 nonprofit has employees expenses passed back through a
8 vendor.

9 What's the purpose of that? The purpose of that is
10 to hide the expenditures. The purpose is that so that the
11 expensive hotels, the limousines, the \$900 dinners, the
12 clothing stylists, the makeup don't have to go through the
13 normal NRA expense approval process.

14 You heard about audits that are done by
15 Mr. Phillips or Mr. Tedrick or Mr. Hart. You could ask to
16 see some of those audits and judge for yourselves how
17 thorough they are. They did notice some problems from year
18 to year, but you also heard Mr. Phillips testify the last
19 audit he recalled performing or being performed by Mr.
20 Tedrick was 2014.

21 Again, the NRA paid \$4.3 million in OOP expenses
22 between 2015 and 2019. These were evidenced only by
23 invoices that say out-of-pocket expenses. No support, month
24 after month the NRA pays them.

25 Again, they paid for limousine and black car

BP

4645

Plaintiff Summation/Ms. Connell

1 services. They paid for other luxury services and this was
2 done through -- with Mr. Phillips' assistance and consent.

3 This is an expense -- this is an example, this
4 slide, of one expense that was paid for by Ackerman McQueen.

5 It shows \$98,000 for two weeks -- for a two-week
6 period for two chauffeured SUVs, run through OOP. Maybe
7 there was a justification for that, but why run it through?
8 Okay.

9 I would urge you to ask for and look at PX 5116 and
10 PX 5129 and all of the intervening exhibits that were
11 admitted. PX 5137, PX 5140 and 5143, take a look at
12 out-of-pocket expenses.

13 Again, you can call for the Hines testimony, as
14 well, that runs through the types of things these were spent
15 on.

16 I'd like to move on to the idea of entrenched
17 leadership. You've seen from examples we just walked
18 through -- by the way, I want you to also look at some of
19 those exhibits because you'll see Mr. Frazer's signature
20 approving some of those payments. He was aware of them. He
21 didn't ask to see the contract that supported them. He
22 didn't ask to try to enforce NRA policies.

23 So, moving on to entrenched leadership. You've
24 seen how important leaders like Mr. Frazer, Mr. Phillips,
25 Mr. Cotton, Mr. King, Ms. Meadows were to maintaining

BP

4646

Plaintiff Summation/Ms. Connell

1 LaPierre's control.

2 Again, the first thing to know is that the people
3 currently running the NRA, even with Mr. LaPierre gone.
4 And, by the way, remember, Mr. King said there's nothing
5 stopping him from returning tomorrow if he wanted. There's
6 nothing structurally within the NRA that would stop him from
7 returning working there.

8 The fact is that the people leading the NRA
9 during -- this is a quote from the NRA board member, Willes
10 Lee, that you heard from.

11 "The people leading the NRA during admitted abuse
12 endorsed and reelected people watching the coup during the
13 alleged corruption and admitted abuse." Got it, okay.

14 He's pointing out an obvious problem. When you
15 don't look back at the history, when you don't look back at
16 how did all this occur, whose fault is it? Whose
17 responsibility is it? Do they understand that? Then you
18 are leaving the same people in charge who got you in trouble
19 in the first place, and there's a problem with that.

20 You heard Mr. Marshall testify about what he and
21 called and others called cabal loyalist. By
22 Ms. Hammer, Ms. Froman, Mr. Robinson, Mr. Keene, who's the
23 real decision makers on the 76-member board. You heard
24 Mr. Cox talk about the board leadership and how all 76
25 members are not really active.

BP

4647

Plaintiff Summation/Ms. Connell

1 And what about the executive level? At the
2 beginning we promised to show you that Mr. LaPierre
3 surrounded himself with unqualified, but loyal executives.

4 Well, you haven't heard anyone question that
5 Ms. Hallow, who has a prior conviction that should have
6 disqualified her from employment who was loyal to LaPierre
7 above all, that she was a qualified employee.

8 You've seen -- you'll see that the 2003 Frankel
9 report, which documented her loss and waste in taking of NRA
10 funds. You've seen evidence that she acted to advance
11 Mr. LaPierre's interest. You've seen evidence that she took
12 NRA monies for her own use.

13 She couldn't have gotten anyplace else. She
14 couldn't have gotten a position like that anywhere else or a
15 salary like she received anywhere else.

16 Joshua Powell, no one is contesting that he was not
17 the right man for the job, to say the least. He was
18 appointed by LaPierre, and he was put in charge of
19 compliance for awhile or the compliance seminars, and he was
20 fired for taking NRA money for personal expenses.

21 Mr. Phillips, the NRA's own counsel pointed a
22 finger at Mr. Phillips today. Mr. Erstling pointed the
23 finger at Mr. Phillips and Mr. LaPierre as violating
24 internal controls and not following NRA rules.

25 And then we have Mr. Frazer. Remember when I said

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4648

Plaintiff Summation/Ms. Connell

1 people are not all one thing? There's no doubt by all
2 accounts that we've heard Mr. Frazer is a nice man. He's a
3 kind man. He worked -- he went to law school at night. He
4 worked hard. That's admirable.

5 Those don't mean that he was qualified to be the
6 GC and secretary of a large complex organization. And I
7 would submit to you that time after time the evidence has
8 shown he had the opportunity to step up, to speak up, to
9 stop illegal conduct, to stop conduct in violation of NRA's
10 policies, and he largely failed to do so. Not in every
11 case. There are instances where he did. Like, when he told
12 them to stop paying the Grassroots contract. He did
13 sometimes; but time after time he didn't, particularly in
14 regard to whistleblowers where he was instrumental in
15 suppressing them.

16 These executives helped Mr. LaPierre manage the
17 board and were called and referred to by some, like there
18 are --

19 THE COURT: Do you want -- we're about at the
20 halfway point? Do you want to go a little bit further and
21 take a break?

22 MS. CONNELL: Why don't we take a break? I have to
23 do some cutting and jump ahead.

24 THE COURT: That's what I thought. All right,
25 let's take a short break.

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Plaintiff Summation/Ms. Connell

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COURT OFFICER: All rise, jury exiting.

(Whereupon, at this time the jury then left the courtroom.)

THE COURT: I trust you all got my note about multitasking to get -- just if you have anything on the verdict forms or anything, we just need to tidy those up so we can be ready to go first thing.

We'll see you soon.

Let's shoot for ten minutes.

(Whereupon, at this time a short recess was then taken.)

(Continued on next page)

4650

Plaintiff Summation/Ms. Connell

1 THE COURT: I confirmed we do have the use of this
2 room next week if we need it for this case, for jury things
3 coming back. I'm going -- I have a full schedule
4 downstairs, but I'll just come up and down as necessary.
5 But I don't know how many people are going to be up here
6 waiting if they're not finished deliberating tomorrow, but
7 who knows. At least there will be room here.

8 COURT OFFICER: Jury entering.

9 (Whereupon, at this time the jury then entered the
10 courtroom.)

11 THE COURT: Okay, welcome back. Have a seat,
12 please.

13 All right, Ms. Connell. You have about an hour.

14 MS. CONNELL: Thank you.

15 SUMMATION BY

16 MS. CONNELL: (Continuing)

17 MS. CONNELL: I'm going to try and move a little
18 faster. At times rather than walking you through specific
19 facts, I may refer to pages of testimony or particular
20 documents that State feels you should look at.

21 In regard to Wayne's domination of the board with
22 the help of board members, I would suggest that you look at
23 PX 609, 813 and 1607.

24 Now, I would like to move on to the course
25 correction.

BP

4651

Plaintiff Summation/Ms. Connell

1 In the verdict sheet and in the jury instructions,
2 the judge is going to talk to you about what period of time
3 is relevant for your review, what period of time accounts
4 for each of the claims; and that includes the failure to
5 properly administer. That period of time is a six-year
6 period that ended in 2022; but I think that a lot of the
7 discussion and the evidence in this case has been given to
8 you in a disconnected way and free from a timeline, and I
9 thought it might be helpful to you to have a timeline of the
10 events that we think are important to both show the
11 defendants had notice and a lack of good faith with regard
12 to their illegal conduct and in regard to what happened
13 before, during and after the course correction.

14 So, first, you know, Woody Phillips and Wayne
15 LaPierre started in their positions at the top of the NRA
16 triangle in 1991 and 1992. In 1996, not long after, there
17 is something called the Board Variance Report. I urge you
18 to request this. It is PX 5018.

19 This was a report prepared by members of the NRA
20 board's Finance Committee and it highlighted concerns about
21 the very types of conduct we complain about today. It takes
22 away any allegation that Wayne LaPierre or Wilson Phillips
23 acted in good faith, or that the NRA didn't know about the
24 illegal conduct that was occurring.

25 It references verbal approvals. It references some

BP

4652

Plaintiff Summation/Ms. Connell

1 of these same vendors that the NRA is now telling you are
2 fraudulent, that they didn't get services for. These are
3 arrangements that were set up by Wayne, and Wayne LaPierre
4 and Wilson Phillips and that were the subject of a board
5 report noting concerns in 1996.

6 Again, they talk about verbal approvals. They talk
7 about a lack of receiving any demonstrable product in
8 response to contracts. They talk about laxed business
9 practices and almost a contempt for board policies.

10 If we can go on to the next slide, please, Jesse.
11 That would be great.

12 They also talk about the dollar value involved.
13 The response to this by Wayne LaPierre was to claim that
14 members who prepared the Board Variance Report were staging
15 a coup. Sound familiar? Sound like it comes from a
16 playbook of someone trying to maintain control?

17 And, by the way, again, just talking about people
18 for a second. Mr. LaPierre talked to you about being a
19 people person, liking people and thinking of the NRA as a
20 family. That may all be true, but what the evidence in this
21 case has shown you is that acting behind the scenes, using
22 others, verbally conveying instructions to others and
23 manipulating and using secrecy and suppression, he can
24 control people.

25 So, in 1997, he takes the people who are

BP

4653

1 challenging his control, the people he feels are behind the
2 Board Variance Report; and he accuses them of a coup attempt
3 and he ousts them about that time Charlton Heston or soon
4 thereafter comes in as president.

5 Just to move on, there was in 1999 the NRA
6 served -- excuse me -- signed a services agreement with
7 Ackerman McQueen. That was signed by LaPierre. It was not
8 properly approved. That's when that contract began. Those
9 are the people that the NRA are saying defrauded the NRA.
10 It was under Wayne LaPierre's control. If you remember the
11 services agreement, any changes to payments, any changes to
12 services had to be approved by him or his designee. You
13 heard and saw that Wilson Phillips worked closely with them
14 for years.

15 That began in '99. We know the out-of-pocket
16 expense report, expense process was in place as of the early
17 2000s because we heard testimony of an audit as early as
18 2004.

19 (Continued on next page)
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BP

4654

Plaintiff's Summation/Ms. Connell

1 MS. CONNELL: Let's long at something else that
2 should have given Mr. Phillips, Mr. LaPierre and the NRA
3 pause.

4 In 2003, the Frenkel report that's PX 2467. That's
5 an investigation into Millie Hallow's conduct and her use of
6 NRA money to pay for purely personal expense, her
7 expenditures of over \$500,000 in NRA credit cards, some of
8 which is business related, much of which was not. That was
9 a very friendly report.

10 You heard the -- Mr. Coy cross-examined on that,
11 and it was said, well, she didn't violate any criminal law.
12 She didn't make -- she didn't violate any law. Look at the
13 report. They only look at wire fraud under the federal
14 statute. Look at the report and see what it says about
15 leadership. Read the report when it says there aren't
16 sufficient internal controls within the NRA. Look at that
17 report and look at Mr. LaPierre supporting her despite
18 taking NRA money. Why? Because she was his go-to person.
19 She arranged the elections for him. She did the crib sheet,
20 the cheat sheet. He kept her in place despite conduct like
21 this. They were on notice from 2003 of a lack of internal
22 control and more on Millie Hallow's misconduct.

23 Continuing onwards. So I would just suggest to you
24 that any -- any claim that the NRA that Mr. Phillips and Mr.
25 LaPierre were unaware of insufficient internal controls, of

KM

4655

Plaintiff's Summation/Ms. Connell

1 violations of internal controls, that doesn't stand -- that
2 doesn't hold water because as of 1997 and as of 2003,
3 they're on notice of these problems.

4 Moving on. In 2004, the NRA begins paying Ms.
5 Hammer. She is a lobbyist. Chris Cox talked to you and
6 said, yeah, she's a legend in her field. He didn't think
7 she was worth the money at the time that he took over ILA.
8 He didn't think that she was worth the amount the NRA was
9 paying her. He didn't think that she was really active in
10 lobbying anymore, but she was paid by the NRA, by NRA/ILA,
11 and then through her organization Unified Sportsmen of
12 Florida, through three different routes. And we suggest
13 that if you look at the Audit Committee reports and the
14 evidence submitted through Eric Hines, you will see that the
15 Audit Committee never properly approved or ratified all of
16 those payment streams.

17 And remember, during the course correction, Mr.
18 LaPierre signed a ten-year contract where Ms. Hammer who was
19 I believe 79 at the time, but I would have to double check
20 the record on that.

21 Just to give you some more context, in 2011,
22 Phillips and LaPierre execute contracts with MMP and the MMP
23 entities. Again, without complying with internal controls
24 and in the presence of the fraud risk indicators that Eric
25 Hines identified. You haven't -- that Eric Hines

KM

4656

Plaintiff's Summation/Ms. Connell

1 identified, and they continued to pay under that
2 agreement -- those agreements for years and to overpay above
3 the contract amounts.

4 In 2013 at the latest, LaPierre and his family
5 begins to accept valuable gifts from MMP owners.

6 In 2013, 2015 and 2018, LaPierre executes
7 employment contracts with the NRA without Board approval.
8 This is really significant, and it shouldn't be downplayed.
9 Mr. LaPierre I think said he didn't even want them. But if
10 you take a look at the terms of these employment agreements,
11 what you will see is that they were extremely beneficial.
12 They bound the NRA to pay millions of dollars to him for up
13 to ten years after he left the NRA for any reason.

14 Allegedly, the last one, the 2018 is no longer in
15 place, but the fact that he would feel free to execute such
16 an agreement calling for the NRA to pay him that amount of
17 money demonstrates the contempt that the Board Variance
18 Report found all the way back in 1997.

19 Then in the Fall of 2017, the Schneiderman call
20 comes in, and the NRA believes they are going to face
21 regulatory scrutiny and then begin the course correction.

22 Just after that, LaPierre executes and arranges the
23 North contract with Ackerman. In the same month LaPierre
24 signs his 2018 post-employment contract. On the same day at
25 the same place, they execute Wilson Phillips'

KM

4657

Plaintiff's Summation/Ms. Connell

1 post-employment contract. Again, without board approval.
2 Again, without approval by the Audit Committee. Again, a
3 lucrative flat-rate fee -- flat-rate agreement under which
4 there are no deliverables and no required work specified.
5 Those were executed after the course correction began. And
6 they demonstrated again that the course correction didn't
7 reach to the top. And we heard about how important tone at
8 the top is.

9 Later that year in 2018, we heard that the Wall
10 Street Journal published a story that had a great effect on
11 some Board members. You can see an email related to that at
12 PX 705, and that began some Board members asking questions.

13 You've heard the Board members whom raised
14 questions dismissed as raising stale questions or concerns
15 that were already being addressed or already being looked
16 at.

17 Well, when a Board member whose supposed to run an
18 organization says what is this about, why are we seeing
19 these press reports about corruption within our
20 organization, they deserve answers. They don't deserve to
21 be blown off, and that's what they were.

22 In 2018, in early 2019, we have heard that Mr.
23 North or Lieutenant Colonel North, Mr. Childress and Ms.
24 Meadows at times begin raising concerns, and we know what
25 happens after that. They are subject to whistleblower

KM

4658

Plaintiff's Summation/Ms. Connell

1 retaliation or at least Lieutenant Colonel North and Mr.
2 Childress is.

3 That's just to give you some bit of timeline for
4 what we are talking about. The misconduct that's at issue
5 in this case dates back at least to the 1990's in some case.
6 There was notice. There were contracts going on and
7 continued through the 2000's. It didn't start in 2018 or
8 2019 or 2020, and you can not ignore that history. It
9 informs the NRA's response.

10 So -- and let's just talk for a second about the
11 Defendants' experts that they put on, their auditor and
12 their experts.

13 If we can going to slide 130, Jesse, please and
14 Jenny.

15 You have heard from an auditor that the NRA on the
16 New York Law has to have an independent financial statement
17 auditor. You heard him testify and Plaintiff's expert
18 testify about the difference between a financial statement
19 audit and an internal controls audit.

20 A financial statement audit is narrow in scope. It
21 looks at the NRA's financial statements and says do those
22 seem to be true as far as we can tell. Yes or no. Okay.
23 That's what those are. Those are not an internal control
24 audits. Mr. Plotts did not perform an internal control
25 audit. You saw no evidence of the same.

KM

4659

Plaintiff's Summation/Ms. Connell

1 Furthermore, as he conceded and as Mr. Tenenbaum
2 explained, a quote unquote "clean financial audit" does not
3 mean an organization is healthy or compliant with the law.

4 Next, the NRA brought in a series of experts
5 including -- well, actually just to continue on with
6 Aronson. If you take a look at the Aronson documents
7 including DX 1810, you know, Aronson explicitly states that
8 it is not providing an assurance on internal controls or
9 identifying deficiencies in internal controls, and that
10 they're limiting their opinion and don't express any opinion
11 on the effectiveness of internal controls.

12 And the NRA experts acknowledge that having the
13 best written policies, the best -- you can have the best
14 policies in the world, but if they are overridden, ignored
15 or violated by executives or leadership within the
16 organization, they don't count for anything. And that's
17 what happened here with the exception the NRA did not have a
18 good whistleblower policy which we'll talk about in a
19 second.

20 These experts, none of the -- the NRA's experts
21 acknowledged -- I'm sorry. Strike that. None of the NRA's
22 experts opine on whether or not any allegation in the
23 Attorney General's complaint was true or not. That's where
24 the lack of talking about time is really significant.

25 Remember when you ask them or when we pressed them

KM

4660

Plaintiff's Summation/Ms. Connell

1 what time period did you look at, it was as of December 31,
2 2020 moving forward. Did you look at the allegations? Did
3 you test whether they were true? No, I looked at whether I
4 saw evidence of them being ongoing in 2020 performing what I
5 would suggest to you are narrow tests.

6 You can ask for the relevant documents.

7 They didn't perform internal control audits. They
8 didn't perform forensic audits. They largely were not
9 experts in non-profits.

10 For example, Mr. Mehta didn't look at any
11 information before 2019, reviewed no transactions himself,
12 and offered no opinion about any allegation in the complaint
13 or the accuracy of any allegation in the complaint. This is
14 largely true for the Defendants' experts. You can ask to
15 see their testimony and we can provide you with the
16 citations if you would like to see that.

17 Moving on, I would like to talk about another
18 really crucial aspect of the course correction, and that's a
19 really human aspect.

20 Craig Spray. Both sides point to Craig Spray, and
21 I think agree that he was an important change agent within
22 the NRA. He was hired not by being hand-picked by Wayne
23 LaPierre, but he was hired after a formal executive search.
24 He was qualified for his position, and he was described by
25 Mike Erstling as a catalyst for reform efforts within the

KM

4661

Plaintiff's Summation/Ms. Connell

1 NRA. That's at slide 138, Jesse.

2 You heard evidence that Mr. Spray sometimes stood
3 up to the "Wayne says" environment within the -- within the
4 NRA. At slide 139. He stopped Wayne's payments or the
5 NRA's payments for Wayne's membership in a golf club. He
6 stopped and questioned other payments for golf or social
7 clubs.

8 You heard Mr. Phillips admit the NRA had no policy
9 permitting such payments. Spray came in and actually said,
10 Hey, guys, what are we doing here. This has to stop.
11 That's what you need from an executive, someone who is going
12 to follow the rules, someone who is going to enforce the
13 law, someone who is going to guard and properly administered
14 those charitable assets. That's what the NRA lacked.
15 That's what it lacked.

16 Mr. Spray came in, and he started to change things.
17 And did they like him? They did. I think the timeline is
18 important here.

19 In April of 2020, the NRA found Spray to be a
20 valued leader. It signed an employment agreement with him
21 even after he had already been employed and wanting to keep
22 him on. It was an 18-month employment agreement. Then on
23 October 29, 2020, Mr. LaPierre said you're such a valued
24 leader. We prize you so much, we want to give you a
25 \$250,000 retention bonus. So in October 2020, Mr. Spray's

KM

4662

Plaintiff's Summation/Ms. Connell

1 performance is great. Remember that.

2 Okay. Then Spray did the unthinkable. He asked
3 NRA leaders and those involved in the preparation of the
4 990, the IRS Form 990 to sign a certification saying that to
5 the best of their knowledge, the contents were true because
6 he had been shocked about information he was learning about
7 excess benefits and personal benefits the NRA had been
8 paying for for executives. He couldn't get information
9 about it. He was surprised about it, and he -- he wanted
10 some assurances that the filings were accurate.

11 At the same time, Spray was continuing push back on
12 the "Wayne says" culture. You know, we saw and went over
13 this email where he chided staff saying there are no more
14 "Wayne says" approvals at the NRA. It has empowered others
15 to misbehave. It's not happening. You know, he was
16 frustrated, and he said, I won't go down that path.

17 Finally, in November 2020 after certain NRA
18 officials including Mr. Cotton, including LaPierre refused
19 to sign the certification, including Mr. Cotton refused to
20 sign the certification, Craig Spray said I'm not signing the
21 990. I won't sign it. He refused. The writing was on the
22 wall for Craig Spray at that point.

23 The man who in October was deserving of a \$250,000
24 retention bonus was now not being invited to meetings. He
25 was being left out of the loop, and he stopped getting

KM

4663

Plaintiff's Summation/Ms. Connell

1 information thereafter.

2 In fact, most tellingly -- I'm sorry. This is an
3 example where Mr. LaPierre electronically signed the 990.

4 Mr. Spray testified he was left out of the loop.
5 There's no question about that, and he was left out of maybe
6 one of the biggest decisions that an organization can make.
7 That's the decision to file for bankruptcy. He is the CFO
8 and treasurer of the NRA, and nobody tells him they are
9 going to take that organization and place it in bankruptcy
10 court in Texas. It's a shocking omission. He learned about
11 the decision to file bankruptcy hours or maybe minutes
12 before it's filed. And shortly after that, Mr. Spray has
13 the backbone or the guts to tell Mr. LaPierre that not only
14 was it a bad idea to file for bankruptcy, the way he went
15 about doing it was not right. The writing was on the wall.
16 Two days later, he was fired or -- actually, on January 28,
17 2021, he was fired leaving the NRA without a CFO, without a
18 treasurer in bankruptcy. Why? Because Mr. LaPierre no
19 longer perceived him as loyal, I would suggest to you.

20 Spray was brought in as a competent qualified CFO
21 and treasurer. He pushed reforms within the NRA. He gave
22 the Top Concerns whistleblower some cover. Remember they
23 said under Spray's guidance, under his leadership, they felt
24 free to come forward. He was making the NRA do its job,
25 making it preserve and administer charitable assets. But as

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4664

Plaintiff's Summation/Ms. Connell

1 soon as his reforms came too close to top leadership, his
2 days were numbered. He was fired. And if you have any
3 doubt that that was wrong, think back to his employment
4 contract in 2020 and his retention bonus. He is a story of
5 the real course correction.

6 Has the NRA made strides ahead? Sure. But Craig
7 Spray's hiring and firing demonstrates that sometimes in
8 many ways this course correction is very shallow.

9 Moving on, let's talk about Ms. Rowling. She
10 testified in Plaintiff's case and also in the Defense case.
11 Ms. Rowling I think seemed to be a caring, dedicated
12 employee. She didn't want corruption to go on within the
13 NRA, but I think it's common sense, and we understand.
14 People want to keep their jobs. They want job security.
15 They want their salaries. They want their titles. Even
16 good people can also feel loyalty to their family or to
17 their job, and they can give into pressure when they see
18 what happens to people who stand up.

19 And is there any question about what happens to
20 people when they stand up to power, when they speak truth to
21 power? If you had a question about it in the NRA, you saw
22 what happened to Oliver North and Richard Childress. You
23 saw what just happened to Craig Spray her former boss.

24 In any case, you heard that Ms. Rowling was
25 promoted within the NRA, and you heard that she is promoted

KM

4665

Plaintiff's Summation/Ms. Connell

1 even though she is a whistleblower. She is one of the
2 authors of the Top Concerns memo. That memo was an
3 important memo. It demonstrated again notice of lots of the
4 problems within the NRA. And in particular, they raised
5 concerns. For example, management has subordinated its
6 judgment to vendors. Decisions are made in the best
7 interest of vendors. The MMP bills violate contract
8 stipulations. This was in the Summer of 2018.

9 How long did the MMP bills continue to violate --
10 violate the NRA's rules? Until 2022 when it was
11 renegotiated. That's how some of these concerns were
12 treated.

13 What about the time that -- when this memo was
14 given to the NRA? How much trust did she have in the NRA at
15 that time?

16 You need look no further than the memo that she
17 prepared and said she wished she had given to the Audit
18 Committee. Read this in its entirety. PX 2605. She felt
19 the meeting was manipulated in a way to try and explain away
20 the issues.

21 And if we advance to slide 157, you when see that
22 she -- when she saw the rubber stamping of related-party
23 transactions and conflict-of-interest transactions -- I want
24 to remind you in 2018 and 2019, the NRA went through
25 something like 33 conflict-of-interest and related-party

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4666

Plaintiff's Summation/Ms. Connell

1 transactions and approved them all. And if you doubt it was
2 a rubber stamping, just think about when they approved
3 Oliver North's contract and then later discovered they
4 didn't have enough information about it.

5 She said that they make her sick. Was she wrong to
6 believe that the Board's intention to the Top Concerns might
7 have been disingenuous? Maybe not.

8 If we can jump to slide 71 please, Jesse. Marion
9 Hammer of Hammertime name said that these so-called
10 accountant whistleblowers are feigning anger. What I see is
11 an orchestrated leaking of distorted information about
12 impure motives, not good deeds.

13 John Frazer listened to this. He did nothing.
14 Nothing to go do. He talked to the whistleblowers. They
15 thought he was nice. They thought he listened to them, and
16 I'm sure he did. But we would suggest to you if you look at
17 the concerns and the whistleblower memo and how long it took
18 the NRA to act or what types of action they took, it's not
19 necessarily a winning story for the NRA.

20 Ms. Rowling stuck around for years. She was there
21 for years under Wilson Phillips. Why did she stick around?
22 She said that she was concerned that she would not be able
23 to find another job. She said that she thought about
24 leaving for years, that she didn't know whether she would be
25 able to get another job, and then she was promoted as

KM

4667

Plaintiff's Summation/Ms. Connell

1 treasurer or a CFO and her salary was increased. Now she
2 has some security. She has a better position, and I don't
3 think her motives are impure at all. I think she thought
4 I'll step in and I'll do the right thing and I'll try and
5 make reforms and she has. But again, in the background is
6 that knowledge -- it must be there. That if she does the
7 wrong thing, she puts her toe over the line, she might be --
8 she might be vulnerable as well.

9 I'd like to move quickly on to the bankruptcy. We
10 talked about it a little bit earlier, but this is an example
11 of the ultimate override of internal controls, and this also
12 belies the story of a course correction.

13 Mr. LaPierre made the decision on his own. He said
14 he consulted the SLC, but it was his decision alone to file
15 for bankruptcy on behalf of the NRA, one of the most
16 profound decisions an organization can make. And how did
17 that end up for the NRA?

18 The court in Texas dismissed the NRA's -- dismissed
19 the bankruptcy as not having been filed in good faith. It
20 noted it was shocked. It said "shocking," and it noted
21 concerns about the surreptitious manner which LaPierre had
22 obtained and exercised authority to file for bankruptcy.
23 The NRA filed for bankruptcy on January 15, 2021. That's
24 years into the course correction. Years into it.

25 LaPierre was accused of taking, losing, wasting and

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4668

Plaintiff's Summation/Ms. Connell

1 diverting NRA funds, and he decides what should I do. Let's
2 take this organization and go to Texas.

3 Now, he gave you some testimony. I would say it's
4 self-serving that he thought, well, I'll still face claims
5 here in New York. But let's be honest. He moved -- he
6 moved the NRA or tried to move the NRA to Texas to avoid
7 regulatory review, and you don't have to take my word for
8 it. You can look in the bankruptcy court's decision at PX
9 2281 because it found that Mr. LaPierre moved -- filed for
10 bankruptcy to evade regulatory review and obtain a
11 litigation advantage. And remember, when he was filing for
12 bankruptcy, he left out -- he didn't include Craig Spray in
13 that. He didn't include John Frazer, the GC. Didn't tell
14 him. Mr. Frazer found out the day it was filed. If that
15 doesn't show you what Mr. LaPierre thought about his
16 authority and how important he was in the NRA, I don't know
17 what when.

18 You can see -- Mr. Frazer admitted this. He said
19 he learned shortly before, and we clarified "shortly" means
20 the day it's filed. And he said, correct.

21 Moving on, if we can. Just quickly look at slides
22 162 and onward. Mr. LaPierre -- just to step aside for a
23 second, Mr. LaPierre also made the decision to sue Ackerman
24 McQueen without consulting Mr. Frazer.

25 Again, managing legal risk is within the scope of

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4669

Plaintiff's Summation/Ms. Connell

1 Mr. Frazer's job. He didn't complain about it. He just
2 went along with it.

3 You would have expected a GC to storm in the office
4 and say what are you doing. You can't do this to our
5 organization. He did nothing. And then he didn't bring it
6 to the Board's attention that he was being evaded -- like
7 his authority was being sidestepped.

8 If we can keep going on, Jesse, with slides 163,
9 164.

10 When Mr. -- going back to the bankruptcy, the only
11 person that Mr. LaPierre told was then head of the press
12 office Andrew Arulanadam. You know, I would remind you of
13 the testimony that -- and you can just page through these
14 slides just because I want to keep moving, Jesse, that other
15 Board members said the decision to file bankruptcy on
16 January 15 was a week after the January 7 Board meeting. At
17 that meeting, Mr. LaPierre presented a new employment
18 contract that offered much more favorable terms to the NRA.
19 Included in this was some bland language about Mr.
20 Erstling -- by the way, also wasn't told about the
21 bankruptcy -- some bland language, duties and powers of the
22 EVP. It didn't say "bankruptcy." It didn't say "Chapter
23 11." Mr. LaPierre took that language and said that gives me
24 authority to file for bankruptcy.

25 Nobody during that Board meeting said we are

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4670

Plaintiff's Summation/Ms. Connell

1 thinking about filing for bankruptcy. Nobody said we are
2 thinking about moving to Texas. No one said anything. It
3 was done. He took control of that organization and evaded
4 Board control completely. That is an absolute violation of
5 the way things are supposed to work, and that is during the
6 course correction, years after the course correction began.

7 After -- and you heard Sonya Rowling say that the
8 bankruptcy cost the NRA 10 to \$12 million, I believe. She
9 also said it cost them vendor good when and the ability to
10 get credit. This damaged the NRA.

11 I would submit to you that this was a failure to
12 properly administer the charitable assets of the NRA and a
13 breach of LaPierre's fiduciary duty because he had a
14 conflict. He was facing regulatory review here in New York
15 for his actions within the NRA, and he made a huge decision
16 on behalf of that organization cutting out the Board. That
17 all occurred during the course correction. And nothing
18 happened to LaPierre as a result.

19 You didn't -- there was no investigation. There
20 was no punishment. There was no looking into, a review of
21 his conduct in that way.

22 I'd like to keep moving on as quickly as possible
23 and get to some of the actual claims that you're going to
24 see on the verdict sheet rather than continuing on through
25 the illegal conduct.

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4671

Plaintiff's Summation/Ms. Connell

1 The Court's going to instruct you on the law. It's
2 going to give you a verdict sheet. The verdict sheet I
3 don't think is finalized or was just finalized or I would
4 present it to you, but the verdict sheet is going to ask you
5 a series of questions and ultimately, you make the
6 decisions. You determine whether to hold someone liable.
7 You determine whether something is true or not. But I'd
8 like to just talk to you about a couple of those claims and
9 time permitting. The first one is the whistleblower
10 protections under N-PCL. That's Not-For-Profit Corporation
11 Law 715B.

12 Plaintiff asserts two causes of action under the
13 N-PCL. I think the first slide is 244, Jesse. The first
14 cause of action is the NRA failed to have a compliant
15 whistleblower policy until January 2020. It had to have a
16 compliant whistleblower policy under the law, and it did
17 not.

18 This -- you heard John Frazer testify that this was
19 its policy. Located within PX 415, I believe at Page 13,
20 and it failed to include many provisions that are required
21 by the law. Again, the judge when instruct you on the law.
22 Not me. But it says only that those who take an action --
23 whistleblower action in good faith when not result in
24 retribution or reprisal. It does indicate they should also
25 be free from intimidation or harassment.

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4672

1 It fails to state that it when maintain a procedure
2 to maintain confidentiality of such reports, and it's not
3 labeled as a whistleblower policy, so it would be difficult
4 for a whistleblower to find.

5 It does not provide the person or people who are --
6 that the person or people who are subject of the complaint
7 when not take part in deliberations or voting on a
8 whistleblower complaint, and it speaks only about a
9 violation of the Statement of Corporate Ethics or a
10 financial irregularity and not about any actual or potential
11 violation of the law or the NRA's internal rules and
12 policies.

13 And then the most important part besides not being
14 labeled and not providing confidentiality is it should
15 clearly say that anyone acting in good faith shall not
16 suffer intimidation, harassment, discrimination or other
17 retaliation, and you can see that people within the NRA
18 might want that type of protection.

19 Getting it right, having a whistleblower policy is
20 an important safeguard. The NRA didn't have it. When you
21 get the verdict sheet, we ask that you answer yes, that the
22 NRA is liable for failure to have a compliant whistleblower
23 policy until January 22, 2020. That date's important
24 because that date on January 22, 2020, we concede the NRA
25 enacted and adopted a complaint whistleblower policy.

(Continued on the following page.)

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4673

Plaintiff Summation/Ms. Connell

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Second, the claims we assert that the NRA engaged in whistleblower intimidation, harassment, discrimination and other retaliation.

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Again, I'm trying to move through quickly. You've heard about a number of whistleblowers. We've talked about -- we've talked about many of them. Some of them acted together.

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So, for example, Esther Schneider, Timothy Knight and Sean Maloney frequently worked together; and, in fact, received the same letter from Carolyn Meadows telling them that they had been stripped of their committee assignments. Instead of protecting and evaluating their whistleblower complaints, the NRA intimidated, harassed and retaliated against them.

16

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19

If we can go to Slide 87, I want to take a step back because you heard a lot of the whistleblowers complain that they asked for certain information from John Frazer and they didn't get it.

20

21

22

Jeffrey Tenenbaum, Government's expert stated the refusal to give board members information is unheard of.

23

24

That's Slide 87, I think, Jesse.

And I'm sorry to the jury, we've got a little bit out of order in our slide presentation.

25

That that is completely wrong and that that is --

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Plaintiff Summation/Ms. Connell

1 I'm sorry, it was slide 72, Jesse, and then we're going to
2 go to slide 87. Let's just go back to 87.

3 You heard Jeffrey Tenenbaum talk about what is good
4 faith. Because Mr. Frazer dismissed most of the
5 whistleblower complaints other than the Top Concerns people
6 that you heard about as not having been brought in good
7 faith, and let's talk about what good faith means.

8 Mr. Tenenbaum described it, he said you have to dig
9 in. You have to figure out what that person was talking
10 about and if they're right, and he says something important.

11 Someone can have an ax to grind. Someone can be
12 rude. Someone can gasp, be a woman who cursed and they can
13 still be a whistleblower and you can't dismiss them as not
14 being in good faith.

15 Oliver North was dismissed as not being in good
16 faith because of an alleged conflict of interest. I submit
17 that's not a legitimate reason to find that he wasn't a
18 whistleblower in good faith. But then why also retaliate
19 against Richard Childress who had no such conflict of
20 interest?

21 Esther Schneider was deemed not in good faith I
22 guess because she was obnoxious or too pushy or because she
23 cursed at Carolyn Meadows. And, by the way, her cursing at
24 Carolyn Meadows and calling her names was not the
25 whistleblower complaint. The letters and writings that she

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4675

Plaintiff Summation/Ms. Connell

1 submitted, the inquiry into payments to board members,
2 financial improprieties deals with vendors, those were her
3 whistleblower complaints and they were ignored. NRA
4 officials took no ownership of their obligations to enforce
5 whistleblower protections.

6 If we can go to Slide 73, Jesse.

7 You heard from Rocky Marshall, for example. Here's
8 Carolyn Meadows. She had no obligation under the
9 whistleblower policy. She didn't believe that she did, and
10 maybe that's why she sent letters to the entire board
11 calling Judge Journey, essentially, a liar, impugning his
12 reputation he said. Maybe that's why she sent a letter to
13 Timothy Knight, Esther Schneider and Sean Maloney stripping
14 them of their committee assignments.

15 If we could go to Slide 76, and I'll move really
16 quickly, Jesse. I'll call out the important ones.

17 Carolyn Meadows said, Hey, it is my prerogative to
18 give you an assignment and I -- if you, if you do the wrong
19 behavior, like, make accusations against Wayne, you're not
20 getting assignments. And if you had any doubt that this is
21 stripping somebody of their committee assignments rather
22 than a fair decision not to reappoint them.

23 If you recall, Marion Hammer sent an e-mail to the
24 whole board and to much of the board saying, yeah, they're
25 disloyal. They joined in attacks. They were stripped of

BP

4676

Plaintiff Summation/Ms. Connell

1 their committee assignments, and it was understood as
2 punishment. Esther Schneider understood it as such.

3 Other board members suffered similar retaliation.
4 Rocky Marshall who had been found highly qualified by the
5 nominating committee the first time he ran for the board;
6 after he raised complaints was found not qualified.

7 The fact is the people who are not in what Willes
8 Lee called the echo chamber were ousted from the board.

9 Can you go the next one, Jesse? I want to see if
10 there's anything else in there.

11 Mr. Malone wrote a letter talking about his ouster
12 asking, begging Carolyn Meadows to be reappointed to at
13 least the Grassroots activity committee for which he had
14 received an award in previous years.

15 He was -- she refused to listen to his letter. You
16 should read his letter, and in one second -- oh, ask to see
17 PX 2094, Malone's letter demonstrating his deep commitment
18 to the NRA.

19 But, Mr. Frazer and if you read that letter, you'll
20 see Mr. Malone said to Ms. Meadows, I want to still be on
21 the committee. I need to be on the committee. I care about
22 it, but I have to do my fiduciary duties. That means I have
23 to ask questions. Didn't matter. He was out. He was
24 perceived as disloyal. He was a whistleblower, and he was
25 out. So, please ask for 2094 and take a look at it.

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4677

Plaintiff Summation/Ms. Connell

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But, according to Mr. Frazer, he's not a whistleblower. He did not act in good faith, so he doesn't even have to be evaluated.

4

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This is true with many of the other whistleblowers that we've talked about.

6

7

I'd like to move on to the related-party transactions.

8

9

Please, if that's possible, Jesse.

10

11

You heard from Jeffrey Tenenbaum that ratifying a conflict of interest which is transaction, which is a large umbrella of transaction where someone's loyalty might be divided between the NRA and someone else. That reviewing a large number of conflict-of-interest transactions after the fact, it is unheard of. That he's never seen an organization ratify more than five at a time or at once even, and he had never seen a nonprofit ratify dozens. And yet you will see here that, as I said, the NRA in a short period of time ratified 33 conflict-of-interest and/or related-party transactions.

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Related-party transactions are a subset of conflict-of-interest transactions. The Judge will explain what they are; but they're essentially when the NRA forms a financial arrangement with a board member or executive or a key person within the NRA, and those have to be approved in

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4678

Plaintiff Summation/Ms. Connell

1 advance by the board. And if they're entered into, then
2 they have to be ratified according to the procedures that
3 the Judge will explain.

4 You saw evidence that the NRA paid money to
5 insiders, including Lieutenant Colonel Oliver North, Marion
6 Hammer, Dave Butz, David Keene, Sandra Froman. You saw
7 evidence that perhaps the board considered or tried to
8 ratify some of these transactions.

9 We're going to ask you that once you hear the law
10 from the Judge, you go back and look at these,
11 quote/unquote, approvals or ratifications and say, Were
12 these really approvals and ratifications?

13 For example, the 2018 approval and ratification of
14 the North contract didn't even reveal he was supposed to get
15 7 million dollars for that contract.

16 Is that really what's really happened? You heard
17 about these minutes, alleged minutes. Take a look and see
18 if you find them credible and say did those really give the
19 information that the Audit Committee needed to ratify or
20 approve these transactions? And why weren't they included
21 in the report that other board members see?

22 We've heard that maybe if you looked in the right
23 place on the 990, you could figure out that at some times
24 some board members got some money. That's not how it is
25 supposed to work. Okay, these are transactions that are

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4679

Plaintiff Summation/Ms. Connell

1 supposed to be open, above board, transparent and approved
2 by the Audit Committee after consideration of all relevant
3 facts as fair, reasonable and in the best interest of the
4 NRA.

5 The NRA arranged a contract with Colonel North that
6 had no written approval from all required parties, no
7 signature -- contract signature review sheet, no business
8 case analysis and was not approved in advance.

9 The other related-party transactions had similar
10 problems, and you can look at the trial testimony if you
11 ask. If you have questions about this and ask, we can show
12 you exhibits and trial testimony at the bottom of each
13 slide.

14 If we can move on. That would be great.

15 I will note one thing, too, about value delivered
16 by these services. Other than Ms. Hammer to whom the NRA
17 has that ten-year contract with, the NRA stopped engaging in
18 all of those related-party transactions soon after the
19 ratification.

20 If the NRA was really getting value for them, if
21 the NRA was really getting the benefit of the bargain, why
22 stop them? Why not carry them on? If, if David Keene's
23 speeches are bringing in new members, new donors and making
24 money for the NRA or advancing its cause, why stop it? But
25 that's what they did because they rubber stamped them, they

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4680

Plaintiff Summation/Ms. Connell

1 ratified them with cursory review and then they stopped them
2 because they knew they wouldn't hold up to real scrutiny.

3 Just to go back to the certain related-party
4 transactions with executives, you're going to be asked to
5 determine whether related-party transactions involving
6 Wayne LaPierre, and Joshua Powell and Woody Phillips were in
7 fact illegal related-party transactions. We allege that
8 they were.

9 LaPierre caused the NRA to pay vendors for hair and
10 makeup for his wife in the amounts of at least \$41,876
11 between May 2017 and 2018 alone. No written approval, no
12 contract signature sheet, no business case analysis. But,
13 more importantly, no approval by the Audit Committee.
14 That's a related-party transaction.

15 Mr. Phillips, post employment consulting agreement.
16 This is outrageous. He is a CFO and treasurer during the
17 course correction. He signs an agreement to which he's
18 entitled to a flat rate of \$30,000 a month, plus \$3,500 for
19 office rental; and he has to deliver nothing in exchange.
20 You heard his counsel say, well, he made himself available.

21 I'm sure we'd all like to have a job where we got
22 paid \$30,000 a month to be available. I would like that
23 job; but that is not, that is not an appropriate -- that is
24 illegal under New York law. It is an illegal related-party
25 transaction. It wasn't approved by the board. It wasn't

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4681

Plaintiff Summation/Ms. Connell

1 fair, reasonable, in the NRA's best interest.

2 And even though the NRA stopped under Craig Spray
3 paying it after a few months, it did pay \$170,692 to
4 Mr. Phillips. That was an illegal related-party
5 transaction.

6 The NRA also paid McKenna & Associates over
7 5 million dollars from 2017 to 2019.

8 They hired Joshua Powell's wife. Mr. Powell was
9 hired by Mr. LaPierre and held various positions, including
10 chief of staff. That was not approved in advance by the
11 Audit Committee.

12 And the NRA while it had been paying McKenna for
13 years, you'll see in the Audit Committee report that it --
14 it increased those payments and retroactively ratified
15 them.

16 It also paid Mr. Powell's father for photographic
17 services. Now, is it coincidence that the NRA suddenly
18 hired the father of an executive to perform services for
19 \$102,000? That seems unlikely to me. That should have been
20 approved by the Audit Committee in advance. It was not. It
21 was retroactively rubber stamped.

22 Mr. Frazer, you heard him testify often presented
23 these related-party transactions and conflict-of-interest
24 transactions to the board. When you look at them, see if
25 the board had and recorded all the information it should

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4682

Plaintiff Summation/Ms. Connell

1 have. See if it is clear that the board looked at how this
2 occurred and took steps to make sure there wouldn't be
3 further ratifications in the future, whether it considered
4 alternative transactions. Whether it ensured that the
5 amounts paid if they're set out in the report are fair and
6 reasonable and in the NRA's best interest.

7 I'll say one last thing about Audit Committee and
8 review of transactions.

9 As I said, when Mr. Frazer learned as late as of
10 2021 about Mr. LaPierre's conflict of interest with MMP, he
11 did nothing about it.

12 Ladies and gentlemen of the jury, we don't have
13 time to run through each and every violation that we allege
14 occurred and each and every breach of duties that the
15 defendants owed the individual defendants, owed to the NRA;
16 but I would point a couple of things out to you.

17 We do ask for removal of Mr. LaPierre and
18 Mr. Frazer. Mr. LaPierre has retired; but what the jury is
19 going to be asked to determine, was there cause to remove
20 him? And we would suggest to you that his rampant
21 violations of internal control, his self-interest, his
22 misuse of NRA funds demonstrates there was cause for
23 removal.

24 You are not being to asked to determine -- you will
25 see no question on that verdict sheet that he be ban from

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4683

Plaintiff Summation/Ms. Connell

1 ever working for a nonprofit. That is not something that is
2 before you.

3 We would also ask that you determine that there was
4 cause to remove Mr. Frazer, and I understand that that may
5 be difficult.

6 Mr. Frazer's counsel got up here and was moved,
7 right? He got emotional; but the Judge is going to explain
8 to you that you have to put sympathy aside and you have to
9 think is this a man who performed his obligations as
10 secretary of the NRA? Is this a man who met his fiduciary
11 obligations? Is this a man to whom the NRA properly
12 entrusted oversight of the NRA and of its donated funds and
13 of its compliance with the law and its management of legal
14 risk? And we would suggest to you that he is not.

15 During his opening statement, Mr. Frazer's attorney
16 asked you to think of him like a traffic cop, trying to
17 identify issues and steer them. I would say -- I would say
18 that someone in his position is much more important than
19 that. He's a board officer. And if he's a traffic cop,
20 then he should be someone who when they see violations of
21 the law or violations of NRA policy is telling people stop,
22 don't. He's holding them accountable. But, you didn't see
23 much evidence of that at all.

24 Mr. Frazer did give compliance seminars. That's
25 great, but you heard Ms. Rowling admit they weren't even

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4684

Plaintiff Summation/Ms. Connell

1 mandatory until 2022. You heard testimony that Mr. LaPierre
2 didn't even attend one until December 2021.

3 Compliance seminars is a great step in the right
4 direction. Does it make an effective fiduciary? I would
5 say the record here demonstrates it does not.

6 Mr. Frazer went along with secrecy. He didn't give
7 board members information. I think we told you he didn't
8 give board members information about important settlements
9 and legal developments.

10 So, we would ask that you check "yes" that there is
11 cause to remove Mr. Frazer.

12 I'd like to very quickly move on to false filings
13 and then damages.

14 Jesse, if you have the false filing slides
15 possible.

16 You heard about the importance of regulatory
17 filings from Mr. Tenenbaum. You heard if we move on to the
18 next slide, that it provides a wealth of information for
19 members, donors, regulators, and people interested in
20 charity.

21 And you heard that one of the questions the IRS
22 Form 990 asks about is conflict-of-interest policies. Does
23 the -- does the organization regularly and consistently
24 monitor and enforce that policy? For the 990s from 2016 to
25 2019 the NRA checked "yes" to that box. Mr. Frazer

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Plaintiff Summation/Ms. Connell

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certified that that was true and correct to the best of his knowledge.

Who at the NRA is responsible for making sure that's true? It is Mr. Frazer. He's in charge of the question about governance; but what happened starting in 2018? Well, with the Audit Committee's help and with Mr. Frazer's help, the Audit Committee rubber stamped dozens of related-party and conflict-of-interest transactions; some of which have been ongoing for years and, yet, they still checked the box that they enforced -- they hadn't enforced a conflict-of-interest policy. We submit to you that was a false filing for which the NRA and Mr. Frazer should be responsible.

Not only that, they continued checking that into 2021 after Mr. LaPierre -- into 2022 after Mr. LaPierre had revealed his conflict of interest to have been ongoing for years.

Does the rubber stamping of multiple conflicts of interest sound like regular consistent enforcement of a conflict-of-interest policy? No. That's a false filing.

The 990 also asks whether there is a significant diversion of assets. For 2020 to 2022, the NRA checked "no", but between 2020 and 2022, Mr. LaPierre repaid according to him one million dollars to the NRA for wrongful

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4686

Plaintiff Summation/Ms. Connell

1 benefits, personal benefits that he had received. We submit
2 to you that that box should have been checked, wrongful
3 diversion box.

4 You heard a lot in the trial about Schedule J,
5 which asks questions about particular types of compensation
6 that executives received, like first class and charter
7 travel and housing payments and health social club dues.
8 You heard the NRA did not have or did not enforce those
9 policies for years. Until 2021, the NRA had only a written
10 policy for first class travel, and we know now that that was
11 violated rampantly.

12 It isn't until -- I'm sorry, the 990 also asked
13 whether the nonprofit requires substantiation prior to
14 reimbursing or allowing expenses incurred for those perks,
15 and we have heard that the NRA did not enforce that policy.
16 Executives got perks and didn't pay for it, didn't pay for
17 them. So, we would say that the NRA had a false filing in
18 that matter.

19 It isn't until the 2019 990 filing 2020 after the
20 complaint in this action was filed that the NRA told the
21 truth, it had no written policy for charter travel or health
22 clubs.

23 We ask that you look at the verdict sheet, you
24 check "yes" on the questions as to whether there was a false
25 filing.

BP

4687

Plaintiff Summation/Ms. Connell

1 Again, I apologize for having to run through these.

2 You're going to be asked to determine whether the
3 individual defendant should repay -- if we can go to slide
4 212, please, Jesse -- damages or restitution related to the
5 NRA-related penalties.

6 Mr. LaPierre admits that he traveled by private
7 plane without NRA approval and in violation of NRA policies
8 from 2014 to 2019. That's the relevant period of time we're
9 asking for damages for. That total \$10,455,307 from
10 May 15th to December of 2019 the NRA paid \$3,222,358 for
11 flights that Mr. LaPierre either was going as a passenger or
12 where the flights stopped in the Bahamas, Nebraska. These
13 flights had a personal component and had no security
14 justification.

15 You heard Mr. LaPierre say that Gayle Stanford
16 committed a fraud on the NRA. The NRA paid millions of
17 dollars to her. And I'm sorry, I'm rushing through, but you
18 can ask that this be read back or you can ask for
19 information about how much the NRA paid to Gayle Stanford.

20 You saw Mr. Hines calculate that we believe those
21 are monies that should be repaid to the NRA.

22 You heard evidence recently that Associated TV, a
23 NRA vendor to which the NRA from 2015 to 2019 paid
24 \$13,213,165 was a fraudster, that there's no evidence of any
25 value being received by the NRA for these payments.

BP

4688

Plaintiff Summation/Ms. Connell

1 Mr. LaPierre testified yesterday that Associated TV
2 committed a fraud on the organization.

3 These are damages, these are -- this is a
4 restitution that should be repaid to the NRA.

5 Mr. LaPierre was the manager of this organization.
6 Mr. Phillips helped him make those payments. You should
7 look at that amount of money and decide how much of it
8 should be repaid by Mr. LaPierre and Mr. Phillips.

9 By the way, Mr. LaPierre admits he was the owner of
10 the Associated TV contract. Mr. LaPierre says he was
11 shocked by Mr. McKenzie's betrayal, but that's not credible.
12 Concerns were raised about the McKenzie and Associated TV in
13 the Board Variance Report in the mid nineties.

14 These are things that the NRA had knowledge about.
15 So this is why in part you should hold the individual
16 defendants responsible, particularly Mr. LaPierre and
17 Mr. Phillips, because they were on notice of the
18 wrongfulness of these expenditures. If you remember the
19 Board Variance Report raised concerns about those
20 expenditures.

21 If we could move on to Slide 219.

22 From 2015 to 2022, the NRA paid the MMP entities
23 \$109,595,600. As you've now heard numerous times in this
24 case, this was an overpayment of the contract amount.

25 If we can go on to Slide 220.

BP

4689

Plaintiff Summation/Ms. Connell

1 You heard that in 2022, under scrutiny of this law
2 enforcement action, the NRA finally renegotiated its terms
3 with MMP at a 46-percent reduction in what was being paid
4 while belated renegotiations offer an accurate measure of
5 the actual worth of the services the MMP entity offered as
6 David Warren who Mr. LaPierre described as a top person in
7 the Financial Services Division said, "This is a win, win,
8 win."

9 THE COURT: Ms. Connell, I gave a short window to
10 the NRA to go a little over. You're now at about the end of
11 that.

12 MS. CONNELL: Can I just have like two more
13 minutes, your Honor?

14 THE COURT: Two more.

15 MS. CONNELL: Thank you.

16 We would argue that Mr. -- that the amounts of
17 overpayment by MMP should be split between Mr. LaPierre,
18 Mr. Phillips and Mr. Frazer because he did nothing once he
19 learned of the conflict of interest between LaPierre and MMP
20 until the contract was renegotiated in 2022.

21 You heard that the NRA paid \$4.3 million in
22 out-of-pocket expenses that did not go through and were not
23 compliant with the NRA's travel and expense reimbursement
24 process. We believe those are damages that should be repaid
25 by the individual defendants.

BP

4690

Plaintiff Summation/Ms. Connell

1 Some of those you'll see were stamped and approved
2 by Mr. Frazer. They were paid by Mr. Phillips, and
3 Mr. LaPierre was the manager of that relationship and should
4 be responsible for that, for those payments.

5 Finally, under Wild Skies, we would say that
6 payments of \$2,340,000 by the NRA to Under Wild Skies is
7 also a wrongful transaction for which Mr. LaPierre and
8 Mr. Phillips should be liable. There was -- the NRA,
9 itself, admits that they were fraudulent.

10 Phillips' commuting costs which appeared on PX 2347
11 are also wrongful-related charges, wrongful charges for
12 which they should have to repay.

13 And, I'm sorry, I don't have time to go through all
14 this here. Ladies and gentlemen, in conclusion, I want to
15 thank you for your time and effort and attention.

16 I want to say that charities play an important role
17 in our society. Whether or not you support and believe in
18 the mission of the NRA is not important. It is not what is
19 at issue here. The charities allow people to come together
20 and serve an important purpose; but they have to have trust
21 in the charity and trust their donated funds will be used
22 for the purposes they were donated for.

23 You heard about how charities are vulnerable to
24 waste, loss and diversion. We submit that the evidence in
25 this case has shown the defendants breached the trust placed

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4691

1 in them, had breached, violated or evaded each of the
2 safeguards intended to prevent such actions in charities and
3 had violated the law.

4 (Continued on next page)

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Plaintiff Summation/Ms. Connell

1 MS. CONNELL: No one is above the law. You don't
2 have to find that the Defendants are bad or evil. You don't
3 have been to touch upon or consider anything else but
4 whether they violated the law. And if you do find that they
5 breached the trust that was placed in them and the laws as
6 explained to you by the Court, we ask that you do the right
7 thing and hold them liable for their conduct in this case.

8 Again, I apologize for rushing at the end. Thank
9 you, your Honor, for the extra time, and thank you all for
10 your absolute dedication and attention over these last six
11 weeks. It's much appreciated.

12 THE COURT: Thank you, Ms. Connell. Thank you all,
13 Counsel.

14 Okay, folks. That's it for the day. We will
15 reconvene tomorrow at 9:30. I'll go through instructions,
16 and then we will select the alternates and then the rest of
17 you will start deliberations.

18 THE COURT OFFICER: All rise. Jury exiting.

19 (Whereupon, at this time the jury exits
20 the courtroom.)

21 THE COURT: Okay. Well done, everyone. I will see
22 you tomorrow. We have all had a lot of late nights.
23 Hopefully, this is not one of them and my staff and I are
24 planning to leave soon. So we are assuming that we are
25 pretty much a wrap on all the documents that were provided

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earlier today.

See you tomorrow.

(Whereupon, at this time the trial was continued
until February 16, 2024.)

KM

4694

PREME COURT OF THE STATE OF NEW YORK
UNTY OF NEW YORK - CIVIL TERM - PART 3

-----X
OPLE OF THE STATE OF NEW YORK, BY LETITIA
MES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

-against-

INDEX NO.
451625/20

E NATIONAL RIFLE ASSOCIATION OF AMERICA,
YNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
d JOSHUA POWELL,

Defendants.

JURY TRIAL
60 Centre Street
New York, New York
February 16, 2024

FORE: HONORABLE JOEL M. COHEN,
Justice, and a jury

PEARANCES:

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BP

4695

Proceedings

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THE COURT: So, I have here our Court exhibit, copies of the verdict sheet and my instructions, which I'm going to send back to them. I don't think you need to read through the whole -- these are all the instructions in the verdict sheet I gave you and then I circulated again this morning.

I sometimes have the parties initial these just to confirm again it is -- you're reserving whatever objections you made before; but just as to form, that this is the one that everybody saw. If that won't take too long, I wouldn't mind you just initialing along the top.

So, I'll first have this -- what's our next Court Exhibit number?

MS. EISENBERG: I believe it is XI, your Honor.

THE COURT: Let's mark this Court Exhibit XI.

(Whereupon, at this time Court Exhibit XI, Verdict Sheet, was so marked.)

THE COURT: You can pass that to counsel. If you can take a quick look and make sure it is the same one I sent you this morning that has been circulated around.

MR. FARBER: Yes, I just wanted to put on the record that our initialing this isn't waiving any objections we may have?

THE COURT: No. I just want to make sure it is the

BP

4696

Proceedings

1 verdict sheet that you are aware of. Look, if there is
2 anything on the verdict sheet that you think doesn't work;
3 in other words, that functionally it doesn't give the right
4 instructions to go from this question to that question or
5 whatever, I'd like to know that before we use it and nobody
6 has raised any objections like that.

7 MR. FARBER: Understood, your Honor. The only
8 objections we have would be to the instructions, which would
9 be reflecting --

10 THE COURT: You're not adopting -- it's really more
11 of an authentication kind of a function that this is, in
12 fact, the verdict sheet that the Court shared with you, that
13 we've talked about for a number of days, you've made
14 objections to some of which were accepted some of which were
15 not.

16 If you don't want to initial it --

17 MR. FARBER: Understood, your Honor. I just wanted
18 to put that on the record.

19 THE COURT: It is on the record. You've preserved
20 more arguments than I could possibly list.

21 MR. FARBER: And just to add to that list, your
22 Honor, we're joining in the objection Mr. Correll made.

23 We filed something a few minutes ago just to
24 memorialize that. And, also, we know your Honor has ruled
25 on the statute of limitations issue, but we put that -- we

BP

4697

Proceedings

1 objected to that in the instruction in writing, and I know
2 we need to -- I think we need to make that -- to renew that,
3 also, orally after the instructions are given.

4 So, we'd request an opportunity to do that before
5 the jury retires.

6 THE COURT: I wouldn't suggest having that done
7 while the jury is here.

8 MR. FARBER: No. Outside the presence of the jury,
9 your Honor.

10 THE COURT: Right. Okay, that's fine.

11 MR. CORRELL: Your Honor, I join in all of those
12 objections, and I also just want to focus on the objection
13 of asking the jury to find whether there was cause to remove
14 Mr. LaPierre.

15 The other thing I'd like the Court to address is
16 the fact that neither the AG nor the NRA gave Mr. LaPierre
17 copies of their slides before they presented them. You had
18 ordered them to give slides to the extent that they did not
19 were tied to an exhibit.

20 I'd like you to review, if you would, slides to
21 determine whether they complied with your order.

22 THE COURT: What slides are you talking about?

23 MR. CORRELL: That they presented to the jury in
24 their closing.

25 THE COURT: If no objections were made in realtime,

BP

4698

Proceedings

1 I'm not going to retroactively rule on objections that
2 weren't made at the time when I could have fixed it.

3 MR. CORRELL: Your Honor, it was my understanding
4 that you admonished counsel not to interrupt the closing,
5 and we did not know what the slides were until they were put
6 up.

7 You gave a clear instruction to people who were
8 using slides to present them to the other side. In the
9 absence of having been presented with any slide, we could
10 not know what they were putting on; and I want to request
11 that the Court review them because I'm considering moving
12 for a mistrial.

13 MS. CONNELL: Your Honor, if I may just be heard?

14 It was my understanding we were not ordered. The
15 Court suggested it was something we could do. Frankly, we
16 wanted to do it, but we didn't even have our slides ready.

17 THE COURT: The time to objecting to something that
18 you think rises to the level of a mistrial is when it is
19 happening, not asking me to review -- first of all, I have
20 absolutely no idea which of the 200-some-odd slides were
21 actually shown. That's not really my job to monitor all
22 that.

23 If something happened that you think was so
24 fundamentally unfair that you're making reference to a
25 mistrial regardless of whether you saw it in advance, if

BP

4699

Proceedings

1 something was said -- the jury is not going to get the
2 slides. The jury is not getting those slides, so it would
3 have to be something that was said. And I certainly didn't
4 want objections. But if something that rose to this level
5 of outrage happened -- and you're not suggesting that there
6 is. You're just saying you want me to look at it and see
7 whether I think it is.

8 MR. CORRELL: Your Honor, I'm suggesting that there
9 is. I still haven't seen the slides.

10 If you could order them to produce them now for
11 review, I'll reserve this and we can proceed.

12 MR. FLEMING: Your Honor, I could be more
13 specific.

14 THE COURT: I really want to get this going here,
15 so, go ahead.

16 MR. FLEMING: Well, just really quickly.

17 I asked for the slides this morning. I haven't
18 received word back. There were two representations made in
19 the summation, the AG's summation yesterday with respect to
20 false filings. One of them related to diversion of assets
21 with respect to excess benefits that Mr. LaPierre had
22 repaid.

23 I don't recall, and we've been searching the record
24 for any testimony about that issue, your Honor; and if there
25 had been testimony, the answer is really quit simple.

BP

4700

Proceedings

1 Diversion of assets has to be significant. It has to rise
2 to the level of more than \$250,000 or five percent of the
3 total assets, which is greater than 8 million, the lesser of
4 those two.

5 None of those things happened, and so easy
6 cross-examination it appears to me was denied because this
7 was never discussed.

8 There's also a second issue --

9 THE COURT: Look, nothing that was said in
10 closings -- first of all, if we want to start taking a list
11 of things people said during closings that were not in
12 evidence, that's going to be a long list, I will tell you
13 that. I listened very carefully to each of you.

14 So, be careful what bricks you throw.

15 None of that is evidence. The jury understands
16 that, I believe. I'm going to reconfirm it now.

17 Like I said, the time to address that was in
18 realtime. Of course I don't want objections to it, but
19 you're not constrained if you think something was
20 outrageous. But I will tell you, there was a lot of stuff
21 that was said by both sides that was not in the record. So,
22 I really don't think it is appropriate to start the day
23 after bringing in things like this.

24 But, you've made your record, I guess. I
25 personally think it is waived by not objecting in realtime,

BP

4701

Proceedings

1 but --

2 MR. CORRELL: Your Honor, is it possible that a
3 curative instruction could ameliorate some of the prejudices
4 that have occurred, so I could I ask at a minimum you direct
5 the NRA -- all parties, the NRA and the AG, to produce their
6 slides so we could address them in the concrete?

7 THE COURT: I'm fine with producing the slides; but
8 like I said, if we're going to start going down the road of
9 correcting things that happened during the closings, I'm
10 not sure you're going to really like it much either.

11 MR. CORRELL: I understand what you're saying, your
12 Honor. I just want to see the slides.

13 THE COURT: The jury is going to have enough to
14 deal with. They have had six weeks of evidence. The
15 closings all -- maybe there was some little bits of license
16 that people chose not to object to, but that's a decision
17 trial lawyers make everyday.

18 I, certainly, if I heard anything I thought was
19 remotely mistrial worthy, I would have raised it; but most
20 of what I heard that I thought went outside the record came
21 from the defense side, personally.

22 Anyway, let's get the verdict sheet up and down the
23 row here so we can get started.

24 In the meantime, I'm going to mark as Court
25 Exhibit XII the version of the instructions that I'm going

BP

4702

Proceedings

1 to give to the jury.

2 (Whereupon, at this time Court Exhibit XII, Jury
3 Instructions, was so marked.)

4 MR. CORRELL: Your Honor, where would you like me
5 to place my initials?

6 THE COURT: Just the top of the first page, just
7 little initials. I'm not going to call them out to the
8 jury. Just so that -- we're just acknowledging that this
9 is the verdict sheet you're aware that I'm sending to the
10 jury.

11 If anybody sees something that somehow crept into
12 it from this morning when I made a PDF of it, I'd be
13 interested to know.

14 MR. CORRELL: Just for the record, your Honor,
15 while the verdict sheet circulates, Professor Siegel does
16 say that the proper procedure is to wait until the end of
17 closings rather than interrupt; and so there is precedent
18 for taking that approach. I was inclined to jump up during
19 the closing, but I was --

20 THE COURT: Maybe not the next day though. Maybe
21 during the closings when the jury is still here, not the
22 next day.

23 Can I ask, do the IT folks have the jury verdict
24 form ready to be put up when I want it?

25 IT PERSON: Will you ask us to pop up the

BP

4703

Proceedings

1 questions at the end of your instructions?

2 THE COURT: No. It is right at the beginning.
3 I'm just going to flip through a couple of pages with them.
4 I'm not going to walk through the whole thing. I just want
5 to point out a couple of -- you know, they haven't seen a
6 jury verdict form before probably, so I just have a couple
7 of small things I want to highlight for them.

8 IT PERSON: So you'll just let me know the
9 question.

10 THE COURT: I'm going to just highlight, but just
11 take it down for now.

12 MR. CORRELL: Your Honor, may I note when I might
13 expect to receive these slides?

14 THE COURT: Well, I would hope that somebody on
15 teams, who are in the building can e-mail those
16 straightaway.

17 MS. EISENBERG: Your Honor, I'll take care of it as
18 soon as I'm done initially.

19 MS. CONNELL: Your Honor, we object to this. We
20 have to go through -- we didn't even use all our slides. It
21 is going to take some work, but the idea that now we're
22 going to through and have to reopen this.

23 THE COURT: I didn't suggest that. You know,
24 generally, demonstratives should be shared. Am I right that
25 it was shared between some of the defendants and the

BP

4704

Proceedings

1 plaintiff or not at all?

2 MS. CONNELL: No, your Honor, not at all. I didn't
3 see the NRA's slides before they went; although, we talked
4 about it.

5 THE COURT: At a minimum the slides that were
6 shown. I don't care if you don't share the slides that were
7 not shown; but if somebody can go through and get the slides
8 that were shown, even if only for a minute.

9 I think if it was shown in open court, you can't
10 really deny one of the parties a chance to see it.

11 MS. CONNELL: Okay, your Honor. We'll have to go
12 through them though. It will just take a few minutes -- it
13 will take a little time today.

14 THE COURT: Understood.

15 What's going on with the verdict sheet? Is it
16 still making its way?

17 THE COURT: We still don't have the Court Exhibits
18 III through VII, which are the excerpts from the
19 transcripts.

20 MS. CONNELL: Those are during Plaintiff's case?

21 THE COURT: I believe so.

22 MS. CONNELL: I'm sorry, your Honor. I'll take a
23 look. We went to introduce them that day --

24 THE COURT: We never -- anyway, that's done?

25 MS. CONNELL: Yes, that's done.

BP

4705

Proceedings

1 THE COURT: Just so the record is clear, the
2 counsel have initialled it, at least as to form reserving
3 their objections on the substance.

4 All right, let's get the jury.

5 COURT OFFICER: All rise, jury entering.

6 (Whereupon, at this time the jury then entered the
7 courtroom.)

8 THE COURT: Good morning, everyone. Have a seat,
9 please.

10 All right, so before we start with the
11 instructions, I will tell you that what I'm going to provide
12 to you, I'm also going to provide in writing, a copy of the
13 instructions so you can take with you.

14 The only part that's in not here, there's the short
15 portion where I'm going to give a little overview of the
16 verdict sheet which is not written out. So, if you want any
17 of that, you can ask for the transcript to cover it, but so
18 you don't have to -- it is not a memory test on the
19 instructions. You'll get exactly what I'm reading from and
20 be able to have that with you.

21 Okay, members of the jury, first of all, I know I
22 speak for the parties when I say how grateful we are for
23 your time and attention during this trial.

24 We come --

25 MR. FLEMING: I'm sorry, your Honor. There's just

BP

4706

Proceedings

1 some confusion about what appears to be a missing juror.

2 That's all.

3 THE COURT: Oh, right. I think we had mentioned
4 Juror 10 was excused for unavailability.

5 MR. FLEMING: I thought that was Juror 9. That's
6 the confusion.

7 THE COURT: No.

8 We come now, again, to that portion of the trial
9 where I will instruct you on the law applicable to this case
10 and after which you will retire for your deliberations.

11 You have now heard all the evidence introduced by
12 the parties and through arguments of their attorneys you
13 have learned the conclusions which each party believes
14 should be drawn from the evidence presented to you.

15 I'm going to start at the end with what you're
16 going to be asked to do, and then go through the very
17 important instructions to guide you along the way.

18 We're going to ask you to use a verdict sheet to
19 write down and report your decision. Here is a copy of the
20 verdict sheet you will see.

21 Put that on the screen.

22 (Displayed)

23 I'm just going to highlight a few things. I'm not
24 going to go through the whole bit; but in terms of the
25 instructions -- and I will say this again -- but as to each

BP

4707

Proceedings

1 question, five of the six jurors have to agree. And if a
2 juror disagrees with an answer, there will be a space for a
3 dissenting juror to sign. You'll see when we get to the
4 questions what that looks like.

5 And then one important thing in the instructions,
6 at the end of the verdict sheet, the last page is a
7 certification page saying that the whole verdict, everybody
8 signs.

9 I'm stressing that because the first jury trial I
10 did here, the jury forgot to sign it and I forgot to look;
11 and we spent the rest of the afternoon running through the
12 courthouse trying to find them all to sign it, which we did,
13 but we're not going to do that.

14 At the very last page -- if you just switch to the
15 last page for a second, 17, Jesse, that's the certification
16 page.

17 (Displayed)

18 Going back to the substance, if you go to page 2,
19 I'm just going to give you some examples of what these look
20 like.

21 The questions which we've tried to make as simple
22 as we could, they typically begin with "Did the plaintiff
23 prove by a preponderance of the evidence," and then whatever
24 the statement is. There are a couple which I'll show you,
25 one or two, where it is the defendant that has the burden of

BP

4708

Proceedings

1 proving the defense. Anyway, it is designed so that a yes
2 answer is yes, the person with the burden of proof did prove
3 it.

4 So, that's the form of the question; it is whether
5 the party that needed to prove it, proved it.

6 If you turn to the next page at the end of each or
7 end of several of these, there's a -- what do you if you
8 answer yes, what do you if you answer no.

9 So, in this 2(a), for example, if you answer yes,
10 that the plaintiff proved by a preponderance of the evidence
11 a violation of duty as described in the question, then you
12 move on to the other questions, 2 (b) and 2(c) and the like.

13 If you answered no, you shift to the third
14 question, which goes down to the next defendant.

15 So, if you find that the plaintiff didn't prove
16 liability, you don't need to answer the rest of the
17 questions in that section. That's basically the way it
18 works with one exception.

19 The other kind of question -- if you turn to the
20 next page, Jesse -- (displayed) -- all the questions are yes
21 or no, except the ones that ask for a dollar figure. So,
22 the form of the questions is yes, no, or dollar. You don't
23 have to write any text or anything else, okay.

24 The one example I wanted to point to is on page 8
25 in 6(c), there are just a few examples of situations where

BP

4709

Proceedings

1 the defendants have some burden to establish a defense.

2 So this one, which we'll get to in the instructions
3 is what's called the ratification defense. So, here, when
4 you answer "yes," you're answering did the defendant prove
5 this defense. So, here, if you answered "yes," that's when
6 you proceed to the next question. So, that means that
7 there's no liability because they proved the defense.

8 If you answered "no" on this one, that means you
9 continue on with the rest of Question 6.

10 So, it is the only time kind of where a "no" answer
11 means you keep going. There's only -- I think that may be
12 the only example of it.

13 The other thing I wanted to show is just a slightly
14 different form is on page 11. These are still yes or no;
15 but rather than asking the same question ten times, we just
16 created a chart where this question relates to related-party
17 transactions and it asks the same question with respect to
18 all ten of the transactions that are at issue. And so it's
19 just you'll check the yes or no.

20 So, this is just a way to conserve and make it a
21 little simpler and more compact.

22 So, other than that, again, as to each -- after
23 each question, there's a little italicized phrase which says
24 if you answered "yes," it tells you what to do; if you
25 answered "no," it tells what you to do. Just read those

BP

4710

Proceedings

1 carefully as you go through it so you know what your
2 directions are at each point.

3 All right, so when you have answered all the
4 questions that require answers, you will let the court
5 officer know; and then he or she will let me know and we
6 will come back to the courtroom to hear your decision.

7 As jurors, your duty is to decide from all the
8 evidence that you have heard and the exhibits that have been
9 admitted into evidence what the facts are. You are the sole
10 and exclusive judges of the facts, neither I or anyone else
11 can take over your responsibility to decide the facts of
12 this case, which you will do by the answers you provide on
13 the verdict sheet.

14 As sole judges of the facts, you must decide which
15 of the witnesses you believe, what portion of their
16 testimony you accept, and what weight you give to it.

17 If in the course of your deliberations your
18 recollection of any part of the testimony should fail or you
19 have any question about my instructions to you on the law,
20 you have the right to return to the courtroom for the
21 purpose of having such testimony read to you or to have such
22 question answered.

23 If you want to have testimony reread to you or to
24 have other questions about my instructions answered to aid
25 in your deliberations, you should submit the question or

BP

4711

Proceedings

1 questions in writing to me and have the jury foreperson who
2 you will select before you start deliberations pass your
3 written inquiry to the court officer outside the
4 deliberation room.

5 If any of you took notes during the trial, those
6 notes are only for your personal use and are simply an aid
7 to your memory. Because the notes may be in inaccurate or
8 incomplete, they may not be given any greater weight than
9 your independent recollection. Because the notes may be
10 inaccurate or incomplete, they may not be given any greater
11 weight or influence than the recollection of other jurors
12 about the facts or the conclusions to be drawn from the
13 facts in determining the outcome of this case.

14 Those of you who did not take notes should rely on
15 your independent recollection of the evidence and not be
16 influenced by the fact that another juror has taken notes.
17 Any difference between a juror's recollection and a juror's
18 notes should always be settled by asking to have the court
19 reporter's transcript on that point read back to you. The
20 court transcript should govern your determinations rather
21 than a juror's notes. A juror's notes are not a substitute
22 for the official record or for the governing principles of
23 law that I will give you.

24 You will recall that at the beginning of the trial
25 I went through some general instructions to keep in mind as

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Proceedings

1 the trial progressed. I won't repeat all of that, but
2 briefly, I want to stress that you must consider only the
3 evidence admitted during the trial and not conclude from my
4 rulings or anything I have said during the trial that I
5 favor any party to this lawsuit. I truly do not.

6 You may not draw any inference from an unanswered
7 question, nor consider testimony which has been stricken
8 from the record in reaching your decision. If you find that
9 any witness has willfully testified falsely as to a material
10 fact, that means as to an important matter, the law permits
11 you to disregard completely the entire testimony of that
12 witness upon the principle that one who testifies falsely on
13 one material fact is likely to testify falsely about
14 everything.

15 You are not required, however, to consider such a
16 witness as totally unbelievable. You may accept so much of
17 his or her testimony as you deem true and disregard what you
18 feel is false.

19 By the processes which I have just described to
20 you, you, as the sole judges of the facts, decide which of
21 the witnesses you will believe, what portion of their
22 testimony you accept and what weight you will give it.

23 Except in a few instances which I will discuss, the
24 burden of proof rests on the plaintiff. That means
25 plaintiff must establish by a fair preponderance of the

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1 credible evidence that the claim plaintiff makes is true.
2 Plaintiff must satisfy that burden of proof as to each
3 element of each claim that it asserts.

4 The credible evidence means the testimony and
5 evidence you find believable and reliable. The
6 preponderance of the evidence means the greater part of the
7 evidence. It does not mean the greater number of witnesses
8 or the greater length of time taken by any party.

9 The phrase "the greater part of the evidence"
10 refers to the quality of the evidence; that is, its
11 convincing quality, the weight and effect it has on your
12 minds, not to the quantity.

13 The law requires that for plaintiffs to prevail on
14 a claim, the evidence that supports their claim must appeal
15 to you as more nearly representing what took place than the
16 evidence opposed to their claim. If it does not or if it
17 weighs so evenly that you're unable to say there is a
18 preponderance on any side, then you must decide the question
19 against the plaintiff. It is only if the evidence favoring
20 plaintiff's claim outweighs the evidence opposed to it that
21 you can find in favor of plaintiff on a claim.

22 (Continued on next page)

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JURY CHARGE

1 THE COURT: In this case, Defendants have raised a
2 defense to liability on certain claims. One example is
3 those relating to related-party transactions as to which
4 they bear the burden of proof.

5 Certain individual defendants also assert specific
6 arguments concerning the calculation of damages they must
7 pay if they are found liable on certain claims as to which
8 they bear the burden of proof. I will provide further
9 instructions later about those. But unless you hear
10 otherwise specifically in these instructions, the burden of
11 proof is on the Plaintiff.

12 In deciding this case, you may consider only the
13 exhibits that were admitted in evidence and the testimony of
14 the witnesses as you heard it in this courtroom or as was
15 read to you or shown to you during the trial.

16 Under our rules of practice, an examination before
17 trial or testimony that was recorded before the trial was
18 taken under oath and entitled to equal consideration by you
19 even though it was taken before the trial and outside this
20 courtroom.

21 However, arguments, remarks and summations of the
22 attorneys are not evidence. Nor is anything I now say or
23 may have said with regard to the facts or evidence.

24 As I instructed you previously, it is important to
25 remember that you may not use any internet services or

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JURY CHARGE

1 social media including, for example, Google, Facebook, X,
2 formally Twitter, LinkedIn, Instagram or TikTok or any other
3 media platforms to discuss or give or get information about
4 the case or its participants or to research topics
5 concerning the trial.

6 Electronic devices including any cell phones,
7 smartphones, laptops or other personal electronic devices
8 must be turned off while you're deliberating. Allowing
9 outside information which may be incomplete, inaccurate or
10 otherwise unreliable to affect your judgment is unfair and
11 prejudicial to the parties and could require this case to be
12 retried.

13 Although as jurors you're encouraged to use all of
14 your life experience in analyzing testimony and other
15 evidence in reaching a fair verdict, you may not communicate
16 any personal, professional expertise you might have or other
17 facts not in evidence to the other jurors. You must base
18 your discussions and decisions solely on the evidence
19 admitted during the trial and that evidence alone. You may
20 not consider or speculate on matters not in evidence or
21 matters outside the case.

22 The individual defendants, Messrs. LaPierre, Frazer
23 and Phillips as well as representatives of the NRA have
24 testified before you. The witnesses who are parties to the
25 action are interested witnesses. That is, they have an

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JURY CHARGE

1 interest in the outcome of the case that may have affected
2 their testimony.

3 An interested witness is not necessarily less
4 believable than a disinterested witness. The fact that they
5 are interested in the outcome of the case does not mean that
6 they have not told the truth. It is for you to decide from
7 the demeanor of the witness on the stand and such other
8 tests as your experience dictates whether or not the
9 testimony has been influenced intentionally or
10 unintentionally by their interest.

11 You may reject the testimony if after careful
12 consideration of all the evidence in the case including the
13 cross-examination of the witness, you decide you do not
14 believe the testimony or you find it is not reliable.

15 On the other hand, you are not required to reject
16 the testimony of such a witness and may accept all or such
17 part of their testimony as you find believable and reliable
18 and reject such part as you find unworthy of acceptance.
19 The testimony is entitled to such weight as you decide it is
20 worth.

21 In reaching your verdict, you are not to be
22 affected by sympathy or dislike for any of the parties, what
23 the reaction of the parties or of the public to your verdict
24 may be, whether it will please or displease anyone, be
25 popular or unpopular or any consideration outside of the

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JURY CHARGE

1 case as it has been presented to you in this courtroom.

2 You should consider only the admitted evidence,
3 both the testimony and the exhibits to find the facts from
4 what you consider to be the believable evidence and apply
5 the law as I now give it to you. Your verdict will be
6 determined by the conclusion you reach, no matter whom the
7 verdict helps or hurts.

8 You may recall that at the beginning of the trial,
9 I instructed you on the concept of a fair juror. As a fair
10 and impartial juror, you must guard against the application
11 of any stereotypes or attitudes about people or groups that
12 might lead you to render a biased decision based on those
13 stereotypes or attitudes. Keep in mind that bias based upon
14 stereotypes or attitudes is not always obvious or conscious.
15 In assessing the testimony and other evidence in this case,
16 you must not be swayed by those stereotypes or attitudes.

17 Facts must be proved by evidence. Evidence
18 includes the testimony of a witness concerning what the
19 witness saw heard or did. Evidence also includes writings,
20 photographs or other physical objects which may be
21 considered as proof of a fact. Evidence can either be
22 direct or circumstantial.

23 Direct evidence is evidence of what a witness saw,
24 heard or did which if believed by you proves a fact.

25 For example, suppose a fact in dispute is whether I

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JURY CHARGE

1 knocked over a water glass near the witness chair. If
2 someone testifies that she saw me knock over the glass, that
3 is direct evidence that I knocked over the glass.

4 Circumstantial evidence is evidence of a fact that
5 does not directly prove a fact in dispute but which permits
6 a reasonable inference or conclusion that the fact exists.

7 For example, the witness testifies that he saw the
8 water was on the bench. The witness states that while he
9 was looking the other way, he heard the breaking of glass,
10 looked up and saw me wiping water from my clothes and from
11 the papers on the bench. This testimony is not direct
12 evidence that I knocked over the glass. It is
13 circumstantial evidence from which you could reasonably
14 infer that I did.

15 Those facts that form the basis of an inference
16 must be proved, and the inference to be drawn must be one
17 that reasonably may be drawn.

18 In the example, even though the witness did not see
19 me knock over the glass, if you believe her testimony, you
20 could conclude that I did. Therefore, the circumstantial
21 evidence if accepted by you allows you to conclude that the
22 fact in dispute has been proved.

23 In reaching your conclusion, you may not guess or
24 speculate.

25 Suppose, for example, the witness testifies that

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JURY CHARGE

1 the water glass was located equally distant from the court
2 clerk and me, and the witness states she heard the breaking
3 of glass and looked up to see both of us brushing water from
4 our clothes.

5 If you believe that testimony, you still could not
6 decide on that evidence alone who knocked over the water
7 glass.

8 Parenthetically, I did not write this example.

9 Where these are the only -- the only proved facts,
10 it would only be a guess as to who did it. However, if the
11 witness also testifies that she heard the court clerk say,
12 I'm sorry, then this additional evidence might allow you to
13 decide who knocked over the water glass.

14 Facts may be proved either by direct or
15 circumstantial evidence or by a combination of both. You
16 may give circumstantial evidence less weight, more weight or
17 the same weight as direct evidence.

18 You will recall that the parties presented expert
19 witnesses who each testified concerning their respective
20 qualifications and gave their respective opinions concerning
21 issues in the case.

22 When a case involves a matter of science or art or
23 requires special knowledge or skill that most people do not
24 have, a qualified witness is permitted to state his or her
25 opinion for the information of the Court and the jury.

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JURY CHARGE

1 The opinions stated by the expert witnesses here
2 were based on particular facts as they each obtained
3 knowledge of them and testified about them or as the
4 attorneys who questioned them asked them to assume.

5 You may reject an expert's opinion if you find the
6 facts to be different from the facts that form the basis for
7 their opinion. You may also reject an opinion if after
8 careful consideration of all the evidence in the case
9 including the cross-examination of the expert witness, you
10 decide that an opinion is not convincing.

11 In other words, you are not required to accept any
12 opinion to the exclusion of the facts and circumstances
13 disclosed by other evidence.

14 Opinion testimony should be evaluated in the same
15 way as the testimony of any other witness. It is given to
16 assist you in reaching a proper conclusion. It is entitled
17 to such weight as you find the witness' qualifications in
18 the field warrant and must be considered by you, but is not
19 controlling upon your judgment.

20 One final point before we get to the legal points.
21 While it is important that the views of all jurors be
22 considered, as I mentioned earlier, a verdict of five of the
23 six members of the jury will be sufficient under the law.
24 When five of you agree on a verdict, you may report your
25 verdict to the Court.

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JURY CHARGE

1 Now, I'm going to turn to the rules of law
2 instructions. First, an overview of the claims.

3 In this case, Plaintiff the Attorney General
4 asserts nine distinct claims. Each claim is based on an
5 alleged violation of a New York Statute. The three statutes
6 involved in the case are, one, the Estates Powers and Trusts
7 law which I will refer to as the EPTL.

8 Two, the Not-For-Profit Corporation Law which I
9 will refer to as the N-PCL; and three, the Executive Law.

10 I'm instructing you that under New York Law, the
11 NRA is deemed to be a charitable not-for-profit corporation.

12 Before turning to the specific claims, here are
13 some over-arching instructions for you to apply to all
14 claims. The first relates to the fact there are multiple
15 defendants.

16 As you know, the Plaintiff has asserted claims
17 against the NRA as well as individual Defendants LaPierre,
18 Phillips and Frazer. I may refer to the individuals
19 together as the individual defendants. Therefore, we are
20 effectively conducting four trials in one.

21 It is your obligation to evaluate the evidence as
22 it applies or fails to apply to each defendant separately.
23 Each of my instructions on the law must be considered by you
24 as referring to each defendant separately. You must return
25 a separate verdict concerning each cause of action against

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JURY CHARGE

1 each defendant. Those verdicts need not be the same though
2 they may be.

3 Next section concerns NRA's responsibility for
4 conduct of directors, officers and employees.

5 A corporate entity like the NRA generally operates
6 through its designated agents and employees including but
7 not limited to its Board of Directors, authorized committees
8 established by the Board of Directors and officers and
9 employees.

10 Generally, a corporate entity such as the NRA is
11 responsible legally for the conduct of its designated agents
12 and employees when they are engaged in NRA business. There
13 are, however, certain instances in which the conduct of a
14 corporate entity's individual agents and employees is not
15 attributable to the entity.

16 Specifically, if you find that an NRA agent or
17 employee including the individual defendants completely
18 abandoned the NRA's interests and was acting solely for
19 their own or another's purposes resulting in harm to the
20 NRA, that conduct is not attributable to the NRA.

21 For this exception to apply, the agent or employee
22 must have totally abandoned the NRA's interests and be
23 acting entirely for his or her own purposes. It can not be
24 invoked merely because the agent or employee has a conflict
25 of interest or because he or she is not acting primarily for

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JURY CHARGE

1 the NRA's interests.

2 In other words, the exception applies when the
3 agent or employee's misconduct is committed against the
4 corporation rather than against others on the corporation's
5 behalf.

6 Even if you find that exception applies, that does
7 not resolve the question of the NRA's liability under the
8 N-PCL and EPTL statutes for conduct by self-interested NRA
9 officers and employees.

10 The NRA Board of Directors which governs the NRA
11 has an independent obligation under those statutes to keep
12 itself informed and oversee the conduct of NRA officers and
13 employees including those that might act against the NRA's
14 interests or the interests of its members and donors. The
15 NRA is liable for the acts and omissions of its Board of
16 Directors.

17 As you will hear shortly, NRA directors as well as
18 officers and key employees must exercise ordinary care in
19 good faith in discharging the responsibilities, but are also
20 able to reasonably rely in good faith on experts and others
21 in satisfying those obligations.

22 If you find that the NRA Board of Directors
23 including through an authorized officer or a delegated
24 committee of the Board failed to discharge its oversight
25 obligations with respect to the conduct of self-interested

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JURY CHARGE

1 officers or employees, you may find the NRA liable for
2 statutory violations arising from such failure.

3 Now, during the course of the trial, you have seen
4 and heard evidence regarding the NRA's Bylaws and various
5 internal operating rules, policies and procedures.

6 You may consider compliance or noncompliance with
7 those bylaws, rules, policies and procedures in making your
8 determination whether the NRA and individual defendants
9 violated the statutory obligations which I will describe
10 shortly, but they are not conclusive.

11 In other words, a finding that the NRA or an
12 individual's conduct -- individual defendant's conduct or a
13 transaction violated an NRA Bylaw, rule, policy or procedure
14 does not necessarily mean that the conduct or transaction
15 violated the Statute.

16 Similarly, a finding that the NRA's or an
17 individual defendant's conduct or transaction complied with
18 an NRA Bylaw, rule, policy or procedure does not necessarily
19 mean that the conduct or transaction complied with the
20 Statute. The decision remains yours considering the
21 evidence admitted at trial to determine whether Plaintiff
22 has established the facts necessary to prove that the NRA or
23 individual defendants failed to discharge their statutory
24 duties as I will now describe them or shortly describe them.

25 Next, a note about the relevant time period before

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JURY CHARGE

1 I get to that.

2 In this case, the Attorney General seeks relief for
3 conduct that occurred during specific periods of time.

4 For the claim against the NRA under the EPTL and
5 the claims alleging violations of duties by the individual
6 defendants under the N-PCL, the relevant period runs from
7 March 20, 2014, to May 2, 2022, except for claims against
8 Defendant Phillips for which the relevant time period ends
9 on December 31, 2018, the date of his retirement.

10 For claims concerning related-party transactions
11 and whistleblower violations under the N-PCL and for false
12 filings under the Executive Law, the relevant period is
13 March 20, 2017 through May 2, 2022. I will refer to these
14 time periods collectively as the relevant period.

15 Next, a note about evidence predating the relevant
16 period.

17 As you will hear later, in determining whether
18 there were violations of law in this case during the
19 relevant period, you will be asked to consider whether the
20 defendants exercised appropriate care and whether they acted
21 in good faith in connection with the conduct or transactions
22 alleged against them.

23 During the course of the trial, you heard testimony
24 and saw exhibits concerning certain events that occurred
25 before the relevant period.

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JURY CHARGE

1 If you determine that those earlier events are
2 relevant to the question of whether one or more defendants
3 acted in good faith or with appropriate care at the time of
4 the alleged violations during the relevant period, you may
5 take that evidence into account in determining liability for
6 those violations.

7 If on the other hand, you determine that such
8 previous events are not relevant to a defendant's good faith
9 or appropriate care at the time of the alleged violation
10 during the relevant period, you should not take that
11 evidence into account in determining liability for
12 defendant's conduct during the relevant period.

13 Now, a note about the relevance of subsequent
14 events and corrective measures.

15 During the course of the trial you heard testimony
16 and saw evidence regarding measures taken by the NRA, and in
17 some cases individual defendants, that defendants claim
18 improved the NRA's internal operating procedures to address
19 previous conduct by certain officers and employees that they
20 claim had the intent and effect to prevent future violations
21 of law or NRA Bylaws, rules, policies and procedures.

22 Some of those measures may have occurred or been
23 implemented after the conduct or transactions at issue had
24 already taken place.

25 If you determine that subsequent events and

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JURY CHARGE

1 corrective measures taken by the NRA and/or individual
2 defendants are relevant to the question of whether the NRA
3 or the individual defendants acted in good faith or with
4 appropriate care at the time of the alleged violations, you
5 may take that evidence into account in determining liability
6 for those violations.

7 If on the other hand, you determine that such
8 subsequent events and corrective measures after an alleged
9 violation are not relevant to a defendant's good faith or
10 appropriate care at the time of the alleged violation, you
11 should not take that evidence into account in determining
12 liability for their prior conduct.

13 For these purposes, the question is not whether the
14 corrective measures occurred during the relevant period. It
15 is whether they occurred after the date of the alleged
16 violation.

17 Similarly, during the course of the trial, you have
18 seen and heard evidence about repayment of funds to the NRA
19 relating to earlier alleged violations. The fact that a
20 defendant made repayment to the NRA of certain funds now
21 claimed to have been unlawfully obtained may be taken into
22 account in determining damages to be awarded in this case as
23 I'll describe later. However, the repayment does not by
24 itself constitute a defense to liability if you conclude
25 that the initial payments the defendants received were

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JURY CHARGE

1 unlawful.

2 If you determine that subsequent repayment by an
3 individual defendant is relevant to the question of whether
4 that defendant acted in good faith or with appropriate care
5 at the time of the alleged violations, you may take such
6 repayment into account in determining liability for those
7 violations.

8 If, on the other hand, you determine that such
9 repayment is not relevant to a defendant's good faith or
10 appropriate care at the time of the alleged violation, you
11 should not take that evidence into account in determining
12 liability for the defendant's prior conduct.

13 I will now instruct you as to the specific claims
14 made by the Attorney General.

15 The Plaintiff's causes of action fall into six
16 categories. They are, one, failure to properly administer
17 the charitable assets of the NRA under the EPTL. That is
18 asserted against the NRA.

19 Two, breach of duty of care and good faith under
20 the N-PCL asserted against Defendants LaPierre, Phillips and
21 Frazer.

22 Wrongful related-party transactions under the --
23 number three. I'm sorry. Wrongful related-party
24 transactions under the N-PCL. That's asserted against the
25 NRA, LaPierre and Phillips.

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JURY CHARGE

1 Four, removal of officers for cause under the N-PCL
2 asserted against Defendants LaPierre and Frazer.

3 Five, violation of whistleblower protections under
4 the N-PCL. That's asserted against the NRA.

5 And finally, six, false filings under the Executive
6 Law asserted against the NRA and Frazer.

7 Certain of your fact finding may be relevant to
8 more than one claim.

9 Your function as a jury is to determine first
10 whether the defendants are liable on any of the specific
11 statutory claims.

12 Second, for those claims that provide for an award
13 of money damages against an individual defendant, if you
14 find there is liability, you shall also determine whether
15 and in what amount money damages are to be awarded. I will
16 further instruct you on how to calculate damages later on.

17 First claim, improper administration of charitable
18 assets under the EPTL.

19 The Plaintiff's claim alleges that the NRA failed
20 to properly administer the NRA's charitable assets during
21 the relevant period. Again, that's March 20, 2014 through
22 May 2, 2022 as required under the EPTL statute.

23 The EPTL authorizes the Attorney General to
24 supervise people and entities known as trustees that
25 administer charitable assets.

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JURY CHARGE

1 Charitable assets means property held and
2 administered for charitable, educational or benevolent
3 purposes.

4 I am instructing you that the NRA is a trustee of
5 charitable assets under the EPTL statute. A trustee fails
6 to properly administer a charitable not-for-profit
7 corporation when it fails to exercise good faith and
8 reasonable care to protect the corporation from unnecessary
9 risk -- unnecessary exposure to risk of loss.

10 Engaging in transactions that are not for
11 legitimate purposes of the not-for-profit corporation may
12 constitute improper administration if they expose the
13 corporation to risk of loss.

14 A trustee may rely on good faith upon the advice of
15 professionals and advisors in administering charitable
16 assets.

17 Transactions that you determine do not adversely
18 affect the NRA's charitable assets are not sufficient to
19 demonstrate improper administration.

20 In determining whether the NRA as a trustee has
21 failed to properly administer the NRA's charitable assets,
22 you may consider among other things whether the NRA violated
23 the N-PCL which I'll address later in these instructions; if
24 such violations, wasted or exposed the NRA's charitable
25 assets to risk of loss.

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JURY CHARGE

1 Two, whether the NRA violated NRA Bylaws, rules,
2 policies or procedures that are designed to preserve and
3 protect the NRA's charitable assets.

4 And three, whether the NRA reasonably relied on the
5 advice of professionals and advisors in discharging the
6 NRA's responsibility. No one factor is dispositive.

7 As noted earlier in these instructions, you may
8 consider subsequent remedial or corrective measures
9 undertaken by the NRA, that is, measures undertaken after
10 allegedly improper conduct has occurred if you conclude that
11 they are relevant to determining the NRA's good faith and
12 reasonable care at the time of the alleged improper
13 conducting considered.

14 You may also consider such remedial or corrective
15 measures in determining whether any transactions or conduct
16 during the relevant period have impaired the NRA's
17 charitable assets.

18 Moving on to the violation of duty claims against
19 the individual defendants.

20 The N-PCL authorizes the Attorney General to assert
21 claims against officers, directors and key persons of
22 not-for-profit entities for among other things, A, neglect
23 of or failure to perform other violation of his duties in
24 the management and disposition of corporate assets committed
25 to his charge; or B, the acquisition by himself, transfer to

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JURY CHARGE

1 others, loss or waste of corporate assets due to any neglect
2 of or failure to perform or other violation of his duties.

3 Under the N-PCL, directors, officers and key
4 persons such as the individual defendants are required to
5 discharge the duties of their respective positions in good
6 faith and with the care an ordinarily prudent person in a
7 like position would exercise under similar circumstances.

8 To act in good faith requires directors and
9 officers to act with undivided loyalty toward the
10 corporation. Here, the NRA.

11 They must deal honestly, fairly and openly with an
12 absence of malice and the absence of a design to defraud or
13 seek -- or to seek an unconscionable advantage.

14 In discharging their duties, each individual
15 defendant when acting in good faith may rely on information,
16 opinions, reports, or statements including financial
17 statements and other financial data in each case prepared or
18 presented by, one, officers or employees of the NRA whom the
19 individual defendants believed to be reliable and competent
20 in the matters presented; two, counsel, public accountants
21 or other person as to matters which the individual defendant
22 believed to be within such person's professional or expert
23 competence; or three, a committee of the Board upon which
24 they do not serve, duly designated in accordance with a
25 provision of the Certificate of Incorporation or the Bylaws

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1 as to matters within its designated authority which
2 committee the individual defendant believed to merit
3 confidence, so long as in so relying, they were acting in
4 good faith and with the care an ordinarily prudent person in
5 a like position would have exercised under similar
6 circumstances.

7 (Continued on the following page.)
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Jury Charge

1 The N-PCL statute provides that persons who perform
2 their duties in good faith reliance on others shall have no
3 liability by reason of being or having been director,
4 officer or key person of the NRA. The individual defendants
5 shall not be considered to be acting in good faith reliance
6 on others if you find that he had knowledge concerning the
7 matter in question that would cause such reliance to be
8 unwarranted.

9 During the course of the trial, you have heard
10 about certain agreements concerning the compensation to be
11 paid to one or more individual defendants during or after
12 their employment. In those circumstances, the individual
13 defendant is permitted to consider his own personal
14 financial interests rather than the NRA's financial
15 interests. It is not a violation of his duty to do so.
16 However, post-employment arrangements negotiated while an
17 officer is still employed may be considered related-party
18 transactions, which are subject to approval requirements
19 that I will explain in the next section of these
20 instructions.

21 If you find that one or more of the individual
22 defendants violated their statutory duties during the
23 relevant period, you will be asked to determine individually
24 as to each defendant whether those violations caused
25 monetary harm to the NRA; and if so, in what amount.

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Jury Charge

1 To the third claim: Wrongful Related-Party
2 Transactions against the NRA, Mr. LaPierre and Mr. Phillips.

3 The attorney general asserts that during the
4 relevant period, March 20, 2017, to May 2, 2022, or
5 December 31, 2018 as to Mr. Phillips; the NRA, Mr. LaPierre
6 and Mr. Phillips entered into certain unlawful related-party
7 transactions that are specifically identified on the verdict
8 sheet.

9 The term "related party" means any director or
10 officer of the NRA or any relative of a director or officer.
11 It is undisputed that Mr. LaPierre and Mr. Phillips were at
12 all relevant times related parties under that definition.

13 For purposes of this claim a relative of a related
14 party means that person's spouse or domestic partner,
15 ancestors, brothers and sisters (whether whole or half),
16 children (whether natural or adopted), grandchildren,
17 great-grandchildren, and the spouse or domestic partner of
18 his or her brothers, sisters, children, grandchildren, great
19 grandchildren.

20 A related-party transaction generally means any
21 transaction, agreement or other arrangement in which a
22 related party has a financial interest and in which the NRA
23 is a participant.

24 However, under the law, a transaction isn't
25 considered not to be a related-party transaction if:

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Jury Charge

1 One, the transaction or the related party's
2 financial interest in the transaction is de minimis, meaning
3 that it is financially so minor that it is insignificant to
4 the NRA or the related party, or;

5 Two, the transaction would not customarily be
6 reviewed by the board or boards of similar organizations in
7 the ordinary course of business and is available to others
8 who are not related parties on the same or similar terms,
9 or;

10 Three, the transaction constitutes a benefit
11 provided to a relate party solely as a member of a class of
12 beneficiaries that the corporation intends to benefit as
13 part of the accomplishment of its mission which benefit is
14 available to all similarly situated members of the same
15 class on the same terms.

16 Section 715 of the N-PCL prohibits the NRA from
17 entering into a related-party transaction unless the
18 transaction is determined by the NRA board or an authorized
19 committee of the board to be fair, reasonable and in the
20 NRA's best interest at the time of such determination. The
21 NRA's Audit Committee was authorized by the NRA to review
22 related-party transactions.

23 Section 715 of the N-PCL requires that the NRA
24 board of directors or authorized committee prior to entering
25 into the transaction consider alternative transactions to

BP

4737

Jury Charge

1 the extent available, approve the transaction by not less
2 than a majority vote of the directors or committee members
3 present at the meeting, and contemporaneously document in
4 writing the basis for the board or authorized committee's
5 approval, including its consideration of any alternative
6 transactions.

7 For each transaction listed in the
8 related-party-transaction section of the verdict sheet, you
9 must determine first whether it is a related-party
10 transaction.

11 If it was a related-party transaction, you must
12 then determine whether it was properly approved in advance
13 by the NRA board or authorized committee in accordance with
14 the requirements just described.

15 If you find that a transaction was not a
16 related-party transaction or that it was a related
17 transaction and was properly approved in advance by the NRA
18 board or authorized committee, you will conclude that the
19 transaction did not violate Section 715 of the N-PCL.

20 On the other hand, if you find that a transaction
21 was a related-party transaction and that it was not properly
22 approved in advance by the NRA board or authorized committee
23 of the board, you will conclude that the transaction
24 violated Section 715 of the N-PCL unless the defendants
25 involved in the transaction proved by a preponderance of

BP

4738

Jury Charge

1 the evidence that the transaction was properly ratified by
2 the NRA board, which I shall now explain.

3 So, the ratification defense.

4 With respect to a related-party transaction that
5 was not approved in advance, the N-PCL provides that
6 defendants may assert a defense based on a later approval by
7 the board or an authorized committee of the board. This is
8 called ratification. The defendant bears the burden of
9 proving this defense by a preponderance of the evidence.

10 A defendant asserting a ratification defense as to
11 a particular related-party transaction must establish by
12 a preponderance of the evidence each of the following
13 facts:

14 One, the transaction was fair, reasonable and in
15 the corporation's best interest at the time the corporation
16 approved the transaction, and;

17 Two, prior to the receipt of any requests for
18 information by the attorney general regarding the
19 transaction, the board or the authorized board committee
20 has:

21 (A) Ratified the transaction by finding in good
22 faith that it was fair, reasonable and in the corporation's
23 best interest at the time the corporation approved the
24 transaction, and in which a related party has a substantial
25 financial interest, considered alternative transactions to

BP

4739

Jury Charge

1 the extent available, approving the transaction by not less
2 than a majority vote of the directors or a committee members
3 present at the meeting;

4 (B) Documented in writing the nature of the
5 violation and the basis for the board's or committee's
6 ratification of the transaction, and;

7 (C) Put into place procedures to ensure that the
8 corporation complies with the N-PCL provisions regarding
9 related-party transactions in the future.

10 You can see why I'm giving this to you in writing.

11 If you determine that the defendants involved in a
12 particular related-party transaction listed on the verdict
13 sheet have proven each of the above facts by a preponderance
14 of the evidence, you will enter a verdict indicating that
15 the transaction did not violate the statute.

16 If you determine that the defendants involved in a
17 particular related-party transaction have not met that
18 burden of proof as to each of the above requirements, you
19 will enter a verdict indicating that the transaction
20 violated the statute.

21 I will instruct you later as to the damages that
22 may be awarded against individual defendants with respect to
23 such violation during the relevant period.

24 Fourth, the fourth claim is about removal of
25 officers, and it is asserted against Mr. LaPierre and

BP

4740

Jury Charge

1 Mr. Frazer.

2 Section 714-C of the N-PCL also permits the
3 plaintiff to seek removal of NRA officers for cause. The
4 plaintiff seeks to remove Defendants LaPierre and Frazer for
5 cause as officers of the NRA. Although Mr. LaPierre
6 tendered his resignation to the NRA shortly before trial,
7 this claim remains in the case, and you must deliver a
8 verdict despite the resignation.

9 To find cause for removal as to an individual
10 defendant, you must find that during the applicable relevant
11 period he, one, violated the N-PCL under one or both of the
12 claims described above; and that, two, the violation
13 constitutes material and serious misconduct in violation of
14 the officer's duty to the NRA or contrary to the interests
15 of the NRA.

16 If you find that the plaintiff has established both
17 of the required elements as to an individual defendant by a
18 preponderance of the evidence, you will return a verdict
19 finding cause for removal as to that defendant.

20 On the other hand, if you find the plaintiff has
21 failed to establish one or both of those elements as to an
22 individual defendant, you will return a verdict finding no
23 cause for removal as to that defendant.

24 No monetary damages are sought with respect to this
25 claim.

BP

4741

Jury Charge

1 Five, Violation of Whistleblower Protections.

2 This is asserted against the NRA.

3 Section 715-B of the N-PCL requires that the NRA
4 board of directors -- I'm sorry -- requires the NRA board of
5 directors to adopt and oversee the implementation of, and
6 compliance with, a whistleblower policy to protect from
7 retaliation persons who report suspected improper conduct.

8 The law provides that such policy shall provide
9 that no director, officer, key person, employee or volunteer
10 of a corporation who in good faith reports any action or
11 suspected action taken by or within the corporation that is
12 illegal, fraudulent or in violation of any adopted policy of
13 the NRA shall suffer intimidation, harassment,
14 discrimination or other retaliation, or in the case of
15 employees, adverse employment consequence.

16 The statute defines a whistleblower as any
17 director, officer, executive, employee or volunteer who in
18 good faith reports any action or suspected action that is
19 illegal, fraudulent or in violation of any adopted policy of
20 the NRA.

21 The statute requires the NRA to adopt and oversee
22 the implementation, and compliance with, a whistleblower
23 policy that is substantially consistent with the following
24 provisions:

25 One, Provisions for the reporting of violations or

BP

4742

Jury Charge

1 suspected violations of laws or corporate policies,
2 including procedures for preserving the confidentiality of
3 reported information;

4 Two, A requirement that an employee, officer or
5 director of the corporation be designated to administer the
6 whistleblower policy and to report to the board or an
7 authorized committee thereof, except that directors who are
8 employees may not participate in any board or committee
9 deliberations or voting relating to administration of the
10 whistleblower policy;

11 Three, A requirement that the person who is the
12 subject of a whistleblower complain not be present at or
13 participate in board or committee deliberations or vote on
14 the matter relating to such complaint, provided that nothing
15 in this subparagraph shall prohibit the board or committee
16 from requesting that the person who is subject to the
17 complaint present information as background or answer
18 questions at a committee or board meeting prior to the
19 commencement of deliberations or voting relating thereto;

20 And, four, A requirement that a copy of the policy
21 be distributed to all directors, officers, key persons,
22 employees and to volunteers who provide substantial services
23 to the corporation. For purposes of this subdivision,
24 posting the policy on the corporation's website or at the
25 corporation's offices in a conspicuous location accessible

BP

4743

Jury Charge

1 to employees and volunteers are among the methods a
2 corporation may use to satisfy the distribution requirement.

3 The N-PCL does not require that the NRA adopt a
4 whistleblower policy that tracks the statutory language
5 precisely. It is enough that the policy be substantially
6 consistent with the statute, meaning that any differences
7 are not significant to the overall purpose of encouraging
8 and protecting whistleblowers for the benefit of the NRA.

9 Plaintiff alleges to two violations of that
10 section:

11 First, that the NRA failed to adopt and implement a
12 whistleblower policy as required by N-PCL 715-B from
13 March 20, 2017, to January 2020 when the NRA adopted a
14 written policy that plaintiff agrees meets the statutory
15 requirements.

16 Second, plaintiff alleges that the NRA violated
17 Section 715-B by failing to evaluate whistleblower
18 complaints and by retaliating against whistleblowers during
19 the relevant period. Again, that's March 20, 2017 to May 2,
20 2022.

21 For purposes of the claims in this case, the
22 plaintiff claims the following individuals are
23 whistleblowers as to which the violations took place, and
24 these are listed in the verdict sheet.

25 Lieutenant Colonel Oliver North, Richard Childress,

BP

4744

Jury Charge

1 Esther Schneider, Timothy Knight, Sean Maloney, Rocky
2 Marshall, Philip Journey and Craig Spray. The NRA denies
3 these allegations.

4 Start with the first claim.

5 If you find that the NRA failed to adopt and
6 implement a whistleblower policy substantially in compliance
7 with Section 715-B of the N-PCL from March 20, 2017 to
8 January 2020, you shall find for the plaintiff on this
9 portion of its whistleblower claim.

10 If you find that the NRA adopted and implemented a
11 whistleblower policy in compliance, in substantial
12 compliance with Section 715-B at any time from March 20,
13 2017 if to January 2020, you shall find that there is no
14 liability on the part of the NRA for this portion of
15 plaintiff's whistleblower claim.

16 Next, to the whistleblower violation claim.

17 If you find that the NRA did not comply with
18 Section 715-B of the N-PCL at any time during the relevant
19 period by, one, failing to evaluate whistleblower complaints
20 or, two, failure to ensure compliance by permitting
21 whistleblowers to suffer intimidation, harassment,
22 discrimination or other retaliation to discourage reporting
23 six improper conduct, you will find for the plaintiff on
24 this claim.

25 If on the other hand you find that the NRA properly

BP

4745

Jury Charge

1 whistleblower complaints and did not permit retaliation
2 against whistleblowers during the relevant period you will
3 find no liability on the part of the NRA in connection with
4 this claim.

5 No monetary damages are sought with respect to
6 either portion of this claim.

7 Finally, the claim under the Executive Law for
8 false filings, and this is against the NRA and Mr. Frazer.

9 Section 172-D(1) of the Executive Law prohibits the
10 making of a material statement which is untrue or failing to
11 disclose a material fact in a public filing relating to the
12 solicitation and collection of funds for charitable
13 purposes. It is undisputed that the CHAR500 form that the
14 NRA files annually with the attorney general, which attaches
15 the IRS Form 990, is such a public filing.

16 A statement of fact is material if a reasonable
17 person would consider it important. In the context of a
18 regulatory filing, an untrue statement is material if it has
19 a natural tendency to influence or is capable of influencing
20 the decision of the decision-making body to which it was
21 addressed.

22 A statement of fact is false if, taken as a whole,
23 it communicates something that is untrue when considered
24 from the viewpoint of an ordinary person.

25 In this case, the plaintiff alleges that the NRA

BP

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Jury Charge

1 made materially false statements and omissions in the annual
2 reports the organization filed with the attorney general,
3 and that Defendant Frazer signed and certified such reports
4 notwithstanding a number of falsehoods therein.

5 First against the NRA.

6 In order to find the NRA liable for making false
7 filings under the Executive Law, you must find that, one, a
8 statement in a public filing was false; two, that the
9 statement or omission was material; and, three, that the
10 statement or omission or omission was made on behalf of the
11 NRA.

12 If you find that the attorney general has
13 established each of the foregoing factors, you will find the
14 NRA liable for making a false filing. If you find that the
15 plaintiff has not established one or more of the foregoing
16 factors, you must return a verdict of no liability as
17 against the NRA.

18 No monetary damages were sought with respect to
19 this claim.

20 The claim against Mr. Frazer.

21 In order to find Mr. Frazer liable for making false
22 filings under the Executive Law, you must find that, one,
23 a statement in a public filing was false; two, that the
24 false statement or omission was material; three, that the
25 statement or omission was made or authorized by Mr. Frazer;

BP

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Jury Charge

1 and, four, that Mr. Frazer knew or should have known that
2 the statement was false.

3 If you find that the attorney general has
4 established each of those foregoing facts, you will find
5 Mr. Frazer liable for making a false filing. If you find
6 that plaintiff has not established one or more of the
7 foregoing facts, you will return a verdict of no liability
8 against Mr. Frazer on this claim.

9 Again, no monetary damages are sought with respect
10 to this claim.

11 Final area is about damages.

12 I'm now going to instruct you on the law of
13 damages. The fact that I instruct you on the law of damages
14 must not be taken as an indication that you should decide
15 for the plaintiff. You will decide on the evidence
16 presented and the rules of law that I have given you whether
17 the plaintiff is entitled to recover -- in this case for the
18 benefit of the NRA -- from a defendant.

19 The plaintiff seeks monetary damages from the
20 individual defendants to compensate the NRA for statutory
21 violations under the N-PCL for violation of duty and
22 related-party transactions. You only need to assess damages
23 if you find that any of these statutory violations have been
24 committed during the relevant period. While several claims
25 may assert violations based on the same conduct, the

BP

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Jury Charge

1 plaintiff may only recover once for the same financial harm.
2 In other words, there can be no double recovery for the same
3 damage.

4 Starting with the N-PCL claim.

5 The attorney general seeks restitution and damages
6 to be paid to the NRA from the individual defendants for
7 violation of their duties under the N-PCL during the
8 relevant period, March 20, 2014, to May 2, 2022.

9 If you find that during the relevant period any of
10 the defendant's conduct violated their duties to the NRA,
11 then you must determine the amount of monetary damages to
12 compensate the NRA for losses caused by such violations. A
13 violation causes a loss if it was a substantial factor in
14 causing that loss.

15 Where difficulty in calculating damages is
16 attributable to defendant's misconduct, such as an absence
17 of records, some uncertainty is permitted. Although
18 mathematical certainty is not required, plaintiff must
19 nonetheless present competent evidence of losses arising
20 from defendant's wrong so that the damages award is not
21 merely speculative.

22 The appropriate measure of damages requires putting
23 the beneficiary, here the NRA, in the same position
24 financially in which it would have been in if the violation
25 had not occurred. Any damages you award must be reasonably

BP

4749

Jury Charge

1 related to the evidence and testimony received during the
2 course of the trial.

3 Next, moving to the Related-Party Transactions.

4 The only claim for which -- if you found -- I
5 believe the only damages are against Mr. Phillips on this
6 claim.

7 If you found Mr. Phillips liable for an illegal
8 related-party transaction, you will determine the amount of
9 damages to be awarded to the NRA in connection with such
10 transaction. The relevant period for this claim is
11 March 20, 2017, through May 2, 2022.

12 In the instructions here I'm crossing out
13 Mr. LaPierre's name because they're not seeking damages as
14 to that transaction as to which no payments were made for
15 post employment.

16 The measure of damages is the amount of any NRA
17 assets lost by reason of the related-party transaction;

18 If a defendant claims that the NRA received value
19 from an unlawful related-party transaction in which he was
20 involved, that defendant has the burden of proving the value
21 received by the NRA. If you find that the defendant has met
22 that burden, then you may subtract such value from any
23 damages award you make with respect to that transaction.
24 Such subtraction may lead to a finding of zero damages with
25 respect to the transaction.

BP

4750

Jury Charge

1 If you find that a defendant willfully and
2 intentionally entered into a related-party transaction in
3 violation of the statute, then you may, but are not required
4 to, award plaintiff a penalty of an amount up to double the
5 amount of any benefit you find that the defendant improperly
6 obtained.

7 A violation is willful if it was done with an
8 awareness that the defendant was acting wrongfully when
9 entering into the transaction. And there is a separate
10 question for that on the verdict form.

11 Finally, a note about credit for repayments made,
12 in this case, by Mr. LaPierre.

13 During the course of the trial, you have seen and
14 heard evidence regarding payments made by Mr. LaPierre to
15 the NRA with respect to prior transactions or events.

16 If you find Mr. LaPierre liable for damages on any
17 claim, you must determine whether and to what extent he is
18 entitled to a credit for amounts he has previously repaid to
19 the NRA to compensate for such damages. Mr. LaPierre bears
20 the burden of entitlement to such a credit.

21 To be entitled to a credit against damages awarded
22 in this case, Mr. LaPierre must prove, first, that a
23 payment was made. Second, Mr. LaPierre must prove that the
24 payment compensated the NRA for some or all of the damages
25 for which you found him to be liable.

BP

4751

Jury Charge

1 For example, if you found Mr. LaPierre liable with
2 respect to a transaction occurring on January 1, 2018, a
3 payment made by Mr. LaPierre to compensate the NRA for
4 losses sustained in connection with that very transaction
5 can be subtracted from your damages award in this case.
6 That would avoid the NRA obtaining a double recovery.

7 On the other hand, if Mr. LaPierre's previous
8 payment was made to compensate the NRA for a different
9 transaction, say one occurring on January 1, 2013, that is
10 prior to the relevant period and not part of your verdict in
11 this case, he would not be entitled to a credit for that
12 payment against damages sustained in the 2018 transaction.
13 In that situation, awarding full damages for the 2018
14 transaction would not be a double recovery for the NRA.

15 Okay, I've now outlined for you the rules of law
16 that apply to this case and the processes by which you will
17 weigh the evidence and decide the facts.

18 In a few minutes you'll retire to the jury room for
19 your deliberations.

20 In order that your deliberations may proceed in an
21 orderly fashion, you must have a foreperson of the jury.
22 To be clear, the foreperson's vote is entitled to know
23 greater weight than that of any other juror. They are there
24 to help keep things organized. In some cases, juror number
25 one acts as a foreperson; but you can select someone else if

BP

4752

Jury Charge

1 you would like.

2 Your function to reach a fair decision from the law
3 and the evidence is an important one. When you are in the
4 jury room, listen to each other and discuss the evidence and
5 issues in the case among yourselves. It is the duty of each
6 of you as jurors to consult with one another and to
7 deliberate with a view of reaching agreement on a verdict,
8 if you can do so without violating your individual judgment
9 and your conscience.

10 While you should not surrender conscientious
11 convictions of what the truth is and what the weight and
12 effect of the evidence and while each of you must decide the
13 case for yourself and not merely consent to the decision of
14 your fellow jurors, you should examine the issues and the
15 evidence before you with candor and frankness and with
16 proper respect in regard for the opinions of each other.

17 Remember in your deliberations that the dispute
18 between the parties is for them a very important matter.
19 They and the Court rely upon you to give full and
20 conscientious deliberation and consideration to the issues
21 and evidence before you. By so doing, you carry out to the
22 fullest your oaths as jurors to truly try the issues of this
23 case and render a true verdict.

24 At this point, we're going to randomly select which
25 of you are the alternate jurors.

BP

4753

1 As I told you before trial, only six of you will be
2 deliberating and additional jurors were required as a
3 safeguard against the possibility that one or more of you
4 might be unable to complete his or her service.
5 Fortunately, that has only happened in three occasions.

6 (Continued on next page)

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4754

Jury Charge

1 THE COURT: So what we are now going to do -- and
2 so what would we are going to do, so the first one is going
3 to be the first alternate. Do you want to give it a spin.
4 We are putting each of your things in there.

5 So the first alternate is juror number one. You
6 are the first alternate. Juror number nine, you are the
7 second alternate.

8 A JUROR: That's the person who is gone.

9 THE COURT: Well, that should -- for math purposes,
10 that should be ten, the one you just picked out again. So
11 we don't want to redo it. So nine would have been ten. So
12 ten. So that's the second alternate. And juror five.

13 So those of you who will not be deliberating must
14 not communicate anything about the case in any fashion with
15 the sitting jurors, other alternates or anyone else until
16 after a verdict has been rendered or I may instruct you
17 otherwise.

18 As a precaution, I'm going to ask that you remain
19 available for the rest of today and that you report back
20 here on Tuesday morning just in case something prevents one
21 of the other jurors from continuing with deliberations
22 tomorrow. I mixed up nine and ten. But again, I'm going to
23 ask you as a precaution to stay for the rest of the day.
24 And if there is no verdict, to report back on Tuesday
25 morning just in case something prevents one of the other

KM

4755

Jury Charge

1 jurors from continuing with deliberations on Tuesday.

2 The court officer has a room for you to sit in for
3 now, and we will direct you where to go.

4 I do want to genuinely thank and commend each of
5 you, the three of you who are leaving and those who are
6 remaining for your faithful attendance and attention.

7 Assuming we do not need to call on you, I want to
8 tell you now on behalf of the Court and the parties, thank
9 you very much for your service.

10 MR. FARBER: Judge, we need to put something on the
11 record outside.

12 THE COURT: So I'm going to --

13 MR. FARBER: I think we need to do it before the
14 jury retires under the rule.

15 Can we just do this at sidebar?

16 (Whereupon, at this time there was a
17 sidebar discussion as follows:)

18 THE COURT: Okay. With the alternate juror ten, I
19 thought she was ten. She turns out to have been nine.

20 MR. CORRELL: That's fine.

21 THE COURT: I think using nine as a proxy for ten.
22 Anybody object?

23 MR. CORRELL: I agree.

24 MR. FARBER: I agree. No objection.

25 Mr. Correll filed a letter I believe it was

KM

4756

Jury Charge

1 yesterday putting on the record a written objection to the
2 charge on the breach of duty claim which we filed a letter
3 right before court this morning joining that objection, and
4 we want to note our continuing objection for the grounds
5 stated in Mr. Correll's letter.

6 MR. CORRELL: I'd like to make that same continuing
7 objection.

8 MR. FARBER: And second, your Honor has ruled on
9 the relevant Statute of Limitations for breach of duty claim
10 is six years and not three years, and we understand that,
11 but we wanted to note our objection to the record to
12 definition of relevant time period for Mr. Phillips in
13 this -- and the relevant time period section of the charge
14 as running from the charge given was March 20, 2014 to his
15 case December 31, 2018.

16 We believe because the three-year statute should
17 apply, it should have been March 20, 2017.

18 MR. CORRELL: And your Honor, I'd like to add a
19 continuing objection to including a -- in the verdict form a
20 requirement to determine whether there was cause to remove
21 Mr. LaPierre.

22 MR. PETERS: And we would like to note an objection
23 that the first cause of action was void for vagueness and
24 that the whistleblower claim should not have been charged
25 because they don't meet the statutory criteria.

KM

4757

Jury Charge

1 MR. CORRELL: And I would like to go add the
2 objection that Mr. LaPierre's view, the Attorney General
3 lacks authority to seek monetary damages under 720 of the
4 N-PCL without alleging and proving knowledge of
5 unlawfulness.

6 MR. PETERS: And we would like to note our
7 objection to the three-year -- to the six-year Statute of
8 Limitations with the EPTL claim. We think it should be
9 three years.

10 MR. CORRELL: Last but not least, or maybe not
11 last, Mr. LaPierre objects to the application of the
12 six-year statute to the claims for breach of duty.

13 MS. CONNELL: Finally, since we are doing this,
14 Plaintiff objects to the three-year Statute of Limitations.

15 We will object to non-inclusion of claims under the
16 EPTL against the individual defendants as trustees and
17 -- and the exclusion of the related-party transactions
18 against Mr. LaPierre for the hair and makeup for
19 Mrs. LaPierre and of the Membership Marketing Partners
20 transactions.

21 MR. CORRELL: And your Honor, I will object to that
22 objection on the ground that the law requires that objection
23 to be made before the jury's instructed, and they have
24 waived their right to make that objection. Their making it
25 after the jury is instructed is violative of the CPLR.

KM

4758

Jury Charge

1 THE COURT: Okay, folks. I'm happy to have you all
2 put it on the record. I take no position whether any or all
3 of it is necessary, but you have the right to make a record
4 if you want to.

5 So with that, we will get back to the jury.

6 (Open court.)

7 THE COURT: Thank you. All right, folks. We will
8 let you folks go back there. I will have copies made of the
9 verdict sheet and instructions, and I will have those given
10 to you shortly.

11 THE COURT OFFICER: All rise. Jury exiting.

12 (Whereupon, at this time the jury exits
13 the courtroom.)

14 THE COURT: I do want to thank you all for your
15 unbelievable efforts really over the last six weeks and --
16 well, first of all, I think Ms. Connell, you're going to
17 give us the missing Court exhibits.

18 MS. CONNELL: I am, your Honor. It's Court
19 Exhibit III, Court Exhibit IV, Court Exhibit V,
20 Court Exhibit VI and Court Exhibit VII.

21 THE COURT: Okay. You can just give them to Ms.
22 Hill over there.

23 THE COURT: I do want to thank everyone for really
24 exceptional efforts. It was challenging at times but all in
25 the name of vigorous representation of your clients, and I

KM

4759

Jury Charge

1 understand that. And I also understand that there are large
2 teams perhaps for some of you who haven't been in front of
3 me the entire time, and I want them to know that I
4 appreciate their efforts.

5 I do want to say I -- the fact that really on both
6 sides, the people allowed multiple members of teams to
7 participate in court, I think was -- it's good for the
8 profession, and I think it adds to the diversity of the
9 presentation. So I appreciate that. And the skill level
10 was very high. And you know, people kept their -- kept
11 things at a high level, so I appreciate that.

12 Is there anything else before we close?

13 MS. CONNELL: Your Honor, we have printed copies of
14 all the exhibits admitted during Plaintiff's case. I think
15 the Defendants have that as well.

16 Should we bring those to the courtroom to maintain
17 here?

18 THE COURT: Well, I mean, I would keep them
19 wherever -- we are going to need them quickly when they ask
20 for them. I don't know whether you have a better place to
21 keep them, but if you want to -- by the way, I do want to
22 also especially thank the court staff, the court officers
23 who have really done a miraculous job in keeping everything
24 organized and safe, my courtroom staff Ms. Hill and the
25 court reporters who continued to do a job that it's kind of

KM

4760

1 like trying to imagine yourself dunking a basketball. I
2 can't even figure out how they do it. So just a tremendous
3 effort during the six weeks.

4 MS. EISENBERG: Your Honor, we couldn't agree more.
5 Thank you so much.

6 In terms of your reaching us, we will monitor our
7 email. If you like, we can also leave our cell phone
8 numbers with your staff if that would be helpful.

9 THE COURT: I would make sure we have every way to
10 reach you. I would assume if this goes the way most things
11 go, that the first thing that we will get is for a bunch of
12 things. So I wouldn't go anywhere quite yet, and -- but
13 then after that, if we can have a way to reach you, I would
14 appreciate it.

15 So with that, the trial record is closed. Thank
16 you all.

17 (Continued on the following page.)
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4761

Proceedings

1 THE COURT: We got a brief note. Totally expected
2 one; although, I'm not sure logistically how you'll do it.

3 The jury requests a list of all the admitted
4 exhibits, identification numbers and a brief description of
5 what the document is.

6 Then they say, "If available, we would like to be
7 provided with any demonstratives the Court will allow."

8 Well, starting with that last one, I think what I
9 said is that if it is by consent, I would permit
10 demonstratives to go back. If it is not with consent, then
11 I will not. So, I have not heard the consent almost to
12 anything ever; but so am I correct in assuming that there
13 will not be unanimous consent to send any demonstratives
14 back?

15 MR. FARBER: That's correct, we would object.

16 MS. EISENBERG: Your Honor, I think we might change
17 our mind on that, but I just need to --

18 THE COURT: It doesn't matter. Unless everybody
19 consents, I'm not going to do it.

20 MR. CORRELL: Mr. LaPierre objects.

21 THE COURT: So, it doesn't matter.

22 Now, can you create such a list. I think it is a
23 sensible question, given how many exhibits there were that
24 they would like to have a list to choose from rather than
25 getting everything all at once. Does such a list exist?

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1 And if not, how long will it take to create it?

2 MR. FLEMING: We have one. I can't vouch for its
3 perfection. It is a working copy, we could all peruse.

4 MR. FARBER: The challenge may be the description
5 part, your Honor. I mean --

6 THE COURT: Well, make it as.

7 TECH PERSON: We have that.

8 THE COURT: Well, it is a question of what you say
9 in the description; but if it just says e-mail dated blank
10 from blank to blank, as long as it is just objective data.
11 Well, try to do it. I think there's a combination of
12 completeness and speed that's a balance here because I don't
13 want them waiting to get going for hours if it is going to
14 take that long. So, I'll let you talk and see if you can
15 maybe start with the list you have, and since it is already
16 put together and then see if people can agree on the
17 descriptions.

18 MS. CONNELL: I think it won't take long. I think
19 we can have something in a few minutes, your Honor.

20 THE COURT: With descriptions that then have to be
21 shared?

22 MS. CONNELL: No, no, we have some descriptions. I
23 think it is a matter of the parties agreeing on the
24 descriptions.

25 THE COURT: Yeah, do it. And, again, I had this

BP

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1 conversation off the record, but we've now made copies -- I
2 think we either have made or are making copies of the --
3 that's the verdict sheet?

4 COURT OFFICER: Yes.

5 THE COURT: I'd like to have the verdict sheet and
6 the instruction exhibits, so Court Exhibit XI and XII I'd
7 like them to be put on NYSCEF so that they're available to
8 the public. So, you might want to wait until we get the
9 instructions as well.

10 MS. STERN: Just to clarify, your Honor, would you
11 like us to put them up on NYSCEF?

12 THE COURT: Yes, that's easier if the plaintiff
13 does it, yes. That would be easier for me if you did it
14 because I'm not sure exactly how we do it.

15 MS. STERN: Sure.

16 THE COURT: So I would just post it is Court
17 Exhibit -- just say Court Exhibit XI, paren., Jury Verdict
18 Sheet or form, whatever it says; and then Court Exhibit XII
19 Instructions.

20 So, Officer, just tell the jury that the parties
21 are working on it. You can tell them that it will just be
22 the admitted exhibits, not the demonstratives.

23 COURT OFFICER: Okay.

24 THE COURT: All right, we're back off the record.

25 (In recess)

BP

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1 THE COURT: The list of exhibits they wanted is
2 Exhibit XIV. The lawyers have that and they're working on
3 that.

4 I now have another note which is -- I almost
5 hesitate to get into it because it seems so premature, but
6 it is -- I'd like to paraphrase this for the record and
7 maybe then I'll share it with you.

8 It is somewhat expressing frustration about the
9 pace of their discussions. It says they're talking about
10 things over and over and not moving on to the next question,
11 and then suggests it is going to take a long time.

12 I mean, it's only been a couple of hours at this
13 point. We're not nearly at the time where it would be up to
14 the Court to intervene and start saying anything other than
15 just keep at it. I mean, I'll show it to counsel.

16 I mean, again, just in terms of juror
17 confidentiality, I'm a little concerned about putting all of
18 this just in the public record; but I may end up having to
19 do it. But, for now, I'd rather just share with counsel.

20 It doesn't express a view one way or the other. It
21 just expresses frustration about how long it is taking which
22 it may -- I guess it is a process complaint that this juror
23 wants things to move more quickly. So, I'll just report
24 that to you.

25 I don't see a particular need -- and after I'll

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1 show you this and you can express your view. I don't see a
2 rationale to bring them all in here and talk to them after
3 two hours and say -- well, I'm certainly not going to say
4 hurry up.

5 Maybe we can make a copy, Officer.

6 So, I'll wait for you to read it. I think at some
7 point there would have to be some unexpressed thoughts,
8 right?

9 My suggestion is that I send them back with a
10 message to just review the portion of the instructions that
11 near the end where I tell them the importance of listening
12 to each other and how important that is, and it's not been
13 that long and something along those lines so that I don't
14 give anything new, but just point their attention to that
15 portion. I'll find what page it is, but it is toward the
16 back.

17 MR. FLEMING: It might be helpful if they knew that
18 maybe we were on the verge of giving them something.

19 THE COURT: Well, we'll tell them that the
20 documents are on the way, and that the Court would just
21 direct your attention back to the -- I think it is right
22 before the alternates. I have to find the copy of this.
23 Everybody has a copy of the instructions except me now.

24 I'm going to ask them to look at the conclusion
25 section beginning on page 69, which talks about listen to

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1 each other, discuss the evidence. It is the duty of each of
2 you as jurors to consult with one another and to deliberate
3 with a view toward reaching an agreement, and just get past
4 this with whoever is having an issue. I don't think
5 bringing them back is a proportionate response to this at
6 this point.

7 Does anyone else have a disagreement with that?

8 MS. CONNELL: No, your Honor, no disagreement.

9 MR. FARBER: No, your Honor.

10 THE COURT: All right, so just say we tell them
11 that -- I'm just talking to the court officer now -- the
12 documents are being gathered. They should be up reasonably
13 soon, and the Court would ask you to just re-review the part
14 of the instructions starting at page 69 about the importance
15 of listening to each other and deliberating and working
16 together cooperatively and that sometimes these things take
17 time.

18 Thank you.

19 All right, let me know when you need me next, for
20 my next session.

21 (In recess)

22 (Continued on next page)

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THE COURT: The question is, "Can the judge explain in layman's terms number 3 on page 47 of the instructions," which is one of the exceptions to related-party transaction, if "The transaction constitutes a benefit provided to a related party solely as a member of a class of the beneficiaries that the corporation intends to benefit as part of the accomplishment of its mission which benefit is available to all similarly situated members of the same class on the same terms."

I could understand why that's a bit of a mouthful to them.

Is this an exception that the defendants claim might apply to any of the transactions? Because it seemed to me that it arguably -- they have argued 1 or 2 might apply, that it's either de minimis or it's not a board issue and something that was available to others; but this is kind of, like, I assume it means he gets a copy of the magazine just like everybody else does.

MR. CORRELL: Your Honor, it applies to hair and makeup provided to all the people who attended Women's Leadership events.

THE COURT: I think that's a second proviso. That's a transaction that would not personally be reviewed, but was available to others who are not related on the same

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1 or similar terms.

2 This is a class of beneficiaries -- in the
3 hairstyling thing, that's not a -- they're not a class of
4 beneficiaries.

5 MR. CORRELL: I would argue that both exceptions
6 apply. It is my understanding -- and I think Mr. LaPierre
7 testified to this -- that those services were made available
8 to everyone.

9 THE COURT: No, I understand that; but is that the
10 way you -- this exception to the related-party transaction I
11 think is intended to mean if the entity provides benefits to
12 all members, then you're not precluded from getting the
13 benefit as a member.

14 So, Mr. LaPierre would get the same magazine
15 everybody else gets.

16 I think that I viewed the hairstyling issue as --
17 which, by the way, is not asserted against your client at
18 this point -- would be number two, if there's anything.

19 So, I mean --

20 MR. CORRELL: Again, I think we've got there's two
21 bites at that apple. I think it can come in under any one.

22 If you take the provision of hair and makeup
23 services to members who attend an event and are asked to
24 speak on the stage as a benefit, then they are beneficiaries
25 I suppose. They're members and beneficiaries and it's

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1 available to anyone who participates.

2 THE COURT: Is anyone aware of any cases under
3 any of these exceptions to which shed light on what they
4 mean?

5 MR. SHIFFMAN: No. There is guidance from the
6 office both pre-2016 when some of this language was changed
7 and after.

8 THE COURT: And what does it provide?

9 MR. SHIFFMAN: I think it is in align with what
10 your Honor stated, something like everybody gets a magazine.
11 We can pull it up.

12 THE COURT: Can you track it down?

13 MR. SHIFFMAN: Yes.

14 THE COURT: Track it down and send it to me. Why
15 don't you take a few minutes and find it.

16 Are the defendants aware of this one? I have to
17 admit, as I was sort of putting these in, they're all in the
18 statute so I figured there really wasn't much harm in
19 putting everything in the statute; but this one did strike
20 me as more of a broadly aimed benefit that it would be silly
21 to prevent related parties to get because everybody else got
22 them as opposed to whereas discrete number of people
23 attending a forum.

24 Now, if every attendee -- if all the members who
25 went got hair and makeup, that would be one thing. It

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1 seemed more like number two, if there's anything; but
2 there's not a lot.

3 The question is how to describe this differently
4 than it is, and it is what the statute says; but it's a bit
5 of a mouthful, I think we can agree. It is a bit of a word
6 salad.

7 So, what would the parties propose as a way to
8 describe what this is? I think it has to have -- there has
9 to be something where you identify a class of beneficiaries
10 that the corporation intends to benefit as part of the
11 accomplishment of its mission.

12 I think this is more -- you know, whether it's
13 enthusiasts or people who enjoy the benefit of the actual --
14 the corporation's purpose, you shouldn't be denied that
15 benefit; but I don't think this is -- the benefit they're
16 talking about is hair and makeup. I think it is -- it has
17 to relate to the organization's mission.

18 So, I think if this has to have any independent
19 meaning, it has to mean, you know, pick whatever the
20 charity's goals are. If this is a benefit one would get as
21 a member consistent with those goals, fine.

22 MR. CORRELL: Your Honor, these events as I
23 understand it were expressly to raise funds to advance the
24 mission. They were -- you know, some of them were actually
25 called benefits.

BP

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1 THE COURT: I know, but it's -- it's flipped,
2 right? This is the organization giving benefit to other
3 members and these are the people who are -- who join in the
4 effort to provide that benefit. So they're given a boost to
5 help them provide that benefit, but that may be what number
6 two is about.

7 Number three is about the recipients of the
8 benefit; meaning, the members who gain from the Women
9 Leadership Forum. Is there anything that those members get,
10 and if they get that, then a related party should get that.
11 The members don't all get their hair and makeup done at
12 these meetings; right?

13 MR. CORRELL: Your Honor, if I could just have a
14 moment, I know there's language in 515-C that addresses
15 benefits.

16 THE COURT: Why don't you all think about it for a
17 few minutes; but my, my inclination is that I can't think
18 of any one of the related-party transactions if properly
19 construed that exception would apply to which would be the
20 easiest answer if I could get comfortable with that.
21 Because whatever it is, none of these are benefits that
22 flowed to the related party by virtue of being a member
23 service that the corporation intended to benefit as part of
24 its mission.

25 I'm not saying it is a related-party transaction

BP

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Proceedings

1 because it might not be under number two; but it certainly
2 is not a benefit as part of it accomplishing its mission.

3 MS. EISENBERG: Your Honor, there is another
4 example.

5 THE COURT: Okay.

6 MS. EISENBERG: The payments as grants to United
7 Sportsmen of Florida, Marion Hammer as a financial interest
8 in that corporate entity; and this is a presumptively
9 allegedly related-party transaction because it's a
10 transaction between the NRA on the one hand and a corporate
11 entity in which she has an interest, right? It is important
12 to understand that there are multiple such corporate
13 entities across the nation that receive grants from the NRA
14 and falls squarely within the NRA's mission.

15 THE COURT: But are they getting that benefit
16 solely as a member of a class? Because that's -- again,
17 that's what seems to distinguish number two and number
18 three.

19 Number two could still be it's available to others
20 who are not related to parties on same or similar terms,
21 right? That's the second exception. But, it says it has to
22 be provided to them solely as a member of a class of
23 beneficiaries.

24 So, are you saying that every single organization
25 gets the same kind of grant? They're just getting it

BP

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Proceedings

1 because they're a member of a class, or isn't it that they
2 get -- that that particular organization gets a directed
3 grant for things that they do. They're not just receiving
4 it because they're the members of a class.

5 Again, it might be fine, but not under this third
6 branch. It seems to me that's -- the third branch is
7 your -- it is not directed to you as a benefit. You're
8 getting it because you're a member of a class. So, that's
9 why I don't think it seems to apply to any of these bespoke
10 grants or reimbursements. Right? I think that the
11 traditional -- I mean, the most obvious thing is all members
12 get this or all fill in the blank, all class -- all members
13 of the following group get the same exact benefit. So you
14 shouldn't discriminate against a related party because this
15 is a throw-in as being a member of a certain class.

16 MR. FLEMING: Your Honor, there was an example
17 given in Mr. Frazer's testimony where he said because he was
18 a member I think of a shooting range or something like, that
19 had non-related parties and, of course, him as a related
20 party he would be permitted to enjoy the payment made by the
21 NRA to the range because it's -- because it fit into this
22 example, and I do think it's a jury question --

23 THE COURT: That's not a challenged related-party
24 transaction here. What I'm trying to get at --

25 MR. FLEMING: I understand.

BP

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Proceedings

1 THE COURT: If the answer to this simple question
2 -- although it is hard to reconstruct this language in a way
3 that will fit all scenarios. But, if the answer is that
4 it's inapplicable because there is no argument that one
5 could come up with that any of these listed transactions,
6 the recipient solely received because they are the members
7 of a class. None of them have that.

8 I'm not sure what you're arguing about since your
9 client isn't named in any of this.

10 MR. FLEMING: No, I understand. I'm trying to get
11 to the understanding that the issue it seems to me it is
12 mission related and that is a jury question because if the
13 rain of money from the NRA falls on something and some
14 related party's benefit and other non-related party's
15 benefit in the same way, that is what this exception is
16 intended to capture.

17 THE COURT: That may be true; but in a situation
18 like we've just been talking about, if you get your hair and
19 makeup done, that's not how you're receiving that benefit.
20 It is a personal benefit. You're not just getting it as a
21 member of a class.

22 MR. FLEMING: I think if a class of people --
23 however that's defined -- are getting hair and makeup
24 services and two out of the ten are related parties and
25 eight of the ten are not, it seems to me it's mission

BP

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1 related.

2 THE COURT: That's the other exception. Did you
3 find your guidance?

4 MS. STERN: Yes, and, one, I was going to say we
5 could just e-mail it to you and everyone else. It was in
6 the letter that we submitted to the Court on February 14th.
7 It has a link to the guidance, but we will send that. It's
8 on our website.

9 And, second, these are arguments that were never
10 made during trial. There's no evidence of these -- of whole
11 classes of people also getting the same benefits. Whether
12 you say a payment to a pistol club which that was never
13 raised, that's not what this exception is for. It's what
14 the related party conflict-of-interest policy is for.

15 MS. EISENBERG: It was raised in our answer.

16 MS. STERN: In your answer? Okay, and there's no
17 evidence of a whole class of people getting the hair and
18 makeup services.

19 THE COURT: I'm sorry, Ms. Eisenberg, you say you
20 raised in your answer this specific argument?

21 MS. EISENBERG: Yes, your Honor.

22 THE COURT: As to which related-party transactions?

23 MS. EISENBERG: In general, because we didn't know
24 which related-party transactions they were arguing because
25 they didn't tell us until the fall.

BP

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1 THE COURT: Well, now that we know because they
2 could have been alleging, you know, you get the NRA magazine
3 every month or whatever it is and, and that's certainly not
4 a related-party transaction. That clearly falls under this.
5 So, that doesn't impress me much.

6 I certainly haven't heard any argument in the six
7 weeks I've sat here about this has a rationale for any of
8 these transactions. I don't want the jury to get confused
9 and overly -- perhaps over thinking something that nobody
10 has really ever asserted.

11 I heard the idea, as Mr. LaPierre testified that,
12 if they buy the idea that, well, it was given to everyone on
13 same and similar terms, even non-related parties because
14 they were doing the same thing Mr. LaPierre was doing, that
15 sounded to me like potentially -- I mean, the reason I kept
16 that in, frankly, as I pointed out was because I thought
17 this number two exception could apply to it if you, if you
18 accepted that testimony. It did not occur to me, to be
19 honest with you, that this third one would apply. I kept it
20 in because it was one of the three exceptions.

21 MS. EISENBERG: I think the jurors perhaps have it
22 right. Can we perhaps look at the definition that the NYAG
23 assigned to that exception and then make our decision based
24 on that?

25 THE COURT: Do you have that nearby, Ms. Stern?

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1 MS. STERN: Yes.

2 THE COURT: Or is it something that's going to be
3 more complicated to read? I'm sure we've spent more time
4 already thinking about this than we have in the entire
5 four-year history of this case.

6 MS. STERN: Okay, this is from the Attorney
7 General's Guidance on Conflict-of-Interest Policies under
8 the Not-For-Profit Corporation Laws. Guidance document
9 issued date September 2018 at page 7:

10 "To qualify for the exception for benefits provided
11 to a related party solely as a member of a class that the
12 corporation intends to benefit as part of the accomplishment
13 of its mission, the benefits must be provided in good faith
14 and without unjustified favoritism towards the related
15 party."

16 "Example of a transaction in this category: A
17 legal services program agrees to handle the eviction case of
18 one of its board members who's eligible to be a client and
19 who is serving as one of the minimum number of
20 client-eligible board members that is required by federal
21 regulations. The decision to accept the case is made
22 pursuant to the organization's established case acceptance
23 policy without regard to the client's status as a board
24 member."

25

BP

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1 THE COURT: Right, so it is what the entity does
2 and it would actually be discriminating against the related
3 party to not provide it because that person would get that
4 benefit if they were anyone.

5 MS. STERN: Correct.

6 THE COURT: So the analogy, I guess, if you're
7 going to use the hair and makeup is, well, if Mrs. LaPierre
8 were just somebody off the street and was asked to speak at
9 this forum, she would have gotten the same treatment the
10 other people did. Although, again, the difference is your
11 situation is that is their whole purpose, is representing, I
12 assume, indigent people and so she's in the class of people
13 to whom the organization is dedicated.

14 This is really coming at it from the other side.
15 This is what benefits are we going to provide for people who
16 help us perform our mission. In other words, other people
17 who were going to enlist in the mission, can we give them
18 benefits that we would give to others?

19 See, that seems -- again, it seems different to
20 me. That's like saying, well, we can give you a job. Let's
21 say, let's say they were going to hire Ms. LaPierre and say,
22 Well, we're going to pay you what we pay everybody else,
23 right? That's the way -- I view it more analogous to that
24 because she's -- she's not receiving a member benefit. She
25 is conveying to a member benefit to others; and as part of

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1 the compensation for that, again, maybe this is fine just
2 like anybody else would, she's going to be compensated in
3 the same way sort of with this makeup service; but that I
4 don't -- I think what the third one is is looking at member
5 benefits, not provider benefits.

6 MR. CORRELL: Your Honor, two things:

7 First, I thought you got it right in the first half
8 of that analysis.

9 Second, just for what it is worth, I'm not even
10 sure how this lands; but in 515-C it says "A corporation may
11 confer benefits upon members or nonmembers in conformity
12 with its purposes."

13 I would argue that when the NRA scheduled a big
14 event with maybe a thousand people, some will be members,
15 some will be nonmembers; and if anyone is asked to speak,
16 they will be provided this benefit. And the fact that
17 Ms. LaPierre is a volunteer, shouldn't -- or the wife of the
18 EVP shouldn't disqualify her from that benefit.

19 THE COURT: And the language I think you're reading
20 out of this is this has to be a benefit to a class of
21 beneficiaries that the corporation intends to benefit as
22 part of its accomplishment of its mission.

23 Providing hair and makeup services is not providing
24 a benefit as part of the accomplishment of the mission. It
25 is the other people who are listening to the forum that are

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1 getting the benefit of the services, not the presenters.

2 MR. CORRELL: I don't even concede it is a benefit.
3 I don't know how much of a benefit it is to have your hair
4 brushed out, you know, frankly. I think it is de minimis.
5 I think the whole thing is kind of silly.

6 THE COURT: Well, it may be; but if the jury is
7 getting twisted or some are about what that might mean and,
8 you know, to me, the -- I think the only thing that had been
9 argued before, at least as I have heard, is either the de
10 minimis which I heard Ms. Rogers say in argument, and the --
11 I have heard one of you reference the available to others
12 who are not related parties thing because that seems to me
13 the benefit, if there is one, for each of these things that
14 both Ms. Eisenberg talked about and what you're talking
15 about.

16 MR. CORRELL: Your Honor, I have a practical
17 suggestion.

18 If you instruct the jury that if they determine
19 that the hair and makeup thing is de minimis or that it
20 falls within the other exceptions, then they don't need to
21 worry about that.

22 THE COURT: Well, that doesn't answer the question
23 because that just tells them -- I think -- I'll sort of --

24 MR. CORRELL: Can you ask them what --

25 THE COURT: This is not typically a dialogue where

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1 I'm trying to talk them into anything.

2 MR. CORRELL: I understand. Can you ask them --

3 THE COURT: All I can do --

4 MR. CORRELL: -- what claim it relates to?

5 THE COURT: No, I think that would be a mistake.

6 This is not the time for that type of dialogue. But I think
7 the thing that the related party gets has to be something
8 that she -- he or she is only getting because they are the
9 beneficiary that a whole class of people get as part of the
10 NRA supporting its mission. That's as layman I can make it
11 I think.

12 MS. EISENBERG: Your Honor, I think it squarely
13 applies to the example that I gave. In fact, hearing
14 Ms. Stern's or the NYAG's example about the legal services
15 provider, providing legal services and obviously --

16 THE COURT: The word "solely" as a member of the
17 class is important, right?

18 MS. EISENBERG: Right.

19 THE COURT: In other words, the only reason that
20 that director was getting it is because he is one of the
21 class that the entity exists to serve.

22 MS. EISENBERG: Right, and so here the related
23 party is not Marion Hammer, but United Sportsmen of Florida,
24 an entity which she has an interest. So the focus should be
25 on the entity, and it is a member of a class of entities who

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1 the NRA supports throughout the nation, squarely within its
2 mission and indirectly supports all of its members and other
3 supporters of the 2nd Amendment.

4 So, I would respectfully request that the Court
5 provide the definition that Ms. Stern read, including the
6 example about the legal services provider. It would seem to
7 me that that would help the jury.

8 THE COURT: I'm willing to read that out and say
9 here's a concrete example of how it might apply and then
10 leave it at that and let them see if they think that's
11 analogous.

12 MS. CONNELL: I'm sorry, your Honor, the language
13 you're talking about is the United Sportsmen of Florida --

14 THE COURT: No, the Guidance from the Attorney
15 General --

16 MS. CONNELL: Your Honor, the only thing I would
17 say is that all of the evidence we heard being related to
18 the United Sportsmen of Florida are the grants to Ms. Hammer
19 directly and directly had to do with her reputation
20 allegedly as an un-parallel lobbyist.

21 THE COURT: I have two choices here. One is to
22 sort of rule as a matter of law this could not possibly
23 apply to any of these, and that's a big thing to swallow at
24 this late stage because I didn't do that before. I struck
25 some related-party transactions from the list, and I didn't

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1 strike any of these. And I didn't sort of parse exactly
2 which exception it might fit under; but I don't see the harm
3 in saying, look, I'll give you a practical example of what
4 guidance has been given and maybe that will help them, and
5 then let them go from there.

6 MS. CONNELL: All right, your Honor.

7 THE COURT: Do you have -- can you e-mail that to
8 Ms. Hale and she can print it out?

9 MR. CORRELL: Can you copy all counsel on that as
10 well so we have it?

11 MS. CONNELL: Of course.

12 THE COURT: We don't have to put our e-mail on the
13 record, but...

14 MR. FLEMING: Do you intend to identify it as AG
15 guidance or some anonymous guidance?

16 THE COURT: I mean, I don't see any reason to hide
17 the ball on what it is.

18 MR. FARBER: Well, these are instructions. I mean,
19 your Honor is stating the law. The fact that it is their
20 guidance isn't relevant. It's your guidance. I would
21 just --

22 THE COURT: Well, we're pretty much out of the time
23 for the day anyway, so I'm not sure what I'm going to be
24 able to provide them. I doubt this is what's standing in
25 the way of them finishing. They haven't indicated that

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1 they're otherwise ready to go.

2 I'd like to take a look at it, but it seems like a
3 reasonable thing to read to them. If this is continuing to
4 bug them, I can think over the long weekend; but I'm very
5 comfortable that it is not the hair and makeup.

6 I'm still thinking about whether it could apply to
7 a class comprised of clubs throughout the country who as a
8 group get benefits from the NRA, and this is just one of
9 them. That at least -- it may not be right factually, but
10 it structurally fits within what this exception is aimed at,
11 although I'm not entirely comfortable with it, but better.

12 MS. CONNELL: Your Honor, it doesn't fit entirely
13 comfortably. There's no showing that this is like a
14 shooting event open to everybody, all members, it's a
15 magazine that all members get. There's no evidence of that
16 to support that.

17 THE COURT: Well, that's the tougher question,
18 whether there's any evidence to support the way people are
19 describing this. But, look, we're not getting anywhere with
20 this.

21 Let me see the guidance. I want to take a look at
22 it, and I don't think I'm going to have time to really do
23 anything meaningful with them between now and the end of the
24 day.

25 So, let's just convey to them that -- hang on one

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Proceedings

1 second. Let's go off the record for one second.

2 (Whereupon, at this time a discussion was then held
3 off the record.)

4 THE COURT: What I understand, they're still
5 working on fixing the note on which exhibits they want so
6 this is not a gating item. I'm just going to ask the
7 officer to convey to them, I got their note, thinking about
8 it and we'll address it on Tuesday. I'm just going to tell
9 them to keep deliberating till close to five and then come
10 back Tuesday and, in the meantime, I'll think about anything
11 particularly that I can say to them and I do want the
12 alternates to be back on Tuesday.

13 MS. EISENBERG: Your Honor, we have additional
14 copies of the list they requested. We previously provided
15 one copy, and we have five more copies in case that's
16 useful.

17 THE COURT: You gave them the list of the exhibits?

18 MS. EISENBERG: Yes, with everyone's consent.

19 THE COURT: We'll deliver that up to them.

20 All right, everyone, so we'll convey that message.
21 I'll think about this and let's mark this one as Court
22 Exhibit XV.

23 (Whereupon, at this time Court Exhibit IX was so
24 marked.)

25 THE COURT: All right, why don't you all just stay

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Proceedings

1 just in case we get a different kind of note for another
2 ten, fifteen minutes and we'll release them at around five
3 and tell them to be back nine-thirty on Tuesday.

4 Is the thing that you sent -- oh, it has a link.

5 MR. SHIFFMAN: We cut and pasted the relevant
6 paragraphs right below it. That's the only part of the
7 guidance. The link will take you to the full guidance.

8 THE COURT: So what you just sent just gives the
9 part of the guidance that gives the example?

10 MS. STERN: In the e-mail we cut and paste what I
11 read into the record, but I put the link to the entire
12 document. Did it not --

13 THE COURT: I just got a printout of the e-mail,
14 which doesn't have the --

15 MS. STERN: Okay. The link is --

16 THE COURT: I see it.

17 MS. STERN: I could download it as a PDF and send
18 it to the chambers. I just need a second to do that.

19 THE COURT: Send it to everyone.

20 MS. STERN: I will.

21 THE COURT: Thank you. I will say I think this
22 example is kind of helpful to understanding what this is
23 for, and it is not quite as narrow -- it's is like we're
24 receiving the magazine. You still need to be a member of
25 the class that the organization is there to serve, which,

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1 again, the -- I guess the question of what do you do with
2 these satellite entities that the NRA supports? They're not
3 members, but they serve members in sort of an ancillary way.

4 MS. STERN: I guess part of what the example is
5 getting to is that in the normal course, like legal services
6 organization, like Legal Aid is going to serve people and
7 give them protection in an eviction proceeding if they make
8 under \$40,000 a year, you have a community member on the
9 board meets -- fits the class of people that, you know, are
10 in that income level and they get evicted, they can get
11 services. They're not precluded and have to go through Bronx
12 legal services because they're on the board.

13 THE COURT: Right, and the analogy of what the NRA
14 does with its education programs or training, is you
15 couldn't keep a related party from enjoying the benefits of
16 those programs, educational or instructional or whatever
17 else they might be and that's what I think this is about.
18 That's the analogy here, which is why I don't think any of
19 the ones that we've talked about really make any sense to
20 me. The "solely" word is important there. That's not a
21 word that legislatures use casually.

22 MS. STERN: I think that's exactly the kind of
23 example that Mr. Frazer gave, is everyone is entitled to
24 this. I come in and I'm a related party. If I fit all
25 those criteria and -- and the service is something that is

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1 mission -- advancing or tied to the mission.

2 THE COURT: You couldn't be kept out of a Women's
3 Leadership Forum, for example, from going to the meeting or
4 if they have a dinner for all of the members of the forum,
5 you couldn't be kept out of that.

6 MS. STERN: By virtue of just purely as a related
7 party.

8 THE COURT: It is not a related-party transaction
9 because you had dinner with everybody else at the forum
10 meeting. The -- and not everybody at the forum meeting got
11 a thousand-dollar hair and makeup as part of it. That was
12 done -- I keep going back to that one because I think that's
13 further afield as part of a presenter, which is not a solely
14 as a member of a class. You're chosen specifically. You,
15 not just as a member of a class to be part of this forum,
16 and the decision to choose a related party is up to the
17 entity. So, when you are chosen to do that, that's one
18 thing.

19 And the -- again, the satellites, satellite
20 entities -- there's precious little evidence in the record
21 here about the specifics of Mrs. Hammer -- you know, I'm
22 trying to get to the point is there anyone on this list --
23 maybe you get to write me another letter if you want to, but
24 I think defendants have to explain to me how any of the --
25 the transactions that are in the verdict form could possibly

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Proceedings

1 fit within. Because if the answer -- and I'm -- if I end up
2 being persuaded that there is no rationale argument that any
3 of the listed ones could be within that exception, then I
4 can just tell them that, that exception is irrelevant to any
5 of the listed transactions.

6 On the other hand, if it is possible that it could
7 be, then I would just use this guidance to say this is the
8 kind of thing they're talking about and you can decide
9 whether anything that's on that list is within that ambit.

10 All right, I think that's as far as we can go with
11 this today. I'm happy if people want to submit a short
12 letter, just because I miss hearing from you already, that's
13 fine.

14 No, I do take it seriously. I mean, any jury note,
15 you never know what people are thinking. They could be
16 either reading this too narrowly or too broadly or
17 completely irrationally and I don't know, and I don't want
18 to leave them confused. It is a little delicate when you
19 get a question like this that is sort of substantive because
20 I'm very hesitant to skew their discussions, and I do think
21 this is kind of a far-afield part of the definition of
22 related-party transaction that I have never heard anyone
23 mention until at least I didn't until just now. But, I can
24 understand why the defendants are interested because if the
25 jury is interested, it is one of those that can only help if

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1 you're looking at it from their perspective, so I get it. I
2 will give it a good look and let you know on Tuesday.

3 MS. STERN: Thank you, your Honor.

4 THE COURT: All right, I'll be in the back room
5 there. Might as well stay here in case something comes up
6 in the next five minutes.

7 MS. EISENBERG: Thank you, your Honor.

8 (In recess)

9 * * * * *

10 (Whereupon, at this time the trial was adjourned
11 to continued on Tuesday, February 20, 2024.)

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1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK: TRIAL TERM PART 3
3 - - - - - X

4 PEOPLE OF THE STATE OF NEW YORK, BY
5 LETITIA JAMES ATTORNEY GENERAL OF THE STATE
6 OF NEW YORK,

Plaintiff,

- against -

INDEX NO.
451625/20

7 THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
8 WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
9 and JOSHUA POWELL,

Defendants.

- - - - - X

60 Centre Street
New York, New York
February 20, 2024
JURY TRIAL

12 BEFORE:

HONORABLE JOEL M. COHEN,

Justice, and a jury

14 APPEARANCES:

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Official Court Reporter

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1 THE COURT: Good morning, everyone. I think the
2 only order of business is to have the Court's response to
3 the juror question we received Friday afternoon stamped as a
4 Court Exhibit and hand it up to the jury.

5 So, can we mark this as Court XVII.

6 (Whereupon, at this time Court Exhibit No. XVII was
7 so marked.)

8 THE COURT: Just for the record, I'll read into the
9 record the response, which I'll just note that I did share
10 with counsel for all parties over the weekend and made
11 some -- a couple of revisions to address comments, but
12 here's the response:

13 On Friday afternoon I received a juror note asking
14 for an explanation in layperson's terms of item number three
15 on page 47 of the Court's instructions. That term describes
16 a type of transaction that is defined by the N-PCL statute
17 not to be a related-party transaction.

18 It reads as follows:

19 "The transaction constitutes a benefit provided to
20 a related party solely as a member of a class of the
21 beneficiaries that the corporation intends to benefit as
22 part of the accomplishment of its mission, which benefit is
23 available to all similarly situated members of the same
24 class on the same terms."
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Proceedings

1 Here is some additional guidance, which should be
2 considered part of my instructions. To come within this
3 provision, the transaction must involve a benefit that the
4 company provides as part of its mission to an entire group
5 of which the related party just happens to be a member. It
6 must be a situation in which the only reason the related
7 party receives the benefit is because he or she is part of
8 that group, not because he or she is a related party.

9 Essentially, the company would have to make a
10 special exception to exclude the related party from
11 receiving a benefit that otherwise would be available to
12 him, her or it because of membership in a group that the
13 company's mission benefits.

14 An example from an unrelated context of a type of
15 transaction that could fall within this definition might be
16 helpful in explaining it:

17 A legal services program agrees to handle the
18 eviction case of one of its board members who is eligible
19 to be a client and who is serving as one of the minimum
20 number of client-eligible board members that is required by
21 federal regulations. The decision to accept the case is
22 made pursuant to the organization's established case
23 acceptance policy about regard to the client's status as a
24 board member.

25 So, I will have a few copies made for counsel and

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Proceedings

1 also for the jury, and we'll send that up.

2 I believe the jury is also waiting on documents
3 that they had requested. Are those compiled?

4 MS. CONNELL: Your Honor, we have gathered all the
5 documents from plaintiff. We've given them to defendants to
6 review, and I think we're waiting for one document from the
7 defendants to be added to that pile.

8 THE COURT: I'd like to -- do the defendants have
9 that one document?

10 MS. EISENBERG: We're presenting it right now, your
11 Honor.

12 THE COURT: Why don't we send up now what we have
13 and say one more is coming; is that all right?

14 MS. EISENBERG: Certainly, your Honor.

15 MR. THOMPSON: We have a copy.

16 MS. EISENBERG: Great.

17 THE COURT: Is that the last one, right there?

18 MS. EISENBERG: It is, your Honor.

19 THE COURT: Then we have a complete set.

20 MS. EISENBERG: Your Honor, may I provide you with
21 a quick update about the list?

22 THE COURT: Sure.

23 MS. EISENBERG: On Friday, jurors requested a list
24 of all exhibits which the parties provided over the weekend.
25 We identified six exhibits that were not listed and one that

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1 was, but should not have been.

2 We believe we have consensus, and we'll be
3 presenting a revised list shortly, and we'll work with the
4 court officer assuming that's okay with the Court to get the
5 revised list to the jurors.

6 THE COURT: That will be fine.

7 MS. EISENBERG: Thank you, your Honor.

8 THE COURT: Give them a copy each. I want the
9 jurors to have six.

10 COURT OFFICER: I have six.

11 THE COURT: And one for Sharon, the original for
12 Sharon.

13 All right, is that all we have for this morning?

14 All right, I'm going to be back and forth
15 downstairs. I'll be, obviously, paying attention for any
16 notes or alerts. Just make sure you're reachable at the
17 contact numbers and see you shortly.

18 (In recess)

19 * * *

20 (Continued on next page)

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Proceedings

1 THE COURT: We have a fairly simple note I think.

2 The entirety of it is, quote: "Caused monetary
3 harm --" harm underlined -- "to the NRA," closed quote.
4 "Can you please explain what this could mean?"

5 So, they are presumably referring to Questions 2B,
6 3B, and 4B which is sort of the middle question after
7 do you find there's liability and the third question is what
8 are the damages; there's a bridge question of any financial
9 harm. I would urge us not to over think this too much.

10 I think "financial harm" means a financial loss --
11 I'm sorry -- "monetary harm" means any financial loss, and
12 then what I would propose to do is to refer them to the
13 damages instructions on page 64 to 65, which state that, The
14 appropriate measure of damages requires putting the
15 beneficiary -- here the NRA -- in the same position
16 financially in which it would have been if the violation had
17 not occurred.

18 MR. CORRELL: Your Honor, my concern is that we're
19 blowing past the word cause and causation, which is a very
20 important concept here. Not just the harm, but causation.

21 Our position is that there is no evidence of
22 causation.

23 THE COURT: Well, that's why -- well, I guess my
24 reference to the -- I skipped over the damages part about
25 causation which is in there as well, but the causation is

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1 the same. That middle question whether it caused financial
2 harm or whether it caused damages, it is the same question.
3 We asked it with -- I can't recall exactly what the
4 evolution of these questions were, but they're focussing on
5 a bridge question which is not supposed to be that
6 significant. It's just you don't calculate damages if you
7 conclude that there was no harm. That's really the purpose
8 of that.

9 So, what would you suggest I add to what my
10 description was?

11 MR. CORRELL: I think there's language about
12 substantial factor.

13 THE COURT: Yeah, that's fine. I mean, I'm happy
14 to --

15 MR. CORRELL: Mr. Farber has just shown me the
16 language "A violation causes a loss if it was a substantial
17 factor in causing that loss."

18 THE COURT: Yeah, look, I'm happy to reference that
19 as well. The word they underlined was "harm." I think what
20 they're signalling is they don't know what harm connotes;
21 and then it is followed by a damages question and then maybe
22 they're wondering maybe it could mean something else and it,
23 frankly, doesn't. It could have as easily had said damage
24 so --

25 MR. CORRELL: Right, and the other concept is that

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Proceedings

1 treating that, the cause to an individual defendant; you
2 have three individual defendants and so I would not like it
3 if the jury were to think that if any of the three
4 defendants caused harm that somehow all three were
5 responsible for that.

6 MS. CONNELL: Your Honor, the pages in the
7 instructions that you reference talk about that specifically
8 and address that concern specifically.

9 THE COURT: Yeah, I agree. I didn't read that when
10 I read before.

11 MR. CORRELL: Your Honor, my other concern is that
12 they -- the AG did not offer an expert on damages or on
13 causation and Mr. LaPierre did, and I intend to move under
14 CPLR 4404 for judgment as a matter of law on that point.

15 I have a case that I can cite to you on that point,
16 so I think we need to be very careful about this issue of
17 causation and damages.

18 THE COURT: I don't think we need to be anymore
19 careful than we were in the instructions, which covers all
20 of this. So, I'm fine making the point and referring them
21 to the entirety of the damages section, which includes the
22 comment with the instruction that if you find that during
23 the relevant period any of the individual defendant's
24 conduct violated the duties to the NRA, then you must
25 determine the amount of monetary damages to compensate the

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Proceedings

1 NRA for losses caused by such violations. A violation
2 causes a loss if it was a substantial factor in causing a
3 loss.

4 So, I'm fine with repeating that, as well.

5 MR. CORRELL: Can I give you a citation to
6 Gonzalez versus Village Taxi Corp., 155 A.D.3d 696, in which
7 the Appellate Division reversed a judgment of the trial
8 court saying that the plaintiffs did not present any experts
9 to instruct the jury on their theory or any other economic
10 theory espoused by their counsel. The plaintiffs also
11 failed to present any expert testimony on the calculation of
12 any financial damages. Gonzalez, herself, could only guess
13 at the alleged losses.

14 THE COURT: Yeah, this is all your posttrial motion
15 if they come out against you. That has nothing to do with
16 answering question.

17 This question is just, I think, requires me to
18 refer them back to the damages section of the -- of the
19 instructions and that, you know, the phrase "monetary harm"
20 is not intended to mean anything other than the monetary
21 damages.

22 That's really I guess the simplest way I can put it
23 is that it means monetary damages.

24 And "caused" means -- I'll refer back to both of
25 them.

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1 I'm trying to find out if we can bring them in and
2 do it orally or spend the time to write it up; but your
3 argument is a different thing which is whether if they come
4 up with a verdict will you be able to succeed on a motion
5 notwithstanding the verdict, and I'm not addressing that
6 right now.

7 Does anybody have a different view of what I'm,
8 essentially, coming down which caused monetary harm is
9 effectively the same thing as monetary damages to the NRA.

10 MS. CONNELL: No objection from the Plaintiff, Your
11 Honor.

12 THE COURT: And then anything from defense?

13 MS. EISENBERG: We agree with your Honor.

14 MR. FARBER: No objection, your Honor.

15 THE COURT: And then the caused monetary damages,
16 I would just refer them to the damages instructions, which
17 talk about both cause and damages and what both of those
18 mean.

19 MS. EISENBERG: That sounds good, your Honor.

20 THE COURT: I think it is a fair question because
21 they're probably wondering why we use a different word
22 "harm" in the second question and then "damage" in the third
23 question, which I suppose is a question we could ask
24 ourselves. But there may be some cases I'm trying to
25 remember that. If there is no harm, you don't move on to

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Proceedings

1 damages, but it is effectively the same question.

2 MR. CORRELL: I would just like to, again, repeat
3 my objection for the record to our position that in order to
4 recover monetary relief under 720, there has to be
5 allegation and proof of knowledge of unlawfulness.

6 THE COURT: Understood. Well, why don't we give
7 them a break. I'll bring them out here and just tell them
8 very quickly what the answer to this is rather than having
9 them wait.

10 So, let's bring the jury in.

11 While we're waiting for them, let's me mark this
12 note as Court Exhibit XX.

13 (Whereupon, at this time Court Exhibit XX was so
14 marked.)

15 THE COURT: I'm marking this as Court Exhibit XX
16 because I think there were two earlier exhibits that were
17 supposed to be X and XI, which are now going to be XVIII and
18 XIX.

19 MS. EISENBERG: I have them right here. These are
20 clip reports for Ms. Meadows and --

21 THE COURT: And which one is which number?

22 MS. EISENBERG: XVIII is Mr. Spray and XIX is
23 Ms. Meadows.

24 THE COURT: I'll ask the court reporter to mark
25 those as XVIII and XIX, Court Exhibits XVIII and XIX.

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1 MS. EISENBERG: Thank you.

2 (Whereupon, at this time Court Exhibit XVIII and
3 Court Exhibit XIX were so marked.)

4 MS. CONNELL: Your Honor, there was one other
5 matter that had to do with clip reports that, erroneously,
6 were not entered into evidence, correctly recorded into
7 evidence; and that has to do with the clip report relating
8 to Gayle Stanford.

9 It was a document that was admitted during her --
10 during her testimony. It was displayed to the jury. It is
11 PX 783. It was technically never admitted into evidence.

12 While we're preparing with the defendants the
13 updated exhibit list, there was another example like that
14 which we agreed to, it was shown to the jury, admitted.

15 THE COURT: My intention was when I overruled
16 objections, a document that was part of the testimony and
17 that was shown on the screen was admitted. We didn't -- we
18 didn't do that in all cases, but I think they were intended
19 to be admitted if I didn't say the words. That was
20 certainly the intention.

21 MS. CONNELL: This was PX 783. That's the example.
22 We sent an e-mail about this I believe to the Court. I
23 understand everything was a mess -- not a mess -- and
24 everyone was busy and we should have brought this -- I
25 understand we were all busy at the end of trial. I should

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Proceedings

1 have moved at that time, but I ask this be deemed --

2 THE COURT: PX 783 is admitted. That's not a new
3 admission. Just to be clear, I have intended to admit that
4 at the time it was shown. I wouldn't have permitted it to
5 be shown to the jury if it wasn't admitted. I appreciate
6 the cleanup.

7 MS. CONNELL: Thank you.

8 THE COURT: Is that one of the documents the jury
9 requested?

10 MS. CONNELL: No, no, your Honor.

11 THE COURT: Okay.

12 MS. EISENBERG: Your Honor, you asked about the
13 volume of all exhibits put together. Two copies of
14 everything just comes up to four boxes.

15 THE COURT: Of everything?

16 MS. EISENBERG: Correct.

17 THE COURT: Plaintiffs?

18 MS. EISENBERG: Correct.

19 THE COURT: At this point they haven't made a
20 request for everything to be up there. I guess, in
21 retrospect, that might have made things go a little more
22 quickly; but whatever they want, if they come up with a
23 longer list, I may just suggest sending it all up.

24 MS. EISENBERG: Thank you.

25 COURT OFFICER: All rise, jury entering.

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Proceedings

1 (Whereupon, at this time the jury then entered the
2 courtroom.)

3 THE COURT: Good morning, everyone. Have a seat,
4 please.

5 So, thank you very much for your note. I figured
6 I give you a change of scenery rather than giving you
7 another note back to you. We appreciate your time and
8 attention.

9 But just to address this one, and for the record,
10 I'll just read the note out. It says, quote:

11 "'Caused monetary harm --" with harm underlined --
12 "to the NRA.' Can you please explain what this could mean."

13 Very simply, it means essentially the same as the
14 references to monetary damages in the instructions; and just
15 to be clear, I know you have a copy of these upstairs, but
16 on pages 64 and 65, describes the damages with respect to
17 the N-PCL claims which is where the language you quote comes
18 from in the verdict sheet, and just to read it out one more
19 time:

20 "If you find that during the relevant period any of
21 the individual defendant's conduct violated their duties to
22 the NRA, then you must determine the amount of monetary
23 damages to compensate the NRA for losses caused by such
24 violations."

25 "A violation causes a loss if it was a substantial

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Proceedings

1 factor in causing that loss."

2 Then later on in the instructions and, obviously,
3 all the instructions are relevant; but the instructions note
4 "That the appropriate measure of damages requires putting
5 the beneficiary (here, the NRA) in the same position
6 financially in which it would have been if the violation had
7 not occurred. Any damages you award must be reasonably
8 related to the evidence and testimony received during the
9 course of the trial."

10 So, effectively, that financial harm question is
11 just a bridge from the liability question to the damages
12 question.

13 So, if you find that there is some harm, meaning
14 some damage, you answer "yes" to that one and then move on
15 to the damages question.

16 If you answer "no," that there was no harm, meaning
17 no damages at all, then there's no need to calculate
18 anything in the next question.

19 So, that, hopefully, simplifies a response to that
20 question.

21 So, with that, I gave you a bit of a walk; and,
22 again, I encourage you to listen to each other and keep
23 plugging away and we'll be here to answer questions that you
24 have.

25 Okay, thank you very much.

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1 COURT OFFICER: All rise, jury exiting.

2 (Whereupon, at this time the jury then left the
3 courtroom.)

4 THE COURT: All right, have a seat. They seem
5 suitably illuminated by that description.

6 All right, I think that's all we have at the
7 moment. Except somebody --

8 MS. EISENBERG: Just confirming that it is our turn
9 to get their lunch and it is on its way.

10 THE COURT: Thank you very much for that.
11 Appreciate it. Thank you, all.

12 We'll be off from one to two. So if there are any
13 notes during that period, we'll be at it shortly after two.

14 (In recess)

15 (Continued on next page)

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AFTERNOON SESSION

* * * * *

THE COURT: We have an energetic and tech-savvy jury. I now have six notes for you. The good news about that is that four of them -- actually five of them are largely just list more exhibits.

I think we now have a large enough list of exhibits that it may just make sense to just bring everything up. I think it would conclude -- that would just be faster. Are those ready to go if we do that?

MS. CONNELL: They will be shortly, your Honor. I gather there are a few issues that need to be addressed, but shouldn't take long.

THE COURT: I'll give you all of these at some point, but I'll skip over for now the ones that are just lists of exhibit numbers because that doesn't really require any explanation.

Here's one, which I'll read. This is from the foreperson:

"Is it possible to perform a digital search on transcripts and/or evidence? For instance, using a find function to search for specific key words. Could the court provide us a laptop containing only the court record transcript or evidence. We believe this will expedite our view of the case."

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1 And then one of the lists of exhibits also includes
2 the following note, from one juror:

3 "I would like to see the list of exhibits. Also,
4 is it possible to see transcripts of all testimony that
5 discusses the post-employment contracts of WLP and Phillips?
6 Is there an easy way to search for this in the record?"

7 I think the answer to that is no, it's not an easy
8 way; and nor would having a laptop, really at least in my
9 experience be all that easy because the transcripts are all
10 day by day, and you'd have to have a single file, which we
11 don't have.

12 MS. EISENBERG: Your Honor, we created over the
13 weekend a database with transcripts broken up by
14 witness/date. So, if let's say you wanted everything
15 that's said by Witness A about Topic X, we could run that
16 search.

17 In addition, we created a database of all admitted
18 exhibits, which would enable us to quickly run a search.

19 For what it's worth, I just wanted to let you know
20 we do have that capability.

21 MS. CONNELL: Your Honor, it is possible to combine
22 all of the transcripts into one searchable document. That's
23 how we've been proceeding. I think we're up to -- I think
24 we have it ready.

25 THE COURT: Look, I mean, typically, in the

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4810

1 traditional sense you have a read-back. I have some
2 sympathy for them not wanting to come and do it in that
3 form. And having the transcript in a way that they can
4 search is unusual, but I understand where they're coming
5 from. It is a very large record and some ability, like we
6 all have, to search for things. I mean, they may not
7 realize first of all that each transcript day has a list of
8 words at the end as well, which is somewhat helpful.

9 So, look, I'm flexible unless a party considers
10 there to be some prejudice to them being able to have an
11 electronic version of the transcript that they can navigate.

12 Do any of the parties object to that on substantive
13 or procedural grounds?

14 MR. FLEMING: Before I say whether I object, there
15 are portions of the transcript, of course, which are outside
16 the jury's hearing.

17 THE COURT: That's a good point. So, whatever we
18 would have to do, we would have to edit the transcript to
19 carefully exclude anything where the jury wasn't present,
20 which will take time.

21 MR. FARBER: I just think the answer to these
22 questions needs to be "no", Judge.

23 THE COURT: Well, is there any reason other than
24 it's hard?

25 MR. FARBER: Well, I mean, I think procedural

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1 problems like that, there may be others like this one just
2 occurred.

3 THE COURT: Well, let's assume -- assuming there's
4 a way to limit it to transcripts that they could clearly
5 request to be reread, is there an objection if we were able
6 to limit it to that, to having them be able to access it in
7 a 21st century manner?

8 MR. FARBER: I guess I'm just trying to envision
9 how that's going to be. In principle, no, but --

10 MS. EISENBERG: Your Honor, if I may suggest, I
11 think what we should do is advise them that we will enable
12 them to run the searches that they want themselves after
13 we've cleaned up the record so that they're not seeing what
14 Mr. Fleming identified. And then I think in the meantime,
15 we have ability to run searches and particular terms if they
16 wish to have a read back on a particular topic.

17 MS. CONNELL: Your Honor, I do think cleaning up
18 the record so-to-speak is going to take quite of bit of time
19 to be careful. So, I would think in the meantime, while
20 that may be something we can work on in the background, in
21 the meantime we may want to try and do a read-back in the
22 more traditional sense.

23 THE COURT: I think what they're saying to us is
24 they don't know exactly what they would ask for a read-back
25 on. They sat through six weeks of really detailed

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1 testimony; and, frankly, like all of you have, they want to
2 be able to use navigation tools that we all use in our daily
3 life to hunt and find things that they may not remember
4 exactly.

5 Like I said, it is a savvy question, and I -- if it
6 can be done in a way that doesn't prejudice anyone, I'd like
7 to see if there's a way to do it.

8 And, all right, so there's two parts of this: One
9 is the analogue, which is just getting their requests for
10 exhibits which, again, I think the answer to that one is
11 going to be just give them everything. And you have -- we
12 can give a 90-something percent version now and just
13 supplement it?

14 MS. CONNELL: Yes, your Honor. And I actually
15 think we already pulled the bulk of what at least the first
16 three notes are.

17 THE COURT: Yeah, there are more.

18 All right, what I'm going to do is I'm going to
19 mark this whole thing as a group as Court Exhibit XXI so
20 that you can all look at it in a clump. So, we'll just make
21 it a single exhibit with multiple pages.

22 (Whereupon, at this time Court Exhibit XXI was so
23 marked.)

24 THE COURT: So, I think the message back to the
25 jury for now is, look, we're going to go ahead and give you

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4813

1 all the exhibits that are admitted. We'll give you the bulk
2 of them now and we may be some supplementing we'll do
3 shortly.

4 MS. EISENBERG: Your Honor, the full set should be
5 ready in a matter of two minutes.

6 THE COURT: All right, we'll do that. And I'll
7 convey to them through the officer that we're trying to work
8 through their more technological request to see if it is
9 feasible.

10 I don't know if I want to say anything like "In the
11 meantime we'll run searches for you." Having tried
12 searching this transcript, it's too much an iterative
13 process with judgment built in as to what exactly you would
14 conclude is responsive to a particular topic.

15 Again, somebody did ask for testimony about certain
16 transactions. I think on that one, they would have to say
17 we want to hear from the expert. If they made a request
18 saying we want to hear from the expert and Mr. Phillips
19 about this, then I think we have a more narrow range to come
20 up with what the read-back would be; but I think that's too
21 broad the way they described it.

22 It is not unfair from their perspective to say we
23 don't know exactly what we're looking for because it's been
24 six weeks, so I'm going to take it in steps.

25 We'll send the documents up as soon as they're

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1 ready, and we'll tell them we're going to think through the
2 tech requests to see if there's anything we can do that
3 would be helpful. And I guess I'd ask the parties to think
4 about it a little bit more, to try to be as creative we can
5 without causing anybody any prejudice.

6 I appreciate Mr. Fleming pointing out there were
7 some parts of the transcript that by definition, they should
8 only see the portions of the transcript that are with the
9 jury present.

10 MS. CONNELL: Your Honor, it might make it slightly
11 easier it seems like the transcript has notations when
12 there's direct and cross and when there's a proceeding and
13 jury charge conference. That should help with the big sift
14 and then there might be some side bars. We wouldn't have
15 too many that have to come out.

16 THE COURT: And we may, ultimately, say you're
17 going to have to ask for the testimony by person.

18 Also, does the transcript have a particular
19 indication when the jury is present when the jury is
20 excused? It has to be something that people can search for.
21 Otherwise, it's going to be a daily log through. So, it may
22 be just technologically difficult, given that some parts of
23 the testimony was off -- outside the jury's presence.

24 So, let's take it in stages. For now, let's get
25 them the documents as soon as they're ready, which I assume

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1 is soon.

2 You know what, let's bring them down. I'll explain
3 to them what we're doing.

4 MS. EISENBERG: Your Honor, the boxes are ready.
5 We're just getting a dolly so we can wheel it over.

6 THE COURT: Thank you.

7 COURT OFFICER: Ready for the jury?

8 THE COURT: Yes.

9 COURT OFFICER: All rise, jury entering.

10 (Whereupon, at this time the jury then entered the
11 courtroom.)

12 THE COURT: Hello, folks. Have a seat.

13 So, thank you for your note. I do appreciate how
14 diligent you're being.

15 The first set of notes where it more or less says
16 exhibits, I think the conclusion is that I've drawn and the
17 parties agree we're just going to give you all the exhibits
18 and just have them moved up.

19 It's a few boxes and that way -- they're all
20 numbered so you can pick the ones that you want rather than
21 do the list again. In hindsight, I probably would have done
22 that from the beginning, but you never know how many;
23 documents the jurors are going to want to see. But since
24 you had a lot on your list, we're going to do that.

25 The technical questions you've asked about,

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1 transcript searching and record searching is more
2 complicated than it might seem, and we're going to continue
3 thinking about how we can do it. Some of you or maybe all
4 of you are tech savvy enough to get all this; but parts of
5 the transcript were outside the jury's presence. So we have
6 to limit ourselves to the parts that you've heard. They're
7 also all in separate files for each day, so they're not one
8 sort of large document that one can search through.

9 So, there's some logistical hurdles that we're
10 trying to figure out. The traditional way would be, again,
11 it is a long trial, I know; but if it was "We want to see
12 the testimony of the Expert X or a Witness X," and then we
13 can more quickly to get that. And it may be a little more
14 tedious to do it that way, but that's the traditional way.
15 But the search way will require a fair amount of prep work
16 that has not been done to ensure that you get every access
17 to things that you've heard which is really all you're
18 supposed to get.

19 So, we're going to work on that while we wheel up
20 the few boxes. So that anything you want that's been
21 admitted, should be in those boxes.

22 So, we'll keep thinking about it; but in the
23 meantime, if there are particular witnesses you want to see
24 the testimony of, we can either do it by read-back or some
25 other way of getting that to you more quickly.

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1 I understand the question. It was sort of a
2 thoughtful approach to trying to figure it out, but it is
3 not as easy as it might seem.

4 Okay, so, we'll let you go back. We'll have the
5 court officers bring the boxes up that you can then have at
6 your disposal.

7 Thank you very much.

8 COURT OFFICER: All rise, jury exiting.

9 (Whereupon, at this time the jury then left the
10 courtroom.)

11 THE COURT: All right, have a seat. So, I'll ask
12 you folks to think about whether there's a way that you can
13 all agree on to make the access to the whole transcript
14 realistic. One thing I would ask us to think about is
15 rather than the read-back approach -- which is notoriously
16 time consuming and laborious, certainly can ensure that
17 there's just transcript portions they have already heard --
18 whether we would agree to just give them the transcript
19 pages that they can read at their leisure rather than having
20 to sit through a read-back which I've always found to be an
21 odd way to do it anyway.

22 So, my preference would be unless there's some
23 disagreement. If they do say, We want to see Mr. X or
24 Ms. X's testimony, to just edit out anything that was off
25 the record, but then just give them the transcript pages.

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1 Does anybody have an objection to at least that
2 logistical part?

3 MR. FARBER: No, your Honor.

4 MS. CONNELL: No, your Honor.

5 MR. FARBER: No, I would just add to that. I think
6 it also to have edited out things that were stricken,
7 objections that were sustained.

8 THE COURT: Agreed. It is going to take a little
9 work, and it is the kind of editing that you can do on the
10 fly if you're doing a read-back. That will require actual
11 cutting and pasting. So, think it through. You have a lot
12 of large brains out there in the audience here. If you can
13 think of a more efficient way to do it, I'm happy to
14 consider it. Okay.

15 I'll see you for the next five or ten minutes. I
16 have a hearing in 208, I'll be in for an hour or so. We'll
17 get interrupted with a note if need be; and if it seems to
18 be something that requires immediate attention, then I'll
19 take a break from the hearing. If it doesn't, I'll finish
20 the hearing and then come up here and deal with that.
21 Thanks.

22 (In recess)

23 (Continued on next page)

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Proceedings

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THE COURT: So, where are we on the transcripts?

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MS. CONNELL: Your Honor, Mr. Fleming's tech, Mr. Marment -- I hope I'm pronouncing that correctly -- had started pulling the combined transcripts and pulling out proceedings, large chunks of things we all agree don't belong there. We had asked defendants if they would agree to this proposal of submitting the transcripts in searchable form if we can make it work to the jury because we think given the volume of information here, the way people think and search it out, that that's the best option and I don't want to take it upon myself to represent the defendants' positions. We have a couple --

THE COURT: Why don't you give me your position and I'll ask them their position.

MS. CONNELL: Our position is we have to go through and make sure that all of the proceedings come out. We should probably take out things that were stricken and sustained. Objections maybe that might be too much, there's a lot of them.

THE COURT: I don't have a problem if you do take out sustained objections and take out the question that they relate to.

MS. CONNELL: Yeah, so that will take a little time. It is definitely not something that can be done by

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Proceedings

1 five today.

2 THE COURT: Agreed.

3 MS. CONNELL: So that --

4 THE COURT: So, subject to that process which I
5 know is not a lot of fun, no substantive objections to
6 giving the output of that process.

7 Now, we have to have some device that has no
8 internet and no other data on it. Does any such device
9 exist that you all trust?

10 MS. CONNELL: Your Honor, I understand someone had
11 spoken to court technology about whether there was a laptop
12 or something for which this could be done. I would just say
13 plaintiff's position is it is kind of hard to find a laptop
14 that doesn't have access to the internet, but any juror has
15 access to the internet at home or on their phone. We're
16 trusting them to follow their instructions.

17 THE COURT: I suspect it can just be disabled.

18 MS. CONNELL: So, it's plaintiff's position to make
19 this happen if it's at all possible.

20 THE COURT: Defense?

21 MS. EISENBERG: Your Honor, the NRA agrees that the
22 jury should receive a searchable version of the transcripts
23 of what they saw during the trial.

24 In addition, we think they should get transcripts
25 of openings and closings, as well as demonstratives as well.

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Proceedings

1 Obviously, that sort of broadens the number of issues --

2 THE COURT: Well, openings and closings would still
3 be within the context of anything in the transcript that
4 they saw. So, the openings and closings. But the
5 demonstratives, I've already given my ruling on that. If
6 they were without -- the default rule is no demonstratives
7 in the jury room and unless we now have a consent from all
8 parties, I'm going to continue with that.

9 But, the openings and closings are part of the
10 transcript.

11 MS. EISENBERG: Very good, your Honor. Thank
12 you.

13 MR. CORRELL: That's fine with Mr. LaPierre.

14 MR. FARBER: And I object to that, your Honor.
15 Openings and closings are not evidence, and they're not --
16 I've never heard of a case in which those go back to the
17 jury. I don't think it is appropriate, and I object to it.

18 In addition, to the matters that the State outlined
19 it should be excised from the transcript, I think colloquy
20 from counsel, things like speaking objections should be
21 excised as well; and there was a lot of that during the
22 course of this trial and some of which were speaking
23 objections that characterized evidence or arguments that are
24 being presented.

25 MR. FLEMING: Your Honor, rightly or wrongly, we

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Proceedings

1 took the openings and closings out already. They can be put
2 back in, but I just wanted to make that note.

3 Otherwise, I have no objection to using a
4 searchable.

5 THE COURT: All right, well, look, in terms of the
6 objection from Mr. Phillips' counsel, the jury heard all of
7 these things; and if they came and asked for a read-back
8 saying, We thought there was a good summary in one of the
9 closings, we want to hear that again, I would let them hear
10 it.

11 I don't really understand the rationale behind it
12 being a memory test, that if they want to hear again things
13 that happened in openings and closings, I certainly don't
14 see anything prejudicial about it. It just gives them a
15 more reliable transcript to turn to than their memory might
16 be. So, I'm going to ask you to do it.

17 Now, they haven't asked for openings and closings
18 specifically, so I'm okay starting with what they have asked
19 for, which seems to be the testimony. If they ask for
20 the openings and closings, we can add that.

21 MR. CORRELL: Your Honor, how about the testimony
22 that came in by audio or video?

23 THE COURT: Well, the video won't be on the
24 transcripts. So, at this point, I would just stick with
25 what's in the court record. They know that they can do a

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Proceedings

1 hear-back on that stuff. The only way to do that is to come
2 back and listen to it again.

3 So, the audio and video that were not part of the
4 court's transcripts will not be part of this, and they have
5 to see that in the old fashion way.

6 MR. CORRELL: Would you just let them know that
7 that's available if they want to hear it?

8 THE COURT: I have no objection to that.

9 MR. CORRELL: Just because, otherwise, it leaves
10 holes in the transcript.

11 THE COURT: Well, the holes will be obvious because
12 they'll say "video was played."

13 MR. FARBER: Judge, I thought that there were
14 transcripts of what was played. Those were all --

15 THE COURT: Well, there are transcripts that were
16 rolled on the screen, but they're not going to be on the
17 court transcript.

18 MR. FARBER: No, I understand. I thought those
19 were done separately. I mean the parties I think had them
20 that we were looking at as we were watching.

21 THE COURT: Those may be the Court Exhibits that
22 were marked.

23 MR. FARBER: That's what I thought, your Honor.

24 THE COURT: That is not part of the official
25 transcript.

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Proceedings

1 If the jury wants to have a hear back of any of
2 that testimony; but instead they say, Well, we're fine
3 reading the transcript part if that's entirely clean, I'm
4 not going to stand on ceremony about that either. But right
5 now, we're just focused on the official court transcript.

6 So, let's do it. I understand from the officer
7 that IT can provide us -- this is now hearsay, so I'm not
8 offering it for the truth of the matter asserted. That we
9 can get a piece of hardware that not have internet access
10 and no extraneous programs, but you all can play with it for
11 awhile if you want to look at it and make sure.

12 MR. FLEMING: Your Honor, just before we leave this
13 subject, we did take a pass at taking out the big chunks.
14 There are these remaining portions, like, motions to strike
15 and sustained objections and all that.

16 We've given that to the Government. I assume
17 they're going to take the ball from here on those?

18 THE COURT: Look, I find I'm willing to do what the
19 parties are agreeable to. I mean, things that the jury
20 heard, in fact heard is pretty low priority editing for me
21 because they heard it; but, certainly, if it was stricken,
22 it should come out for sure.

23 I'm also fine if you have the bandwidth to do it to
24 take out -- you know, the long objections that are not
25 admissible evidence. But, I certainly -- I would not insist

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Proceedings

1 on it because if it was something they shouldn't hear, we
2 would have done it up at the bench.

3 Okay. Well, I appreciate you going through that
4 effort in part because it makes it less likely that you'll
5 write me letters during the night because you'll be busy on
6 something else.

7 But, I do, I think the jury seems to desire wanting
8 to really get their hands dirty in this stuff, which is
9 fine; but I would certainly want if we're going to do it,
10 give it to them tomorrow because I'd like to keep the ball
11 moving here.

12 And we can, by the way, can do it in pieces. If
13 you get through the first two weeks of the trial, and then
14 we'll give them the rest of it. It's not like they're going
15 to read it all in one sitting anyway.

16 MS. CONNELL: Certainly, your Honor. We'll
17 prioritize according to our discussion today and we'll
18 circulate it to the parties and the Court.

19 THE COURT: Do it from the part when the testimony
20 starts and we'll leave out for now the openings and
21 closings.

22 If they ask for it, I would provide it.

23 MS. CONNELL: Okay, thank you, your Honor.

24 THE COURT: All right, thanks everyone. Appreciate
25 it. The note, it is marked as Exhibit XXII, Court

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1 Exhibit XXII which was the note about Mr. Correll's favorite
2 article.

3 All right, thank you. See you all tomorrow, unless
4 I'm called down again, at least a half hour.

5 I'm going to bring the alternates back tomorrow.
6 I'm going to ask the alternates come back again tomorrow.
7 I'm going to consider that each day; but, for now, it's just
8 a precaution.

9 (In recess)

10 (Whereupon, at this time the trial was adjourned
11 and continued on February 21, 2024.)

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1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK: TRIAL TERM PART 3
3 - - - - - X

4 PEOPLE OF THE STATE OF NEW YORK, BY
5 LETITIA JAMES ATTORNEY GENERAL OF THE STATE
6 OF NEW YORK,

Plaintiff,

- against -

INDEX NO.
451625/20

7 THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
8 WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
9 and JOSHUA POWELL,

Defendants.

- - - - - X

60 Centre Street
New York, New York
February 21, 2024
JURY TRIAL

12 BEFORE:

HONORABLE JOEL M. COHEN,

Justice, and a jury

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Bonnie Piccirillo
Official Court Reporter

bp

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Proceedings

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THE COURT: Good morning, everyone.

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So, I understand from my law clerk that there may be some objection to complying with the jurors' request for the transcript?

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MR. CORRELL: Yes, your Honor. As I said to Mr. Blaustein, I hate to be the fly in the ointment; but on reflection it occurred to me that Mr. LaPierre's rights would be potentially highly prejudiced by allowing a transcript to go to the jury that was generated by over 40 hours of AG's time to his 9 hours, and where the AG had the privilege and the right to opening and closing and had resources of ten lawyers against his one.

I think that the jury -- I'm unaware of any precedent for doing this and, certainly, unaware of any precedent for searching, sending it back and allowing them to search. I'm concerned if they start searching by word search, the first ten or twenty hits will all be in the plaintiff's case and that because Mr. LaPierre came at the very end, that they might never get to the evidence that he put on to rebut the AG's allegations.

I think all things being considered, it would be best to not send a transcript back to the jury and certainly not to allow them to search it because I think it would be to the disadvantage of my client.

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Proceedings

1 THE COURT: Have you found any law one way or the
2 other providing that it is an abusive discretion to provide
3 the transcript in this way?

4 MR. CORRELL: I haven't looked yet, your Honor.
5 I'd be happy to look for some.

6 THE COURT: I haven't seen any one way or the
7 other. The part that I'm a little unclear about is, you
8 know, the trial happened. The transcript is simply a mirror
9 of the trial that they just heard. I'm not going to get
10 into details of your point about who had how much time. I
11 think the allocation of time was discussed at great length
12 and ended up being roughly equal plaintiffs across the
13 defendants.

14 So, what I'm having trouble understanding -- I
15 recognize it's unusual. I haven't had a request like this,
16 so I'm just trying to react to it in a rationale way. If,
17 as I assume we all agree, if they asked to have the
18 transcript read back, it is a hundred percent clear to me
19 that we would do that.

20 MR. CORRELL: I have no objection to that, your
21 Honor.

22 THE COURT: Right. So if -- given that, I'm having
23 trouble understanding the logic -- and, again, I recognize
24 doing something that we haven't seen before always raises
25 some questions. What could the marginal prejudice possibly

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1 be if instead of doing that, we provide the same exact data
2 to them in a simpler and more digestible form?

3 MR. CORRELL: One advantage in terms of fairness is
4 knowing what they have asked to be read back so we can tell
5 whether they're focussing on something that was appropriate
6 for them to focus on or not appropriate to focus. The --

7 THE COURT: Where does that fight come from?

8 The jury can look at whatever exhibits they want.
9 They have all of them up there. There's no due process
10 right to know what they're looking at.

11 MR. CORRELL: I'm not suggesting there is, your
12 Honor. I am suggesting if there were some rulings, close
13 rulings on excluding evidence or allowing evidence and that
14 becomes a focus of the deliberations, that that would inform
15 any posttrial motions.

16 THE COURT: Well, in any case, you have an appeal
17 and you make arguments about close evidentiary questions.

18 I'm not really sure I understand still the logic.
19 I think the searching part; I mean, at least I understand
20 your point there. But, I don't know, although it is new, it
21 still doesn't really make any sense to me that since they're
22 free to hear the transcript at their whim and we told them
23 that several times at the beginning and at the end of the
24 trial, they're requesting reasonable to me, if different.
25 So, you know, in the absence of some guidance that you can

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1 give me -- if all we're doing is just talking about what
2 makes sense, I think it makes sense to provide them what
3 they have asked for.

4 I will while we're still in the midst of doing some
5 editing to get rid of -- if that's what we're doing and
6 we'll get to that in a second. I'll give you a little bit
7 of time to search for any guidance that you can find that
8 would suggest that it would be an abusive discretion to
9 provide them the transcript in a way that I think most
10 people would agree is the more typical way people consume
11 information, which is electronically.

12 MR. FARBER: Judge, I agree that in principle
13 there's no distinction between giving them that, which would
14 be read back to them in court in a form that they can search
15 through. I think that the difficulty in respect in which
16 doing read-backs is a better process, it's just a logistical
17 one. Goes to the issue that I raised yesterday about there
18 is colloquy, there are questions as to which there were
19 objections that were sustained.

20 In theory, we could strip all of that out; but
21 that's going to take some substantial period of time to do.
22 And, so, the alternative we have is give them a transcript
23 that just has taken out the stricken testimony and things
24 that were outside their presence, but that's less than
25 ideal.

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1 So, there is a difference between what Mr. Correll
2 is advocating and what they would get from read-backs.

3 MR. FLEMING: And, your Honor, I really take no
4 position on it; but to Mr. Correll's point, there are cases
5 which say it is an abusive discretion not to tell the jury
6 not to emphasize a portion of testimony; and to his point,
7 that if they do a search and, let's say, there's twenty hits
8 and they reach the first ten and don't get to the second
9 ten, it would run potentially afoul of that rule.

10 MS. EISENBERG: Your Honor, if I may address
11 something that Mr. Farber just stated?

12 There are three questions that the NYAG asked to
13 which I and Ms. Rogers objected to on hearsay grounds and
14 one on privileged grounds, and your Honor sustained
15 objections to those three questions and we, respectfully,
16 request that those be redacted.

17 I don't believe that --

18 THE COURT: Were there answers given to the
19 questions?

20 MS. EISENBERG: No. The objections were timely.

21 THE COURT: So, they heard -- obviously live, they
22 heard the questions and the objections, but you wouldn't
23 would want them edited out?

24 MS. EISENBERG: Yes, because the questions to which
25 we objected embedded inadmissible and prejudicial matter;

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1 and further, Mr. Farber had time to identify any other such
2 instances that he believes fall into the same category and
3 he has not. And, therefore, I don't think that my request
4 should be overruled on the basis that Mr. Farber
5 articulated.

6 MR. FARBER: That, I disagree with that position.

7 What Ms. Connell did overnight was prepare a
8 transcript that redacted what was discussed with the Court
9 yesterday. If we're going to go through the process of
10 identifying those portions of the transcript which contain
11 questions as to which there was objection made, we can do
12 that now. But they all -- I think it is completely improper
13 just to remove some that the NRA cares about and not remove
14 the rest of them.

15 MS. CONNELL: Your Honor, plaintiff has prepared a
16 transcript as we discussed yesterday. What is removed is
17 are all proceedings that were outside the presence of the
18 jury, the word indices and any testimony that was stricken.
19 We shared that with the parties last night.

20 We received responses only from the NRA.
21 Ms. Eisenberg identified three instances where she wasn't
22 sure that the redactions were correct. I believe we
23 resolved all of those.

24 Ms. Eisenberg asked for the redaction of one series
25 of questions relating to objections; and I have to say, we

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1 share in Mr. Farber's objection to that because if we're
2 going to start taking out portions of testimony where
3 there's an objection sustained, that we think the question
4 itself was improper, I think that's a little bit of opening
5 the door.

6 I can give you some examples where we would have
7 the same argument. The jury was here. They heard the
8 questions. They heard the Court sustaining the questions,
9 sustaining the objection. We can even instruct the jury
10 about the effect of sustaining an objection.

11 In regard to the larger question here in
12 Mr. Correll's point; if the jury asks for testimony as they
13 did yesterday in one note they said, Hey, we'd like to hear
14 the testimony about Mr. LaPierre and Mr. Phillips
15 post-employment contract, as an exercise I went through the
16 transcript to find what I thought would be all testimony
17 relating to that. If you do that, you're going to -- it is
18 true you're going to come across -- and if we did that as
19 read-backs, what they're going to hear first for the first
20 twenty-five minutes is plaintiff's case, my questioning of
21 Mr. Phillips, cross-examination of Mr. Phillips.

22 That's how it is going to come in no matter how we
23 do this, if they're asking general questions. I think the
24 jury -- so that addresses Mr. Correll's concern about maybe
25 the plaintiff's case would come first.

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1 Well, that's how it will happen if they ask
2 generally. We can instruct the jury or give them some sort
3 of guide that here are the pages where each witness
4 testified on the plaintiff's case, the defendant's case. So
5 they can specify where they're looking, but I can't say that
6 that's prejudice because that's the approach the Court would
7 use in the read-back anyway.

8 And, frankly, your Honor, I just think this is a
9 complex case. The same witnesses testified often on the
10 plaintiff's case and the defense case, were subject to
11 lengthy crosses by their counsel and other defense counsel
12 on the plaintiff's case.

13 So, saying that only things bad for the defense
14 came out in the first half of the case isn't even really
15 accurate. I just think this is a sensible pragmatic way to
16 address the jury's -- the jurors' concern and to allow the
17 jury to deliberate in a timely fashion.

18 MS. EISENBERG: Last, but not least, your Honor,
19 if your Honor is inclined to sustain Mr. Farber's objection,
20 that there should be a redaction of all questions that were
21 objected to and to which objections were sustained; the NRA
22 is happy to undertake that effort. Based on my review of
23 the transcript overnight, I don't actually think it will
24 take that long, and we'll be happy to shoulder that burden.

25 MR. CORRELL: Your Honor, I have found one case

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1 while not directly on point casts some light on the point I
2 tried to make, which is the delicacy with which the Court
3 has to protect the record.

4 It says -- this is United States versus Arboleda,
5 20 F.3d 58, Second Circuit (1994).

6 "During deliberations on the same day of closing
7 arguments were given, the jury asked to have the
8 prosecutor's final argument read back to them. Shortly
9 thereafter, the jury convicted each of the defendants. This
10 was reversible error. While the prosecutor gets the last
11 word, he does not get the last word twice."

12 And, that's my concern here. The prosecutor gets
13 the first word and the last word and gets forty hours of
14 evidence.

15 THE COURT: I thought we were leaving out the
16 openings and closings.

17 MR. CORRELL: We were, but the same principle
18 applies to forty hours of evidence versus ten hours of
19 evidence. There is a disproportionality between the power
20 of the State and the power of the individual.

21 THE COURT: Well, who got the closing on the
22 introduction of evidence?

23 MR. CORRELL: The defendants ended up. We had the
24 last evidence in. I had three witnesses, and my expert was
25 up for, I believe, maybe ten minutes, and a security expert

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1 was up for maybe ten minutes and then Mr. LaPierre was up
2 for awhile.

3 But it was at the end of the case; and to the
4 extent that that was the last thing the jury heard, it may
5 serve to redress the horrible imbalance between the case
6 that the Government put on and the case that my client was
7 able to put on just because of time constraints and
8 constraints of resources.

9 THE COURT: Well, look, you can make your record.
10 I think the repeated references to some sort of unfairness
11 met the allocation of time are really just genuinely out of
12 bounds.

13 I do not think that anyone looking at this record
14 will view it as imbalanced in the slightest, but you can
15 make your record and say what you want.

16 The defendants and both sides had notice of how the
17 time would be allocated. I gave each of the defendants the
18 opportunity to tell me directly if they felt like they
19 weren't getting their share of the defense time that they
20 wanted. But, anyway, I don't want to go back through all of
21 that. The record is what it is and I'm quite comfortable
22 with it, and I think you can -- well, I'll leave it at that.

23 Look, I think the jury has made what seems to me a
24 reasonable request. At the same time, the last thing I want
25 to do is create even a scintilla of a risk of an unnecessary

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1 appeal issue arising out of something like this. My own
2 view is that we are dramatically over thinking this. We're
3 talking about giving them a transcript of what they already
4 heard and instead of doing the traditional way of a
5 read-back of portions of it, they made a request that would
6 sound reasonable I think to virtually everyone in the
7 current business environment when you have access to a long
8 document like this, seems perfectly reasonable to me. But,
9 I will agree that I haven't seen it done. I haven't heard
10 about it being done. I haven't canvassed people to find
11 out; but just on the chance that something about this
12 unusual process gives rise to appellate issue, I'm, frankly,
13 not interested in taking that risk.

14 So, I will I guess advise the jury -- I'm not
15 certainly going to point fingers in any way. But just say
16 logistically we can't comply with the request for providing
17 an electronic copy of the transcript for searching; but
18 they're certainly willing, able to ask for individual
19 portions of the testimony that they identify to be read back
20 to them.

21 I do think that the effort that has already gone in
22 to identifying the transcript, if the jury says, We want to
23 hear X person's testimony, you know, we've all been here for
24 many, many weeks. It seems to me an efficient use of time
25 to just say, Hey, look we have the transcript, send a

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1 hardcopy of the transcript instead of having a dramatic
2 reading.

3 I would -- I guess I'll ask a subquestion. Does
4 anybody object to that? In other words, if they say, "We
5 want to hear Mr. Smith's testimony, direct testimony and
6 cross or they just want to hear the direct testimony -- they
7 don't have to ask for all of it -- but if they want to hear
8 it, does anybody object to giving it to them in transcript
9 form rather than having it be read back? And whoever
10 objects, gets to do the reading back.

11 MS. CONNELL: No objection from plaintiff, your
12 Honor.

13 MR. CORRELL: Your Honor, as the fly in the
14 ointment again, and I hesitate to the say this; but there is
15 authority that when there's read back, it should be replayed
16 in open court.

17 And that is United States versus Newhoff, 627 F.3d
18 1163, 9th Circuit (2010); and I haven't run it down to New
19 York State cases, but I believe that's the traditional
20 approach.

21 THE COURT: It is the traditional approach because
22 that's the way it's always done. I don't know that there's
23 any magic to that, though.

24 MS. CONNELL: Your Honor, I share the Court's
25 concern. We're not looking for something that would lead

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1 to an appeal or to make this reversible.

2 THE COURT: I can't think of what the appellate
3 issue would be, to be honest with you; but because I can't
4 think of it, doesn't mean it doesn't exist.

5 MS. CONNELL: I would just note that in some
6 criminal cases there may be sort of a 6th Amendment right or
7 some other concerns that may not be present in civil cases
8 so that should be something worth considering.

9 THE COURT: Okay. Well, proving, again, that
10 there's no simple issue we cannot complicate in this case.
11 I'm trying to decide whether to interrupt them to tell them
12 that they have to ask for individual pieces of testimony,
13 and then we'll sort of deal with that as it comes up.

14 We may spend a little time looking through some
15 cases as well in the meantime. The fact that something
16 hasn't been done before doesn't mean that it is not
17 sensible.

18 Look, it's certainly possible that it is also
19 overkill for the jury to want 4,000 pages of transcripts.
20 They don't really need that either, I agree, but I certainly
21 sympathize with them that in a six-week trial it would be
22 easier and is probably the way you all work that if you want
23 to find something, you find it the way we all find things,
24 electronically.

25 Anyway, enough of sermonizing from me.

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1 So, in the meantime, I think I probably should
2 bring them in because if they are sitting up there waiting
3 for this, there's no reason for that.

4 I have, also, been mulling over a question which
5 you know we have the alternates coming back in everyday;
6 and while I don't want to release them because I think we
7 may need them, at least I'm toying with the idea of letting
8 them wait it out at home and be able to be called in when
9 needed. But, that's just more a matter of personal
10 convenience. I don't know how long the deliberations are
11 going to take, but that's just something I'm thinking about.

12 There may be another jury note.

13 So, let's wait on that and then we'll see whether
14 we call them back down.

15 MR. FLEMING: Your Honor, just to flag an issue?

16 THE COURT: Yes.

17 MR. FLEMING: With the bundle of notes that came in
18 late yesterday, one of the notes asked for e-mails relating
19 to Mr. Frazer to and from him put in the order in which he
20 received them or sent them.

21 And to make --

22 THE COURT: You mean those were the words in the
23 note, or that was just the exhibits that they asked for?

24 MR. FLEMING: Those were the words in the note, one
25 of the six. I believe there were six. And last night we

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1 put together those e-mails, put them in chronological order.

2 I have given them to the plaintiff to review. If
3 it is okay with them. Although, we could provide that to
4 the jury to assist them a little bit. I know they have all
5 the documents now. If the Court's view is that's good
6 enough, that's fine; but we thought we would do that.

7 MS. EISENBERG: Your Honor, the NRA joins the
8 request by Mr. Fleming.

9 MS. CONNELL: Your Honor, we just got this note
10 this morning. I think it is unusual and I think it is
11 almost a piece of advocacy at this point.

12 THE COURT: If we're going to be turning square
13 corners, I'm going to do it all the way. They have the
14 exhibits. We're not going to organize them for them.

15 I hope you all have, also, thought through the fact
16 the jury searching through the transcript might be helpful
17 for your clients, too.

18 But, anyway, so I got this new note here with two
19 points in it:

20 "(1) Could we have a document or spreadsheet that
21 lists the exhibits in numerical order followed by the
22 corresponding box number. That would allow us to search and
23 find exhibits more quickly."

24 And "(2) Request to see the transcripts for
25 Caroline Meadows and Craig Spray testimony."

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1 MS. EISENBERG: Your Honor, there were designations
2 offered by the NRA and NYAG already. We should assume they
3 want each side.

4 THE COURT: All of it?

5 MS. EISENBERG: Correct.

6 MR. FARBER: Judge, I have no objection to that,
7 and I think those were prepared.

8 Going back to your question about any authority on
9 the issue of providing transcripts to the jury, there is
10 another case which I think describes some considerations.
11 It's a federal case for judges to consider in doing that and
12 admonitions to be given to the jury when transcripts are
13 provided, and I just want to provide the cite for that.

14 It is United States versus Hernandez, 27 F.3d 1403,
15 9th Circuit (1994). And I'd ask that if your Honor does
16 decide to give them transcripts and including giving these
17 transcripts, that you provide the admonitions.

18 THE COURT: What is the admonition?

19 MR. FARBER: So, the 9th Circuit said that -- I'm
20 going to read from it in a prior case.

21 "The District Court provided the jury upon its
22 request with a copy of the trial transcript during
23 deliberations, noting the many precautions taken to avoid
24 undue emphasis of any portion of the trial transcript. We
25 held the District Court did not abuse its discretion."

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1 "Precautions included that the District Court, one,
2 provided counsel an opportunity to note inaccuracies in the
3 transcript; two, caution the jury that the transcript was
4 not to serve as substitute for memory or assessment of the
5 credibility; and, three, admonish the jury weigh all the
6 evidence and not focus on any portion of the trial; and,
7 four, instructed that the transcript was not authoritative
8 and should not prevail over the jurors' memories."

9 THE COURT: There is a counterpart to the Pattern
10 Jury Instructions approved by the Appellate Division of New
11 York State which says that the only official record that
12 they should consult if there's a doubt about anyone's memory
13 is the transcript.

14 That is exactly what I instructed them twice;
15 right?

16 MR. FARBER: We don't have a final transcript at
17 this point, your Honor.

18 THE COURT: Well, these instructions envision
19 providing the transcript or having them be read in the
20 trial, that's what the instructions are for.

21 Yeah, if the parties note typographical errors in
22 the transcript, they should be spotting that along the way;
23 but once that is taken care of, that's all we have is the
24 transcript.

25 MR. CORRELL: Your Honor, I did note some

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1 substantive errors in the transcript. I didn't think we
2 were going to be reviewing them everyday and with errata;
3 but that would be something that I think would be necessary
4 to correct so that they actually get a correct transcript.

5 THE COURT: Well, I'm surprised to hear you say you
6 didn't think that now is the right time to do it because
7 when else would be the right time to do it?

8 So, if it is not clear, it seems to me the reason
9 for getting dailies is to do exactly that; to see if there
10 are any substantive mistakes that need to be corrected.

11 So, the rules of this state are that the official
12 record will be read back to the jury during trial. So, you
13 better be on top of it if you aren't already to get any
14 corrections into the system as soon as you can.

15 MS. CONNELL: Your Honor, if I can just note, we
16 have had a jury that's been here for six weeks. They have
17 been asking for information, evidence, we're trying to speed
18 the flow. They have been doing their civic duty for a long
19 period of time, and they deserve us trying to make it easier
20 not harder for them while preserving everybody's rights.

21 THE COURT: I agree. The only good thing is
22 they're not here listening to all of this.

23 So, the two things they want, I thought they had a
24 list of the exhibits in numerical order.

25 MS. EISENBERG: Yes, your Honor, they have it in

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1 the order in which they came in, and --

2 THE COURT: Oh, they're not done, like, PX 1
3 through --

4 MS. EISENBERG: No, and we're more than happy to do
5 that; but they are done Mr. Marshall was the first witness.
6 There were like say five exhibits that came in through him.
7 Regardless what they were numbered, we assigned them
8 sequential tab numbers 001, 002, 003, et cetera, and that's
9 together in the first box.

10 So, we actually think they have the tool that
11 they're asking for potentially, but we're more than happy to
12 do exactly what they just requested.

13 THE COURT: I had assumed they were listed by
14 exhibit numbers numerically so that -- you know, because,
15 also, during the trial several people said, well number, ask
16 for PX 35 or whatever; and if they're up there with a bunch
17 of boxes where even if they know what number they're looking
18 for they can't find it, that's not very helpful.

19 MS. CONNELL: Plaintiff has boxes of the exhibits
20 on plaintiff's entire case in number, in order. We had I
21 thought arranged with defendants to have their boxes in that
22 order in advance to make it easier to send exhibits back
23 and/or for giving everything back to the jury.

24 MS. EISENBERG: We can create the index they
25 requested very easily; and, obviously, everyone had the

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1 opportunity to inspect the boxes that went back.

2 THE COURT: Yeah, all right. Well, I think
3 something like that would be helpful because how would they
4 know where an exhibit number is if it is not organized by
5 number.

6 MR. FLEMING: Your Honor, I'll just note that's
7 exactly what we tried to do last night to answer the
8 particular note that the jury asked, which I guess now is
9 something we don't want to do? I'm a little confused by
10 that.

11 THE COURT: Well, I had assumed that the exhibits
12 were organized in a way that people would be able to
13 decipher which was where.

14 MR. FLEMING: I understand, but the note they
15 asked for last night for a subset of documents is exactly
16 what we put together, four of them in the way they asked it
17 to be done.

18 THE COURT: Look, the problem I have with that is,
19 you know, if everyone agreed that your collection was an
20 entire and accurate answer to that, I would have no problem
21 giving it them if they asked for it. But I'm just reading
22 the room here that I find it unlikely I'm going to get
23 consensus that whatever your collection is, is complete.

24 MR. FLEMING: Well, I actually have heard
25 absolutely nothing from the Government about it being

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1 inaccurate or incomplete.

2 MS. CONNELL: Well, we just got it this morning;
3 and we voiced our objection that it seems more like advocacy
4 and us doing work --

5 THE COURT: If, if it was an objective question --
6 look, I honestly don't know. But if somebody said, Give us
7 an objective list in chronological order of five documents
8 and everybody agreed what the five were, I wouldn't have a
9 problem sending it up and say, Look, here, this is what you
10 asked for, here it is.

11 If it is more complicated than that and you're not
12 sure that what they have given you is a complete answer to
13 the question, then I'm not going to send it. I expect for
14 the parties to only object where there's a reasonable basis
15 to do that and if they do, fine.

16 I would ask you to look at this thing, if they ask
17 for a chronological compilation. If there's no reasonable
18 objection to it, then I'll send it up. If there is, I
19 won't.

20 MS. CONNELL: Taking it back, your Honor, to where
21 we were before we revisited this issue which is the
22 numerical order of all of the exhibits, I think that's
23 something we can maybe work out.

24 THE COURT: Well, I don't really want to send them
25 another bunch of boxes.

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1 MS. EISENBERG: We can do the index, no problem.

2 THE COURT: Work on the index.

3 MS. EISENBERG: Your Honor, is it going to be
4 hear-backs or read-backs because Ms. Meadows was by
5 video?

6 THE COURT: Well, they asked for the transcripts.

7 This one seems a little easier because this is
8 literally what they heard and it's in exactly the order they
9 heard it. And so this question about not reading the
10 transcripts out of context, they're going to get the entire
11 thing.

12 MR. FARBER: Judge, I agree with that, that that
13 has all the extraneous material removed.

14 THE COURT: Right. So, those transcripts there's
15 no objection to, it's just giving them the transcripts of
16 Spray and Meadows. If they came in in two bunches or at
17 least two bunches, so would they get them in the same
18 bunches in which they heard them?

19 MS. CONNELL: Yes, your Honor. I think the easier
20 way to do it is to have the two, for example, the two Spray
21 designations and counter-designations together, and then the
22 two Meadows designations and counter-designations; but
23 they're in two bundles. The one that went in plaintiff's
24 case and the one that went in defendants' case.

25 THE COURT: So, there would be four bundles?

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1 MS. CONNELL: Yes.

2 THE COURT: Which would correspond to the four
3 times they heard from these folks.

4 MS. CONNELL: Yes, your Honor.

5 THE COURT: So, let's get that gathered and we can
6 get that up there to them, and we'll tell them we're working
7 on the spreadsheet.

8 I'll bring them down here and tell them what we're
9 doing. So, let's get the jury down for a second.

10 Just so I'm clear, it is accurate to tell them the
11 boxes were organized when the exhibits were introduced?

12 MS. EISENBERG: That's right, and the index has
13 headings for witnesses and dates.

14 MR. FLEMING: Your Honor, not to belabor the point
15 I was making before; but just to be clear, the note listed
16 exhibit numbers. There were about 33 of them, and all we
17 did was put them in chronological order.

18 So, I have a tough time understanding what the
19 objection is.

20 THE COURT: So, only -- so they just asked you to
21 take these 33 exhibits and put them in chronological order?

22 MR. FLEMING: Exactly, that's it.

23 MS. CONNELL: Your Honor, we were handed this this
24 morning and said we would look at it, which we will; but
25 we've been busy working on the transcripts.

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1 THE COURT: If that's all it is and maybe I missed
2 it in the note, we should be able to do that for them. Just
3 check it. If you don't think it is right --

4 MS. CONNELL: Right, Judge, but we're just asking
5 for the opportunity, give advance notice and work
6 cooperatively.

7 THE COURT: I'm not sure what the judgment calls
8 are involving chronologizing 33 documents.

9 MS. CONNELL: There are often changes. We have to
10 make sure the changes are correct. I'm not saying it's
11 complex. We were just handed it before you came out.

12 MR. FLEMING: They're exhibit numbers. They're not
13 changes. They are exhibits.

14 THE COURT: They could overlap, right? There could
15 be -- but still it's -- okay.

16 MS. EISENBERG: Your Honor, we have the index in
17 case you'd like to have it, the one sent back to them. We
18 can also hand up a copy, if you'd like.

19 THE COURT: That's the one they have now?

20 MS. EISENBERG: That's right, your Honor.

21 THE COURT: Yes, I'd like to see a hardcopy if you
22 have it.

23 COURT OFFICER: Ready for the jury, your Honor?

24 THE COURT: Yes.

25 COURT OFFICER: All rise, jury entering.

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1 (Whereupon, at this time the jury then entered the
2 courtroom.)

3 THE COURT: Good morning, folks. Have a seat,
4 please. Sorry to interrupt your deliberations. Just wanted
5 to give you an update.

6 So, the request with respect to the transcript, the
7 entire multi-thousand-page transcript, I understand why you
8 asked for it. For a variety of logistical and legal
9 reasons, I can't make it happen exactly what you're asking
10 for, which is the searchable with a laptop and the entirety
11 of the whole thing. There's a bunch of reasons for it.

12 The traditional way to do it is to ask for -- it's
13 often called a read-back of particular testimony that you
14 want to hear; and then once we get something more specific,
15 we can talk about whether the more efficient way is to give
16 a transcript or to literally have you come back and hear a
17 back and forth on it.

18 The caution I would give you if you see any
19 portions of the transcript, just to remember that you have
20 to put all of it in context. You know, you have to just
21 remember that any particular piece of testimony is just part
22 of all the evidence that comes in. But, in any event, but
23 we will get you portions that you may have different
24 memories of and you wanting to hear, well, what did this
25 witness say?

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1 We'll do it specifically when you have one. For
2 example, the most recent note asks for the Meadows and Spray
3 testimony that you saw on the screen, and we're going to put
4 those transcripts together and send those up.

5 We're also -- I understand the point about that
6 you just asked for a document or a spreadsheet or some kind
7 of a key that lists the exhibits in numerical order. I
8 think the way they were put together was in the order that
9 they were introduced in the trial; but I can see how if
10 you're looking for a particular exhibit number, if you don't
11 know where it is. So, the parties are going to put together
12 an index that will help you through that.

13 So, there were a couple of different ways that it
14 could have been organized, and that's the way it was chosen
15 to do it because I think that's the way lawyers collect
16 things during the trial; this was admitted on day one, this
17 was admitted on day two. But, I get it.

18 So, we're trying to do everything we can and we do
19 appreciate the diligence with which you're going through the
20 record. So, I want to let you know both of those things, so
21 we'll get you the two things that were just asked for.

22 And if there is testimony from the trial as to
23 which you are having -- you feel the need that you want to
24 either hear it back or see particular portions of the
25 transcript, just let us know and then we'll get that to

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1 you.

2 Okay, so I don't think it was an unreasonable
3 request, but for a variety of reasons we had to do it the
4 traditional way. Okay, and I think all the other requests
5 are still sort of in process other than that one.

6 So, I just wanted to say hello and make sure you
7 knew that we know you're still up there and we're
8 responding. The lawyers are working very hard to get
9 answers to the requests as soon as possible.

10 So, thanks, again. Welcome back, and we'll see you
11 when we next hear from you. Thank you.

12 COURT OFFICER: All rise, jury exiting.

13 (Whereupon, at this time the jury then left the
14 courtroom.)

15 THE COURT: This most recent request we'll mark as
16 Court Exhibit XXIII.

17 All right, folks, please get to work on finalizing,
18 hopefully, this chronology thing that they asked for, which
19 sounds like it is a simpler task than I had envisioned.

20 I would strongly encourage you that if for whatever
21 reason you haven't been checking the transcripts for
22 substantive errors, you should be and you should do it now
23 because now is when it counts because now is when the jury
24 may get it. Whether it is by read-back or a transcript,
25 somebody is going to have to read from the document that we

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1 all have. So, if it says red and it should say green, fix
2 it now if it is important, at least.

3 All right, next.

4 MS. CONNELL: Your Honor, one thing I will note.

5 One of the notes from yesterday did ask for a
6 read-back. I believe it was a note sent at 1:56 p.m., and
7 it said:

8 "I would like to see the listed exhibits that
9 contains the list of exhibits. Also, is it possible to
10 see --" well, it doesn't ask for read-back. It says "Is it
11 possible to see transcripts of all testimony that discusses
12 the post-employment contracts of WLP and Phillips."

13 THE COURT: Yeah, that's different than a
14 read-back. That's asking for us to curate evidence from the
15 trial and sort of -- and that, I think, is more difficult
16 than "We want to hear the testimony of Mr. Phillips," for
17 example, on this. I think that's a more complicated request
18 for them to ask us to curate evidence, which is also fraught
19 because everybody is going to disagree.

20 MS. CONNELL: I agree with that. I just didn't
21 want the jury to think we're working on that and not know
22 that we're not working on that.

23 THE COURT: Fair point. All right. Well, let's
24 keep working.

25 (In recess)

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1 THE COURT: Let's mark these as Court Exhibits XXIV
2 and XXV and make copies for counsel on both sides, and I
3 need one for myself so I can read it out loud.

4 (Whereupon, at this time Court Exhibit XXIV and
5 Court Exhibit XXV were so marked.)

6 THE COURT: So, we received two more notes. One is
7 a short one asking to see the transcript from the attorney
8 general's closing argument. The second one is a longer one.

9 Well, I'll read it out loud:

10 "In reviewing Question 9A about the NRA's
11 Whistleblower Policy, we have found relevant policy about
12 reporting violations in a statement of Corporate Ethics
13 dated --" I believe it says "01/26/15 in the NRA Employee
14 Handbook labeled PX 415 (index 258). We are unable to find
15 in evidence a copy that updated that policy, which we
16 understand exists and is in compliance with N-PCL, though it
17 may be after the relevant period ending 1/22/20."

18 "Can counsel advise whether any update to the
19 Employee Handbook that updates the Corporate Ethics
20 statement is in evidence? Or confirm whether an update was
21 produced before 1/22/20?"

22 The question about the closing argument, I'm aware
23 of at least one case out of the First Department -- a
24 criminal case -- finding error in rereading only the
25 prosecutor's summation in a case, which kind of makes sense.

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1 I know they asked for just one side, but I think I'd be
2 uncomfortable giving sort of half the story.

3 We talked about whether they could have a rereading
4 of all of it, but I don't think I would just do part of it.

5 On the second one, that's a pretty detailed
6 question, and I guess I'll let you all mull it over over
7 lunch and see if there's an objective answer that is both
8 clear and undisputed and it can help avoid confusion they
9 may be having, that's fine.

10 So, I'll just leave that with you to think about
11 what the appropriate response would be.

12 I do have a hearing at 2:15 that I'm doing in
13 another matter that I'll try to be as quick as I can. I'll
14 come back after that.

15 So, the -- the only other thing I wanted to add is
16 I had done a little bit of looking along with my staff, and
17 there's not a lot on this whole transcript thing. I'm
18 comfortable giving them the entire transcript. To do
19 finding, their own searching, while if I were writing the
20 rules myself, I might permit something like that; I don't
21 think there's enough support for that. And the concern that
22 courts seem to have and legitimately is that the jurors will
23 focus on one testimony, piece of testimony to the exclusion
24 of others. Again, if left to my own devices, I think
25 there's nothing inappropriate about giving them the entire

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1 transcript, but that may be too much to swallow at this
2 stage.

3 There is, I think, pretty good law in the Second
4 Circuit, in fact the case that came after the one that was
5 read earlier that has some I think pretty good language.
6 The United States versus Escotto, E-S-C-O-T-T-O, 121 F.3d
7 81. Amongst other things, it says "We agree with the 3rd
8 Circuit and also with Judge Trager's reasoning in the
9 instant case that written transcripts provide the jury a
10 more efficient method than read-backs of sorting through
11 lengthy portions of testimony. The opportunity to turn
12 pages, some rapidly and some leisurely, will often be
13 preferable to enduring a verbatim and usually unanimated
14 rereading of testimony."

15 They go on later to say "While they recognize that
16 supplying transcripts of trial testimony poses some risk of
17 undue emphasis on selected passages, we conclude that the
18 decision to provide the jury with transcripts in lieu of
19 requested read-backs should be left to the trial court's
20 discretion, just like the decision to as to a request for
21 transcripts."

22 "The decision to supply transcripts either when
23 requested or in lieu of a requested read-backs should
24 generally be guided by the same considerations that apply to
25 a decision to permit a read-back of testimony. Whether a

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1 court permits read-backs or sends transcripts, appropriate
2 cautions should be given to the jury to minimize the
3 particular risks associated with either technique."

4 "For example, a jury instruction reminding the jury
5 to consider all the evidence without unduly emphasizing any
6 portion of it would be appropriate in most cases where the
7 court sends transcripts into the jury room."

8 I think that's a common-sense position. I will
9 note we found a First Department case from 1989 in the
10 particular context of the Criminal Procedural Rules, which
11 do require that the defendant be -- criminal defendant be
12 present for all proceedings. And in that case, in 1989,
13 they expressed disapproval of the practice of submitting
14 transcript of testimony for review in the jury room and,
15 basically, if the defendant objects, then the read-back must
16 occur in open court with defendant and counsel present.

17 But, I think that is a specific outgrowth of the
18 statute that requires specific kinds of procedural
19 guidelines in a criminal case.

20 So, in any event, I'm persuaded that if and when
21 they ask for a read-back again or the first read-back, that
22 rather than having hours of read-backs -- assuming we can
23 agree on a transcript -- I think that makes a lot more
24 sense.

25 So, that's about it for this one. I may -- there's

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1 one other sort of technical point, and I guess I didn't
2 include it in the instructions.

3 We're getting notes from individual jurors and,
4 typically, the foreperson would be the one writing all the
5 notes. I don't think that that would stop them from coming,
6 but it just might be a little less chaotic; but at this
7 point, that's what we have.

8 All right. So, take a look at both of these.
9 Again, on the closing arguments, the two choices it seems to
10 me are either to give them nothing or to give them all of
11 them. And my inclination would be to stick with they can
12 ask read-backs of the evidence, but unless the parties want
13 the closing arguments back there.

14 MS. EISENBERG: Your Honor, the NRA definitely
15 wants the closing arguments back there, and we think that's
16 the right thing to do given how long the trial was and their
17 repeated requests for the same. Because when they sent a
18 note yesterday, they didn't say only evidence. They said
19 transcripts, court records and evidence.

20 MR. CORRELL: Your Honor, the case I cited the
21 right to speak first and last and then to give the
22 government the opportunity to have two last words just to me
23 should conclude that question.

24 MR. FARBER: And, your Honor, we object to giving
25 them the closing arguments. I have addressed this some the

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1 other day. I think the cases that you referred to
2 referencing the fact that jurors need to be told to focus on
3 reviewing all of the evidence, giving them the closing
4 arguments in particular is taking them away from what they
5 ought to be doing.

6 At this point what they should be doing and the
7 only thing they should be doing is reviewing the evidence,
8 whether those are exhibits or testimony.

9 THE COURT: Well, the only case I'm familiar with
10 is one that for whatever reason just gave one party's
11 closing. That's the only case I'm familiar with.

12 So, if there's anything else in particular, you can
13 let me know.

14 But, we're at the lunch break, so anything?

15 MS. CONNELL: No, just to make it clear for the
16 record, plaintiff believes having all the closing arguments
17 would be helpful to the jury, we should provide them.

18 MR. FARBER: One logistical thing, your Honor. You
19 said for us to consider over the lunch break. I know you
20 have a hearing at 2:15. When would you like us back in
21 order to deal with that?

22 THE COURT: Well, be back here 2:30. I don't know
23 when I'll be up here. I'll be up here as fast as I can.

24 MR. FARBER: Thank you, your Honor. One other just
25 quick point on the summations issue. I mean, for example,

BP

1 the AG in their summation lists a whole range of exhibits.
2 The process of going back and looking over the summations,
3 they're going to focus on things like that, that I think
4 just are improper.

5 THE COURT: All right, I'll think it over. See you
6 in the afternoon.

7 MS. CONNELL: Thank you, your Honor.

8 (Whereupon, at this time a luncheon recess was then
9 taken.)

10 (Continued on next page)

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AFTERNOON SESSION

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THE COURT: Good afternoon, folks. So, I've been trying to follow the back and forth between you and my law clerks while in another hearing; but it sounds like there's the simple answer is just to tell them that Tab 13, PX 421 is the amended Whistleblower Policy.

8

The rest of it just, you know, the NRA language seems fine with the page numbers, and I -- I think just referencing that it has, it is dated January 22, 2020, is sufficient. I mean, some of the language that's slightly different is whether it was in effect as of then. I'm not going to provide any testimony other than to just say it has a date of January 22, 2020.

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MS. ROGERS: Your Honor, all we would say is that the juror note specifically inquires whether an update was produced before the 22nd, and the same document does contain the date stamp on the board resolution enacting the update which is before the 22nd.

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So, directing them to page numbers perhaps we could say the updated policy is on page 286, and the date of the resolution adopting the update is on this other page.

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THE COURT: I don't have all the stuff in front of me. I'm trying to find the proposal by the NRA is -- Ms. Eisenberg?

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1 MS. EISENBERG: Your Honor, I think Ms. Connell
2 inadvertently forwarded to you an outdated version of the
3 NRA's proposal.

4 THE COURT: I'm looking at yours.

5 MS. EISENBERG: Before I got everyone's comments
6 and then I proposed a different one that more directly
7 responds to the question that Ms. Rogers just highlighted.

8 If I -- it basically says, We have the manual and
9 there are threes page that are relevant. The first page
10 contains a copy of the policy. The second page has the date
11 in the top corner, which shows it was effective as of at
12 least that date. And the third page reflects the date of
13 the resolution of the board and in which the board adopted
14 it, which was January 11th.

15 THE COURT: I have a better idea. I think I'm just
16 going to say that the amended policy, it is up to the jurors
17 to read the document and decide what it means. But they are
18 not really sure what document they should be looking at.
19 So, I think just telling them that it is PX 421 is
20 sufficient, and they can read the dates themselves.

21 MS. ROGERS: Your Honor, would the Court be
22 amenable to because the exhibit is no voluminous, directing
23 them to the page the policy is on, and then directing them
24 to the page that the resolution is on enacting the policy?

25 So, the Court wouldn't need to testify to the date.

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1 The Court could just say at page 202 of this document shows
2 the policy adoption, and page 286 shows the policy's text.

3 MS. CONNELL: Your Honor, the jury has asked for a
4 simple document. They have asked for the amended
5 Whistleblower Policy.

6 THE COURT: Well, I think -- look, I'm trying to be
7 also helpful to the jury in referring to a 300-page
8 document. So, Ms. Rogers you say 202 is the?

9 MS. ROGERS: I'm sorry, your Honor, I misspoke.

10 Pages 201 and 202 show the resolution adopting
11 the update and then at page 286 shows what the new policy
12 says.

13 THE COURT: And is there any dispute that the
14 adoption of the resolution on 201 and 202 applies to the
15 Whistleblower Policy on 286, asking the AG?

16 MS. CONNELL: Your Honor, I would just say I don't
17 know. I haven't looked at it because, literally, we've just
18 been debating this. But page 283 of 300, which is 274, it
19 says effective date of the policy, and we agree that's the
20 effective date of the policy. So why not --

21 THE COURT: Frankly, I don't know what the
22 difference of any of this is because there's no damages
23 attached to this, and the only dispute is whether there was
24 a policy during the earlier period.

25 MS. CONNELL: Right. Your Honor, I just think the

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1 simpler we keep things and answer the jury's questions
2 directly with this.

3 THE COURT: I think giving page references within
4 this document to what's relevant to the Whistleblower
5 Policy. So, 201, 202 are board resolutions?

6 MS. ROGERS: It's one board resolution spread
7 across two pages.

8 THE COURT: Board resolution. 283 is that a
9 relevant? Page 283 is the effective date?

10 MS. ROGERS: Yes, 283 is where the policy text
11 begins.

12 THE COURT: Of the Whistleblower Policy?

13 MS. ROGERS: Of the new Whistleblower Policy.

14 THE COURT: And what was 286?

15 MS. ROGERS: 286 was me misspeaking, and I
16 apologize. I was looking at a different version.

17 THE COURT: So, 283.

18 MS. EISENBERG: I'm sorry, your Honor, page 283 is
19 beginning of the Statement of Corporate Ethics, which
20 contains the Whistleblower Policy, which starts on page 286.

21 So, if we want to be comprehensive we can give them
22 201 through 202, 283 and 286.

23 THE COURT: I think that's fine. Board resolution
24 201, 202. 283 is beginning of Corporate Ethics policy, and
25 286 is the Whistleblower Policy.

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1 MS. EISENBERG: Thank you.

2 MS. STERN: Sorry, just to make you crazy, it's 201
3 of 300. It is the page number of the exhibit, not of the
4 document.

5 THE COURT: So, are the page numbers still right?
6 Is it 201 out of 300?

7 MS. STERN: Yes.

8 THE COURT: All the page numbers that were just
9 given are the ones at the bottom, which is the exhibit
10 number?

11 MS. STERN: Correct, your Honor.

12 THE COURT: I think they're used to reading those
13 things that way.

14 MS. EISENBERG: I agree. I think we say of 300,
15 that will avoid any confusion.

16 THE COURT: I'm also going to just sort of gently
17 include an instruction that I -- the PJI actually include,
18 and I don't because it seemed a little regulatory; but that
19 the jury foreperson should be sort of coordinating the
20 notes.

21 MR. CORRELL: Your Honor, there is some utility to
22 seeing which jurors write which notes. I found that to be
23 helpful. So, I wouldn't want to extinguish the separate
24 identity or make people feel like they have to funnel their
25 requests.

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1 THE COURT: That is the typical PJI instruction
2 that the foreperson is supposed to organize things. It
3 doesn't block anyone from asking anything.

4 Look, it doesn't matter that much to me one way or
5 the other. I didn't raise it before, and they seem to be
6 not shy about doing their own. So, if nobody else really
7 cares about it, I'll leave it the way it is.

8 So, what else do I need to tell them other than
9 this one small thing? That's pretty much it.

10 I should tell you all I have to leave for an
11 appointment this afternoon at about 3:45. So, any notes
12 that come in after that, Mr. Blaustein will be here.
13 Hopefully, if they're something just to get documents, you
14 don't have to wait for me.

15 We have another note. Okay, new note:

16 "Requesting the transcript of John Frazer's
17 testimonies during the case."

18 So, this is our first request for -- and it is
19 specifically for transcripts, and it is specific and kind of
20 what I told them to do, if they wanted to see. So, it will
21 be two different sets: One during the plaintiff's case, one
22 during the defense case.

23 So, hopefully, you've done all this work already to
24 excise out from the transcript portions anything that was
25 off the record or when the jury wasn't present.

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1 I don't recall there being a lot of that during
2 Mr. Frazer's testimony; but if there's anything, just agree
3 on the transcript pages and try to have them ready. If you
4 can have them ready by the end of the day, that's fine. If
5 it has to be early in the morning, okay; but as soon as we
6 can, I'd like to be responsive.

7 This is at least very specific. There's no
8 ambiguity. So, let's get it done.

9 MS. EISENBERG: Your Honor, the only other thing is
10 as you may recall, jurors asked in the note whether it is
11 possible to gather testimony related to two post-employment
12 contracts. As Ms. Connell previously pointed out, I'm not
13 sure we've gotten back to them on that request which I
14 believe your inclination was to say that's a little bit too
15 vague. But they have a more narrow request. We'd be happy
16 to provide --

17 THE COURT: Look, my thinking on that is -- I said
18 it seems vague to me, it would require curating. If the
19 parties can agree and say this is everything on those and we
20 can be helpful and sort of highlight the testimony, I won't
21 foreclose you doing that. But, otherwise, I would give that
22 answer that, you know, typically read-backs have to be not
23 something that requires us to parse.

24 MS. EISENBERG: I think it is something the parties
25 may be able to agree upon. It just may take a little bit of

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1 time.

2 MR. FARBER: I'm less optimistic about that.

3 MS. CONNELL: Your Honor, just so I understand, are
4 we going to be giving the jury transcripts to take back with
5 them or do we do a read-back?

6 THE COURT: Look, my view -- and I haven't seen
7 anything contrary and, certainly, in a civil case. The
8 Second Circuit's rationale is very similar to mine, which is
9 if they can do a read-back which is people reading from a
10 script, I cannot think of any reason why they can't have the
11 document that they can then read it at their pace rather
12 than trying to follow it. It has no evidentiary component
13 to have two strangers reading the back and forth.

14 In a criminal case, I think it raises concerns
15 because at least -- at least one decision I've read suggests
16 that the act of them reading it happens outside the presence
17 of the defendant, which in a criminal case is something
18 that's specifically baked into the rules. Whether that's
19 still good law or not -- the case I saw was in 1989 -- but I
20 don't know, but I'm persuaded in this circumstance it
21 would -- it couldn't possibly -- at least I don't see any
22 prejudice in providing the testimony that they can read
23 individually or together in an organized way rather than
24 what will be hours. Let's face it, it would be hours of
25 time sitting here with people reading to the jury. That

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1 seems crazy to me after six weeks.

2 MR. FLEMING: To be clear, your Honor, I do not
3 oppose them getting a transcript. I will say that the one
4 point to take away from the case is undue emphasis.

5 If the jury emphasizes one portion as opposed to
6 the other, I think that can be cured with an instruction;
7 and I think especially here since Mr. Frazer testified two
8 separate times, they should be told that they should
9 consider all of it, not just some of it.

10 THE COURT: That's a good point, and I will make
11 that point to them.

12 MR. CORRELL: Your Honor, there is some guidance
13 from the 9th Circuit in 1994.

14 I'll just read, "Providing to the jury during their
15 deliberations the transcribed portion of one witness's
16 testimony was reversible error. Trial court failed to
17 caution the jury to weigh all the evidence and failed to
18 warn that the transcript was not authoritative, even though
19 both direct and cross examination were provided, this was
20 not a sufficient protection. Counsel must be given an
21 opportunity to review the transcript to ensure its accuracy
22 and to ensure that all bench conferences are deleted."

23 THE COURT: Well, a couple points to that. First
24 of all, counsel has had the opportunity to review the
25 transcript for accuracy. Whether they have done so or not,

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1 is not -- well, I'll just leave it at that.

2 Clearly, Mr. Frazer testified a long time ago; and
3 so if there are any substantive corrections that haven't
4 been made yet, you have until whenever this is provided if
5 you need them to make changes -- transcription mistakes.
6 You know, if he said a word and he thinks it is not the
7 right word, that's not -- it is not a -- that's not a change
8 you can make now.

9 So, I don't think that part works. I don't think
10 it's the law that you cannot as a matter of law -- by the
11 way, was that a criminal case?

12 MR. CORRELL: Yes, your Honor.

13 THE COURT: I'm quite comfortable it's not the law,
14 certainly not in the Second Circuit it's not the law, even
15 in criminal cases. And I think it's just not a sensible, in
16 my opinion, distinction to make that a read-back is
17 functionally the same as, but less, frankly, useful than a
18 transcript.

19 MR. CORRELL: Your Honor, I wasn't disputing that.
20 We have as much interest as everyone else in preserving the
21 sanctity of this trial. I was just providing that as
22 guidance the way another court looked at to make sure we
23 tapped all those bases.

24 THE COURT: Consider them tagged.

25 MS. EISENBERG: Your Honor, may I --

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1 THE COURT: Yes.

2 MS. EISENBERG: Thank you, your Honor. I discussed
3 this issue this morning. It was mooted by a ruling, but now
4 it is back on.

5 There are three questions back to back that
6 Ms. Stern asked of Mr. Frazer during his testimony. When I
7 objected and when Ms. Rogers objected, your Honor sustained
8 the objection to the questions and no answer was provided.

9 As I mentioned this morning, the questions embedded
10 inadmissible prejudicial matter. I just e-mailed the three
11 questions to the Court. We would respectfully request that
12 the Court permit us to redact those three questions,
13 objections and the Court saying that the objections are
14 sustained.

15 MS. CONNELL: Your Honor, plaintiff would just say
16 that to the extent we're taking out sustained objections,
17 then it should be across the board and not pick and choose.

18 MR. FARBER: I agree we that, your Honor.

19 MS. CONNELL: As an example, your Honor, I believe
20 in regard to Mr. Frazer's testimony the NRA asked a number
21 of questions that your Honor sustained regarding bias, that
22 were loaded questions. They were objected to. Those also
23 should be stricken.

24 THE COURT: I think it should be evenhanded. Some
25 objectionable questions don't necessarily inject prejudicial

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1 matter, but some do. I think it is a fair point, although
2 it is -- does require a little leg work, but questions where
3 the objections were sustained should be edited out. So,
4 build that into your work. I'm sorry, but I think that's
5 fair.

6 MS. EISENBERG: Thank you.

7 MS. CONNELL: Your Honor --

8 THE COURT: On all sides.

9 MS. CONNELL: On all sides, thank you.

10 THE COURT: No, I didn't mean just those three. I
11 was accepting the broader point that Mr. Farber was making.

12 All right, I guess let's bring them down.

13 MS. CONNELL: I'm sorry, one final point.

14 There are two cases that we read quickly before we
15 came down here. One is People versus Velasco, that's a
16 criminal case, 77 N.Y.2d 469. It is from 1991.

17 And in criminal cases, it talks about the jury's
18 entitlement to get read-backs or to hear testimony of
19 anything they requested, including things that are not
20 evidence -- I'm just referencing the juror request for a
21 closing. We didn't find directly on point with regard to
22 closing, and that case cited favorably a civil case, Wylie
23 versus Consolidated Rail Corp., which I believe is 261 AD2d
24 955.

25 And, also, your Honor, I would direct the Court to

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1 the case Kerner -- with a K -- versus Surface Transportation
2 Corp., 266 Ap.Div. 356 (1943), which was affirmed by the
3 Court of Appeals; and Bloch versus City of New York,
4 68 AD2d 932, for the propositions that if the jury asks for
5 a read-back, it is entitled to hear that testimony.

6 THE COURT: Well, read-back of the closing
7 arguments in those cases?

8 MS. CONNELL: The first two cases I cited seemed to
9 indicate that it could include arguments not evidentiary --

10 THE COURT: My lean is I don't have to tell them
11 right. Now my lean is not to provide the closings. Again,
12 the case I saw was a slanted one where they only were
13 providing the prosecution's and that seems apparent that you
14 can't do that.

15 But, I think that the purpose of reading back is to
16 read back evidence. Again, this is one of those where both
17 sides thought it would be helpful to have all the closings,
18 transcripts available to the jury. I don't know that I
19 would object, but I don't know that it is legitimate to say
20 that -- you know, they heard them, they heard the closing
21 arguments.

22 I've never had a request from a jury for a
23 read-back of those. I think it would force me to then go
24 back into an issue that was raised I think at least in one
25 direction, but I would raise it in both, that there were

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1 some foot faults during closing arguments on both sides,
2 that some things that were said that arguably were not
3 really in the record. Nothing that I consider material, but
4 I would feel the need to kind of go back and think about all
5 of that and I don't think it is really worth it.

6 So, I'll read whatever letter you provide if you
7 think that the jury -- that there is a right for them to get
8 them; but my lean right now is to leave it at evidence,
9 which is that's what they're supposed to be basing their
10 rulings on, not what was said in the arguments. And, the
11 arguments are a full day. So, that would be a lot to add to
12 their burden.

13 So, I'm certainly not going to give just one
14 side's -- sorry, nobody needs to argue this anymore. If you
15 want to put in arguments about why I should give them, I'll
16 listen and we can fix it tomorrow if I change my mind; but
17 right now, I'm going to stick with this.

18 COURT OFFICER: Ready?

19 THE COURT: Yes.

20 COURT OFFICER: All rise, jury entering.

21 (Whereupon, at this time the jury then entered the
22 courtroom.)

23 THE COURT: Welcome back, have a seat. Sorry to
24 keep bringing you back. I'm trying to do it as little as
25 possible, but I want to also bounce back answering the

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1 questions when I can.

2 I received a question about the Whistleblower
3 Policy, and I do have an answer for you. I'm just looking
4 for -- okay.

5 The updated Whistleblower Policy that you are
6 inquiring about is Plaintiff's Exhibit 421, which is at
7 Tab 13 I think of your boxes. It is a long document,
8 roughly 300 pages.

9 The board resolutions are 201 and 202, or the board
10 resolution is at page 201 and 202 of 300 at the bottom.

11 The Corporate Ethics policy begins at 283, again,
12 of 300, and the Whistleblower Policy within that begins at
13 page 286. So, that's the exhibit. I think that's what you
14 were looking for is what document was it and that's the
15 document.

16 We are going to prepare the Frazer testimony, which
17 we just received a request for.

18 One thing I wanted to point out with respect to all
19 of these requests for testimony, really all the requests for
20 evidence is just to reemphasize the importance of
21 considering the totality of the evidence and that you
22 shouldn't place undue emphasis on particular pieces of
23 testimony that you get sent up to you. Just it is part of
24 the overall equation.

25 I'm fine to provide it for you, but I want to

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1 protect against any undue emphasis on any particular thing
2 just because I happened to send it up in response to a
3 request. It's just part of it. So, just consider it in the
4 context of all the evidence.

5 So, the parties are going to put those together;
6 and I take it from your note that your preference is to
7 receive a transcript as opposed to sitting here listening to
8 a read-back, which everyone is nodding to, enthusiastically.

9 So, I know we have other requests that we're
10 still -- some of them I'm still considering and some of them
11 are still being worked on. I will say, generally, the
12 evidence that gets permitted to get into the jury room is
13 the evidence, not arguments of counsel.

14 So, at this point, I'm limiting what I send up
15 there to the admissible evidence; and whether it's opening
16 arguments or closing arguments, it's not evidence. So, I'm
17 continuing to think that through, but the basic function is
18 to make sure that you don't get distracted by things that
19 are not admissible evidence.

20 Okay, I think that's all I have to -- did I catch
21 everything that I was planning to describe to these guys
22 now? I think so.

23 All right. Well, look, I appreciate your hard work
24 and having to come down here and listen to answers doesn't
25 help that much, but I wanted to give you the answers to

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1 these, especially that one document you were looking for.

2 And, keep at it. I'm going to be leaving in a bit
3 for another appointment, so you can keep sending notes and
4 the lawyers and my staff will handle those while I'm gone,
5 but I'll be back tomorrow morning.

6 Okay, thank you, all.

7 COURT OFFICER: All rise, jury exiting.

8 (Whereupon, at this time the jury then left the
9 courtroom.)

10 THE COURT: Have a seat.

11 So, hopefully, that was sufficient on all fronts.
12 Anything needs to be corrected?

13 MS. EISENBERG: I think so, your Honor. The
14 post-employment agreement related testimony, I'm not sure we
15 had a consensus; but I think, your Honor, generally covered
16 it.

17 THE COURT: Yeah, I wasn't sure what to do with
18 them on that. If you all come up with an agreed-upon set,
19 definitive set of what the -- especially the affected
20 parties' belief is the testimony that covers that issue.

21 They are -- the post-employment agreements are
22 narrow topics, and so it may be possible for to you isolate
23 testimony that relates to that; and if it can be done with
24 agreed-upon accuracy and everybody is comfortable with it,
25 I'm happy to comply with the request. If there's going to

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1 be a lot of fighting about it, then I'm unlikely to do it.

2 MS. EISENBERG: I think the number of pages that
3 concern those two agreements is fairly small, given the
4 overall record and I'm sure we'll do our best to agree if we
5 can.

6 MR. FARBER: Well, I have a different view. I
7 just -- it sort of goes back to the comment that your Honor
8 made about viewing things in isolation and not having the
9 context of the whole evidence; and that's, yes, it's a
10 discrete claim in the case, but there was broader evidence
11 that's relevant, the assessment of that claim, at least in
12 my view.

13 So, you know, as I sit here, I can't sit agreeing
14 to do exactly what I think those instructions say shouldn't
15 be done. I think if there are read-backs, it should be a
16 specific testimony as opposed to having counsel in curating
17 for the jury and saying this is responsive to that.

18 THE COURT: All I'm doing is not foreclosing the
19 parties from proposing an agreed-upon set of testimony that
20 covers the topic. If your point is, well, there has to be
21 other things that may not relate specifically to that
22 transaction that's still relevant to it, I get it. So,
23 that's why I'm not wildly optimistic.

24 MR. FARBER: Thank you, your Honor.

25 THE COURT: But I don't want to shut the door on it

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1 because, in principle, if you could come up with an answer
2 to the jury's question, we should; and if you can't, you
3 can't.

4 Do you have something else for me?

5 Court Exhibit XXVI, and you can give a copy of that
6 to counsel, as well.

7 (Whereupon, at this time Court Exhibit XXVI was so
8 marked.)

9 All right, all, don't burn the house down while I'm
10 gone and be nice to Mr. Blaustein.

11 (In recess)

12 * * * *

13 (Whereupon, at this time the trial was adjourned
14 and continued on February 22, 2024.)

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1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK: TRIAL TERM PART 3
3 - - - - - X

4 PEOPLE OF THE STATE OF NEW YORK, BY
5 LETITIA JAMES ATTORNEY GENERAL OF THE STATE
6 OF NEW YORK,

Plaintiff,

- against -

INDEX NO.
451625/20

7 THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
8 WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
9 and JOSHUA POWELL,

Defendants.

- - - - - X

60 Centre Street
New York, New York
February 22, 2024
JURY TRIAL

12 BEFORE:

HONORABLE JOEL M. COHEN,

Justice, and a jury

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Bonnie Piccirillo
Official Court Reporter

bp

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THE COURT: All right, good afternoon, folks.

I'm going to update the record on a couple of juror notes that I've advised counsel about that I want to put on the record.

The first is one that arrived at 1:30 p.m., and that was -- the note was "May we have Wilson Phillips testimony? (Text of transcript)."

I provided this note to counsel earlier in the day, and they have quite quickly gathered and agreed upon the testimony to send up and have sent it up to the jury. So that one is taken care of.

And then I received at 4:10 -- so, I'll mark this one I just referenced at 1:30 as Court Exhibit XXVII, and next I'll mark as Court Exhibit XXVIII.

(Whereupon, at this time Court Exhibit XXVII and Court Exhibit XXVIII were so marked.)

THE COURT: So, Court Exhibit XXVIII, that is a two-part request.

Question 1: "What is the date that the AG requested information regarding Woody Phillips and LaPierre's post-employment contracts?"

And number 2: "I'd like to see transcripts of the testimony of Charles Cotton, David Coy, and Rowling." R-O-W-L-I-N-G which is Sonya Rowling, I believe.

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And then the note concludes:

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"Is it possible that this could be ready in the morning? Thank you."

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I have given that note to counsel who have advised that they are going to make every effort to gather this so that it can be provided to the jurors in the morning.

8

Agreed, counsel? Lots of nodding.

9

MR. FARBER: Yes.

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THE COURT: All right, so I think that's all we have for tonight, unless you're coming to give me something else.

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MS. CONNELL: Your Honor, there's one complicating issue.

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With regard to Mr. Cotton, we used video clips of his deposition as party admissions and impeachment. Those are not reflected in the record, but they are part of the record; and either we need to note to the jury that they could request that they be replayed or work out some other method by which they can see that. We can print up clip requests, as well.

22

THE COURT: Well --

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MS. CONNELL: Rowling as well, I'm sorry.

24

THE COURT: Rowling as well?

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MS. CONNELL: Yes.

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THE COURT: Well, my inclination is to get the transcripts from the trial. They requested transcripts from the testimony of, so I think it is a fair reading of that that that they mean the trial transcripts.

5

6

I'm okay with either providing it and seeing if they want the rest of it, if that's agreeable to everyone. I can -- we can include with that a note that we have not yet -- we have not included the videotapes.

7

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Was that played separately or was that played during their testimony?

11

12

MS. CONNELL: During their testimony, and we can provide clip reports, your Honor.

13

14

THE COURT: I think that one since it was inter-delineated within the testimony, there will be a section in the transcript that says "Video was played," that's typically what it says. And so if they want that, then they can ask for it.

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MS. CONNELL: Thank you, your Honor.

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THE COURT: Just like in some other testimony when somebody was impeached let's say with prior, there's some stuff that may not have been reflected; but they'll see the gap and if they want it -- if anybody feels very strongly that we should affirmatively get it, I didn't see anyone leaping to that, but I would consider it if people were

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1 insisting on it.

2 MS. CONNELL: Your Honor, we believe that we do
3 feel strongly about it. These are party admissions. We
4 played them during the case in chief. They were put in
5 front of the jury. We feel strongly they're entitled to see
6 that if they want a read-back of the testimony.

7 THE COURT: It is not actually part -- when it is
8 done that way, part of the court transcript. That's just
9 the way it is. I don't disagree that if they ask for it, it
10 can be -- well, I'm going to just leave it at that.

11 What do the defendants --

12 MS. ROGERS: Your Honor, I think if the jurors come
13 to a juncture in the transcript where they're asking what do
14 the videos say, we can approach that then. But we had
15 objected to many of these as improper impeachment; and if
16 impeachment was done properly, then the transcript will say,
17 Didn't you testify at your deposition that you approved the
18 contract in June, and so the jury might not need to see the
19 clip which we had objected to in the first place.

20 THE COURT: I'm not sure that it is improper, but
21 it is a way that is not then reflected in the transcript,
22 that is true.

23 MS. CONNELL: Your Honor, just to make it clear,
24 plaintiff objects. There were not objections to a lot of
25 these video clips or most of them.

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1 They are party admissions. We can produce and
2 provide to the parties and circulate and provide to the jury
3 clip reports, and we believe it is properly considered.

4 THE COURT: I think they were used as impeachment
5 when they were played.

6 MS. CONNELL: Not always, your Honor, no.

7 THE COURT: This was during their testimony. It
8 wasn't, we are now playing for the jury the following prior
9 recorded transcripts.

10 MS. CONNELL: They were played during their
11 testimony, your Honor; but they were both. In fact, I
12 believe and then we can take a look that your Honor held
13 them as such party admissions. So, we believe they should
14 be part of this record, not just left for the jury --

15 THE COURT: I understand the argument. I'm going
16 to stick with what I had, is that if -- first of all, I
17 think the jury or because they understood that we're not
18 going to respond to very curated kind of requests, they're
19 asking for in some cases hundreds of pages. We really have
20 no way of knowing of whether all they're looking for is a
21 very small piece of it.

22 So, I think going above and beyond what they ask
23 for which I think this would be, I'm going to take a step at
24 a time for now. Let's gather the testimony that's in the
25 transcript and provide that, and we'll see if they request

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1 more. I don't think this falls under the sort of doctrine
2 of completeness.

3 MS. CONNELL: Your Honor --

4 THE COURT: Look, I don't need anymore argument on
5 this.

6 MS. CONNELL: May I just ask that they be
7 instructed that they can ask when they --

8 THE COURT: I'm going to give them the transcripts
9 they requested.

10 MR. CORRELL: Your Honor, on another point, what is
11 your thinking on answering the question about when the AG
12 questioned about the employment agreements?

13 THE COURT: I assume -- the only document in the
14 record is the, as I recall -- if there's a document in the
15 record that reflects that date, the only thing I recall is a
16 subpoena and so I don't know if there's anything in the
17 record that reflects that date.

18 MR. FARBER: Judge, whether there's something in
19 the record or not, my suggestion or my request is that the
20 Court's response to them being something along the lines of,
21 As to this question, it is your responsibility based upon
22 your review of the evidence to find the facts.

23 What they're asking us to do is to go through the
24 evidence ourselves and to answer a factual question for
25 them, which I think is --

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2 THE COURT: Look, like I said, if -- I'm not sure
3 that there is anything in the record that reflects this.

4

MR. FARBER: Whether there is or there isn't,
5 that's the point, your Honor. That's for them to assess.

6

They asked what is the date the AG requested
7 certain information, and the job of the jury is to find the
8 answer to factual questions. That's a factual question, and
9 they're supposed to do it, themselves, based upon reviewing
10 the evidence.

11

And, it is also I think somewhat troubling because
12 there's been a series of notes like this. This one I think
13 is the most direct where they're sort of asking us to do
14 things that are really their job.

14

15

THE COURT: I think that's not unfair, especially
16 if there's -- if we could construe this as, look, I know
17 there's a document I just can't remember the number, can you
18 tell me; but that's not really what this question is.

19

And I, frankly, don't recall any document that
20 would reveal this information.

21

MS. CONNELL: Your Honor, I think that there was
22 the preservation notice, there was some testimony about
23 that. There was the subpoena, there was some testimony
24 about this. This is part of the 715-j affirmative defense.

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So, I agree, it is a factual issue that the jury

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needs to find, and I think should be clear --

THE COURT: Right, those are the three documents I was anything about, as well; but I don't think any of them got as granular as providing the information that 715-j asks about, which was this ratification before they were notified.

MS. CONNELL: I agree. I don't think any of them directly go to that. I would want to double check, but, again, I do think it is an important distinction --

THE COURT: Well, I think in that, in that setting I think it may be that the right answer is, it's up to you to determine whether that information is in the record. We can't really respond to that.

MR. CORRELL: Your Honor, the question assumes that there was a date on which the AG requested the info. Our position is there wasn't.

THE COURT: Well, either way, I think Mr. Farber is probably right, that we're not in the business of telling them what the evidence is or isn't.

MR. CORRELL: I agree with that, your Honor.

MS. CONNELL: Your Honor, just the point of law, though, that it is part of the affirmative defense so --

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1 THE COURT: I understand what you're saying, and
2 the defendants are the ones who are saying that so -- so I
3 think that's probably the right answer so I can -- when we
4 provide that information, the transcripts, I think I'll just
5 say as to the first question, the jury has to find facts
6 based on what it finds from the admitted evidence and that's
7 not a question that the Court or the parties can answer for
8 them at this point.

9 Okay, good night. Counsel, I'm going to shoot to
10 be here at 9:30 and bring them down and, hopefully, we'll
11 have the transcripts to send up and I'll give them that
12 little spiel on that answer.

13 (Whereupon, at this time the trial was adjourned
14 and continued on continued on February 23, 2024.)
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1 SUPREME COURT OF THE STATE OF NEW YORK
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Plaintiff,

- against -

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9 and JOSHUA POWELL,

Defendants.

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60 Centre Street
New York, New York
February 23, 2024
JURY TRIAL

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Justice, and a jury

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THE COURT: Good morning, everyone. I want to try and deal with these logistic issues that were raised in various notes to me as soon as we can.

3

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I'll start with I received a letter in the wee hours from the State about this issue of the video clips that were shown during the Cotton and Rowling testimonies. It is a good letter. I did read several of the cases that are in there. I think they involved different situations.

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The one that jumped out to me was The People versus Flores case from 1985 holding reversible error for -- well, the quote from it is that "The court directed the read back of testimonies without including the portion impeaching the witness's prior testimony."

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I looked at it. First of all, it was Grand Jury testimony so, obviously, it wasn't videotaped; and the trial court in that case seemingly deleted it from the transcript, which is a far different thing than what we are doing here.

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But, I think what I'm going to do -- and I don't really need to hear argument about it -- is tell the jury once we clear up any issues you all had in terms of just putting together the actual transcript, I'll remind them that during two of the witnesses there were video clips played; and that per our usual procedure, those are not in

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1 the transcripts. So, they're not in the transcripts that
2 are being handed to you; but if you wish to see the
3 transcript of those video clips, just send us another note
4 and I'll provide them.

5 So, rather than just leaving it to them to bring it
6 up on their own, I think it is fair to at least flag the
7 issue. And if they want them, that's fine; if they don't,
8 also fine. I'm not deleting anything from the official
9 transcript.

10 Parties can decide how they want to impeach
11 witnesses. If they want it to be in the official
12 transcript, they read it out for the court reporter. If
13 they would prefer to use video which I think is fine, that
14 is logistical issue that comes up. So, I don't think it is
15 inappropriate to provide it for the jury if they ask for it.

16 I personally don't view the request they made as
17 being clear one way or the other; but I'm giving them the
18 transcript once we work out the kinks, and I'll let them
19 know that those video clips are available. I think we
20 should do it by transcript, not by having them come in and
21 watch. That way would put more emphasis on the impeachment
22 than on the rest of the testimony.

23 MS. CONNELL: Your Honor, plaintiff would just
24 still note an exception. We have the transcripts printed,
25 the clip reports here and ready; and that should be told to

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1 them so they don't fear a delay which they clearly are
2 concerned about. At a minimum they should know that.

3 THE COURT: I'm done with that issue.

4 Tell me what is going on with what I thought was a
5 simple task of putting together the transcripts?

6 MS. CONNELL: Your Honor, there are really three
7 areas. There are four -- but one plaintiff is willing not
8 to disagree about -- where there were sustained objections
9 and the defendants won't agree to redact them. And we've
10 agreed with things that we thought were maybe not copacetic;
11 but just in the interest of being even handed, we've taken
12 out all sustained objections and relevant questions where
13 that's appropriate.

14 There are a couple of examples where the defendants
15 just won't agree. It is a sustained objection. It should
16 come out.

17 MS. EISENBERG: Your Honor, the reason we don't
18 agree is because the answer was provided before the
19 objection was made and then there was no motion to strike.
20 That's the only reason.

21 THE COURT: I sustained the objection?

22 MS. EISENBERG: But they made the objection after
23 the answer was provided. But, yes, you said sustained, but
24 then they didn't say "move to strike." There were other
25 instances to which we agreed where the objection was made

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1 before the answer was provided and when you sustained it, we
2 certainly agreed to redact those.

3 THE COURT: Well, sustain -- sometimes I will note,
4 Well, the witness has already answered.

5 MS. EISENBERG: You did not.

6 THE COURT: I can't recall. What happens sometimes
7 is that the sustaining of the objection and the answer
8 happen at about the same time, and the court reporter hears
9 both of them. The sustaining of the objection has the
10 effect of striking the question and the answer, so they
11 should both be edited out in accordance with what we've been
12 doing throughout.

13 MS. EISENBERG: Okay, that's not a problem, your
14 Honor. We wanted to be systematically consistent.

15 THE COURT: Yeah, when I intended to leave the
16 answer standing -- again, I'm not always watching the
17 realtime to see what exactly is getting on there -- I will
18 make an exception to it and say, "Well, the witness has
19 already answered" and in that situation, then I don't
20 typically go ahead and sustain the objection.

21 So, I agree with whichever side said we should just
22 have a consistent rule. And so if there was, I would
23 consider that a stray answer that is effectively stricken by
24 the objection being sustained.

25 So, with that ruling, you can then proceed with the

BP

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Proceedings

1 rest of the editing and we can tell the jury it is all going
2 to be there?

3 MS. EISENBERG: Yes, your Honor. Mr. Coy is
4 already ready because there were no disagreements there, and
5 the two others are in court. We'll just use a black marker
6 to redact those.

7 THE COURT: So, it will be a matter of minutes.

8 MS. EISENBERG: Thank you.

9 THE COURT: That's fine. So that was easier than I
10 thought it would be.

11 MR. CORRELL: Your Honor, without reopening the
12 argument that you didn't want to reopen, I just wanted to
13 drop a marker which there was one item where there was
14 testimony from the bankruptcy and Mr. LaPierre had a
15 standing objection to using testimony from the bankruptcy.

16 I just wanted to flag that. If they don't ask for
17 it, it won't be an issue.

18 THE COURT: Well, the difference here is if
19 testimony is played in open court here and all parties have
20 the ability to cross-examine the witness, it doesn't have
21 the same -- I view it differently when something is
22 introduced as substantive evidence just separate and apart.

23 Here, if it was just played live to a live witness
24 who everybody could cross-examine, I don't see the same
25 objection being appropriate.

BP

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Proceedings

1 MS. ROGERS: Your Honor, we just wanted to flag
2 that we, also, put in a letter in response to their
3 late-night letter, but it might not have hit the docket
4 until this morning. That letter had more recent authority
5 on this issue confirming that the Court can exercise its
6 discretion not to give the jury impeachment read-back. We
7 don't intend to reopen the issue.

8 I think your Honor's ruling is reasonable and fair,
9 but I just wanted to make that note for the record.

10 THE COURT: I had not seen it.

11 MS. ROGERS: I think it hit the docket right as we
12 were all entering the room, so that's probably why.

13 THE COURT: I see it now.

14 MS. CONNELL: To be clear, your Honor, these were
15 often offered for impeachment. They were also party
16 admissions.

17 THE COURT: Well, yes and no. I mean, you can --
18 this may be overly technical; but if you were offering it as
19 new evidence in addition to the live testimony of Ms. Smith,
20 We're also going to play certain prior testimony, this -- I
21 haven't looked at all the clips. But, generally speaking,
22 these were used as she answered a question, Well, didn't you
23 say the following; you can't have simultaneous testimony
24 here. I mean, I -- my recollection is when these clips were
25 shown, they may have also been admissible as independent

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Proceedings

1 evidence; but they weren't offered that way. Because when
2 you offer it that way, you do it the way we've done with all
3 the other witnesses where the, the testimony is shown to the
4 jury, we have back and forth about completeness and it is a
5 separate introduction of witness testimony.

6 It is not really worth getting into because I'm
7 pretty clear that when this was shown, it was shown for
8 purposes of impeachment. Again, it might be independently
9 admissible as well; but the question that we're really just
10 getting at is when the jury asked to hear that testimony, my
11 position is is it's the official record. And I'm now going
12 to let them know that since they may not realize it, but
13 when the videotape happens that's not in the transcript; and
14 if they want it, they can get it.

15 So, I'm good with where I came out. I
16 appreciate -- there's no perfect solution. I think the one
17 thing I wouldn't do which appears to be what some of these
18 cases involve is literally editing out impeachment questions
19 and answers live on the stand. I can see why that would be
20 a problem.

21 MS. CONNELL: Thank you, your Honor. We still note
22 the exception. We do have the clip reports available.

23 THE COURT: Understood. If they ask for them,
24 they'll get them.

25 All right, let's -- is the jury gathered? Not yet.

BP

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Proceedings

1 We're still waiting on one.

2 COURT OFFICER: Ready, Judge?

3 THE COURT: Yes, sir.

4 COURT OFFICER: All rise, jury entering.

5 (Whereupon, at this time the jury then entered the
6 courtroom.)

7 THE COURT: Good morning, everyone. Please have a
8 seat.

9 So, just a couple of things I wanted to update you
10 on about some of the most recent requests.

11 The request we received near the end of the day
12 yesterday was for transcripts of three witnesses,
13 Mr. Cotton, Mr. Coy and Ms. Rowling; and those are I think
14 ready or one is ready right now. The other two, they're
15 just making some small changes.

16 The only point I want to raise on those is the only
17 thing we have edited out on any of these is sustained
18 objections. So, if the question was asked, objection raised
19 and I sustained it, that's not supposed to be part of the
20 record. So, just to keep you from being distracted we've
21 edited some of those out. So, if you see any editing marks,
22 that's the only thing that's coming out, along with it if we
23 have conferences at the bench or while you're out of the
24 courtroom. So, we're just leaving it to the admitted
25 testimony.

BP

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Proceedings

1 The other point is as to two of the witnesses, I
2 think it is Mr. Cotton and Ms. Rowling, you may remember
3 that during the testimony after some questioning, the --
4 there was played some video of their prior deposition
5 testimony or may be in some cases other types of testimony.

6 The way our system works, that is not transcribed.
7 When the video plays, the court reporter doesn't put that in
8 the transcript. So there will be just a notation saying
9 "Video was played."

10 So, the transcripts that you're getting won't have
11 the text of those videos. If you want those, just send a
12 followup note saying if you want all of them or if you want
13 a particular one and we'll have that done. Those
14 transcripts are ready. It is not going to be a long delay.
15 The official transcript just includes what was taken down by
16 the court reporter; but, again, you're free to ask for that
17 stuff if you want it.

18 I want to stress, again, that although it is
19 appropriate for you to ask for individual pieces of evidence
20 and testimony, most important is to take a holistic view of
21 all the evidence in the case. It is all one big whole and
22 you shouldn't overemphasize any particular piece of evidence
23 just because it's being sent to the jury room. It's just
24 important to always remember to take the broad view of all
25 the evidence that was submitted.

BP

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Proceedings

1 So, that should be up to you shortly. And, again,
2 just send us a followup note if you want anything else.

3 The other question that was asked was a more
4 specific fact question, "What was the date that --" the
5 question was "What is the date that the AG requested
6 information regarding Woody Phillips and Mr. LaPierre's
7 post-employment contracts?"

8 Unfortunately, although we'd like to be helpful
9 with that, that's the question we really can't provide an
10 answer for because that's a fact question for the jury to
11 determine based on the evidence. So, it would be
12 inappropriate for us to sort of hand you an answer like
13 that.

14 So, if you want to see evidence, we can certainly
15 bring that to you; but we can't sort of curate it and give
16 you answers to specific questions. That's not our role.

17 So, that's the answer to that.

18 So, with that, I think that that covers the various
19 requests, and we can let you go back to work.

20 COURT OFFICER: All rise, jury exiting.

21 (Whereupon, at this time the jury then left the
22 courtroom.)

23 THE COURT: Okay, let's try to get the transcripts
24 up to them as quickly as we can.

25 MS. EISENBERG: We sent Mr. Coy and are working on

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Proceedings

1 the other two.

2 THE COURT: Sent it through who?

3 MS. EISENBERG: Through the lieutenant.

4 MS. CONNELL: Your Honor, we're actually reprinting
5 them because it just ends up being easier.

6 THE COURT: Fine. Thank you.

7 MR. SHIFFMAN: Thank you, your Honor.

8 (In recess)

9

10 (Continued on next page)

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Proceedings

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AFTERNOON SESSION

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THE COURT: So, we'll mark this as Court

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Exhibit XXIX which, I believe, the court officer gave you

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and it is concise.

7

The question is: "How to figure out damages or

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harm?"

9

My proposed response is as follows:

10

In response to the juror question regarding

11

calculation of damages, please refer to pages 67 to 69 of

12

the Court's instructions. If you have a specific question

13

regarding those instructions, please submit it and I will

14

determine whether additional guidance can be provided."

15

Anybody have any issues with that?

16

MR. FARBER: Judge, just that in looking at the

17

pages that were put on NYSCEF of the jury instructions, they

18

don't appear to correspond to that.

19

THE COURT: Is that right?

20

MR. FARBER: The damages -- the section of your

21

instructions that starts with the heading "Damages" runs

22

from page 63 of 72 of 72 to 68 of 72. I can hand those up.

23

THE COURT: I was looking at a PDF I had on my

24

computer, and I guess I did not have the actual copies. So

25

that's a fair point. I can make that change. So, it

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Proceedings

1 is 63 --

2 MR. FARBER: 63, your Honor, to 68.

3 THE COURT: 63 to 68. Okay, so I will make that
4 change and then have it sent up to the jury.

5 Any other comments?

6 MS. CONNELL: No, your Honor. That's acceptable to
7 plaintiff.

8 I just say if it comes back and if it comes up
9 again, I remind the Court there was a request for
10 summations, maybe that would help them.

11 We cited People versus Velasco and the Wylie case
12 previously.

13 THE COURT: Okay, thank you. We'll wait for the
14 next note. Thank you.

15 I'll come down to resign this note and have it
16 marked as an exhibit. I'll be back in five minutes.

17 (In recess)

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19 * * * * *

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21 THE COURT: All right, I'm going to mark the
22 response revised having the correct page numbers Court
23 Exhibit XXX and ask the court officer to bring it up to the
24 jury.

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Proceedings

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(Whereupon, at this time Court Exhibit XXX was so marked.)

THE COURT: You can make copies and bring it up to them. All right, let's see if we get another response.

(In recess)

(Continued on next page)

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Proceedings

1 THE COURT: All right, good afternoon, everyone.

2 I have a note from the jury foreman which says the
3 following: "We need 15 minutes to finish filling the
4 verdict sheet."

5 So, as I mentioned, we do have flexibility from the
6 administration to stay past the usual five o'clock ending
7 time, if necessary. So, it seems to me they're pretty much
8 at the end.

9 So, I will give them the fifteen minutes and come
10 back out when we have the verdict.

11 Okay, I'm going to mark this as Court Exhibit XXXI,
12 and you can make copies after you mark it.

13 (Whereupon, at this time Court Exhibit XXXI was so
14 marked.)

15 * * * *

16 (Short recess)

17

18 (Continued on next page)

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4911

Proceedings

1 COURT OFFICER: All rise.

2 THE COURT: Have a seat. I'm bringing the jury
3 down with their verdict.

4 Before they get here, I collected from the jury --
5 the court officers did, the copy of the instructions they
6 had with them, just for the record, which I'm handing to the
7 court reporter to mark as Court Exhibit XXXII.

8 (Whereupon, at this time Court Exhibit XXXII was so
9 marked.)

10 MR. CORRELL: Your Honor, a housekeeping matter,
11 I'd like to ask the Court to see the jury verdict form
12 before the jury is discharged, which is my client's right.

13 THE COURT: I will.

14 MR. CORRELL: And I will also ask the Court to poll
15 the jury before they are discharged.

16 THE COURT: Will do.

17 MR. CORRELL: Your Honor, I would also ask the
18 Court to allow more than fifteen days to submit a written
19 motion under CPLR 4404.

20 THE COURT: I don't know exactly what that means
21 because more than fifteen days could mean a lot more than
22 fifteen days. I don't know exactly what you had in mind.

23 MR. CORRELL: My thought was we would do it after
24 the second phase of the trial.

25 THE COURT: If you need to.

BP

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Proceedings

1 MR. CORRELL: If we need to.

2 THE COURT: Oh, I see what you mean. Why don't we
3 talk about that after.

4 COURT OFFICER: Is the Court ready for the jury?

5 THE COURT: Yes, sir.

6 COURT OFFICER: All rise, jury entering.

7 (Whereupon, at this time the jury then entered the
8 courtroom.)

9 THE COURT: Welcome to the jury. Please have a
10 seat.

11 To the Foreperson, has the jury reached a verdict?

12 THE FOREPERSON: Yes, your Honor, we have.

13 THE COURT: Do you have a copy of the verdict form.

14 THE FOREPERSON: I do.

15 THE COURT: Can I ask you to please stand. I'm
16 going to read each question and you would please read me the
17 jury's answer.

18 Question 1: Did the Plaintiff prove by a
19 preponderance of the evidence that the NRA failed to
20 properly administer the organization and its assets at any
21 time between March 20, 2014, and May 2, 2022. Yes or no?

22 THE FOREPERSON: Yes.

23 THE COURT: Question 2(a): Did Plaintiff prove by
24 a preponderance of the evidence that at any time between
25 March 20, 2014, and May 2, 2022, Defendant Wayne LaPierre

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Proceedings

1 violated his statutory obligation to discharge the duties of
2 his position in good faith and with the care an ordinarily
3 prudent person in a like position would exercise under
4 similar circumstances? Yes or no?

5 THE FOREPERSON: Yes.

6 THE COURT: Question 2(b): If you answered "yes"
7 to Question 2(a), do you find that the violations caused
8 monetary harm to the NRA? Yes or no?

9 THE FOREPERSON: Yes.

10 THE COURT: Question 2(c): If you answered "yes"
11 to Question 2(b) above, what is the dollar amount of
12 monetary harm sustained by the NRA as a result of Wayne
13 LaPierre's violation or violations of his statutory duties
14 from March 20, 2014, through May 2, 2022?

15 THE FOREPERSON: \$5,400,000.

16 THE COURT: With one dissenting vote.

17 THE FOREPERSON: That's right.

18 THE COURT: Question 2(d): Of the amount entered
19 in response to Question 2(c) above, what portion, if any,
20 did Wayne LaPierre establish by a preponderance of the
21 evidence that he has repaid to the NRA?

22 THE FOREPERSON: \$1,048,769.98.

23 Question 3(a): Did Plaintiff prove by a
24 preponderance of the evidence that at any time between
25 March 20, 2014, and December 31, 2018 (the date of his

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Proceedings

1 retirement) Defendant Wilson Phillips violated his statutory
2 obligation to discharge the duties of his position in good
3 faith and with the care an ordinarily prudent in a like
4 position would exercise under similar circumstances? Yes or
5 no?

6 THE FOREPERSON: Yes.

7 THE COURT: If you answered "yes" to Question
8 3(a) -- this is Question 3(b), sorry.

9 If you answered "yes" to Question 3(a), do you find
10 the violation or violations caused monetary harm to the NRA?
11 Yes or no?

12 THE FOREPERSON: Yes.

13 THE COURT: If you answered "yes" to Question 3(b)
14 above, what is the dollar amount of monetary harm sustained
15 by the NRA as a result of Wilson Phillips' violation of his
16 statutory duties of care and good faith from March 20, 2014,
17 through December 31, 2018?

18 THE FOREPERSON: \$2,000,000.

19 Question 4(a): Did Plaintiff prove by a
20 preponderance of the evidence that at any time between
21 March 20, 2014, and May 2nd, 2022, Defendant John Frazer
22 violated his statutory obligation to discharge the duties of
23 his position in good faith and with the care an ordinarily
24 prudent person in a like position would exercise under
25 similar circumstances? Answer yes or no?

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Proceedings

1 THE FOREPERSON: Yes.

2 THE COURT: If you answered "yes" to Question 4(a),
3 do you find that the violations caused monetary harm to the
4 NRA?

5 THE FOREPERSON: No.

6 THE COURT: With one dissenting vote.

7 Moving on to Question 5(a): Did the Plaintiff
8 prove by a preponderance of the evidence that Wayne
9 LaPierre's 2018 post-employment contract was a related-party
10 transaction in which Wayne LaPierre had a financial interest
11 and in which the NRA is a participant that occurred between
12 March 20, 2017, and May 2nd, 2022? Yes or no?

13 THE FOREPERSON: Yes.

14 THE COURT: If your answer was "yes" to
15 Question 5(a), did the Plaintiff prove by a preponderance of
16 the evidence that the 2018 post-employment contract was not
17 properly approved in advance by the NRA Board or authorized
18 committee? Answer yes or no?

19 THE FOREPERSON: No.

20 THE COURT: Question 6(a): Did the Plaintiff prove
21 by a preponderance of the evidence that Wilson Phillips'
22 post-employment consulting contract is a related-party
23 transaction in which Wilson Phillips had a financial
24 interest and in which the NRA is a participant that occurred
25 between March 20, 2017, and May 2, 2018? Yes or no?

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Proceedings

1 THE FOREPERSON: Yes.

2 THE COURT: Question 6(b): If you answered "yes"
3 in Question 6(a), did the Plaintiff prove by a preponderance
4 of the evidence that the post-employment consulting contract
5 was not properly approved in advance by the NRA Board or
6 authorized committee? Yes or no?

7 THE FOREPERSON: Yes.

8 THE COURT: Question 6(c): If you answered "yes"
9 to Question 6(b), did Wilson Phillips and/or the NRA prove
10 by a preponderance of the evidence that the post-employment
11 consulting contract was properly ratified by the NRA Board
12 of Directors or an authorized committee? Yes or no?

13 THE FOREPERSON: No.

14 THE COURT: Question 6(d): If you answered "no" to
15 Question 6(c) above, state the amount of actual damages, if
16 any, sustained by the NRA as a result of that violation by
17 Wilson Phillips.

18 THE FOREPERSON: No, zero dollars.

19 THE COURT: With one dissenting vote.

20 Question 6(g): Did the Plaintiff prove by a
21 preponderance of the evidence that Wilson Phillips engaged
22 in the unlawful related-party transaction willfully and
23 intentionally? If so, please state the amount of damages,
24 if any, to be awarded to Plaintiff. The amount must not
25 exceed twice the amount of restitution to the NRA. So, yes

BP

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Proceedings

1 or no?

2 THE FOREPERSON: Yes.

3 THE COURT: And what is the amount that you
4 awarded, if any?

5 THE FOREPERSON: None, zero dollars.

6 THE COURT: Question 7(a): Did the Plaintiff prove
7 by a preponderance of the evidence that one or more of the
8 following is a related-party transaction in which a related
9 party had a financial interest and in which the NRA is a
10 participant that occurred between March 20, 2017, and May 2,
11 2022?

12 First, hair and makeup expenses for Susan LaPierre;
13 yes or no?

14 THE FOREPERSON: Yes.

15 THE COURT: Board Member Dave Butz (personal
16 appearances and shooting instructions); yes or no?

17 THE FOREPERSON: Yes.

18 THE COURT: Board Member Sandra Froman (payments in
19 connection with speaking engagements of Ms. Froman); yes or
20 no?

21 THE FOREPERSON: Yes.

22 THE COURT: Officer and Board Member Oliver North
23 (Ackerman McQueen contract); yes or no?

24 THE FOREPERSON: Yes.

25 THE COURT: Board Member Marion Hammer - direct

BP

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Proceedings

1 payments by NRA (consulting services); yes or no?

2 THE FOREPERSON: Yes.

3 THE COURT: Board Member Marion Hammer - direct
4 payments by NRA ILA (consulting services); yes or no?

5 THE FOREPERSON: Yes.

6 THE COURT: Board member Marion Hammer - payments
7 to United Sportsmen of Florida (financial interest in grant
8 payments post 2017); yes or no?

9 THE FOREPERSON: Yes.

10 THE COURT: Officer Joshua Powell/McKenna (wife's
11 interest in payments by the NRA to McKenna & Associates);
12 yes or no?

13 THE FOREPERSON: Yes.

14 THE COURT: Officer Joshua Powell/Jim Powell
15 Photography (father's interest in payments by the NRA to Jim
16 Powell Photography); yes or no?

17 THE FOREPERSON: Yes.

18 THE COURT: Board Member David Keene (payments for
19 speaking engagements); yes or no?

20 THE FOREPERSON: Yes.

21 THE COURT: With one dissenting juror to that one.

22 Question 7(b): For each transaction as to which
23 you answered "yes" in Question 7(a), did the Plaintiff prove
24 by a preponderance of the evidence that the transaction was
25 not properly approved in advance by the NRA Board or

BP

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Proceedings

1 authorized committee?

2 Hair and Makeup expenses for Susan LaPierre; yes or
3 no?

4 THE FOREPERSON: Yes.

5 THE COURT: Board Member Dave Butz; yes or no?

6 THE FOREPERSON: Yes.

7 THE COURT: Board Member Sandra Froman (payments in
8 connection with speaking engagements of Ms. Froman); yes or
9 no?

10 THE FOREPERSON: Yes.

11 THE COURT: Officer and Board Member Oliver North
12 (Ackerman McQueen contract); yes or no?

13 THE FOREPERSON: Yes.

14 THE COURT: Board member Marion Hammer - direct
15 payments by NRA (consulting services); yes or no?

16 THE FOREPERSON: Yes.

17 THE COURT: Board Member Marion Hammer - direct
18 payments by NRA ILA (consulting services); yes or no?

19 THE FOREPERSON: Yes.

20 THE COURT: Board Member Marion Hammer - payments
21 to United Sportsmen of Florida (financial interest in grant
22 payments post 2017); yes or no?

23 THE FOREPERSON: Yes.

24 THE COURT: Officer Joshua Powell/McKenna; yes or
25 no?

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Proceedings

1 THE FOREPERSON: Yes.

2 THE COURT: Officer Joshua Powell/Jim Powell
3 Photography; yes or no?

4 THE FOREPERSON: Yes.

5 THE COURT: Board Member David Keene; yes or no?

6 THE FOREPERSON: Yes.

7 THE COURT: Question 7(c): If you answered "yes"
8 to 7(b), did the NRA prove by a preponderance of the
9 evidence that any of the related-party transactions was
10 properly ratified by the NRA Board of Directors or an
11 authorized committee?

12 Hair and Makeup Expenses for Susan LaPierre; yes or
13 no?

14 THE FOREPERSON: No.

15 THE COURT: Board Member Dave Butz; yes or no?

16 THE FOREPERSON: Yes.

17 THE COURT: Board Member Sandra Froman; yes or no?

18 THE FOREPERSON: Yes.

19 THE COURT: Officer and Board Member Oliver North;
20 yes or no?

21 THE FOREPERSON: Yes.

22 THE COURT: Board Member Marion Hammer - direct
23 payments by NRA (consulting services); yes or no?

24 THE FOREPERSON: Yes.

25 THE COURT: Board Member Marion Hammer - direct

BP

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Proceedings

1 payments by NRA ILA (consulting services); yes or no?

2 THE FOREPERSON: Yes.

3 THE COURT: With one dissenting juror.

4 Board Member Marion Hammer - payments to United
5 Sportsmen of Florida; yes or no?

6 THE FOREPERSON: Yes.

7 THE COURT: Officer Joshua Powell/McKenna; yes or
8 no?

9 THE FOREPERSON: Yes.

10 THE COURT: Officer Joshua Powell/Jim Powell
11 Photography; yes or no?

12 THE FOREPERSON: Yes.

13 THE COURT: And Board Member David Keene (payments
14 for speaking engagements); yes or no?

15 THE FOREPERSON: No.

16 THE COURT: Moving on to Section IV, Removal of
17 Officers:

18 Question 8(a): Did the Plaintiff prove by a
19 preponderance of the evidence that there is cause for the
20 removal of Defendant Wayne LaPierre as Executive Vice
21 President of the NRA; yes or no?

22 THE FOREPERSON: Yes.

23 THE COURT: With one dissenting juror.

24 Question 8(b): Did the Plaintiff prove by a
25 preponderance of the evidence that there is cause for the

BP

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Proceedings

1 removal of John Frazer as Secretary of the NRA; yes or no?

2 THE FOREPERSON: No.

3 THE COURT: Section V, Violation of Whistleblower
4 Protections.

5 Question 9(a): Did the Plaintiff prove by a
6 preponderance of the evidence that the NRA violated N-PCL
7 Section 715-b by failing to adopt a whistleblower policy
8 that complied with New York law at any time between
9 March 20, 2017, and January 22, 2020? Yes or no?

10 THE FOREPERSON: Yes.

11 THE COURT: Question 9(b): Did the Plaintiff prove
12 by a preponderance of the evidence that the NRA violated
13 N-PCL Section 715-b by failing to evaluate whistleblower
14 complaints or by failing to ensure compliance by permitting
15 any of the following individuals to suffer intimidation,
16 harassment, discrimination or other retaliation to
17 discourage reporting of improper conduct at any time between
18 March 20, 2017, and May 2nd, 2022?

19 First, Lieutenant Colonel Oliver North, yes or no?

20 THE FOREPERSON: Yes.

21 THE COURT: Richard Childress, yes or no?

22 THE FOREPERSON: Yes.

23 THE COURT: Esther Schneider, yes or no?

24 THE FOREPERSON: Yes.

25 THE COURT: Timothy Knight, yes or no?

BP

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Proceedings

1 THE FOREPERSON: Yes.

2 THE COURT: Sean Maloney, yes or no.

3 THE FOREPERSON: Yes.

4 THE COURT: Rocky Marshall, yes or no?

5 THE FOREPERSON: Yes.

6 THE COURT: Philip Journey, yes or no?

7 THE FOREPERSON: Yes.

8 THE COURT: Craig Spray, yes or no?

9 THE FOREPERSON: Yes.

10 THE COURT: Section VI. False Filings Claims Under
11 Executive Law.

12 Question 10(a): Did the Plaintiff prove by a
13 preponderance of the evidence that any of the NRA's annual
14 CHAR500 filings which include the NRA IRS Form 990, between
15 March 20, 2017, and May 2, 2022, contained a statement or
16 omission that was materially false? Yes or no?

17 THE FOREPERSON: Yes.

18 THE COURT: Question 10(b): If you answered "yes"
19 to Question 10(a), did the Plaintiff prove by a
20 preponderance of the evidence that John Frazer made or
21 authorized a materially false statement or omission in any
22 of the NRA's annual CHAR500 filings, which include the NRA
23 IRS Form 990, between March 20, 2017 and March 2, 2022, and
24 that Mr. Frazer knew or should have known that the statement
25 or omission was materially false? Yes or no?

BP

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Proceedings

1 THE FOREPERSON: Yes.

2 THE COURT: With one dissenting juror.

3 I'm going to hand out to counsel a copy of the jury
4 form to peruse. After I do that -- you can have a seat.

5 Just one moment. Thank you very much.

6 In a moment I'm going to ask the jurors just
7 confirm the verdict that I am going to let the counsel take
8 a quick look at the verdict sheet.

9 (Brief pause)

10 THE COURT: I'm going to ask counsel, do counsel
11 have any issues with the form of the verdict sheet and its
12 consistency as with the verdict read by the foreperson?

13 MS. CONNELL: No, your Honor.

14 MS. ROGERS: No, your Honor.

15 MR. CORRELL: No, your Honor.

16 MR. FARBER: No, your Honor.

17 MR. FLEMING: No.

18 THE COURT: Okay, I'm going to ask each juror --
19 I'm going to use the juror number that we've come to know
20 you by.

21 First stand, Juror Twelve, does the verdict that
22 was read reflect the true verdict of the jury?

23 JUROR NUMBER TWELVE: Yes.

24 THE COURT: Juror Number Eight, does the verdict
25 read by the Foreperson reflect the true verdict of the jury?

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Proceedings

1 JUROR NUMBER EIGHT: Yes.

2 THE COURT: Thank you. Juror Number Three, does
3 the verdict read by the Foreperson reflect the true verdict
4 of the jury?

5 JUROR NUMBER THREE: Yes.

6 THE COURT: Juror Number Eleven, does the verdict
7 read by the Foreperson reflect the true verdict of the jury?

8 JUROR NUMBER ELEVEN: Yes, your Honor.

9 THE COURT: Juror Number Seven, does the verdict
10 read by the Foreperson reflect the true verdict of the jury?

11 JUROR NUMBER SEVEN: Yes.

12 THE COURT: Thank you. And, Juror Number Six, does
13 the verdict read by the Foreperson reflect the true verdict
14 of the juror?

15 JUROR NUMBER SIX: Yes, your Honor.

16 THE COURT: Members of the jury -- is there
17 anything else from counsel?

18 MR. CORRELL: Your Honor, I just want to renew the
19 oral motion that was made earlier under CPLR 4401 for a
20 directed verdict and move orally pursuant to CPLR 4404(a)
21 for judgment as a matter of law in Mr. LaPierre's favor for
22 a new trial in the interest of justice and on the grounds
23 the verdict is against the weight of the evidence. And I
24 would also like to ask on the record for the Court to allow
25 more than fifteen days to submit a written motion under CPLR

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1 4404.

2 I would also ask the Court to stay entry of the
3 judgment on the verdict until after the second phase of the
4 trial.

5 THE COURT: Anyone else?

6 MS. ROGERS: Nothing from the NRA, your Honor.

7 MR. FARBER: Judge, I have a similar request in
8 terms of additional time which to file a motion for a new
9 trial. I'll make the other request in connection with those
10 posttrial motions.

11 THE COURT: Understood. Mr. Fleming?

12 MR. FLEMING: If you would like to hear from me
13 now, I would speak to it; but I can also wait until after
14 you're done with the jury.

15 THE COURT: That's fine. Anything from the State?

16 MS. CONNELL: No, your Honor.

17 THE COURT: Okay, members of the jury, this
18 completes your service. On behalf of the judicial system of
19 the state and the parties and lawyers, I thank you for that
20 service.

21 Before you leave the courtroom, however, I want to
22 inform you that you do not have to answer questions about
23 the case asked by anyone other than possibly me, and I don't
24 have any. The public interest requires that jurors have the
25 utmost freedom of debate in the jury room, and that each of

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1 you be free to express your views without fear of what
2 others may think. Although you are not required to maintain
3 secrecy about what occurred in the jury room, you should
4 keep in mind your own best interests as jurors before
5 discussing the case with anyone or answering any questions
6 about it.

7 In sum, you are free to discuss the case with
8 anyone, and you are also free to decline to discuss the case
9 with anyone.

10 So, with that, I bid you a fond farewell, and thank
11 you very much for all of your time and patience and
12 diligence, and I really do appreciate your time.

13 Thank you very much.

14 COURT OFFICER: All rise, jury exiting.

15 (Whereupon, at this time the jury was discharged
16 and exited the courtroom.)

17 THE COURT: And I also thank the alternate jurors
18 who are now sitting in the courtroom for your time and
19 attention and your patience during this process as well, so
20 thank you very much.

21 All right, everybody can be seated.

22 We are in overtime here, so I would ask that we try
23 to keep whatever preservation of arguments that you want to
24 make now brief, and you can certainly expand on them in any
25 posttrial motions. You don't have to put everything on the

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1 record. Just preserve what you feel like you need to.

2 MR. CORRELL: Should we go in order of the
3 defendants?

4 THE COURT: Sure.

5 MS. EISENBERG: Your Honor, we just want to
6 preserve all of the arguments we made in our motion for
7 directed verdict and as a matter of law.

8 THE COURT: Okay.

9 MR. CORRELL: Your Honor, I'd like to incorporate
10 by reference the arguments that I made on the earlier Rule
11 4401 motion.

12 I had also incorporated arguments made by
13 Mr. Phillips's counsel and Mr. Frazer's counsel.

14 And I would like to make an oral motion for
15 judgment as a matter of law on the issue of whether Section
16 720 provides for relief in the form of damages in an action
17 against an officer at all; and whether assuming arguendo
18 without conceding that it does, whether such damages can --
19 a judgment for damages or any other monetary relief can be
20 procured without allegation and proof of an unlawful
21 transfer of corporate assets with knowledge of its
22 unlawfulness to the officer who is the defendant in the
23 lawsuit.

24 I'd also like to move orally for judgment
25 notwithstanding the verdict on the ground that no reasonable

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1 jury could conclude that Mr. LaPierre is liable on these
2 facts, on this record or that any act or omission on his
3 part was a substantial factor in causing any damages or
4 monetary harm.

5 I'm, also, moving orally on the ground that the
6 verdict against Mr. LaPierre is against the weight of the
7 evidence and against the interest of justice.

8 And, I'm also moving orally to set aside the
9 verdict on the ground that it appears -- to the extent that
10 it imposes damages outside the three-year period that we
11 believe is applicable to the claims against him in this
12 action and look forward to submitting a written motion
13 embodying all these arguments in due course.

14 THE COURT: Thank you.

15 MR. FARBER: Judge, we still have the motions that
16 we made at the close of the State's case, which I know your
17 Honor has deferred ruling on. In terms of posttrial
18 motions, as I said, we'll put those in writing.

19 What I would like to ask the Court for and we'll be
20 submitting is a request to have sixty days to do the
21 briefing in connection with those motions.

22 MR. FLEMING: Your Honor, first, I would join in
23 the motion for an extension of time to file a 4404 motion.
24 And as your Honor knows, I made an oral motion for a
25 directed verdict followed up by a written brief, which was

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1 filed last Sunday, which the Court has.

2 And, so, we would continue to urge the directed
3 verdict motion be considered and granted. That's it. Thank
4 you.

5 THE COURT: Thank you.

6 MS. CONNELL: Your Honor, plaintiff would like to
7 reserve the right to make a judgment notwithstanding the
8 verdict in regard to ratifications of certain related-party
9 transactions, the credit afforded to Mr. LaPierre and the
10 lack of damages with regard to Mr. Phillips' post-employment
11 contract.

12 THE COURT: Okay, thank you all very much.

13 I'm certainly flexible about the scheduling of
14 posttrial motions. What I suggest we do is schedule a
15 conference in the next day or week to talk about the
16 schedule for briefing and, also, the schedule for the Phase
17 2 trial.

18 As a precaution, I tentatively blocked out a couple
19 of weeks in July because time was filling up quickly. If
20 the time doesn't work, we can look further, but I think it
21 was July, around the week of the 15th or so. But, so, think
22 about that in your schedule. I think I blocked two weeks.

23 So, we'll reach out to find the time for a
24 conference, sort of scheduling conference on briefing and on
25 the Phase 2 trial and any other things that have to happen

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1 between now and the Phase 2 trial in terms of additional
2 evidence. So, we'll reach out and try to schedule that in
3 the next week.

4 As I've said, I'm starting a trial on Monday, so
5 I'm not sure exactly when I can do that; but I'll try to do
6 this as soon as I can.

7 So, with that, I do want to, again, express my
8 appreciation to very hard working counsel who worked
9 tirelessly on this case for years.

10 I, also, want to thank who I didn't the tech, who
11 worked on this trial have been prudent and really helped
12 the -- the defense ones aren't here, but I want to thank
13 you.

14 I want to thank the court staff, court reporters,
15 court officers, Ms. Hill who runs the entire show.

16 So, anyway, thank you very much. I appreciate all
17 of your efforts, and we'll be seeing each other again soon.
18 So, thanks very much.

19 MS. CONNELL: Thank you, your Honor.

20 MR. FARBER: Thank you, your Honor.

21 MR. CORRELL: Thank you, your Honor.

22 MR. FARBER: Thank you, Judge.

23 * * * *

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