

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

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

6 Plaintiff,

7 -against-

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

11 Defendants.

12 -----X

13 Index No. 451625/20 Via Microsoft Teams
14 ORAL ARGUMENT January 5, 2022
15 and DECISION

16
17 B E F O R E:

18 HONORABLE JOEL M. COHEN,
19 Justice

20 A P P E A R A N C E S:

21 ATTORNEY GENERAL OF THE STATE OF NEW YORK
22 OFFICE OF LETITIA JAMES
23 Attorneys for the Plaintiff
24 BY: JAMES SHEEHAN, ESQ.
25 Chief of the Charities Bureau
EMILY STERN, ESQ.
Co-Chief of the Enforcement Section, Charities
Bureau
STEPHEN C. THOMPSON, ESQ.
Assistant Attorney General
MONICA CONNELL, ESQ.
Assistant Attorney General

26
27 BREWER, ATTORNEYS AND COUNSELORS
28 Attorneys for the Defendant LaPierre
29 BY: SVETLANA EISENBERG, ESQ.
30 SERGE MOSHAK, ESQ.

ALAN F. BOWIN, CSR, RMR, CRR

1 (Appearances continued:)

2

3 BREWER, ATTORNEYS AND COUNSELORS
Attorneys for the Defendant NRA
4 BY: SVETLANA EISENBERG, ESQ.
SERGE MOSHAK, ESQ.

5

6

CORRELL LAW GROUP
7 Attorneys for the Defendant LaPierre
BY: P. KENT CORRELL, ESQ.

8

9

WINSTON & STRAWN LLP
10 Attorneys for the Defendant Phillips
BY: SETH FARBER, ESQ.
11 MARK WERBNER, ESQ.

12

13 GAGE, SPENCER & FLEMING LLP
Attorneys for the Defendant Frazer
14 BY: WILLIAM B. FLEMING, ESQ.

15

16 AKIN GUMP STRAUSS HAUER & FELD, ESQS.
Attorneys for the Defendant Powell
17 BY: THOMAS P. McLISH, ESQ.

18

19 WINSTON & STRAWN LLP
Attorneys for Non-Party Christopher Cox
20 BY: MATTHEW SAXON, ESQ.

21

22

23 ALAN F. BOWIN, CSR, RMR, CRR
24 Official Court Reporter

25

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1 THE COURT: Let's go on the record, Alan.

2 Let's start with appearances, beginning with the
3 plaintiff.

4 (Pause.)

5 THE COURT: I can't hear you.

6 MS. CONNELL: One second, your Honor. We're trying
7 to straighten out a technical problem on our end.

8 (Pause.)

9 MR. THOMPSON: All right, there we go.

10 Can you hear me now, your Honor?

11 THE COURT: Yes.

12 MR. THOMPSON: So this is Stephen Thompson, on
13 behalf of the plaintiff; and also joining me on behalf of
14 the plaintiff today is Emily Stern, Monica Connell, and
15 James Sheehan.

16 THE COURT: Just a normal request: If you're not
17 speaking, please go on "mute," because every time you move
18 around, it shuts off the others' mics.

19 Let's go with the defendants. The NRA?

20 MS. EISENBERG: Good afternoon, your Honor.

21 This is Svetlana Eisenberg; Brewer, Attorneys and
22 Counselors; on behalf of The National Rifle Association of
23 America. I'm joined by my colleague Serge Moshak.

24 MR. CORRELL: Good afternoon, your Honor.

25 It's Kent Correll, for Wayne LaPierre.

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1 THE COURT: Mr. Phillips?

2 MR. FARBER: Your Honor, good afternoon.

3 It's Seth Farber, for Mr. Phillips; and Mark
4 Werbner, for Mr. Phillips, is also on, as well.

5 THE COURT: Both for Mr. Phillips?

6 MR. FARBER: Yes, your Honor.

7 THE COURT: Okay. Mr. Frazer?

8 MR. FLEMING: Your Honor, William Fleming, for
9 Mr. Frazer.

10 THE COURT: Sorry; I didn't catch the name.

11 MR. FLEMING: William Fleming, for Mr. Frazer.

12 THE COURT: Okay, thanks, Mr. Fleming. I didn't
13 see your picture.

14 MR. FLEMING: I'm sorry.

15 THE COURT: And Mr. Powell?

16 MR. McLISH: Yes, your Honor. It's Tom McLish, for
17 Mr. Powell. Sorry; I'm only on audio today.

18 THE COURT: And the nonparty, Mr. Cox?

19 MR. SAXON: Good afternoon, your Honor.

20 This is Matt Saxon, from Winston & Strawn, on
21 behalf of Mr. Cox.

22 THE COURT: C-o-x, Alan.

23 Okay, we're here on a motion to compel and it's the
24 plaintiff's motion.

25 So, Mr. Thompson, I've read the materials, so you

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1 can just go through the highlights, if you will.

2 MR. THOMPSON: Sure. Thank you very much, your
3 Honor.

4 And am I still coming through all right?

5 (Ms. Connell nodded in assent.)

6 MR. THOMPSON: Great.

7 So, your Honor, just to very briefly recap why we
8 are here before your Honor on this order to show cause
9 today:

10 We subpoenaed documents from nonparty Christopher
11 Cox, a former high-ranking NRA official who, for about a
12 year and a half, was engaged in an expensive arbitration
13 with the NRA over, among other things, the NRA's allegations
14 that Mr. Cox was improperly expensing or being reimbursed
15 for personal expenses from sports to -- or sport --
16 ticketing -- ticketing to sporting events or meals or
17 personal travel or hotels.

18 The allegations are strikingly similar to some of
19 the allegations that we've raised against the individual
20 defendants in this litigation, but in the arbitration, the
21 NRA appears to be taking a different position against
22 Mr. Cox, a former and allegedly disloyal former employee for
23 the NRA, compared to the position that it's taken against
24 Mr. LaPierre or the other individual defendants in this
25 action.

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1 So, in August of last year, we subpoenaed Mr. Cox
2 for documents related to the arbitration and for other
3 materials and then, the day before the return date for the
4 subpoena, the NRA blocked the production on two grounds:
5 one, because some of the materials were allegedly
6 confidential under this arbitration agreement and, second,
7 because the NRA felt it was entitled to pre-review the
8 entirety of Mr. Cox's production, otherwise, for privilege
9 or for donor information.

10 And so, to date, as far as we know, the NRA has had
11 the entirety of Mr. Cox's responsive documents in its
12 possession since October of last year, but we have not
13 received any documents yet from Mr. Cox responsive to our
14 subpoena.

15 So, your Honor, the NRA has not at any point
16 objected to the subpoena on relevance grounds, so the two
17 issues that we're dealing with today are whether these
18 documents are immune from discovery under this
19 confidentiality agreement and whether the NRA is entitled to
20 pre-review the entirety of Mr. Cox's production before it
21 comes to us, which has already delayed production by three
22 months at this point.

23 So, as we argued in our papers, there are three
24 independent reasons why these documents are not immune from
25 discovery in spite of the private arbitration agreement that

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1 the NRA has with Mr. Cox. First and foremost is waiver,
2 your Honor.

3 The NRA has admitted that it provided the
4 arbitration pleadings to the professionals for the Unsecured
5 Creditors Committee in connection with its Chapter 11
6 bankruptcy in Texas, with Mr. Cox's permission. That is
7 waiver of this confidentiality, your Honor. They've
8 provided the materials outside the sphere of confidentiality
9 allegedly granted by this arbitration agreement and they've
10 waived any confidentiality they have over not only those
11 materials, but all of the subject matter related thereto.
12 So that would extend not only to materials that were in
13 existence at the time of the bankruptcy, but the materials
14 that have since been created as the arbitration progressed.

15 And, independently, the NRA also produced to our
16 office an expert report that it prepared in connection with
17 the arbitration, and we believe that that is also
18 subject-matter waiver over the entire arbitration because it
19 dealt with the allegedly confidential issues that are at
20 play in the arbitration.

21 So that's waiver.

22 Turning next to the exceptions that are built into
23 the arbitration clause; specifically, that disclosure is
24 permitted where the disclosure is required by law:

25 So the *Peskoff* case that we cited, your Honor --

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1 and, you know, this language is found in every nondisclosure
2 agreement, every settlement agreement, every arbitration
3 agreement across the country -- that the documents should be
4 kept confidential unless they're required to be produced by
5 law, and a subpoena --

6 THE COURT: I take it -- I take it, you were unable
7 to find cases in this context, where the confidentiality was
8 imposed by arbitration -- by the arbitration entity's rules?

9 MR. THOMPSON: Not specifically with respect to the
10 exception, your Honor, no. I have not found any cases
11 dealing with the "required by law" exception, either way, in
12 the context of an arbitration agreement.

13 I will note, the NRA has relied heavily on the
14 *Pasternak* case from the Southern District and there, this
15 argument was not presented to the court; the court was not
16 presented with the argument that disclosure pursuant to a
17 validly issued subpoena is required by law.

18 And for the reporter, that case is *Pasternak*,
19 P-a-s-t-e-r-n-a-k.

20 And also, your Honor, the *Valeron* court, or the
21 *Valeron* case that we cited in our papers -- and that's
22 V-a-l-e-r-o-n -- the court there did note that it was not
23 aware of any case law that would prohibit disclosure of
24 documents from a confidential arbitration pursuant to a
25 validly issued subpoena, although it was not dealing

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1 specifically with the exception that disclosure is required
2 by law in that case.

3 So that's the "required by law" exception.

4 Oh, and I will also note, the NRA draws the
5 distinction between settlement contexts and arbitration
6 contexts, but the same public policy considerations around
7 settlements also exist with respect to arbitration.

8 THE COURT: Similar --

9 MR. THOMPSON: Yes.

10 THE COURT: -- in that the arbitration is covered
11 by federal law. The encouragement of arbitration is a
12 federal statute.

13 MR. THOMPSON: Yes, your Honor, although the same
14 public policy considerations around encouraging settlement
15 or any form of alternative dispute resolution exists for
16 settlement as well as arbitration; but that public policy,
17 in the settlement context, in the arbitration context, in
18 any context, does not immunize the documents from
19 disclosure.

20 And that brings me to my final point, your Honor:
21 that the position the NRA has taken with respect to
22 Mr. Cox's documents related to the arbitration would
23 effectively allow any regulated entity to immunize
24 disclosure to its regulator by entering into a private
25 agreement, whether it's an arbitration agreement or, as was

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1 the case in the litigation that our office had against
2 Ackerman and the NRA which we cited in our papers,
3 nondisclosure agreements. These private agreements cannot
4 be permitted to allow parties to refuse to disclose clearly
5 relevant documents to a regulator in the context of this
6 enforcement action.

7 And the NRA has relied very heavily on the *Lloyds*
8 *of London* case that they've cited in their papers, but in
9 that case, the issue was whether or not the special referee
10 at the Supreme Court level had clearly identified documents
11 to be disclosed, and it had not. And so, the court rejected
12 the special referee's recommendations. And then, on appeal,
13 the First Department noted this existing public interest in
14 encouraging arbitration. And we don't believe that that is
15 at all binding on this Court to immunize the documents from
16 disclosure. And we rely on the *Kamyr* case, or -- I'm not
17 sure if that pronunciation is correct, but for our reporter,
18 that's K-a-m-y-r -- where the court said that, you know,
19 documents -- and it's not just evidentiary materials, but
20 documents in an arbitration that would tend to show that a
21 party is taking a different position in the arbitration than
22 in the instant litigation -- is [sic] clearly discoverable.

23 So, for all of those reasons, your Honor -- waiver,
24 the "required by law" exception, and public policy -- we
25 believe that these documents should be disclosed and they're

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1 not immune from discovery in this action.

2 And so I want to, then, briefly address the issue
3 of pre-review by the NRA.

4 We do not object to a targeted review by the NRA of
5 the sort that your Honor recommended with respect to
6 Mr. Powell's documents, where the NRA could, for example,
7 run search terms to try and identify documents more likely
8 to be privileged based on the NRA's work product privilege
9 or attorney-client privilege. But I would note that these
10 are documents that were exchanged between the NRA and
11 Mr. Cox in the arbitration; so, presumably, the NRA already
12 is intimately familiar with the documents and could easily
13 identify documents that may need to be withheld.

14 So we don't believe that this wholesale review of
15 the entirety of Mr. Cox's production is appropriate, and
16 that includes --

17 THE COURT: And do you know -- do we know what the
18 volume of the production is?

19 MR. THOMPSON: I'm going to let Ms. Eisenberg speak
20 to that, your Honor, but -- if I'm recalling correctly, it
21 was, I think, four to five thousand documents? But I would
22 ask Ms. Eisenberg to weigh in on that question, your Honor.

23 THE COURT: I'll ask her.

24 Go ahead.

25 MR. THOMPSON: And so, with respect to the donor

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1 information, then, your Honor:

2 At the OAG's request -- at our request -- the
3 protective order in this case treats donor information,
4 personally identifying information for NRA donors, as
5 confidential. We asked for that; we put it in the
6 protective order. We do not think that the NRA has the
7 right to slow this production, this already very delayed
8 production, even more by taking the time out to redact, in
9 otherwise relevant documents, donor-identifying information
10 that is already being treated as confidential in this
11 action; we don't believe the NRA has cited to any legal
12 authority that gives it the right or privilege to do so.

13 THE COURT: Well, this one raises some different
14 issues.

15 Let me ask you, first, though: Is the donor
16 information -- and I don't know what the donor information
17 is, and I guess you don't, either. But to what extent is
18 member names and donor names and the like -- would that have
19 any independent relevance here?

20 MR. THOMPSON: It could, your Honor, and the
21 example that we cited in our papers is the defense that has
22 been raised by the defendants in this action: that many of
23 the issues we've raised around personal expenses and excess
24 benefits -- that they relate to donor cultivation work and
25 they've argued that it's about being able to go out, meet

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1 with high-dollar donors and cultivate their business or get
2 them to donate money to the NRA. If that's true, very well,
3 but we have the right to test that, and we can't test it in
4 heavily redacted documents where we don't know the success
5 of the NRA's fund-raising efforts or where the documents are
6 not produced at all because of donor privilege issues.

7 We have not sought lists of members in this case;
8 we don't think that that is relevant, but we don't want to
9 be foreclosed from getting information about donors where it
10 could be relevant to the defenses raised by the defendants
11 in this action.

12 THE COURT: Yeah.

13 I mean, look, the issue is, there's 60 or 70 years
14 of law, in the First Amendment context, that discusses at
15 least the potential chilling effect on associational
16 activities if the government collects things like membership
17 information, which -- I understand that's not what you're
18 saying. And, you know, there's a case as recently as a year
19 or two ago, *Americans for Prosperity Fund [sic] v. Bonta*,
20 B-o-n-t-a, 141 S. Ct. 2373 (2021). So, I mean, it seems to
21 me that at a bare minimum, we should be cautious and
22 scrutinize this kind of thing carefully.

23 Now, if you had issued a request for membership
24 lists, I think I could deal with that; it would be pretty
25 straightforward, and then, unless you had a good reason to

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1 ask for it, the answer would be no.

2 The question here is, none of us know what this is.
3 So I agree in the sense that if there was a single donor and
4 it's a question of whether somebody was on his or her yacht
5 or something, then, you know, maybe -- maybe -- it would be
6 relevant to know the names so that you can do further
7 discovery. But unless we know what this is --

8 I will tell you that just an open-ended ruling that
9 says donor information cannot be anonymized troubles me
10 because I don't know what the "it" is.

11 So I'm going to tread carefully on this one, I
12 believe, or I -- because I think it's a legitimate concern.
13 Let's put it that way.

14 If, for some reason, and I can't -- I don't really
15 know, but if there was an exhibit attached to some brief
16 that has the names of a million members, I can't imagine
17 that's relevant to you and I can't -- I do think it raises
18 some concern.

19 So I think this one is -- so you --

20 To boil it down -- I'll stop the soliloquy -- your
21 point is that in some situations, it might be relevant.

22 MR. THOMPSON: That's right, your Honor.

23 And we strongly believe that the *Americans for*
24 *Prosperity* case does specifically leave that option
25 available to our office; that in striking down the sort

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1 of -- what they call the "dragnet" approach to collecting
2 information, they left open more targeted opportunities for
3 investigation, like subpoenas or document requests of the
4 kind that we have here.

5 THE COURT: The difference -- right. So, if you
6 had an investigation in which a particular donor or a kind
7 of donor and you were asking for that, I get that [sic].

8 But what we have here is, you're asking for a bunch
9 of documents related to something else and we don't know --
10 you nor I don't know -- whether in that sack of documents
11 some irrelevant -- other kinds of donor information might be
12 included.

13 So we're going to have to figure out a way to deal
14 with that. So I'm just flagging that.

15 I'll let Ms. Eisenberg speak for herself when we
16 get to her, but that's the concern I have there, is that
17 none of us know what this is yet.

18 MR. THOMPSON: Understood, your Honor.

19 And I believe that's the end of my argument, so I
20 will rest on the papers otherwise.

21 THE COURT: Okay.

22 Okay, Ms. Eisenberg?

23 MS. EISENBERG: Thank you, your Honor.

24 I'll begin with the issue I believe is of most
25 interest to you based on your comment on December 10. You

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1 asked, "Why isn't -- in light of the subpoena, isn't this
2 disclosure required by law?" And the answer is, there are
3 two cases -- the *Lloyds* case from the Appellate Division in
4 the First Department, from 2007 and the *Pasternak* decision
5 from the Southern District, from 2013 -- that, together,
6 make very clear that that exception is not applicable, and I
7 can deconstruct that.

8 First, in New York, based on the First Department's
9 ruling, when a civil litigant, like the NYAG here, issues a
10 subpoena for confidential arbitration materials, *Lloyds* made
11 very clear that New York law does not require production of
12 confidential arbitration materials. To the contrary, New
13 York law chooses to protect it from disclosure. The --

14 THE COURT: Is there anything in the opinion there
15 that reads as a kind of bright-line rule you just described?

16 I mean, they were dealing with one order relating
17 to certain documents about an arbitration in which the
18 defendant was not a party, and you're kind of amplifying
19 that to be a very broad rule.

20 MS. EISENBERG: Your Honor, yes, there is one
21 sentence that both answers your question and rebuts
22 something Mr. Thompson said; it appears at the beginning of
23 page 365 and it says: "Given the important public interest
24 in protecting the rights of parties who submit to
25 confidential arbitration, the court correctly concluded that

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1 no aspect of the Belgian arbitration to which Occidental is
2 not a party may be subject to compulsory disclosure in this
3 litigation."

4 THE COURT: Okay.

5 MS. EISENBERG: This answers your question about
6 the rule -- the broad rule -- of law. The --

7 THE COURT: No, it says that this Belgian
8 arbitration to which Occidental is not a party -- that that
9 arbitration -- that the arbitration documents in this case
10 may not be subject to compulsory disclosure. It doesn't --

11 You know, the courts are there to resolve specific
12 cases. If they meant to announce a broad rule that --
13 essentially, you would add the word, can "never" be
14 disclosed, and I don't think it says that.

15 MS. EISENBERG: Nonetheless, your Honor, the court
16 in this case does talk about the importance of
17 confidentiality, the importance of the expectations and the
18 rights. And on top of it, the case, or the First
19 Department, talks about the public interest in respecting
20 that right.

21 So I agree that there is a distinction about the
22 fact that the party from whom they sought the information
23 was not a party in the litigation, but the NRA's position is
24 that it's not a material distinction because what's really
25 driving this is the society's decision that it is important

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1 to encourage arbitration, that confidentiality is a
2 paradigmatic aspect of arbitration and that, as a policy
3 matter, when you have a civil subpoena for this type of
4 information it is not discoverable.

5 On top of that, we have a case that could not be
6 more on point, and that's the *Pasternak* decision that relies
7 on the *Lloyds* case, that interprets the rule that is at
8 issue here, that involves the arbitration body that we have
9 here, and that rejects the very same arguments that
10 Mr. Thompson just made.

11 To begin with, it's a Rule 45 subpoena issued
12 pursuant to Rule 45 under the Federal Rules of Civil
13 Procedure. Although here we have an Article 31 subpoena,
14 the distinction is immaterial because in each case, you have
15 a civil litigant who is seeking production of documents from
16 a third party and failure to produce what is required to be
17 produced by law is sanctionable. So the court considers the
18 rule, quotes it verbatim, and then goes on to enumerate each
19 of the exceptions that are available under the rule,
20 including the one, your Honor, that you mentioned, "as
21 required by law."

22 Now, it is clear that the party seeking discovery
23 in that case relied on Rule 45, just like it is Article 31
24 of the CPLR that the New York Attorney General is relying on
25 here. Despite -- and the reason it's clear is because the

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1 first part of the opinion is about the timeliness of the
2 Rule 45 subpoena, so we know that the court was aware that
3 that was the basis for it; and when the judge gets to the
4 exceptions, the judge says that none of those are triggered,
5 that Mr. Pasternak has not demonstrated that any of them
6 apply and then hearkens back to the policy principle, saying
7 that there is a very important policy concern for protecting
8 confidentiality [sic] arbitrations and that is a barrier
9 that cannot be overcome.

10 So that case solidifies and supports the position
11 that, given the *Lloyds* decision and New York's view on
12 whether such materials are discoverable in civil discovery,
13 here the "otherwise required by law" exception is simply not
14 applicable.

15 And it certainly cannot be that the mere issuance
16 of a subpoena for records means that they are required by
17 law to be produced. They are not, until you, your Honor,
18 decide that they are, as a matter of New York law. And here
19 we've had a First Department opinion for more than a decade
20 that said it does not.

21 I would like to address some specific smaller
22 points raised by Mr. Thompson with regard to the authorities
23 that I just discussed.

24 First, Mr. Thompson says that the *Lloyds* holding on
25 which the NRA relies is dicta. Nothing could be further

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1 from the truth. It is true that the lower court's opinion
2 rejected the referee's proposed order on the grounds that it
3 did not specify certain information and another basis;
4 however, it is crystal-clear that when the First Department
5 upheld that outcome, it did so because of the
6 confidentiality of the arbitration, and that is clear from
7 the sentence that I read to your Honor earlier that starts
8 with the words, "Given the important public interest ..."

9 Second, the New York Attorney General relies on the
10 *Kamyr* case. That case stands for the narrow proposition
11 that the evidentiary record is discoverable; in other words,
12 as we have conceded from Day 1, just because records are
13 used in an arbitration doesn't shield them from discovery.

14 Third, Mr. Thompson relies on the *Valeron* case, and
15 I think it's really important to emphasize that *Valeron* did
16 not hold that there was a legal duty to produce a
17 confidential arbitration award pursuant to an exception that
18 talked about a legal duty. What the *Valeron* decision dealt
19 with was two issues: One was whether the records in the
20 case should continue to be sealed and, two, whether the
21 plaintiff was collaterally estopped from going after the
22 investment bank for securities fraud. And in the course of
23 discussing the first issue, the court mentions, a couple of
24 times, the fact that, apparently, sometime earlier in the
25 case, there was a request for the award and then it was

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1 produced, and then the court makes a comment that it must
2 have been pursuant to that particular exception; but it is
3 not the type of binding, precedential language that should
4 guide this Court here.

5 We don't know if, when the materials were
6 requested, the issue was litigated; we don't know if there
7 was an objection; we don't know if everybody agreed that it
8 should be produced. We have no idea what the court actually
9 decided. So, while the language is there, it is mere dicta
10 in that it is just a comment about what happened in the case
11 before, and it's certainly not necessary to either of the
12 two outcomes in the *Valeron* case.

13 Moreover, what's clear from the *Valeron* opinion is
14 that even there, after unsealing pretty much everything in
15 the case, the court ordered that any discussion of the
16 confidential arbitration award should remain sealed. In
17 fact, it's a little bit difficult to follow the opinion
18 because portions of it are redacted, which is yet a separate
19 and independent reason for why we urge the Court not to rely
20 on *Valeron*.

21 THE COURT: Can we move on to the question of --

22 Certainly, these documents -- in fact, a lot of
23 them -- were already produced in the bankruptcy action and,
24 apparently, no -- that was not an obstacle to producing them
25 to third parties there. So, whether one calls it a waiver

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1 or just a significant undermining of the whole idea, how do
2 you square the objection here with the fact that those
3 documents were freely given to third parties in the
4 bankruptcy case?

5 MS. EISENBERG: Your Honor, they were not freely
6 given to third parties.

7 The documents that were shared with the Unsecured
8 Creditors Committee was specifically with the understanding
9 that it was going only to the professionals. The Unsecured
10 Creditors Committee was not an adversary, unlike some of the
11 cases that Mr. Thompson cites, and it was understood that it
12 was only the professionals who were going to refer to those
13 documents and only use them for purposes of discharging
14 their duties as professionals to the Unsecured Creditors
15 Committee.

16 In addition, when the NRA produced the expert
17 disclosure, it was specifically subject to the reservations
18 in the objections and responses that accompanied the
19 production that stated that none of the documents being
20 produced are intended to waive any rights or immunities or
21 protections that the NRA has.

22 And the *Pasternak* case is actually quite
23 instructive on the waiver issue, as well, because not only
24 does it squarely deal with the issue of discoverability, but
25 it actually contains a very similar waiver-type argument

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1 made by Mr. Pasternak, which the court squarely rejected
2 because there is no basis for finding that by producing
3 certain documents in certain limited circumstances, the
4 party that made the production intentionally and knowingly
5 waived its rights as to the entire file.

6 And factually, just in terms of the timeline, the
7 last of these disclosures that Mr. Thompson relies on
8 occurred in or around April of 2021. By then, the
9 arbitration had not yet completed and the disclosure was
10 limited to pleadings. So, even if one could potentially
11 argue that there was waiver as to those documents, that is
12 waiver only as to those documents.

13 THE COURT: All right. But how large is the
14 production?

15 MS. EISENBERG: Certainly, your Honor.

16 So the overall size is about 4,000 documents.
17 Obviously, many of them are very fine-print e-mails and a
18 lot of context and content. Of those, about 360 are
19 documents that this main fight is about; they are documents
20 like arbitration pleadings, orders by --

21 THE COURT: How many of those 300-or-so were the
22 ones that were produced in the bankruptcy case? Most of
23 them?

24 My understanding is --

25 MS. EISENBERG: No, no.

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1 THE COURT: -- all the pleadings up to a certain
2 day were produced in --

3 MS. EISENBERG: Your Honor, I don't have the number
4 handy, but if I had to estimate off the top of my head, the
5 number of pleadings, which are claims, counterclaims,
6 answers, is less than 12.

7 The arbitration involved a lot of other filings,
8 like motions, pretrial disclosures, orders from the
9 tribunal, and also involved correspondence related to the
10 resolution of this case and contains documents that are the
11 resolution. So I'd like to say that the lion's share of
12 those arbitration materials actually have not been produced
13 and it's only a handful of those 363 documents that have
14 been shared with the Unsecured Creditors Committee
15 professionals pursuant to their restrictions that I
16 described. And then there's the report, but that's only one
17 document.

18 THE COURT: And so, what kind of --

19 Moving on to the -- sort of -- the other issue we
20 discussed: What kind of donor information and member
21 information is in there that you view as sensitive?

22 MS. EISENBERG: Certainly, your Honor.

23 Mr. Cox was the head of the Institute for
24 Legislative Action and he had the privilege of interfacing
25 with some of the more generous donors that the NRA has,

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1 including certain individuals who do prefer to remain
2 anonymous; and the NRA values their contributions to the NRA
3 and their First Amendment rights, particularly in the
4 context of this investigation and statements that have been
5 made before it even began. It could not be more important
6 to the NRA to be able to redact those.

7 And that has been a laborious exercise, which
8 Mr. Moshak (indicating) has been in charge of, and the delay
9 is only because there are lots of redactions that need to be
10 made in order to protect such information.

11 In addition --

12 THE COURT: But is it just the names or does it
13 have -- is there --

14 MS. EISENBERG: So it's a variety of different
15 things. It's information identifying the donor and then
16 information identifying his or her personal information,
17 like where they work or where they live, or their children's
18 names, or -- I'm kind of making it up right now, but I
19 know -- I know that there is information that even if you
20 redacted the name but left the address, people would be able
21 to figure out who it is. And on top of it, we have
22 handwritten notes in those documents that reveal the
23 identity of the donors.

24 So we can't just run a filter using some technology
25 tool and rest on that; we need to put our eyes on it.

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1 What I will say is that since December 10, we have
2 been working diligently to review the documents and,
3 obviously, we set aside the arbitration file as discussed.
4 But everything else, as a compromise, or in an effort to
5 sort of narrow the issues before your Honor, we -- we've
6 been going through the files and we, just today -- we were
7 hoping to do it yesterday but, like I said, the process is
8 laborious -- about 2800 documents we have cleared for
9 production by either advising Mr. Cox's counsel that they
10 can be produced as is or advising Mr. Cox's counsel that
11 they contain information that needs to be redacted. And we
12 did the work for them by indicating exactly what we believe
13 needs to be redacted.

14 THE COURT: Does that include any attorney-client
15 privileged information or is it just the donor information?

16 MS. EISENBERG: So far, we haven't deter -- we
17 haven't found in Mr. Cox's draft production attorney-client
18 privileged/protected information; but there are about 700
19 documents that still remain, that Mr. Moshak needs to
20 complete his review of, and there's a tranche that he
21 designated for my input. So I don't know if, at the end of
22 the day, any of these will be privileged.

23 What I can say is that we certainly are reviewing
24 for privileges, as well, because when the New York Attorney
25 General issued an investigative subpoena to Mr. Cox back in

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1 2019 and Mr. Saxon and his colleagues teed up a production
2 then, we did identify documents that revealed privileged
3 information belonging to the NRA. So, given, you know,
4 Mr. Cox's high-level position at the NRA, it's not at all
5 surprising that there might be documents in his draft
6 production that may reveal privileged information.

7 THE COURT: I probably should have asked
8 Mr. Thompson this initially, but if the documents we're
9 talking about are ones that were part of the arbitration,
10 why was it done by subpoena as opposed to just asking the
11 NRA -- issuing a document request to the NRA? Or let me ask
12 it differently: Was there just a document request to the
13 NRA which sought the same information?

14 MR. THOMPSON: There was, your Honor, or certainly,
15 this information is responsive to the document requests
16 issued to the NRA. But in an effort to try and get
17 documents as soon as possible, we've also been seeking
18 documents from third parties.

19 THE COURT: It just seems --
20 I mean, if the document request to Mr. Cox was,
21 "all documents about this arbitration," I'm not sure why you
22 wouldn't just make that request, stated that way, to the NRA
23 rather than, you know, nonparty, through the expense and
24 time.

25 MR. THOMPSON: Your Honor, I think the delay we've

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1 experienced with receiving documents from the NRA, as well
2 as the nonparties, sort of -- well, at this point, I guess
3 it doesn't justify the subpoena to Mr. Cox, but we've been
4 trying to get documents for a very long time. We have
5 depositions starting next week and we thought that trying to
6 get documents from nonparties would be an expedient way to
7 get the documents sooner rather than later.

8 THE COURT: Best-laid plans.

9 MR. THOMPSON: Yes, your Honor.

10 THE COURT: Okay.

11 MS. EISENBERG: May I speak to that?

12 THE COURT: That's not an important point. It
13 goes, really, to Mr. Cox's question about the expense that
14 he's been put through.

15 But it's odd, anyway, because these are bilateral
16 documents that both sides -- both the party and the nonparty
17 -- would have. It just -- it's a little confusing, why it
18 wouldn't be done in a slightly different way. Typically,
19 third parties will say, "Well, why don't you get it from the
20 party first?"

21 I'm not going to get into the psychology of why you
22 did it, but --

23 All right, is there any other -- anything else?

24 MS. EISENBERG: Yes, your Honor. Just one parting
25 point, or two, if I may.

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1 THE COURT: I'm running a little short on time, so
2 I want to be done with the argument by 4:30. I want to give
3 Mr. Saxon a few minutes and then I want to give you my
4 ruling.

5 MS. EISENBERG: Okay. I'll speak very quickly,
6 your Honor.

7 First, the New York Attorney General talks about
8 "balancing." The cases on which we rely, *Lloyds* and
9 *Pasternak*, do not leave room for any kind of balancing;
10 these materials are protected in this context, period. But
11 if the Court were so inclined as to engage into any kind of
12 balancing, I think the Court will probably acknowledge the
13 importance of the confidentiality and the importance of
14 protecting those rights and expectations.

15 But if the Court were to consider, sort of, what's
16 on the other end of it and how do we balance it, I
17 respectfully refer your Honor to the explanation that
18 Mr. Thompson and his papers give as to why the New York
19 Attorney General wants these documents, and they say that
20 they believe that the NRA applied a more exacting standard
21 against Mr. Cox than as against other officers; and while we
22 certainly disagree with the merits of that position, that's
23 not why we are here today, but that takes me to my point:

24 First, the NYAG already has the expert disclosure,
25 which is the full recitation of the claims that the NRA

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1 asserted against Mr. Cox. They already have that. The NYAG
2 also has the Form 990 disclosure from November of 2020 that
3 summarizes those. But even if the Court were inclined to
4 give them more, which I don't think is merited, it should be
5 limited to just the pleadings, because the NRA pleadings
6 will adequately give the information that the New York
7 Attorney General needs. Given the important policy
8 considerations and the clear law, there is no basis for
9 vitiating the right across the board.

10 So I would urge the Court to please consider to
11 limit its ruling to just the pleadings, because by the
12 Attorney General's own admission, that will, or should,
13 satisfy the need that they have for these documents.

14 Last but not least, I urge the Court to think about
15 the consequences for the society as a whole and arbitration
16 participants as a whole, whether they're not regulated --
17 whether they are regulated -- like the NRA, or not. There
18 are tons of regulated entities in New York and every day
19 they go into arbitrations with the idea that those rights
20 will be upheld, and if the Court were to hold otherwise, it
21 would certainly have repercussions beyond just this case.

22 THE COURT: I want to finish things up quickly
23 here.

24 Mr. Saxon, I think I know the argument that you
25 have about compensation, so let me just turn to Mr. Thompson

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1 quickly and see if there's anything else on the substantive
2 argument and then I'll, hopefully, give you a few minutes,
3 Mr. Saxon.

4 MR. THOMPSON: Yes, your Honor, very briefly.

5 I just want to quote from the *Valeron* holding: "No
6 American court of which I am aware would ever accept that a
7 party to an arbitration was shielded by rules like those of
8 the LTIA from producing documents or evidence in an American
9 lawsuit pursuant to discovery demand or subpoena." We think
10 that refutes the NRA's characterization of that case.

11 And I just wanted to note, your Honor, that we have
12 been very diligent in trying to get documents from the NRA
13 as soon as possible and have taken these parallel tracks to
14 try and get documents from the other parties, also on an
15 expedited basis, to try --

16 THE COURT: Parallel would be fine, but did the
17 actual request -- the requests that went to Mr. Cox, did the
18 exact same requests go to the NRA?

19 MR. THOMPSON: They were not the exact same, your
20 Honor, but the documents would have been covered by the
21 requests that went to the NRA first, in -- June of this
22 year, I believe it was.

23 THE COURT: And the targeted request was, you know:
24 "Dear NRA, give us all documents in connection with the
25 arbitration with Mr. Cox"? It wasn't asked that in that

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1 way.

2 MS. EISENBERG: No.

3 MR. THOMPSON: No, your Honor, not to the NRA.

4 THE COURT: Now, Mr. Saxon, I'll give you just a
5 minute to ...

6 MR. SAXON: Thank you, your Honor. I'll be very
7 brief.

8 As you know from our papers, we have no objection
9 to producing the documents; we'll comply with whatever your
10 order is.

11 As far as the documents produced to the UCC during
12 the bankruptcy, my recollection -- you asked for the number
13 of those documents? My recollection -- I had a colleague
14 try to run this down while we've just been on the call --
15 was that it was over a hundred. I don't believe it was a
16 dozen, if that's what Ms. Eisenberg said. But -- it was a
17 long time ago, but my recollection is that it was
18 substantial; the number of documents.

19 As far as the expert report that was produced to
20 the NRA -- I mean to the NYAG -- that was, like, the central
21 document in the case that laid out the NRA's theories and
22 all of its claims. It wasn't some peripheral expert; it was
23 kind of their central document. So there was some tension
24 in them producing that to the NYAG, but nothing else, and
25 then saying, "Well, we included language when we produced it

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1 that said, 'You should keep this confidential.'" By that
2 logic, we -- Cox -- could take all these documents and
3 produce them to a third party and say, "Well, we include the
4 language in the production that says they have to keep this
5 stuff confidential." So there seems to be some tension in
6 that argument.

7 And then I'll just say, on the fees, we just --
8 while we've been on this call, we received an e-mail from
9 Ms. Eisenberg about which documents we're supposed to
10 produce and how we're supposed to redact them, and there's a
11 substantial number of documents. And we've been kind of put
12 in the middle of this and incurred significant fees writing
13 letters, attending hearings, filing motions, and looking at
14 documents. And this e-mail -- I haven't examined it yet
15 because I just got it while we've been on the call -- will
16 lead to more fees.

17 So there are two bases --

18 We've asked for the NYAG to cover some fees and
19 we've asked for the NRA to cover other fees. There's two
20 bases for us to ask the NRA to cover fees: One is, there's
21 an agreement under which they agreed to cover the fees.
22 Second, there is a written e-mail from the general counsel
23 of the NRA to us, saying -- and I'll just -- I'll quote it,
24 and we attach it to our brief, but it's from the general
25 counsel to us, outside counsel for Cox, saying: "The NRA

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1 confirms that it will reimburse reasonable legal fees Chris
2 Cox incurs responding to this subpoena and other requests
3 from the New York AG with focus on matters within the scope
4 of his former employment by NRA."

5 So that's a separate basis, outside of the
6 agreement, for us to ask the NRA to cover the fees.

7 So they responded --

8 THE COURT: Well, look, the issue with that: The
9 powers that I have are really under the CPLR. This is not a
10 breach of contract action between your client and the NRA,
11 so, you know, I don't know that I can get into the question
12 of whether they are obligated by contract to do it. You can
13 sue them for it, but it doesn't mean that I can do it as
14 just -- in response to a motion.

15 MR. SAXON: Your Honor, I believe CPLR section 2304
16 provides the Court with authority to modify or fix
17 conditions of a -- of a document production. In the
18 commentary of that rule, it states that a party can move for
19 payment of reasonable production expenses consistent with
20 the rules.

21 THE COURT: You certainly can with --

22 You certainly can with respect to the party that
23 asked you to produce it, and that's the AG part, and I
24 understand that. I'm not aware of a situation where you
25 would be able to assess fees, under that rule, against a

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1 different party who was actually objecting to the --

2 But, look, I get the point. I do.

3 The argument --

4 MR. SAXON: And the --

5 Go ahead. I'm sorry.

6 THE COURT: The argument with respect to the AG, I
7 understand that, and there's a specific statute and a rule
8 about that. The NRA one, I'm a little less understand -- I
9 both understand it more in the sense that the fees were
10 generated largely by the objections, not by the requests.
11 But I think I may have -- you know, unless you can show that
12 the NRA's conduct is sanctionable, so that I can impose a
13 cost-shifting on that ground. I'm not sure that I can just
14 shift costs at my whim, even though I do understand the
15 point: you're a third party; you probably shouldn't
16 necessarily have been going through this to begin with.

17 MR. SAXON: Understood.

18 I'll just make one final point on that, your Honor:

19 Under the NRA's reading of the contract that we
20 have between Cox and the NRA, they need to pay -- our view
21 is that they need to pay -- the fees. They say they won't
22 do that because the NYAG is supposed to do it under the
23 statute. And until there's some court ruling or something
24 saying that the NYAG is not permitted -- supposed -- to do
25 it, then they won't even engage. So we're kind of in a

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1 Catch-22.

2 But I just wanted to give you a little bit of
3 context to understand why we're doing this in the first
4 place.

5 THE COURT: Well, I think I can help, at least on
6 that front, in terms of giving you clarity as to what the
7 NYAG is going to cover.

8 All right, look, thank you very much. I'm going to
9 give you my ruling on the motion and the request:

10 The motion to compel is largely granted with a few
11 caveats. There is -- and I'll go through why. And there is
12 some scope for pre-review, but it needs to be targeted and
13 not as time-consuming as it may be, and I'll get to both of
14 those.

15 So the first issue is whether the documents
16 generated during the arbitration, such as, as I understand
17 it, pleadings and expert reports and transcripts and the
18 like, are discoverable. I conclude they are, for three main
19 reasons:

20 First, to the extent that the NRA is raising an
21 across-the-board objection to producing arbitration-related
22 documents on grounds of confidentiality as a matter of law,
23 that objection, to me, is, at a minimum, undermined if not
24 waived by the production of precisely that kind of document
25 in the bankruptcy case. The NRA cannot produce arbitration

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1 documents in a proceeding in which it is a petitioner but
2 then balk at producing such documents here, where it's a
3 defendant. So, even if the bankruptcy production doesn't
4 constitute a formal waiver, and I think it does, at a
5 minimum, it substantially undermines the argument that such
6 documents are so confidential that they should be immune
7 from normal discovery.

8 You know, in terms of the dissemination of them,
9 and Ms. Eisenberg said that in the Texas case they were only
10 shared with outside counsel, that's what confidentiality
11 agreements are for and, you know, where this information
12 might fit within the confidentiality order is a different
13 question. But that's different than whether it is
14 discoverable. It was clearly discovered in the Texas case
15 and I don't see a legitimate ground for making a distinction
16 here.

17 And, second, even if there was no waiver, I don't
18 think that disclosing the documents here would violate the
19 arbitration agency's rules. I think this is the kind of
20 disclosure that is generally viewed as being "required by
21 law"; that is, by legal process, supervised by a court.

22 I recognize that settlement agreements are not
23 exactly the same thing, but confidentiality agreements of
24 all kinds -- settlement agreements, joint-defense
25 agreements, all sorts of confidentiality agreements --

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1 typically, have provisions that say, "If you get a subpoena,
2 you have to let us know" or they say, you know, "You can't
3 produce it unless it's required by law," which is the
4 language we have here.

5 And I think it is relevant that --

6 The *Peskoff* case, I think, has it right, that the
7 "required by law" language does cover and would give one
8 party to an arbitration agreement the ability to say, "Well,
9 look, I know I agreed not to make this public, but I now
10 have a court-supervised discovery order requiring me to
11 provide it." So it may be that in situations like this the
12 party would have to wait to be subpoenaed, resist the
13 subpoena and then be ordered by the court, possibly; but if
14 the court does order it notwithstanding that, then I think
15 it's not inconsistent with the arbitration group's rules.

16 Now, the last point: I've already stated this in
17 this case, that agreeing to confidentiality in an
18 arbitration does not mean that documents are immune from
19 subpoena. This is a nuanced question. I do not agree with
20 the NRA's reading of the *Underwriters at Lloyds* case, which
21 is 41 A.D.3d 362. It is cited in the NRA's papers for an
22 exceedingly broad proposition, and I quote: "Arbitration
23 materials are not discoverable pursuant to CPLR Article 31
24 subpoena." That is simply not what that case says, and I'm
25 not aware of any case -- certainly, in the New York system,

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1 that I'm aware of -- that says that.

2 It is absolutely true that the court noted that
3 there is an important public interest in protecting the
4 rights of parties who submit to confidential arbitration.
5 The court did not, however, mandate an across-the-board
6 prohibition on discovery.

7 I think it is worth noting that the court observed
8 no less than three times, including in the sentence that
9 Ms. Eisenberg read into the record, in its opinion that
10 Occidental, which was the defendant in the case, was not a
11 party to the arbitration, strongly suggesting a couple of
12 things: first of all, that context matters, as it usually
13 does; and the fact that the defendant was not in the
14 arbitration was a relevant factor.

15 So, while due regard must be given to the public
16 interest in protecting the confidentiality of arbitration,
17 it seems to me that it's a case-by-case decision.

18 Here, unlike in the *Lloyds* case, the NRA was a
19 party to the arbitration. Moreover, at this point, there
20 has been no argument that the materials are irrelevant; and
21 based on the OAG's papers, I think they make a decent
22 argument that they have independent relevance here.

23 The AG's complaint contains allegations against the
24 NRA and the individual defendants related to allegedly
25 improper excess benefits. The arbitration between Mr. Cox

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1 and the NRA involved similar allegations, except this time
2 by the NRA, against Mr. Cox receiving excess benefits and
3 that it violated the NRA's internal policies. Those are
4 central issues in this case: what those policies are, how
5 they've been enforced and the like. So the arbitration
6 documents are broadly relevant.

7 So what I would say is, is that the way this should
8 work is that there should be respect for arbitration
9 confidentiality. I think things like arbitration awards,
10 for example, as was involved in one of the other cases, is
11 an example of one where one might say that the number, let's
12 say, that is awarded in an arbitration, conceivably, could
13 be very confidential. I could see situations where that
14 might be redacted if it was not relevant. Here, there's
15 really been no objection based on that ground.

16 And I know the argument is being made now, "Well,
17 maybe just do it to the pleadings." I don't have in front
18 of me any basis for making a document-by-document call
19 because the objection that's been made is an
20 across-the-board one. So my rejection of it is equally
21 across the board.

22 You know, if there had been objections saying,
23 "Look, this is our first objection, that you can't have any
24 of it; our second one is, is that these 400 documents
25 have" -- you know -- "there are these reasons why we're not

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1 going to -- we shouldn't have to -- produce them ..." But
2 that hasn't been done. That's not in front of me. I'm not
3 going to remand it for you guys to start that all over
4 again. This has taken too long as it is.

5 So the motion to compel is granted. The production
6 of those documents should proceed rapidly, since they've
7 been in the parties' possession for quite some time.

8 In terms of the pre-review, I do think -- as we
9 talked about last time -- I do think there is some rationale
10 for having targeted pre-review to look for attorney-client
11 privileged information. As I mentioned last time, I think
12 that can be done without reading every shred of paper;
13 people do it all the time.

14 The donor information, as I discussed with
15 Mr. Thompson, I do view as potentially sensitive. Again, it
16 is a case-by-case thing. I think, probably, the way to do
17 it here is to redact -- to have the NRA take the first crack
18 at redacting -- sensitive donor information, identifying
19 information.

20 I don't want to get into the weeds here, but it
21 seems like if it were just identities, they can be called
22 "Donor No. 1, Donor No. 2, Donor No. 3," so that at least
23 when it's redacted, you know it's a name. But I don't know
24 exactly what's in there. Certainly, if we're redacting the
25 name, we would, you know, be redacting the address, and

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1 certainly children's names, for goodness' sake. I don't
2 know what we're talking about.

3 You can redact, but that's going to be subject to
4 the normal kind of rules where, if the other side looks at
5 it and the document looks like Swiss cheese and nobody can
6 figure out what it is, I might take it in for an in camera
7 review. Or, more hopefully, your special discovery master,
8 if such person is in fact retained, which I very much hope
9 happens, that person can do it a lot more quickly than I
10 will be able to.

11 So the principle of some pre-review, fine. It has
12 to be narrowly done, carefully; done in a way that's
13 efficient and not going to take forever. Given how long
14 you've had it, I would say that the materials should be
15 produced by the end of this month, if not sooner.

16 Actually, you're doing depositions right now; is
17 that right?

18 MR. THOMPSON: Yes, your Honor. The depositions
19 start next Friday.

20 THE COURT: Let me revise that:

21 From what Ms. Eisenberg said, some of this has
22 already been done; some of the redactions have been done.
23 They should be produced on a rolling basis, as soon as they
24 are ready. So the first slug should go out this week, if
25 it's already been done, or no later than next week, and the

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1 production should be completed by the end of the month.

2 With respect to Mr. Cox's expenses, I think I've
3 previewed this:

4 The CPLR provides that the reasonable production
5 expenses of a nonparty witness shall be defrayed by the
6 party seeking discovery, or the statute would support an
7 order that the AG's office pay the reasonable production
8 expenses incurred by Mr. Cox in collecting and producing the
9 documents. The Commercial Division Rules add that
10 reasonable production expenses can include fees charged by
11 outside counsel and e-discovery consultants.

12 Counsel fees are not always covered, and in this
13 case I find that the AG need not defray the fees to the
14 extent they stem from litigating the instant dispute. The
15 dispute was initiated by the NRA's objections to production,
16 not Mr. Cox's, and it would be unfair for the AG's office to
17 shoulder those expenses.

18 So what I would say is that pursuant to the CPLR
19 and the Commercial Division Rules, the AG must compensate
20 Mr. Cox for reasonable production expenses, and that would
21 include fees only to the extent that they relate to
22 production, not responding to this motion.

23 I will assume that counsel can figure out how to do
24 that, but the main money here, my guess is, is because of
25 the dispute.

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1 The only cognizable ground for seeking to have the
2 NRA pay for that would be, in my view, as a sanction for
3 frivolous conduct or as a discovery sanction or, separately,
4 pursuant to some contract argument have, in my view, the
5 ability to adjudicate any contract argument, and I do not
6 find that the NRA's positions have been frivolous. I have
7 gone the other way but I don't think that they are
8 frivolous.

9 That finding is without prejudice to any
10 contractual or indemnification claims Mr. Cox might be able
11 to assert in a different forum.

12 Okay?

13 I would ask Mr. Cox's counsel to put together a
14 bill of costs that focuses on the expenses related to
15 production itself, not litigating this dispute.

16 Okay?

17 In my last minute or so, can somebody tell me
18 whether there is a discovery master in this case, soon?

19 MS. CONNELL: Your Honor, this is Monica Connell,
20 from the New York State Attorney General's office.

21 The parties met and discussed the special master a
22 number of times and spoke with Judge Sherwood on two
23 occasions, or more. The plaintiff consented to appointment
24 of a special master and agreed to the defendants' request
25 that the plaintiff, or the AG, shoulder 50 percent of the

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1 cost, but the defendants couldn't agree how to divide the
2 costs for the special master amongst themselves.

3 So we do not have a special master, very
4 unfortunately, and I think all parties would agree that
5 Judge Sherwood was very quick and helpful and productive,
6 even in trying to resolve this initial issue.

7 So that's the status, unfortunately.

8 THE COURT: Well, I certainly urge you to rethink
9 that; and as you think about it, I do not think I have the
10 ability to order you to pay a special master, but I can
11 impose one on you if it's not going to impose any costs and
12 it will be whoever I choose, subject to any conflicts.

13 So I'm just putting that out there, that this is a
14 case that I think will require some attention like that, and
15 you know, Mr. Sherwood -- Judge Sherwood -- is an excellent
16 candidate.

17 MR. GEISLER: Your Honor --

18 I'm sorry. This is Mordecai Geisler, on behalf of
19 the NRA.

20 Just very quickly -- I don't want to hold your
21 Honor any longer -- the NRA also agreed to the appointment
22 of a special master, also agreed to a 50-50 split. The
23 holdup was that there were certain defendants who did not
24 want to agree to a special master, if they had to pay, under
25 any circumstances.

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1 Nevertheless, we have some ideas that we want to
2 propose directly to the Attorney General's office which we
3 have not yet discussed. So, hopefully, we can see if we can
4 make some progress.

5 THE COURT: All right. Well, I would urge you to
6 do it, because I think you'll be -- I think it will work
7 better with the right person rather than --

8 I'm sure, whoever I pick would be good, too, but
9 this is your chance to have somebody that maybe you all
10 agree on. And if it's just a question -- I've seen this
11 happen before, more in practice, is that you split it 50-50
12 and then leave it to the defendants or the plaintiffs, if
13 there were multiple, to work out how to divide it up.

14 I'd like to know soon, because each time we do one
15 of these, especially if there's going to be in camera
16 review, I really need to have somebody onboard to do it. So
17 if you can let me know, say, within seven days, I'd
18 appreciate it.

19 All right, thanks, everyone.

20 Alan, please stay on the line.

21 Actually, we'll send to counsel, separately, Alan's
22 e-mail address to order the transcript.

23 Alan, do you need to stay on and ask them any
24 spelling questions?

25 COURT REPORTER: No, your Honor.

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1 And I wish to thank counsel for their spelling
2 assistance as we went along. Thank you.


3 THE COURT: Okay.

4 Well, as usual, excellent arguments, all, and I
5 will see you soon. Please, as always, stay safe and healthy
6 and have a good rest of the week.

7 MULTIPLE COUNSEL: Thank you, your Honor.

8 * * *

9 CERTIFIED to be a true and accurate transcript
10 of the proceedings.

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13 Official Court Reporter
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