

EXHIBIT 7

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 451625/2020

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

Plaintiff,

-against-

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

Defendants.

- - - - -x

April 7, 2022

12:00 p.m.

P R O C E E D I N G S B E F O R E
The Hon. Peter Sherwood,
Ganfer, Shore, Leeds & Zauderer, LLP

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2 SPECIAL MASTER SHERWOOD:

3 Good afternoon, everyone. What I
4 would like to do, as I always do, is
5 to set an agenda. My notes say that
6 there are four items to discuss, and
7 you let me know if you have anything
8 to add. One has to do with Aaronson.
9 The LaPierre deposition, there is a
10 request there to extend the time
11 beyond seven hours. There is the
12 Paine subpoena, where the Attorney
13 General, I gather, is seeking some
14 assistance from the NRA. And there is
15 the ESI. Those are the four items
16 that I have.

17 Is there anything else?

18 MS. CONNELL: No, Judge.

19 SPECIAL MASTER SHERWOOD:

20 Good.

21 So let's talk about Aaronson
22 first. I did work on a decision and I
23 ultimately take to the conclusion that
24 the descriptions of privilege that the
25 NRA wrote is sufficiently ambiguous,

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2 that if I were to go ahead and decide
3 it, given what the standards are, and
4 whose's got the burden of proof, I
5 would have to require, I think,
6 disclosure. But I'm not so sure
7 that's the right result. And so what
8 I would like to do, since it's only
9 somewhere between 20-odd documents and
10 56 -- I have two different numbers --
11 I would like to review the documents
12 in camera, Ms. Eisenberg, and if you
13 can get them to me say by the end of
14 the day tomorrow, you should be able
15 to turn it all around tomorrow.

16 MS. EISENBERG: We'll do
17 that, Your Honor.

18 SPECIAL MASTER SHERWOOD:
19 Great. So --

20 MS. FUCHS: Your Honor, may I
21 be heard on that? This is Yael Fuchs
22 from the Attorney General's office.

23 SPECIAL MASTER SHERWOOD:
24 Yes, ma'am.

25 MS. FUCHS: Thank you. There

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2 is a threshold issue that we really
3 don't know how many documents are at
4 issue. I spoke with Counsel for the
5 NRA this morning, after repeated
6 attempts to get clarity on that, and
7 they agreed that there is a
8 disconnect. And it's somewhere
9 between the 23 listed on their
10 categorical privilege log and maybe
11 over a hundred as listed in Aaronson's
12 logs, which are a document-by-document
13 log. And Counsel represented this
14 morning that they understand that
15 there is a disconnect and will take
16 some steps to try to understand, you
17 know, what documents are actually
18 being withheld, because at this point
19 for us, it's kind of clear as mud.

20 SPECIAL MASTER SHERWOOD: So
21 who is taking these steps?

22 MS. FUCHS: I understood that
23 Counsel for the NRA is going to work
24 with Counsel for Aaronson to make sure
25 they are on the same page in terms of

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2 what documents are supposed to be
3 withheld, what documents should be
4 redacted and produced, and what
5 documents should be produced in their
6 entirety. It's a rolling process, and
7 as of this morning, it's still not
8 done.

9 SPECIAL MASTER SHERWOOD:

10 Well, I had the impression that the
11 high end of that number was 56.

12 MS. FUCHS: Right. And if
13 you look at Aaronson's privilege log,
14 which is a document-by-document log
15 that references the NRA's categorical
16 privilege log to give the reason, it's
17 over a hundred, and we just received a
18 supplemental privilege log yesterday.

19 SPECIAL MASTER SHERWOOD:

20 Okay. Well, so what can you tell me,
21 if anything, Ms. Eisenberg?

22 MS. EISENBERG: Certainly,
23 Your Honor. So there are 80 documents
24 that are either redacted or withheld,
25 and many revolve around the same

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2 thread. So we will provide those to
3 Your Honor, and foldered such that
4 they are grouped appropriately to not
5 waste your time.

6 In terms of the disconnect, I
7 don't know that there is a disconnect,
8 but what I told Ms. Fuchs is that I
9 understand that when she looks at
10 Aaronson's log, it represents that
11 Aaronson withheld more documents than
12 the NRA instructed them to withhold,
13 and what I represented to Ms. Fuchs
14 today is that I don't know what, if
15 any, reason there is for any
16 disconnect, but we will certainly work
17 with Mr. Glaws from Carr Maloney, who
18 represents Aaronson, to make sure that
19 everything we instructed to turn over
20 to the New York Attorney General's
21 office, has been turned over. And to
22 make sure that anything that has been
23 withheld or redacted is provided to
24 Your Honor so that you can see the
25 documents and consider them.

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2 SPECIAL MASTER SHERWOOD:

3 Okay. Now, am I going to get a list
4 as well, or just the documents?

5 MS. EISENBERG: We'll
6 definitely provide a list that helps
7 navigate the collection.

8 SPECIAL MASTER SHERWOOD: I
9 would appreciate that, that's great.

10 MS. EISENBERG: Certainly.

11 SPECIAL MASTER SHERWOOD: Are
12 you going to be able to turn those
13 around today?

14 MS. EISENBERG: Yeah, we
15 should be able to do it today. As far
16 as, you know, making it as user
17 friendly as possible, being able to do
18 it tomorrow, I think, would deliver a
19 more user-friendly work product, but
20 if you need it today, we'll get it to
21 you today.

22 SPECIAL MASTER SHERWOOD:
23 Well, I like friendly. So why don't
24 we -- we're talking about tomorrow
25 morning versus late this afternoon?

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2 Is that what we're talking about?

3 MS. EISENBERG: Certainly,
4 Your Honor, that works for us, thank
5 you.

6 SPECIAL MASTER SHERWOOD: All
7 right. So we will do that.

8 Ms. Connell, I'm not so sure
9 I will be able to turn it around by
10 tomorrow, but certainly by Monday. If
11 I get it tomorrow, it may be Monday,
12 not tomorrow.

13 MS. FUCHS: Thank you, Your
14 Honor. We would --

15 SPECIAL MASTER SHERWOOD:
16 This is your task, Ms. Fuchs, okay.

17 MS. FUCHS: It is.

18 SPECIAL MASTER SHERWOOD: So
19 I am well aware that it's been sitting
20 a while, and so I will turn it around
21 as quickly as I can.

22 MS. FUCHS: We very much
23 appreciate that, Your Honor. We did
24 depose the representative of Aaronson
25 on March 22nd, but he is coming back

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2 for some additional testimony on
3 April 18th, so it would be certainly
4 the most efficient if we had any
5 de-privileged documents by that time.

6 SPECIAL MASTER SHERWOOD:
7 Great. So that takes care of
8 Aaronson.

9 LaPierre. Kent, I guess the
10 issue is whether Mr. LaPierre needs to
11 sit for seven hours or up to 14. As I
12 understand it, he's been deposed
13 before. What can you tell me?

14 MR. CORRELL: Correct, he's
15 been deposed many times. Once in the
16 bankruptcy, sat and gave trial
17 testimony in the bankruptcy
18 proceeding. He sat for a 341 meeting
19 in the bankruptcy. I think there was
20 also a 2004 examination. And he's
21 been deposed in a number of other
22 satellite cases, so he's been deposed
23 quite a few times.

24 My concern is that if you
25 expand the time to 14 hours, that the

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2 questioning will expand to fill the
3 time available. And in the past,
4 we've had experience with examiners
5 doing things like reading documents
6 into the record, long passages of
7 documents, and then asking witnesses,
8 do you see that, and taking up lots of
9 time. So I am just interested in a
10 practical approach, an efficient
11 approach. And I think the best thing
12 to do is to let the examiner examine
13 for seven hours, see where we are, and
14 then let them explain whether they
15 think they need more time and, if so,
16 why. And if there's been any abuse on
17 either side in terms of the wasting
18 time on the examiner's part or wasting
19 time on the lawyer's part, then we can
20 just take that off the clock and you
21 can put that time back on the clock to
22 keep it fair.

23 SPECIAL MASTER SHERWOOD: Who
24 is going to speak for the A.G.?

25 MR. CONLEY: I am, Your

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2 Honor, Jonathan Conley.

3 SPECIAL MASTER SHERWOOD: Go
4 ahead, Mr. Conley.5 MR. CONLEY: So this morning,
6 we do believe that good cause exists
7 here for additional time, given the
8 centrality of Mr. LaPierre's role in
9 what is a large, complex and
10 document-intensive case. We think
11 there are a number of reasons why
12 Mr. LaPierre's prior testimony should
13 not preclude us from getting
14 additional time here. First,
15 Mr. LaPierre's investigative
16 examination and his deposition and
17 testimony in the NRA bankruptcy were
18 not taken in the context of this law
19 enforcement action. The investigative
20 examination is different from a civil
21 deposition, and that the purpose is to
22 understand what has happened in a
23 regulated entity and whether there are
24 violations of law warranting further
25 action. The NRA bankruptcy took place

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2 in a Texas Federal Bankruptcy Court.
3 It involved different issues and legal
4 standards, and it was in the context
5 of an expedited motion hearing. The
6 NRA has also contested the
7 admissibility of Mr. LaPierre's prior
8 testimony in this action and while
9 we --

10 SPECIAL MASTER SHERWOOD: Let
11 me cut you off for a minute.

12 MR. CONLEY: Sure.

13 SPECIAL MASTER SHERWOOD: Was
14 he deposed during your investigation?

15 MR. CONLEY: Yes, he was
16 deposed in June of 2020 in our
17 investigation.

18 SPECIAL MASTER SHERWOOD: All
19 right. Well, don't you already have a
20 fair amount of information from him as
21 a result of that? I read that you
22 said, look, he didn't answer a lot of
23 questions and he avoided answering
24 questions and on and on and on. I
25 understand that, but I'm still asking

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2 the question. Don't you have much of
3 what you need already based on his
4 sworn testimony during the
5 investigation?

6 MR. CONLEY: Your Honor, I
7 would not say that we have most of
8 what we need. We did have time with
9 Mr. LaPierre, but given that
10 Mr. LaPierre's the center of this
11 case, we are confident that additional
12 time is going to be needed to question
13 him on the myriad of topics that are
14 set forth in the complaint. Since
15 Mr. LaPierre's
16 investigation/examination, hundreds of
17 thousands of documents have been
18 produced in this action and numerous
19 depositions have or are about to be
20 taken, and we believe there will be a
21 factual record in this case that
22 didn't exist when Mr. LaPierre
23 previously testified for us. And,
24 again, the NRA is contesting the
25 admissibility of that prior testimony

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2 in this action. And while we find
3 those grounds to be meritless, it
4 still underscores that at least a
5 number of the Defendants are going to
6 contest the admissibility of
7 Mr. LaPierre's prior testimony here.

8 SPECIAL MASTER SHERWOOD:

9 Okay. So here's what I'm going to do.
10 I am going to allow additional
11 testimony up to nine hours, up from
12 seven. And the purpose of that is two
13 things: Number one, you have some
14 testimony before. I'm not so sure
15 that you need a full-throated
16 examination of this witness. And I
17 also want to give Mr. LaPierre an
18 incentive to answer the questions
19 directly rather than -- rather than
20 dragging out his response. My notion
21 is that you have up to nine hours.
22 You can agree to go more than that
23 without bringing me back into it if,
24 you know, both sides think it's
25 appropriate. If you think that there

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2 is a basis for going beyond nine hours
3 over Mr. Correll's objection, then you
4 can come back to me and do it quickly
5 and we will resolve that. But, again,
6 what I'm trying to do is see if I can
7 incentivize Mr. LaPierre to be
8 succinct.

9 MR. CONLEY: Understood, Your
10 Honor. Just to clarify, the nine
11 hours, up to nine hours is for the
12 Attorney General's questioning?

13 SPECIAL MASTER SHERWOOD:
14 Yes.

15 MR. CONLEY: Thank you, Your
16 Honor.

17 SPECIAL MASTER SHERWOOD: I
18 suspect you are not going to be asking
19 him any questions, Mr. Correll?

20 MR. CORRELL: I haven't -- I
21 have no plans to.

22 MR. McLISH: Your Honor, this
23 is Tom McLish, representing Joshua
24 Powell. We may have some questions
25 for Mr. LaPierre. And what has

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2 happened in some of the depositions so
3 far is at the end, you know, as we
4 approach seven hours, a number of the
5 other Defendants are sort of clamoring
6 for time, and that's been a problem in
7 a few depositions. So it might
8 behoove us --

9 SPECIAL MASTER SHERWOOD: The
10 time asking Mr. LaPierre questions?

11 MR. McLISH: Not in his
12 deposition, but in depositions in this
13 case, we've, at the end of -- as we
14 approach seven hours, it's become an
15 issue sometimes with the A.G.
16 continuing to ask questions up to the
17 seven hours and then the witness's
18 Counsel saying we're leaving after
19 seven hours and the other parties have
20 not had a chance yet to ask whatever
21 questions they have. And I don't know
22 that that will happen with
23 Mr. LaPierre. And I don't know that
24 we'll have much, if any, questions for
25 him, but I did want to just raise that

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2 as an issue that might happen. As
3 Mr. Connelly just said, he's
4 interpreting your ruling as nine hours
5 for the A.G.; that leaves no time for
6 the rest of us.

7 SPECIAL MASTER SHERWOOD:

8 Well, I did say nine hours for the
9 A.G. If you need to go beyond that
10 because you have questions, you can
11 talk with me about that now and give
12 me a guesstimate as to how much time
13 you want, or you can wait towards the
14 end. Maybe, you know, when you get to
15 the seventh or eighth hour, you can
16 reach out to me. If I know exactly
17 when you are going to be doing the
18 deposition, I will endeavor to give
19 you a number where you can reach me if
20 you need to. I don't want to break up
21 the deposition if we don't have to,
22 but, at the same time, I don't want
23 this to go on and on and on.

24 MR. McLISH: Understood. I
25 think that sounds fine, Your Honor.

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2 MR. CORRELL: Your Honor,
3 this is Kent Correll. Just for
4 clarification, are you envisioning
5 that as occurring on one day, so that
6 will just be one, long day, nine
7 hours?

8 SPECIAL MASTER SHERWOOD: I
9 think that's up to you guys. I'm not
10 going to micromanage to that extent.
11 It's up to you.

12 MR. CORRELL: Thank you.

13 SPECIAL MASTER SHERWOOD: I
14 think you should meet and confer with
15 the Attorney General, see if you can
16 come to an understanding with respect
17 to that, and so on. Hopefully, you
18 won't have to come back.

19 MR. CORRELL: Thank you.

20 SPECIAL MASTER SHERWOOD: All
21 right. Mr. Paine. Who is this?
22 Jonathan, is that you again?

23 MS. CONNELL: It's me, Your
24 Honor, Monica Connell. So Your Honor,
25 Mr. Paine is a former employee of the

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NRA. He resides in California. We went to great lengths to serve a subpoena on him and actually learned that the subpoena had been served from NRA Counsel, Mr. Geisler. We asked Mr. Geisler at that time if the NRA would be representing Mr. Paine, and he said he would get back to us. We followed up a number of times. We never got an answer. We are, I guess, going to commence enforcement procedures in California although that could take some time, but, you know, after much pushing, I was told last week the exact message, which I put in my letter, which was something to the extent of that the NRA would be representing Mr. Paine at his deposition. And I was hoping to avoid costly, time-consuming, and, perhaps, delaying enforcement proceedings in California to bring in a witness who the NRA is going to represent. If I understand the filing from last night,

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2 the NRA is now saying they're not
3 going to represent Mr. Paine, but it
4 just seems to me that if they're in
5 contact with Mr. Paine --

6 SPECIAL MASTER SHERWOOD:

7 That's not what I understood, by the
8 way. I understand them to be taking
9 the position that to the extent that
10 he is being asked about NRA
11 information, they're going to weigh
12 in. So they're going to represent him
13 with that -- now, I don't know how you
14 slice that one, but that's my
15 understanding of what they had to say.

16 MS. CONNELL: Well, I think
17 that's the --

18 SPECIAL MASTER SHERWOOD: But
19 I am going to ask for some
20 clarification before we're done.

21 Go ahead, are you finished?

22 MS. CONNELL: Oh, no, I was
23 just going to say that in an e-mail on
24 March 30th, the NRA said, quote, you
25 asked whether the NRA's Counsel

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2 represents Paul Paine. The answer is
3 no. However, should the OAG re-notice
4 his deposition -- which it's not clear
5 to me whether we could then serve a
6 notice and they would honor that or
7 cause Mr. Paine to honor that -- we
8 will of course represent him at such a
9 deposition to the extent that he is a
10 former employee of the NRA who may be
11 in possession of information belonging
12 to the NRA.

13 SPECIAL MASTER SHERWOOD:

14 That's what I was referring to.

15 MS. CONNELL: Right. So
16 we're just trying to cut out
17 unnecessary delay and difficulties if
18 we can. We finally got sort of an
19 answer.

20 SPECIAL MASTER SHERWOOD: So
21 Ms. Eisenberg?

22 MS. EISENBERG: Certainly,
23 Your Honor.

24 SPECIAL MASTER SHERWOOD:
25 Give me some better sense of what you

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2 have in mind.

3 MS. EISENBERG: Well, I think
4 Your Honor got it exactly right. To
5 the extent this individual is a former
6 employee and is in possession of
7 privileged information belonging to
8 the NRA or of information that we
9 might instruct him not to reveal on
10 the record, let's say, donor names,
11 the NRA certainly extends to represent
12 him to the extent that it needs to
13 assert privileges and be able to
14 instruct him not to answer. And even
15 though he is a former employee, the
16 knowledge that he has is derived from
17 when he was an employee of the NRA,
18 and the NRA certainly has the right to
19 do that. I don't think anyone is
20 disputing that. So we just wanted to
21 make it clear. We have never
22 suggested that we represent him. We
23 have been clear that we don't. And
24 any suggestion that there's been some
25 kind of undo influence or

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2 participation by the NRA in the
3 alleged failure to comply -- I don't
4 even know what exactly Ms. Connell
5 means in her letter when she says that
6 he failed to comply, but I think, A,
7 it's not clear what relief is being
8 sought. I read the letter several
9 times, and it's not. But B, it is --
10 what is clear is that the factual
11 predicate or premise for the argument
12 that the NYAG is making is that the
13 NRA is able to control Mr. Paine or
14 worse, that it's directing him not to
15 do something. Both are completely
16 untrue, and if and when the deposition
17 proceeds, the NRA reserves the right
18 to any questions that call for
19 information that otherwise is properly
20 withheld from the record and to
21 instruct the witness to the same
22 effect.

23 SPECIAL MASTER SHERWOOD:

24 Here's what I don't understand,
25 Ms. Eisenberg. This lawsuit has to do

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2 100 percent with the NRA and NRA
3 conduct alleged. Mr. Paine is a
4 former employee. I can't imagine that
5 they're going to be asking him
6 questions about his children and
7 grandchildren, if he has any, and, you
8 know, where he goes for lunch and
9 personal things like that. So any
10 questions that he is likely to be
11 asked comes within the scope of what
12 you just described to me. So bottom
13 line, aren't you going to be just
14 representing him? I really don't
15 understand the fine line that you are
16 trying to cut here, given what I just
17 said.

18 MS. EISENBERG: Well, do you
19 want to? Mr. Furia will address, Your
20 Honor.

21 MR. FURIA: Your Honor, this
22 is Phillip Furia.

23 SPECIAL MASTER SHERWOOD:
24 Whoever can give it to me.

25 MR. FURIA: I think the

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2 distinction is that we are not
3 Mr. Paine's Counsel and if the
4 deposition proceeds, we are going to
5 be representing the NRA's interests at
6 the deposition, not his. And the
7 entire analysis here is whether he's
8 under the NRA's control. As a former
9 employee, he's not. So we don't have
10 the ability to tell him to appear, to
11 tell him to comply. And also, as
12 Ms. Eisenberg mentioned before, there
13 hasn't been noncompliance because
14 there's been no attempt to follow the
15 legal steps necessary to actually
16 enforce the subpoena. So we have no
17 control over him. And any action by
18 this firm at the deposition will be to
19 protect the NRA, not Mr. Paine.

20 SPECIAL MASTER SHERWOOD: So
21 I take it, then, that my takeaway from
22 what I heard both of you say is that
23 you are not representing him. To the
24 extent that he is asked about
25 materials that you think are

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2 privileged, you are going to assert
3 your client's privilege, the NRA's.
4 If Mr. Paine has objections of his
5 own, you are going to sit quiet.

6 Do I have that right.

7 MR. FURIA: That's correct.

8 SPECIAL MASTER SHERWOOD:

9 Okay. And I take it that -- well, let
10 me ask the question. Has he asked to
11 be represented by your firm?

12 MR. FURIA: I'm not aware of
13 that being the case. I know that we
14 do not represent him, but I have no
15 knowledge of him asking for
16 representation.

17 SPECIAL MASTER SHERWOOD:

18 Prior to the time of his deposition,
19 he asks to be represented by your firm
20 and you decide or anyone, any entity
21 representing the NRA is asked to
22 represent him, you need to disclose
23 it. It will become pretty obvious at
24 the deposition, I understand that, but
25 they ought to know in advance. They,

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2 being the Office of the Attorney
3 General. All right? So let's be
4 clear about that.

5 MR. FURIA: Okay.

6 SPECIAL MASTER SHERWOOD:

7 Let's try to be transparent here. I'm
8 not suggesting that you disclose
9 confidential information, but in terms
10 of the back and forth between
11 Mr. Paine and the NRA in terms of
12 representation, it needs to be
13 transparent. Okay?

14 MR. FURIA: Okay.

15 SPECIAL MASTER SHERWOOD:

16 Anything else on this subject?

17 MS. CONNELL: Your Honor,
18 yes. Just one thing I would say is we
19 will enforce the subpoena which was
20 served upon Mr. Paine and with which
21 he didn't comply in California. I
22 would just -- and I thank you for your
23 ruling. I would just add that the NRA
24 has provided or paid for attorneys for
25 various witnesses, it was our belief

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2 that's a topic covered in our letter
3 somewhat, under the demand number 41,
4 I believe it is, of our request for
5 production. So to the extent the NRA
6 will reveal that whether or not it is
7 representing Mr. Paine in advance of
8 his deposition, I would ask that they
9 reveal whether they are providing or
10 funding an attorney for Mr. Paine in
11 advance of the deposition. That's the
12 first item. And part of the reason I
13 had been asking for an answer to this
14 question is to see whether there was a
15 way to shortcut enforcement
16 proceedings and that's been somewhat
17 strung out. I did think in good hope
18 we would get an answer one way or the
19 other sooner than this, but to the
20 extent we need to depose Mr. Paine
21 after the end date for depositions, I
22 would ask to be allowed to do so.

23 SPECIAL MASTER SHERWOOD: Let
24 me just say this with respect to that,
25 and I am talking to the NRA's Counsel.

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2 If the NRA is representing him, either
3 directly or indirectly, or is paying
4 for the cost of his representation, I
5 don't think that latter piece -- well,
6 either piece is privileged. So I
7 would expect -- I would be surprised
8 if Ms. Connell or whoever is going to
9 be questioning the witness doesn't ask
10 the question of the witness as to
11 whether or not his representation is
12 being funded by the NRA and it's fair
13 game. All right?

14 MS. CONNELL: Thank you, Your
15 Honor.

16 SPECIAL MASTER SHERWOOD: So
17 better if you just let them know in
18 advance rather than do a dance around
19 it.

20 Okay, so now for the -- let
21 me not make a joke of it. The ESIs.

22 Ms. Connell, here's what I'm
23 not quite understanding with respect
24 to your request. It's certainly
25 extensive. I see this Appendix A

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2 produced by the NRA which seems to
3 respond to the questions you asked as
4 to whether or not all the information
5 in various categories have been
6 provided. Am I misinterpreting that?

7 MS. CONNELL: I think you
8 are, Your Honor, and I think if we
9 take a step back, there's a couple of
10 things I would like to state that
11 might explain this.

12 When discovery in this civil
13 action began, the NRA elected,
14 apparently, to scan documents and to
15 use ESI search terms traditionally
16 used for e-mails and text messages,
17 mainly, and apply it to the bulk of
18 their production. When we learned
19 that this was how they intended to
20 proceed, we objected, we said we don't
21 agree with that, but if that makes
22 things faster and simpler, within
23 reason, we are willing to work with
24 you, but we still want the traditional
25 categories of documents as maintained

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2 in ordinary course of your business,
3 responsive to our demand pursuant to
4 C.P.L.R. 3122. However, we will work
5 with you on search terms and we worked
6 to cut them down, we asked them to
7 sample, to reduce the production time.
8 They didn't do that. You know, we
9 worked within ESI, but what we are
10 talking about isn't traditional ESI.
11 What we have been trying to get
12 primarily are categories of documents
13 or information that the NRA could,
14 should, or must maintain in the
15 ordinary course of their business.
16 And we've asked for a clear statement
17 of whether it's been produced or has
18 been withheld and if so, for what
19 reason, or if no such documents exist,
20 this is what we're entitled to under
21 the C.P.L.R. And this is something we
22 put in front of Judge Cohen when we
23 were forced by Order to Show Cause to
24 move for production of all documents.
25 And I would like to just say that we

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extended the deadline for NRA over and over for their production of documents. We finally had to move by Order to Show Cause. Judge Cohen said all document production by the NRA should be completed by February 28th, give them a one-time extension to March 10th, and then he said they have to certify they have produced all responsive documents. They haven't. We got a production last night. And we are getting a production of readily identifiable categories of documents. You know, recently, we got personnel files for key people. This is information we sought last June. You know, we're getting board of director meeting minutes last night. Documents relating to an outside consultant last night. We haven't been able to review them. They have to be uploaded. So part of the issue is we shouldn't be here now on April 7th trying to get what we've been trying to get since

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2 last June. I did go through --
3 because I'm looking for a way to end
4 discovery at some point, end document
5 discovery -- Appendix I. It does
6 answer some questions and some of the
7 responses finally are okay. But in
8 other ones, they are not and it might
9 help to walk through them and talk
10 about our concerns or questions.

11 SPECIAL MASTER SHERWOOD:

12 Okay. Go ahead.

13 MS. CONNELL: So the first
14 item, and Appendix I doesn't exactly
15 follow our categories from our letter,
16 but let's use this as an easy guide.
17 The first category is packets of
18 information given to the board as
19 maintained within the files at the
20 NRA. So what we were asking for is
21 board books. You know, what
22 information does the NRA convey to the
23 whole board. The primary mechanism
24 the NRA has used with regard to much
25 of this information is a type of

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2 messaging system that's secured called
3 Sendinc. They continue to use Sendinc
4 to this day, as far as we know. They
5 have not preserved documents sent by
6 Sendinc even though we told them they
7 have to preserve relevant documents in
8 2019. And they have not produced the
9 packets sent to the board from
10 Sendinc, and now are finally saying
11 they don't exist. In their production
12 they give us something like a couple
13 of hundred or maybe it was 800
14 messages from Sendinc, but all those
15 messages concerned was that they're
16 using Sendinc to convey information to
17 the board and maybe receive
18 information back, but we don't know
19 what that information was. To our
20 knowledge, the NRA has not asked
21 individual members or individual
22 officers for their Sendinc passwords
23 so they can go in and recreate what
24 information they're giving to the
25 board. We just don't know that. And

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2 so it seems very basic that when you
3 are being investigated by your
4 regulator and there's a question of
5 whether you are providing accurate
6 information to the board so the board
7 can take action, we have complaints by
8 board members that they are not being
9 given accurate information, getting
10 our hands on the information you have
11 given the board over the years is
12 central. Why don't we have that?
13 They don't say here that they have
14 produced that, and they haven't. In
15 fact, they admit to us that they have
16 not produced the Sendinc packets. And
17 so there seems to me like an apparent
18 spoliation in that regard.

19 And I will note, too, when
20 they say the NRA produced materials
21 distributed to its board, they list
22 some items, but what I think they're
23 talking about, and the reason I don't
24 think they pointed us to a particular
25 area is we can find some of these

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2 documents attached as attachments to
3 e-mails that board members might have
4 sent around. So going through
5 thousands and thousands of documents,
6 we can sometimes link an e-mail and
7 find the attachment and put together
8 what we think is information sent to
9 the board. It's incomplete. It's not
10 clear. It's not a timeline. And it's
11 a tremendous amount of work. And it's
12 unnecessary. They either have the
13 information they sent to the board or
14 they don't and they should point us to
15 it or say they haven't maintained it
16 and they're not producing it.

17 SPECIAL MASTER SHERWOOD: So
18 let me hear from Ms. Eisenberg or
19 whoever else is managing this.

20 MS. EISENBERG: Certainly,
21 Your Honor.

22 SPECIAL MASTER SHERWOOD: Go
23 ahead.

24 MS. EISENBERG: So the NYAG
25 does not get to have it both ways. If

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2 Ms. Connell was very concerned by
3 making sure that they had every single
4 paper that ever went to any member of
5 the 76-member board, then they should
6 have served a shorter set of discovery
7 requests and said these are the 15 or
8 20 items that we really care about and
9 we want the NRA to undertake a
10 monumental effort in making sure that
11 every shred of paper that falls into
12 these categories is produced. Yet
13 that is not what they did. The NYAG
14 served a very extensive request for
15 documents that contained 62 separate
16 requests, some of which contained up
17 to seven subparts. And it was clear
18 from day one, as we made very clear in
19 our objections, that the only way to
20 comply with such an unreasonable
21 request was to utilize exactly what
22 the commercial division rules direct
23 you to do and what Justice Cohen's
24 individual rules direct you to do, is
25 to use technology and reasonable

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2 efforts to -- reasonably diligent
3 efforts to locate information, but it
4 was not going to be possible to, at
5 the end of the day, inventory
6 everything that we produced and answer
7 these detailed questions about all
8 these multiple categories, because
9 either you do it this way or you do it
10 that way. They chose to serve this
11 extensive request, and the only way to
12 comply with it was what we have done.
13 Now, we have certainly turned over to
14 them lots of information that is kept
15 in the ordinary course of business in
16 a particular file. And I personally
17 have gone to the NRA and the various
18 people and the various floors and the
19 various drawers and files and, you
20 know, I'm sure that's not what
21 Ms. Connell wants to suggest, but each
22 of these requests requires a lot of
23 work and a lot of resources. The NRA
24 already produced over 1.5 million
25 pages of records just in this action

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1 alone. The NRA has spent days, if not
2 weeks, collecting all these
3 categorical documents to digitize
4 them, review them for privilege, turn
5 them over. And then, most recently,
6 we have spent an inordinate amount of
7 time trying to be as cooperative as we
8 possibly can be to help the NYAG
9 understand what's in the production,
10 because, apparently, they are having
11 trouble searching it, even though they
12 have a database and presumably the
13 technological tools that should enable
14 them to do it.
15

16 Moreover, Your Honor, as you
17 know, there are only three claims
18 remaining against the NRA. The
19 allegations that remain relate to
20 events that happened in the past.
21 They relate to allegations that the
22 NRA failed to comply with
23 whistleblower procedures, engaged in
24 allegedly improper related party
25 transactions, and that the NRA

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2 allegedly filed materially false
3 filings with the NYAG. So when
4 Ms. Connell talks about, you know, the
5 day on which they served the discovery
6 requests, that's when the lawsuit
7 looked much different. Now, we have
8 three claims that remain against the
9 NRA, and we have 1.5 million of pages
10 that have been turned over --

11 SPECIAL MASTER SHERWOOD: The
12 1.5 relates to just these three causes
13 of action, or the larger number of
14 claims?

15 MS. EISENBERG: The larger,
16 because we had been turning things
17 over for months now, and Justice Cohen
18 dismissed on March 2nd.

19 So bottom line, Your Honor,
20 we have -- you know, I think that what
21 the NYAG is really doing is asking us
22 as Counsel to do their homework for
23 them, learn what's in the production,
24 and is trying to give them -- is
25 trying to get us to give them answers

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2 that, frankly, you know, they can ask
3 in depositions, they can propound
4 interrogatories to the extent they are
5 still timely or they could have. And
6 frankly, they should have designed
7 their discovery program differently if
8 they wanted to be able to say that the
9 NRA produced every single document
10 that a member of the 76-member board
11 ever considered. So back to where I
12 started, given how much we have done
13 already, we have gone above and
14 beyond. If there are any specific
15 questions that remain, we are happy to
16 meet and confer with Ms. Connell to
17 see if we can voluntarily cooperate
18 further and provide that information.
19 But enough is enough. We have gone
20 above and beyond, and this has been an
21 exorbitant effort on our part to
22 respond.

23 SPECIAL MASTER SHERWOOD: I
24 haven't heard you respond to one of
25 the things Ms. Connell said, which was

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2 apparently you have a company that
3 apparently digitized paper documents.
4 She didn't use the word paper, but
5 that was my takeaway. And that those
6 documents were then -- are no longer
7 available. What can you tell me about
8 that?

9 MS. EISENBERG: Where we
10 digitized documents, we turned them
11 over, either Prosale or to the extent
12 they hit on search terms. I am not
13 aware of any digitized paper documents
14 that are no longer available. I don't
15 know, Your Honor, to what you are
16 referring.

17 MS. CONNELL: Sendinc, I
18 believe we are discussing the Sendinc
19 packets, and we would like to know
20 what efforts the NRA made to preserve,
21 because they certainly have not
22 produced the packets sent by Sendinc,
23 no question.

24 MS. ROGERS: I can speak to
25 this, Your Honor. Sara Rogers for the

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2 NRA. This first came up --

3 SPECIAL MASTER SHERWOOD:

4 What is your name again?

5 MS. ROGERS: Sara Rogers.

6 SPECIAL MASTER SHERWOOD:

7 Okay.

8 MS. ROGERS: This first came
9 up in the investigation more than two
10 years ago. So this has nothing to do
11 with paper packets of documents.
12 Sendinc is an electronic application
13 that is like an add on to e-mail, when
14 you want to send a really secure
15 e-mail, you send it via Sendinc. It
16 is not used very often, but it has
17 been used to distribute a few types of
18 documents such as financials to
19 members of the finance committee, for
20 example. We cooperated extensively
21 with the New York A.G. during the
22 investigation to try to extract, at
23 their request, not just the documents
24 that happened to be sent, the
25 financials, but the exact copies of

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2 the Sendinc messages. That was not
3 possible. We provided them with the
4 full Sendinc terms of service. I
5 think they were contemplating doing a
6 third-party subpoena to Sendinc, I
7 don't know. We didn't stand in the
8 way of that. We said, look, we can
9 get you our internal documents and we
10 can get manually and very labor
11 intensively, which we did, we can comb
12 through all the e-mails and look for
13 the trails of what was sent via
14 Sendinc, but we do not -- there's
15 literally not the technological
16 capability even if you have the
17 password to like extract things out.
18 We tried to do that. So we've
19 produced, I think it's between 900 and
20 1,000 e-mail records of Sendinc
21 transmissions and the types of
22 documents that were sent via Sendinc,
23 such as draft -- I think we sent --
24 such as like tax returns and
25 financials have been produced. But

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2 there's certainly -- it's not the case
3 that a hard copy document was
4 digitized, put into Sendinc and ceased
5 to exist. It's just that there's just
6 electronic add on to e-mail which is
7 not susceptible to the same ESI
8 collection message that you would use
9 for e-mail. And this is something
10 that, you know, we alerted the A.G. to
11 years ago and worked with them on and
12 I just don't know that we have any
13 further solutions for them other than
14 what we have already done.

15 SPECIAL MASTER SHERWOOD: So
16 does that mean that the documents that
17 were provided to Sendinc is not part
18 of your \$1.5 million -- million
19 document production?

20 MS. ROGERS: We believe that
21 they are, so the times of materials
22 transmitted on Sendinc are, as a
23 general rule, attachments that we want
24 to be secure. You are sending them to
25 people like board members who are not

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2 within the NRA e-mails service, right.
3 So a board member might have an e-mail
4 address at Yahoo.com or something and
5 you want to secure a transmission, so
6 you send it via Sendinc. And it's
7 been a couple of years since I've
8 looked at this, so I would have to
9 refresh myself, but my understanding
10 is that the types of things that were
11 sent across Sendinc existed separately
12 within the NRA's server. So if you
13 send the finance committee copies of
14 the financial statements, you know,
15 those financial statements exist and
16 were produced. We just don't have the
17 ability to take the attachment copy
18 out of Sendinc and produce it. But
19 that doesn't mean they don't have the
20 financials. I don't know if that's
21 helpful.

22 SPECIAL MASTER SHERWOOD: And
23 I have the impression that Sendinc or
24 this add on that was used, in the
25 normal course of the board's

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2 activities, so if you have a board
3 meeting coming up and there are board
4 books, that gets forwarded to the
5 members of the board through this add
6 on, or am I mistaken?

7 MS. ROGERS: I can't certify,
8 Your Honor, that it was never used
9 that way, but the usage was more
10 limited. So to the extent that there
11 are board books, and I am using that
12 term very loosely, if there are
13 materials that are customarily given
14 out at board meetings, and they are
15 usually given out at the board
16 meeting. So there would be a copy of
17 the secretary's report, which contains
18 various committee reports. There's a
19 copy of the tax return in the fall.
20 We've -- I believe we would have
21 produced those.

22 Sendinc, my understanding is
23 that the usage was primarily confined
24 to a couple of subcommittees of the
25 board.

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2 SPECIAL MASTER SHERWOOD:

3 Now, so what is the normal process for
4 providing materials to the board in
5 advance of the meeting? It's sent
6 electronically? It's sent through
7 snail mail? What was the practice of
8 the NRA?

9 MS. ROGERS: So again, you
10 know, not testifying here, but my
11 understanding from our collection
12 efforts and years of working on this
13 is that the materials are generally
14 provided in hard copy in person.
15 They're put on a table, and given out
16 at the board meeting.

17 SPECIAL MASTER SHERWOOD: So
18 the board book is provided at the
19 board meetings?

20 MS. ROGERS: Yes, Your Honor.

21 SPECIAL MASTER SHERWOOD: Is
22 that what you are telling me?

23 MS. ROGERS: Yes, that's as a
24 general matter.

25 SPECIAL MASTER SHERWOOD:

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2 Doesn't give much time for review,
3 does it?

4 MS. ROGERS: Well, so a lot
5 of the materials are, you know,
6 reports of subcommittees that have
7 only met in a couple of days preceding
8 the board meeting. And I'm not saying
9 no materials are ever distributed in
10 advance, but to the extent that they
11 were, to the extent that something was
12 distributed by e-mail, that, I think,
13 would almost certainly be in our
14 production, but if there are packets,
15 then I think most of the packets are
16 given out at the meeting.

17 SPECIAL MASTER SHERWOOD:
18 Now, the A.G. has asked for board
19 books. And I'm using that -- to use
20 the word you used -- loosely. In
21 other words, materials that were sent
22 to the board either in hard copy or in
23 an electronic form, that's what I'm
24 talking about. Has all of that been
25 provided to the A.G.?

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2 MS. ROGERS: Yes. My
3 colleague tells me yes, and based on
4 the search terms that we were using
5 and the custodians, I could not
6 imagine there would be any that would
7 not be in there.

8 SPECIAL MASTER SHERWOOD: So
9 why would it be covered by search
10 terms if what you provide to your
11 board members are hard copies at the
12 board meetings? They don't get it in
13 advance. If they got it in advance, I
14 can see it being e-mailed to them or
15 sent in some electronic fashion. But
16 if they get it at the board meeting,
17 it's a hard copy that's, you know,
18 placed in front of their seats at the
19 meeting. How is it that you are able
20 to provide that information to the
21 A.G.? I'm just trying to get a feel
22 for what we're talking about, here.

23 MS. ROGERS: Certainly.

24 SPECIAL MASTER SHERWOOD:

25 This is what I am trying to do.

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2 MS. ROGERS: So to the extent
3 that anything was sent by e-mail, I am
4 not saying that never happened, we are
5 just saying there is not a board book
6 that's e-mailed. But anything that's
7 e-mailed would have been captured on
8 the e-mail. And then we know what
9 types of documents are printed out and
10 put in the board member's seats at the
11 meetings. Those are prepared and
12 printed by the secretary's office from
13 whom we collected documents. They
14 certainly exist in electronic form
15 before they are printed. So those
16 would have been covered by our
17 production. And it's a matter of
18 routine. So there's a packet of all
19 of the committee reports. Those
20 packets were produced. There is a
21 packet of the financials. Those were
22 produced. And I'm not sitting here
23 with a comprehensive list of
24 everything that was produced, but
25 obviously as part of our document

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2 production effort, we have liaised
3 with the secretary's office and
4 identified these types of materials
5 and would have been confident that we
6 collected them.

7 MS. EISENBERG: And then, in
8 addition, Your Honor, after every
9 board meeting there is a board book
10 that comes out that includes reports
11 for various committees and reports
12 from meetings of the board and there
13 is certain regularity to those and for
14 each meeting there is a board book and
15 we collected them as such and turned
16 over them to the NYAG a long time ago.

17 SPECIAL MASTER SHERWOOD: As
18 hard copies or electronic form?

19 MS. EISENBERG: We digitized
20 them and we gave it to them as pdfs,
21 they have it digitally, but we had to
22 scan them. And then yesterday there
23 were recent board minutes or there
24 were board books for more recent
25 meetings of the board that were

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2 collected subsequently, because they
3 didn't even exist when we originally
4 turned those over. There are four
5 such board books, and we turned them
6 over yesterday.

7 SPECIAL MASTER SHERWOOD: All
8 right --

9 MS. CONNELL: Your Honor --

10 SPECIAL MASTER SHERWOOD: Not
11 yet, Ms. Connell. Is that the only
12 thing you sent, you turned over
13 yesterday? Just these recent --
14 recently-created documents or was
15 there more?

16 MS. EISENBERG: There were
17 additional items, Your Honor. We were
18 making our way through the long list
19 of specific questions that the NYAG
20 had. And, again, in the attempt to
21 cooperate and to go above and beyond
22 the search terms, we identified
23 packets of additional information that
24 apparently are of interest to the
25 NYAG. For example, one of the

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2 questions is compliance or audit
3 reports issued by forensic risk
4 alliance. There were six spreadsheets
5 that represent their work in
6 connection with a certain engagement
7 that we turned over yesterday. So --
8 and there were other items. I don't
9 have a complete list in front of me
10 right now.

11 SPECIAL MASTER SHERWOOD:

12 Yes, Ms. Connell?

13 MS. CONNELL: So Your Honor,
14 if I may very briefly, there are a
15 number of different things that relate
16 to a board or board meeting or
17 committee meeting. So there's
18 information that the officers,
19 including some of the Defendants,
20 provide to the board. That is
21 important information to know. And
22 what I am not hearing is what efforts
23 the NRA made to secure those packets
24 of information sent via Sendinc after
25 2019 when we talked to them and we

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2 said we want that information.

3 SPECIAL MASTER SHERWOOD: Oh,
4 I see. You are talking about
5 information in the possession of board
6 members that you say the NRA failed to
7 collect?

8 MS. CONNELL: That's right,
9 or preserve. And that's one aspect.

10 So what are the officers --
11 what's Wayne LaPierre, what's John
12 Frazier, what's Woody Phillips, what
13 are they saying to the board, what
14 information are they giving? That's
15 important. Then there are minutes of
16 the board meetings. There are
17 transcripts of the board meetings.
18 Then there are very brief summary
19 reports of committee meetings and
20 board meetings. And so all of those
21 things are different. But what we've
22 asked for --

23 SPECIAL MASTER SHERWOOD: Did
24 you say the board meetings are
25 transcribed?

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2 MS. CONNELL: Many of them
3 are, and we don't have those
4 transcripts. We have a couple. We
5 don't have them. We are not asking
6 for something outrageous or beyond the
7 ken. This is a regulatory action
8 where we are seeing that officers
9 violated their fiduciary duty to the
10 organization and the board. And what
11 they told the board or what they sent
12 the board is crucial. And, in fact, I
13 think to say that what Sendinc -- what
14 was sent via Sendinc probably is,
15 might be in the production, it wasn't
16 important, in fact, most of the
17 materials based on what we can
18 ascertain pertaining to two key board
19 committees, the audit and finance
20 committees, were conveyed via Sendinc.

21 And frankly, if you will
22 allow me, Your Honor, we have one
23 member of our team who is very
24 familiar with the document, document
25 production and this issue and may be

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2 able to help clarify. Because I
3 believe what's getting lost here is in
4 this discussion of, oh, there were 60
5 documents, that's not a lot in a
6 complex action. Oh, we want to do it
7 this way, we want to produce by ESI,
8 that's fine, we work with you, but we
9 never waive the right to the
10 categories of documents and we pursue
11 them vociferously and we are pursuing
12 them now and we want answers to them.
13 And the idea, too, that, oh, we
14 produced one million documents -- or
15 pages of documents, not documents.
16 The fact is we will try to work with
17 them to limit that production and
18 focus and didn't get cooperation, but
19 we are past all that now. All of this
20 should have been resolved before
21 March 10th. These conversations
22 should have been had, these
23 revelations should have been had.
24 These were part of our Order to Show
25 Cause.

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2 So Your Honor, if I just may
3 briefly allow Stephen Thompson, my
4 teammate, to speak on this, I think he
5 could be very helpful.

6 SPECIAL MASTER SHERWOOD:

7 Okay.

8 MS. CONNELL: Stephen?

9 MR. THOMPSON: Thank you,
10 Your Honor. Am I coming through all
11 right?

12 SPECIAL MASTER SHERWOOD: I
13 can hear you.

14 MR. THOMPSON: Briefly, Your
15 Honor, on the Sendinc issue, we have
16 been very focused on, in particular,
17 the materials that have been provided
18 to the audit and finance subcommittees
19 of the board. And Sendinc was
20 primarily, as far as we can tell, used
21 to communicate with members of those
22 two committees. And it was not only
23 for transmitting documents to the
24 members of those committees, but also
25 there were some just e-mail

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2 communications back and forth, like a
3 member of the audit committee would
4 ask a question of NRA staff via
5 Sendinc and we raised that issue with
6 the NRA in 2019 and what I am hearing
7 today is that nothing has been done to
8 resolve the preservation issue that we
9 encountered since then and that these
10 materials are still being sent via
11 Sendinc without preserving the records
12 in any way or any way that we can tell
13 what was sent or what wasn't sent. So
14 all we have are these, you know,
15 Sendinc cover e-mails that say you
16 received a secure message via Sendinc
17 and nothing else.

18 SPECIAL MASTER SHERWOOD: The
19 attachments to the e-mails were not
20 included in many of the documents that
21 you received?

22 MR. THOMPSON: That's
23 correct, Your Honor. And the NRA in
24 their responses, the appendix --

25 SPECIAL MASTER SHERWOOD:

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2 Ms. Eisenberg, what about that?

3 MS. EISENBERG: Well,
4 Sendinc, by design, is a software that
5 is used on your computer that allows
6 you to communicate in an encrypted way
7 which is critical for the personal and
8 other information that gets
9 transmitted. It does not create a
10 record that you can then access. Our
11 preservation requirements extend to
12 things that exist. We can't --

13 SPECIAL MASTER SHERWOOD:
14 Wait a minute. So Sendinc sends an
15 e-mail with an attachment. The e-mail
16 is provided, but the attachment is
17 not, and you are telling me that it
18 doesn't exist?

19 MS. EISENBERG: No, that's
20 not what I am saying.

21 SPECIAL MASTER SHERWOOD:
22 That's what I just understood from
23 you. Explain.

24 MS. EISENBERG: What I am
25 saying is that as a general rule, you

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2 can't go back and access copies of
3 records that were transmitted through
4 Sendinc, e-mails or attachments.
5 Ms. Rogers described the process we
6 employed during the investigation, and
7 the various ways we had tried to
8 practically address the NYAG's
9 interest in seeing what was shared
10 with the board and the various
11 committees. And we turned those over.
12 And then we told them that we spent
13 hours trying to figure out the
14 workaround with Sendinc, and we
15 weren't able to do so. And the
16 technology simply doesn't enable us to
17 go back. And, as Ms. Rogers said, if
18 the NYAG, you know, reached out to
19 Sendinc, maybe they had better luck,
20 but we did not.

21 MR. THOMPSON: Your Honor,
22 just to clarify, this conversation
23 happened back in 2019. And they
24 appeared to have continued to use the
25 service since then. And so, you know,

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2 regardless of whether their
3 preservation duties extended before
4 that conversation, certainly they were
5 on notice as of December of 2019 that
6 they needed to be finding a way to
7 preserve these documents on a
8 go-forward basis. So all of the
9 e-mails that have been sent from 2019
10 to the present, we think, should have
11 been preserved.

12 SPECIAL MASTER SHERWOOD: So
13 what do you want to do about that,
14 Mr. Thompson? They say they don't
15 have them.

16 MS. CONNELL: So Your Honor,
17 in regard to the Sending documents
18 after 2019, it seems to me there is a
19 basis for spoliation. And if the NRA
20 can't demonstrate someone scanned
21 those documents, someone made that
22 packet or information that was sent to
23 the board and received responses from
24 board members, they should have been
25 produced, I think there's spoliation

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2 there.

3 SPECIAL MASTER SHERWOOD:

4 Based on what you have seen of these
5 e-mails to which there were
6 attachments, typically, do the e-mails
7 list what is attached or not really?

8 MS. CONNELL: Not really,
9 Your Honor. And Mr. Thompson can
10 correct me if I'm wrong, but they
11 really don't. And I would say also in
12 regard to items left for the board at
13 board meetings, it's my understanding
14 that most of those documents are
15 shredded at the end of those meetings.
16 So again, we're just -- we're asking
17 for what you have. If they allowed
18 the Sending documents to be destroyed,
19 which is what it seems to be, or
20 failed to preserve them, that's an
21 answer, but saying somehow that we are
22 not entitled to these packets, that
23 they are trickled throughout their
24 production, that's really not right.
25 If they maintain the packets that they

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2 give to the finance committee and the
3 audit committee or to the general
4 board in advance of board meetings,
5 we're entitled to that. If they have
6 board books that they put on the
7 chairs, we're entitled to that, and
8 those should have been produced. And
9 they were sought 10 months ago, Your
10 Honor.

11 MS. ROGERS: Your Honor, I
12 can address portions of this. So
13 Ms. Connell's absolutely right.
14 Anything that was transmitted over
15 Sendinc, even though we don't have the
16 ability to snatch the copy out of the
17 Sendinc server that was transmitted
18 there, somebody prepared that
19 document. Somebody scanned it or
20 prepared it on a computer and attached
21 it. And that somebody, I mean, we
22 have a fair degree of confidence who
23 that was. We know who the secretary
24 of the finance committee was during
25 each relevant year, we know who the

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2 secretary of the audit committee was,
3 and we gathered those people's
4 documents. We know what types of
5 materials they distributed,
6 financials, tax returns, we gathered
7 those. The fact that we don't have
8 the copy that was in the Sendinc file,
9 we only have the copy that resided on
10 the secretary's computer before they
11 attached it, is not something we can
12 do much about, but I don't think that
13 there's any specific document that
14 they can demonstrate was spoliated.
15 We collected exhaustively from these
16 relevant custodians and these exact
17 types of documents. I also want to
18 speak to the shredding issue. The
19 protocol at board meetings is, you
20 know, it's 76 board meetings. It's a
21 large hotel ballroom, and there are
22 identical copies of the same document
23 left on each chair, so copies of
24 committee reports and financials and
25 the like. The rule at board meetings,

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2 which is made very clear to the board
3 members is, if you take any notes, if
4 you alter these documents in any way,
5 then you have created a unique
6 document that has to be preserved and
7 you have to hold on to it or give it
8 to Counsel so it can be collected.
9 But if all you have got is one of 76
10 copies of the same exact, you know,
11 committee report, we don't need you to
12 individually preserve that. The
13 secretary's office has a copy. You
14 just have a photocopy everyone else
15 has. That can be shredded and that's
16 done to, you know, keep the page count
17 down, bluntly, and because you don't
18 want to leave your board committee
19 reports in a hotel ballroom where a
20 member of the public can find them.
21 But there's certainly -- the board
22 members are very clearly instructed
23 that any unique record that they
24 create, any notes they make on the
25 board packet that wouldn't just merely

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2 replicate what the secretary's office
3 has, have to be preserved. And during
4 the investigation, you know, we
5 went -- there was separate Counsel for
6 the board that went around and did a
7 collection of all of those and
8 produced them.

9 SPECIAL MASTER SHERWOOD: How
10 many times a year does the board meet?

11 MS. ROGERS: Four times.

12 SPECIAL MASTER SHERWOOD:
13 Four times?

14 MS. ROGERS: Or three, I'm
15 sorry. I thought it was four. It's
16 three.

17 SPECIAL MASTER SHERWOOD: And
18 the audit committee?

19 MS. ROGERS: The audit
20 committee meets in connection with
21 every regular board meeting, but there
22 can be special meetings of the audit
23 committee called. I couldn't, sitting
24 here today, give you an exact number,
25 but it would be more than three in a

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2 typical year but, you know, less than
3 15.

4 SPECIAL MASTER SHERWOOD: And
5 I assume there is an executive
6 committee?

7 MS. ROGERS: There is an
8 executive committee. And their
9 frequency, like the audit committee,
10 would be less standardized, but it's
11 not weekly or anything like that to my
12 knowledge.

13 SPECIAL MASTER SHERWOOD: You
14 are saying that the executive
15 committee doesn't meet on a schedule,
16 pursuant to a schedule?

17 MS. ROGERS: I would not know
18 off the top of my head, unless my
19 colleagues do, but it's not -- it
20 wouldn't be constant and it wouldn't
21 be only three times a year; there
22 would be ad hoc meetings.

23 SPECIAL MASTER SHERWOOD: And
24 what have you done with the executive
25 committee minutes and notes?

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2 MS. ROGERS: So any minutes
3 or reports of any committee meeting,
4 any of them, have been produced. That
5 is, I mean --

6 SPECIAL MASTER SHERWOOD:
7 Except for those that were transmitted
8 through Sendinc.

9 MS. ROGERS: Well, even if a
10 copy of the minutes was transmitted
11 via Sendinc, that doesn't mean the
12 minutes weren't produced.

13 SPECIAL MASTER SHERWOOD: But
14 it doesn't mean they were either.

15 MS. CONNELL: Right.

16 MS. ROGERS: As a practical
17 matter, there is no way a document
18 gets into Sendinc without existing
19 elsewhere.

20 SPECIAL MASTER SHERWOOD:
21 There is a way to figure out whether
22 they were sent or not; isn't there?
23 Which is: If one were to come up with
24 a list -- if you have four board
25 meetings and you can probably recreate

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2 the dates on which the board met and
3 the dates the critical committees met,
4 you can then go, whether or not you
5 have produced them all or not, because
6 either there's going to be a blank,
7 there is going to be a gap or there is
8 not going to be a gap; isn't that
9 right?

10 MS. ROGERS: That is right,
11 Your Honor, but, I mean, I think we
12 did more than that. So there is a
13 person named Rick Tedrick, who was
14 responsible for distributing -- and
15 this is just for illustration --
16 packets of materials to the finance
17 committee during a large swath of the
18 relevant period. We didn't just
19 collect the documents on his computer
20 during those dates that he could have
21 attached to Sendinc. We collected his
22 documents over the course of years,
23 and produced -- I don't want to say
24 literally everything, but certainly
25 documents through a comprehensive

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2 search. So those documents would be,
3 with a high level of confidence, I
4 think we could say those documents
5 would be in the production.

6 SPECIAL MASTER SHERWOOD: But
7 you don't know that, because you
8 haven't checked?

9 MS. ROGERS: Well, it's very
10 difficult to -- especially on the
11 record at a court proceeding --
12 certify, you know, that every single
13 piece of paper this guy had in six
14 years --

15 SPECIAL MASTER SHERWOOD: I
16 am not talking about every piece of
17 paper. But it seems to me if you have
18 four meetings a year, you should have
19 four sets of documents. Now, there
20 may be, in one of those sets, one or
21 two or three or six documents are
22 missing, but it's one thing to say
23 that there are two, four, or six
24 documents missing from a particular
25 board meeting package, and it's

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2 another thing to say that the whole
3 package for the -- I am making it
4 up -- the June meeting is not there.

5 MS. ROGERS: We believe the
6 package for every meeting -- I mean, I
7 want to consult with my colleagues who
8 have been on the matter more recently,
9 but we believe the package for every
10 meeting is there.

11 SPECIAL MASTER SHERWOOD: I
12 suppose, Ms. Connell, that you would
13 be able to run a search of your own to
14 see -- to list the dates of board
15 packages.

16 MS. CONNELL: Except to the
17 extent they're broken up, and we are
18 collecting them in pieces from
19 different areas. And remember, Judge,
20 I think one example --

21 SPECIAL MASTER SHERWOOD: No,
22 no, no. I am not talking about broken
23 up. I am assuming if they sent you a
24 board package, if they're broken up,
25 that's a problem.

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2 MS. CONNELL: They're broken

3 up.

4 SPECIAL MASTER SHERWOOD:

5 They're broken up, there's a problem.

6 When I say broken up, if there is a

7 June board meeting with a package, it

8 shouldn't be in five places. It

9 should be --

10 MS. CONNELL: No.

11 SPECIAL MASTER SHERWOOD: It

12 should be in one package for June.

13 MS. CONNELL: That's right,

14 and that's what we would like to know

15 because we haven't found that, Your

16 Honor. And we would like to know what

17 was given to the board. And I will

18 give you one example that I think

19 could be helpful, here.

20 They notice in their

21 Appendix I, like a 990, a Form 990

22 might be something they give to the

23 board. It's a very important

24 regulatory filing, right? Well, we

25 are alleging that the NRA and John

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2 Frazer made false filings of 990s,
3 okay? When we talked to board
4 members, when we got discovery and
5 sworn testimony at the bankruptcy, for
6 example, what we learned was that the
7 board's review of these the 990s
8 largely consist -- and they are quite
9 thick documents, great detail -- of a
10 couple of copies, anywhere from three
11 to nine or something like that, sat in
12 the boardroom on a table and the board
13 gets some time to review them, often
14 while other proceedings are going on
15 and cannot leave the room with them.

16 Now, if those packets are
17 provided to the finance and audit
18 committee in advance or to the whole
19 board in advance, what they say,
20 whether there are changes, what
21 questions they get back, that's
22 important to know, but at least tell
23 us you sent this to the board in
24 advance. And we can't say that as we
25 sit here, and that's one key example.

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2 This shouldn't be as complex as
3 it is. And if the answer is, well,
4 you have lots of information that you
5 know board members got, then you
6 should be able to piece together and
7 guess and assume that at some point
8 this was sent to the whole board,
9 that's not how this should proceed, if
10 there's any way, other way, that the
11 NRA can do it otherwise.

12 Now, they could have used ESI
13 search terms to search, for example,
14 Mr. Tedrick's documents, and that
15 might result in many things that he
16 produced to the board. But if
17 Mr. Tedrick, himself, maintains a
18 record of here are the packets that I
19 produced -- that I gathered, produced
20 and conveyed to the board, then why
21 don't we get them produced like that
22 or, you know, conveyed to us that they
23 have been produced, but, you know, you
24 haven't found them, because we haven't
25 found them. And it's not -- I am

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2 going to put aside ad hoc kind of
3 comments, it's not because we haven't
4 looked or we're not looking or we
5 don't know what we're doing. It's
6 because they are not there in any
7 semblance of order. And that's what
8 we've been after.

9 And the Sendinc is a perfect
10 example of sort of playing games and
11 trying to say, well, you should have
12 gotten this someplace else. No. At
13 least once you knew we were trying to
14 get this information, you should tell
15 us, here's what we gave the board via
16 Sendinc on this date. Instead of us
17 getting an e-mail that says,
18 essentially, communication to the
19 board, document attached. That's just
20 not right, Your Honor. So to the
21 extent that they can provide insight
22 into the packets of information
23 provided to the board for the relevant
24 period, they should have to do that.
25 And to the extent they can't, I think

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2 they're set up for spoliation motion
3 with regard to Sendinc, and we can
4 assume that they didn't want us to see
5 what they were sending to the board.

6 SPECIAL MASTER SHERWOOD:

7 Apart from Sendinc -- I hear what you
8 had to say with Sendinc -- are there
9 other sets of documents that are kind
10 of routine documents -- when I say
11 routine, I mean provided on a regular
12 basis, that's what I mean by
13 routine -- that you are finding that
14 there are some gaps?

15 MS. CONNELL: So there are
16 the same issues with regard to
17 materials provided to the audit
18 committee, but I will give you an
19 example. For the audit committee,
20 they said very plainly -- and this is
21 on Exhibit I or Appendix I -- that
22 they do not maintain a centralized
23 repository of documents distributed to
24 committee members for review. Well,
25 that's our answer and I guess we have

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2 to live with that.

3 SPECIAL MASTER SHERWOOD:

4 Where is that? On what page?

5 MS. CONNELL: That's on

6 page 2, right in the middle.

7 SPECIAL MASTER SHERWOOD: It

8 maintains no centralized repository of

9 documents distributed to committee

10 members or review in connection with

11 each meeting.

12 MS. CONNELL: Right.

13 SPECIAL MASTER SHERWOOD:

14 Accordingly, the NRA applied search

15 terms to e-mail communications

16 disseminated by John Frazer and Rick

17 Tedrick, which the NRA did.

18 MS. CONNELL: So Your Honor,

19 that is an example of an answer, it's

20 an actual answer, right, to the

21 question asked: What documents did

22 you give to the audit committee? We

23 don't maintain records like that,

24 here's the best we could do.

25 Now that, to me, is pretty

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2 damaging to the NRA, but we can live
3 with that. Why aren't we getting a
4 clear answer like that for other
5 documents provided to the board as a
6 whole?

7 And if you go down to the
8 next category under materials provided
9 to the audit committee, it's
10 addressing materials provided to the
11 finance committee for review. And it
12 talks about information gathered from
13 Wilson Phillips, Defendant Woody
14 Phillips, who served as secretary to
15 the finance committee until his
16 retirement in 2018. But what about
17 documents given to the finance
18 committee by his successors, by Craig
19 Spray, by Sonya Rowling, where are
20 those documents? And Mr. Phillips
21 used to provide some fairly detailed
22 reports to the finance committee. Why
23 don't we have those, and why aren't
24 those pointed out?

25 SPECIAL MASTER SHERWOOD: And

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2 you have a whole list of similar items
3 when you go down this list, I take it?

4 MS. CONNELL: Yes, yes. I
5 mean, there are one or two items
6 that -- there are some items in
7 Appendix I that can be easily dealt
8 with. You know, we asked for
9 whistleblower files. They actually
10 identified whether they produced
11 those. So that's scratched off,
12 right? There are some documents like
13 W-2s for the named Defendants --

14 SPECIAL MASTER SHERWOOD: Let
15 me ask you this, let me ask you this:
16 What say you of your office, on
17 attachment I and whatever else you
18 want to use, to produce a specific
19 list of documents you want them to
20 produce that you know are or should be
21 in their possession? Does that make
22 sense?

23 MS. CONNELL: You mean take
24 Exhibit I -- sorry, you mean take
25 Appendix I and say is there some kind

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2 of clear order that we can come out of
3 this proceeding with?

4 SPECIAL MASTER SHERWOOD:
5 Correct, that's what I am trying to
6 say.

7 MS. CONNELL: I think that is
8 doable for us. I think that that's
9 probably a good way to proceed,
10 because we do want to wind this
11 process down to a close. We want to
12 get --

13 SPECIAL MASTER SHERWOOD: You
14 know some specific things that you are
15 looking for.

16 MS. CONNELL: Yes.

17 SPECIAL MASTER SHERWOOD: And
18 I am trying to get you to be focused,
19 to be specific, and not have sort of
20 generalized questions which then can
21 be misinterpreted.

22 MS. CONNELL: Right.

23 SPECIAL MASTER SHERWOOD: So
24 you know, you are well along, it seems
25 to me. You probably have a reasonable

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2 good sense of what you want, and what
3 you are looking for. And I know I am
4 putting a burden on you, but, you
5 know, that's a way to get from where
6 we are to where we need to go.

7 MS. CONNELL: Your Honor, I
8 am happy to do that, but, again, we
9 would like to act quickly. The whole
10 reason we brought an Order to Show
11 Cause --

12 SPECIAL MASTER SHERWOOD: And
13 I am asking you to do that.

14 MS. CONNELL: Yes, but I
15 would like a quick response so you can
16 see that we have been trying to --

17 SPECIAL MASTER SHERWOOD: Do
18 that.

19 MS. CONNELL: -- act
20 collaboratively -- we have been trying
21 to act collaboratively with the NRA,
22 and we keep getting put off. So we
23 will have something to you by
24 tomorrow. We will have something to
25 you by tomorrow.

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2 SPECIAL MASTER SHERWOOD:

3 Okay. I know that I am putting a
4 burden on you and I heard you talk
5 about spoliation and that's a serious
6 matter. But before we turn to that,
7 it seems to me that if there are
8 things that you think are important
9 that you want, then specify them, and
10 let's see if we can get them.

11 Ms. Eisenberg, what that
12 means for you is, you know, you need
13 to look at that list carefully and
14 seriously and provide the information
15 that they are asking for. And don't
16 say, well, you know, you didn't ask
17 for it in such and such a form. If
18 you know what it is they want and they
19 didn't ask it in the precise form that
20 you want, but you know what they want,
21 give it to them.

22 MS. CONNELL: Thank you, Your
23 Honor.

24 SPECIAL MASTER SHERWOOD: And
25 I say that to you, Ms. Eisenberg,

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2 because, you know, there is a serious
3 spoliation claim here. I want to
4 avoid having you suffer the
5 consequences of that. So let's try to
6 cooperate. I know that you have
7 cooperated a lot in the past. I am
8 asking you to do similar.

9 MS. EISENBERG: Your Honor,
10 absolutely. We have cooperated in the
11 past, and we will be happy to spend
12 additional resources and time coming
13 up --

14 SPECIAL MASTER SHERWOOD:
15 Thank you.

16 MS. EISENBERG: -- with
17 precise answers.

18 You know, I just want to note
19 for the record that there absolutely
20 is no basis for even any suggestion of
21 spoliation. And to the extent
22 Ms. Connell asserted on the record
23 that she believes that the reason
24 certain individuals used Sendinc was
25 because they didn't want the NYAG to

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2 see it, there's absolutely no evidence
3 to support that.

4 SPECIAL MASTER SHERWOOD: I
5 don't think I heard her say that.
6 What I did hear, and why I raised the
7 spoliation in question, it seems to me
8 that, you know, I am picking up on
9 what Mr. Thompson said, that, you
10 know, you had preservation
11 obligations, and to say that, well,
12 you know, the Sending documents are no
13 longer available from 2019, 2020,
14 that's a problem.

15 MS. EISENBERG: The point
16 was --

17 SPECIAL MASTER SHERWOOD:
18 That's all I am saying to you.

19 MS. EISENBERG: Yes, Your
20 Honor.

21 MS. CONNELL: Your Honor, I
22 will say one thing. We will get this
23 list to the NRA tomorrow. Can we have
24 a date for a response back, and maybe
25 another date to be in front of Your

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2 Honor?

3 SPECIAL MASTER SHERWOOD: How
4 long do you need, Ms. Eisenberg?

5 MS. EISENBERG: I haven't
6 seen the list yet, Your Honor, so it's
7 hard to provide a response.

8 SPECIAL MASTER SHERWOOD:
9 Here's what we will do. Would you let
10 Ms. Connell -- as soon as you get the
11 list, look it over, get back in touch
12 with her -- same day -- and indicate
13 by when you are going to be able to
14 turn it around and let me know what
15 that date is and I will give you a
16 date within three days of that date,
17 assuming that, you know, I am not
18 otherwise jammed up.

19 MS. EISENBERG: Yes, Your
20 Honor.

21 MS. CONNELL: And Your Honor,
22 I would just like to -- I understand
23 if you want to see that list and see
24 how long they need, but we do have the
25 extension request on the table because

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2 we are now backing up against a month
3 past what Judge Cohen anticipated
4 would be the timeline when we would
5 have all the documents.

6 SPECIAL MASTER SHERWOOD: Say
7 that again?

8 MS. CONNELL: So it's almost
9 a month after the date --

10 SPECIAL MASTER SHERWOOD: I
11 know that. I know that.

12 MS. CONNELL: We have an
13 extension request pending, so I just
14 want to flag that for Your Honor,
15 because we have a number of upcoming
16 depositions. We asked in our letter
17 of application for an extension of
18 time for us to take depositions by
19 whatever the length of time is that
20 the NRA has delayed in producing
21 documents.

22 SPECIAL MASTER SHERWOOD: I
23 will certainly take that up, and you
24 will have to bring it to my attention
25 again. I don't think this is the time

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2 for me to be making some judgements
3 about that because I just don't know.

4 MS. CONNELL: I agree. I
5 wanted to flag that.

6 SPECIAL MASTER SHERWOOD:
7 Fair enough. Fair enough. Fair
8 enough.

9 MS. CONNELL: And may I ask
10 one request?

11 SPECIAL MASTER SHERWOOD:
12 Yes.

13 MS. CONNELL: The NRA has
14 indicated that it has produced text
15 messages for certain custodians, but I
16 would ask if they could communicate to
17 us in the next, you know, by tomorrow,
18 the period covered, whether that
19 includes all of Mr. Powell's phones
20 and which phone numbers and phones it
21 covered for him because there is an
22 issue with regard to Mr. Powell's
23 phones and whether they were
24 preserved.

25 SPECIAL MASTER SHERWOOD: Can

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2 you do that, Ms. Eisenberg?

3 MS. CONNELL: And whether it
4 includes Mr. Staple's text messages,
5 because we have flagged for them that
6 we have problems, we don't have
7 Mr. Staple's text messages or at least
8 not usable, accessible versions of
9 them.

10 SPECIAL MASTER SHERWOOD: Can
11 you do that, Ms. Eisenberg?

12 MS. EISENBERG: Yes, Your
13 Honor. I believe we already addressed
14 the question about Mr. Staple's. I am
15 happy to do it again.

16 SPECIAL MASTER SHERWOOD:
17 Fair enough.

18 Anything else we need to do
19 today?

20 MS. CONNELL: I don't believe
21 so, Your Honor.

22 MS. EISENBERG: Your Honor, I
23 would just like to make one quick
24 statement for the record if I may.

25 SPECIAL MASTER SHERWOOD:

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2 Sure.

3 MS. EISENBERG: Ms. Connell
4 suggested that Justice Cohen ordered
5 us to produce all these documents.
6 That is incorrect. In their Order to
7 Show Cause seeking an extension, they
8 allege the same grievances, and our
9 opposition was that we were not
10 required to provide all these itemized
11 lists given the search terms protocol
12 and the enormous effort and expense
13 that the NRA had been through. And
14 those issues simply were not ruled on
15 by the judge. When we were before
16 Justice Cohen, I explained to him that
17 we were still reviewing ESI hits, and
18 we needed more time to do that. So I
19 just wanted to make it very clear that
20 any suggestion that there was a
21 violation of what Justice Cohen said
22 is completely meritless.

23 MS. CONNELL: Your Honor, to
24 be clear, I don't know that I said
25 that explicitly and if I did, I don't

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2 know that you made a ruling on
3 specific categories. But I did say
4 that they are in violation of Judge
5 Cohen's Order, and that's because they
6 are. It's after March 10th. They
7 continue to produce documents. They
8 have not given us a certification of
9 completion. The certification they
10 point to is not it. So -- but I did
11 not make that specific representation
12 to the extent that that's how it came
13 across, that was not what was
14 intended.

15 MS. EISENBERG: Thank you.

16 SPECIAL MASTER SHERWOOD:

17 What I think I am going to do is give
18 you a tentative date. So I am
19 changing my mind, here, in getting
20 back together with me. How about
21 Wednesday, the 13th? Now, we may need
22 to push that back if you don't have --
23 if you are not prepared to have a
24 substantive conversation with me, but
25 at least I am giving you a

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2 placeholder. Somebody start to speak.

3 MS. CONNELL: I was saying
4 that works for the Attorney General,
5 Your Honor.

6 SPECIAL MASTER SHERWOOD:
7 Ms. Eisenberg? If that works for you?

8 MS. EISENBERG: We will make
9 it work, Your Honor, in terms of being
10 available for the hearing in front of
11 you on the 13th.

12 SPECIAL MASTER SHERWOOD: So
13 we will do the 13th at noon. And
14 again, you know, if you don't have
15 this all teed up by the 12th, we may
16 have to push it back to the 14th or
17 something like that, just let me know.
18 All right? Anything else.

19 MS. EISENBERG: Nothing
20 further, Your Honor. Thank you.

21 MS. CONNELL: All Counsel, I
22 am going to circulate a list. If I
23 missed anyone for your appearance, let
24 me know because I am going to provide
25 it to the court reporter.

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1 **Proceedings**

2 **MS. EISENBERG: Thank you,**

3 **Ms. Connell.**

4 **SPECIAL MASTER SHERWOOD:**

5 **Thank you.**

6 **(Time noted: 1:31 p.m.)**

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CERTIFICATION

I, JAMIE ANN STANTON, a
Registered Professional Reporter and
Notary Public for and within the State of
New York, do hereby certify:

That the within transcript is
a true and accurate record of the
proceedings.

I further certify that I am
not related to any of the parties to this
action by blood or marriage, and that I
am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 11th day of
April, 2022.



JAMIE ANN STANTON, RPR

* * *

[& - amount]

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Article 31 Disclosure, Section 3116

(a) Signing. The deposition shall be submitted to the witness for examination and shall be read to or by him or her, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness before any officer authorized to administer an oath. If the witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed. No changes to the transcript may be made by the witness more than sixty days after submission to the witness for examination.

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