

Mot. Seq. No. \_\_\_\_\_

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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

Plaintiff,

v.

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

Defendants.

Index No. 451625/2020

**AFFIRMATION OF  
MONICA CONNELL  
IN GOOD FAITH AND IN  
SUPPORT OF ORDER TO  
SHOW CAUSE**

Monica Connell, an attorney duly admitted to practice before the Courts of this State,  
hereby affirms the following under the penalty of perjury pursuant to CPLR § 2106:

1. I am an Assistant Attorney General and Senior Counsel in the Enforcement  
Section of the Charities Bureau of the Office of the New York State Attorney General (“OAG”  
or “Attorney General”) and am fully familiar with the facts stated herein based upon my personal  
knowledge, review of the prior proceedings had herein, and my own and my colleagues’ review  
of records maintained by this Office.

2. I submit this affirmation as an affirmation of good faith and in support of the  
Plaintiff’s application, by order to show cause, pursuant to Civil Practice Law and Rules  
(“CPLR”) 3401 and Rule 202.21 of the Uniform Civil Rules for the Supreme Courts and County  
Courts (“Rule 202.21”). Specifically, Plaintiff asks to be permitted to file the note of issue and  
certificate of readiness on December 13, 2022 or such other date as is set by the Court but,  
pursuant to Rule 202.21(d), under the condition that Plaintiff may still file an application seeking

relief in conjunction with the Defendant National Rifle Association of America's ("NRA") discovery conduct either in the form of an order precluding the admission of certain evidence or an order permitting discovery of matters where privilege has been waived and making Plaintiff whole, and that Plaintiff be permitted to note such condition on the certificate of readiness in lieu of certifying all discovery as complete. In the alternative, Plaintiff asks for a conference and to be permitted to file the note of issue and certificate of readiness but complete any necessary discovery granted by the Court thereafter under Rule 202.21(e) or for an order extending Plaintiff's time to file the note or issue pending a decision by the Court following that conference.

3. On August 6, 2022, Plaintiff People of the State of New York, through the OAG, commenced this regulatory enforcement action against the NRA and four of its current and former senior officials, alleging that they violated New York State laws aimed at preventing abuse of not-for-profit status and misuse of charitable funds.

4. By consent of the parties, this Court appointed a discovery Special Master, the Hon. O. Peter Sherwood, by order dated February 7, 2022. (NYSCEF 579.)

5. There were multiple rounds of motions to dismiss, the most recent of which were denied by the Court on September 29, 2022. (NYSCEF 843-47.)

6. On October 13, 2022, the NRA filed its current answer. (NYSCEF 857.) In its Answer, the NRA refers to its "course correction," also known as its "360° Review" or compliance reform effort, which has been a fixture of its defense in this case and in its earlier, dismissed bankruptcy. *See, e.g.*, NYSCEF 857 at ¶¶ 568, 597, 632. The NRA's Answer includes specific assertions of fact relating to portions of the course correction. *See, e.g.*, NYSCEF 857 at ¶ 9 ("The NRA states that expenses associated with private air travel which

were determined to constitute excess benefits were reimbursed by Mr. LaPierre to the NRA.”);

¶ 149 (The NRA states that air charter charges determined to constitute excess benefits were reimbursed by Mr. LaPierre to the NRA.”); ¶ 152 (“The NRA states that expenses that were determined to constitute excess benefits were reimbursed to the NRA with interest.”). Many of the NRA’s expert opinions address aspects of its course correction.<sup>1</sup>

7. Pursuant to the Fifth Revised Scheduling Order (NYSCEF 829), all discovery, including expert discovery, was scheduled to end on November 29, 2022. The note of issue and certificate of readiness were required to be filed on November 29, 2022.

8. Discovery in this action has included more than two dozen depositions of party and fact witnesses, over a million pages of documents being produced and expert discovery, which included reports by twelve experts as well as expert depositions.

9. Multiple applications relating to discovery have been made to this Court and to the Special Master.

10. On September 29, 2022, at the argument on the motions to dismiss, Plaintiff raised the potential need of the Court’s attention to a number of outstanding discovery issues (some of these have been or appear about to be resolved). Plaintiff followed the Court’s direction to schedule a conference with the Court’s Principal Law Clerk and the Special Master

---

<sup>1</sup> The NRA’s purported course correction was also a major feature of its presentation at the hearing held in the NRA’s bankruptcy proceeding, *In Re National Rifle Association of America and Sea Girt LLC*, Jointly Administered, Case No. 21-30085-hdh11 (Bankr. S.D. Tex.). See Bankruptcy Trial Transcript 4-25-21 at 18:13-17 (“we set out to put our own house in order, which we did. We went out to self-report”); 18:23-25 (“it begins with the NRA hiring the law firm of Morgan Lewis to review our not-for-profit compliance procedures.”); 4-25-2021 at 33:19-34:7 (“The NRA finds that even Mr. LaPierre is subject to review. You will hear him say, no one should escape review, including me. Mr. LaPierre, we file a Form 990. It is, in fact, the tax IRS form that is for the IRS. That form, the National Rifle Association found that Mr. LaPierre had received an excess benefit to the tune of just over \$300,000. Demand was made. He paid it. He didn’t negotiate it. He wrote a check. He reimbursed the National Rifle Association to the tune of just over \$300,000. And what else did he do? He paid his taxes. He paid his taxes to the tune of \$70,000-plus, which is what you’ll hear. That \$300,000, though, represents the totality of excess benefits from the time period of 2015 forward.”).

and proceeded to try to resolve outstanding issues with the Special Master's guidance.

Following a conference with Your Honor's Principal Law Clerk, Samuel A. Blaustein, and the Special Master, on October 20, 2022, Plaintiff filed an application to the Special Master. A copy of Plaintiff's application ("10/20/2022 Letter Application") is annexed hereto as Exhibit A.

11. The 10/20/2022 Letter Application argued that the NRA improperly used privilege as a sword and a shield, shielding steps it touted that it took as part of its course correction behind a curtain of privilege both with respect to testimony and document production. Plaintiff argued that the NRA hired and used outside legal consultants and counsel to perform certain steps it touts as part of its course correction but then refused to let witnesses answer questions relating to such steps. Plaintiff cited to extensive examples of where the NRA put its course correction at issue but foreclosed discovery of the same and asked that the NRA be found to have waived privilege, with additional discovery permitted or that the NRA be precluded from relying on arguments where it put the privileged information at issue. Plaintiff cited extensive caselaw in support of its application.

12. In its 10/20/2022 Letter Application, Plaintiff cited numerous examples of where the NRA had placed the nature and results of the NRA's conduct as part of its course correction at issue, but then precluded discovery of the same through assertions of privilege, even when asked whether a step was taken, or when, by whom, and what actions, if any resulted. For example, David, Coy, current Second Vice President of the NRA and longtime leader of the NRA's Audit Committee, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Even after the Plaintiff sought additional deposition time and the Special Master's assistance at his deposition, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Other witnesses were similarly precluded by assertions of privilege from answering questions about the NRA's reform efforts.

13. In response to the 10/20/2022 Letter Application, the NRA did not argue that its course correction was not part of its defense or that it had not blocked inquiry into steps it took as part of its course correction, as alleged by Plaintiff. A copy of the NRA's response, without attachments, is annexed hereto as Exhibit B. The NRA's response largely rested upon its argument that it did not specifically invoke the advice of counsel defense. The NRA also argued that it withheld only approximately 629 documents relating to its course correction and remedial

efforts—approximately 0.002% of all documents it produced—based on privileges. This number was incorrect as later admitted by the NRA.

14. At argument on November 14, 2022, Judge Sherwood reiterated his earlier direction that the NRA must submit for *in camera* review a sample of the documents pertaining to its course correction which it had withheld as privileged and share an index and information relating to how it was sampling such documents. A copy of the transcript is annexed hereto as Exhibit C (November 14, 2022 Transcript) at 73-75.

15. Plaintiff met and conferred with the NRA and endeavored multiple times to learn how the NRA was identifying the universe of documents pertaining to the course correction (as opposed to certain other communications the Plaintiff was seeking) that the NRA was sampling for the Special Master. The NRA obscured what it was doing in regard to production of the privileged documents. It flatly refused to disclose how it was sampling materials for submission to the Special Master.

16. Plaintiff was forced to write to the Special Master for relief and to ask that the NRA “just plainly state what it has submitted to Your Honor for *in camera* review and how it has selected the same.” Attached as Exhibit D is a copy of Plaintiff’s November 22, 2022 email and its attachment. Further, from what Plaintiff could tell, the NRA’s sampling did not include a number of topics relating to the compliance reform efforts raised by Plaintiff and about which the NRA has asserted privilege. Plaintiff raised objections to the NRA’s selection of the universe of relevant documents and to the NRA’s refusal to be transparent about this process or its sampling protocols. Plaintiff asserted that the “information provided to the Plaintiff regarding the documents submitted to Your Honor is simply insufficient for Plaintiff to make any assessment of whether the documents submitted, if a sample, are representative of the larger

universe of responsive materials, encompass the documents at issue, and are privileged or whether the privilege has been waived by the NRA's placing the subject at issue in this litigation or using the privilege as a sword and shield." *Id.* Plaintiff attempted unsuccessfully to work out a resolution with the NRA.

17. Given the pendency of this and other matters, Plaintiff wrote to the Court on November 22, 2022 to extend the date for filing the note of issue from November 29, 2022 to December 13, 2022. By order of this Court dated November 22, 2022, and upon the recommendation and approval of the discovery Special Master, that date was extended until December 13, 2022. NYSCEF 900.

18. By email dated November 23, 2022, more than a month after the Plaintiff's application, the Special Master confirmed that the NRA had only produced seven email chains pertaining to its compliance reform efforts. Further, Judge Sherwood found that the "OAG argues with substantial justification that the NRA failed to describe sufficiently how it selected the documents for the review." The Special Master directed the NRA to submit a sample of withheld documents and received an unrepresentative sample. A copy of this email is annexed hereto as Exhibit E.

19. Similarly, the Special Master held that the documents relating to the course correction "do not include several topics listed by the OAG. For example, the sample makes no reference to any whistle blower complaint, investigation of alleged misconduct within the NRA or related party transactions. It also shields all documents concerning investigations or corrective action involving any of the defendants named in the complaint and gives no hint as to how the NRA made excess benefit calculations or determined their reasonableness. These examples

suggest that the search terms selected were either grossly inadequate or that the NRA elected to shield selected categories of documents from in camera review.” Exhibit E.

20. Judge Sherwood directed that the parties meet and confer to try to agree on the ‘search terms used and database searched and to agree on ESI that will adequately search for the information requested and give a fair sampling of the results. The protocol agreed to shall provide for an adequate sampling methodology and reporting of information concerning the number of hits by word, phrase or any other terms on which the parties agree. The NRA may then present a representative sample of documents it claims are protected.” *Id.* Plaintiff and the NRA attempted to meet and confer. While that was ongoing, Judge Sherwood issued a decision on the pending application.

21. On November 29, 2022, Judge Sherwood issued his decision. A copy of that decision is annexed hereto as Exhibit F. As is relevant to this application, Judge Sherwood found that the Special Master held that the NRA “seeks to cloak essentially all of its ‘course correction’ and ‘360° review’ initiatives as privileged merely because the NRA included attorneys in those efforts, save for the selected portions it chooses to disclose to the OAG as proof of the ‘reasonableness’ of, for example, the amount of excess benefits it has request[ed] Mr. LaPierre to repay, the adequacy of its review of whistleblower complaints, the sufficiency of its investigations of alleged NRA employee misconduct or, more generally, its ‘good faith.’” *Id.* at 9. The Special Master found that the NRA failed to carry its burden to establish that the information in question is privileged and directed the NRA to produce the allegedly privileged documents at issue, barring one last chance to submit the materials it is withholding for in camera review and to establish that the information sought is privileged and that the NRA has not waived such privilege by putting certain matters at-issue. *Id.*



22. On December 5, 2022 the parties had a conference with the Special Master. A copy of that transcript is annexed hereto as Exhibit G.

23. The parties met and conferred and tried to reach some understanding or agreement in terms of how to identify the universe of relevant documents and did make some headway. Plaintiff learned that the NRA was doing a relevance review of documents identified in its supplemental privilege log. However, Plaintiff has made clear to the NRA that that review does not encompass all of the documents relating to relevant aspects of its course correction about which it has withheld discovery. The NRA has only reviewed documents pertaining to its supplemental privilege log which used search terms that would not capture all of the course correction topics at issue. Further, Plaintiff still has not learned from the NRA how it is defining its course correction for the purposes of the relevance review. Plaintiff has also not gotten a promised hit report for search terms in the supplemental privilege log to work from as a means of identifying a reasonable universe of responsive documents.

24. The NRA had indicated that was submitting what can only be deemed an interim or initial a sample of documents to the Special Master for review today. Plaintiff is not aware of how the NRA identified relevant documents or how it sampled the same despite asking for this information for almost a week. Nevertheless, submission of the same for in camera review appeared to at least be a beginning of this process. This afternoon, the NRA indicated that it would not be making such a submission.

25. Upon information and belief, based upon meet and confers and a review of appendices to the NRA's Supplemental Privilege Log, from which it is deriving its sample, any sample submitted will not capture a fair representation of documents relating to the following topics: (As Plaintiff will demonstrate in its anticipated motion papers, the NRA put at issue and

then blocked testimonial and document discovery of issues it asserts as evidence of its reform efforts, including: (1) the determination and calculation of excess benefits by Wayne LaPierre and other NRA executives (specifically that the determinations and calculations were complete and accurate); (2) the NRA's investigations, including into: (a) Defendant Wilson Phillips' conduct as CFO and Treasurer and his receipt of private inurement, (b) whistleblower retaliation specifically relating to the Brewer firm, (c) board member travel, (d) use of an NRA vendor (Ackerman McQueen) to pay for personal expenses incurred by NRA employees, (e) diversions of assets, (f) Board member Marion Hammer payments, and (f) conflicts of interest, including the LaPierre family's relationship with the owners of several of the NRA's largest vendors; (3) the NRA's handling of whistleblower complaints, including the investigation of the same and treatment of complaints (which it largely delegated to litigation counsel) as well as those complaints not deemed to be made by whistleblowers, including NRA directors [REDACTED] [REDACTED]; (4) reform of vendor relationships and compliance with contract procurement policies including those relating to Membership marketing Partners and related entities, Ackerman McQueen, Affiliated Television International, and Gayle Stanford-related entities; (5) Audit Committee review of allegations of wrongdoing and conflict of interest by defendant Wayne LaPierre, the signing of the NRA's 2019 IRS Form 990 filing, and allegations in the Complaint; and (6) work done by K&L Gates, Morgan Lewis, Don Lan, the Brewer firm and other outside counsel and consultants hired as part of the NRA "course correction" and touted by the NRA as evidence of its good faith reform efforts.

26. The Special Master has urged the parties to make an application to the Court. The NRA proposed making a joint application for a two-week extension of the note of issue date.

Plaintiff took the position that this would be insufficient. While it would allow the NRA to submit its flawed sample to Judge Sherwood for review, it would leave Plaintiff in the position of making the identical application, just two weeks later, on December 27<sup>th</sup>, and would not resolve the prejudice suffered by the Plaintiff as a result of the NRA's conduct. The parties met again with the Special Master on December 8, 2022. The NRA has made no application to Your Honor for more time to complete its discovery production or to make Plaintiff whole, as the NRA has indicated an intent to do.

27. Even if the NRA will agree and work with Plaintiff to identify the real universe of relevant documents being withheld as privileged, and even if such documents are reviewed by the Special Master and a privilege determination is made, Judge Sherwood would have to determine whether any privilege attached has been waived by placing the issues identified in paragraph 24, above, at issue. And even if such documents were produced to Plaintiff, Plaintiff would still not be made whole as the NRA elected to block testimony on relevant issues. Plaintiff would need new witness testimony and potentially some new expert discovery.

28. Further, even if Plaintiff were to receive such documents now, it would not undo the prejudice caused by the NRA's failure to produce the same during discovery when the information could have been used to question witnesses. Nor does it remedy the NRA's shielding of information behind privilege during the more than thirty depositions in this action, including the continued and prolonged corporate representative deposition, or in preparing or challenging the reports of the 12 experts in this case.

29. The relief sought by Plaintiff will allow the note of issue and certificate of readiness to be filed while allowing Plaintiff to seek relief from this Court either in the form of preclusion or other discovery sanction, such as a limitation on when and what evidence may be

introduced at what stage of trial, or in the form of obtaining the time necessary to address the harm caused by the NRA's dilatory conduct, while simultaneously allowing the case to progress through summary judgment and to trial.

30. Efforts to resolve the date for the filing of the note of issue and certificate of readiness with the NRA have been unavailing. In response to an email proposing an application to the Court under Rule 202.21, the NRA rejected the same, noting that it is "not aware of a rule that permits the carveout you describe. In any case, the NRA disagrees that the case is ready for trial" because of outstanding discovery matters. Nor has Plaintiff been able to resolve the underlying discovery issue with the NRA despite months of discovery disputes and motion practice. Plaintiff met and conferred on this via video conference last week and via email over the intervening six days.

31. On the afternoon of December 12, 2022, the NRA reached out to Plaintiff seeking a one-week extension of time to appeal the November 29, 2022 Decision. During that phone call, the NRA indicated that it would not be submitting documents for in camera review on December 12, 2022, as it had indicated but on the 13<sup>th</sup> instead. The NRA and Plaintiff and certain Defendants spoke to Judge Sherwood who advised reaching out to Chambers and requesting a week extension. The NRA and Plaintiff tried to call Chambers and the NRA subsequently sent an email regarding the same. Plaintiff does not object to a week extension to appeal the Special Master's decision but does object to a general extension of discovery.

32. Portions of this motion quote testimony that is Confidential under the governing Protective Order. For that reason, and given the terms of the Protective Order and the time constraints here, Plaintiff is filing some portions of this application under seal but does not believe that they should remain under seal.

Dated: New York, New York  
December 12, 2022

*/s/ Monica Connell*

---

Monica Connell



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
CHARITIES BUREAU

212.416.8965  
Monica.Connell@ag.ny.gov

October 20, 2022

**VIA EMAIL**

Hon. O. Peter Sherwood, Special Master  
360 Lexington Avenue  
New York, NY 10017  
[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)

Re: *People of the State of New York, by Letitia James, Attorney General of the State of New York v. The National Rifle Association of America, Inc. et al.*, Index No. 451625/2020

Dear Judge Sherwood:

On behalf of the Plaintiff, the People of the State of New York (“Plaintiff”), the Office of the Attorney General of the State of New York (“OAG”) respectfully submits this letter to address significant outstanding discovery issues between Plaintiff and Defendant National Rifle Association of America (“NRA”) in accordance with the Court’s and Your Honor’s directions communicated during the conferences held on October 3 and 5, 2022.

The NRA has disregarded its discovery obligations to the detriment of Plaintiff by belatedly producing documents responsive to document requests Plaintiff served more than a year ago, after the official close of fact discovery, and after relevant depositions were completed. The NRA has also improperly withheld from discovery documents that it claims are privileged where no such privilege applies, or where the NRA has waived any such privilege by affirmatively placing privileged information at issue. Discovery in this action has been protracted due to the NRA’s discovery conduct, as evidenced by the record in this action, and Plaintiff is eager to bring discovery to a close.

For that reason, even though the NRA’s compliance with its discovery obligations is woefully deficient in numerous respects, Plaintiff has raised in this omnibus motion outstanding discovery matters that are the most prejudicial to Plaintiff. In each instance, the NRA has failed to provide the Plaintiff with full and complete discovery of a matter on which the NRA is affirmatively relying to support its defenses in this action.

Hon. O. Peter Sherwood

October 20, 2022

Page 2

**I. The NRA must provide disclosure concerning its reliance on the advice or work of counsel concerning the NRA's purported "course correction" or else risk preclusion.**

The NRA has made its use of outside legal consultants and counsel, and its reliance on their reviews, analyses, and advice, central to its defense. Repeatedly, NRA fact and expert witnesses have discussed the "course correction" and "360-degree review" that the NRA allegedly began in late 2017 and remains ongoing, and which has been conducted by various outside counsel. But the NRA has repeatedly refused to disclose the substance of counsel's work and advice on privilege grounds, presenting a classic sword-and-shield abuse of privilege. For the reasons given below, the NRA should be directed to either produce relevant documents and its corporate representative for additional testimony, or else face preclusion from presenting evidence of its reliance on outside counsel. The choice is the NRA's, but it cannot withhold material and relevant information in discovery in this way while also citing to and relying upon such information in its defense.

**a. Relevant Law**

Under New York law, privileges are to be "narrowly construed," with the party asserting the privilege having the burden of establishing it. *McGowan v. JPMorgan Chase Bank, N.A.*, 2020 WL 1974109, at \*3 (S.D.N.Y. Apr. 24, 2020)<sup>1</sup> (quoting *Spectrum Sys. Int'l Corp. v. Chm. Bank*, 78 N.Y.2d 371, 377 (1991)). "It is also the burden of the party asserting a privilege to establish that it has not been waived." *Id.* (citing *John Blair Comms., Inc. v. Reliance Capital Grp.*, 182 A.D.2d 578, 579 (1st Dep't 1992)). A party will waive privilege by placing the advice of counsel "at issue" in a litigation, even if the party does not expressly intend to rely on attorney-client communications in support of its claims.<sup>2</sup> *Id.* at \*6. "Thus, the privilege may implicitly be waived when [a party] asserts a claim that in fairness requires examination of protected communications." *Id.* (quoting *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991)).

Courts in this State routinely find that a party waived privilege when it asserts a claim or defense that can only be tested by invading that privilege. *See, e.g., Village Board v. Rattner*, 130 A.D.2d 654, 655 (2d Dep't 1987) (party asserting good faith defense based on reliance on counsel waived privilege); *see McGowan*, 2020 WL 1974109 at \*7 (noting that it "would be

---

<sup>1</sup> New York law on attorney-client privilege is generally similar to federal law and both federal and state law recognize the doctrine of at issue waiver. *McGowan*, 2020 WL 1974109 at \*2, n.3, \*7 (S.D.N.Y. Apr. 24, 2020).

<sup>2</sup> If a party waits until after the close of discovery to introduce a privileged communication that waives privilege, a court may preclude introduction of that communication since permitting its introduction would deprive the opposing party of the opportunity to take discovery on the privileged communications that would be waived by that selective disclosure. *Gottwald v. Sabert*, 204 A.D.3d 495, 495-96 (1st Dep't 2022); *see also McGowan*, 2020 WL 1974109 at \*8 (party will be precluded from relying on evidence relating to investigation unless it confirms its intent to do so, in which case opposing party will be permitted to take discovery with respect to it and privilege will be waived).

Hon. O. Peter Sherwood

October 20, 2022

Page 3

unfair for a party who has asserted facts that place privileged communications at issue to deprive the opposing party of the means to test those factual assertions through discovery of those communications”) (internal quotation marks omitted). In such circumstances, the assertion of the claim or defense waives the privilege as to all communications concerning the relevant transaction. *Village Board*, 130 A.D.2d at 655. To hold otherwise would permit a party to selectively disclose only “self-serving communications” while “rely[ing] on the protection of the privilege regarding damaging [ones],” which courts have repeatedly found to be impermissible. *Id.*; see, e.g., *Banach v. Dedalus Fdn., Inc.*, 132 A.D.3d 543, 543 (1st Dep’t 2015) (use of portion of board minutes placed contents at issue and required disclosure of full unredacted minutes); *Orco Bank, N.V. v. Protein Del Pacifico, S.A.*, 179 A.D.2d 390, 390-91 (1st Dep’t 1992) (party waived privilege by making selective disclosure of its counsel’s advice); *BMW Group v. Castlerom Holding Corp.*, 2018 WL 2432181, \*7-\*8 (Sup. Ct. N.Y. Cty. May 30, 2018) (finding waiver with respect to investigator and expert, where, among other things, party used excerpts of communications and documents to support its position but asserted privilege in an attempt to shield the remainder of the materials).

The “at issue” waiver doctrine not only covers privileged communications, but also extends to factual material that would otherwise be protected from disclosure by work-product protections. Thus, if a party relies on a report from an expert, it cannot withhold the underlying factual data on which the report was based because the reliance waives the protection. See, e.g., *In re: New York City Asbestos Litig.*, 2011 WL 6297966 (Sup. Ct. N.Y. Cty. Dec. 7, 2011) (holding that party waived privilege over raw data underlying reports).

Even where it does not selectively disclose the underlying privileged documents, a party will still waive privilege if it relies on documents or testimony that were created by counsel or otherwise based on privileged information. Thus, a party may not “rely on the thoroughness and competency of its investigation and corrective actions and then try and shield discovery of documents underlying the investigation by asserting the attorney-client privilege or work-product protections.” *Angelone v. Xerox Corp.*, 2011 WL 4473534, \*3 (W.D.N.Y. Sept. 26, 2011); accord *Polidori v. Societe Generale Groupe*, 39 A.D.3d 404, 406 (1st Dep’t 2007). In *Angelone*, the Court found that the defendant’s reliance on its own internal investigation and corrective measures waived privilege with respect to all documents and communications “considered, prepared, reviewed, or relied on by [defendant] in creating or issuing [the report of its internal investigation].” 2011 WL 4473534 at \*3.

Similarly, in *Polidori*, the Appellate Division found that the defendant’s assertion that it investigated and took “immediate and adequate measures” to stop the wrongdoing waived work product protections because that “position puts in issue whether the corrective actions taken by defendant were reasonable in light of what it learned from the investigation.” 39 A.D.3d at 406; see also *Coyne v. The City University of New York*, 2012 WL 12090963 (Sup. Ct. N.Y. Cty. Mar. 19, 2012) (same); *Brownell v. Roadway Package Sys., Inc.*, 185 F.R.D. 19, 25 (N.D.N.Y. 1999) (same, noting that permitting the defendant to continue to assert privilege would be to let it impermissibly use “privilege as both a sword and a shield”). Finally, a party cannot use its own litigation counsel to perform factual investigations and rely on those investigations in support of its claims or defenses without waiving “any otherwise applicable privilege as to the disclosed investigations.” *Joint Stock Company “Channel One Russia Worldwide” v. Russian TV Co., Inc.*, 2020 WL 12834595, \*2 (S.D.N.Y. May 1, 2020).



Hon. O. Peter Sherwood

October 20, 2022

Page 4

**b. Relevant Facts**

Since late 2017, the NRA has relied on outside counsel in connection with its so-called “course correction” and “360 degree review.” The NRA cites to work performed by Morgan Lewis, the Brewer firm, BakerHostetler, K&L Gates, Wit Davis, and Steve Hart in support of the “course correction.”<sup>3</sup> The NRA’s corporate representative testified that the Brewer firm and attorney Don Lan investigated and determined amounts of certain excess benefits owed by Wayne LaPierre as part of course correction, but the corporate representative could not answer what investigations are still ongoing as such answer would reveal privileged information and counsel stated the NRA’s position that “the entire review is privileged.”<sup>4</sup> Members of the NRA Audit Committee identified various counsel the Audit Committee relied on as part of the course correction but declined to answer specific questions on privilege grounds.<sup>5</sup> Here, the NRA does exactly what is prohibited under the law: it has placed at issue in this case the existence, scope, thoroughness and results of its course correction including its investigations into wrongdoing while at the same time asserting privilege to shield those matters from being tested by Plaintiff. *See Angelone*, 2011 WL 4473534, at \*3; *Polidori*, 39 A.D.3d at 406.

For example, the Complaint in this action alleges at length Defendant LaPierre’s abuse of his position as a fiduciary to, *inter alia*, obtain millions of dollars in personal benefits including through charter flights for himself and his family, expense reimbursements, and NRA funded gifts and services.<sup>6</sup> This is a central issue in this case. The NRA and Wayne LaPierre have repeatedly represented that Mr. LaPierre has repaid monies owed as excess benefits to the NRA as part of its compliance reform process.<sup>7</sup> But at the same time as it points to this process and to its investigations and determination of amounts allegedly owed and repaid, it has blocked any meaningful inquiry into the thoroughness and reasonableness of such actions through the assertion of privilege.

---

<sup>3</sup> See, e.g., [REDACTED].

<sup>4</sup> See, e.g., [REDACTED]

<sup>5</sup> See, e.g., [REDACTED]

<sup>6</sup> Second Amended and Verified Complaint (NYSCEF 646), ¶¶ 9, 146-164, 199-208.

<sup>7</sup> See, e.g., NRA Answer (NYSCEF 857) at ¶ 9 (“The NRA states that expenses associated with private air travel which were determined to constitute excess benefits were reimbursed by Mr. LaPierre to the NRA.”), ¶ 149 (“The NRA states that air charter charges determined to constitute excess benefits were reimbursed by Mr. LaPierre to the NRA.”); ¶ 152 (“The NRA states that expenses that were determined to constitute excess benefits were reimbursed to the NRA with interest.”). The NRA now contends, through an expert report, that some amounts repaid by Mr. LaPierre were not excess benefits but without knowing how such amounts were calculated, Plaintiff’s hands are tied. The NRA admits it paid for private flights by Mr. LaPierre to the Bahamas but admits cryptically that some such charges “deemed to constitute excess benefits were reimbursed by Mr. LaPierre.” *Id.* at ¶ 165.



Hon. O. Peter Sherwood

October 20, 2022

Page 5

The NRA has testified that it relied on advice provided and work performed by the Brewer firm as well as the NRA's outside tax counsel, Don Lan, in determining what amounts paid by the NRA for LaPierre's travel constituted excess benefits.<sup>8</sup> But the underlying documentation or advice has not been provided to Plaintiff, and no NRA fact witness has been able to testify as to the accuracy of what was reported in the 990s.<sup>9</sup> In preparation for the corporate representative deposition of the NRA, [REDACTED]

The NRA's investigation and attempts at remediation of other improper excess benefits received by the LaPierres, while touted as a compliance success story<sup>12</sup>, were also shielded by

<sup>8</sup> Exhibit A at 372:3-374:11; [REDACTED] (attached as Exhibit D).

<sup>9</sup> See, e.g., [REDACTED] Deposition at 129:9-130:12 (attached as Exhibit E) ([REDACTED]); Exhibit C at 427:14-433:22 [REDACTED].

<sup>10</sup> Exhibit A at 454:3-457:23.

<sup>11</sup> *Id.* at 454:3-463:25.

<sup>12</sup> LaPierre Deposition at 321:9-322:16 (attached as Exhibit F) (LaPierre testifying [REDACTED]), 323:8-324:18 ("[REDACTED]"), 346:13-347:25 ([REDACTED]); see also Bankruptcy Trial Transcript 4-5-21 PM at 18:13-17 (attached as Exhibit G) ("we set out to put our own house in order, which we did. We went out to self-report"), 18:23-25 ("it begins with the NRA hiring the law firm of Morgan Lewis to review our not-for-profit compliance procedures."), 33:19-34:7 ("The NRA finds that even Mr. LaPierre is subject to review. You will hear him say, no one should escape review, including me. Mr. LaPierre, we file a Form 990. It is, in fact, the tax IRS form that is for the IRS. That form, the National Rifle Association found that Mr. LaPierre had received an excess benefit to the tune of just over \$300,000. Demand was made. He paid it. He didn't negotiate it. He wrote a check. He reimbursed the National Rifle Association to the tune of just over \$300,000. And what else did he do? He paid his taxes. He paid his taxes to the tune of \$70,000-plus, which is what you'll hear. **That \$300,000, though, represents the totality of excess benefits from the time period of 2015 forward.**").

Hon. O. Peter Sherwood

October 20, 2022

Page 6

the NRA's assertion of privilege. [REDACTED]

[REDACTED] that may show what is included in the amounts paid back by LaPierre, but not the "raw data" underlying the determination of what was owed.<sup>16</sup> *Asbestos Litigation*, 2011 WL 6297966 ("[I]f a party selectively discloses certain privileged material but, as in this case, withholds underlying raw data that might be prone to scrutiny by the opposing party, principles of fairness may require a more complete disclosure.") As a result, the Plaintiff has been denied information sufficient to determine if these are the final work sheets, to determine the methodologies applied, or to determine the source and reliability of much of the information.

The NRA also blocked discovery of its alleged investigation of other instances of wrongdoing. Members of the NRA's Audit Committee were repeatedly instructed by counsel not to answer questions about what, if anything, the Audit Committee discussed, learned, or did in response to topics raised in the complaint, including with respect to allegations concerning Wayne LaPierre.<sup>17</sup> Invariably, the response to any question about what action the Audit Committee took was some variation on the theme, "We discussed this with counsel."<sup>18</sup> The same instructions were given when the Audit Committee members were asked about issues related to

---

<sup>13</sup> Exhibit A at 483:22-484:11.

<sup>14</sup> *Id.* at 495:20-496:21.

<sup>15</sup> *Id.* at 503:2-23.

<sup>16</sup> NRA-NYAGCOMMDIV-00013553 (attached as Exhibit H); NRA-NYAGCOMMDIV-01540248 (attached as Exhibit I).

<sup>17</sup> [REDACTED]

<sup>18</sup> *See, e.g.*, Exhibit B at 59:23-60:10, 74:16-76:5

Hon. O. Peter Sherwood

October 20, 2022

Page 7

NRA vendors that feature in the complaint,<sup>19</sup> and their reliance on the Brewer firm to conduct any investigations concerning those vendors.<sup>20</sup>

The NRA's current treasurer and chief financial officer, Sonya Rowling, testified that

<sup>21</sup> Ms. Rowling testified that

<sup>22</sup>

When asked for details about the investigation into and calculations of excess benefits for LaPierre,

<sup>23</sup>  
<sup>24</sup> Indeed,

<sup>25</sup>

Additionally, the NRA's expert witnesses have relied on work done by and advice provided to the NRA by several law firms in reaching a conclusion that Plaintiff's requested relief in the form of an independent compliance monitor is not necessary, since the NRA allegedly had effective internal controls as of December 31, 2020.<sup>26</sup> They have also cited to

---

<sup>19</sup> Exhibit B at 82:8-83:3, 86:22-89:9.

<sup>20</sup> Exhibit B at 89:2-9.

<sup>21</sup> Rowling Deposition at 210:2-21.

<sup>22</sup> Exhibit E at 105:10-106:7, 206:7-25.

<sup>23</sup> See, e.g., Exhibit A at 382:3-15; 389:24-391:22; 504:21-505:20; 774:10-23.

<sup>24</sup> Exhibit A at 788:2-22.

<sup>25</sup> See, e.g.,

<sup>26</sup> See, e.g., Expert Report of



Hon. O. Peter Sherwood

October 20, 2022

Page 8

[REDACTED] 27

Here, the NRA has put the existence, nature, thoroughness and reasonableness of its internal investigations and remediation efforts at issue. It has touted its efforts and cited its use of and reliance upon outside professionals including non-litigation work done by the Brewer firm, Don Lan, and other outside professionals while refusing to disclose the underlying work product—exactly the kind of sword-and-shield privilege assertion that the courts in *Angelone* and *Polidori* rejected. The NRA cannot, on the one hand, argue that it has fulfilled its discovery obligations with respect to internal investigations and identification of excess benefits while also refusing to provide Plaintiff with the means to test the NRA's conclusory assertions. Additionally, the individual defendants have asserted a business judgment defense under N-PCL § 717(b), which protects reasonable reliance on outside experts.<sup>28</sup> Plaintiff cannot test the reasonableness of that reliance without understanding the information communicated to and from the experts on which the defendants rely.

Plaintiff respectfully requests that the NRA be required to disclose the documents from external consultants as part of its “course correction” that have been withheld as privileged, specifically as related to the (1) calculation of excess benefits; (2) handling of whistleblower complaints; and (3) internal investigations, self-disclosures, and remedial actions taken as part of the NRA's course correction. Plaintiff also asks that the NRA be directed to produce a corporate representative capable of testifying regarding the NRA's reliance upon such outside advisors.

**II. Plaintiff is entitled to additional disclosure from the NRA's independent auditor, as late disclosure from the NRA has prejudiced Plaintiff.**

The NRA has made its external auditors, including Aronson, a centerpiece of its defense by both its fact and expert witnesses. Even though Plaintiff subpoenaed Aronson directly for relevant documents, the NRA interceded and acted as a gatekeeper for Aronson's production, resulting in relevant documents being withheld. On September 16, 2022—the day that initial expert disclosures were due and 5 months after Aronson was deposed in this action—the NRA

---

<sup>27</sup> Exhibit J at p. 15; [REDACTED] dated September 16, 2022, at pp. 34-35 (attached as Exhibit L).

<sup>28</sup> See NYSCEF 349 at 8 et seq. (Frazer memorandum in support of second motion to dismiss); NYSCEF 356 at 19 (LaPierre memorandum in support of second motion to dismiss); NYSCEF 681 at 91 (Powell answer asserting business judgment affirmative defense); NYSCEF 682 at 68 (Phillips answer asserting business judgment affirmative defense).

Hon. O. Peter Sherwood

October 20, 2022

Page 9

produced several material workpapers from Aronson's fiscal year 2020 audit.<sup>29</sup> These workpapers were prepared in 2021, and covered key issues such as the NRA's compliance (or lack thereof) with its policies governing contracts and the NRA's conflict of interest policy. Despite being called for by Plaintiff's document requests,<sup>30</sup> these documents were either not previously produced,<sup>31</sup> produced in a previously redacted (to the point of uselessness) form,<sup>32</sup> or previously logged on Aronson's privilege and redaction log.<sup>33</sup> It is clear that the NRA decided to produce these documents months after the close of fact discovery to support the NRA's expert witnesses.<sup>34</sup>

The NRA's delay in producing these documents has prejudiced Plaintiff. *See Gottwald*, 204 A.D.3d at 495-96 (holding that trial court correctly exercised discretion in precluding selective privilege waiver after close of discovery since opposing party would have been entitled to expanded discovery based on such waiver). Aronson's corporate representative was deposed in March and April of this year, and, as evidenced by the NRA's expert reports, the NRA has made Aronson's audits a central part of its defense. Plaintiff respectfully requests the opportunity to depose Aronson for 3 hours on a date agreeable to the parties and the witness in early December, and that the NRA be required to cover the cover all costs of that deposition.

### **III. The NRA must disclose documents concerning recent negotiations between the NRA and Membership Marketing Partners and its affiliates, including communications involving the NRA's counsel.**

The NRA's ongoing relationship with Membership Marketing Partners ("MMP") and its affiliates, including Allegiance Creative Group ("Allegiance") is a central topic in this litigation. Wayne LaPierre and his family have accepted benefits from MMP even while the NRA paid MMP tens of millions of dollars above any written contractual amount in violation of NRA internal controls. Yet the NRA has failed to produce documents relevant to its ongoing

---

<sup>29</sup> NRA-NYAGCOMMDIV-01539999 through NRA-NYAGCOMMDIV-01540003 (attached as Exhibits M through Q).

<sup>30</sup> Plaintiff's First Requests for Production of Documents to Defendant National Rifle Association of America, dated June 25, 2021, at Request 23 (attached as Exhibit R); Plaintiff's Subpoena *Duces Tecum* to Aronson LLC, dated June 21, 2022, at Request 7 (attached as Exhibit S).

<sup>31</sup> Exhibit P.

<sup>32</sup> *Compare* Aronson\_NRA0047392 (attached as Exhibit T) *and* Exhibit Q.

<sup>33</sup> Aronson's NRA 2020 audit work paper redaction log dated February 2, 2022, at Row 90 (attached as Exhibit U) (showing entry for [REDACTED]).

<sup>34</sup> *See* Exhibit J at pp. 18-19 (citing the newly produced Aronson workpapers).



Hon. O. Peter Sherwood

October 20, 2022

Page 10

relationship with MMP. For the reasons given below, Plaintiff requests that the NRA be directed to produce all documents concerning the recent negotiations of a new contract with Allegiance, and any consideration by the NRA's Audit Committee thereof.

In July of 2022, Plaintiff learned through the deposition of [REDACTED]

[REDACTED]

Plaintiff repeatedly requested production of documents related to the negotiations between the NRA and MMP and its affiliates, which was largely being handled on the NRA's side by its litigation counsel, the Brewer firm.<sup>37</sup>

During the final day of the deposition of the NRA's corporate representative deposition on September 9, 2022, Plaintiff learned that the NRA had [REDACTED]

[REDACTED] contrary to earlier testimony by the NRA's treasurer.<sup>39</sup>

Yet the NRA did not produce the new Allegiance memorandum of understanding and contract until September 12, 2022, after the completion of the continued deposition of the NRA's corporate representative on September 9, 2022. At that point, Plaintiff was denied the opportunity to question the witness on these very important matters. The NRA subsequently produced a record of a July 2022 meeting of the NRA's Audit Committee that purportedly shows the Audit Committee approved the memorandum of understanding for the new Allegiance contract—albeit after the memorandum had already been signed.<sup>40</sup> Other than the memorandum itself and an incomplete internal NRA contract review sheet for the memorandum,<sup>41</sup> the NRA has not produced any documents, notes, or communications concerning that Audit Committee Meeting. Additionally, the NRA has withheld documents relating to the negotiation of this contract.

---

<sup>35</sup> Exhibit E at 257:17-25.

<sup>36</sup> *Id.* at 259:12-260:23.

<sup>37</sup> *Id.* at 257:17-261:3.

<sup>38</sup> Exhibit A at 939:23-940:9.

<sup>39</sup> *Id.* at 949:13-951:23, 952:10-953:22.

<sup>40</sup> NRA-NYAGCOMMDIV-01540050 (attached as Exhibit V); NRA-NYAGCOMMDIV-01539964 (attached as Exhibit W).

<sup>41</sup> NRA-NYAGCCOMMDIV-01539969 (attached as Exhibit X).

Hon. O. Peter Sherwood

October 20, 2022

Page 11

The NRA has failed to articulate a basis for withholding communications between its counsel and its vendor, a third party—nor could it. The NRA has not demonstrated it is entitled to the “absolute immunity of work product . . . [which] should be limited to those materials which are uniquely the product of a lawyer’s learning and professional skills, such as materials which reflect his legal research, analysis, conclusions, legal theory or strategy.” *Hoffman v. Ro-San Manor*, 73 A.D.2d 207, 211 (1st Dep’t 1980). And even if contract negotiation conversations could be stretched to meet the definition of work product, it waived any such privilege: work product protection is waived “when there is a likelihood that the material will be revealed to an adversary, under conditions that are inconsistent with a desire to maintain confidentiality.” *Bluebird Partners v. First Fid. Bank*, 248 A.D.2d 219, 225 (1998). The MMP entities have been the subject of testimonial and document subpoenas in this action, and the NRA should have no expectation of privacy in the conversations between it and MMP, particularly given the relevance of its relationship to MMP in the complaint.

Furthermore, market testing a fundraising contract is not “uniquely the product of a lawyer’s learning and professional skills,” *Hoffman*, 73 A.D.2d at 211, and the NRA can claim no privilege over the alleged market testing conducted by the NRA or its outside counsel.

Finally, the NRA has not asserted a claim of privilege—nor can it—over any of the discussions that took place during the July 2022 Audit Committee meeting at which the MMP memorandum of understanding was discussed. Any such discussions are relevant to Plaintiff’s claim concerning the Audit Committee’s failure to adequately address Defendant LaPierre’s conflicts of interest.

Plaintiff respectfully requests that the NRA be directed to disclose documents related to the new Allegiance contract, and any negotiations or discussions thereof.

#### **IV. The NRA improperly withholds certain material evidence as privileged.**

The NRA’s privilege log contains twenty-eight (28) categories of documents withheld on privilege grounds.<sup>42</sup> Many of these categories include communications between the NRA and third parties who are either non-attorneys or do not represent the NRA, and which Plaintiff believes to be material to this action.

- Categories A, B, C, D, E, F, H, L, N, R, S, T, U include communications between the NRA and one or more of its external auditors (RSM and Aronson).
- Categories E, H, K, and N include communications between the NRA and McKenna & Associates—an NRA vendor that provided fundraising and business consulting services.
- Categories H, L, M, O, and U include communications between the NRA and Membership Marketing Partners—an NRA vendor that provides membership and fundraising services.

---

<sup>42</sup> NRA Supplemental Privilege Log dated July 5, 2022 (attached as Exhibit Y).



Hon. O. Peter Sherwood

October 20, 2022

Page 12

- Category J includes communications between the NRA and TBK Strategies LLC—an NRA vendor that provides security services.

With respect to the Aronson and RSM documents, those documents should be produced to the extent they have not already, in light of Your Honor’s and the Court’s rulings on the NRA’s communications with its auditors.<sup>43</sup> Then, with respect to the NRA’s communications with its vendors, the NRA has failed to establish that its communications with these third parties are privileged.

Additionally, each of the categories on the NRA’s privilege log relates to the NRA’s past and ongoing “course correction” efforts. The withheld documents include communications with counsel who have been identified as having advised the NRA on its remedial actions and cover the time periods when the NRA purportedly took such actions. For example:

- Category A relates to corporate governance issues and the Top Concerns memorandum;
- Category C relates to meetings of the Audit Committee;
- Category E relates to issues concerning the NRA’s travel policy, contract approvals, vendors, travel expenses, compliance seminars, and corporate governance;
- Category I relates to related party transactions and vendor issues;
- Category K relates to LaPierre’s expenses;
- Category L relates to excess benefit transactions;
- Category M relates to the NRA’s investigation into Millie Hallow, LaPierre’s longtime advisor, who was recently terminated;
- Category O relates to ethics considerations around NRA whistleblower Oliver North;
- Category Q relates to a vendor owned by the significant other of Defendant Phillips;
- Category R relates to conflict concerns surrounding Defendant Powell and McKenna & Associates;
- Category V relates to the NRA’s annual conflict of interest questionnaires;
- Category ZB relates to the make-up artist for Susan LaPierre.

For all of the reasons stated above in Section I, the NRA has waived any claim of privilege it has over documents related to its past and ongoing “course correction” efforts, and must disclose them or be precluded from doing so at trial.

---

<sup>43</sup> NYSCEF 711, 848.

Hon. O. Peter Sherwood

October 20, 2022

Page 13

**V. The NRA must be directed to produce certain documents on an ongoing basis.**

The NRA has an ongoing obligation to produced documents where its prior response to document requests is no longer complete. *See* CPLR 3101(h) (requiring supplementation of discovery responses when, *inter alia*, a prior response is no longer complete); Siegel, N.Y. Prac. § 352A (6th ed. 2022) (producing party is responsible for supplementing its response automatically). As argued above, the NRA has made its ongoing “course correction” and related internal investigations central to its defense against Plaintiff’s claims, particularly with respect to Plaintiff’s request for forward looking equitable relief such as an independent compliance monitor. This is particularly relevant in this case, where Plaintiff seeks prospective injunctive relief, and the NRA alleges that such relief is not necessary. The NRA should be required to supplement its production of documents on an ongoing basis, including:

- Board Reports and minutes,
- Reports, presentations, retention letters and management letters from Aronson or any other external auditor;
- Documents reflecting, containing or summarizing its investigations, determinations, and actions taken by the NRA as part of its “course correction,”
- Documents reflecting the NRA’s calculations, demands for payment, and receipt of payments for excess benefit transactions.

**CONCLUSION**

In light of the foregoing, it is respectfully requested that (1) Defendants produce documents related to the “course correction”, including relating to the determination of excess benefits and investigations undertaken as part of the same, that have been withheld on privilege grounds and a witness able to testify to facts related to those documents, or otherwise be precluded from relying on advice provided to them by third parties at trial; (2) Plaintiff be permitted to depose Aronson for additional time as a result of the NRA’s delinquent production of documents, and that the NRA cover the costs of such deposition; (3) the NRA produce documents concerning its relationship with MMP and Allegiance, including any documents related to the recent renegotiations of the NRA’s contracts with MMP and Allegiance and market testing relating to the MMP entities; (4) the NRA produce the identified material documents inappropriately denoted as privileged on the NRA’s privilege log; and (5) the NRA be directed to supplement its production of documents in accordance with CPLR 3101(h). To allow Plaintiff to complete the discrete discovery requested and avoid substantial prejudice, Plaintiff requests a modest extension for filing the Note of Issue by two weeks—until December 13—and a corresponding two-week extension of the date for filing dispositive motions and motions directed to experts to February 3, 2023.

Respectfully,

*/s/ Monica Connell*

Monica Connell

Assistant Attorney General

cc: All Counsel of Record

Exhibits Temporarily Redacted Pursuant to  
Protective Order Pending Direction from Court

# **EXHIBIT B**

## **NRA Opp to 10.20.2022 OAG Letter Application**

B R E W E R  
ATTORNEYS & COUNSELORS

November 4, 2022

VIA EMAIL

Hon. O. Peter Sherwood, Special Master  
Ganfer Shore Leeds & Zauderer  
306 Lexington Avenue  
New York, NY 10017  
[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)

Re: ***NYAG v. The National Rifle Association of America et al.***,  
**Index No. 451625/2020**

Dear Judge Sherwood:

In response to the discovery letter from the New York Attorney General (“NYAG”), dated October 20, 2022, the National Rifle Association of American (“NRA”) will comply with the reasonable requests in the motion. Specifically, it will:

- 1) provide the raw data underlying the determination of excess benefits repaid by Wayne LaPierre (*see* Letter at 6) (requesting “the ‘raw data’ underlying the determination of what was owed”);
- 2) agree to an additional three-hour deposition of Aronson LLP by the NYAG (Letter at 9);
- 3) produce non-privileged documents relating to contract negotiations between NRA and Allegiance Creative and any market testing of the relationship with Membership Marketing Partners (Letter at 8-11); and
- 4) produce Board Reports, minutes, and other items listed on Page 13 of NYAG’s letter on a continuing basis, to the extent such communications are otherwise discoverable and not privileged (Letter at 13).

However, the NYAG’s contention that NRA waived its attorney-client, work product, or trial preparation privileges is without merit, for five reasons.

*First*, despite what NYAG argues (Letter pp. 2-8), the NRA has never asserted an “advice of counsel” defense in this matter and has no intention of doing so. (*See Answer at pp. 150-160*) (listing 34 affirmative defenses or defenses; “advice of counsel” not included). That fact is dispositive of NYAG’s claim that the NRA has effected an “at issue” waiver of its attorney-client privilege. *See Deutsche Bank Tr. Co. of Americas v. Tri-Links Inv. Tr.*, 43 A.D.3d 56, 64 (1st Dep’t 2007) (“at issue” waiver occurs only “when the party *has asserted a claim or defense that he intends to prove by use of the privileged materials.*”) (emphasis added). The privilege is not being

B R E W E R

November 4, 2022

Page 2

wielded as a “sword” by the NRA simply because witnesses have invoked it to shield confidential attorney-client or otherwise privileged communications from disclosure. *See id.* at 68-69.

*Second*, New York law is clear that 1) the privilege fully applies to compliance matters, and 2) references to internal investigations in pleadings do not break the privilege. *See Spectrum Sys. Int’l Corp. v. Chem. Bank*, 78 N.Y.2d 371, 380 (1991) (noting that “[l]egal advice is often sought, and rendered, precisely to avoid litigation, or facilitate compliance with the law, or simply to guide a client’s course of conduct.”); *McGowan v. JPMorgan Chase Bank, N.A.*, No. 18CIV8680PACGWG, 2020 WL 1974109, at \*7 (S.D.N.Y. Apr. 24, 2020) (“[t]he mere fact that a defendant in an answer denies an allegation made in a complaint is insufficient to place the substance of the allegation at issue for purposes of the waiver doctrine,” and “[i]f the rule was otherwise, any plaintiff could force a defendant to choose between the Scylla of admitting that it had conducted an inadequate investigation and the Charibdis of placing at issue the contents of any investigation that it did conduct.”)

*Third*, although the NRA invokes a “good faith” defense, this does not break the privilege because this defense does not turn in any way on any advice it received from its attorneys. *McGowan*, 2020 WL 1974109, at \*8 (“As to the defense asserted in the Answer, the mere use of the term ‘good faith’ in an Answer does not by itself reflect reliance on a ‘good faith’ defense that requires disclosure of privileged communications.”).

*Fourth*, the cases cited by NYAG nearly all involve a defendant’s assertion of a *Faragher-Ellerth* affirmative defense, and the NRA invokes no comparable affirmative defense in its Answer that would put the legal advice it received from counsel at issue. *Id.* Thus, cases involving a defendant’s assertion of a *Faragher-Ellerth* defense are irrelevant here. Other cases cited by NYAG are similarly distinguishable.

*Fifth*, and contrary to NYAG’s assertion on pages 11-12 of her letter, the NRA has not waived privilege over any document on which an auditor or vendor was copied. Nor is it required to update its privilege log. There is no waiver where the presence of a third party is necessary to the provision of legal advice and the holder of the privilege has a reasonable expectation of confidentiality. *Bluebird Partners. v. First Fid. Bank*, 248 A.D.2d 219, 225 (1st Dep’t 1998). And communications involving multiple privilege holders are privileged to the extent made in furtherance of common legal interests. *Hyatt v. State Franchise Tax Bd.*, 105 A.D.3d 186, 205 (2d Dep’t 2013). Here, the NRA’s detailed privilege log adequately explains the basis for its privilege assertions.

## I. Factual Background

After the Court dismissed her two dissolution claims against the NRA, Attorney General James asserted a new claim against the NRA. The First Cause of Action asserts that the NRA is not capable of properly administering assets donated to it for charitable purposes and that the Court should appoint an independent compliance monitor to oversee the NRA’s administration of its assets.

B R E W E R

November 4, 2022

Page 3

As the trial in this action will show, the NYAG's claim has no merit because, even if certain deficiencies existed in the past, the NRA, among other things, has since (i) instituted a series of additional checks and balances, (ii) improved processes related to vendor payments and expense reimbursements, and (iii) obtained repayments from employees of alleged excess benefits.

Despite years of discovery, the NYAG now seeks privileged communications and materials related to the series of steps taken by the NRA that have been referred to as its "course correction," i.e. the efforts pursued by the NRA to insure compliance with its accounting controls, governance rules and administrative process.

The NYAG's unreasonable request is unwarranted. The information is privileged on multiple grounds and therefore not discoverable. The implicit waiver theory on which the NYAG relies has no application here. As the NYAG concedes, the privilege may be waived when a party asserts a claim or affirmative defense that places protected communications "at issue."

Here, the NRA does not assert an "advice of counsel" defense or anything similar. If the NYAG believes that internal control deficiencies have not been fixed, she can present evidence of ongoing problems. If the NYAG believes that the NRA has not periodically and consistently trained its officers, Board members, and employees, she can present evidence that she believes refutes that assertion. If the NYAG believes that Wayne LaPierre has not repaid enough money to the NRA, despite the evidence of the checks he wrote to the NRA, she can offer evidence that she thinks undermines that claim. Finally, if she disagrees that procurement practices are fully compliant, she can present evidence of ongoing issues.

Discovery in this case indeed has been protracted, but not because of the NRA's discovery conduct; rather because the NYAG's repeated requests for documents and information have been extraordinarily excessive. To date, the NRA has produced 311,640 documents, amounting to over *1.5 million* pages. Of that production, the NRA has produced approximately 219,680 documents relating its course correction and remedial efforts. (*See Exhibit A*) It has withheld approximately 629 documents relating to its course correction and remedial efforts—approximately 0.002%—based on privileges. (*See Exhibit B*). Indeed, the NRA's discovery conduct has by far exceeded its obligations under the CPLR.

That the NYAG claims that the affairs of the NRA are not in order—an assertion she must realize she cannot prove—does not mean that the NRA should be denied the right to assert basic privileges applicable to all litigants. The NYAG's request should be denied.

## II. Legal Background

In New York, the attorney-client privilege is codified in CPLR §§ 3101(b) and 4503(a)(1). It "shields from disclosure any confidential communications between an attorney and his or her client made for the purpose of obtaining or facilitating legal advice in the course of a professional relationship." *Ambac Assur. Corp. v. Countrywide Home Loans, Inc.*, 27 N.Y.3d 616, 623 (2016) (citing CPLR 4503(a)(1)). The attorney-client privilege enables one seeking legal advice to

November 4, 2022

Page 4

communicate with counsel for this purpose secure in the knowledge that the contents of the exchange will not later be revealed against the client's wishes. *See People v. Mitchell*, 58 N.Y.2d 368, 373 (4th Dept 1983). The privilege "belongs to the client and attaches if information is disclosed in confidence to the attorney for the purpose of obtaining legal advice or services." *People v. Osorio*, 549 N.E.2d 1183, 1185 [1989]. Attorney-client privileged material is "absolutely immune from discovery." *Spectrum Sys. Int'l Corp.*, 78 N.Y.2d at 376 (citing CPLR § 3101(b).)

Under CPLR § 3101(c), "[t]he work product of an attorney shall not be obtainable." Attorney work product consists of "documents prepared by counsel acting as such, and to materials uniquely the product of a lawyer's learning and professional skills, such as those reflecting an attorney's legal research, analysis, conclusions, legal theory or strategy." *Brooklyn Union Gas Co. v. Am. Home Assur. Co.*, 23 A.D.3d 190, 190–91 (1st Dep't 2005). Like the attorney-client privilege, the attorney work-product privilege is unqualified and absolute. *Corcoran v. Peat. Marwick*, 151 A.D.2d 443, 445 (1st Dep't 1989) ("an attorney's work product is absolutely exempt from discovery"); CPLR § 3101(c) (it "shall not be obtainable").

The third privilege category is trial preparation materials, which (unlike attorney-client communications and attorney work-product, which are shielded from discovery absolutely) may be discoverable "on a showing of substantial need and undue hardship in obtaining the substantial equivalent of the materials by other means." *Spectrum Sys. Int'l Corp.*, 78 N.Y.2d at 377 (citing CPLR § 3101(d)(2)).

Legal advice concerning investigative or compliance matters is fully subject to attorney-client and work-product protection. As the Court of Appeals explained, "[l]egal advice is often sought, and rendered, precisely to avoid litigation, or facilitate compliance with the law, or simply to guide a client's course of conduct." *Id.* at 380.

"At issue" waiver of privilege occurs only "where a party *affirmatively* places the subject matter of its own privileged communication at issue in litigation, so that invasion of the privilege is required to determine the validity of a claim or defense of the party asserting the privilege, and application of the privilege would deprive the adversary of vital information." *Deutsche Bank Tr. Co. of Americas*, 43 A.D.3d at 63 (emphasis added).

Thus, "at issue" waiver requires three elements: 1) an "affirmative act" that 2) "put[s] the protected information at issue by making it relevant to the case" 3) under circumstances where "application of the privilege would have denied the opposing party access to information vital to his defense." *Arkwright Mut. Ins. Co. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, No. 90 CIV. 7811 (AGS), 1994 WL 510043, at \*11 (S.D.N.Y. Sept. 16, 1994).

Importantly, "that a privileged communication contains information relevant to issues the parties are litigating does not, without more, place the contents of the privileged communication itself 'at issue' in the lawsuit; if that were the case, a privilege would have little effect." *Deutsche Bank Tr. Co. of Americas*, 43 A.D.3d at 64. "Rather, 'at issue' waiver occurs when the party *has asserted a claim or defense that he intends to prove by use of the privileged materials.*" *Id.* (internal



November 4, 2022

Page 5

quotation marks omitted, emphasis added); *see also Vill. Bd. of Vill. of Pleasantville v. Rattner*, 130 A.D.2d 654, 655 (1987) (“[w]here a party asserts *as an affirmative defense* the reliance upon the advice of counsel,” it “waives the attorney-client privilege with respect to all communications to or from counsel concerning the transactions for which counsel’s advice was sought”) (emphasis added).

Further, references in a pleading to an investigation or the involvement of counsel are not enough to break the privilege or place attorney-client communications “at issue.” As one court has explained, “[t]he mere fact that a defendant in an answer denies an allegation made in a complaint is insufficient to place the substance of the allegation at issue for purposes of the waiver doctrine.” *McGowan*, 2020 WL 1974109, at \*7 (emphasis added).

Dispositive here, statements by witnesses indicating that they received legal advice as to a matter at issue in the litigation are insufficient to break the privilege. *Deutsche Bank Tr. Co. of Americas.*, 43 A.D.3d at 64, 68-69; *Soho Generation of New York, Inc. v. Tri-City Ins. Brokers, Inc.*, 236 A.D.2d 276, 277 (1st Dep’t 1997).

### III. Analysis

#### A. The NRA Has Not Raised an “Advice of Counsel” Defense, and Therefore It Has Not Waived Any Privilege Between Itself and Its Counsel

Here, the NRA has not raised any defense, affirmative defense or claim that effects an “at issue” waiver of its attorney-client, work product, or trial preparation privileges. The NRA asserted 34 defenses or affirmative defenses in this matter. “Advice of counsel” is not one of them. (*See Answer of the NRA to Second Amended and Verified Complaint* (NYSCEF 857) at pp. 150-160). The NRA never asserted an “advice of counsel” defense, and it has no intention of ever doing so. NYAG is simply wrong in suggesting otherwise.

That the NRA does not assert and will not assert an “advice of counsel” defense obviates the need for any “sword and shield” inquiry. *U.S. Fid. & Guar. Co. v. Excess Cas. Reinsurance Ass’n*, 68 A.D.3d 481, 482 (2009) (“In view of cedant’s concession, however, that it will not raise the ‘advice of counsel’ defense and make any reference to attorney-client communications by cedant at the trial, we agree that the court should not permit cedant to raise this defense to reinsurers’ claims, or refer to any such communications”; moreover, no waiver of attorney-client privilege occurred due to the concession.); *Miteva v. Third Point Mgmt. Co.*, 218 F.R.D. 397, 397-98 (S.D.N.Y. 2003) (disclosure of attorney-client communication not appropriate where defendant expressly represented that “it is not asserting nor relying on the advice of counsel defense”). Simply put, there has been no “affirmative act” by the NRA that “put[s] the protected information at issue by making it relevant to the case.” *Arkwright Mut. Ins. Co.*, 1994 WL 510043, at \*11.

NYAG’s assertion that the NRA has made an “at issue” waiver of its privileges is meritless. Nor has NRA made any selective disclosure of communications with its counsel that would effect such a waiver.

November 4, 2022

Page 6

While the NRA indeed undertook a “course correction” beginning in 2018, the NRA has been clear that the NRA itself, particularly its Treasurer, Craig Spray and then Sonya Rowling, spearheaded this effort—not its counsel. (Answer at 4). NRA’s Answer does not mention legal advice from its attorneys or assert reliance on such advice.

Instead of citing claims or defenses that the NRA makes, the NYAG cites deposition statements by witnesses declining to answer specific questions that sought disclosure of legal advice from the NRA’s attorneys. But statements from witnesses in depositions are not claims, defenses, or legal arguments. *See Deutsche Bank Tr. Co. of Americas.*, 43 A.D.3d at 64, 68-69 (testimony from plaintiff’s managing director [Cohen] stating that he consulted counsel before approving settlement did not waive privilege because the plaintiff had “never, either through counsel or through Cohen’s testimony, stated an intention to use the advice of counsel to prove the reasonableness of the . . . settlement, and it now explicitly disclaims any such intention”); *Soho Generation of New York, Inc. v. Tri-City Ins. Brokers, Inc.*, 236 A.D.2d at 277 (“By merely mentioning at his deposition that he had withdrawn plaintiff’s claim upon the advice of counsel, plaintiff’s president Mr. Mosery did not waive any attorney-client privilege by placing the subject matter of counsel’s advice in issue or by making selective disclosure of such advice.”).

The witness statements cited by NYAG seeking to protect the confidentiality of attorney-client communications are not “swords” that those witnesses are somehow wielding against NYAG. *See Deutsche Bank Tr. Co. of Americas*, 43 A.D.3d at 64, 68-69 (witness testimony from plaintiff’s president that he received legal advice from counsel before settling matter, where defendant contended that settlement was excessive and unreasonable, did not mean he was using legal advice as a “sword”). Instead, the statements cited by NYAG are garden-variety invocations of the privilege as a “shield” against compelled disclosure of confidential legal advice and attorney work-product. Thus, there is no “sword and shield” inquiry to be had because the NRA has never sought to use legal advice as a “sword.” It seeks merely to preserve the basic right of any litigant—to receive confidential legal advice from its attorneys.

Thus, to the extent that the references to “external consultants” in NYAG’s letter includes NRA’s litigation counsel, there is no basis whatsoever to require the NRA to produce a “corporate representative” to testify about the NRA’s “reliance” on the Brewer Firm. (*See* Letter at 8). Nor is there any basis for requiring the NRA to turn over attorney work-product, attorney-client communications, or trial preparation materials on the theory that these are somehow merely “documents from external consultants,” and not truly attorney-client communications or attorney work-product. (*Id.*) Finally, there is no basis whatsoever for the sweeping production of privileged materials requested on pages 12-13 of NYAG’s Letter on the ground that the NRA has effected a sweeping waiver of privileged communications with its attorneys related to its “course correction.”

**B. References to the NRA’s “Course Correction” in NYAG’s Complaint and the NRA’s Answer Do Not Place Attorney-Client Communications “At Issue”**

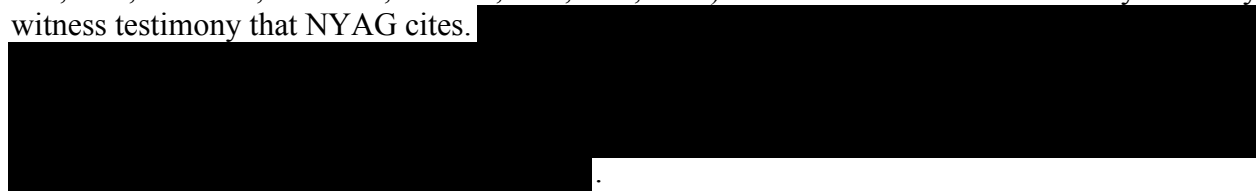
Unlike the NRA’s answer, which neither invokes “advice of counsel” or even mentions legal advice from the Brewer Firm or outside tax counsel, NYAG makes repeated and gratuitous

B R E W E R

November 4, 2022

Page 7

reference to the Brewer Firm in its Complaint, charging falsely that the Brewer Firm was “in charge of NRA’s compliance efforts.” (See Second Amended Complaint ¶¶ 252, 253, 262, 471-486, 489, 492-493, 514-515, 554-55, 561, 604, 623.) This contention is rebutted by the very witness testimony that NYAG cites.



The law is clear that efforts by plaintiffs like NYAG to destroy litigation privileges by making irrelevant allegations in pleadings are doomed to failure. According to the case law that NYAG herself relies upon in her Letter,

The mere fact that a defendant in an answer denies an allegation made in a complaint is insufficient to place the substance of the allegation at issue for purposes of the waiver doctrine. **If the rule was otherwise, any plaintiff could force a defendant to choose between the Scylla of admitting that it had conducted an inadequate investigation and the Charibdis of placing at issue the contents of any investigation that it did conduct.** To be entitled to discovery, it is not enough to point to an allegation made in a complaint or to a denial of that allegation. **Rather, the plaintiff must show that the allegation has relevance to a claim or defense.** See Fed. R. Civ. P. 26(b)(1).

*McGowan*, 2020 WL 1974109, at \*7 (emphasis added). NYAG’s baseless assertions in its Second Amended Complaint attacking the Brewer Firm are woefully insufficient to break the privilege.

And ultimately, whether counsel was involved in NRA’s compliance efforts or litigation efforts or in some other capacity does not matter for purposes of the privilege. The New York Court of Appeals has made clear—in a decision cited by NYAG—that legal advice on compliance matters may properly be subject to attorney-client privilege. As the Court of Appeals has explained, “[l]egal advice is often sought, and rendered, precisely to avoid litigation, or facilitate compliance with the law, or simply to guide a client’s course of conduct.” *Spectrum Sys. Int’l Corp.*, 78 N.Y.2d at 380. Thus, the fact that outside law firms or its own lawyers provided legal advice in connection with the NRA’s “course correction” does not break the privilege or make all such communications discoverable. *Id.* Instead, “[t]he critical inquiry is whether, viewing the lawyer’s communication in its full content and context, it was made in order to render legal advice or services to the client.” *Id.* at 379. If so, the communication is not discoverable.

Further rebutting NYAG’s contentions, the NRA has produced many thousands of pages of documents of non-privileged communications relating to its “course correction,” its handling of whistleblower complaints, its internal investigations, its self-disclosures, and its remedial efforts. (Exhibit A). Specifically, NRA has produced 219,680 documents relating to the 28 categories mentioned on pages 11-12 of the NYAG’s Letter. (*Id.*) It has withheld approximately 629 of those documents—less than one-quarter of 1% of that total—based on privileges. (Exhibit B). That is,

B R E W E R

November 4, 2022

Page 8

the NRA is withholding a miniscule fraction of documents that contain or reflect legal advice or work product of its counsel—as is its right under CPLR §§ 3101(b)-(d) and 4503. (*See* Supplemental Privilege Log [attached as Exhibit C] [explaining the basis for the NRA’s privilege assertions]). The NRA’s voluminous production regarding its “course correction” proves that NYAG’s suggestion that NRA is seeking to shield its “course correction” behind attorney-client privilege is baseless.

### **C. The NRA’s Assertion of a “Good Faith” Defense Does Not Break the Privilege**

One of the NRA’s affirmative defenses is “good faith.” (Answer at p. 152). As it explains,

The NRA has no liability under any of the causes of action asserted against it in the Complaint to the extent that officers and directors of the NRA whose conduct Plaintiff attempts to impute to the NRA discharged their responsibilities in good faith and with the degree of diligence, care, and skill which ordinarily prudent persons in a similar position would exercise in like circumstances and at all times, and acted in good faith and relied on information, opinions, or reports of reasonable reliability either presented or available to them.

This statement does not mean that the NRA cannot assert privilege over confidential attorney-client communications it had with its counsel relating to remedial, compliance efforts, or investigative efforts, or over confidential attorney work-product or trial preparation material—and NYAG does not contend otherwise. “As to the defense asserted in the Answer, the mere use of the term ‘good faith’ in an Answer does not by itself reflect reliance on a ‘good faith’ defense that requires disclosure of privileged communications.” *McGowan*, 2020 WL 1974109, at \*8. As in *McGowan*, NYAG does not explain how attorney-client communications or work-product “would be relevant to a claim or defense.” *Id.* at \*7. Here, as in *McGowan*, the NRA does not contend that its “good faith” or “degree of diligence, care, and skill which ordinarily prudent persons in a similar position would exercise” had anything to do with the substance of any legal advice that it received. Again, NYAG makes no argument whatsoever that NRA’s “good faith” defense requires disclosure of privileged documents.

### **D. The NRA Does Not Assert a *Faragher-Ellerth* Defense, Which Distinguishes the Cases Cited By NYAG**

Like *McGowan*, this is not a case where the NRA has asserted a *Faragher-Ellerth* defense. *Faragher-Ellerth* is a special affirmative defense in sexual harassment cases where the employer may avoid supervisory liability if it proves that it “exercised reasonable care to prevent and correct any harassing behavior and . . . the plaintiff unreasonably failed to take advantage of the preventative or corrective opportunities that the employer provided.” *Vance v. Ball State Univ.*, 570 U.S. 421, 424 (2013). It must be specifically pleaded and proved. *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 765 (1998).

B R E W E R

November 4, 2022

Page 9

Nearly every case cited by NYAG where a court ordered privilege documents produced involved a specific assertion by the defendant of a *Faragher-Ellerth* defense. Compare *Angelone v. Xerox Corp.*, No. 09-CV-6019, 2011 WL 4473534, at \*2 (W.D.N.Y. Sept. 26, 2011) (“Here, Xerox has clearly invoked the *Faragher-Ellerth* defense”); *Brownell v. Roadway Package Sys., Inc.*, 185 F.R.D. 19, 21–22 (N.D.N.Y. 1999) (case involving *Faragher-Ellerth* defense); *Coyne v. The City University of New York*, No. 1040282008, 2012 WL 12090963 (N.Y. Sup. Ct. Mar. 19, 2012) (in sexual harassment case, employer waived privilege by raising the issue of “the reasonableness and outcome of its investigation into” plaintiff’s complaint as a defense); *Polidori v. Societe Generale Groupe*, 39 A.D.3d 404, 406, 835 N.Y.S.2d 80 (2007) (in sexual harassment case, privilege waived where defendant had “taken the position that plaintiff has no cause of action because it took immediate and adequate measures to stop the harassment.”)

A *Faragher-Ellerth* defense is not at issue here, and “there is no claim of harassment contained in [NYAG]’s complaint.” *McGowan*, 2020 WL 1974109, at \*8. Thus, the many cases cited by NYAG involving the employer’s assertion of a *Faragher-Ellerth* defense have no relevance here.

Other cases cited by NYAG are similarly distinguishable. In *Banach v. Dedalus Found., Inc.*, the defendant waived its attorney-client privilege regarding the minutes of a board meeting by using portions of those minutes during a deposition and by placing the contents of the minutes at issue. 132 A.D.3d 543, 544 (2015). The NRA has done nothing similar in this case—it has never sought to rely on a document over which it simultaneously asserts privilege.

In *BMW Group v. Castlerom Holding Corp.*, a fraud suit involving allegedly adulterated heating oil, the results of testing conducted by a non-attorney environmental scientist (Clarke) and an investigation by a non-attorney private investigator (Valenti) had to be disclosed where they were used by the plaintiffs to support their complaint and request for injunction. No. 650910/2013, 2018 WL 2432181, at \*4 (N.Y. Sup. Ct. May 30, 2018). The court observed that the attorney-client privilege does not extend to underlying facts; that “this court and the Appellate Division relied on the tests and Valenti’s and Clarke’s findings in making determinations in this case[.]” and that “plaintiffs disclosed only portions of the tests and Valente’s and Clarke’s communications in their court papers.” *Id.* Thus, the plaintiffs could not “use excerpts of privileged communications and documents to make out their case and then assert the privilege to shield the remainder of the material.” *Id.* The NRA has done nothing remotely similar here.

In *In re: New York City Asbestos Litigation*, the court held that work-product privilege could not be asserted regarding underlying data used in published scientific research studies and that the crime-fraud exception applied to waive privileges once applicable to certain other communications with attorney. No. 400000/88, 2011 WL 6297966 (N.Y. Sup. Ct. Dec. 07, 2011). Here, there is no claim involving the crime-fraud exception, and no assertion of privilege over underlying data.



B R E W E R

November 4, 2022

Page 10

In *Joint Stock Co. “Channel One Russia Worldwide” v. Russian TV Co. Inc.*, the court held that “a party that chooses to use its litigation counsel to perform factual investigations, *and submits counsel’s sworn testimony concerning those investigations as evidence going to the merits*, has waived any otherwise applicable privilege as to the disclosed investigations.” No. 18CV2318LGSBCM, 2020 WL 12834595, at \*2 (S.D.N.Y. May 1, 2020) (emphasis added). Here, the NRA has not submitted its counsel’s sworn testimony concerning any investigation “as evidence going to the merits.” *Id.*

*Orco Bank, N.V. v. Proteinis Del Pacifico, S.A* was a suit by a lender against a borrower. 179 A.D.2d 390, 390-91 (1992). The borrower attempted to probe the lender’s due diligence in making the loan at issue, and “received responses that plaintiff relied upon the advice of its lawyers who informed it, for example, ‘we had a good security.’” *Id.* In these circumstances, the court held, “plaintiff had waived the attorney-client privilege by placing the subject matter of counsel’s advice in issue and by making selective disclosure of such advice.” *Id.* Moreover, the “record disclose[d] a substantial need for said defendant to have access to materials which may allow it to contest plaintiff’s claims that its attorneys advised it at all.” *Id.* In this case, there is no factual dispute over whether the NRA’s attorneys “advised it all”; moreover, the advice given by the NRA’s attorneys has no relevance whatsoever to any claim or defense.

*United States v. Bilzerian* involved a criminal securities fraud trial. 926 F.2d 1285, 1291-92 (2d Cir. 1991). There, the defendant (Bilzerian) asserted lack of *mens rea* based on “his good faith attempt to comply with the securities laws.” *Id.* The court held that if Bilzerian chose to make this defense, he would effect a waiver of attorney client privilege “for Bilzerian’s testimony that he thought his actions were legal would have put his knowledge of the law and the basis for his understanding of what the law required in issue.” *Id.* Under those circumstances, “[h]is conversations with counsel regarding the legality of his schemes would have been directly relevant in determining the extent of his knowledge and, as a result, his intent.” *Id.* Here, the NRA has not made any similar “good faith” or “advice of counsel” defense that would implicate communications with its attorneys.

#### **E. The NRA Has Not Waived Privilege Over All Documents on Which Non-Attorney Auditors and Vendors Were Included**

The NYAG also asserts in Section IV of the Letter that documents withheld on privilege grounds and listed on the NRA’s detailed categorical log should be produced because they involve third parties. The NYAG’s request should be rejected because it is untimely and has no merit.

As the NYAG’s letter acknowledges, the NRA’s categorical logs were supplemented by the NRA (at the NYAG’s request) on or about July 5, 2022. Months later and weeks before the note of issue date, the NYAG takes issue with the NRA’s categorical logs. There is no reason why the NYAG could not have sought this relief as early as July 2022.

Moreover, the fact that third parties were copied on certain communications is not

B R E W E R

November 4, 2022

Page 11

dispositive on the issue of privilege. For example, there is no waiver where the presence of a third party is necessary to the provision of legal advice and the holder of the privilege has a reasonable expectation of confidentiality. *Bluebird Partners*, 248 A.D.2d at 225 (“The work product privilege is waived upon disclosure to a third party only when there is a likelihood that the material will be revealed to an adversary, under conditions that are inconsistent with a desire to maintain confidentiality”); *Oakwood Realty Corp. v. HRH Constr. Corp.*, 51 A.D.3d 747, 749 (2d Dep’t 2008). And communications involving multiple privilege holders are also privileged to the extent made in furtherance of common legal interests. *Hyatt*, 105 A.D.3d at 205. The NYAG’s belated request that the NRA re-review the documents it withheld, in order to more granularly assert the basis for withholding these documents should, be rejected. The NRA’s privilege log is more than adequate to support its privilege claims.

Equally misguided is the NYAG’s argument based on Judge Cohen’s recent ruling regarding certain specific documents in Aronson’s possession. The NYAG fails to mention that Your Honor held that certain documents shared with the auditor were privileged—a ruling the NYAG did not appeal. (*See* Second Amendment to Order re Aronson Documents, dated May 12, 2022). It is precluded from arguing that all communications with auditors are not privileged. Moreover, that the NYAG has been on notice that some of the withheld communications are with RSM and Aronson for months and never sought relief until the eleventh hour is another reason for denying the relief she seeks.

\*\*\*

In sum, while the NRA will comply with the reasonable requests in NYAG’s letter, it vigorously rejects NYAG’s baseless contention that NRA has somehow effected a sweeping subject-matter waiver of its attorney-client, work product, or trial preparation privileges, or that its privilege log is otherwise inadequate.

Respectfully submitted,

/s/ Noah Peters

William A. Brewer III

Svetlana M. Eisenberg

Noah Peters

BREWER, ATTORNEYS &amp; COUNSELORS

750 Lexington Avenue, 14th Floor

New York, New York 10022

Telephone: (212) 489-1400

Facsimile: (212) 751-2849

CC: All Counsel of Record

# **EXHIBIT C**

2022.11.14 SM - Conference Trans FINAL



Page 1

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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

PLAINTIFF,

-against-

Case No.:  
451625/2020

THE NATIONAL RIFLE ASSOCIATION OF AMERICA,  
INC., WAYNE LaPIERRE, WILSON PHILLIPS, JOHN  
FRAZER, and JOSHUA POWELL,

DEFENDANT.

-----X  
DATE: November 14, 2022

TIME: 10:00 A.M.

ORAL ARGUMENT before SPECIAL  
MASTER O. PETER SHERWOOD for Discovery,  
held remotely, at all parties' locations,  
before Karyn Chiusano, a Notary Public of  
the State of New York.

Page 2

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

NEW YORK STATE OFFICE OF THE  
ATTORNEY GENERAL

Attorneys for the Plaintiff  
PEOPLE OF THE STATE OF NEW YORK, BY  
LETITIA JAMES, ATTORNEY GENERAL OF THE  
STATE OF NEW YORK  
28 Liberty Street ~ 16th Floor  
New York, New York 10005  
BY: MONICA CONNELL, ESQ.  
JONATHAN CONLEY, ESQ.  
EMILY STERN, ESQ.

## BREWER, ATTORNEYS &amp; COUNSELORS

Attorneys for the Defendant  
THE NATIONAL RIFLE ASSOCIATION OF  
AMERICA, INC.  
750 Lexington Avenue  
New York, New York 10022  
BY: SVETLANA EISENBERG, ESQ.  
sme@brewerattorneys.com

## CORRELL LAW GROUP

Attorneys for the Defendant  
WAYNE LAPIERRE  
102 East 10th Street  
New York, New York 10003  
BY: KENT CORRELL, ESQ.  
kent@correlllawgroup.com

## WERBNER LAW

Attorneys for the Defendant  
WILSON PHILLIPS  
5600 W Lovers Lane ~ Suite 116-314  
Dallas, Texas 75209  
BY: MARK WERBNER, ESQ.  
mwerbner@werbnerlaw.com

(Appearances continue on following page.)

## A P P E A R A N C E S: (Continued)

GAGE, SPENCER & FLEMING, LLP  
Attorneys for the Defendant

JOHN FRAZER  
410 Park Avenue ~ #810  
New York, New York 10022  
BY: WILLIAM FLEMING, ESQ.  
ELLEN JOHNSON, ESQ.  
wfleming@gagespencer.com

AKIN, GUMP, STRAUSS, HAUER & FELD, LLP  
Attorneys for the Defendant

JOSH POWELL  
Bank of America Tower  
1 Bryant Park  
New York, New York 10036  
BY: SAMANTHA BLOCK, ESQ.  
HAYLEY BOOKER, ESQ.  
tmclish@akingump.com

WINSTON & STRAWN, LLP  
Attorneys for WILSON PHILLIPS  
MetLife Building

200 Park Avenue  
New York New, York 10166  
BY: SETH FARBER, ESQ.  
REBECCA LOEGERING, ESQ.  
sfarber@winston.com

## ALSO PRESENT:

JIM FARMER, Concierge  
ZEF CODA, Videographer  
NYNA SARGEANT

\* \* \*

Page 4

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 SPECIAL MASTER SHERWOOD: So, it  
3 looks like we have four sets of  
4 communications that we need to go  
5 through. At least that is the way I  
6 have organized them. I hope this  
7 works for everyone.

8 There is the October 20th  
9 Letter of the Attorney General and  
10 responses to that. There is then the  
11 letter of the NRA, Ms. Eisenberg's  
12 letter of the same date and responses  
13 to that.

14 With respect to privilege  
15 claims asserted by the Attorney  
16 General's Office then there is a  
17 second letter, same date, October  
18 20th, by Ms. Eisenberg, again, as to  
19 fees that they are seeking  
20 reimbursement for, relating to the  
21 subpoena addressed to Aronson in the  
22 Orders and then, there is the October  
23 23rd Letter of, it looks like, Ms.  
24 Con -- Ms. Connell, the attorney --  
25 yes, Ms. Connell from the Attorney

Page 5

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 General's Office.

3 With respect to that last one,  
4 Ms. Connell, is that still on the  
5 table or -- or not?

6 MS. CONNELL: Your Honor, I  
7 didn't have it on my, sort of, agenda  
8 for today.

9 Let me take a look at it and  
10 maybe we can begin with October 20th  
11 and I will let you know.

12 SPECIAL MASTER: That is what we  
13 will do.

14 I just want to know if that is  
15 one of the items that will be covered  
16 today. It has to do with -- let's  
17 see. Oh, it's the -- this is the  
18 whistleblower and Frenkel Report.

19 MS. CONNELL: Right.

20 No, Your Honor.

21 We don't need to address that  
22 today.

23 SPECIAL MASTER SHERWOOD: All  
24 right.

25 One down, three to go.

Page 6

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 Let's begin then with the  
3 Attorney General's letter of the  
4 20th. This has to do with -- hold on.  
5 -- this has to do with a number of  
6 matters relating to --

7 MS. CONNELL: Your Honor, it  
8 has to do with the NRA's using  
9 privilege as a sword and a shield in  
10 regard to certain matters and it has  
11 to do with materials being withheld  
12 in -- in relation to the NRA's  
13 independant Auditor, Aronson, and  
14 materials being withheld by the NRA  
15 in relation to the NRA Membership  
16 Marketing Partners and its affiliates  
17 and it has to do with matters that we  
18 believe are inappropriately withheld  
19 on the NRA's privilege log.

20 SPECIAL MASTER SHERWOOD: Okay.  
21 Give me a moment to look at  
22 some notes here.

23 MS. CONNELL: Sure.

24 SPECIAL MASTER SHERWOOD: All  
25 right.

Page 7

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 So, this has largely to do with  
3 the information relating to the  
4 course correction and the NRA claims  
5 that this is privileged information.

6 The AG asserts that where  
7 you're using the so-called  
8 "privileged information" as a sword,  
9 that's not permitted and that's  
10 what's being asserted here, in that  
11 the NRA is asserting advice of  
12 counsel and -- as a Defense in this  
13 case.

14 Ms. Eisenberg says "no, we are  
15 not doing that at all." And they say  
16 that the privilege does apply to  
17 internal investigations and the fact  
18 that they make reference to it in its  
19 pleading doesn't ring appropriate.

20 So, my question is: Okay. Just  
21 what is it that is being withheld at  
22 this point? Because I understand from  
23 Ms. Eisenberg that there are a number  
24 of categories of documents that --  
25 that's being sought that is not being

Page 8

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 withheld, the so-called raw data, et

3 cetera.

4 So help me out, Ms. Eisenberg:

5 What is actually being withheld here?

6 MS. EISENBERG: We are --

7 MS. CONNELL: I'm sorry.

8 MS. EISENBERG: Your Honor, we

9 are withholding, Your Honor,

10 communications that are privileged,

11 pursuant to the attorney/client

12 privilege, the work product doctrine

13 and the trial preparation.

14 SPECIAL MASTER SHERWOOD: That's

15 not what I am asking. I know the

16 labels. I want to know: What's the

17 nature of the documents, not what's

18 the nature of the privilege.

19 MS. EISENBERG: The documents

20 are communications between the NRA

21 and its counsel during the various

22 years at issue in this case.

23 They are the usual

24 attorney/client communications that

25 one would expect a corporation to



Page 9

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 have with its lawyers. They pertain  
3 to a whole variety of different legal  
4 issues that, I guess, sequentially  
5 are connected to certain actions that  
6 the NRA took in this case.

7 But they are not documents or  
8 communications that the NRA is  
9 planning to offer at trial or feature  
10 at trial or rely on at trial in any  
11 way, shape or form for any of its  
12 defenses.

13 SPECIAL MASTER SHERWOOD: Now,  
14 these are -- are these documents that  
15 are being withheld within the bundle  
16 of documents that you are going to  
17 produce by Wednesday for in-camera  
18 review?

19 MS. EISENBERG: Yes and no,  
20 Your Honor.

21 So, we draw the --

22 SPECIAL MASTER SHERWOOD: I  
23 don't know what that means.

24 What you're going to tell me?

25 MS. EISENBERG: I am happy to

Page 10

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 explain.

3 So, first of all, we draw a  
4 distinction between the waiver  
5 argument that Ms. Connell puts  
6 forward and then, the argument that  
7 she makes about third parties.

8 And I think it's a really  
9 important distinction and I think we  
10 should discuss those issues  
11 separately.

12 With regard to communications  
13 where Aronson, RSM, MMP are copied,  
14 that's very easy, I went through them  
15 this weekend, some of them are  
16 non-privileged, we are going to turn  
17 them over. I think the AG already  
18 has duplicates. Some of them are  
19 privileged and we are going to turn  
20 them over to you today and give you  
21 the rest on Wednesday.

22 And I think that you will see  
23 from the communications that they are  
24 clearly privileged because some of  
25 these third parties were involved in

Page 11

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 providing services to the NRA where  
3 they were integral to the legal  
4 advice being sought and rendered.

5 So, that's --

6 SPECIAL MASTER SHERWOOD: Are  
7 these the Aronson documents right now  
8 or are they documents relating to  
9 communications where Aronson was not  
10 involved?

11 MS. EISENBERG: There is --  
12 there's a number of third parties  
13 that Ms. Connell identified,  
14 including MMP, who was in charge of  
15 membership and fundraising, McKenna,  
16 who was a consultant and the two  
17 auditors: Aronson and RSM.

18 SPECIAL MASTER SHERWOOD: Okay.

19 MS. EISENBERG: They are a kind  
20 of a bucket of its own.

21 But like I said, those are very  
22 easy, either we will turn them over  
23 or you will give them to you and  
24 you'll see, in camera, that they are,  
25 in fact, privileged.

Page 12

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 SPECIAL MASTER SHERWOOD: Okay.

3 MS. EISENBERG: So then, we  
4 move on to the separate category for  
5 which Ms. Connell is saying even  
6 though these are communications  
7 between the NRA and its lawyers, the  
8 NRA, according to Ms. Connell,  
9 implicitly waived privileges to those  
10 because the NRA wants to tell the  
11 jury about enhanced processes,  
12 compliance training, repayments by  
13 executives, controls in place and  
14 things like that.

15 And the number of documents  
16 that are privileged that relate to  
17 all of these things is -- is  
18 tremendous.

19 In our letter, we indicated  
20 that it was around 600. Actually, on  
21 sort of reassessment, there are  
22 thousands of documents that are  
23 privileged in that category and so,  
24 it wouldn't be practical, Your Honor,  
25 to put all of those in front of you.

Page 13

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 So, instead, what we will do,  
3 we will give you a representative  
4 sample of communications between the  
5 NRA and various lawyers, where Ms.  
6 Connell wants to pierce the  
7 privilege.

8 For example, our firm, for  
9 example, Don Lan, for example, Morgan  
10 Lewis.

11 And again, because we are not  
12 placing those communications at issue  
13 and because, you'll see the AG has no  
14 need for those communications in this  
15 case.

16 We are confident, Your Honor,  
17 that you will find that there has  
18 been no waiver.

19 Frankly, for the record, we  
20 don't even think that they have made  
21 a threshold showing of waiver to even  
22 necessitate an in-camera review by  
23 you but we are happy to provide some  
24 of these documents to you, just to  
25 give you the comfort that their

Page 14

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 argument completely lacks merit.

3 SPECIAL MASTER SHERWOOD: Okay.

4 All right. Let's go back to you -- I

5 will come back to you in a moment,

6 Ms. Eisenberg.

7 But let's come back to you, Ms.

8 Connell.

9 You started to say something

10 and I sort of cut you off because I

11 wanted to talk to Ms. Eisenberg.

12 MS. CONNELL: I'm sorry, Your

13 Honor.

14 That was my misunderstanding.

15 I thought you directing that question

16 to me. You did not cut me off. I

17 think I jumped in.

18 Your Honor, one thing I would

19 like to say at the outset is that

20 it's nice to get documents now but

21 why has the NRA been withheld

22 documents --

23 SPECIAL MASTER SHERWOOD: We are

24 where we are.

25 MS. CONNELL: Okay. So, Your

Page 15

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 Honor, I want to stress it's not only  
3 documents at issue. The Attorney  
4 General's Office has been trying to  
5 get information from the NRA through  
6 depositions and other means and has  
7 been precluded from doing so by the  
8 NRA's assertion of privilege.

9 And what's important here to  
10 understand is that we are not seeking  
11 to pierce privilege on sort of normal  
12 every day matters, we are seeking to  
13 obtain information in fairness we are  
14 entitled to because the NRA has  
15 affirmatively placed certain issues,  
16 certain matters at issue, in this  
17 lawsuit.

18 The NRA made that election, it  
19 made that choice and it also made the  
20 choice to have counsel, the  
21 litigation counsel for fraud  
22 investigation and outside counsel  
23 conduct -- handle certain work for  
24 it.

25 The NRA is relying upon that

Page 16

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 work in order to assert a defense and  
3 arguments in this case. So, it's not  
4 merely that it got advice of counsel  
5 or that it -- that it sought guidance  
6 from counsel on certain issues.

7 The NRA is saying, for example,  
8 that it retained outside counsel and  
9 consultants and it's asserting that  
10 as proof of its reform efforts,  
11 saying you don't need to oppose a  
12 monitor, Judge, you don't need to  
13 impose injunctive relief because we  
14 have been reforming.

15 We were relying on K & L Gates,  
16 Morgan Lewis, Don Lan and others to  
17 advise us. Even one of their experts  
18 has opined that the NRA's reliance on  
19 citation to these outside counsel and  
20 outside consultants is evidence of it  
21 setting and appropriate tone at the  
22 top and complying with the COSO  
23 Framework, which is the gold standard  
24 for compliance reform.

25 The NRA has affirmatively



Page 17

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 placed at issue that it has  
3 investigated and sought repayment for  
4 excess payments received by its  
5 employees.

6 Why has it done this? It wants  
7 to show that there's no need for  
8 perspective injunctive relief.

9 It alleges in its answer, it  
10 has alleged in motion practice, it  
11 has argued in motion practice and it  
12 has argued at the bankruptcy, that  
13 Wayne LaPierre, for example, has  
14 repaid excess benefits with interest.

15 But in this regard, Your Honor,  
16 the NRA has refused to let us  
17 understand, or peek behind the  
18 curtain, as to how it determines what  
19 excess benefits were owed, whether it  
20 has identified the potential universe  
21 of excess benefits, calculated  
22 amounts owed or whether it has fairly  
23 assessed those amounts owed and this  
24 is simply not sufficient.

25 This is a partial waiver

Page 18

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 because they revealed some  
3 information relating to how the  
4 Brewer Firm and outside counsel, Don  
5 Lan, identified the amounts of excess  
6 benefits that are owed.

7 But they cherry picked the  
8 information and not let us really get  
9 an understanding or test the accuracy  
10 and sufficiency of those assertions.

11 And frankly, Your Honor, that's  
12 not permitted. And I want to be  
13 clear on something that Ms. Eisenberg  
14 said. It is simply not necessary,  
15 under New York law, to affirmatively  
16 assert an Advice of Counsel defense  
17 to invoke at issue waiver of  
18 privileged matters.

19 The cases we have cited are  
20 clear on this. The fact that they put  
21 these issues affirmatively at issue  
22 in this case acts as an at-issue  
23 waiver and it can be applied, it can  
24 be explicit or implicit.

25 So, the NRA has done this.

Page 19

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 Cases like ORCO Bank and  
3 Gottwald versus Saber demonstrate  
4 that you can't wait until the end of  
5 Discovery and suddenly pop up with  
6 some Excel spreadsheets, the way the  
7 NRA has done.

8 We completed the NRA's  
9 corporate rep deposition on September  
10 9th, pretty long after the close of  
11 fact discover but it's only now that  
12 are getting some Excel spreadsheets  
13 but we have been robbed of the  
14 opportunity say: Okay. Who prepared  
15 the spreadsheet? How did they  
16 prepare it? What did they look at to  
17 determine excess benefits? What  
18 didn't they look at? How did they  
19 calculate how much is owed? Who  
20 determined whether there was a  
21 business purpose and how did they do  
22 that?

23 They have simply blocked the  
24 Plaintiff's ability to inquire and  
25 test the assertions and yet, the NRA

Page 20

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 is going to and has, throughout this  
3 case and the bankruptcy case, touted  
4 its attempts to identify and seek  
5 payment of excess benefits as a  
6 defense and evidence of its reform  
7 and lack of need for injunctive  
8 relief.

9 Your Honor, under the cases  
10 that we have cited, we would argue  
11 that the answer is late production of  
12 these documents doesn't make  
13 Plaintiff whole.

14 We are aware that we are where  
15 we are, Your Honor, as you so  
16 correctly put it and frankly, you  
17 know, while we want to be made whole,  
18 Plaintiff wants to get on to the  
19 trial of this matter.

20 And we would assert that the  
21 correct -- the correct relief here  
22 would be that the NRA can't rely upon  
23 arguments and issues that it has  
24 denied Plaintiff disclosure of.

25 Can it say that Mr. LaPierre

Page 21

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 repaid \$600,000.00? Sure.

3 Can it say that the NRA, as it  
4 has before, conducted an  
5 investigation of excess benefits and  
6 repaid them all?

7 No. It can't because it won't  
8 let us find that out.

9 And how won't us let us find  
10 that out?

11 Well, for example, when we  
12 asked about investigations being  
13 conducted, whether they are complete,  
14 whether they are ongoing, who is  
15 doing them, what are they doing?

16 We are told by the NRA's  
17 corporate rep that that is a  
18 privileged matter that we can't  
19 inquire into. We are told by the  
20 Heads of the Audit Committee and the  
21 First and Second Vice President,  
22 that's privileged and we can't  
23 inquire into.

24 Fair enough.

25 If the NRA wants to protect

Page 22

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 this information as privileged, it's  
3 entitled to do that.

4 But then, it bears the results  
5 of its conduct, which is that it  
6 can't come into court and open those  
7 matters up to the court, other than  
8 it refused to open up to us in  
9 Discovery.

10 SPECIAL MASTER SHERWOOD: I  
11 thought that -- maybe I'm mistaken  
12 but I thought that Ms. Eisenberg said  
13 that they are not going to rely on  
14 their course correction or 360 review  
15 as their defense.

16 But let me hear from you about  
17 that, Ms. Eisenberg.

18 MS. EISENBERG: Your Honor,  
19 what I said was that we are not going  
20 to rely on privileged documents that  
21 reflect advice from the NRA's lawyers  
22 to the NRA, even if those documents  
23 relate to the NRA's efforts to  
24 achieve full compliance with all of  
25 the laws and regulations that apply.

Page 23

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 So, the NRA, for example, has  
3 been conducting training for its  
4 senior-level employees and now, it's  
5 available for everyone on the  
6 internet and now, the Board has been  
7 trained.

8 Absolutely, Your Honor, the NRA  
9 should not be precluded from telling  
10 the jury and the Judge that that has  
11 become normal course of business at  
12 the NRA.

13 What Ms. Connell wants is to  
14 see privileged communications between  
15 our firm and the NRA, when the  
16 training presentation was being  
17 prepared. That has no relevance to  
18 her ability to do both the  
19 effectiveness of our training.

20 If she thinks that the training  
21 is ineffective, she has the slide  
22 decks, she can argue that it's  
23 ineffective on its face.

24 There is nothing in the  
25 privileged communications related to

Page 24

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 the preparation of those  
3 presentations that she needs in order  
4 to prove up any of her claims or  
5 disprove any of our defenses.

6 Another example: The NRA has  
7 recently amended a number --

8 SPECIAL MASTER SHERWOOD: Let me  
9 just ask you this: So, you're going  
10 to be using course correction  
11 materials that includes training and  
12 so on, I assume you're going to be  
13 arguing that those measures are  
14 accurate.

15 Do I have that right?  
16 Sufficient?

17 Do I have that right?

18 MS. EISENBERG: Yes.

19 The NRA will argue that the  
20 processes it has in place are  
21 sufficient and the appointment of the  
22 Independant Compliance Monitor is,  
23 therefore, not warranted but --

24 SPECIAL MASTER SHERWOOD: And in  
25 order to do that, you're going to



Page 25

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 explain why they are sufficient;

3 right?

4 MS. EISENBERG: Right.

5 But we are not going to do it

6 by reference to findings of

7 privileged discussion -- privileged

8 investigations or subject-matter

9 privileged discussions.

10 I think it's a really important

11 distinction.

12 We are not saying --

13 SPECIAL MASTER SHERWOOD: That

14 is what I am trying to understand:

15 The distinction that you say is

16 important.

17 Just help me out --

18 MS. EISENBERG: Yes.

19 SPECIAL MASTER SHERWOOD: -- so

20 that I understand it.

21 MS. EISENBERG: Exactly.

22 As you know, Your Honor, the

23 claims by the NYAG against -- by the

24 NYAG against the NRA is that there

25 were unauthorized related-party

Page 26

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 transactions, violations of  
3 whistleblower, laws and policies, and  
4 incorrect filings.

5 The NRA's defense is not that  
6 we didn't do anything wrong but if we  
7 did it wrong, we shouldn't be held  
8 liable because our lawyers told us  
9 that that would be okay.

10 That is not the NRA's defense.  
11 And that is sort of the classic  
12 paradigm of a reliance on a -- the  
13 Advice of Counsel Defense, which is  
14 the Rosarium case that Ms. Connell  
15 cites.

16 Our defense is that we didn't  
17 engage in unauthorized or unratified  
18 related-party transactions, we did  
19 not violate whistleblower policies  
20 and laws and we did not make  
21 inaccurate statements in regulatory  
22 filings.

23 And then, to the extent the  
24 factfinder were to find that some  
25 violations or technical infractions

Page 27

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 occurred in the past, we are also  
3 going to say that targeted relief  
4 that the NYAG seeks in her Claims 2  
5 through 15 is more than sufficient to  
6 address any concerns that the court  
7 may have and that therefore, the  
8 appointment, the draconian measure,  
9 applying an Independant Compliance  
10 Monitor is certainly not warranted.

11 We, of course, do want to tell  
12 the Judge and the jury that we have  
13 training and of course, we do want to  
14 tell them that we have had these  
15 policies for decades and, even  
16 more-recently, amended the policies  
17 to make them more current and more  
18 state of the art.

19 Of course we want to be able to  
20 tell the jury and the Judge that  
21 there are eyes and principles in  
22 place that a payment cannot go out  
23 the door unless two different people  
24 authorize it.

25 Of course we want to tell the

Page 28

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 jury that there are recusal  
3 mechanisms that are in place, where  
4 someone has a potential conflict of  
5 interest.

6 But the point is that we either  
7 have those processes or we don't. And  
8 if Ms. Connell disagrees with that,  
9 she can put forward evidence that she  
10 thinks undercuts our witnesses when  
11 they say so.

12 What Ms. Connell is trying to  
13 do is pierce the privilege, where  
14 there is absolutely no basis for any  
15 kind of waiver and we said it very  
16 clearly in our letter: We are not  
17 going to refer to privileged  
18 communications at trial. We are not  
19 going to say that because they are  
20 lawyers in the mix, we, therefore,  
21 don't need a monitor. We are not  
22 going to say that even if what we did  
23 was wrong, shouldn't be held against  
24 us because our lawyers told us.

25 I will admit there is one

Page 29

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 reference in one of the expert  
3 reports where an expert says: "It  
4 was reasonable for the NRA to hire a  
5 tax lawyer to advise the NRA on  
6 excess benefit issues."

7 We will not elicit evidence or  
8 testimony to that effect.

9 That's the only example I think  
10 where I agreed, if we were to put  
11 forward that as -- as evidence of  
12 course correction, it would be, I  
13 guess, fair for them to inquire about  
14 that but we are not going to do that.

15 MS. CONNELL: Your Honor --

16 SPECIAL MASTER SHERWOOD: You're  
17 going to be putting forward to the  
18 jury the various -- let me just use  
19 what -- what you're doing on the  
20 accounting side: Various checks and  
21 balances, which you then argue are  
22 sufficient and if -- with respect to  
23 that: Where is that evidence coming  
24 from?

25 Other than that you put the

Page 30

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 procedures in place as a result of  
3 advice given to you by lawyers and  
4 Accountants.

5 MS. EISENBERG: No.

6 Your Honor, that is not what we  
7 are doing.

8 We are saying the NRA, acting  
9 through its Board and through its  
10 Audit Committee, had policies and  
11 procedures, checks and balances and  
12 various controls and in the last  
13 couple of years, has enhanced them  
14 even further.

15 It is not the NRA's position,  
16 at trial, that lawyers conducted an  
17 investigation and determined that X,  
18 Y and Z needed to be done, the NRA  
19 did X, Y, Z and, therefore, it's  
20 sufficient.

21 I think it's completely an  
22 opposite to compare this case to the  
23 sexual harassment cases that Ms.  
24 Connell cites, where you have a  
25 person coming forward, they are being

Page 31

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 sexually harassed, the company  
3 conducts an investigation and then,  
4 based on that investigation, takes  
5 remedial measures to prevent future  
6 harassment, which, unfortunately  
7 occurs, and the company says: "Well,  
8 we did what was reasonable under the  
9 circumstances, don't hold us liable."

10 That is completely an opposite,  
11 that is not at all what is happening  
12 here and just because the NRA has  
13 lawyers and consults lawyers, which I  
14 think being the NRA's regulator, I  
15 think Ms. Connell should be pleased  
16 about, does not, in and of itself,  
17 mean that the NRA waived it's  
18 privileges.

19 SPECIAL MASTER SHERWOOD: Okay.  
20 All right.

21 MS. CONNELL: Your Honor?

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

24 MS. CONNELL: This is Monica  
25 Connell.

Page 32

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 SPECIAL MASTER SHERWOOD:

3 Monica, yes.

4 MS. CONNELL: I would like to  
5 address a couple of things.

6 SPECIAL MASTER SHERWOOD: All  
7 right.

8 MS. CONNELL: I will just note  
9 that we didn't specifically tease  
10 out, in our letter, the compliance  
11 training.

12 That's because, by and large,  
13 we have gotten the slide decks, we've  
14 gotten attendance sheets about the  
15 compliance training, we know what it  
16 is, fair enough.

17 But the case law is clear that  
18 the NRA can't do what it's doing  
19 here, which is using privilege as a  
20 sword and a shield and prejudicing  
21 our case, when they put into issue a  
22 fact that, in fairness, requires  
23 Discovery of protected information.

24 And it is just simply not true  
25 that the NRA is not going to rely on



Page 33

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 any way of privileged information.

3 It may not pull out a letter from the  
4 Brewer Firm to Wayne LaPierre but it  
5 is one hundred percent relying on  
6 information it has prevented the  
7 Plaintiff from obtaining.

8 And I would like to say, Your  
9 Honor, in regard to the course  
10 correction, the NRA has multiple  
11 expert reports that opine that the  
12 course correction is sufficient,  
13 there's no need for the injunctive  
14 relief that the Attorney General  
15 seeks, that thing with the control  
16 environment in the NRA is good as of  
17 now and those representations and  
18 that argument that the NRA puts  
19 forward in its answer in the preamble  
20 to its answer, we have been unable to  
21 test.

22 How have we been unable to test  
23 this?

24 For example, we asked the NRA:  
25 Have you investigated Mr. LaPierre's

Page 34

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 Conflict of Interest with the MMP  
3 entities? The entities that the NRA  
4 has paid close to \$100 Million to,  
5 and he accepted gifts of great value  
6 from; right?

7 And what we were told initially  
8 is: "No, we don't know about whether  
9 there is any investigation. No, we  
10 don't know whether there is an  
11 investigation."

12 And then the corporate  
13 representative said: "Actually,  
14 there is an investigation but it's  
15 privileged and you can't find out  
16 about it."

17 But are they going to testify  
18 that the the NRA has investigated  
19 misconduct and that it's safe to  
20 assume that there won't be further  
21 misconduct in the NRA? Of course  
22 they are. That's what their own  
23 experts opine.

24 We asked the same question  
25 about whether Mr. Phillips invocation

Page 35

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 of his Fifth Amendment right  
3 repeatedly investigated whether his  
4 excess benefits, which have not yet  
5 been repaid, have been fully  
6 investigated and an amount  
7 determined.

8 We have not been given that  
9 information, it's privileged. It's  
10 one thing, Your Honor, for the NRA to  
11 say: Here are the policies --

12 SPECIAL MASTER SHERWOOD: Let me  
13 stop you right there.

14 MS. CONNELL: Sure.

15 SPECIAL MASTER SHERWOOD: The  
16 NRA, with respect to Mr. Powell, for  
17 example, they said they conducted an  
18 investigation and what they  
19 investigated -- investigated is  
20 privilege and you're not allowed to  
21 look under the covers, sort of speak?

22 MS. CONNELL: That is exactly  
23 right, Your Honor.

24 And it's the same with the  
25 determination of excess benefits.

Page 36

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 We can know about the amount we  
3 tell you is the right amount but  
4 you're not going to be able to figure  
5 it out yourself or test that  
6 assertion and the cases that we cite  
7 make clear that is not the law.

8 SPECIAL MASTER SHERWOOD: She  
9 said she is going to give you raw  
10 data, I don't know what that is but  
11 you will have to ask her.

12 MS. CONNELL: I don't know what  
13 that is, also, Your Honor.

14 And frankly, it's November  
15 14th, fact Discovery closed July  
16 15th. A lot of these determinations  
17 we just got a spreadsheet that lists  
18 out some excess benefits  
19 determinations or made in 2020.

20 Why are we learning about this  
21 now and why did they block this from  
22 asking these questions until now?  
23 Frankly, we asked their witnesses  
24 very straightforward questions: What  
25 period of time did you look at? Who

Page 37

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 determined the business purpose?

3 What did you do if there was a mixed

4 purpose? What document -- did you

5 look at other documents? Who

6 determined what documents your tax

7 expert would look at?

8 SPECIAL MASTER SHERWOOD: Let me

9 ask Ms. Eisenberg about that.

10 What say you about that? Let's

11 focus on the excess benefits.

12 MS. EISENBERG: Certainly, Your

13 Honor.

14 SPECIAL MASTER SHERWOOD: Wait.

15 You have said that Mr. LaPierre

16 made a very-substantial payment to

17 the NRA to reimburse for excess

18 benefits and the AG says: "Well, we

19 don't know that the repayment was

20 adequate" and they want to figure out

21 how you got to where you were and how

22 else are they going to be able to do

23 that except to probe into what was

24 discovered, what was looked at and

25 the results you obtained, rather than

Page 38

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 simply saying: "He paid back money.  
3 He paid back a half a million dollars  
4 and that's the end of it."

5 This is what we determined in  
6 Discovery.

7 MS. EISENBERG: Your Honor, so  
8 Ms. Connell's statement severely  
9 mischaracterizes the ample  
10 information that her office has --

11 SPECIAL MASTER SHERWOOD: That's  
12 why I am giving you a shot.

13 MS. EISENBERG: Yes.

14 So, they have a series of  
15 spreadsheets, some which they have  
16 from 2021 and some of which they've  
17 have since September that detail what  
18 was repaid? What was the amount of  
19 the transaction? What was the  
20 interest that was calculated? When  
21 did the transaction occur? What was  
22 the type of the transaction?

23 And then, they also have a copy  
24 of a check. And then, they also have  
25 the description in the 990 of how the

Page 39

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 NRA disclosed it there.

3 So, for Ms. Connell to sit  
4 there and suggest that she has no  
5 idea what is encompassed by the  
6 \$600,000.00 is completely inaccurate.  
7 They know exactly what was repaid and  
8 therefore, if they think something  
9 else should have been repaid, they  
10 know it was not.

11 And for them to say: "Well, we  
12 need to know what you guys discussed  
13 with your tax lawyer," that is  
14 completely unwarranted.

15 Either Mr. LaPierre repaid a  
16 particular transaction or he did not.

17 Ms. Connell has that  
18 information, she has that knowledge.

19 She has no reason to inquire  
20 about what Don Lan, the tax attorney,  
21 what kind of advice he gave to the  
22 NRA.

23 SPECIAL MASTER SHERWOOD: Now,  
24 in your view, does she have -- is she  
25 entitled to know where the NRA

Page 40

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 started with respect to this?

3 By that, I mean figuring out  
4 how much, potentially, Mr. LaPierre  
5 owed and then, of course, you go  
6 through a process to determine well,  
7 what's the appropriate amount of --  
8 the who came up with that number?

9 MS. EISENBERG: Two parts to  
10 that: First of all, with respect to  
11 the first repayment, back in 2020,  
12 she has that information because the  
13 spreadsheet provides not only what he  
14 repaid but also other transactions  
15 that were analyzed and determined  
16 that he didn't need to repay them.

17 Second, for the subsequent  
18 repayments: A), I don't think she is  
19 entitled to that information but B),  
20 she has it. Because she knows what  
21 transactions have transpired; she  
22 enumerates them in her complaint and  
23 she says: "These transactions should  
24 not have occurred."

25 So, she now knows which ones



Page 41

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 have been repaid and by implication,  
3 everything that has not been repaid  
4 has not been determined that it needs  
5 to be repaid.

6 Now, the NRA, of course, has  
7 not taken the position that any any  
8 and all repayments that must occur  
9 have already occurred. There are a  
10 lot of different transactions and the  
11 NRA is taking a careful and dire and  
12 deliberate approach and if there are  
13 additional payments, we will apprise  
14 the NYAG of that.

15 But if, at the time of trial,  
16 no additional repayments have  
17 occurred, they will know what has  
18 been repaid and what has not and they  
19 can make --

20 SPECIAL MASTER SHERWOOD: If  
21 you're still conducting  
22 investigations into what has been  
23 paid, what has -- what excess  
24 transactions occurred and didn't  
25 occur until such time that you make a

Page 42

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 determination that it is one of those  
3 improper transactions, I gather your  
4 -- your -- you're maintaining that  
5 the AG is not entitled to know what  
6 it is.

7 MS. EISENBERG: Absolutely.

8 SPECIAL MASTER SHERWOOD: They  
9 are only entitled to know those --  
10 about those that you -- you conclude  
11 are improper transactions; right?

12 MS. EISENBERG: Right.

13 And we didn't conclude that  
14 they were necessary "improper."

15 I think, as the 990 makes  
16 clear, that some of them were for  
17 personal reasons and therefore, the  
18 simple calculation had to be repaid.

19 But some of them, it's very  
20 clear that they were deemed to be  
21 excess benefits for purposes of going  
22 above and beyond and aerating on the  
23 side of caution so I don't want it to  
24 be couched in terms of an admission.

25 But yes, absolutely, more than

Page 43

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 \$600,000.00 has been repaid and Ms.

3 Connell knows exactly what that is.

4 Of course, if the NRA were to

5 determine that additional amounts

6 need to be repaid and Mr. LaPierre

7 says he will repay them, I don't

8 think the NRA should be precluded for

9 asking him for the repayments.

10 And if that were to happen, of

11 course, we would tell the NYAG about

12 it before trial.

13 SPECIAL MASTER SHERWOOD: And

14 as you go through the transactions,

15 whether something is an excess

16 benefit transaction or not is a

17 determination that the NRA makes and

18 to the extent that they look at

19 transactions, which either you

20 conclude is not an excess benefit

21 transactions or that you haven't come

22 to a decision about, the fact of

23 those, the existence of those two

24 types of transactions is not

25 discoverable.

Page 44

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 Is that what you're telling me?

3 MS. EISENBERG: In other words,  
4 you're saying that of the ones that  
5 haven't been repaid --

6 SPECIAL MASTER SHERWOOD: I am  
7 not saying anything.

8 MS. EISENBERG: I just want to  
9 make sure I understand.

10 Your question presupposes that  
11 of the transactions that haven't been  
12 repaid some have been determined not  
13 to be excess benefits and some are  
14 still under investigation.

15 And your question is: Ms.  
16 Connell is not entitled to know  
17 what's in the first verse the second  
18 bucket.

19 Is that your question?

20 SPECIAL MASTER SHERWOOD: That  
21 is exactly right.

22 MS. EISENBERG: Right.

23 I think that it slightly --  
24 there's a disconnect, I think, with  
25 reality.

Page 45

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 I think that, sitting here  
3 right now, the NRA believes it got  
4 reimbursement from Mr. LaPierre for  
5 any and all transactions that should  
6 have been borne by him in the first  
7 place.

8 But to the extent that the NRA,  
9 in the future, determines that  
10 additional payments ought to occur,  
11 it will notify Mr. LaPierre and  
12 shouldn't be precluded from doing so.

13 But I think that if -- if the  
14 question is, you know, let's say,  
15 hypothetically, you have lawyers  
16 looking at a particular set of  
17 transactions trying to determine  
18 whether or not they are excess  
19 benefits and whether or not they  
20 should be repaid by an executive.

21 Absolutely, that is privileged.

22 Counsel get hired by  
23 corporations all the time to give  
24 corporations legal advice and if that  
25 were to be occurring right now, that

Page 46

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 is not information that Ms. Connell  
3 is entitled to and -- but there's no  
4 sword and shield and there's no  
5 prejudice and there's no unfairness.  
6 It's not like in Discovery, we are  
7 not going to tell her what they are  
8 but then, at trial, we are going to  
9 say "all along, we have been  
10 investigating this."

11 We understand that we have not  
12 -- we are not putting the subject  
13 matter of privileged communications  
14 at issue at trial and that's a  
15 position that we have taken and we  
16 can't change our mind at trial.

17 SPECIAL MASTER SHERWOOD: Are  
18 you making a distinction between  
19 putting those transactions -- not  
20 putting those transactions at issue  
21 at trial but using them at the remedy  
22 stage.

23 Is that the distinction that  
24 you're making?

25 MS. EISENBERG: By those

Page 47

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 transactions are you referring to,

3 the ones that Mr. LaPierre repaid?

4 SPECIAL MASTER SHERWOOD: The  
5 ones that you just talked about.

6 MS. EISENBERG: Well, I mean  
7 there are transactions that occur at  
8 the NRA every day and the ones that  
9 the NRA has identified as being  
10 "problematic," inadvertently or  
11 otherwise, have been repaid.

12 And --

13 SPECIAL MASTER SHERWOOD: I  
14 understand that.

15 But you're -- you appear to be  
16 arguing, and you will correct me if I  
17 get it wrong, that whether or not  
18 these are excess benefit transactions  
19 is really a determination for the NRA  
20 to make and unless, and until, the  
21 NRA makes that determination, you  
22 can't look behind the curtain, to see  
23 whether you have identified a hundred  
24 percent of those transactions or just  
25 83 and a half percent of those

Page 48

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 transactions.

3 Do you get my point?

4 MS. EISENBERG: I think there  
5 is, again, a, sort of, disconnect.

6 The NRA identified transactions  
7 --

8 SPECIAL MASTER SHERWOOD: I am  
9 struggling hard to understand, trust  
10 me.

11 MS. EISENBERG: Right.

12 But there's no distinction that  
13 we are drawing between "liability"  
14 versus, you know, "relief" because  
15 one of the main claims that Ms.  
16 Connell's office makes is that assets  
17 were mismanaged.

18 So, a defense to that is: Even  
19 though, initially, payments may have  
20 been made in error, on behalf and for  
21 the benefit of Mr. LaPierre, he  
22 repaid those, with interest.

23 So, of course we do intend to  
24 offer that evidence of repayment to  
25 rebut her claim of liability.



Page 49

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 SPECIAL MASTER SHERWOOD: But  
3 there are six more such transactions.

4 MS. EISENBERG: But --

5 SPECIAL MASTER SHERWOOD: Will  
6 you talk about them?

7 MS. EISENBERG: Sorry?

8 SPECIAL MASTER SHERWOOD: What  
9 if there are another -- I am just  
10 making this up -- six additional  
11 transactions, which -- for which you  
12 did not demand repayment but fairly  
13 could be questioned as excess benefit  
14 transactions?

15 MS. EISENBERG: Right.

16 SPECIAL MASTER SHERWOOD: You're  
17 saying those transactions are -- are  
18 privileged and --

19 MS. EISENBERG: No.

20 SPECIAL MASTER SHERWOOD: -- you  
21 have no obligation to -- that is what  
22 I hear you saying.

23 Are you under no obligation to  
24 disclose them and have what you have  
25 been doing about them or not doing

Page 50

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 about them disclosed to the  
3 Plaintiff?

4 MS. EISENBERG: Thank you, Your  
5 Honor.

6 I appreciate the question and I  
7 realize realize the disconnect.

8 The point is that Ms. Connell  
9 knows about all of the transactions  
10 of that have occurred. That's not a  
11 mystery.

12 She has the general ledger.  
13 She alleges in the complaint various  
14 payments to, or for, the benefit of  
15 various executives.

16 So that information is not kept  
17 from them. And because it doesn't  
18 appear on the schedules -- if the  
19 hypothetical "six transactions" don't  
20 appear in the schedule of things that  
21 have been repaid, by definition, they  
22 can say: "No demand has been made.  
23 Nothing has been repaid. And they  
24 can make a dig deal about it, if they  
25 wish to, saying that is why an

Page 51

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 Independent Compliance Monitor is

3 required."

4 SPECIAL MASTER SHERWOOD: I got

5 it.

6 I understand what you're

7 saying.

8 MS. CONNELL: Your Honor, may I

9 address a couple of clean-up issues

10 on that?

11 SPECIAL MASTER SHERWOOD: Yes.

12 MS. CONNELL: First of all, I

13 heard counsel say that the NRA

14 believes it has received repayment

15 for all transactions for which it

16 should receive reimbursement.

17 She has stated that they have

18 -- or implied that they have

19 addressed all excess benefit

20 transactions.

21 So far, we have been talking

22 about Mr. LaPierre's flights. And we

23 don't even know that they have

24 addressed all excess benefits

25 transactions for that.

Page 52

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 They are entitled to -- this is  
3 classic cherry picking.

4 SPECIAL MASTER SHERWOOD: Hold  
5 on. Hold on.

6 MS. CONNELL: Sure.

7 SPECIAL MASTER SHERWOOD: She is  
8 not arguing that -- well, she is  
9 stating the position that they have  
10 looked into this and they have  
11 covered them and and beyond that,  
12 you're -- you, being the Office of  
13 the Attorney General, knows all of  
14 the transactions, benefits received,  
15 with all 16,000 transactions.

16 I just made up that number.

17 And simply by -- if you're --  
18 believe that in their, among the  
19 15,000 -- 16,000, are several  
20 transactions that are -- let me use  
21 the term -- my term -- that are  
22 "suspicious," you're entitled to do  
23 that.

24 But you're not entitled to  
25 know, from the NRA, whether it looked

Page 53

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 into those trance -- those particular  
3 transactions, to determine that are  
4 -- were also -- well, to determine  
5 whether they are excess benefits or  
6 not.

7 You're not entitled to know  
8 whether they looked at them or didn't  
9 look at them.

10 MS. CONNELL: So, Your Honor,  
11 the idea that we have the general  
12 ledger for certain years and we only  
13 have it for certain years and  
14 somehow, from that general ledger, we  
15 can tell what has or has not or could  
16 be an excess benefit is not accurate  
17 and not true.

18 Certainly, we are entitled to  
19 the extent that NRA said: We have  
20 identified and repaid -- it got  
21 repayment for some excess benefits or  
22 all excess benefits.

23 What criteria did they use?  
24 This is not a determination that the  
25 NRA made. When we ask about how did

Page 54

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 they arrive at this? Or when we ask  
3 about what investigation are you  
4 doing for luxury hotels, for  
5 limousine services, for expensive  
6 dinners, for which there's no  
7 evidence or business purpose, we are  
8 told: "That's privileged." Even as  
9 to past determinations. We are told:  
10 "You can't know that."

11 We can't test out the truth and  
12 the accuracy of those assertions and  
13 that's simply not permitted under  
14 governing case law.

15 And again, we are talking,  
16 primarily, about Wayne LaPierre. We  
17 have been blocked from asking about  
18 excess benefits, for example, to Mr.  
19 Phillips.

20 SPECIAL MASTER SHERWOOD: Ms.  
21 Connell, I know we are not talking  
22 about -- that the case involves  
23 excess benefits A), to other  
24 executives or Directors of the NRA.

25 We are using Wayne LaPierre

Page 55

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 simply, so that I can get a handle on  
3 -- on the issue. It, obviously, would  
4 apply to the other people as well.

5 So, let's continue to use, you  
6 know, Mr. LaPierre, since we are well  
7 down the road, with respect to all of  
8 this, using him as the example  
9 (indicating.)

10 MS. CONNELL: Can I say one  
11 other thing, really quickly? I'm  
12 sorry.

13 SPECIAL MASTER SHERWOOD:  
14 (Indicating.)

15 MS. CONNELL: We did get a  
16 spreadsheet in 2021. I presented that  
17 spreadsheet to the NRA corporate rep  
18 and asked to walk through it and he  
19 didn't know if he had ever see it  
20 before. He didn't generate it and he  
21 couldn't testify knowledgeably about  
22 it.

23 Getting new spreadsheets, after  
24 the close of Discovery, after all  
25 depositions are completed, don't help

Page 56

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 me. There are charges on there we  
3 don't know if they are repayment for  
4 monies that have been paid --

5 SPECIAL MASTER SHERWOOD: So,  
6 you received the spreadsheets after  
7 the deposition of the corporate rep.

8 Is that what happened?

9 MS. CONNELL: Yes. Yes, Your  
10 Honor.

11 And we can't test what is this  
12 payment for? What did it cover?

13 And one example is, Your Honor,  
14 there was a \$37,000.00 payment for  
15 lodging for Wayne LaPierre. We have  
16 tried -- we asked a question about  
17 that.

18 We got into quite an argument  
19 at a deposition saying it's improper.  
20 We are trying to apply something. We  
21 don't know what that charge is for.  
22 We don't know what it is for, Your  
23 Honor, and now, we have no way to  
24 find out.

25 SPECIAL MASTER SHERWOOD: Okay.



Page 57

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 Well, let me ask Ms. Eisenberg  
3 about that one.

4 What say you about that  
5 particular one?

6 It sounds like the AG couldn't  
7 have asked adequate questions about  
8 that because they didn't have that  
9 information at the time of the  
10 deposition.

11 Is that the issue or is it  
12 something else?

13 MS. EISENBERG: Well, they have  
14 always known about the underlying  
15 transactions and they could have  
16 always asked --

17 SPECIAL MASTER SHERWOOD: I am  
18 talking about the \$37,000.00 hotel  
19 transaction that she gave as an  
20 example, where it shows up after the  
21 corporate representative depositions.

22 MS. EISENBERG: Right.

23 I believe that is the one that  
24 was repaid only in September.

25 And as soon as the records

Page 58

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 related to it were generated, they

3 were turned over to the NYAG.

4 And so, I think there is

5 absolutely no merit to any claim of

6 unfairness. They always knew about

7 the underlying transactions.

8 SPECIAL MASTER SHERWOOD: About

9 this underlying transaction?

10 MS. EISENBERG: Yeah.

11 They alleged them in the

12 complaint.

13 MS. CONNELL: No.

14 SPECIAL MASTER SHERWOOD: How

15 could they have?

16 MS. EISENBERG: Because --

17 SPECIAL MASTER SHERWOOD: This

18 transaction occurred, you say, in

19 September of 2022.

20 MS. EISENBERG: No, the

21 repayment.

22 SPECIAL MASTER SHERWOOD: How

23 could she have known that?

24 MS. EISENBERG: No. No, Your

25 Honor. The repayment occurred in

Page 59

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 September, not the underlying

3 transaction.

4 The underlying transaction

5 occurred back in 2017 or 2018.

6 SPECIAL MASTER SHERWOOD: Right.

7 This is the \$37,000.00

8 transaction you're talking about?

9 I am asking you.

10 MS. EISENBERG: I don't

11 remember the amount but I do remember

12 that there is lodging in Arizona.

13 MS. CONNELL: That is not true

14 --

15 MS. EISENBERG: And there is

16 lodging in Dallas.

17 And the details that have been

18 provided to the NYAG makes clear the

19 location and the date and the amount

20 of the expense.

21 MS. CONNELL: Your Honor, we do

22 not know -- we did not know about

23 this -- about this charge and we

24 still don't know what it is about.

25 And it is important to note

Page 60

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 that the NRA, even during the  
3 argument and certainly during the  
4 bankruptcy and certainly implied in  
5 their answer in their motion practice  
6 and through their expert reports, is  
7 telling us they have done, what they  
8 call "a top to bottom 360 degree  
9 Compliance Review Program" to say  
10 that we know about something when we  
11 don't know about it is just not true.

12 So, for example, what we do  
13 because it is a notation on a chart  
14 prepared by I don't know whom that  
15 the \$37,000.00 lodging charge was  
16 allegedly paid for Mr. LaPierre by  
17 the NRA -- by Ackerman and then,  
18 repaid by the NRA.

19 We don't know why this is only  
20 being repaid now. We don't know what  
21 other charges that might have been  
22 repaid.

23 We are now faced with having to  
24 defend this assertions that all of  
25 these excess benefits have been

Page 61

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 correctly investigated, ascertained  
3 and repaid, without knowing any of  
4 how it was done.

5 SPECIAL MASTER SHERWOOD: That  
6 is -- I got it.

7 MS. CONNELL: Okay.

8 SPECIAL MASTER SHERWOOD: The  
9 next step that has to do with a  
10 request to depose Aronson for another  
11 three hours because of late-incoming  
12 information.

13 And you want three hours and  
14 you want a way to repay the cost of  
15 it.

16 Ms. Eisenberg says that we will  
17 give you the three hours but I think  
18 she is reluctant to pay for it.

19 What do you mean by "pay for  
20 it," by the way.

21 MS. CONNELL: Your Honor, just  
22 the actual cost of the Court Reporter  
23 and the Videographer, all of that.

24 SPECIAL MASTER SHERWOOD: Okay.

25 MS. CONNELL: And --

Page 62

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 SPECIAL MASTER SHERWOOD: You're  
3 not asking the NRA to pay salaries of  
4 the Assistant Attorney Generals, are  
5 you?

6 MS. CONNELL: No. No. I don't  
7 think so.

8 SPECIAL MASTER SHERWOOD: Just  
9 for my note.

10 MS. CONNELL: Your Honor, I  
11 would say that we understand that we  
12 are getting more Aronson documents  
13 from the NRA any day now or sometime.

14 SPECIAL MASTER SHERWOOD: All  
15 right.

16 MS. CONNELL: So, we haven't --

17 SPECIAL MASTER SHERWOOD: I got  
18 it.

19 So, Ms. Eisenberg, is there --  
20 are you resisting the demand that you  
21 pay the deposition cost, as now  
22 defined?

23 MS. EISENBERG: Absolutely,  
24 Your Honor.

25 The two documents that

Page 63

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 triggered this need for the AG to go  
3 back to Aronson is something that the  
4 NRA green-lighted a long time ago and  
5 it was, actually, the NRA that  
6 realized that they weren't produced.

7 And it was the NRA, who tried  
8 to encourage Aronson to go ahead and  
9 produce them and when the lawyer  
10 wasn't able to do it promptly, we got  
11 their -- Aronson's consent and did it  
12 for them.

13 And this is definitely no good  
14 deed goes unpunished kind of  
15 situation, where the NRA has --

16 SPECIAL MASTER SHERWOOD: When  
17 did those documents find their way to  
18 the Attorney General's Office; before  
19 or after Aronson was deposed?

20 MS. EISENBERG: After.

21 SPECIAL MASTER SHERWOOD: So,  
22 why --

23 MS. EISENBERG: The --

24 SPECIAL MASTER SHERWOOD: I  
25 don't understand.

Page 64

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 You didn't turn these documents  
3 over, I assume they are important,  
4 until after the depositions.

5 You recognize that they are  
6 probably entitled to some more time.

7 Apparently, the delay was  
8 because of issues on your side, or  
9 Aronson's side.

10 Why is it that the -- this  
11 isn't a situation where because it  
12 waits, the Attorney General, you  
13 should be picking up the cost of the  
14 depositions?

15 And by the way, it's not a lot  
16 of money.

17 MS. EISENBERG: Because the NRA  
18 absolutely did nothing wrong. These  
19 are Aronson documents, internal  
20 documents, that it gave for us, to  
21 clear for privilege.

22 We cleared them.

23 Aronson didn't produce them. We  
24 didn't realize that. And when we  
25 did, we brought it to Aronson's



Page 65

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 attention and when they couldn't do  
3 it expeditiously, we did it for them.

4 So, there is absolutely no  
5 fault of ours in the mix at all.

6 So, we --

7 SPECIAL MASTER SHERWOOD: Is  
8 your view -- is it your view, then,  
9 that if anyone should pay for the  
10 cost of the Videographer and the  
11 Court Reporter, it's Aronson and not  
12 the NRA?

13 Is that --

14 MS. EISENBERG: I mean it's not  
15 the NRA and --

16 SPECIAL MASTER SHERWOOD: I got  
17 that.

18 MS. EISENBERG: Right.

19 SPECIAL MASTER SHERWOOD: But  
20 who is it?

21 It's one of three: It's the  
22 NRA, it's Aronson, it's the AG.

23 And I am trying to find out  
24 whether or not your view is that it  
25 should be Aronson because it was

Page 66

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 their error.

3 MS. EISENBERG: Well, I mean it  
4 was their error but they are not a  
5 party. I am not aware of a mechanism  
6 pursuant to which Ms. Connell can  
7 issue and impose such a sanction  
8 against a non-party.

9 And I will say that Ms.  
10 Connell's subpoena to Aronson called  
11 for an inordinate amount of data and  
12 Aronson did produce to her office an  
13 inordinate amount of data and her  
14 office did chose to go forward with  
15 the deposition of Aronson, without --  
16 with Discovery still trickling in.

17 And if I were her, I wouldn't  
18 know of a basis upon which she can  
19 ask for Aronson to pay for it.

20 Don't need to make that  
21 decision. I represent the NRA and  
22 there should be no basis for the NRA  
23 to have to pay for it.

24 We don't object to another  
25 three-hour deposition.

Page 67

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 If -- if Ms. Connell wants to  
3 try to get Aronson to come forward  
4 and testify again but we shouldn't  
5 have to pay for it.

6 SPECIAL MASTER SHERWOOD: Okay.  
7 I understand that.

8 Let's -- let's move on.

9 The next has to do with  
10 documents regarding the relationship  
11 of MMP and, I guess, Allegiance,  
12 including documents re- -- recently  
13 negotiating and so on.

14 And talk to me about that.

15 As I understand it, Ms.  
16 Connell, I am asking you this  
17 question: As I understand it, the  
18 NRA is going to produce -- let me ask  
19 you this, Ms. Eisenberg: You say  
20 that the NRA will produce  
21 "non-privileged" contact negotiation  
22 documents.

23 Am I to understand, from that,  
24 that there are contact -- there are  
25 contract negotiations, documents,

Page 68

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 that you will be withholding?

3 And if you are, will you be  
4 providing a privileged log with  
5 respect to them?

6 MS. EISENBERG: There are no  
7 contract negotiations documents that  
8 we are withholding.

9 SPECIAL MASTER SHERWOOD: Okay.

10 I am just picking up on what  
11 you all wrote.

12 You wrote "all non-privileged,"  
13 which that opens the thought that  
14 there were some privileged ones,  
15 that's all.

16 MS. EISENBERG: Right.

17 I think that was inartfully  
18 written.

19 And thank you for picking up on  
20 that. So --

21 SPECIAL MASTER SHERWOOD: Okay.

22 Therefore -- let me just make  
23 clear: With respect to the contract  
24 negotiation documents and that  
25 includes the back and forth, you --

Page 69

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 you're going to provide all of the  
3 documents --

4 I'm sorry to do this but  
5 somebody is not picking up.

6 Off the record.

7 (Whereupon, an off-the-record  
8 discussion was held.)

9 SPECIAL MASTER SHERWOOD: So, is  
10 that -- is that -- I take it that  
11 that's where we are, with respect to  
12 --

13 MS. EISENBERG: Your right.  
14 Your Honor.

15 SPECIAL MASTER SHERWOOD: MMP  
16 and Allegiance; is that correct?

17 MS. EISENBERG: There are --  
18 there are historical communications  
19 that have nothing to do with contract  
20 negotiation, over which we do claim  
21 common-interest privilege but they  
22 don't have anything to do with  
23 contract negotiation.

24 Anything that has to do with  
25 contract negotiation, either already

Page 70

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 has been produced or will be  
3 produced.

4 SPECIAL MASTER SHERWOOD: And  
5 with respect to documents that you  
6 are withholding, they are going to  
7 find their way onto a privileged log,  
8 am I right or not correct?

9 MS. EISENBERG: I am not sure  
10 whether they actually requested those  
11 documents or if they did, we will be  
12 sure to log them.

13 MS. CONNELL: Your Honor, we  
14 requested all documents from MMP.

15 And even prior to what we knew  
16 or understood to be formal  
17 negotiations, there were back and  
18 forth regarding vendor compliance  
19 between the Brewer Firm and counsel  
20 for MMP and MMP.

21 So, Your Honor, we don't  
22 understand why that would be  
23 privileged at all. There is another  
24 effort where the NRA is saying we  
25 affirmatively -- they just amended

Page 71

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 their answer to say: "Hey, we  
3 renegotiated our contract with MMP,  
4 it's compliant. It's great" but they  
5 precluded us from getting information  
6 regarding their investigation into  
7 overpayment to MMP.

8 We have been blocked from that.  
9 We have been blocked from some  
10 communications about their vendor  
11 compliance reform efforts and  
12 frankly, then, the negotiations, as  
13 well.

14 So this -- this goes under the  
15 Sword and Shield Argument.

16 SPECIAL MASTER SHERWOOD: Well,  
17 Ms. Eisenberg, you're -- if you're  
18 withholding documents related to MMP  
19 and Allegiance, you're going to have  
20 to put them on a privileged log.

21 All right.

22 MS. CONNELL: Your Honor, can I  
23 go back to Aronson?

24 I am not sure if counsel from  
25 the NRA indicated that we would need

Page 72

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 a new court order to depose Aronson  
3 or --

4 SPECIAL MASTER SHERWOOD: I  
5 thought that I didn't have to make an  
6 order with respect to that because  
7 they -- they are not resisting the  
8 request for a three -- three-hour  
9 deposition.

10 Do I have that right, Ms.  
11 Eisenberg?

12 MS. EISENBERG: We are not  
13 objecting to it, that is correct.

14 SPECIAL MASTER SHERWOOD: All  
15 right.

16 MS. CONNELL: I am just assume  
17 that Aronson will put under the  
18 existing subpoena for Aronson; is  
19 that correct?

20 SPECIAL MASTER SHERWOOD: Is  
21 that right, Ms. Eisenberg?

22 MS. EISENBERG: I am not in a  
23 position to speak on behalf of  
24 Aronson, Your Honor, I'm sorry.

25 SPECIAL MASTER SHERWOOD: Fair



Page 73

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 enough.

3 What I would do, if I were you,  
4 Ms. Connell, is to set up the  
5 depositions that you -- in response  
6 to that and you will learn very  
7 quickly if they are going to want  
8 another subpoena and we will deal  
9 with that, when we can.

10 MS. CONNELL: Thank you.

11 SPECIAL MASTER SHERWOOD: With  
12 that, I will suggest to you, Ms.  
13 Eisenberg, that whatever you can do  
14 to facilitate doing this, cost  
15 effectively, it would be appreciated.

16 Okay. Now, on Pages 11 and 12  
17 of the October 20th letter, there  
18 are, in Section 4, you say that:  
19 "The NRA improperly withheld certain  
20 material evidenced as privilege."

21 Now, those are all of the  
22 documents that you are going to be  
23 providing to me as -- for in-camera  
24 review, isn't that right, Ms.  
25 Eisenberg?

Page 74

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 MS. EISENBERG: So, Your Honor,  
3 with regard to the three bullets, on  
4 Page 11, and the first bullet, on  
5 Page 12, yes.

6 To the extent that we didn't  
7 de-privilege them, we will provide  
8 them to you for in-camera review.

9 SPECIAL MASTER SHERWOOD: Great.  
10 That takes care of that.

11 That is all I want to know.

12 MS. EISENBERG: Okay.

13 SPECIAL MASTER SHERWOOD: Let's  
14 see -- that takes care of that.

15 MS. CONNELL: Your Honor, some  
16 of the additional categories, on Page  
17 12, lead to the course correction.  
18 They are on the privileged log but  
19 they fall under our sword and shield.

20 SPECIAL MASTER SHERWOOD: I  
21 assume -- I assume those two, Ms.  
22 Eisenberg, if they are being  
23 withheld, on privileged grounds, they  
24 are going to be submitted for  
25 in-camera review?

Page 75

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 MS. EISENBERG: So, these, Your  
3 Honor, fall into the category that I  
4 flagged on the onset.

5 There are a lot of documents  
6 that relate to "course correction"  
7 and are purely between the NRA and  
8 its counsel, without third parties  
9 present.

10 I don't think it's good use of  
11 your time to give you all of them but  
12 we will give you representative  
13 samples.

14 SPECIAL MASTER SHERWOOD:  
15 Representative samples? Great.

16 MS. CONNELL: Can we get the  
17 index of what they are giving you so  
18 we know how they are selecting the  
19 sample?

20 SPECIAL MASTER SHERWOOD: That  
21 is a fair point, don't you think, Ms.  
22 Eisenberg?

23 MS. EISENBERG: Of course, Your  
24 Honor.

25 SPECIAL MASTER SHERWOOD: Share

Page 76

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 that with them and if there is a  
3 comment that you need to make, with  
4 respect to the protocols that the NRA  
5 has followed, you will let me know, I  
6 am sure.

7 So, let's see now.

8 (Whereupon, a short recess was  
9 taken.)

10 SPECIAL MASTER SHERWOOD:

11 Documents at Page 13 of the letter.

12 MS. CONNELL: Yes, Your Honor.

13 Because this is a prospective  
14 injunctive relief case, seeking  
15 appointment of a monitor and certain  
16 other on injunctive relief, I hope to  
17 be on trial sometime in 2023, keeping  
18 hope alive for that.

19 And what we are saying is that  
20 to assess the appropriateness of  
21 injunctive relief, at that point, we  
22 we should get updates on certain,  
23 very discrete categories of  
24 documents.

25 SPECIAL MASTER SHERWOOD: Is it

Page 77

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 your -- do you contemplate that the  
3 issues relating to injunctive relief,  
4 assuming you prove you're entitled to  
5 it, is going to be the subject matter  
6 of the trial or is that a remedy  
7 proceeding which would occur after  
8 liability has been determined?

9 MS. CONNELL: Your Honor, I  
10 think these documents that we are  
11 seeking go to liability, they may  
12 also go to remedy but they certainly  
13 can speak to liability.

14 So, for example, the NRA has  
15 repeatedly said the Audit Committee  
16 is appropriately addressing and  
17 investigating conflicts,  
18 related-party transactions, that kind  
19 of thing.

20 It has blocked us from inquiry  
21 into what it is doing but, at least,  
22 the reports and minutes, that sort of  
23 thing.

24 This information would be  
25 necessary to tell the State status

Page 78

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 and what is going on with the NRA or  
3 if they are having a recurrence, at  
4 least, with Board reports with  
5 problematic conduct and that sort of  
6 thing.

7 I agree with you that a  
8 subsequent remedy of things might  
9 require different and further  
10 Discovery.

11 SPECIAL MASTER SHERWOOD: Ms.  
12 Eisenberg, give me a sense of what  
13 volume we are talking about for the  
14 items that are covered by the four  
15 bullet points, on Page 13.

16 MS. EISENBERG: Yes, Your  
17 Honor.

18 So --

19 SPECIAL MASTER SHERWOOD: Is it  
20 a paradox number or --

21 MS. EISENBERG: It depends on  
22 how conservatively or liberally you  
23 construe the items.

24 The Board reports and minutes  
25 that the -- the NRA Board meets three

Page 79

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 times a year and there are minutes  
3 generated to the Board by the various  
4 committees and minutes prepared.

5 Those are -- those tend to be  
6 actually quite extensive, which we  
7 think it is yet another reason why  
8 the NRA does have effective  
9 processes.

10 And even though they are  
11 extensive, we are happy to turn them  
12 over to the NYAG, with respect to  
13 future meetings, when and as they are  
14 occur.

15 SPECIAL MASTER SHERWOOD: Thank  
16 you.

17 And the second one: "Reports,  
18 presentations, retention letters and  
19 management letters from Aronson or  
20 other external auditors."

21 MS. EISENBERG: Your Honor, to  
22 the extent that we have those  
23 records, we would be delighted to  
24 turn over the official presentation  
25 that is made to the Audits Committee,

Page 80

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 I think that would be quite

3 manageable.

4 I think that if con -- if the  
5 request is construed to just refer to  
6 what Aronson presents to the Audit  
7 Committee, and the management letter  
8 that it authors, and doesn't extend  
9 to documents related to it, that  
10 would be doable.

11 No problem.

12 SPECIAL MASTER SHERWOOD: And  
13 what about the next bullet point:  
14 "Documents reflecting, containing or  
15 summarizing investigations,  
16 determinations and actions taken by  
17 the NRA as part of the course  
18 correction."

19 That's what we talked about  
20 before; right?

21 And your position?

22 MS. EISENBERG: Right, Your  
23 Honor.

24 I think to the extent -- let's  
25 say hypothetically tomorrow, you



Page 81

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 know, some good thing happens and we  
3 think that it's going to help us  
4 defeat the compliance monitor claim,  
5 you know, as it happens, we, of  
6 course, will turn it over to the NYAG  
7 because if we want to present it at  
8 trial, the NYAG should have notice.

9 However, all of that is subject  
10 to privileges. The NRA, just because  
11 it was sued by the NYAG, still  
12 retains its protections and  
13 privileges, under the CPLR, and so,  
14 we are not undertaking to reveal  
15 privileged communications and we are  
16 not undertaking to, in realtime, be  
17 assessing and inventorying the  
18 communications or, let alone,  
19 providing a privileged log to the  
20 NYAG.

21 That would certainly be above  
22 and beyond what is required under the  
23 CPLR, would be excessive and  
24 burdensome and we are not undertaking  
25 to do that.

Page 82

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 SPECIAL MASTER SHERWOOD: Okay.

3 And the last one is:

4 "Documents reflecting the NRA's  
5 calculations, demands for payment and  
6 receipt of payments for excess  
7 benefit transactions."

8 We talked about that earlier,  
9 too.

10 MS. EISENBERG: Right.

11 If additional receipts of  
12 payments occur or if there are  
13 additional demands for payment, the  
14 NRA will produce that to the NYAG  
15 when, and as, that occurs.

16 SPECIAL MASTER SHERWOOD: I take  
17 that with respect to past documents  
18 that were generated in the past,  
19 reflecting the NRA calculations and  
20 its demands for payments and receipt  
21 of payments for excess benefits, some  
22 of those you provided and some of  
23 those you have not and you don't  
24 expect to be giving additional  
25 documents within that category at

Page 83

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 this point.

3 Do I have that right?

4 MS. EISENBERG: No. No. No,

5 Your Honor. That's wrong.

6 We gave them everything.

7 To the extent that things have  
8 been demanded and repaid, they have  
9 spreadsheets showing what that  
10 contains and they have checks,  
11 showing the repayment and they have  
12 testimony about the repayment having  
13 occurred.

14 So, what -- what we are  
15 withholding, on privileged grounds,  
16 is privileged communications between  
17 the NRA and its counsel related to  
18 some of these matters.

19 But the NYAG has everything for  
20 every historic repayment that has  
21 occurred.

22 MS. CONNELL: Your Honor, I  
23 just have to note that we strenuously  
24 disagree with that.

25 That is a misrepresentation.

Page 84

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 SPECIAL MASTER SHERWOOD: I

3 know.

4 MS. CONNELL: I not only

5 object, I strenuously object.

6 SPECIAL MASTER SHERWOOD: We

7 need to move this along.

8 All right. I think we covered

9 everything in -- that is in the

10 October 20th letter.

11 Obviously, I am going to be

12 give you a decision about this.

13 You haven't heard very many

14 decisions from me about that today.

15 Okay. Now, what is next?

16 (Whereupon, a short recess was

17 taken.)

18 SPECIAL MASTER SHERWOOD: Next

19 is the NRA's letter of the 20th, as

20 well, with respect to the AG's

21 privileged logs.

22 Let's see. And there -- hold

23 on.

24 (Whereupon, a short recess was

25 taken.)

Page 85

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 SPECIAL MASTER SHERWOOD: The AG  
3 says: "There are five categories of  
4 documents that it claims to be  
5 privileged. Communications with  
6 witnesses and their counsel,  
7 communications with other law  
8 enforcement agencies, communications  
9 with consultants, interview memoranda  
10 and communications with confidential  
11 informants and complainants."

12 I think some, but not all of  
13 these, have been addressed earlier  
14 and we need to make sure of those.

15 I sense from your response, Ms.  
16 Connell -- this is the NRA'S demand  
17 -- so, let me start with you, Ms.  
18 Eisenberg.

19 MS. EISENBERG: Thank you, Your  
20 Honor.

21 First is a threshold argument.

22 Ms. Connell makes a timeliness  
23 argument, which is completely  
24 disingenuous because the issues about  
25 our privileged log and the third

Page 86

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 parties and documents that were  
3 withheld, she could have raised as  
4 early as July of this year and did  
5 not and seeks a relief now.

6 And so, I think that as a  
7 matter of symmetry and mutual  
8 fairness, we should not be precluded  
9 from seeking this relief now.

10 Second --

11 SPECIAL MASTER SHERWOOD:

12 Assuming -- assuming I disagree with  
13 you and I am not saying that I am  
14 disagree with you: What say you  
15 about the timeliness issue? I take  
16 it that is your response to the  
17 timeliness -- that is your -- that is  
18 your full response to the timeliness  
19 issue or is there more?

20 MS. EISENBERG: There is  
21 definitely more, Your Honor.

22 We have consistently and  
23 acidulously informed the NYAG of our  
24 concerns about the completeness of  
25 their privileged log, both how it was

Page 87

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 constructed and what it -- the  
3 information that it identified, in  
4 addition, issues in this case have  
5 not been joined until just recently.

6 The NYAG was supposed to amend  
7 its complaint and then did not.

8 And the NRA answered --

9 SPECIAL MASTER SHERWOOD: When  
10 did it ammend?

11 MS. EISENBERG: So, the NYAG  
12 amended her complaint on May 2nd and  
13 asserted a new claim against the NRA.

14 The NRA then moved to dismiss  
15 that claim and so did two of the  
16 individual Defendants.

17 Judge Cohen issued a ruling at  
18 the end of September denying the  
19 NRA's motion to dismiss and  
20 addressing the other concerns raised  
21 by the other Defendants.

22 And there was conversation, as  
23 reflected at the oral argument,  
24 before Judge Cohen, that the NYAG  
25 would amend the complaint to get rid

Page 88

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 of some historical language seeking  
3 restitution from the individual  
4 Defendants and referring to the NRA  
5 by its appropriate name.

6 Nonetheless, the NYAG later  
7 informed us that she was not going to  
8 do that and at that point, the NRA  
9 went ahead and answered the complaint  
10 and asserted defenses to the  
11 newly-asserted claim that was  
12 asserted back in May but we didn't  
13 answer it because we moved to  
14 dismiss.

15 SPECIAL MASTER SHERWOOD: Okay.  
16 I have that fact.

17 MS. EISENBERG: So --

18 SPECIAL MASTER SHERWOOD: I'm  
19 sorry.

20 Go ahead.

21 MS. EISENBERG: Yeah.

22 Basically, the point is that  
23 the issues have been joined only  
24 recently and with a new claim that  
25 she asserted only in May of 2022,



Page 89

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 seeking the Independent Compliance  
3 Monitor.

4 I think these issue relate to  
5 the privileged log assumed additional  
6 significance and on that basis, Your  
7 Honor, the NRA should be heard on  
8 this issue.

9 SPECIAL MASTER SHERWOOD: All  
10 right.

11 So, in your letter, you  
12 challenge the law enforcement  
13 privilege being asserted by the AG  
14 and the common-interest privilege.

15 Those are the only two  
16 privileges that you are focussing on  
17 in the motion to compel, do I have  
18 that right?

19 MS. EISENBERG: Your Honor,  
20 those are some of the issues.

21 I think that before we even get  
22 to whether these apply, the point is  
23 that their log is structured in a way  
24 that doesn't really permit a fair  
25 assessment of whether the privileges

Page 90

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 apply in the first place.

3 For example, they don't  
4 identify any third parties who might  
5 have been copied on their  
6 communications with these parties.

7 In addition, their log seems to  
8 be defective in that we have  
9 testimony from an Assistant Attorney  
10 General talking about a meeting  
11 between every town and --

12 SPECIAL MASTER SHERWOOD: We  
13 will get to that.

14 That is on my list. We will get  
15 to that. That's for sure.

16 I am just, at this point,  
17 trying to understand the scope of the  
18 claims that you are making, with  
19 respect to privilege.

20 Let me -- let me talk for a  
21 second.

22 Karyn, if the time comes when  
23 you need to take a break, please let  
24 me know; okay?

25 THE COURT REPORTER: No

Page 91

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 problem.

3 SPECIAL MASTER SHERWOOD: It  
4 has gone awhile.

5 THE COURT REPORTER: Thank you.

6 SPECIAL MASTER SHERWOOD: What  
7 say you, Ms. Connell, about the law  
8 enforcement privilege and the common  
9 interest privilege that is on --

10 MS. CONNELL: I --

11 SPECIAL MASTER SHERWOOD: I know  
12 that they were asserted back in, I  
13 guess, the spring or early summer and  
14 part of the decision that I made  
15 related to those privileges.

16 But the context was in respect  
17 to depositions of counsel for  
18 Plaintiffs that the NRA was seeking.

19 Aren't we in a very different  
20 position today?

21 MS. CONNELL: Actually, Your  
22 Honor --

23 SPECIAL MASTER SHERWOOD: They  
24 just want documents at this point.

25 MS. CONNELL: Your Honor, I

Page 92

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 think we are largely in the same  
3 position, with one exception, which  
4 is: The AG is in a stronger  
5 position.

6 The NRA's --

7 SPECIAL MASTER SHERWOOD: Why am  
8 I not surprised you say that?

9 MS. CONNELL: The NRA's  
10 attempts to get information regarding  
11 what was involved in the Attorney  
12 General's investigation and exactly,  
13 you know, what it did when, are more  
14 irrelevant now than they ever have  
15 been.

16 The court has dismissed the  
17 NRA's counterclaims, which allege  
18 that the investigation, the  
19 enforcement action were driven by  
20 First Amendment bias, over improper.

21 So, to the extent that it was  
22 ever relevant so delve into what and  
23 how the Attorney General investigated  
24 the NRA, that is well behind us now.

25 SPECIAL MASTER SHERWOOD: What

Page 93

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 you're saying -- what you're saying,  
3 then, is: Look, the information that  
4 is being sought now is not -- is not  
5 -- you're not resisting the  
6 production of that information now  
7 because there is some public-interest  
8 privilege but rather because it's  
9 simply irrelevant at this point.

10 MS. CONNELL: We still maintain  
11 this information is privileged, Your  
12 Honor, but also --

13 SPECIAL MASTER SHERWOOD: That  
14 is not what I am understanding.

15 MS. CONNELL: Right. Right.

16 SPECIAL MASTER SHERWOOD: I  
17 wasn't going to let you shroud my  
18 question, by talking about whether  
19 it's irrelevant.

20 I get the irrelevance argument.

21 What I don't get is the  
22 argument that the public-interest  
23 privilege applies here.

24 There's a -- there's a huge  
25 difference between trying to depose a

Page 94

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 lawyer for the -- for the party and

3 simply seeking to obtain documents.

4 I think you will -- well, if

5 you go back and look at my ruling, it

6 was all in the context of an effort

7 to obtain the deposition of -- what

8 is his name? Mr. Sheehan?

9 MS. CONNELL: Yes.

10 SPECIAL MASTER SHERWOOD: And

11 somebody else in the Charities

12 Bureau.

13 MS. CONNELL: There were about

14 six Notices or something over all.

15 It was the waterfront there.

16 SPECIAL MASTER SHERWOOD: It's a

17 whole different matter there.

18 MS. CONNELL: Your Honor, it is

19 different to depose an attorney

20 versus to seek documents. That

21 doesn't mean the documents are not,

22 themselves, privileged, though.

23 The Attorney General is

24 entitled to the privileges that are

25 attached to her investigation and to

Page 95

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 her investigatory methods and to  
3 shield from Discovery information  
4 that is covered by these privileges.

5 And frankly, the information on  
6 our privileged log, which was served  
7 in December of 2021, and remained  
8 largely unchanged is privileged.

9 There's no reason to go into --  
10 and there's no reason to say that  
11 this information is not covered by  
12 these privileges.

13 The NRA certainly hasn't come  
14 close to such a showing.

15 SPECIAL MASTER SHERWOOD: Wait a  
16 minute.

17 Now you're talking about -- to  
18 the extent that you are talking about  
19 investigative methods and so on, I  
20 understand that.

21 But I have the impression that  
22 the privilege that you asserted  
23 covers a larger swarth of documents  
24 than those that protect the  
25 investigatory --

Page 96

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 MS. CONNELL: No, Your Honor.

3 If I can: We collected a  
4 tremendous amount of documents during  
5 the investigation and we revealed and  
6 produced all of the documents, with  
7 very limited exceptions, to all  
8 parties in this action.

9 And also we revealed the  
10 identity of witnesses that we spoke  
11 with, with only one or two names are  
12 confidential informants withheld.

13 The NRA and the Defendants have  
14 all the documents that we gathered,  
15 as part of our investigation.

16 It would have that for a long  
17 time and that is not at issue. What  
18 really is at issue is picking apart,  
19 internally, what the Attorney General  
20 was doing, with regard to this  
21 investigation, what letters she sent,  
22 what internal documents she had.

23 I think they might have given  
24 up on the internal memorandum of the  
25 witness interview.



Page 97

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 SPECIAL MASTER SHERWOOD:

3 Category 4?

4 MS. CONNELL: Excuse me?

5 SPECIAL MASTER SHERWOOD: Is

6 that Category 4?

7 MS. CONNELL: Category 4, yes.

8 And, Your Honor, what we are  
9 talking about here is a small class  
10 of documents that the Attorney  
11 General has identified.

12 SPECIAL MASTER SHERWOOD: Let's  
13 go through that.

14 You have "communications with  
15 witnesses and/or their counsel."

16 If we these witnesses -- I  
17 assume, when you say "witnesses,"  
18 these are individuals who you will be  
19 calling as witnesses at the trial;  
20 right?

21 MS. CONNELL: Um, some of them,  
22 we may; some of them, we may not.

23 We produced all documents and  
24 materials obtained by them. And when  
25 we did an examination of them, we

Page 98

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 produced the examination of that.

3 SPECIAL MASTER SHERWOOD: You're  
4 not resisting, at this point,  
5 communications for their counsel --

6 MS. CONNELL: Your Honor, we  
7 are.

8 We are resisting those very  
9 narrow --

10 SPECIAL MASTER SHERWOOD:  
11 Educate me.

12 MS. CONNELL: Sure.

13 We are resisting that very  
14 narrow back and forth that, as  
15 investigators, we engage in.

16 We are trying to identify and  
17 obtain information from witnesses,  
18 actual communications back and forth.

19 Again, any --

20 SPECIAL MASTER SHERWOOD: That  
21 is paragraph -- that is Category 5,  
22 isn't it?

23 MS. CONNELL: Actually, it's  
24 covered in Category 1.

25 SPECIAL MASTER SHERWOOD: Well,

Page 99

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 I am focused on 1 but --

3 MS. CONNELL: Right.

4 SPECIAL MASTER SHERWOOD: -- I  
5 am interpreting it as Category 5  
6 information.

7 MS. CONNELL: Document  
8 preservation Notices, subpoenas,  
9 correspondence and documents with  
10 back and forth between the AG and the  
11 witnesses or their counsel.

12 But again, we have produced the  
13 substantive documents those witnesses  
14 have -- have produced.

15 But the NRA has indicated it  
16 wants to know who we spoke to and  
17 when, that has, again --

18 SPECIAL MASTER SHERWOOD: That  
19 is Category 1?

20 MS. CONNELL: Yes.

21 SPECIAL MASTER SHERWOOD:  
22 Category 1 --

23 MS. CONNELL: Yes.

24 SPECIAL MASTER SHERWOOD: -- is  
25 limited to the witnesses that you are

Page 100

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 going to be presenting.

3 That's how I interpret it.

4 MS. CONNELL: No, Your Honor.

5 I'm sorry, Your Honor, it's  
6 potential witnesses that we spoke to  
7 as part of the investigation and it's  
8 just some interaction between us and  
9 those witnesses; the Preservation  
10 Notice, the subpoena Letters of  
11 Scheduling, letters, by and large.

12 But, Your Honor, again, this  
13 goes to how and what we ask for and  
14 when we ask for it, its investigative  
15 technique and this should be  
16 privileged.

17 SPECIAL MASTER SHERWOOD: I  
18 think you have lost me there, but  
19 okay. I am not going to belabor the  
20 point.

21 What about communications with  
22 other law enforcement agencies?

23 That is communications between  
24 your office and the D.C. AG?

25 MS. CONNELL: Yes, Your Honor.

Page 101

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 By and large.

3 SPECIAL MASTER SHERWOOD: Is  
4 that the City attorney?

5 What is the title of the -- of  
6 the --

7 MS. CONNELL: It's the Attorney  
8 General.

9 SPECIAL MASTER SHERWOOD: What  
10 is that>?

11 MS. CONNELL: It's the Attorney  
12 General of the District of Columbia.

13 SPECIAL MASTER SHERWOOD: Okay.

14 And Ms. Eisenberg, why do you  
15 think you're entitled to that  
16 information?

17 MS. EISENBERG: Oh, Your Honor,  
18 it's very simple: We need to look at  
19 our defenses, which include unclean  
20 hands and that claims are precluded  
21 on constitutional grounds because  
22 Letitia James threatened to destroy  
23 the NRA even before she became the  
24 Attorney General and before she even  
25 saw a single shred of evidence.

Page 102

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 And then, her office met --  
3 shortly after she became the NYAG,  
4 her office, Mr. Sheehan, himself, and  
5 someone from her front office met  
6 with every town, in person, at the  
7 NYAG's Office for a whole hour to  
8 speak about nothing else but the NRA  
9 and its Form 990'S.

10 So, even though the  
11 counterclaims have been dismissed,  
12 the defenses raise all the same  
13 issues.

14 And Ms. Connell's office hasn't  
15 moved to dismiss the defenses. Those  
16 defenses are in the case. And Ms.  
17 Connell's alleged argument about  
18 alleged irrelevance has no merit  
19 whatsoever.

20 In addition, I will remind Your  
21 Honor that we sought, and obtained,  
22 the Attorney General's Office  
23 communications with Philip Journey,  
24 one of the NRA's Board Members, and  
25 we found out that their

Page 103

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 communications were very friendly,  
3 they were texting back and forth  
4 about cars and clearly, developing a  
5 personal rapport that the NRA is  
6 entitled to have those communications  
7 because A), they go biases and  
8 credibility of witnesses and frankly,  
9 NYAG Office and B), they certainly  
10 are not protected by any of these  
11 claimed privileges.

12 SPECIAL MASTER SHERWOOD: I --

13 MS. CONNELL: Your Honor --

14 SPECIAL MASTER SHERWOOD: I  
15 thought that Judge Cohen effectively  
16 threw out those defenses, Ms.  
17 Eisenberg.

18 MS. EISENBERG: Incorrect.

19 Nobody has ever moved to  
20 dismiss those defenses and in fact,  
21 they weren't pleaded until October of  
22 this year.

23 And it is not -- he never ruled  
24 on the viability of --

25 SPECIAL MASTER SHERWOOD: How is

Page 104

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 your bias claim now any different  
3 from your constitutional claim that  
4 was thrown out -- counterclaim that  
5 was thrown out by Judge Cohen?

6 MS. EISENBERG: Structurally,  
7 it's very different.

8 We previously asserted  
9 counterclaims against the NYAG, where  
10 we suit injunctive relief and money  
11 damages for violations of the NRA's  
12 constitutional rights.

13 Here, we are asserting these  
14 defenses on clean hands and  
15 constitutional defenses, as a way to  
16 preclude a finding of liability, even  
17 if the NYAG managed to prove of her  
18 claims.

19 We are entitled to a jury  
20 charge on that issue and we are  
21 entitled to put up in evidence that  
22 defense which no one has moved to  
23 disks mission SPECIAL MASTER  
24 SHERWOOD: It seems to me Judge Cohen  
25 has adequately addressed that issue



Page 105

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 and but I understand your position. I  
3 will tell you right now, there's a  
4 very high likelihood that I am going  
5 to sustain the Attorney General's  
6 view that the law enforcement  
7 privilege -- that the information  
8 that you are seeking here in terms of  
9 communications with other law  
10 enforcement agency is irrelevant.

11 MS. EISENBERG: Well Your  
12 Honor, may I insert something.

13 SPECIAL MASTER SHERWOOD: I  
14 haven't -- I told you what I am  
15 likely to do, I didn't say -- but  
16 sure. What do you want to tell me.

17 MS. EISENBERG: Miss Connolly  
18 said it's the D.C. AG but she didn't  
19 identify the other agency. Part of  
20 our defense or the whole problem with  
21 the case is that it was a whole -- a  
22 number of different ate see within  
23 New York State, it was Governor Cuomo  
24 the Defendant of financial services  
25 and the AG who was coming together to

Page 106

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 try to destroy the NRA. And to the  
3 extent -- SPECIAL MASTER SHERWOOD:  
4 You think it's improper for the New  
5 York Attorney General to confer with  
6 -- with the office of the Governor  
7 and other governmental agencies in  
8 connection with their investigation  
9 into the NRA? Something is wrong with  
10 that, in your mind.

11 MS. EISENBERG: That is not my  
12 claim. My claim is that I am entitled  
13 to my documents in defense of my  
14 client SPECIAL MASTER SHERWOOD: I  
15 understand it. I am likely to as I  
16 say reject that claim.

17 MS. CONNELL: Your Honor that  
18 also -- I'm sorry SPECIAL MASTER  
19 SHERWOOD: Go ahead.

20 MS. CONNELL: The argument  
21 about the relevance and the fact that  
22 the NRA is mitigated from the  
23 defenses here is addressed on Page 2  
24 of our letter with the citation that  
25 supports us and that also relies to

Page 107

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 Category 1, I would argue SPECIAL  
3 MASTER SHERWOOD: Category III is  
4 communications with consultants that  
5 completed that is my understanding  
6 right? Do I have that right, Ms.  
7 Eisenberg.

8 MS. EISENBERG: I think they  
9 made the representation that is no  
10 consult abilities will testify at  
11 trial and they didn't rely on what  
12 the consult abilities told them. The  
13 residual there is confidential  
14 Complainants and there was  
15 inconsistency whether there was one  
16 or two and they didn't say they would  
17 call the confidential -- the person  
18 who is the confidential complaints  
19 they reserve the right to do so and  
20 they say they will tell us if they  
21 change their mind and that leaves us  
22 --

23 SPECIAL MASTER SHERWOOD: Here  
24 is what we will do with that.

25 MS. EISENBERG: Prejudiced.

Page 108

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 SPECIAL MASTER SHERWOOD: And to  
3 the extent that -- and this is  
4 addressed to you Ms. Connell -- that  
5 the AG is going to be using  
6 individuals witness in Category I or  
7 Category III that needs to be  
8 disclosed.

9 MS. CONNELL: (Indicating.)

10 SPECIAL MASTER SHERWOOD: If they are  
11 only being held as rebuttal witnesses  
12 in the narrow sense of that word,  
13 that phrase, rather, you -- you need  
14 not disclose them. In other words, if  
15 your -- if it's -- if you're in  
16 rebuttal territory and the -- your  
17 questioning the credibility of some  
18 testimony, that sort of thin8g, you  
19 know, you obviously don't have to  
20 disclose that up front but any other  
21 witness that you are going to put on  
22 in your case in your case in Chief  
23 must be disclosed and the sooner the  
24 better.

25 MS. CONNELL: Absolutely Your

Page 109

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 Honor we addressed an interrogatory  
3 of witnesses and we agree SPECIAL  
4 MASTER SHERWOOD: All right. And we  
5 are now down to five communications  
6 with confidential informants and  
7 Claimant's I think I covered that  
8 already.

9 MS. CONNELL: Yes Your Honor.

10 MS. EISENBERG: And there are  
11 other issues about the log that we  
12 list in our letters as to the dates  
13 and the thoroughness about the  
14 process that was used and that is  
15 addressed on --

16 SPECIAL MASTER SHERWOOD:  
17 Explain to me what you mean by the  
18 dates.

19 MS. EISENBERG: Yeah Your  
20 Honor.

21 SPECIAL MASTER SHERWOOD: Let me  
22 just finish. They have provided they  
23 said the dates involved are the dates  
24 from when they started and  
25 investigation through the date of the

Page 110

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 complaint. They have finite  
3 obligations to update information  
4 that has been sought as you --  
5 against the NRA. What I don't  
6 understand is what you think you're  
7 entitled to predating the documents  
8 that they had -- well what do you  
9 mean by the time period prior to the  
10 beginning of their informal  
11 investigation?

12 MS. EISENBERG: I don't Your  
13 Honor that is not my issue my issue  
14 is that every Category I through five  
15 they say the timeframe is  
16 coincidentally the same: September  
17 one, 2018 through August 6, 2020. So  
18 SPECIAL MASTER SHERWOOD: Right.

19 MS. EISENBERG: August 6 is  
20 when they filed the complaint SPECIAL  
21 MASTER SHERWOOD: Right.

22 MS. EISENBERG: September one,  
23 2018 is an arbitrarily chosen date.  
24 We know from assistant Attorney  
25 General's wanes testimony under oath

Page 111

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 that let-ish a James didn't  
3 officially authorize the  
4 investigation until April of 2019 and  
5 according to him an informal  
6 investigation started in or around  
7 November of 2018.

8 Mind you the meeting with every  
9 up to was in February of 2019. So,  
10 the dates of the specific  
11 communications all of a sudden become  
12 very important to test the voracity  
13 that an investigation was underway  
14 before the every town spoke with the  
15 D.C. AG and also very important in  
16 assessing the overall bias of the  
17 investigation to begin with. So what  
18 we simply ask for is that instead of  
19 providing this artificial September  
20 one, 2018 start date, the NYAG  
21 actually specific the first date in  
22 which their communication insist  
23 these five categories occurred  
24 because if that date is before  
25 Letitia then became the Attorney

Page 112

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 General, that is important. If it's  
3 before or after the meeting with  
4 every town, that is important. And  
5 the date communication is not  
6 privileged, it's not pro affected by  
7 any of the priviligies that Ms.  
8 Connell asserts and therefore, we are  
9 entitled to that information.

10 SPECIAL MASTER SHERWOOD: And  
11 what is it exactly that you want us  
12 to do with respect to the time  
13 period?

14 MS. EISENBERG: Yes.

15 SPECIAL MASTER SHERWOOD: Do you  
16 want us to push it back is there a  
17 date that you have in mind.

18 MS. EISENBERG: New York City I  
19 want them to identify --

20 SPECIAL MASTER SHERWOOD: If I  
21 am not mistaken what you you're  
22 asking for is the revision of the  
23 search terms. You're looking for a  
24 broader time period. What is the  
25 beginning time period that you have



Page 113

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 in mind.

3 MS. EISENBERG: No Your Honor  
4 not in this re guard. The September  
5 one, 2018 date and of course Ms.  
6 Connell can correct me if that is  
7 wrong that is artificial chosen. I  
8 don't think that that is actually how  
9 far some of these communications  
10 extent and it would be really odd for  
11 each of the five categories to begin  
12 on September one so I don't -- what I  
13 don't think they have done is taken  
14 all of these one thousand plus  
15 documents sorted them chronologically  
16 and said September 23, 2018 is the  
17 first communication and let's put  
18 that, instead they artificially said  
19 September one, 2018 which is not a  
20 real date SPECIAL MASTER SHERWOOD:  
21 Ms. Eisenberg there -- may be I am  
22 just not well informed about how one  
23 goes about searches electronic  
24 searches. Keep in mind I started out  
25 as a computer programmer so take that

Page 114

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 into account. But if you remember  
3 going to do a search, you would  
4 identify parameters and among the  
5 baseline or you know, basic  
6 parameters that you would say are is  
7 parameters with respect to the  
8 timeframe.

9 MS. EISENBERG: Right SPECIAL  
10 MASTER SHERWOOD: And I am asking you:  
11 Okay. You think that the timeframe is  
12 too narrow, let's assume that, what  
13 timeframe would you like?

14 MS. EISENBERG: Your Honor I am  
15 not saying -- I appreciate the  
16 question because it illucidates the  
17 question and let me strain it better.  
18 I am not questioning the September  
19 one, 2018 start date foyer their  
20 search they in good faith can  
21 determine when it's fair they know  
22 when the communications started I I  
23 will take Ms. Connell's word for it  
24 that there was nothing before that  
25 and that is find and you end up with

Page 115

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 one thousand or three hundred of  
3 however mean documents in the  
4 particular category and their  
5 software can permit them to  
6 chronologically sort the documents  
7 and identify the first date of the  
8 communication in the category and the  
9 last date in the category and that  
10 should be the range they specific in  
11 the column date range in their  
12 privileged log because that  
13 information is actually quite  
14 significant in my defense of my --  
15 against the claims that they assert  
16 against my client and I am entitled  
17 to that document information appeared  
18 the start date is not privileged and  
19 cannot be withheld under any of these  
20 claims privileged SPECIAL MASTER  
21 SHERWOOD: Sorry to be so dense about  
22 that, I heard the words that you gave  
23 me, I tried to understand them and I  
24 am not understanding them. I am not  
25 understanding because if -- if they

Page 116

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 did the search which requires that  
3 documents that had a September one,  
4 2018 or later date gets caught, if  
5 it's part of an e-mail chain that is  
6 -- that shows documents before  
7 September one, 2018 that still would  
8 be caught in the search that is why I  
9 don't understand.

10 MS. EISENBERG: That is not  
11 what I I am saying Your Honor. I  
12 don't think they started having these  
13 communications on September one,  
14 2018. I understand that -- SPECIAL  
15 MASTER SHERWOOD: I heard that.

16 MS. EISENBERG: I am entitled  
17 to know -- SPECIAL MASTER SHERWOOD:  
18 Okay there are documents that have  
19 post September one, 2018 start dates  
20 but it may well include an e-mail  
21 chain that goes before that date. You  
22 just finished telling me that you  
23 don't have any -- any car else with  
24 the search being made as of September  
25 one, 2018. That is why I am not

Page 117

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 understanding what you're trying to  
3 tell me.

4 MS. EISENBERG: Yes.

5 SPECIAL MASTER SHERWOOD: Those  
6 are --

7 MS. EISENBERG: There are two  
8 different issues what is the start  
9 parameter started on September one --  
10 SPECIAL MASTER SHERWOOD: You don't  
11 have any problems with that right.

12 MS. EISENBERG: Sorry SPECIAL  
13 MASTER SHERWOOD: And you don't have  
14 any problems with that right.

15 MS. EISENBERG: Right. Because  
16 assume that Ms. Connell in good faith  
17 used that date as the right date.

18 SPECIAL MASTER SHERWOOD: That  
19 is not an issue here.

20 MS. EISENBERG: Right. And  
21 then, if you do a traditional  
22 privileged log you're supposed to see  
23 who sent an e-mail to whom what was  
24 general privileged and the date  
25 right?

Page 118

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 SPECIAL MASTER SHERWOOD: Yes.

3 MS. EISENBERG: Okay. So here  
4 they gave us a categorical privileged  
5 log and they didn't give us the dates  
6 for the documents SPECIAL MASTER  
7 SHERWOOD: That is typical in  
8 responses to ESI requests.

9 MS. EISENBERG: Okay.

10 SPECIAL MASTER SHERWOOD: When  
11 you're asking for a category,  
12 category X cough 1,000 documents  
13 within that folder. So what do you  
14 want? Do you want 1,000 pages.

15 MS. EISENBERG: If you look at  
16 their privileged log, if you look at  
17 the second column called date range,  
18 the date range is the same for each  
19 of the categories and it starts on  
20 September one, 2018 and that  
21 effectively -- SPECIAL MASTER  
22 SHERWOOD: That is a good thing. Why  
23 is that a good thing? Because it says  
24 everything was in the folder comes  
25 within the date range of September

Page 119

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 one, 2018 and August 30, 2021  
3 whatever that date is okay? And there  
4 may be 1,000 documents.

5 MS. EISENBERG: Right but that  
6 is -- SPECIAL MASTER SHERWOOD: I  
7 don't understand what -- what you're  
8 trying to tell me with respect to you  
9 know, that response to your you know,  
10 -- to your Discovery requests where  
11 the response is a categorical one  
12 you're not going to get -- it's a  
13 good thing that in each and everyone,  
14 they society as a date range  
15 September one through August 31st.  
16 Because if for some of them they say  
17 no, not September one, 2018 but  
18 January thirty-one, 2019 that makes  
19 the situation worse for you not  
20 better.

21 MS. EISENBERG: Well Your Honor  
22 I want the truth I want to know when  
23 they started the communications and  
24 their privileged log doesn't reveal  
25 that information because they chose a

Page 120

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 -- they -- they put in the date they  
3 put in for disclosures and they must  
4 reveal the real start date.

5 SPECIAL MASTER SHERWOOD: All  
6 right. I will reject that -- that  
7 claim for the reasons that I have  
8 been saying. Explaining to you. The  
9 real dates are in the document within  
10 the category.

11 MS. EISENBERG: Every town.

12 SPECIAL MASTER SHERWOOD: What  
13 about every towns.

14 MS. EISENBERG: So --

15 SPECIAL MASTER SHERWOOD: Just  
16 remember -- just remember that Judge  
17 -- again, I am keeping in mind what  
18 has been disclosed and what remains.

19 MS. EISENBERG: The Judge never  
20 dismissed the certificates no one  
21 moves to A dismiss them and the  
22 defenses are different than the  
23 counter claims. But the point is that  
24 every town is con pick with us Lee  
25 missing from the privileged log, it's



Page 121

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 not mentioned yet we know that they  
3 had this one hour meeting that was  
4 prescheduled and likely  
5 communications afterwards and this  
6 privileged log is woefully deficient  
7 because it doesn't indicate or  
8 reflect any communication with every  
9 town which is impossible.

10 SPECIAL MASTER SHERWOOD: What  
11 they are saying is that every town is  
12 not a witness.

13 MS. EISENBERG: Well it doesn't  
14 matter Your Honor, we are entitled to  
15 any and all communications that they  
16 had with --

17 SPECIAL MASTER SHERWOOD: Nobody  
18 really?

19 MS. EISENBERG: During the case  
20 SPECIAL MASTER SHERWOOD: Sight me a  
21 case that says that is and you don't  
22 have to tell me right now but give me  
23 some cases where it says that a  
24 government has conducted an  
25 investigation you're entitled to

Page 122

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 Discovery of every -- every  
3 individual and every entities that  
4 they have communicated with in  
5 connection with their investigation.

6 MS. EISENBERG: I will look for  
7 that case and --

8 SPECIAL MASTER SHERWOOD: Find  
9 me a case and it certainly doesn't a  
10 near -- in your letter woman wop and  
11 the point is that it's not everyone  
12 it's every phone SPECIAL MASTER  
13 SHERWOOD: Same point same point. Show  
14 me a case.

15 MS. EISENBERG: Before the NRA.

16 SPECIAL MASTER SHERWOOD: Show  
17 me the case. All you have to do is  
18 just, you know, show me a case.

19 MS. EISENBERG: Okay. Will do.  
20 Thank you SPECIAL MASTER SHERWOOD:  
21 All right. What else is there to  
22 discuss with respect to the NRA's  
23 letter? Anything else?

24 MS. EISENBERG: Well, I think  
25 that to the extent that they it be to

Page 123

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 have communications with witnesses or  
3 other agencies, I think they should  
4 have to update their log, I think --  
5 SPECIAL MASTER SHERWOOD: I think we  
6 said that updating is required on  
7 both sides.

8 MS. CONNELL: Your Honor, we  
9 did object to generally updating  
10 everything after the commencement of  
11 litigation on our side we didn't  
12 require updating everything from the  
13 NRA obviously documents about  
14 liability asking counsel to document  
15 documents by everyone is burden on  
16 some and the NRA hasn't shown a case  
17 showing otherwise and we object to  
18 that SPECIAL MASTER SHERWOOD: And  
19 that is a very -- I understand the  
20 argument and I recognize that. But to  
21 the extent that there is new  
22 information that you received from a  
23 witness.

24 MS. CONNELL: Yeah SPECIAL  
25 MASTER SHERWOOD: That seems credible

Page 124

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 --

3 MS. CONNELL: Absolutely, I  
4 misunderstood you certainly we have  
5 been updating and documenting  
6 everything that we get witnesses  
7 third-party, yes, absolutely SPECIAL  
8 MASTER SHERWOOD: That is all.

9 MS. CONNELL: That's it.

10 SPECIAL MASTER SHERWOOD: Okay. Let's  
11 see Number One 3 is Aronson and that  
12 is -- that is fee. So, mission  
13 Eisenberg tell me about this.

14 MS. EISENBERG: Certainly Your  
15 Honor under the C P L L and the  
16 commercial division rule where a  
17 third-party -- SPECIAL MASTER  
18 SHERWOOD: Let me cut you off. Let me  
19 can you tell you O there's no  
20 question that they are under an  
21 obligation to reimburse Aronson for  
22 the reasonable costs of their  
23 production. So you are about to tell  
24 me that, I know that. So the argument  
25 here has to do with how much. They

Page 125

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 say that they are not obligated to  
3 reimburse Aronson for work done in  
4 order to protect the NRA's privilege.  
5 And they also have argument about you  
6 know, just how much you're seeking.  
7 There is one document in your -- in  
8 the materials that I think was  
9 provided from February of 2021 I  
10 think it is that shows that Aronson  
11 billed you for 100 and \$25,000400 and  
12 75 and 50 s and that negotiation  
13 through sometime in February of 21.  
14 You now say their obligated -- the --  
15 the fee that they are seeking is a  
16 round number of 300 and 25 thought.  
17 So, you haven't carried your burden  
18 of showing that you are entitled to  
19 that number because you haven't  
20 presented any information that one  
21 would -- would be required in any  
22 communication for this round number  
23 of \$25,000 and that is before we get  
24 to the question of whether your  
25 obligated -- whether the AG can be

Page 126

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 obligated to reimburse Aronson for  
3 fees done in connection with the AG's  
4 search and one last thing, it is true  
5 that the commercial division rules,  
6 index A relates to ESI does recognize  
7 that there may be circumstances where  
8 you're entitled to privilege claims  
9 done by the third -- third parties. I  
10 haven't seen any cases that says that  
11 is true or none ESI searches. So, I  
12 have laid that out for you.

13 MS. EISENBERG: Okay.

14 SPECIAL MASTER SHERWOOD: And I  
15 am all ears.

16 MS. EISENBERG: Right. So all  
17 of it was ESI or predominantly ESI or  
18 to the ex-they had hard copy paper  
19 was scanned as ESI it's clear that  
20 Aronson had work papers and excels  
21 where they share a platform and I am  
22 confident that the majority of it is  
23 ESI and within the ambit of the rule  
24 --

25 SPECIAL MASTER SHERWOOD: Who is

Page 127

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 obligated to make the distinction who  
3 has the burden you -- Aronson has the  
4 burden or the AG has the burden.

5 MS. EISENBERG: That is not  
6 fairly in dispute or any issue that  
7 they raised that it's not ESI it's  
8 very clear most of it is ESI --  
9 SPECIAL MASTER SHERWOOD: You haven't  
10 answered my question.

11 MS. EISENBERG: Well, I think  
12 that --

13 SPECIAL MASTER SHERWOOD: Whose  
14 burden is it is my question.

15 MS. EISENBERG: I think the  
16 burden he been would be on that  
17 because under the rule they are  
18 affect I have Lee to pay for ESI they  
19 know it's ESI and if they want to  
20 prove -- SPECIAL MASTER SHERWOOD: I  
21 respectfully disagree. The entity is  
22 seeking attorneys fee that is the  
23 burden to show that they are seeking  
24 you know, their request of fees is  
25 reasonable which includes showing

Page 128

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 that the amount of time and effort  
3 made is reasonable and also showing  
4 that the hourly rate is reasonable,  
5 those are the elements of a post  
6 dock. I don't know of a sipping will  
7 case that puts the burden an entity  
8 other than an entity that is seeking  
9 the reimbursement.

10 MS. EISENBERG: That is a  
11 different issue ESI versus -- SPECIAL  
12 MASTER SHERWOOD: No no. No. That is  
13 across the Board. ESI and none ESI.  
14 No that is -- you know, that is well  
15 established.

16 MS. EISENBERG: Your Honor but  
17 the NYAG knows most of it is ESI and  
18 they haven't raised the issue and if  
19 we need to submit an affidavit to the  
20 effect it is mostly ESI we would be  
21 happy to procure this is.

22 SPECIAL MASTER SHERWOOD: This  
23 is your communication this is your  
24 motion, you have the obligation to  
25 make out the prima facie case. This



Page 129

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 is nothing new.

3 MS. EISENBERG: Your Honor with  
4 regard to the amount I am an officer  
5 of the court and I represented to you  
6 that the amounts that the NRA has  
7 reimbursed Aronson to date is around  
8 \$300,000.00 if it is necessary to  
9 submit the invoices we are happy to  
10 do that the amount that Aronson NRA  
11 has never disputed and that is the  
12 issue that we brought to Your Honor.

13 SPECIAL MASTER SHERWOOD: Okay.  
14 Ms. Connell.

15 MS. CONNELL: Your Honor, we  
16 actually have said specifically that  
17 we acknowledge responsibility to pay  
18 for comfort reasonably incurred in  
19 complying with the subpoena by a  
20 third-party. That is not the  
21 question. But what is reasonable? And  
22 that is on the burden, the burden is  
23 on the person that is seeking  
24 repayment and SPECIAL MASTER  
25 SHERWOOD: That is what I just said.

Page 130

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 MS. CONNELL: We have not seen  
3 documents or testified to support  
4 what amount we could determine is  
5 reasonable here. And in indication  
6 Your Honor it's important to note  
7 under a D pen Dicks A under the  
8 division rules where a third-party is  
9 \*\*\*MARK an attorneys privilege that  
10 soft is born by the party. We have  
11 out lined the NRA's conduct here with  
12 regard to asserting it's privilege,  
13 it actually took from I think all of  
14 2021 to even now we are getting  
15 Aronson documents now still we have  
16 had motion practice about this and  
17 been engaged in a very costly and  
18 unnecessary process that the NRA  
19 chose to engage in to redact and  
20 identify privileged documents. That  
21 is on the NRA. What we had asked for  
22 and what we raised is that- that the  
23 that we identify what is a reasonable  
24 amount. Same we have paid -- we have  
25 paid Aronson 300 \$25,000 does not

Page 131

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 allow us to assess what a reasonable  
3 amount is we know that the a pen  
4 dishes --

5 SPECIAL MASTER SHERWOOD: What  
6 Ms. Eisenberg needs to do what NRA  
7 needs to do in its application is  
8 what you do in all of these cases  
9 which is you provide documentary  
10 evidence of invoices that gives  
11 detail, that is standard stuff that  
12 lawyers and account abilities provide  
13 when they bill their clients and we  
14 need to know what the hourly rates  
15 are and who did what when. That --  
16 that is the standard stuff that is  
17 what is required and I am telling  
18 this to you and I hope will and I  
19 know that Ms. Eisenberg is listening  
20 because that is what she is going to  
21 have to do. As she said she is an  
22 Officer of the Court and we say and  
23 it's interesting it's over  
24 \$300,000.00, the request was for 300  
25 \$25,000 never once has the NRA

Page 132

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD  
2 presented evidence that it paid 300  
3 and \$25,000 for -- to Aronson in  
4 connection with this production. So  
5 the request is sufficient in -- in  
6 that respect. And we get to the next  
7 level, which has to do with what is  
8 reason burst believe and what is not.  
9 Now, there is -- and you presented a  
10 fair A case law that says that you  
11 are not entitled to be reimbursed for  
12 doing somebody else's work. And it --  
13 not the case. I haven't seen any  
14 cases that would go the other way.  
15 But that is not to say that the NRA  
16 is not entitled to seek reimbursement  
17 the fees that they paid to Aronson's  
18 in connection with Aronson's work in  
19 connection with their obligation to  
20 the NRA to keep it's documents  
21 confidential. It would not surprise  
22 me if there was in the retain area  
23 agreement between Aronson and the NRA  
24 that there's a confidentiality  
25 provision and to the extent that the

Page 133

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 -- that Aronson did a privileged  
3 search, with respect to ESI, I think  
4 that is fair grounds for argument  
5 with respect to it. And so, there  
6 you're. Now why am I spending all of  
7 this time explaining what the law is.  
8 I don't think we should be spend Aing  
9 a lot of time fighting over this. I  
10 have outlined to you some of my sense  
11 of what I think the law sand how it  
12 should an approached and what I would  
13 urge both sides to do is sit down and  
14 figure out what is the reasonable  
15 amount of fees to which the NRA is  
16 entitled to be reimbursed having  
17 fronted the money that it gave  
18 legitimately to Aronson and before  
19 you, Ms. Eisenberg go to the trouble  
20 of presenting -- of preparing the  
21 level of details that I would require  
22 or I should be making a decision that  
23 two sides will come up with some kind  
24 of an accounting then you will do  
25 what you have to do and I will do

Page 134

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 what I have to do okay.

3 MS. EISENBERG: Thank you

4 SPECIAL MASTER SHERWOOD: I think we

5 are at the end. Is there I go else

6 that we have to deal with MS.

7 CONNELL: No.

8 MS. EISENBERG: Thank you very

9 much Your Honor.

10 SPECIAL MASTER SHERWOOD: So let us conclude

11 and obviously I will give you a -- I will

12 give you a decision.

13 MS. EISENBERG: Thank you.

14 MASTER SHERWOOD: I would like

15 to get a transcript in a condensed

16 version and.

17 (Whereupon, at 12:12 P.M., the

18 Examination of this witness was

19 concluded.)

20

21

22

23

24

25

° ° ° °

Page 135

1

2

## E X H I B I T S

3

4

## PLAINTIFF'S EXHIBITS

5

6

EXHIBIT

EXHIBIT

7

NUMBER

DESCRIPTION

8

Exhibit 1

DOCUMENT

9

Exhibit 2

DOCUMENT

10

Exhibit 3

DOCUMENT

11

Exhibit 4

PHOTOGRAPH

12

Exhibit 5

PHOTOGRAPH

13

Exhibit 6

PHOTOGRAPH

14

Exhibit 7

PHOTOGRAPH

15

Exhibit 8

PHOTOGRAPH

16

Exhibit 9

PHOTOGRAPH

17

Exhibit 10

PHOTOGRAPH

18

Exhibit 11

PHOTOGRAPH

19

Exhibit 12

PHOTOGRAPH

20

Exhibit 13

PHOTOGRAPH

21

Exhibit 14

PHOTOGRAPH

22

Exhibit 15

PHOTOGRAPH

23

Exhibit 16

PHOTOGRAPH

24

Exhibit 17

PHOTOGRAPH

25

Exhibit 18

PHOTOGRAPH

Page 137

1 ORAL ARGUMENT BEFORE SPECIAL MASTER SHERWOOD

2 Exhibit 19 PHOTOGRAPH

3 Exhibit 20 PHOTOGRAPH

4

5

6

7

## I N D E X

8

9 EXAMINATION BY PAGE

10 MR. GALEOTA 5

11 MR. GLANZBERG 118

12

13 INFORMATION AND/OR DOCUMENTS REQUESTED

14 INFORMATION AND/OR DOCUMENTS PAGE

15 (None)

16

17

18 QUESTIONS MARKED FOR RULINGS

19 PAGE LINE QUESTION

20 (None)

21 \* Minimum one page for index. Try to fit

22 on one page, if possible, if only a small

23 amount of information is on the last page

24 of the index.

25



Page 138

1

2

\* don't have a section with (None) by

3

itself on a separate page.

4

5

\* use your judgment on spacing whether to

6

single space some entries or to leave

7

double spacing.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Page 139

## C E R T I F I C A T E

STATE OF NEW YORK )  
: SS.:  
COUNTY OF NEW YORK )

I, KARYN CHIOUSANO, a Notary Public  
for and within the State of New York, do  
hereby certify:

That the witness whose examination is  
hereinbefore set forth was duly sworn and  
that such examination is a true record of  
the testimony given by that witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or by 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 21st day of November, 2022.



KARYN CHIOUSANO

[&amp; - accounting]

Page 1

<b>&amp;</b>	<b>17</b> 135:24	<b>25,000400</b>	<b>7</b>
<b>&amp;</b> 2:9 3:4,9,14 16:15	<b>18</b> 135:25 <b>18034</b> 139:23 <b>19</b> 137:2	125:11 <b>28</b> 2:6 <b>2nd</b> 87:12	<b>7</b> 135:14 <b>75</b> 125:12 <b>750</b> 2:11 <b>75209</b> 2:21
<b>1</b>	<b>2</b>	<b>3</b>	<b>8</b>
<b>1</b> 3:11 98:24 99:2,19,22 107:2 135:8 <b>1,000</b> 118:12,14 119:4 <b>10</b> 135:17 <b>100</b> 34:4 125:11 <b>10003</b> 2:16 <b>10005</b> 2:6 <b>10022</b> 2:12 3:6 <b>10036</b> 3:11 <b>10166</b> 3:16 <b>102</b> 2:16 <b>10:00</b> 1:13 <b>10th</b> 2:16 <b>11</b> 73:16 74:4 135:18 <b>116-314</b> 2:20 <b>118</b> 137:11 <b>12</b> 73:16 74:5,17 135:19 <b>12:12</b> 134:17 <b>13</b> 76:11 78:15 135:20 <b>14</b> 1:12 135:21 <b>14th</b> 36:15 <b>15</b> 27:5 135:22 <b>15,000</b> 52:19 <b>15th</b> 36:16 <b>16</b> 135:23 <b>16,000</b> 52:15,19 <b>16th</b> 2:6	<b>2</b> 27:4 106:23 135:9 <b>20</b> 137:3 <b>200</b> 3:16 <b>2017</b> 59:5 <b>2018</b> 59:5 110:17 110:23 111:7,20 113:5,16,19 114:19 116:4,7 116:14,19,25 118:20 119:2,17 <b>2019</b> 111:4,9 119:18 <b>2020</b> 36:19 40:11 110:17 <b>2021</b> 38:16 55:16 95:7 119:2 125:9 130:14 <b>2022</b> 1:12 58:19 88:25 139:20 <b>2023</b> 76:17 <b>20th</b> 4:8,18 5:10 6:4 73:17 84:10 84:19 <b>21</b> 125:13 <b>21st</b> 139:20 <b>23</b> 113:16 <b>23rd</b> 4:23 <b>25</b> 125:16 <b>25,000</b> 125:23 130:25 131:25 132:3	<b>3</b> 124:11 135:10 <b>30</b> 119:2 <b>300</b> 125:16 130:25 131:24 132:2 <b>300,000.00</b> 129:8 131:24 <b>31st</b> 119:15 <b>360</b> 22:14 60:8 <b>37,000.00</b> 56:14 57:18 59:7 60:15 <b>4</b> <b>4</b> 73:18 97:3,6,7 135:11 <b>410</b> 3:5 <b>451625/2020</b> 1:7 <b>5</b> <b>5</b> 98:21 99:5 135:12 137:10 <b>50</b> 125:12 <b>5600</b> 2:20 <b>6</b> <b>6</b> 110:17,19 135:13 <b>600</b> 12:20 <b>600,000.00</b> 21:2 39:6 43:2	<b>8</b> 135:15 <b>810</b> 3:5 <b>83</b> 47:25 <b>9</b> <b>9</b> 135:16 <b>990</b> 38:25 42:15 <b>990's</b> 102:9 <b>9th</b> 19:10 <b>a</b> <b>a.m.</b> 1:13 <b>abilities</b> 107:10 107:12 131:12 <b>ability</b> 19:24 23:18 <b>able</b> 27:19 36:4 37:22 63:10 <b>absolutely</b> 23:8 28:14 42:7,25 45:21 58:5 62:23 64:18 65:4 108:25 124:3,7 <b>accepted</b> 34:5 <b>account</b> 114:2 131:12 <b>accountants</b> 30:4 <b>accounting</b> 29:20 133:24

[accuracy - appropriateness]

Page 2

<b>accuracy</b> 18:9 54:12 <b>accurate</b> 24:14 53:16 <b>achieve</b> 22:24 <b>acidulously</b> 86:23 <b>ackerman</b> 60:17 <b>acknowledge</b> 129:17 <b>acting</b> 30:8 <b>action</b> 92:19 96:8 139:16 <b>actions</b> 9:5 80:16 <b>acts</b> 18:22 <b>actual</b> 61:22 98:18 <b>addition</b> 87:4 90:7 102:20 <b>additional</b> 41:13 41:16 43:5 45:10 49:10 74:16 82:11,13 82:24 89:5 <b>address</b> 5:21 27:6 32:5 51:9 <b>addressed</b> 4:21 51:19,24 85:13 104:25 106:23 108:4 109:2,15 <b>addressing</b> 77:16 87:20 <b>adequate</b> 37:20 57:7 <b>adequately</b> 104:25 <b>admission</b> 42:24	<b>admit</b> 28:25 <b>advice</b> 7:11 11:4 16:4 18:16 22:21 26:13 30:3 39:21 45:24 <b>advise</b> 16:17 29:5 <b>aerating</b> 42:22 <b>affect</b> 127:18 <b>affidavit</b> 128:19 <b>affiliates</b> 6:16 <b>affirmatively</b> 15:15 16:25 18:15,21 70:25 <b>ag</b> 7:6 10:17 13:13 37:18 42:5 57:6 63:2 65:22 85:2 89:13 92:4 99:10 100:24 105:18,25 108:5 111:15 125:25 127:4 <b>ag's</b> 84:20 126:3 <b>agencies</b> 85:8 100:22 106:7 123:3 <b>agency</b> 105:10 105:19 <b>agenda</b> 5:7 <b>ago</b> 63:4 <b>agree</b> 78:7 109:3 <b>agreed</b> 29:10 <b>agreement</b> 132:23 <b>ahead</b> 63:8 88:9 88:20 106:19	<b>aing</b> 133:8 <b>akin</b> 3:9 <b>akingump.com</b> 3:13 <b>alive</b> 76:18 <b>allege</b> 92:17 <b>alleged</b> 17:10 58:11 102:17,18 <b>allegedly</b> 60:16 <b>alleges</b> 17:9 50:13 <b>allegiance</b> 67:11 69:16 71:19 <b>allow</b> 131:2 <b>allowed</b> 35:20 <b>ambit</b> 126:23 <b>amend</b> 87:6,25 <b>amended</b> 24:7 27:16 70:25 87:12 <b>amendment</b> 35:2 92:20 <b>america</b> 1:9 2:11 3:10 <b>ammend</b> 87:10 <b>amount</b> 35:6 36:2,3 38:18 40:7 59:11,19 66:11,13 96:4 128:2 129:4,10 130:4,24 131:3 133:15 137:23 <b>amounts</b> 17:22 17:23 18:5 43:5 129:6 <b>ample</b> 38:9 <b>analyzed</b> 40:15	<b>answer</b> 17:9 20:11 33:19,20 60:5 71:2 88:13 <b>answered</b> 87:8 88:9 127:10 <b>apart</b> 96:18 <b>apparently</b> 64:7 <b>appear</b> 47:15 50:18,20 <b>appearances</b> 2:23 <b>appeared</b> 115:17 <b>application</b> 131:7 <b>applied</b> 18:23 <b>applies</b> 93:23 <b>apply</b> 7:16 22:25 55:4 56:20 89:22 90:2 <b>applying</b> 27:9 <b>appointment</b> 24:21 27:8 76:15 <b>appreciate</b> 50:6 114:15 <b>appreciated</b> 73:15 <b>apprise</b> 41:13 <b>approach</b> 41:12 <b>approached</b> 133:12 <b>appropriate</b> 7:19 16:21 40:7 88:5 <b>appropriately</b> 77:16 <b>appropriateness</b> 76:20
--	--	--	--

[april - attorney]

Page 3

<b>april</b> 111:4	83:1 84:1 85:1	125:3,10 126:2	<b>assertions</b> 18:10
<b>arbitrarily</b>	85:21,23 86:1	126:20 127:3	19:25 54:12
110:23	87:1,23 88:1	129:7,10 130:15	60:24
<b>area</b> 132:22	89:1 90:1 91:1	130:25 132:3,23	<b>asserts</b> 7:6 112:8
<b>argue</b> 20:10	92:1 93:1,20,22	133:2,18	<b>assess</b> 76:20
23:22 24:19	94:1 95:1 96:1	<b>aronson's</b> 63:11	131:2
29:21 107:2	97:1 98:1 99:1	64:9,25 132:17	<b>assessed</b> 17:23
<b>argued</b> 17:11,12	100:1 101:1	132:18	<b>assessing</b> 81:17
<b>arguing</b> 24:13	102:1,17 103:1	<b>arrive</b> 54:2	111:16
47:16 52:8	104:1 105:1	<b>art</b> 27:18	<b>assessment</b>
<b>argument</b> 1:15	106:1,20 107:1	<b>artificial</b> 111:19	89:25
4:1 5:1 6:1 7:1	108:1 109:1	113:7	<b>assets</b> 48:16
8:1 9:1 10:1,5,6	110:1 111:1	<b>artificially</b>	<b>assistant</b> 62:4
11:1 12:1 13:1	112:1 113:1	113:18	90:9 110:24
14:1,2 15:1 16:1	114:1 115:1	<b>ascertained</b> 61:2	<b>association</b> 1:9
17:1 18:1 19:1	116:1 117:1	<b>asked</b> 21:12	2:10
20:1 21:1 22:1	118:1 119:1	33:24 34:24	<b>assume</b> 24:12
23:1 24:1 25:1	120:1 121:1	36:23 55:18	34:20 64:3
26:1 27:1 28:1	122:1 123:1,20	56:16 57:7,16	72:16 74:21,21
29:1 30:1 31:1	124:1,24 125:1,5	130:21	97:17 114:12
32:1 33:1,18	126:1 127:1	<b>asking</b> 8:15	117:16
34:1 35:1 36:1	128:1 129:1	36:22 43:9	<b>assumed</b> 89:5
37:1 38:1 39:1	130:1 131:1	54:17 59:9 62:3	<b>assuming</b> 77:4
40:1 41:1 42:1	132:1 133:1,4	67:16 112:22	86:12,12
43:1 44:1 45:1	134:1 137:1	114:10 118:11	<b>ate</b> 105:22
46:1 47:1 48:1	<b>arguments</b> 16:3	123:14	<b>attached</b> 94:25
49:1 50:1 51:1	20:23	<b>assert</b> 16:2 18:16	<b>attempts</b> 20:4
52:1 53:1 54:1	<b>arizona</b> 59:12	20:20 115:15	92:10
55:1 56:1,18	<b>aronson</b> 4:21	<b>asserted</b> 4:15	<b>attendance</b>
57:1 58:1 59:1	6:13 10:13 11:7	7:10 87:13	32:14
60:1,3 61:1 62:1	11:9,17 61:10	88:10,11,12,25	<b>attention</b> 65:2
63:1 64:1 65:1	62:12 63:3,8,19	89:13 91:12	<b>attorney</b> 1:4 2:3
66:1 67:1 68:1	64:19,23 65:11	95:22 104:8	2:5 4:9,15,24,25
69:1 70:1 71:1	65:22,25 66:10	<b>asserting</b> 7:11	6:3 8:11,24 15:3
71:15 72:1 73:1	66:12,15,19 67:3	16:9 104:13	33:14 39:20
74:1 75:1 76:1	71:23 72:2,17,18	130:12	52:13 62:4
77:1 78:1 79:1	72:24 79:19	<b>assertion</b> 15:8	63:18 64:12
80:1 81:1 82:1	80:6 124:11,21	36:6	90:9 92:11,23

[attorney - case]

Page 4

94:19,23 96:19 97:10 101:4,7,11 101:24 102:22 105:5 106:5 110:24 111:25 <b>attorneys</b> 2:4,9 2:10,15,19 3:4,9 3:15 127:22 130:9 <b>audit</b> 21:20 30:10 77:15 80:6 <b>auditor</b> 6:13 <b>auditors</b> 11:17 79:20 <b>audits</b> 79:25 <b>aught</b> 45:10 <b>august</b> 110:17 110:19 119:2,15 <b>authorize</b> 27:24 111:3 <b>authors</b> 80:8 <b>available</b> 23:5 <b>avenue</b> 2:11 3:5 3:16 <b>aware</b> 20:14 66:5 <b>awhile</b> 91:4	99:10 103:3 112:16 <b>balances</b> 29:21 30:11 <b>bank</b> 3:10 19:2 <b>bankruptcy</b> 17:12 20:3 60:4 <b>based</b> 31:4 <b>baseline</b> 114:5 <b>basic</b> 114:5 <b>basically</b> 88:22 <b>basis</b> 28:14 66:18,22 89:6 <b>bears</b> 22:4 <b>beginning</b> 110:10 112:25 <b>behalf</b> 48:20 72:23 <b>belabor</b> 100:19 <b>believe</b> 6:18 52:18 57:23 132:8 <b>believes</b> 45:3 51:14 <b>benefit</b> 29:6 43:16,20 47:18 48:21 49:13 50:14 51:19 53:16 82:7 <b>benefits</b> 17:14 17:19,21 18:6 19:17 20:5 21:5 35:4,25 36:18 37:11,18 42:21 44:13 45:19 51:24 52:14 53:5,21,22 54:18 54:23 60:25	82:21 <b>better</b> 108:24 114:17 119:20 <b>beyond</b> 42:22 52:11 81:22 <b>bias</b> 92:20 104:2 111:16 <b>biases</b> 103:7 <b>bill</b> 131:13 <b>billed</b> 125:11 <b>block</b> 3:12 36:21 <b>blocked</b> 19:23 54:17 71:8,9 77:20 <b>blood</b> 139:16 <b>board</b> 23:6 30:9 78:4,24,25 79:3 102:24 128:13 <b>booker</b> 3:12 <b>born</b> 130:10 <b>borne</b> 45:6 <b>bottom</b> 60:8 <b>break</b> 90:23 <b>brewer</b> 2:9 18:4 33:4 70:19 <b>brewerattorne...</b> 2:13 <b>broader</b> 112:24 <b>brought</b> 64:25 129:12 <b>bryant</b> 3:11 <b>bucket</b> 11:20 44:18 <b>building</b> 3:15 <b>bullet</b> 74:4 78:15 80:13 <b>bullets</b> 74:3	<b>bundle</b> 9:15 <b>burden</b> 123:15 125:17 127:3,4,4 127:14,16,23 128:7 129:22,22 <b>burdensome</b> 81:24 <b>bureau</b> 94:12 <b>burst</b> 132:8 <b>business</b> 19:21 23:11 37:2 54:7
<b>c</b>			
<b>c</b> 2:2 3:2 124:15 139:2,2 <b>calculate</b> 19:19 <b>calculated</b> 17:21 38:20 <b>calculation</b> 42:18 <b>calculations</b> 82:5,19 <b>call</b> 60:8 107:17 <b>called</b> 7:7 8:2 66:10 118:17 <b>calling</b> 97:19 <b>camera</b> 9:17 11:24 13:22 73:23 74:8,25 <b>car</b> 116:23 <b>care</b> 74:10,14 <b>careful</b> 41:11 <b>carried</b> 125:17 <b>cars</b> 103:4 <b>case</b> 1:7 7:13 8:22 9:6 13:15 16:3 18:22 20:3 20:3 26:14			

[case - communications]

Page 5

30:22 32:17,21 54:14,22 76:14 87:4 102:16 105:21 108:22 108:22 121:19 121:21 122:7,9 122:14,17,18 123:16 128:7,25 132:10,13 <b>cases</b> 18:19 19:2 20:9 30:23 36:6 121:23 126:10 131:8 132:14 <b>categorical</b> 118:4 119:11 <b>categories</b> 7:24 74:16 76:23 85:3 111:23 113:11 118:19 <b>category</b> 12:4,23 75:3 82:25 97:3 97:6,7 98:21,24 99:5,19,22 107:2 107:3 108:6,7 110:14 115:4,8,9 118:11,12 120:10 <b>caught</b> 116:4,8 <b>caution</b> 42:23 <b>certain</b> 6:10 9:5 15:15,16,23 16:6 53:12,13 73:19 76:15,22 <b>certainly</b> 27:10 37:12 53:18 60:3,4 77:12 81:21 95:13 103:9 122:9	124:4,14 <b>certificates</b> 120:20 <b>certify</b> 139:9,14 <b>cetera</b> 8:3 <b>chain</b> 116:5,21 <b>challenge</b> 89:12 <b>change</b> 46:16 107:21 <b>charge</b> 11:14 56:21 59:23 60:15 104:20 <b>charges</b> 56:2 60:21 <b>charities</b> 94:11 <b>chart</b> 60:13 <b>check</b> 38:24 <b>checks</b> 29:20 30:11 83:10 <b>cherry</b> 18:7 52:3 <b>chief</b> 108:22 <b>chiusano</b> 1:18 139:7,23 <b>choice</b> 15:19,20 <b>chose</b> 66:14 119:25 130:19 <b>chosen</b> 110:23 113:7 <b>chronologically</b> 113:15 115:6 <b>circumstances</b> 31:9 126:7 <b>citation</b> 16:19 106:24 <b>cite</b> 36:6 <b>cited</b> 18:19 20:10	<b>cites</b> 26:15 30:24 <b>city</b> 101:4 112:18 <b>claim</b> 48:25 58:5 69:20 81:4 87:13,15 88:11 88:24 104:2,3 106:12,12,16 120:7 <b>claimant's</b> 109:7 <b>claimed</b> 103:11 <b>claims</b> 4:15 7:4 24:4 25:23 27:4 48:15 85:4 90:18 101:20 104:18 115:15 115:20 120:23 126:8 <b>class</b> 97:9 <b>classic</b> 26:11 52:3 <b>clean</b> 51:9 104:14 <b>clear</b> 18:13,20 32:17 36:7 42:16,20 59:18 64:21 68:23 126:19 127:8 <b>cleared</b> 64:22 <b>clearly</b> 10:24 28:16 103:4 <b>client</b> 8:11,24 106:14 115:16 <b>clients</b> 131:13 <b>close</b> 19:10 34:4 55:24 95:14 <b>closed</b> 36:15	<b>coda</b> 3:21 <b>cohen</b> 87:17,24 103:15 104:5,24 <b>coincidentally</b> 110:16 <b>collected</b> 96:3 <b>columbia</b> 101:12 <b>column</b> 115:11 118:17 <b>come</b> 14:5,7 22:6 43:21 67:3 95:13 133:23 <b>comes</b> 90:22 118:24 <b>comfort</b> 13:25 129:18 <b>coming</b> 29:23 30:25 105:25 <b>commencement</b> 123:10 <b>comment</b> 76:3 <b>commercial</b> 124:16 126:5 <b>committee</b> 21:20 30:10 77:15 79:25 80:7 <b>committees</b> 79:4 <b>common</b> 69:21 89:14 91:8 <b>communicated</b> 122:4 <b>communication</b> 111:22 112:5 113:17 115:8 121:8 125:22 128:23 <b>communications</b> 4:4 8:10,20,24
---	---	---	--

## [communications - contemplate]

Page 6

9:8 10:12,23 11:9 12:6 13:4 13:12,14 23:14 23:25 28:18 46:13 69:18 71:10 81:15,18 83:16 85:5,7,8 85:10 90:6 97:14 98:5,18 100:21,23 102:23 103:2,6 105:9 107:4 109:5 111:11 113:9 114:22 116:13 119:23 121:5,15 123:2 <b>company</b> 31:2,7 <b>compare</b> 30:22 <b>compel</b> 89:17 <b>complainants</b> 85:11 107:14 <b>complaint</b> 40:22 50:13 58:12 87:7,12,25 88:9 110:2,20 <b>complaints</b> 107:18 <b>complete</b> 21:13 <b>completed</b> 19:8 55:25 107:5 <b>completely</b> 14:2 30:21 31:10 39:6,14 85:23 <b>completeness</b> 86:24 <b>compliance</b> 12:12 16:24 22:24 24:22	27:9 32:10,15 51:2 60:9 70:18 71:11 81:4 89:2 <b>compliant</b> 71:4 <b>complying</b> 16:22 129:19 <b>computer</b> 113:25 <b>con</b> 4:24 80:4 120:24 <b>concerns</b> 27:6 86:24 87:20 <b>concierge</b> 3:20 <b>conclude</b> 42:10 42:13 43:20 134:10 <b>concluded</b> 134:19 <b>condensed</b> 134:15 <b>conduct</b> 15:23 22:5 78:5 130:11 <b>conducted</b> 21:4 21:13 30:16 35:17 121:24 <b>conducting</b> 23:3 41:21 <b>conducts</b> 31:3 <b>confer</b> 106:5 <b>confident</b> 13:16 126:22 <b>confidential</b> 85:10 96:12 107:13,17,18 109:6 132:21 <b>confidentiality</b> 132:24	<b>conflict</b> 28:4 34:2 <b>conflicts</b> 77:17 <b>conley</b> 2:7 <b>connected</b> 9:5 <b>connection</b> 106:8 122:5 126:3 132:4,18 132:19 <b>connell</b> 2:7 4:24 4:25 5:4,6,19 6:7,23 8:7 10:5 11:13 12:5,8 13:6 14:8,12,25 23:13 26:14 28:8,12 29:15 30:24 31:15,21 31:24,25 32:4,8 35:14,22 36:12 39:3,17 43:3 44:16 46:2 50:8 51:8,12 52:6 53:10 54:21 55:10,15 56:9 58:13 59:13,21 61:7,21,25 62:6 62:10,16 66:6 67:2,16 70:13 71:22 72:16 73:4,10 74:15 75:16 76:12 77:9 83:22 84:4 85:16,22 91:7,10 91:21,25 92:9 93:10,15 94:9,13 94:18 96:2 97:4 97:7,21 98:6,12 98:23 99:3,7,20	99:23 100:4,25 101:7,11 103:13 106:17,20 108:4 108:9,25 109:9 112:8 113:6 117:16 123:8,24 124:3,9 129:14 129:15 130:2 134:7 <b>connell's</b> 38:8 48:16 66:10 102:14,17 114:23 <b>connolly</b> 105:17 <b>consent</b> 63:11 <b>conservatively</b> 78:22 <b>consistently</b> 86:22 <b>constitutional</b> 101:21 104:3,12 104:15 <b>constructed</b> 87:2 <b>construe</b> 78:23 <b>construed</b> 80:5 <b>consult</b> 107:10 107:12 <b>consultant</b> 11:16 <b>consultants</b> 16:9 16:20 85:9 107:4 <b>consults</b> 31:13 <b>contact</b> 67:21,24 <b>containing</b> 80:14 <b>contains</b> 83:10 <b>contemplate</b> 77:2
--	--	--	---



[context - defendants]

Page 7

<b>context</b> 91:16 94:6 <b>continue</b> 2:23 55:5 <b>continued</b> 3:2 <b>contract</b> 67:25 68:7,23 69:19,23 69:25 71:3 <b>control</b> 33:15 <b>controls</b> 12:13 30:12 <b>conversation</b> 87:22 <b>copied</b> 10:13 90:5 <b>copy</b> 38:23 126:18 <b>corporate</b> 19:9 21:17 34:12 55:17 56:7 57:21 <b>corporation</b> 8:25 <b>corporations</b> 45:23,24 <b>correct</b> 20:21,21 47:16 69:16 70:8 72:13,19 113:6 <b>correction</b> 7:4 22:14 24:10 29:12 33:10,12 74:17 75:6 80:18 <b>correctly</b> 20:16 61:2 <b>correll</b> 2:14,17 <b>correlllawgrou...</b> 2:17	<b>correspondence</b> 99:9 <b>coso</b> 16:22 <b>cost</b> 61:14,22 62:21 64:13 65:10 73:14 <b>costly</b> 130:17 <b>costs</b> 124:22 <b>couched</b> 42:24 <b>cough</b> 118:12 <b>counsel</b> 7:12 8:21 15:20,21,22 16:4,6,8,19 18:4 18:16 26:13 45:22 51:13 70:19 71:24 75:8 83:17 85:6 91:17 97:15 98:5 99:11 123:14 <b>counselors</b> 2:9 <b>counter</b> 120:23 <b>counterclaim</b> 104:4 <b>counterclaims</b> 92:17 102:11 104:9 <b>county</b> 1:2 139:5 <b>couple</b> 30:13 32:5 51:9 <b>course</b> 7:4 22:14 23:11 24:10 27:11,13,19,25 29:12 33:9,12 34:21 40:5 41:6 43:4,11 48:23 74:17 75:6,23 80:17 81:6	113:5 <b>court</b> 1:2 22:6,7 27:6 61:22 65:11 72:2 90:25 91:5 92:16 129:5 131:22 <b>cover</b> 56:12 <b>covered</b> 5:15 52:11 78:14 84:8 95:4,11 98:24 109:7 <b>covers</b> 35:21 95:23 <b>cplr</b> 81:13,23 <b>credibility</b> 103:8 108:17 <b>credible</b> 123:25 <b>criteria</b> 53:23 <b>cuomo</b> 105:23 <b>current</b> 27:17 <b>curtain</b> 17:18 47:22 <b>cut</b> 14:10,16 124:18  <b>d</b>  <b>d</b> 130:7 137:7 <b>d.c.</b> 100:24 105:18 111:15 <b>dallas</b> 2:21 59:16 <b>damages</b> 104:11 <b>data</b> 8:2 36:10 66:11,13 <b>date</b> 1:12 4:12 4:17 59:19 109:25 110:23 111:20,21,24	112:5,17 113:5 113:20 114:19 115:7,9,11,18 116:4,21 117:17 117:17,24 118:17,18,25 119:3,14 120:2,4 129:7 <b>dates</b> 109:12,18 109:23,23 111:10 116:19 118:5 120:9 <b>day</b> 15:12 47:8 62:13 139:20 <b>de</b> 74:7 <b>deal</b> 50:24 73:8 134:6 <b>decades</b> 27:15 <b>december</b> 95:7 <b>decision</b> 43:22 66:21 84:12 91:14 133:22 134:12 <b>decisions</b> 84:14 <b>decks</b> 23:22 32:13 <b>deed</b> 63:14 <b>deemed</b> 42:20 <b>defeat</b> 81:4 <b>defective</b> 90:8 <b>defend</b> 60:24 <b>defendant</b> 1:11 2:10,15,19 3:4,9 105:24 <b>defendants</b> 87:16,21 88:4 96:13
---	--	---	---

[defense - documents]

Page 8

<b>defense</b> 7:12 16:2 18:16 20:6 22:15 26:5,10,13 26:16 48:18 104:22 105:20 106:13 115:14 <b>defenses</b> 9:12 24:5 88:10 101:19 102:12 102:15,16 103:16,20 104:14,15 106:23 120:22 <b>deficient</b> 121:6 <b>defined</b> 62:22 <b>definitely</b> 63:13 86:21 <b>definition</b> 50:21 <b>degree</b> 60:8 <b>delay</b> 64:7 <b>deliberate</b> 41:12 <b>delighted</b> 79:23 <b>delve</b> 92:22 <b>demand</b> 49:12 50:22 62:20 85:16 <b>demanded</b> 83:8 <b>demands</b> 82:5 82:13,20 <b>demonstrate</b> 19:3 <b>denied</b> 20:24 <b>dense</b> 115:21 <b>denying</b> 87:18 <b>depends</b> 78:21 <b>depose</b> 61:10 72:2 93:25 94:19	<b>deposed</b> 63:19 <b>deposition</b> 19:9 56:7,19 57:10 62:21 66:15,25 72:9 94:7 <b>depositions</b> 15:6 55:25 57:21 64:4,14 73:5 91:17 <b>description</b> 38:25 135:7 <b>destroy</b> 101:22 106:2 <b>detail</b> 38:17 131:11 <b>details</b> 59:17 133:21 <b>determination</b> 35:25 42:2 43:17 47:19,21 53:24 <b>determinations</b> 36:16,19 54:9 80:16 <b>determine</b> 19:17 40:6 43:5 45:17 53:3,4 114:21 130:4 <b>determined</b> 19:20 30:17 35:7 37:2,6 38:5 40:15 41:4 44:12 77:8 <b>determines</b> 17:18 45:9 <b>developing</b> 103:4	<b>dicks</b> 130:7 <b>difference</b> 93:25 <b>different</b> 9:3 27:23 41:10 78:9 91:19 94:17,19 104:2,7 105:22 117:8 120:22 128:11 <b>dig</b> 50:24 <b>dinners</b> 54:6 <b>dire</b> 41:11 <b>directing</b> 14:15 <b>directors</b> 54:24 <b>disagree</b> 83:24 86:12,14 127:21 <b>disagrees</b> 28:8 <b>disclose</b> 49:24 108:14,20 <b>disclosed</b> 39:2 50:2 108:8,23 120:18 <b>disclosure</b> 20:24 <b>disclosures</b> 120:3 <b>disconnect</b> 44:24 48:5 50:7 <b>discover</b> 19:11 <b>discoverable</b> 43:25 <b>discovered</b> 37:24 <b>discovery</b> 1:16 19:5 22:9 32:23 36:15 38:6 46:6 55:24 66:16 78:10 95:3 119:10 122:2 <b>discrete</b> 76:23	<b>discuss</b> 10:10 122:22 <b>discussed</b> 39:12 <b>discussion</b> 25:7 69:8 <b>discussions</b> 25:9 <b>dishes</b> 131:4 <b>disingenuous</b> 85:24 <b>disks</b> 104:23 <b>dismiss</b> 87:14,19 88:14 102:15 103:20 120:21 <b>dismissed</b> 92:16 102:11 120:20 <b>disprove</b> 24:5 <b>dispute</b> 127:6 <b>disputed</b> 129:11 <b>distinction</b> 10:4 10:9 25:11,15 46:18,23 48:12 127:2 <b>district</b> 101:12 <b>division</b> 124:16 126:5 130:8 <b>doable</b> 80:10 <b>dock</b> 128:6 <b>doctrine</b> 8:12 <b>document</b> 37:4 99:7 115:17 120:9 123:14 125:7 135:8,9,10 <b>documentary</b> 131:9 <b>documenting</b> 124:5 <b>documents</b> 7:24 8:17,19 9:7,14
---	---	---	--

## [documents - entitled]

Page 9

9:16 11:7,8 12:15,22 13:24 14:20,22 15:3 20:12 22:20,22 37:5,6 62:12,25 63:17 64:2,19,20 67:10,12,22,25 68:7,24 69:3 70:5,11,14 71:18 73:22 75:5 76:11,24 77:10 80:9,14 82:4,17 82:25 85:4 86:2 91:24 94:3,20,21 95:23 96:4,6,14 96:22 97:10,23 99:9,13 106:13 110:7 113:15 115:3,6 116:3,6 116:18 118:6,12 119:4 123:13,15 130:3,15,20 132:20 137:13 137:14 <b>doing</b> 7:15 15:7 21:15,15 29:19 30:7 32:18 45:12 49:25,25 54:4 73:14 77:21 96:20 132:12 <b>dollars</b> 38:3 <b>don</b> 13:9 16:16 18:4 39:20 <b>door</b> 27:23 <b>double</b> 138:7 <b>draconian</b> 27:8	<b>draw</b> 9:21 10:3 <b>drawing</b> 48:13 <b>driven</b> 92:19 <b>duly</b> 139:11 <b>duplicates</b> 10:18 <b>e</b> <b>e</b> 2:2,2 3:2,2 116:5,20 117:23 135:2 137:7 139:2,2 <b>earlier</b> 82:8 85:13 <b>early</b> 86:4 91:13 <b>ears</b> 126:15 <b>east</b> 2:16 <b>easy</b> 10:14 11:22 <b>educate</b> 98:11 <b>effect</b> 29:8 128:20 <b>effective</b> 79:8 <b>effectively</b> 73:15 103:15 118:21 <b>effectiveness</b> 23:19 <b>effort</b> 70:24 94:6 128:2 <b>efforts</b> 16:10 22:23 71:11 <b>eisenberg</b> 2:12 4:18 7:14,23 8:4 8:6,8,19 9:19,25 11:11,19 12:3 14:6,11 18:13 22:12,17,18 24:18 25:4,18,21 30:5 37:9,12 38:7,13 40:9	42:7,12 44:3,8 44:22 46:25 47:6 48:4,11 49:4,7,15,19 50:4 57:2,13,22 58:10,16,20,24 59:10,15 61:16 62:19,23 63:20 63:23 64:17 65:14,18 66:3 67:19 68:6,16 69:13,17 70:9 71:17 72:11,12 72:21,22 73:13 73:25 74:2,12,22 75:2,22,23 78:12 78:16,21 79:21 80:22 82:10 83:4 85:18,19 86:20 87:11 88:17,21 89:19 101:14,17 103:17,18 104:6 105:11,17 106:11 107:7,8 107:25 109:10 109:19 110:12 110:19,22 112:14,18 113:3 113:21 114:9,14 116:10,16 117:4 117:7,12,15,20 118:3,9,15 119:5 119:21 120:11 120:14,19 121:13,19 122:6 122:15,19,24 124:13,14	126:13,16 127:5 127:11,15 128:10,16 129:3 131:6,19 133:19 134:3,8,13 <b>eisenberg's</b> 4:11 <b>either</b> 11:22 28:6 39:15 43:19 69:25 <b>election</b> 15:18 <b>electronic</b> 113:23 <b>elements</b> 128:5 <b>elicit</b> 29:7 <b>ellen</b> 3:7 <b>else's</b> 132:12 <b>emily</b> 2:8 <b>employees</b> 17:5 23:4 <b>encompassed</b> 39:5 <b>encourage</b> 63:8 <b>enforcement</b> 85:8 89:12 91:8 92:19 100:22 105:6,10 <b>engage</b> 26:17 98:15 130:19 <b>engaged</b> 130:17 <b>enhanced</b> 12:11 30:13 <b>entities</b> 34:3,3 122:3 <b>entitled</b> 15:14 22:3 39:25 40:19 42:5,9 44:16 46:3 52:2 52:22,24 53:7,18
---	---	--	--

[entitled - fees]

Page 10

64:6 77:4 94:24 101:15 103:6 104:19,21 106:12 110:7 112:9 115:16 116:16 121:14 121:25 125:18 126:8 132:11,16 133:16 <b>entity</b> 127:21 128:7,8 <b>entries</b> 138:6 <b>enumerates</b> 40:22 <b>environment</b> 33:16 <b>error</b> 48:20 66:2 66:4 <b>esi</b> 118:8 126:6 126:11,17,17,19 126:23 127:7,8 127:18,19 128:11,13,13,17 128:20 133:3 <b>esq</b> 2:7,7,8,12,17 2:21 3:6,7,12,12 3:17,17 <b>established</b> 128:15 <b>et</b> 8:2 <b>evidence</b> 16:20 20:6 28:9 29:7 29:11,23 48:24 54:7 101:25 104:21 131:10 132:2 <b>evidenced</b> 73:20	<b>ex</b> 126:18 <b>exactly</b> 25:21 35:22 39:7 43:3 44:21 92:12 112:11 <b>examination</b> 97:25 98:2 134:18 137:9 139:10,12 <b>example</b> 13:8,9,9 16:7 17:13 21:11 23:2 24:6 29:9 33:24 35:17 54:18 55:8 56:13 57:20 60:12 77:14 90:3 <b>excel</b> 19:6,12 <b>excels</b> 126:20 <b>exception</b> 92:3 <b>exceptions</b> 96:7 <b>excess</b> 17:4,14 17:19,21 18:5 19:17 20:5 21:5 29:6 35:4,25 36:18 37:11,17 41:23 42:21 43:15,20 44:13 45:18 47:18 49:13 51:19,24 53:5,16,21,22 54:18,23 60:25 82:6,21 <b>excessive</b> 81:23 <b>excuse</b> 97:4 <b>executive</b> 45:20 <b>executives</b> 12:13 50:15 54:24	<b>exhibit</b> 135:6,6,8 135:9,10,11,12 135:13,14,15,16 135:17,18,19,20 135:21,22,23,24 135:25 137:2,3 <b>exhibits</b> 135:4 <b>existence</b> 43:23 <b>existing</b> 72:18 <b>expect</b> 8:25 82:24 <b>expeditiously</b> 65:3 <b>expense</b> 59:20 <b>expensive</b> 54:5 <b>expert</b> 29:2,3 33:11 37:7 60:6 <b>experts</b> 16:17 34:23 <b>explain</b> 10:2 25:2 109:17 <b>explaining</b> 120:8 133:7 <b>explicit</b> 18:24 <b>extend</b> 80:8 <b>extensive</b> 79:6 79:11 <b>extent</b> 26:23 43:18 45:8 53:19 74:6 79:22 80:24 83:7 92:21 95:18 106:3 108:3 113:10 122:25 123:21 132:25 <b>external</b> 79:20	<b>eyes</b> 27:21 <b>f</b> <b>f</b> 139:2 <b>face</b> 23:23 <b>faced</b> 60:23 <b>facie</b> 128:25 <b>facilitate</b> 73:14 <b>fact</b> 7:17 11:25 18:20 19:11 32:22 36:15 43:22 88:16 103:20 106:21 <b>factfinder</b> 26:24 <b>fair</b> 21:24 29:13 32:16 72:25 75:21 89:24 114:21 132:10 133:4 <b>fairly</b> 17:22 49:12 127:6 <b>fairness</b> 15:13 32:22 86:8 <b>faith</b> 114:20 117:16 <b>fall</b> 74:19 75:3 <b>far</b> 51:21 113:9 <b>farber</b> 3:17 <b>farmer</b> 3:20 <b>fault</b> 65:5 <b>feature</b> 9:9 <b>february</b> 111:9 125:9,13 <b>fee</b> 124:12 125:15 127:22 <b>fees</b> 4:19 126:3 127:24 132:17 133:15
---	---	---	---

[feld - going]

Page 11

<b>feld</b> 3:9 <b>fifth</b> 35:2 <b>fighting</b> 133:9 <b>figure</b> 36:4 37:20 133:14 <b>figuring</b> 40:3 <b>filed</b> 110:20 <b>filings</b> 26:4,22 <b>financial</b> 105:24 <b>find</b> 13:17 21:8,9 26:24 34:15 56:24 63:17 65:23 70:7 114:25 122:8 <b>finding</b> 104:16 <b>findings</b> 25:6 <b>finish</b> 109:22 <b>finished</b> 116:22 <b>finite</b> 110:2 <b>firm</b> 13:8 18:4 23:15 33:4 70:19 <b>first</b> 10:3 21:21 40:10,11 44:17 45:6 51:12 74:4 85:21 90:2 92:20 111:21 113:17 115:7 <b>fit</b> 137:21 <b>five</b> 85:3 109:5 110:14 111:23 113:11 <b>flagged</b> 75:4 <b>fleming</b> 3:4,6 <b>flights</b> 51:22 <b>floor</b> 2:6 <b>focus</b> 37:11	<b>focused</b> 99:2 <b>focussing</b> 89:16 <b>folder</b> 118:13,24 <b>followed</b> 76:5 <b>following</b> 2:23 <b>form</b> 9:11 102:9 <b>formal</b> 70:16 <b>forth</b> 68:25 70:18 98:14,18 99:10 103:3 139:11 <b>forward</b> 10:6 28:9 29:11,17 30:25 33:19 66:14 67:3 <b>found</b> 102:25 <b>four</b> 4:3 78:14 <b>foyer</b> 114:19 <b>framework</b> 16:23 <b>frankly</b> 13:19 18:11 20:16 36:14,23 71:12 95:5 103:8 <b>fraud</b> 15:21 <b>frazier</b> 1:10 3:5 <b>frenkel</b> 5:18 <b>friendly</b> 103:2 <b>front</b> 12:25 102:5 108:20 <b>fronted</b> 133:17 <b>full</b> 22:24 86:18 <b>fully</b> 35:5 <b>fundraising</b> 11:15 <b>further</b> 30:14 34:20 78:9 139:14	<b>future</b> 31:5 45:9 79:13 <b>g</b> <b>gage</b> 3:4 <b>gagespencer.c...</b> 3:7 <b>galeota</b> 137:10 <b>gates</b> 16:15 <b>gather</b> 42:3 <b>gathered</b> 96:14 <b>general</b> 1:4 2:3,5 4:9 33:14 50:12 52:13 53:11,14 64:12 90:10 92:23 94:23 96:19 97:11 101:8,12,24 106:5 112:2 117:24 <b>general's</b> 4:16 5:2 6:3 15:4 63:18 92:12 102:22 105:5 110:25 <b>generally</b> 123:9 <b>generals</b> 62:4 <b>generate</b> 55:20 <b>generated</b> 58:2 79:3 82:18 <b>getting</b> 19:12 55:23 62:12 71:5 130:14 <b>gifts</b> 34:5 <b>give</b> 6:21 10:20 11:23 13:3,25 36:9 45:23 61:17 75:11,12	78:12 84:12 118:5 121:22 134:11,12 <b>given</b> 30:3 35:8 96:23 139:13 <b>gives</b> 131:10 <b>giving</b> 38:12 75:17 82:24 <b>glanzberg</b> 137:11 <b>go</b> 4:4 5:25 14:4 27:22 40:5 43:14 63:2,8 66:14 71:23 77:11,12 88:20 94:5 95:9 97:13 103:7 106:19 132:14 133:19 134:5 <b>goes</b> 63:14 71:14 100:13 113:23 116:21 <b>going</b> 9:16,24 10:16,19 20:2 22:13,19 24:9,12 24:25 25:5 27:3 28:17,19,22 29:14,17 32:25 34:17 36:4,9 37:22 42:21 46:7,8 67:18 69:2 70:6 71:19 73:7,22 74:24 77:5 78:2 81:3 84:11 88:7 93:17 100:2,19 105:4 108:5,21 114:3 119:12
--	--	---	--

[going - important]

Page 12

131:20 <b>gold</b> 16:23 <b>good</b> 33:16 63:13 75:10 81:2 114:20 117:16 118:22 118:23 119:13 <b>gotten</b> 32:13,14 <b>gottwald</b> 19:3 <b>governing</b> 54:14 <b>government</b> 121:24 <b>governmental</b> 106:7 <b>governor</b> 105:23 106:6 <b>great</b> 34:5 71:4 74:9 75:15 <b>green</b> 63:4 <b>grounds</b> 74:23 83:15 101:21 133:4 <b>group</b> 2:14 <b>guard</b> 113:4 <b>guess</b> 9:4 29:13 67:11 91:13 <b>guidance</b> 16:5 <b>gump</b> 3:9 <b>guys</b> 39:12	<b>happen</b> 43:10 <b>happened</b> 56:8 <b>happening</b> 31:11 <b>happens</b> 81:2,5 <b>happy</b> 9:25 13:23 79:11 128:21 129:9 <b>harassed</b> 31:2 <b>harassment</b> 30:23 31:6 <b>hard</b> 48:9 126:18 <b>hauer</b> 3:9 <b>hayley</b> 3:12 <b>heads</b> 21:20 <b>hear</b> 22:16 49:22 <b>heard</b> 51:13 84:13 89:7 115:22 116:15 <b>held</b> 1:17 26:7 28:23 69:8 108:11 <b>help</b> 8:4 25:17 55:25 81:3 <b>hereinbefore</b> 139:11 <b>hereunto</b> 139:19 <b>hey</b> 71:2 <b>high</b> 105:4 <b>hire</b> 29:4 <b>hired</b> 45:22 <b>historic</b> 83:20 <b>historical</b> 69:18 88:2 <b>hold</b> 6:4 31:9 52:4,5 84:22 <b>honor</b> 5:6,20 6:7 8:8,9 9:20 12:24	13:16 14:13,18 15:2 17:15 18:11 20:9,15 22:18 23:8 25:22 29:15 30:6 31:21 33:9 35:10,23 36:13 37:13 38:7 50:5 51:8 53:10 56:10,13,23 58:25 59:21 61:21 62:10,24 69:14 70:13,21 71:22 72:24 74:2,15 75:3,24 76:12 77:9 78:17 79:21 80:23 83:5,22 85:20 86:21 89:7,19 91:22,25 93:12 94:18 96:2 97:8 98:6 100:4,5,12,25 101:17 102:21 103:13 105:12 106:17 109:2,9 109:20 110:13 113:3 114:14 116:11 119:21 121:14 123:8 124:15 128:16 129:3,12,15 130:6 134:9 <b>hope</b> 4:6 76:16 76:18 131:18 <b>hotel</b> 57:18 <b>hotels</b> 54:4	<b>hour</b> 66:25 72:8 102:7 121:3 <b>hourly</b> 128:4 131:14 <b>hours</b> 61:11,13 61:17 <b>huge</b> 93:24 <b>hundred</b> 33:5 47:23 115:2 <b>hypothetical</b> 50:19 <b>hypothetically</b> 45:15 80:25
		<b>i</b>	
		<b>idea</b> 39:5 53:11 <b>identified</b> 11:13 17:20 18:5 47:9 47:23 48:6 53:20 87:3 97:11 <b>identify</b> 20:4 90:4 98:16 105:19 112:19 114:4 115:7 130:20,23 <b>identity</b> 96:10 <b>iii</b> 107:3 108:7 <b>illucidates</b> 114:16 <b>implication</b> 41:2 <b>implicit</b> 18:24 <b>implicitly</b> 12:9 <b>implied</b> 51:18 60:4 <b>important</b> 10:9 15:9 25:10,16 59:25 64:3	

[important - involves]

Page 13

111:12,15 112:2 112:4 130:6 <b>impose</b> 16:13 66:7 <b>impossible</b> 121:9 <b>impression</b> 95:21 <b>improper</b> 42:3 42:11,14 56:19 92:20 106:4 <b>improperly</b> 73:19 <b>inaccurate</b> 26:21 39:6 <b>inadvertently</b> 47:10 <b>inappropriately</b> 6:18 <b>inartfully</b> 68:17 <b>include</b> 101:19 116:20 <b>includes</b> 24:11 68:25 127:25 <b>including</b> 11:14 67:12 <b>incoming</b> 61:11 <b>inconsistency</b> 107:15 <b>incorrect</b> 26:4 103:18 <b>incurred</b> 129:18 <b>independant</b> 6:13 24:22 27:9 <b>independent</b> 51:2 89:2 <b>index</b> 75:17 126:6 137:21,24	<b>indicate</b> 121:7 <b>indicated</b> 12:19 71:25 99:15 <b>indicating</b> 55:9 55:14 108:9 <b>indication</b> 130:5 <b>individual</b> 87:16 88:3 122:3 <b>individuals</b> 97:18 108:6 <b>ineffective</b> 23:21 23:23 <b>informal</b> 110:10 111:5 <b>informants</b> 85:11 96:12 109:6 <b>information</b> 7:3 7:5,8 15:5,13 18:3,8 22:2 32:23 33:2,6 35:9 38:10 39:18 40:12,19 46:2 50:16 57:9 61:12 71:5 77:24 87:3 92:10 93:3,6,11 95:3,5,11 98:17 99:6 101:16 105:7 110:3 112:9 115:13,17 119:25 123:22 125:20 137:13 137:14,23 <b>informed</b> 86:23 88:7 113:22 <b>infractions</b> 26:25	<b>initially</b> 34:7 48:19 <b>injunctive</b> 16:13 17:8 20:7 33:13 76:14,16,21 77:3 104:10 <b>inordinate</b> 66:11 66:13 <b>inquire</b> 19:24 21:19,23 29:13 39:19 <b>inquiry</b> 77:20 <b>insert</b> 105:12 <b>insist</b> 111:22 <b>integral</b> 11:3 <b>intend</b> 48:23 <b>interaction</b> 100:8 <b>interest</b> 17:14 28:5 34:2 38:20 48:22 69:21 89:14 91:9 93:7 93:22 <b>interested</b> 139:17 <b>interesting</b> 131:23 <b>internal</b> 7:17 64:19 96:22,24 <b>internally</b> 96:19 <b>internet</b> 23:6 <b>interpret</b> 100:3 <b>interpreting</b> 99:5 <b>interrogatory</b> 109:2 <b>interview</b> 85:9 96:25	<b>inventorying</b> 81:17 <b>investigated</b> 17:3 33:25 34:18 35:3,6,19 35:19 61:2 92:23 <b>investigating</b> 46:10 77:17 <b>investigation</b> 15:22 21:5 30:17 31:3,4 34:9,11,14 35:18 44:14 54:3 71:6 92:12,18 94:25 96:5,15,21 100:7 106:8 109:25 110:11 111:4,6 111:13,17 121:25 122:5 <b>investigations</b> 7:17 21:12 25:8 41:22 80:15 <b>investigative</b> 95:19 100:14 <b>investigators</b> 98:15 <b>investigatory</b> 95:2,25 <b>invocation</b> 34:25 <b>invoices</b> 129:9 131:10 <b>invoke</b> 18:17 <b>involved</b> 10:25 11:10 92:11 109:23 <b>involves</b> 54:22
--	---	--	---

[irrelevance - learning]

Page 14

<b>irrelevance</b> 93:20 102:18 <b>irrelevant</b> 92:14 93:9,19 105:10 <b>ish</b> 111:2 <b>issue</b> 8:22 13:12 15:3,16 17:2 18:17,21,22 32:21 46:14,20 55:3 57:11 66:7 86:15,19 89:4,8 96:17,18 104:20 104:25 110:13 110:13 117:19 127:6 128:11,18 129:12 <b>issued</b> 87:17 <b>issues</b> 9:4 10:10 15:15 16:6 18:21 20:23 29:6 51:9 64:8 77:3 85:24 87:4 88:23 89:20 102:13 109:11 117:8 <b>items</b> 5:15 78:14 78:23	<b>jonathan</b> 2:7 <b>josh</b> 3:10 <b>joshua</b> 1:10 <b>journey</b> 102:23 <b>judge</b> 16:12 23:10 27:12,20 87:17,24 103:15 104:5,24 120:16 120:19 <b>judgment</b> 138:5 <b>july</b> 36:15 86:4 <b>jumped</b> 14:17 <b>jury</b> 12:11 23:10 27:12,20 28:2 29:18 104:19	48:14 51:23 52:25 53:7 54:10,21 55:6,19 56:3,21,22 59:22 59:22,24 60:10 60:11,14,19,20 66:18 74:11 75:18 76:5 81:2 81:5 84:3 90:24 91:11 92:13 99:16 108:19 110:24 114:5,21 116:17 119:9,9 119:22 121:2 122:18 124:24 125:6 127:19,24 128:6,14 131:3 131:14,19 <b>knowing</b> 61:3 <b>knowledge</b> 39:18 <b>knowledgeably</b> 55:21 <b>known</b> 57:14 58:23 <b>knows</b> 40:20,25 43:3 50:9 52:13 128:17	<b>lane</b> 2:20 <b>language</b> 88:2 <b>lapierre</b> 1:9 2:15 17:13 20:25 33:4 37:15 39:15 40:4 43:6 45:4,11 47:3 48:21 54:16,25 55:6 56:15 60:16 <b>lapierre's</b> 33:25 51:22 <b>large</b> 32:12 100:11 101:2 <b>largely</b> 7:2 92:2 95:8 <b>larger</b> 95:23 <b>late</b> 20:11 61:11 <b>law</b> 2:14,19 18:15 32:17 36:7 54:14 85:7 89:12 91:7 100:22 105:6,9 132:10 133:7,11 <b>laws</b> 22:25 26:3 26:20 <b>lawsuit</b> 15:17 <b>lawyer</b> 29:5 39:13 63:9 94:2 <b>lawyers</b> 9:2 12:7 13:5 22:21 26:8 28:20,24 30:3,16 31:13,13 45:15 131:12 <b>lead</b> 74:17 <b>learn</b> 73:6 <b>learning</b> 36:20
<b>j</b>	<b>k</b>	<b>l</b>	
<b>james</b> 1:4 2:5 101:22 111:2 <b>january</b> 119:18 <b>jim</b> 3:20 <b>john</b> 1:9 3:5 <b>johnson</b> 3:7 <b>joined</b> 87:5 88:23	<b>k</b> 16:15 <b>karyn</b> 1:18 90:22 139:7,23 <b>keep</b> 113:24 132:20 <b>keeping</b> 76:17 120:17 <b>kent</b> 2:17,17 <b>kept</b> 50:16 <b>kind</b> 11:19 28:15 39:21 63:14 77:18 133:23 <b>knew</b> 58:6 70:15 <b>know</b> 5:11,14 8:15,16 9:23 20:17 25:22 32:15 34:8,10 36:2,10,12 37:19 39:7,10,12,25 41:17 42:5,9 44:16 45:14	<b>l</b> 16:15 124:15 124:15 <b>labels</b> 8:16 <b>lack</b> 20:7 <b>lacks</b> 14:2 <b>laid</b> 126:12 <b>lan</b> 13:9 16:16 18:5 39:20	



[leave - master]

Page 15

<b>leave</b> 138:6	<b>limousine</b> 54:5	<b>looks</b> 4:3,23	22:1,10 23:1
<b>leaves</b> 107:21	<b>line</b> 137:19	<b>lost</b> 100:18	24:1,8,24 25:1
<b>ledger</b> 50:12	<b>lined</b> 130:11	<b>lot</b> 36:16 41:10	25:13,19 26:1
53:12,14	<b>list</b> 90:14 109:12	64:15 75:5	27:1 28:1 29:1
<b>lee</b> 120:24	<b>listening</b> 131:19	133:9	29:16 30:1 31:1
127:18	<b>lists</b> 36:17	<b>lovers</b> 2:20	31:19,22 32:1,2
<b>legal</b> 9:3 11:3	<b>litigation</b> 15:21	<b>luxury</b> 54:4	32:6 33:1 34:1
45:24	123:11	<b>m</b>	35:1,12,15 36:1
<b>legitimately</b>	<b>llp</b> 3:4,9,14	<b>ma'am</b> 31:23	36:8 37:1,8,14
133:18	<b>location</b> 59:19	<b>mail</b> 116:5,20	38:1,11 39:1,23
<b>letitia</b> 1:3 2:5	<b>locations</b> 1:17	117:23	40:1 41:1,20
101:22 111:25	<b>lodging</b> 56:15	<b>main</b> 48:15	42:1,8 43:1,13
<b>letter</b> 4:9,11,12	59:12,16 60:15	<b>maintain</b> 93:10	44:1,6,20 45:1
4:17,23 6:3	<b>loegering</b> 3:17	<b>maintaining</b>	46:1,17 47:1,4
12:19 28:16	<b>log</b> 6:19 68:4	42:4	47:13 48:1,8
32:10 33:3	70:7,12 71:20	<b>majority</b> 126:22	49:1,2,5,8,16,20
73:17 76:11	74:18 81:19	<b>making</b> 46:18,24	50:1 51:1,4,11
80:7 84:10,19	85:25 86:25	49:10 90:18	52:1,4,7 53:1
89:11 106:24	89:5,23 90:7	133:22	54:1,20 55:1,13
122:10,23	95:6 109:11	<b>manageable</b>	56:1,5,25 57:1
<b>letters</b> 79:18,19	115:12 117:22	80:3	57:17 58:1,8,14
96:21 100:10,11	118:5,16 119:24	<b>managed</b> 104:17	58:17,22 59:1,6
109:12	120:25 121:6	<b>management</b>	60:1 61:1,5,8,24
<b>level</b> 23:4 132:7	123:4	79:19 80:7	62:1,2,8,14,17
133:21	<b>logs</b> 84:21	<b>mark</b> 2:21 130:9	63:1,16,21,24
<b>lewis</b> 13:10	<b>long</b> 19:10 63:4	<b>marked</b> 137:18	64:1 65:1,7,16
16:16	96:16	<b>marketing</b> 6:16	65:19 66:1 67:1
<b>lexington</b> 2:11	<b>look</b> 5:9 6:21	<b>marriage</b> 139:16	67:6 68:1,9,21
<b>liability</b> 48:13,25	19:16,18 35:21	<b>master</b> 1:16 4:1	69:1,9,15 70:1,4
77:8,11,13	36:25 37:5,7	4:2 5:1,12,23	71:1,16 72:1,4
104:16 123:14	43:18 47:22	6:1,20,24 7:1	72:14,20,25 73:1
<b>liable</b> 26:8 31:9	53:9 93:3 94:5	8:1,14 9:1,13,22	73:11 74:1,9,13
<b>liberally</b> 78:22	101:18 118:15	10:1 11:1,6,18	74:20 75:1,14,20
<b>liberty</b> 2:6	118:16 122:6	12:1,2 13:1 14:1	75:25 76:1,10,25
<b>lighted</b> 63:4	<b>looked</b> 37:24	14:3,23 15:1	77:1 78:1,11,19
<b>likelihood</b> 105:4	52:10,25 53:8	16:1 17:1 18:1	79:1,15 80:1,12
<b>limited</b> 96:7	<b>looking</b> 45:16	19:1 20:1 21:1	81:1 82:1,2,16
99:25	112:23		83:1 84:1,2,6,18

[master - mystery]

Page 16

85:1,2 86:1,11 87:1,9 88:1,15 88:18 89:1,9 90:1,12 91:1,3,6 91:11,23 92:1,7 92:25 93:1,13,16 94:1,10,16 95:1 95:15 96:1 97:1 97:2,5,12 98:1,3 98:10,20,25 99:1 99:4,18,21,24 100:1,17 101:1,3 101:9,13 102:1 103:1,12,14,25 104:1,23 105:1 105:13 106:1,3 106:14,18 107:1 107:3,23 108:1,2 108:10 109:1,4 109:16,21 110:1 110:18,21 111:1 112:1,10,15,20 113:1,20 114:1 114:10 115:1,20 116:1,15,17 117:1,5,10,13,18 118:1,2,6,10,21 119:1,6 120:1,5 120:12,15 121:1 121:10,17,20 122:1,8,12,16,20 123:1,5,18,25 124:1,8,10,17 125:1 126:1,14 126:25 127:1,9 127:13,20 128:1 128:12,22 129:1 129:13,24 130:1	131:1,5 132:1 133:1 134:1,4,10 134:14 137:1 <b>material</b> 73:20 <b>materials</b> 6:11 6:14 24:11 97:24 125:8 <b>matter</b> 20:19 21:18 25:8 46:13 77:5 86:7 94:17 121:14 139:18 <b>matters</b> 6:6,10 6:17 15:12,16 18:18 22:7 83:18 <b>mckenna</b> 11:15 <b>mean</b> 31:17 40:3 47:6 61:19 65:14 66:3 94:21 109:17 110:9 115:3 <b>means</b> 9:23 15:6 <b>measure</b> 27:8 <b>measures</b> 24:13 31:5 <b>mechanism</b> 66:5 <b>mechanisms</b> 28:3 <b>meeting</b> 90:10 111:8 112:3 121:3 <b>meetings</b> 79:13 <b>meets</b> 78:25 <b>members</b> 102:24 <b>membership</b> 6:15 11:15	<b>memoranda</b> 85:9 <b>memorandum</b> 96:24 <b>mentioned</b> 121:2 <b>merely</b> 16:4 <b>merit</b> 14:2 58:5 102:18 <b>met</b> 102:2,5 <b>methods</b> 95:2,19 <b>metlife</b> 3:15 <b>million</b> 34:4 38:3 <b>mind</b> 46:16 106:10 107:21 111:8 112:17 113:2,24 120:17 <b>minimum</b> 137:21 <b>minute</b> 95:16 <b>minutes</b> 77:22 78:24 79:2,4 <b>mischaracterizes</b> 38:9 <b>misconduct</b> 34:19,21 <b>mismanaged</b> 48:17 <b>misrepresentat...</b> 83:25 <b>missing</b> 120:25 <b>mission</b> 104:23 124:12 <b>mistaken</b> 22:11 112:21 <b>misunderstand...</b> 14:14 <b>misunderstood</b> 124:4	<b>mitigated</b> 106:22 <b>mix</b> 28:20 65:5 <b>mixed</b> 37:3 <b>mmp</b> 10:13 11:14 34:2 67:11 69:15 70:14,20,20 71:3 71:7,18 <b>moment</b> 6:21 14:5 <b>money</b> 38:2 64:16 104:10 133:17 <b>monica</b> 2:7 31:24 32:3 <b>monies</b> 56:4 <b>monitor</b> 16:12 24:22 27:10 28:21 51:2 76:15 81:4 89:3 <b>morgan</b> 13:9 16:16 <b>motion</b> 17:10,11 60:5 87:19 89:17 128:24 130:16 <b>move</b> 12:4 67:8 84:7 <b>moved</b> 87:14 88:13 102:15 103:19 104:22 <b>moves</b> 120:21 <b>multiple</b> 33:10 <b>mutual</b> 86:7 <b>mwerbner</b> 2:22 <b>mystery</b> 50:11
---	---	--	--

[n - obligated]

Page 17

<b>n</b>	<b>new</b> 1:2,2,3,4,19	21:3,25 22:22	<b>nra's</b> 6:8,12,19
<b>n</b> 2:2 3:2 137:7	2:3,4,5,6,6,12,12	23:2,8,12,15	15:8 16:18 19:8
<b>name</b> 88:5 94:8	2:16,16 3:6,6,11	24:6,19 25:24	21:16 22:21,23
<b>names</b> 96:11	3:11,16,16 18:15	29:4,5 30:8,18	26:5,10 30:15
<b>narrow</b> 98:9,14	55:23 72:2	31:12,17 32:18	31:14 82:4
108:12 114:12	87:13 88:24	32:25 33:10,16	84:19 85:16
<b>national</b> 1:9 2:10	105:23 106:4	33:18,24 34:3,18	87:19 92:6,9,17
<b>nature</b> 8:17,18	112:18 123:21	34:21 35:10,16	102:24 104:11
<b>near</b> 122:10	129:2 139:4,5,8	37:17 39:2,22,25	122:22 125:4
<b>necessary</b> 18:14	<b>newly</b> 88:11	41:6,11 43:4,8	130:11
42:14 77:25	<b>nice</b> 14:20	43:17 45:3,8	<b>number</b> 6:5 7:23
129:8	<b>non</b> 10:16 66:8	47:8,9,19,21	11:12 12:15
<b>necessitate</b> 13:22	67:21 68:12	48:6 51:13	24:7 40:8 52:16
<b>need</b> 4:4 5:21	<b>normal</b> 15:11	52:25 53:19,25	78:20 105:22
13:14 16:11,12	23:11	54:24 55:17	124:11 125:16
17:7 20:7 28:21	<b>notary</b> 1:18	60:2,17,18 62:3	125:19,22 135:7
33:13 39:12	139:7	62:13 63:4,5,7	<b>nyag</b> 25:23,24
40:16 43:6 63:2	<b>notation</b> 60:13	63:15 64:17	27:4 41:14
66:20 71:25	<b>note</b> 32:8 59:25	65:12,15,22	43:11 58:3
76:3 84:7 85:14	62:9 83:23	66:21,22 67:18	59:18 79:12
90:23 101:18	130:6	67:20 70:24	81:6,8,11,20
108:13 128:19	<b>notes</b> 6:22	71:25 73:19	82:14 83:19
131:14	<b>notice</b> 81:8	75:7 76:4 77:14	86:23 87:6,11,24
<b>needed</b> 30:18	100:10	78:2,25 79:8	88:6 102:3
<b>needs</b> 24:3 41:4	<b>notices</b> 94:14	80:17 81:10	103:9 104:9,17
108:7 131:6,7	99:8	82:14,19 83:17	111:20 128:17
<b>negotiating</b>	<b>notify</b> 45:11	87:8,13,14 88:4	<b>nyag's</b> 102:7
67:13	<b>november</b> 1:12	88:8 89:7 91:18	<b>nyna</b> 3:21
<b>negotiation</b>	36:14 111:7	92:24 95:13	<b>o</b>
67:21 68:24	139:20	96:13 99:15	<b>o</b> 1:16 124:19
69:20,23,25	<b>nra</b> 4:11 6:14,15	101:23 102:8	<b>oath</b> 110:25
125:12	7:4,11 8:20 9:6	103:5 106:2,9,22	<b>object</b> 66:24
<b>negotiations</b>	9:8 11:2 12:7,8	110:5 122:15	84:5,5 123:9,17
67:25 68:7	12:10 13:5	123:13,16 129:6	<b>objecting</b> 72:13
70:17 71:12	14:21 15:5,14,18	129:10 130:18	<b>obligated</b> 125:2
<b>never</b> 103:23	15:25 16:7,25	130:21 131:6,25	125:14,25 126:2
120:19 129:11	17:16 18:25	132:15,20,23	127:2
131:25	19:7,25 20:22	133:15	

[obligation - page]

Page 18

<b>obligation</b> 49:21 49:23 124:21 128:24 132:19 <b>obligations</b> 110:3 <b>obtain</b> 15:13 94:3,7 98:17 <b>obtained</b> 37:25 97:24 102:21 <b>obtaining</b> 33:7 <b>obviously</b> 55:3 84:11 108:19 123:13 134:11 <b>occur</b> 38:21 41:8 41:25 45:10 47:7 77:7 79:14 82:12 <b>occurred</b> 27:2 40:24 41:9,17,24 50:10 58:18,25 59:5 83:13,21 111:23 <b>occurring</b> 45:25 <b>occurs</b> 31:7 82:15 <b>october</b> 4:8,17 4:22 5:10 73:17 84:10 103:21 <b>odd</b> 113:10 <b>offer</b> 9:9 48:24 <b>office</b> 2:3 4:16 5:2 15:4 38:10 48:16 52:12 63:18 66:12,14 100:24 102:2,4,5 102:7,14,22 103:9 106:6	<b>officer</b> 129:4 131:22 <b>official</b> 79:24 <b>officially</b> 111:3 <b>oh</b> 5:17 101:17 <b>okay</b> 6:20 7:20 11:18 12:2 14:3 14:25 19:14 26:9 31:19 56:25 61:7,24 67:6 68:9,21 73:16 74:12 82:2 84:15 88:15 90:24 100:19 101:13 114:11 116:18 118:3,9 119:3 122:19 124:10 126:13 129:13 134:2 <b>once</b> 131:25 <b>ones</b> 40:25 44:4 47:3,5,8 68:14 <b>ongoing</b> 21:14 <b>onset</b> 75:4 <b>open</b> 22:6,8 <b>opens</b> 68:13 <b>opine</b> 33:11 34:23 <b>opined</b> 16:18 <b>opportunity</b> 19:14 <b>oppose</b> 16:11 <b>opposite</b> 30:22 31:10 <b>oral</b> 1:15 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1	13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 87:23 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1	117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1 129:1 130:1 131:1 132:1 133:1 134:1 137:1 <b>orco</b> 19:2 <b>order</b> 16:2 24:3 24:25 72:2,6 125:4 <b>orders</b> 4:22 <b>organized</b> 4:6 <b>outcome</b> 139:17 <b>outlined</b> 133:10 <b>outset</b> 14:19 <b>outside</b> 15:22 16:8,19,20 18:4 <b>overall</b> 111:16 <b>overpayment</b> 71:7 <b>owed</b> 17:19,22 17:23 18:6 19:19 40:5
			<b>p</b>
			<b>p</b> 2:2,2 3:2,2 124:15 <b>p.m.</b> 134:17 <b>page</b> 2:23 74:4,5 74:16 76:11 78:15 106:23 137:9,14,19,21 137:22,23 138:3

[pages - preparation]

Page 19

<b>pages</b> 73:16 118:14 <b>paid</b> 34:4 38:2,3 41:23 56:4 60:16 130:24,25 132:2,17 <b>paper</b> 126:18 <b>papers</b> 126:20 <b>paradigm</b> 26:12 <b>paradox</b> 78:20 <b>paragraph</b> 98:21 <b>parameter</b> 117:9 <b>parameters</b> 114:4,6,7 <b>park</b> 3:5,11,16 <b>part</b> 80:17 91:14 96:15 100:7 105:19 116:5 <b>partial</b> 17:25 <b>particular</b> 39:16 45:16 53:2 57:5 115:4 <b>parties</b> 1:17 10:7 10:25 11:12 75:8 86:2 90:4,6 96:8 126:9 139:15 <b>partners</b> 6:16 <b>parts</b> 40:9 <b>party</b> 25:25 26:18 66:5,8 77:18 94:2 124:7,17 129:20 130:8,10 <b>pay</b> 61:18,19 62:3,21 65:9 66:19,23 67:5 127:18 129:17	<b>payment</b> 20:5 27:22 37:16 56:12,14 82:5,13 <b>payments</b> 17:4 41:13 45:10 48:19 50:14 82:6,12,20,21 <b>peek</b> 17:17 <b>pen</b> 130:7 131:3 <b>people</b> 1:3 2:4 27:23 55:4 <b>percent</b> 33:5 47:24,25 <b>period</b> 36:25 110:9 112:13,24 112:25 <b>permit</b> 89:24 115:5 <b>permitted</b> 7:9 18:12 54:13 <b>person</b> 30:25 102:6 107:17 129:23 <b>personal</b> 42:17 103:5 <b>perspective</b> 17:8 <b>pertain</b> 9:2 <b>peter</b> 1:16 <b>philip</b> 102:23 <b>phillips</b> 1:9 2:20 3:15 34:25 54:19 <b>phone</b> 122:12 <b>photograph</b> 135:11,12,13,14 135:15,16,17,18 135:19,20,21,22 135:23,24,25	137:2,3 <b>phrase</b> 108:13 <b>pick</b> 120:24 <b>picked</b> 18:7 <b>picking</b> 52:3 64:13 68:10,19 69:5 96:18 <b>pierce</b> 13:6 15:11 28:13 <b>place</b> 12:13 24:20 27:22 28:3 30:2 45:7 90:2 <b>placed</b> 15:15 17:2 <b>placing</b> 13:12 <b>plaintiff</b> 1:5 2:4 20:13,18,24 33:7 50:3 <b>plaintiff's</b> 19:24 135:4 <b>plaintiffs</b> 91:18 <b>planning</b> 9:9 <b>platform</b> 126:21 <b>pleaded</b> 103:21 <b>pleading</b> 7:19 <b>please</b> 90:23 <b>pleased</b> 31:15 <b>plus</b> 113:14 <b>point</b> 7:22 28:6 48:3 50:8 75:21 76:21 80:13 83:2 88:8,22 89:22 90:16 91:24 93:9 98:4 100:20 120:23 122:11,13,13	<b>points</b> 78:15 <b>policies</b> 26:3,19 27:15,16 30:10 35:11 <b>pop</b> 19:5 <b>position</b> 30:15 41:7 46:15 52:9 72:23 80:21 91:20 92:3,5 105:2 <b>possible</b> 137:22 <b>post</b> 116:19 128:5 <b>potential</b> 17:20 28:4 100:6 <b>potentially</b> 40:4 <b>powell</b> 1:10 3:10 35:16 <b>practical</b> 12:24 <b>practice</b> 17:10 17:11 60:5 130:16 <b>preamble</b> 33:19 <b>preclude</b> 104:16 <b>precluded</b> 15:7 23:9 43:8 45:12 71:5 86:8 101:20 <b>predating</b> 110:7 <b>predominantly</b> 126:17 <b>prejudice</b> 46:5 <b>prejudiced</b> 107:25 <b>prejudicing</b> 32:20 <b>preparation</b> 8:13 24:2
--	--	---	---

[prepare - putting]

Page 20

<b>prepare</b> 19:16	64:21 69:21	<b>probably</b> 64:6	<b>protected</b> 32:23
<b>prepared</b> 19:14	73:20 74:7	<b>probe</b> 37:23	103:10
23:17 60:14	89:13,14 90:19	<b>problem</b> 80:11	<b>protections</b>
79:4	91:8,9 93:8,23	91:2 105:20	81:12
<b>preparing</b>	95:22 105:7	<b>problematic</b>	<b>protocols</b> 76:4
133:20	125:4 126:8	47:10 78:5	<b>prove</b> 24:4 77:4
<b>prescheduled</b>	130:9,12	<b>problems</b> 117:11	104:17 127:20
121:4	<b>privileged</b> 7:5,8	117:14	<b>provide</b> 13:23
<b>present</b> 3:20	8:10 10:16,19,24	<b>procedures</b> 30:2	69:2 74:7 131:9
75:9 81:7	11:25 12:16,23	30:11	131:12
<b>presentation</b>	18:18 21:18,22	<b>proceeding</b> 77:7	<b>provided</b> 59:18
23:16 79:24	22:2,20 23:14,25	<b>process</b> 40:6	82:22 109:22
<b>presentations</b>	25:7,7,9 28:17	109:14 130:18	125:9
24:3 79:18	33:2 34:15 35:9	<b>processes</b> 12:11	<b>provides</b> 40:13
<b>presented</b> 55:16	45:21 46:13	24:20 28:7 79:9	<b>providing</b> 11:2
125:20 132:2,9	49:18 54:8	<b>procure</b> 128:21	68:4 73:23
<b>presenting</b> 100:2	67:21 68:4,12,14	<b>produce</b> 9:17	81:19 111:19
133:20	70:7,23 71:20	63:9 64:23	<b>provision</b> 132:25
<b>presents</b> 80:6	74:18,23 81:15	66:12 67:18,20	<b>public</b> 1:18 93:7
<b>preservation</b>	81:19 83:15,16	82:14	93:22 139:7
99:8 100:9	84:21 85:5,25	<b>produced</b> 63:6	<b>pull</b> 33:3
<b>president</b> 21:21	86:25 89:5	70:2,3 96:6	<b>purely</b> 75:7
<b>presupposes</b>	93:11 94:22	97:23 98:2	<b>purpose</b> 19:21
44:10	95:6,8 100:16	99:12,14	37:2,4 54:7
<b>pretty</b> 19:10	112:6 115:12,18	<b>product</b> 8:12	<b>purposes</b> 42:21
<b>prevent</b> 31:5	115:20 117:22	<b>production</b>	<b>pursuant</b> 8:11
<b>prevented</b> 33:6	117:24 118:4,16	20:11 93:6	66:6
<b>previously</b> 104:8	119:24 120:25	124:23 132:4	<b>push</b> 112:16
<b>prima</b> 128:25	121:6 130:20	<b>program</b> 60:9	<b>put</b> 12:25 18:20
<b>primarily</b> 54:16	133:2	<b>programmer</b>	20:16 28:9
<b>principles</b> 27:21	<b>privileges</b> 12:9	113:25	29:10,25 32:21
<b>prior</b> 70:15	31:18 81:10,13	<b>promptly</b> 63:10	71:20 72:17
110:9	89:16,25 91:15	<b>proof</b> 16:10	104:21 108:21
<b>privilege</b> 4:14	94:24 95:4,12	<b>prospective</b>	113:17 120:2,3
6:9,19 7:16 8:12	103:11	76:13	<b>puts</b> 10:5 33:18
8:18 13:7 15:8	<b>privileges</b> 112:7	<b>protect</b> 21:25	128:7
15:11 28:13	<b>pro</b> 112:6	95:24 125:4	<b>putting</b> 29:17
32:19 35:20			46:12,19,20

[question - relying]

Page 21

<b>q</b>	<b>reality</b> 44:25 <b>realize</b> 50:7,7 64:24 <b>realized</b> 63:6 <b>really</b> 10:8 18:8 25:10 47:19 55:11 89:24 96:18 113:10 121:18 <b>realtime</b> 81:16 <b>reason</b> 39:19 79:7 95:9,10 132:8 <b>reasonable</b> 29:4 31:8 124:22 127:25 128:3,4 129:21 130:5,23 131:2 133:14 <b>reasonably</b> 129:18 <b>reasons</b> 42:17 120:7 <b>reassessment</b> 12:21 <b>rebecca</b> 3:17 <b>rebut</b> 48:25 <b>rebuttal</b> 108:11 108:16 <b>receipt</b> 82:6,20 <b>receipts</b> 82:11 <b>receive</b> 51:16 <b>received</b> 17:4 51:14 52:14 56:6 123:22 <b>recess</b> 76:8 84:16,24 <b>recognize</b> 64:5 123:20 126:6	<b>record</b> 13:19 69:6,7 139:12 <b>records</b> 57:25 79:23 <b>recurrence</b> 78:3 <b>recusal</b> 28:2 <b>redact</b> 130:19 <b>refer</b> 28:17 80:5 <b>reference</b> 7:18 25:6 29:2 <b>referring</b> 47:2 88:4 <b>reflect</b> 22:21 121:8 <b>reflected</b> 87:23 <b>reflecting</b> 80:14 82:4,19 <b>reform</b> 16:10,24 20:6 71:11 <b>reforming</b> 16:14 <b>refused</b> 17:16 22:8 <b>regard</b> 6:10 10:12 17:15 33:9 74:3 96:20 129:4 130:12 <b>regarding</b> 67:10 70:18 71:6 92:10 <b>regulations</b> 22:25 <b>regulator</b> 31:14 <b>regulatory</b> 26:21 <b>reimburse</b> 37:17 124:21 125:3 126:2 <b>reimbursed</b> 129:7 132:11	133:16 <b>reimbursement</b> 4:20 45:4 51:16 128:9 132:16 <b>reject</b> 106:16 120:6 <b>relate</b> 12:16 22:23 75:6 89:4 <b>related</b> 23:25 25:25 26:18 58:2 71:18 77:18 80:9 83:17 91:15 139:15 <b>relates</b> 126:6 <b>relating</b> 4:20 6:6 7:3 11:8 18:3 77:3 <b>relation</b> 6:12,15 <b>relationship</b> 67:10 <b>relevance</b> 23:17 106:21 <b>relevant</b> 92:22 <b>reliance</b> 16:18 26:12 <b>relief</b> 16:13 17:8 20:8,21 27:3 33:14 48:14 76:14,16,21 77:3 86:5,9 104:10 <b>relies</b> 106:25 <b>reluctant</b> 61:18 <b>rely</b> 9:10 20:22 22:13,20 32:25 107:11 <b>relying</b> 15:25 16:15 33:5
<b>r</b>	<b>r</b> 2:2 3:2 139:2 <b>raise</b> 102:12 <b>raised</b> 86:3 87:20 127:7 128:18 130:22 <b>range</b> 115:10,11 118:17,18,25 119:14 <b>rapport</b> 103:5 <b>rate</b> 128:4 <b>rates</b> 131:14 <b>raw</b> 8:2 36:9 <b>real</b> 113:20 120:4,9		

[remained - rule]

Page 22

<b>remained</b> 95:7	<b>repeatedly</b> 35:3	<b>resisting</b> 62:20	60:9 73:24 74:8
<b>remains</b> 120:18	77:15	72:7 93:5 98:4,8	74:25
<b>remedial</b> 31:5	<b>report</b> 5:18	98:13	<b>revision</b> 112:22
<b>remedy</b> 46:21	<b>reporter</b> 61:22	<b>respect</b> 4:14 5:3	<b>rid</b> 87:25
77:6,12 78:8	65:11 90:25	29:22 35:16	<b>rifle</b> 1:9 2:10
<b>remember</b> 59:11	91:5	40:2,10 55:7	<b>right</b> 5:19,24
59:11 114:2	<b>reports</b> 29:3	68:5,23 69:11	6:25 11:7 14:4
120:16,16	33:11 60:6	70:5 72:6 76:4	24:15,17 25:3,4
<b>remind</b> 102:20	77:22 78:4,24	79:12 82:17	31:20 32:7 34:6
<b>remotely</b> 1:17	79:17	84:20 90:19	35:2,13,23 36:3
<b>rendered</b> 11:4	<b>represent</b> 66:21	91:16 112:12	42:11,12 44:21
<b>renegotiated</b>	<b>representation</b>	114:7 119:8	44:22 45:3,25
71:3	107:9	122:22 132:6	48:11 49:15
<b>rep</b> 19:9 21:17	<b>representations</b>	133:3,5	57:22 59:6
55:17 56:7	33:17	<b>respectfully</b>	62:15 65:18
<b>repaid</b> 17:14	<b>representative</b>	127:21	68:16 69:13
21:2,6 35:5	13:3 34:13	<b>response</b> 73:5	70:8 71:21
38:18 39:7,9,15	57:21 75:12,15	85:15 86:16,18	72:10,15,21
40:14 41:2,3,5	<b>represented</b>	119:9,11	73:24 80:20,22
41:18 42:18	129:5	<b>responses</b> 4:10	82:10 83:3 84:8
43:2,6 44:5,12	<b>request</b> 61:10	4:12 118:8	89:10,18 93:15
45:20 47:3,11	72:8 80:5	<b>responsibility</b>	93:15 97:20
48:22 50:21,23	127:24 131:24	129:17	99:3 105:3
53:20 57:24	132:5	<b>rest</b> 10:21	107:6,6,19 109:4
60:18,20,22 61:3	<b>requested</b> 70:10	<b>restitution</b> 88:3	110:18,21 114:9
83:8	70:14 137:13	<b>result</b> 30:2	117:11,14,15,17
<b>repay</b> 40:16 43:7	<b>requests</b> 118:8	<b>results</b> 22:4	117:20,25 119:5
61:14	119:10	37:25	120:6 121:22
<b>repayment</b> 17:3	<b>require</b> 78:9	<b>retain</b> 132:22	122:21 126:16
37:19 40:11	123:12 133:21	<b>retained</b> 16:8	<b>rights</b> 104:12
48:24 49:12	<b>required</b> 51:3	<b>retains</b> 81:12	<b>ring</b> 7:19
51:14 53:21	81:22 123:6	<b>retention</b> 79:18	<b>road</b> 55:7
56:3 58:21,25	125:21 131:17	<b>reveal</b> 81:14	<b>robbed</b> 19:13
83:11,12,20	<b>requires</b> 32:22	119:24 120:4	<b>rosarium</b> 26:14
129:24	116:2	<b>revealed</b> 18:2	<b>round</b> 125:16,22
<b>repayments</b>	<b>reserve</b> 107:19	96:5,9	<b>rsm</b> 10:13 11:17
12:12 40:18	<b>residual</b> 107:13	<b>review</b> 9:18	<b>rule</b> 124:16
41:8,16 43:9		13:22 22:14	126:23 127:17



[ruled - sherwood]

Page 23

<b>ruled</b> 103:23 <b>rules</b> 126:5 130:8 <b>ruling</b> 87:17 94:5 <b>rulings</b> 137:18	<b>scanned</b> 126:19 <b>schedule</b> 50:20 <b>schedules</b> 50:18 <b>scheduling</b> 100:11 <b>scope</b> 90:17 <b>search</b> 112:23 114:3,20 116:2,8 116:24 126:4 133:3 <b>searches</b> 113:23 113:24 126:11 <b>second</b> 4:17 21:21 40:17 44:17 79:17 86:10 90:21 118:17 <b>section</b> 73:18 138:2 <b>see</b> 5:17 10:22 11:24 13:13 23:14 47:22 55:19 74:14 76:7 84:22 105:22 117:22 124:11 <b>seek</b> 20:4 94:20 132:16 <b>seeking</b> 4:19 15:10,12 76:14 77:11 86:9 88:2 89:2 91:18 94:3 105:8 125:6,15 127:22,23 128:8 129:23 <b>seeks</b> 27:4 33:15 86:5	<b>seen</b> 126:10 130:2 132:13 <b>selecting</b> 75:18 <b>senior</b> 23:4 <b>sense</b> 78:12 85:15 108:12 133:10 <b>sent</b> 96:21 117:23 <b>separate</b> 12:4 138:3 <b>separately</b> 10:11 <b>september</b> 19:9 38:17 57:24 58:19 59:2 87:18 110:16,22 111:19 113:4,12 113:16,19 114:18 116:3,7 116:13,19,24 117:9 118:20,25 119:15,17 <b>sequentially</b> 9:4 <b>series</b> 38:14 <b>served</b> 95:6 <b>services</b> 11:2 54:5 105:24 <b>set</b> 45:16 73:4 139:11,20 <b>seth</b> 3:17 <b>sets</b> 4:3 <b>setting</b> 16:21 <b>severely</b> 38:8 <b>sexual</b> 30:23 <b>sexually</b> 31:2 <b>sfarber</b> 3:18 <b>shape</b> 9:11	<b>share</b> 75:25 126:21 <b>sheehan</b> 94:8 102:4 <b>sheets</b> 32:14 <b>sherwood</b> 1:16 4:1,2 5:1,23 6:1 6:20,24 7:1 8:1 8:14 9:1,13,22 10:1 11:1,6,18 12:1,2 13:1 14:1 14:3,23 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1,10 23:1 24:1,8,24 25:1 25:13,19 26:1 27:1 28:1 29:1 29:16 30:1 31:1 31:19,22 32:1,2 32:6 33:1 34:1 35:1,12,15 36:1 36:8 37:1,8,14 38:1,11 39:1,23 40:1 41:1,20 42:1,8 43:1,13 44:1,6,20 45:1 46:1,17 47:1,4 47:13 48:1,8 49:1,2,5,8,16,20 50:1 51:1,4,11 52:1,4,7 53:1 54:1,20 55:1,13 56:1,5,25 57:1 57:17 58:1,8,14 58:17,22 59:1,6 60:1 61:1,5,8,24 62:1,2,8,14,17
<b>s</b>			
<b>s</b> 2:2 3:2 125:12 135:2 <b>saber</b> 19:3 <b>safe</b> 34:19 <b>salaries</b> 62:3 <b>samantha</b> 3:12 <b>sample</b> 13:4 75:19 <b>samples</b> 75:13 75:15 <b>sanction</b> 66:7 <b>sand</b> 133:11 <b>sargeant</b> 3:21 <b>saw</b> 101:25 <b>saying</b> 12:5 16:7 16:11 25:12 30:8 38:2 44:4,7 49:17,22 50:25 51:7 56:19 70:24 76:19 86:13 93:2,2 114:15 116:11 120:8 121:11 <b>says</b> 7:14 29:3 31:7 37:18 40:23 43:7 61:16 85:3 118:23 121:21 121:23 126:10 132:10			

[sherwood - special]

Page 24

63:1,16,21,24	116:1,15,17	<b>sides</b> 123:7	72:24 88:19
64:1 65:1,7,16	117:1,5,10,13,18	133:13,23	100:5 106:18
65:19 66:1 67:1	118:1,2,7,10,22	<b>sight</b> 121:20	115:21 117:12
67:6 68:1,9,21	119:1,6 120:1,5	<b>signature</b> 139:23	<b>sort</b> 5:7 12:21
69:1,9,15 70:1,4	120:12,15 121:1	<b>significance</b> 89:6	14:10 15:11
71:1,16 72:1,4	121:10,17,20	<b>significant</b>	26:11 35:21
72:14,20,25 73:1	122:1,8,13,16,20	115:14	48:5 77:22 78:5
73:11 74:1,9,13	123:1,5,18,25	<b>simple</b> 42:18	108:18 115:6
74:20 75:1,14,20	124:1,8,10,18	101:18	<b>sorted</b> 113:15
75:25 76:1,10,25	125:1 126:1,14	<b>simply</b> 17:24	<b>sought</b> 7:25 11:4
77:1 78:1,11,19	126:25 127:1,9	18:14 19:23	16:5 17:3 93:4
79:1,15 80:1,12	127:13,20 128:1	32:24 38:2	102:21 110:4
81:1 82:1,2,16	128:12,22 129:1	52:17 54:13	<b>sounds</b> 57:6
83:1 84:1,2,6,18	129:13,25 130:1	55:2 93:9 94:3	<b>space</b> 138:6
85:1,2 86:1,11	131:1,5 132:1	111:18	<b>spacing</b> 138:5,7
87:1,9 88:1,15	133:1 134:1,4,10	<b>single</b> 101:25	<b>speak</b> 35:21
88:18 89:1,9	134:14 137:1	138:6	72:23 77:13
90:1,12 91:1,3,6	<b>shield</b> 6:9 32:20	<b>sipping</b> 128:6	102:8
91:11,23 92:1,7	46:4 71:15	<b>sit</b> 39:3 133:13	<b>special</b> 1:15 4:1
92:25 93:1,13,16	74:19 95:3	<b>sitting</b> 45:2	4:2 5:1,12,23
94:1,10,16 95:1	<b>short</b> 76:8 84:16	<b>situation</b> 63:15	6:1,20,24 7:1
95:15 96:1 97:1	84:24	64:11 119:19	8:1,14 9:1,13,22
97:2,5,12 98:1,3	<b>shortly</b> 102:3	<b>six</b> 49:3,10 50:19	10:1 11:1,6,18
98:10,20,25 99:1	<b>shot</b> 38:12	94:14	12:1,2 13:1 14:1
99:4,18,21,24	<b>show</b> 17:7	<b>slide</b> 23:21 32:13	14:3,23 15:1
100:1,17 101:1,3	122:13,16,18	<b>slightly</b> 44:23	16:1 17:1 18:1
101:9,13 102:1	127:23	<b>small</b> 97:9	19:1 20:1 21:1
103:1,12,14,25	<b>showing</b> 13:21	137:22	22:1,10 23:1
104:1,24 105:1	83:9,11 95:14	<b>sme</b> 2:13	24:1,8,24 25:1
105:13 106:1,3	123:17 125:18	<b>society</b> 119:14	25:13,19 26:1
106:14,19 107:1	127:25 128:3	<b>soft</b> 130:10	27:1 28:1 29:1
107:3,23 108:1,2	<b>shown</b> 123:16	<b>software</b> 115:5	29:16 30:1 31:1
108:10 109:1,4	<b>shows</b> 57:20	<b>somebody</b> 69:5	31:19,22 32:1,2
109:16,21 110:1	116:6 125:10	94:11 132:12	32:6 33:1 34:1
110:18,21 111:1	<b>shred</b> 101:25	<b>soon</b> 57:25	35:1,12,15 36:1
112:1,10,15,20	<b>shroud</b> 93:17	<b>sooner</b> 108:23	36:8 37:1,8,14
113:1,20 114:1	<b>side</b> 29:20 42:23	<b>sorry</b> 8:7 14:12	38:1,11 39:1,23
114:10 115:1,21	64:8,9 123:11	49:7 55:12 69:4	40:1 41:1,20

[special - sufficient]

Page 25

42:1,8 43:1,13	100:1,17 101:1,3	<b>spoke</b> 96:10	<b>strain</b> 114:17
44:1,6,20 45:1	101:9,13 102:1	99:16 100:6	<b>strauss</b> 3:9
46:1,17 47:1,4	103:1,12,14,25	111:14	<b>strawn</b> 3:14
47:13 48:1,8	104:1,23 105:1	<b>spreadsheet</b>	<b>street</b> 2:6,16
49:1,2,5,8,16,20	105:13 106:1,3	19:15 36:17	<b>strenuously</b>
50:1 51:1,4,11	106:14,18 107:1	40:13 55:16,17	83:23 84:5
52:1,4,7 53:1	107:2,23 108:1,2	<b>spreadsheets</b>	<b>stress</b> 15:2
54:1,20 55:1,13	108:10 109:1,3	19:6,12 38:15	<b>stronger</b> 92:4
56:1,5,25 57:1	109:16,21 110:1	55:23 56:6 83:9	<b>structurally</b>
57:17 58:1,8,14	110:18,20 111:1	<b>spring</b> 91:13	104:6
58:17,22 59:1,6	112:1,10,15,20	<b>ss</b> 139:4	<b>structured</b> 89:23
60:1 61:1,5,8,24	113:1,20 114:1,9	<b>stage</b> 46:22	<b>struggling</b> 48:9
62:1,2,8,14,17	115:1,20 116:1	<b>standard</b> 16:23	<b>stuff</b> 131:11,16
63:1,16,21,24	116:14,17 117:1	131:11,16	<b>subject</b> 25:8
64:1 65:1,7,16	117:5,10,12,18	<b>start</b> 85:17	46:12 77:5 81:9
65:19 66:1 67:1	118:1,2,6,10,21	111:20 114:19	<b>submit</b> 128:19
67:6 68:1,9,21	119:1,6 120:1,5	115:18 116:19	129:9
69:1,9,15 70:1,4	120:12,15 121:1	117:8 120:4	<b>submitted</b> 74:24
71:1,16 72:1,4	121:10,17,20	<b>started</b> 14:9 40:2	<b>subpoena</b> 4:21
72:14,20,25 73:1	122:1,8,12,16,20	109:24 111:6	66:10 72:18
73:11 74:1,9,13	123:1,5,18,24	113:24 114:22	73:8 100:10
74:20 75:1,14,20	124:1,7,10,17	116:12 117:9	129:19
75:25 76:1,10,25	125:1 126:1,14	119:23	<b>subpoenas</b> 99:8
77:1 78:1,11,19	126:25 127:1,9	<b>starts</b> 118:19	<b>subsequent</b>
79:1,15 80:1,12	127:13,20 128:1	<b>state</b> 1:2,3,4,19	40:17 78:8
81:1 82:1,2,16	128:11,22 129:1	2:3,4,5 27:18	<b>substantial</b>
83:1 84:1,2,6,18	129:13,24 130:1	77:25 105:23	37:16
85:1,2 86:1,11	131:1,5 132:1	139:4,8	<b>substantive</b>
87:1,9 88:1,15	133:1 134:1,4,10	<b>stated</b> 51:17	99:13
88:18 89:1,9	137:1	<b>statement</b> 38:8	<b>sudden</b> 111:11
90:1,12 91:1,3,6	<b>specific</b> 111:10	<b>statements</b> 26:21	<b>suddenly</b> 19:5
91:11,23 92:1,7	111:21 115:10	<b>stating</b> 52:9	<b>sued</b> 81:11
92:25 93:1,13,16	<b>specifically</b> 32:9	<b>status</b> 77:25	<b>sufficiency</b> 18:10
94:1,10,16 95:1	129:16	<b>step</b> 61:9	<b>sufficient</b> 17:24
95:15 96:1 97:1	<b>spencer</b> 3:4	<b>stern</b> 2:8	24:16,21 25:2
97:2,5,12 98:1,3	<b>spend</b> 133:8	<b>stop</b> 35:13	27:5 29:22
98:10,20,25 99:1	<b>spending</b> 133:6	<b>straightforward</b>	30:20 33:12
99:4,18,21,24		36:24	132:5

[suggest - three]

Page 26

<b>suggest</b> 39:4 73:12 <b>suit</b> 104:10 <b>suite</b> 2:20 <b>summarizing</b> 80:15 <b>summer</b> 91:13 <b>support</b> 130:3 <b>supports</b> 106:25 <b>supposed</b> 87:6 117:22 <b>supreme</b> 1:2 <b>sure</b> 6:23 21:2 35:14 44:9 52:6 70:9,12 71:24 76:6 85:14 90:15 98:12 105:16 <b>surprise</b> 132:21 <b>surprised</b> 92:8 <b>suspicious</b> 52:22 <b>sustain</b> 105:5 <b>svetlana</b> 2:12 <b>swarth</b> 95:23 <b>sword</b> 6:9 7:8 32:20 46:4 71:15 74:19 <b>sworn</b> 139:11 <b>symmetry</b> 86:7	<b>taken</b> 41:7 46:15 76:9 80:16 84:17,25 113:13 <b>takes</b> 31:4 74:10 74:14 <b>talk</b> 14:11 49:6 67:14 90:20 <b>talked</b> 47:5 80:19 82:8 <b>talking</b> 51:21 54:15,21 57:18 59:8 78:13 90:10 93:18 95:17,18 97:9 <b>targeted</b> 27:3 <b>tax</b> 29:5 37:6 39:13,20 <b>tease</b> 32:9 <b>technical</b> 26:25 <b>technique</b> 100:15 <b>tell</b> 9:24 12:10 27:11,14,20,25 36:3 43:11 46:7 53:15 77:25 105:3,16 107:20 117:3 119:8 121:22 124:13 124:19,23 <b>telling</b> 23:9 44:2 60:7 116:22 131:17 <b>tend</b> 79:5 <b>term</b> 52:21,21 <b>terms</b> 42:24 105:8 112:23 <b>territory</b> 108:16	<b>test</b> 18:9 19:25 33:21,22 36:5 54:11 56:11 111:12 <b>testified</b> 130:3 <b>testify</b> 34:17 55:21 67:4 107:10 <b>testimony</b> 29:8 83:12 90:9 108:18 110:25 139:13 <b>texas</b> 2:21 <b>texting</b> 103:3 <b>thank</b> 50:4 68:19 73:10 79:15 85:19 91:5 122:20 134:3,8 134:13 <b>thin8g</b> 108:18 <b>thing</b> 14:18 33:15 35:10 55:11 77:19,23 78:6 81:2 118:22,23 119:13 126:4 <b>things</b> 12:14,17 32:5 50:20 78:8 83:7 <b>think</b> 10:8,9,17 10:22 13:20 14:17 25:10 29:9 30:21 31:14,15 39:8 40:18 42:15 43:8 44:23,24 45:2,13 48:4 58:4 61:17 62:7	68:17 75:10,21 77:10 79:7 80:2 80:4,24 81:3 84:8 85:12 86:6 89:4,21 92:2 94:4 96:23 100:18 101:15 106:4 107:8 109:7 110:6 113:8,13 114:11 116:12 122:24 123:3,4,5 125:8 125:10 127:11 127:15 130:13 133:3,8,11 134:4 <b>thinks</b> 23:20 28:10 <b>third</b> 10:7,25 11:12 75:8 85:25 90:4 124:7,17 126:9,9 129:20 130:8 <b>thirty</b> 119:18 <b>thoroughness</b> 109:13 <b>thought</b> 14:15 22:11,12 68:13 72:5 103:15 125:16 <b>thousand</b> 113:14 115:2 <b>thousands</b> 12:22 <b>threatened</b> 101:22 <b>three</b> 5:25 61:11 61:13,17 65:21 66:25 72:8,8 74:3 78:25
<b>t</b>			
<b>t</b> 135:2 139:2,2 <b>table</b> 5:5 <b>take</b> 5:9 69:10 82:16 86:15 90:23 113:25 114:23			

[three - unpunished]

Page 27

115:2 <b>threshold</b> 13:21 85:21 <b>threw</b> 103:16 <b>thrown</b> 104:4,5 <b>time</b> 1:13 36:25 41:15,25 45:23 57:9 63:4 64:6 75:11 90:22 96:17 110:9 112:12,24,25 128:2 133:7,9 <b>timeframe</b> 110:15 114:8,11 114:13 <b>timeliness</b> 85:22 86:15,17,18 <b>times</b> 79:2 <b>title</b> 101:5 <b>tmclish</b> 3:13 <b>today</b> 5:8,16,22 10:20 84:14 91:20 <b>told</b> 21:16,19 26:8 28:24 34:7 54:8,9 105:14 107:12 <b>tomorrow</b> 80:25 <b>tone</b> 16:21 <b>top</b> 16:22 60:8 <b>touted</b> 20:3 <b>tower</b> 3:10 <b>town</b> 90:11 102:6 111:14 112:4 120:11,24 121:9,11 <b>towns</b> 120:13	<b>traditional</b> 117:21 <b>trained</b> 23:7 <b>training</b> 12:12 23:3,16,19,20 24:11 27:13 32:11,15 <b>trance</b> 53:2 <b>transaction</b> 38:19,21,22 39:16 43:16 57:19 58:9,18 59:3,4,8 <b>transactions</b> 26:2,18 40:14,21 40:23 41:10,24 42:3,11 43:14,19 43:21,24 44:11 45:5,17 46:19,20 47:2,7,18,24 48:2,6 49:3,11 49:14,17 50:9,19 51:15,20,25 52:14,15,20 53:3 57:15 58:7 77:18 82:7 <b>transcript</b> 134:15 <b>transpired</b> 40:21 <b>tremendous</b> 12:18 96:4 <b>trial</b> 8:13 9:9,10 9:10 20:19 28:18 30:16 41:15 43:12 46:8,14,16,21 76:17 77:6 81:8 97:19 107:11	<b>trickling</b> 66:16 <b>tried</b> 56:16 63:7 115:23 <b>triggered</b> 63:2 <b>trouble</b> 133:19 <b>true</b> 32:24 53:17 59:13 60:11 126:4,11 139:12 <b>trust</b> 48:9 <b>truth</b> 54:11 119:22 <b>try</b> 67:3 106:2 137:21 <b>trying</b> 15:4 25:14 28:12 45:17 56:20 65:23 90:17 93:25 98:16 117:2 119:8 <b>turn</b> 10:16,19 11:22 64:2 79:11,24 81:6 <b>turned</b> 58:3 <b>two</b> 11:16 27:23 40:9 43:23 62:25 74:21 87:15 89:15 96:11 107:16 117:7 133:23 <b>type</b> 38:22 <b>types</b> 43:24 <b>typical</b> 118:7 <b>u</b> <b>um</b> 97:21 <b>unable</b> 33:20,22 <b>unauthorized</b> 25:25 26:17	<b>unchanged</b> 95:8 <b>unclean</b> 101:19 <b>undercuts</b> 28:10 <b>underlying</b> 57:14 58:7,9 59:2,4 <b>understand</b> 7:22 15:10 17:17 25:14,20 44:9 46:11 47:14 48:9 51:6 62:11 63:25 67:7,15,17 67:23 70:22 90:17 95:20 105:2 106:15 110:6 115:23 116:9,14 119:7 123:19 <b>understanding</b> 18:9 93:14 107:5 115:24,25 117:2 <b>understood</b> 70:16 <b>undertaking</b> 81:14,16,24 <b>underway</b> 111:13 <b>unfairness</b> 46:5 58:6 <b>unfortunately</b> 31:6 <b>universe</b> 17:20 <b>unnecessary</b> 130:18 <b>unpunished</b> 63:14
---	--	--	--

[unratified - x]

Page 28

<b>unratified</b> 26:17 <b>unwarranted</b> 39:14 <b>update</b> 110:3 123:4 <b>updates</b> 76:22 <b>updating</b> 123:6 123:9,12 124:5 <b>urge</b> 133:13 <b>use</b> 29:18 52:20 53:23 55:5 75:10 138:5 <b>usual</b> 8:23	<b>volume</b> 78:13 <b>voracity</b> 111:12	61:14,20 63:17 64:15 70:7 89:23 104:15 132:14 139:17	<b>witness</b> 96:25 108:6,21 121:12 123:23 134:18 139:10,13,19
	<b>w</b>	<b>wayne</b> 1:9 2:15 17:13 33:4 54:16,25 56:15 <b>we've</b> 32:13 <b>wednesday</b> 9:17 10:21 <b>weekend</b> 10:15 <b>went</b> 10:14 88:9 <b>werbner</b> 2:19,21 <b>werbnerlaw.com</b> 2:22 <b>wfleming</b> 3:7 <b>whatsoever</b> 102:19 <b>whereof</b> 139:19 <b>whistleblower</b> 5:18 26:3,19 <b>william</b> 3:6 <b>wilson</b> 1:9 2:20 3:15 <b>winston</b> 3:14 <b>winston.com</b> 3:18 <b>wish</b> 50:25 <b>withheld</b> 6:11,14 6:18 7:21 8:2,5 9:15 14:21 73:19 74:23 86:3 96:12 115:19 <b>withholding</b> 8:9 68:2,8 70:6 71:18 83:15	<b>witnesses</b> 28:10 36:23 85:6 96:10 97:15,16 97:17,19 98:17 99:11,13,25 100:6,9 103:8 108:11 109:3 123:2 124:6 <b>woefully</b> 121:6 <b>woman</b> 122:10 <b>wop</b> 122:10 <b>word</b> 108:12 114:23 <b>words</b> 44:3 108:14 115:22 <b>work</b> 8:12 15:23 16:2 125:3 126:20 132:12 132:18 <b>works</b> 4:7 <b>worse</b> 119:19 <b>written</b> 68:18 <b>wrong</b> 26:6,7 28:23 47:17 64:18 83:5 106:9 113:7 <b>wrote</b> 68:11,12
<b>v</b>	<b>w</b>		<b>x</b>
<b>value</b> 34:5 <b>variety</b> 9:3 <b>various</b> 8:21 13:5 29:18,20 30:12 50:13,15 79:3 <b>vendor</b> 70:18 71:10 <b>verse</b> 44:17 <b>version</b> 134:16 <b>versus</b> 19:3 48:14 94:20 128:11 <b>viability</b> 103:24 <b>vice</b> 21:21 <b>videographer</b> 3:21 61:23 65:10 <b>view</b> 39:24 65:8 65:8,24 105:6 <b>violate</b> 26:19 <b>violations</b> 26:2 26:25 104:11	<b>w</b> 2:20 <b>wait</b> 19:4 37:14 95:15 <b>waits</b> 64:12 <b>waived</b> 12:9 31:17 <b>waiver</b> 10:4 13:18,21 17:25 18:17,23 28:15 <b>walk</b> 55:18 <b>wanes</b> 110:25 <b>want</b> 5:14 8:16 15:2 18:12 20:17 27:11,13 27:19,25 37:20 42:23 44:8 61:13,14 73:7 74:11 81:7 91:24 105:16 112:11,16,19 118:14,14 119:22,22 127:19 <b>wanted</b> 14:11 <b>wants</b> 12:10 13:6 17:6 20:18 21:25 23:13 67:2 99:16 <b>warranted</b> 24:23 27:10 <b>waterfront</b> 94:15 <b>way</b> 4:5 9:11 19:6 33:2 56:23	61:14,20 63:17 64:15 70:7 89:23 104:15 132:14 139:17 <b>wayne</b> 1:9 2:15 17:13 33:4 54:16,25 56:15 <b>we've</b> 32:13 <b>wednesday</b> 9:17 10:21 <b>weekend</b> 10:15 <b>went</b> 10:14 88:9 <b>werbner</b> 2:19,21 <b>werbnerlaw.com</b> 2:22 <b>wfleming</b> 3:7 <b>whatsoever</b> 102:19 <b>whereof</b> 139:19 <b>whistleblower</b> 5:18 26:3,19 <b>william</b> 3:6 <b>wilson</b> 1:9 2:20 3:15 <b>winston</b> 3:14 <b>winston.com</b> 3:18 <b>wish</b> 50:25 <b>withheld</b> 6:11,14 6:18 7:21 8:2,5 9:15 14:21 73:19 74:23 86:3 96:12 115:19 <b>withholding</b> 8:9 68:2,8 70:6 71:18 83:15	<b>witness</b> 96:25 108:6,21 121:12 123:23 134:18 139:10,13,19 <b>witnesses</b> 28:10 36:23 85:6 96:10 97:15,16 97:17,19 98:17 99:11,13,25 100:6,9 103:8 108:11 109:3 123:2 124:6 <b>woefully</b> 121:6 <b>woman</b> 122:10 <b>wop</b> 122:10 <b>word</b> 108:12 114:23 <b>words</b> 44:3 108:14 115:22 <b>work</b> 8:12 15:23 16:2 125:3 126:20 132:12 132:18 <b>works</b> 4:7 <b>worse</b> 119:19 <b>written</b> 68:18 <b>wrong</b> 26:6,7 28:23 47:17 64:18 83:5 106:9 113:7 <b>wrote</b> 68:11,12
			<b>x</b>
			<b>x</b> 1:3,11 30:17,19 118:12 135:2 137:7

[y - zef]

Page 29

<b>y</b>
<b>y</b> 30:18,19 <b>yeah</b> 58:10 88:21 109:19 123:24 <b>year</b> 79:2 86:4 103:22 <b>years</b> 8:22 30:13 53:12,13 <b>york</b> 1:2,2,3,4,19 2:3,4,5,6,6,12,12 2:16,16 3:6,6,11 3:11,16,16 18:15 105:23 106:5 112:18 139:4,5,8
<b>z</b>
<b>z</b> 30:18,19 <b>zef</b> 3:21

## **EXHIBIT D**

11.22.2022 Email to SM re Sampling & Email Attachment



**From:** [Connell, Monica](#)  
**To:** [Svetlana Eisenberg](#); [Dawn M. Wilson](#); [Peter Sherwood](#)  
**Cc:** [kent@correllawgroup.com](#); [WFleming@gagespencer.com](#); [Thompson, Stephen](#); [SFarber@winston.com](#); [Sarah Rogers](#); [PBannon@winston.com](#); [Sargent, Nina](#); [mwerbner@werbnerlaw.com](#); [mmacdougall@akingump.com](#); [Stern, Emily](#); [samantha.block@akingump.com](#); [hevans@akingump.com](#); [Noah Peters](#); [Stern, Emily](#); [Thompson, Stephen](#)  
**Subject:** RE: Pending motions, People v. NRA  
**Date:** Tuesday, November 22, 2022 12:09:00 PM  
**Attachments:** [RE - In camera review .pdf](#)  
[image005.png](#)  
[image006.png](#)  
[image001.png](#)

---

Dear Judge Sherwood:

Plaintiff write in response to the NRA's email of this morning in order to address two issues.

### **Documents Submitted for In Camera Review**

As an initial matter, the NRA should just plainly state what it has submitted to Your Honor for in camera review and how it has selected the same. Attached is an email chain demonstrating that Plaintiff's efforts to understand the protocol the NRA used to select the emails provided to Your Honor were unsuccessful. In fact, the NRA failed to respond to the last email in the chain which simply asked "Was what was provided all documents or a sampling, and if a sampling, how was that done?"

Plaintiff sought relief in regard to two general categories of allegedly privileged information in its October 20, 2022 omnibus letter application. The first category included documents between the NRA and its agents and third parties, including independent auditors and vendors such as McKenna and MMP, as outlined in Plaintiff's October 20, 2022 letter. The second category encompassed information withheld as privileged relating to matters the NRA directly put at issue in this litigation, including the NRA's compliance reform process. This second category includes communications with the Brewer firm and various outside counsel and consultants relating to, for example, investigation of NRA whistleblower complaints, the calculation of excess benefits, investigation of alleged misconduct within the NRA, related party transactions, conflict of interest, failure to comply with NRA policies relating to procurement, and vendor contracting. As outlined in Plaintiff's October 20<sup>th</sup> letter, such matters have been placed in issue by the NRA and the NRA may not shield the same from discovery.

It appears that the NRA is taking the position that it has submitted all documents from the first category. If that is the case, can the NRA please confirm that?

Regarding materials from the second category, the NRA states, in summary, that it compiled communications (and, assumedly, reports and related documents) with "a number of lawyers" including NRA counsel and two identified outside counsel, and ran searches "for communications with referenced counsel concerning the above-referenced topics" which include "calculation of potential excess benefits, determinations of whether something is an excess benefit, vendor compliance, and conflicts of interest." Plaintiff will note that this list of issues does not include a number of topics relating to the compliance reform efforts raised by Plaintiff and about which the NRA has asserted privilege.

Even if the search terms used by the NRA were complete, it is still unclear how the NRA selected the documents provided to Your Honor. Were all documents received in response to the search terms provided to Your Honor? *As the parties have repeatedly done throughout this litigation, the NRA should identify the search terms used, the population of ESI searched, including total number of documents searched and the custodians, and the number of "hits" it received and confirm whether it has submitted all "hits" to Your Honor or has selected some. If it has selected some documents, it should indicate how it did so.*

In short, Plaintiff needs a clearer statement of what has been submitted for your review and, to the extent that what has submitted is a portion of a larger sample of withheld documents, to understand how the documents produced were selected. The information provided to the Plaintiff regarding the documents submitted to Your Honor is simply insufficient for Plaintiff to make any assessment of whether the documents submitted, if a sample, are representative of the larger universe of responsive materials, encompass the documents at issue, and are privileged or whether the privilege has been waived by the NRA's placing the subject at issue in this litigation or using the privilege as a sword and shield.

### **The NRA's Proposed Stipulation**

Second, the NRA proposes a stipulation limiting facts and arguments it may introduce at trial. The NRA stated in its email that it "is willing to stipulate that it will not (i) use any privileged documents at trial; or (ii) refer to the advice it received from any attorney in mounting any defense." That is a good first step. However, the NRA would also have to agree that it could not introduce evidence or argument at trial regarding actions undertaken by or with counsel on behalf of the NRA, such as investigations, negotiations with vendors, etc., over which the NRA has asserted privilege and blocked discovery. NRA witnesses have testified and the NRA has confirmed that it intends to argue that it has taken certain steps as part of its compliance reform process, but it has blocked Plaintiff from inquiring about the steps during depositions, placing the matters at issue but using privilege as a shield. As outlined in Plaintiff's October 20, 2022 letter and at the November 14th argument, the NRA intends to argue, and in fact its expert witnesses argue, that the NRA engaged in a far reaching and effective reform effort. But the NRA has blocked the Plaintiff from inquiring into the same and testing that assertion, withholding relevant documents and precluding relevant testimony. The NRA should not introduce facts or arguments at trial regarding issues about which it has elected to block discovery as privileged.

As a way forward to a possible stipulation, Plaintiff suggests that the NRA identify the specific steps it asserts it took as part of its compliance reform efforts, including investigations. For those steps for which it has not seriously blocked inquiry using privilege, for example, its compliance refresher courses, there may be no dispute. For other steps, Plaintiff can set forth whether discovery relating to the same was blocked by an inappropriate assertion of privilege and perhaps the parties may be able to craft a stipulation that resolves some or all of the matters at issue here.

Thank you for your attention to these matters.

Respectfully,

Monica Connell



**Monica Connell**  
**Senior Litigation Counsel**  
New York State Office of the Attorney General  
28 Liberty Street, 19th Floor | New York, NY 10005  
Tel: (212) 416-8965 | [Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov)

-----  
The information contained in this e-mail and any attachments to this e-mail is privileged and confidential information, and is intended only for the use of the individuals or entities named as addressees. If the reader of this message is not the intended recipient or the employee, agent, or service-provider responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender by telephone at 212-416-8965. The address, email address and fax numbers provided herein are not for service of papers absent express agreement to the same. Thank you.

---

**From:** Svetlana Eisenberg <sme@brewerattorneys.com>  
**Sent:** Tuesday, November 22, 2022 6:23 AM  
**To:** Connell, Monica <Monica.Connell@ag.ny.gov>; Dawn M. Wilson <dwilson@ganfershore.com>; Peter Sherwood <psherwood@ganfershore.com>  
**Cc:** kent@correlllawgroup.com; WFleming@gagespencer.com; Thompson, Stephen <Stephen.Thompson@ag.ny.gov>; SFarber@winston.com; Sarah Rogers <sbr@brewerattorneys.com>; PBannon@winston.com; Sargent, Nina <Nina.Sargent@ag.ny.gov>; mwerbner@werbnerlaw.com; mmacdougall@akingump.com; Stern, Emily <Emily.Stern@ag.ny.gov>; samantha.block@akingump.com; hevans@akingump.com; Noah Peters <nbp@BrewerAttorneys.com>; Stern, Emily <Emily.Stern@ag.ny.gov>; Thompson, Stephen <Stephen.Thompson@ag.ny.gov>  
**Subject:** RE: Pending motions, People v. NRA

Dear Judge Sherwood,

On behalf of the NRA, I write to address Ms. Connell's latest correspondence.

**First**, Ms. Connell asserts: "We believe that it is necessary for the NRA to articulate how it selected the sample it has submitted to the Special Master to determine whether it is in fact representative of the entire[t]y of the categories of documents it has withheld from production. If the sample provided is not representative of the larger population of withheld documents, the results of Judge Sherwood's in camera review cannot be extrapolated to the entire population. We therefore ask that the NRA disclose how it selected the documents it submitted, as directed by Judge Sherwood."

As reflected in the attached (and quoted below), the NRA advised the OAG how it selected the sample it submitted to Your Honor. The attached email message, dated November 16, 2022, to OAG states:

“We provided to Judge Sherwood privileged communications between the NRA and its counsel that relate to the NRA's ongoing efforts to ensure compliance with applicable laws, regulations, and its own policies. In addition, we provided communications with a number of lawyers, including our firm, Don Lan, Alex Reid, and John Frazer. The subject matter of the communications included calculation of potential excess benefits, determinations of whether something is an excess benefit, vendor compliance, and conflicts of interest.

The documents were compiled by running searches for communications with referenced counsel concerning the above-referenced topics.”

In sum, the documents provided to Your Honor are representative of the larger population of withheld communications.

Moreover, as Your Honor can see (and as the NRA previously represented), those documents do not involve third parties; rather, they are between the NRA and its counsel. Importantly, the NRA has no intention whatsoever of relying, introducing, or referencing any of the privileged documents in support of or as part of any of its defenses. As such, there is no basis for any claim of waiver. In addition, as noted earlier, it is not clear why in-camera review is necessary to evaluate the NYAG's “at issue” waiver argument. Moreover, the NRA is willing to stipulate that it will not (i) use any privileged documents at trial; or (ii) refer to the advice it received from any attorney in mounting any defense.

**Second**, Ms. Connell also states: “Again, it is not solely the documents that are at issue but the NRA's attempts to block Plaintiff from obtaining access to information it relies upon in asserting that it has appropriately calculated excess benefits, investigated whistleblower complaints, addressed alleged malfeasance, and implemented reforms regarding conflicts of interest and vendor procurement.” With regard to that statement, the NRA notes that because there has been no “at issue” waiver, there is no basis for compelling the NRA to disclose copies of written or verbal privileged communications.

Naturally, the NRA disagrees with certain mischaracterizations in the OAG's email message. Please let us know if you have any other questions.

Regards,  
Svetlana

Svetlana M. Eisenberg | Partner  
Brewer, Attorneys & Counselors  
750 Lexington Avenue, 14th Floor  
New York, New York 10022  
Office Direct: 212.224.8817  
Office Main: 212.489.1400  
Cell: 929.319.1731  
Fax: 212.751.2849  
[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com) [www.brewerattorneys.com](http://www.brewerattorneys.com)

BREWER

This communication (including any attachments) is intended for the sole use of the intended recipient, and may contain material that is confidential, privileged, attorney work product, and/or subject to privacy laws. If you are not the intended recipient, you are hereby kindly notified that any use, disclosure, or copying of this communication or any part thereof is strictly prohibited. If you have received this communication in error, please delete this communication, including any copies or printouts, and notify us immediately by return email or at the telephone number above. Brewer, Attorneys and Counselors asserts in respect of this communication all applicable confidentiality, privilege, and/or privacy rights to the fullest extent permitted by law. Thank you.

---

**From:** Connell, Monica <[Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov)>  
**Sent:** Monday, November 21, 2022 1:49 PM  
**To:** Dawn M. Wilson <[dwilson@ganfershore.com](mailto:dwilson@ganfershore.com)>; Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>; Peter Sherwood <[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)>  
**Cc:** [kent@correlllawgroup.com](mailto:kent@correlllawgroup.com); [WFleming@gagespencer.com](mailto:WFleming@gagespencer.com); [tmclish@akingump.com](mailto:tmclish@akingump.com); Thompson, Stephen <[Stephen.Thompson@ag.ny.gov](mailto:Stephen.Thompson@ag.ny.gov)>; [SFarber@winston.com](mailto:SFarber@winston.com); Sarah Rogers <[sbr@brewerattorneys.com](mailto:sbr@brewerattorneys.com)>; [PBannon@winston.com](mailto:PBannon@winston.com); Sargent, Nina <[Nina.Sargent@ag.ny.gov](mailto:Nina.Sargent@ag.ny.gov)>; [mwerbner@werbnerlaw.com](mailto:mwerbner@werbnerlaw.com); [mmacdougall@akingump.com](mailto:mmacdougall@akingump.com); Stern, Emily <[Emily.Stern@ag.ny.gov](mailto:Emily.Stern@ag.ny.gov)>; [samantha.block@akingump.com](mailto:samantha.block@akingump.com); [hevans@akingump.com](mailto:hevans@akingump.com); Noah Peters <[nbp@BrewerAttorneys.com](mailto:nbp@BrewerAttorneys.com)>; Stern, Emily <[Emily.Stern@ag.ny.gov](mailto:Emily.Stern@ag.ny.gov)>; Thompson, Stephen <[Stephen.Thompson@ag.ny.gov](mailto:Stephen.Thompson@ag.ny.gov)>  
**Subject:** RE: Pending motions, People v. NRA

Dear Ms. Wilson,

Thank you for your email today. We have received only a "rough" of the transcript of the

conference. I have attached a copy of that to this email. I inquired of the Court Reporter and asked for the final version. I understand we can expect to receive it today.

Plaintiff needs to raise an important issue. At the November 14, 2022 conference, the NRA indicated that it was going to provide a sample of the allegedly privileged materials for in camera review. This included assertedly privileged materials that generally fall into two categories: (1) communications with and information shared between the NRA and third parties; and (2) communications between the NRA and its counsel related to the NRA's compliance reform efforts, over which Plaintiff has alleged the NRA has waived privilege by putting such matters at issue and/or for which information the NRA has improperly used privilege as a sword and shield. These two categories were confirmed in Ms. Eisenberg's November 15, 2022 email to the Special Master. Again, it is not solely the documents that are at issue but the NRA's attempts to block Plaintiff from obtaining access to information it relies upon in asserting that it has appropriately calculated excess benefits, investigated whistleblower complaints, addressed alleged malfeasance, and implemented reforms regarding conflicts of interest and vendor procurement.

At our request, the Special Master directed, and the NRA agreed, to provide the protocol of how it selected the sample materials provided to the Special Master. The NRA has refused to do so, saying only the NRA provided "a representative sample of privileged documents to which the NYAG is not entitled. Separately and together, they demonstrate that the NYAG's waiver argument has no merit. They cover a variety of years, lawyers, law firms, and issues." We believe that it is necessary for the NRA to articulate how it selected the sample it has submitted to the Special Master to determine whether it is in fact representative of the entirety of the categories of documents it has withheld from production. If the sample provided is not representative of the larger population of withheld documents, the results of Judge Sherwood's in camera review cannot be extrapolated to the entire population. We therefore ask that the NRA disclose how it selected the documents it submitted, as directed by Judge Sherwood.

Thank you,

Monica Connell



**Monica Connell**  
**Senior Litigation Counsel**  
New York State Office of the Attorney General  
28 Liberty Street, 19th Floor | New York, NY 10005  
Tel: (212) 416-8965 | [Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov)

-----  
The information contained in this e-mail and any attachments to this e-mail is privileged and

confidential information, and is intended only for the use of the individuals or entities named as addressees. If the reader of this message is not the intended recipient or the employee, agent, or service-provider responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender by telephone at 212-416-8965. The address, email address and fax numbers provided herein are not for service of papers absent express agreement to the same. Thank you.

---

**From:** Dawn M. Wilson <[dwilson@ganfershore.com](mailto:dwilson@ganfershore.com)>

**Sent:** Monday, November 21, 2022 12:22 PM

**To:** Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>; Peter Sherwood <[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)>

**Cc:** Connell, Monica <[Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov)>; [kent@correlllawgroup.com](mailto:kent@correlllawgroup.com); [WFleming@gagespencer.com](mailto:WFleming@gagespencer.com); [tmclish@akingump.com](mailto:tmclish@akingump.com); Thompson, Stephen <[Stephen.Thompson@ag.ny.gov](mailto:Stephen.Thompson@ag.ny.gov)>; [SFarber@winston.com](mailto:SFarber@winston.com); Sarah Rogers <[sbr@brewerattorneys.com](mailto:sbr@brewerattorneys.com)>; [PBannon@winston.com](mailto:PBannon@winston.com); Sargent, Nina <[Nina.Sargent@ag.ny.gov](mailto:Nina.Sargent@ag.ny.gov)>; [mwerbner@werbnerlaw.com](mailto:mwerbner@werbnerlaw.com); [mmacdougall@akingump.com](mailto:mmacdougall@akingump.com); Stern, Emily <[Emily.Stern@ag.ny.gov](mailto:Emily.Stern@ag.ny.gov)>; [samantha.block@akingump.com](mailto:samantha.block@akingump.com); [hevans@akingump.com](mailto:hevans@akingump.com); Noah Peters <[nbp@BrewerAttorneys.com](mailto:nbp@BrewerAttorneys.com)>

**Subject:** RE: Pending motions, People v. NRA

**[EXTERNAL]**

Counsel,

Judge Sherwood has completed the review of the documents submitted by the NRA for in camera review. Specifically documents 1 -33 and 87 - 94, have been reviewed and determined to be protected by the attorney-client privilege. This is a bottom line determination. A reasoned decision will be issued in coming days.

In addition, in accordance with the discussion at the hearing last week, Judge Sherwood at this time is denying the NRA's motion for legal fees related to the Aaronson document review and production, without prejudice to the NRA renewing that motion with the proper support necessary to satisfy its burden.

Will someone please forward me the transcript when it is received?

Thank you,

**Dawn M. Wilson**

*Counsel*



*Celebrating Over 40 Years Serving Clients*

360 Lexington Avenue  
New York, New York 10017

**Main:** 212.922.9250

**Direct:** 212.922.9181

**Fax:** 212.922.9335

[dwilson@ganfershore.com](mailto:dwilson@ganfershore.com)

NOTE: The information contained in this E-Mail is confidential and may be legally privileged. If you are not the intended recipient, you must not read, use or disseminate the information. Although this E-Mail and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by the sender or Ganfer Shore Leeds & Zauderer LLP for any loss or damage arising in any way from its use. This E-Mail is not intended to create a binding agreement of any kind, nor is it intended to be a binding counter-offer to any offer that may be pending, unless otherwise expressly stated. It is intended to be an informal response to any pending proposal, part of an ongoing negotiation which awaits a written agreement signed by the party or parties to be charged before being legally binding. For this E-Mail to create any form of a binding agreement, it must include an affirmative statement to that effect.

---

**From:** Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>

**Sent:** Sunday, November 13, 2022 4:07 PM

**To:** Peter Sherwood <[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)>

**Cc:** [Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov); [kent@correlllawgroup.com](mailto:kent@correlllawgroup.com); [WFleming@gagespencer.com](mailto:WFleming@gagespencer.com); [tmclish@akingump.com](mailto:tmclish@akingump.com); [Stephen.Thompson@ag.ny.gov](mailto:Stephen.Thompson@ag.ny.gov); [SFarber@winston.com](mailto:SFarber@winston.com); Sarah Rogers <[sbr@BrewerAttorneys.com](mailto:sbr@BrewerAttorneys.com)>; [PBannon@winston.com](mailto:PBannon@winston.com); [Nina.Sargent@ag.ny.gov](mailto:Nina.Sargent@ag.ny.gov); [mwerbner@werbnerlaw.com](mailto:mwerbner@werbnerlaw.com); [mmacdougall@akingump.com](mailto:mmacdougall@akingump.com); [Emily.Stern@ag.ny.gov](mailto:Emily.Stern@ag.ny.gov); Dawn M. Wilson <[dwilson@ganfershore.com](mailto:dwilson@ganfershore.com)>; [samantha.block@akingump.com](mailto:samantha.block@akingump.com); [hevans@akingump.com](mailto:hevans@akingump.com); Noah Peters <[nbp@BrewerAttorneys.com](mailto:nbp@BrewerAttorneys.com)>

**Subject:** RE: Pending motions, People v. NRA

Your Honor,



On behalf of the NRA, below is timing update with regard to the documents for in camera review.

**First**, the NRA will provide privileged documents involving third parties for in camera review on Monday (tomorrow). The NRA believes that Your Honor will find it helpful to have a document-by-document log (index) that reflects the bases of the claimed privileges in the context of these documents (e.g., the third party's necessary role in the communications). The NRA requests until midnight on Wednesday to provide that index.

**Second**, in preparing the third party documents for in camera review, the NRA also determined (based on the review of individual documents) that some documents (i) are not privileged, or (ii) are privileged but, given Judge Cohen's recent ruling, can be produced to the NYAG if the NYAG agrees to the stipulation memorialized in the attached email exchange between the NRA and the NYAG. The NRA will produce, subject to the stipulation to the extent applicable, these documents to the NYAG on Tuesday.

**Third**, the NRA will share with Your Honor on Monday for in-camera review samples of privileged documents related to the NRA's efforts to ensure its compliance with its governance controls. As you will see, those documents do not involve third parties and are between the NRA and its counsel. Further, the NRA has no intention whatsoever of relying on, introducing, or referencing any of these privileged documents in support of or as part of any of its defenses. The NRA believes the samples provided on Monday will assist Your Honor in determining that the NYAG's waiver argument lacks merit. Of course, because the NRA is not asserting an advice of counsel defense and will not rely upon or refer to any of these documents for any defense, there is no basis for any waiver claim.

We look forward to seeing you at the hearing on the pending motions tomorrow at 10 a.m. E.S.T. (Pursuant to the Special Master Stipulation, the NRA arranged for a court reporter to join the video call. An invitation and a link were sent on 11/11 at 7:18 pm.) In the meantime, should you have any questions, please do not hesitate to let us know.

Thank you for your attention to this matter.

Regards,  
Svetlana Eisenberg

Svetlana M. Eisenberg | Partner  
Brewer, Attorneys & Counselors  
750 Lexington Avenue, 14th Floor  
New York, New York 10022  
Office Direct: 212.224.8817  
Office Main: 212.489.1400

Cell: 929.319.1731

Fax: 212.751.2849

[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com) [www.brewerattorneys.com](http://www.brewerattorneys.com)

BREWER

This communication (including any attachments) is intended for the sole use of the intended recipient, and may contain material that is confidential, privileged, attorney work product, and/or subject to privacy laws. If you are not the intended recipient, you are hereby kindly notified that any use, disclosure, or copying of this communication or any part thereof is strictly prohibited. If you have received this communication in error, please delete this communication, including any copies or printouts, and notify us immediately by return email or at the telephone number above. Brewer, Attorneys and Counselors asserts in respect of this communication all applicable confidentiality, privilege, and/or privacy rights to the fullest extent permitted by law. Thank you.

---

**From:** Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>

**Sent:** Saturday, November 12, 2022 11:48 PM

**To:** Peter Sherwood <[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)>

**Cc:** [Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov); [kent@correlllawgroup.com](mailto:kent@correlllawgroup.com); [WFleming@gagespencer.com](mailto:WFleming@gagespencer.com); [tmclish@akingump.com](mailto:tmclish@akingump.com); [Stephen.Thompson@ag.ny.gov](mailto:Stephen.Thompson@ag.ny.gov); [SFarber@winston.com](mailto:SFarber@winston.com); Sarah Rogers <[sbr@brewerattorneys.com](mailto:sbr@brewerattorneys.com)>; [PBannon@winston.com](mailto:PBannon@winston.com); [Nina.Sargent@ag.ny.gov](mailto:Nina.Sargent@ag.ny.gov); [mwerbner@werbnerlaw.com](mailto:mwerbner@werbnerlaw.com); [mmacdougall@akingump.com](mailto:mmacdougall@akingump.com); [Emily.Stern@ag.ny.gov](mailto:Emily.Stern@ag.ny.gov); Dawn M. Wilson <[dwilson@ganfershore.com](mailto:dwilson@ganfershore.com)>; [samantha.block@akingump.com](mailto:samantha.block@akingump.com); [hevans@akingump.com](mailto:hevans@akingump.com)

**Subject:** Re: Pending motions, People v. NRA

Your Honor,

We will be able to provide a firm ETA tomorrow afternoon. I will be in touch then.

Regards,

Svetlana

Svetlana M. Eisenberg | Partner  
Brewer, Attorneys & Counselors  
750 Lexington Avenue, 14th Floor  
New York, New York 10022  
Office Direct: 212.224.8817  
Office Main: 212.489.1400  
Cell: 929.319.1731  
Fax: 212.751.2849  
[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com) [www.brewerattorneys.com](http://www.brewerattorneys.com)

---

**From:** Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>

**Sent:** Friday, November 11, 2022 11:50:04 PM

**To:** Peter Sherwood <[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)>

**Cc:** [Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov) <[Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov)>; [kent@correlllawgroup.com](mailto:kent@correlllawgroup.com) <[kent@correlllawgroup.com](mailto:kent@correlllawgroup.com)>; [WFleming@gagespencer.com](mailto:WFleming@gagespencer.com) <[WFleming@gagespencer.com](mailto:WFleming@gagespencer.com)>; [tmclish@akingump.com](mailto:tmclish@akingump.com) <[tmclish@akingump.com](mailto:tmclish@akingump.com)>; [Stephen.Thompson@ag.ny.gov](mailto:Stephen.Thompson@ag.ny.gov) <[Stephen.Thompson@ag.ny.gov](mailto:Stephen.Thompson@ag.ny.gov)>; [SFarber@winston.com](mailto:SFarber@winston.com) <[SFarber@winston.com](mailto:SFarber@winston.com)>; Sarah Rogers <[sbr@brewerattorneys.com](mailto:sbr@brewerattorneys.com)>; [PBannon@winston.com](mailto:PBannon@winston.com) <[PBannon@winston.com](mailto:PBannon@winston.com)>; [Nina.Sargent@ag.ny.gov](mailto:Nina.Sargent@ag.ny.gov) <[Nina.Sargent@ag.ny.gov](mailto:Nina.Sargent@ag.ny.gov)>; [mwerbner@werbnerlaw.com](mailto:mwerbner@werbnerlaw.com) <[mwerbner@werbnerlaw.com](mailto:mwerbner@werbnerlaw.com)>; [mmacdougall@akingump.com](mailto:mmacdougall@akingump.com) <[mmacdougall@akingump.com](mailto:mmacdougall@akingump.com)>; [Emily.Stern@ag.ny.gov](mailto:Emily.Stern@ag.ny.gov) <[Emily.Stern@ag.ny.gov](mailto:Emily.Stern@ag.ny.gov)>; Dawn M. Wilson <[dwilson@ganfershore.com](mailto:dwilson@ganfershore.com)>; [samantha.block@akingump.com](mailto:samantha.block@akingump.com) <[samantha.block@akingump.com](mailto:samantha.block@akingump.com)>; [hevans@akingump.com](mailto:hevans@akingump.com) <[hevans@akingump.com](mailto:hevans@akingump.com)>

**Subject:** Re: Pending motions, People v. NRA

Your Honor, Unfortunately, we ran into a few issues and will not be able to provide the documents this evening.

We will be able to provide an ETA tomorrow and will send an update then.

Please accept our apologies for the delay.

Thank you.

Regards,

Svetlana

---

**From:** Peter Sherwood <[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)>

**Sent:** Friday, November 11, 2022 3:55:17 PM

**To:** Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>

**Cc:** [Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov) <[Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov)>; [kent@correlllawgroup.com](mailto:kent@correlllawgroup.com) <[kent@correlllawgroup.com](mailto:kent@correlllawgroup.com)>; [WFleming@gagespencer.com](mailto:WFleming@gagespencer.com) <[WFleming@gagespencer.com](mailto:WFleming@gagespencer.com)>; [tmclish@akingump.com](mailto:tmclish@akingump.com) <[tmclish@akingump.com](mailto:tmclish@akingump.com)>; Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>; [Stephen.Thompson@ag.ny.gov](mailto:Stephen.Thompson@ag.ny.gov) <[Stephen.Thompson@ag.ny.gov](mailto:Stephen.Thompson@ag.ny.gov)>; [SFarber@winston.com](mailto:SFarber@winston.com) <[SFarber@winston.com](mailto:SFarber@winston.com)>; Sarah Rogers <[sbr@brewerattorneys.com](mailto:sbr@brewerattorneys.com)>; [PBannon@winston.com](mailto:PBannon@winston.com) <[PBannon@winston.com](mailto:PBannon@winston.com)>; [Nina.Sargent@ag.ny.gov](mailto:Nina.Sargent@ag.ny.gov) <[Nina.Sargent@ag.ny.gov](mailto:Nina.Sargent@ag.ny.gov)>; [mwerbner@werbnerlaw.com](mailto:mwerbner@werbnerlaw.com) <[mwerbner@werbnerlaw.com](mailto:mwerbner@werbnerlaw.com)>; [mmacdougall@akingump.com](mailto:mmacdougall@akingump.com) <[mmacdougall@akingump.com](mailto:mmacdougall@akingump.com)>; [Emily.Stern@ag.ny.gov](mailto:Emily.Stern@ag.ny.gov) <[Emily.Stern@ag.ny.gov](mailto:Emily.Stern@ag.ny.gov)>; Dawn M. Wilson <[dwilson@ganfershore.com](mailto:dwilson@ganfershore.com)>; [samantha.block@akingump.com](mailto:samantha.block@akingump.com) <[samantha.block@akingump.com](mailto:samantha.block@akingump.com)>; [hevans@akingump.com](mailto:hevans@akingump.com) <[hevans@akingump.com](mailto:hevans@akingump.com)>

**Subject:** Re: Pending motions, People v. NRA

Ms. Eisenberg,

I appreciate the extraordinary efforts you are making to comply with my request in a timely manner.

Best

OPS

Sent from my iPhone

**Peter Sherwood**

*Senior counsel*



*Celebrating Over 40 Years Serving Clients*

360 Lexington Avenue

New York, New York 10017

**Main:** 212.922.9250

**Direct:** 212.823.0925

**Fax:** 212.922.9335

[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)

NOTE: The information contained in this E-Mail is confidential and may be legally privileged. If you are not the intended recipient, you must not read, use or disseminate the information. Although this E-Mail and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by the sender or Ganfer Shore Leeds & Zauderer LLP for any loss or damage arising in any way from its use. This E-Mail is not intended to create a binding agreement of any kind, nor is it intended to be a binding counter-offer to any offer that may be pending, unless otherwise expressly stated. It is intended to be an informal response to any pending proposal, part of an ongoing negotiation which awaits a written agreement signed by the party or parties to be charged before being legally binding. For this E-Mail to create any form of a binding agreement, it must include an affirmative statement to that effect.

On Nov 11, 2022, at 3:29 PM, Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)> wrote:

Dear Judge Sherwood,

Thank you for your message below. It was forwarded to the parties as requested.

The NRA is working on complying with Your Honor's request. We are intending to respond today before 12 midnight.

Thank you.

Regards,

Svetlana

Svetlana M. Eisenberg | Partner

Brewer, Attorneys & Counselors  
750 Lexington Avenue, 14th Floor  
New York, New York 10022  
Office Direct: 212.224.8817  
Office Main: 212.489.1400  
Cell: 929.319.1731  
Fax: 212.751.2849  
[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com) [www.brewerattorneys.com](http://www.brewerattorneys.com)

---

**From:** Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>  
**Sent:** Wednesday, November 9, 2022 10:39 AM  
**To:** Monica Connell (OFFICIAL) <[monica.connell@ag.ny.gov](mailto:monica.connell@ag.ny.gov)>; Kent Correll <[kent@correlllawgroup.com](mailto:kent@correlllawgroup.com)>; William Fleming <[WFleming@gagespencer.com](mailto:WFleming@gagespencer.com)>; McLish, Thomas <[tmclish@akingump.com](mailto:tmclish@akingump.com)>; Farber, Seth <[SFarber@winston.com](mailto:SFarber@winston.com)>; [mwerbner@werbnerlaw.com](mailto:mwerbner@werbnerlaw.com)  
**Subject:** Fwd: Pending motions, People v. NRA

Pls see email below from Judge Sherwood.

Svetlana M. Eisenberg | Partner  
Brewer, Attorneys & Counselors  
750 Lexington Avenue, 14th Floor  
New York, New York 10022  
Office Direct: 212.224.8817  
Office Main: 212.489.1400  
Cell: 929.319.1731  
Fax: 212.751.2849  
[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com) [www.brewerattorneys.com](http://www.brewerattorneys.com)

---

**From:** Peter Sherwood <[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)>  
**Sent:** Tuesday, November 8, 2022 5:39 PM  
**To:** Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>  
**Subject:** Pending motions, People v. NRA

Dear Miss Eisenberg,

I have completed an initial review of the Attorney General's motion, dated October 20, the NRA's opposition, dated November 4 and the relevant case law. The cases make clear that "determining document immunity claims and reviewing them are largely fact-specific processes" (see *spectrum systems international corp. v. Chemical Bank*, 78 NY 2d 371,381 (1991). As such fact-finders are often

encouraged to conduct in camera reviews (see id). I have determined that needs to be done here.

Please re-review the documents the NRA wishes to withhold and provide for in camera review the documents the NRA maintains are immune from disclosure. If possible, please make them available for my review by this Friday, November 11. Also, please forward this email to all counsel ASAP.

Thank you,  
O. P. Sherwood

Sent from my iPhone

**Peter Sherwood**

*Senior counsel*

[<image001.png>](#)

*Celebrating Over 40 Years Serving Clients*

360 Lexington Avenue  
New York, New York 10017

**Main:** 212.922.9250

**Direct:** 212.823.0925

**Fax:** 212.922.9335

[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)

NOTE: The information contained in this E-Mail is confidential and may be legally privileged. If you are not the intended recipient, you must not read, use or disseminate the information. Although this E-Mail and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by the sender or Ganfer Shore Leeds & Zauderer LLP for any loss or damage arising in any way from its use. This E-Mail is not intended to create a binding agreement of any kind, nor is it intended to be a binding counter-offer to any offer that may be pending, unless otherwise expressly stated. It is intended to be an informal response to any pending proposal, part of an ongoing negotiation which awaits a written agreement signed by the party or parties to be charged before being legally binding. For this E-Mail to create any form of a binding agreement, it must include an affirmative statement to that effect.

**CAUTION: This email is from outside the organization. DO NOT CLICK a link or open an attachment unless you know the content is safe and are expecting it from the sender. If in doubt, contact the sender separately to verify the content.**

=====

**CAUTION: This email is from outside the organization. DO NOT CLICK a link or open an attachment unless you know the content is safe and are expecting it from the sender. If in**

**doubt, contact the sender separately to verify the content.**

=====

**IMPORTANT NOTICE:** This e-mail, including any attachments, may be confidential, privileged or otherwise legally protected. It is intended only for the addressee. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please notify the sender immediately by reply e-mail and delete the e-mail from your system.

**CAUTION: This email is from outside the organization. DO NOT CLICK a link or open an attachment unless you know the content is safe and are expecting it from the sender. If in doubt, contact the sender separately to verify the content.**

=====

**From:** [Connell, Monica](#)  
**To:** [Svetlana Eisenberg](#)  
**Subject:** RE: In camera review  
**Date:** Wednesday, November 16, 2022 2:16:00 PM

---

Thank you. Was what was provided all documents or a sampling, and if a sampling, how was that done?

---

**From:** Svetlana Eisenberg <sme@brewerattorneys.com>  
**Sent:** Wednesday, November 16, 2022 2:00 PM  
**To:** Connell, Monica <Monica.Connell@ag.ny.gov>  
**Subject:** Re: In camera review

Monica,

We provided to Judge Sherwood privileged communications between the NRA and its counsel that relate to the NRA's ongoing efforts to ensure compliance with applicable laws, regulations, and its own policies. In addition, we provided communications with a number of lawyers, including our firm, Don Lan, Alex Reid, and John Frazer. The subject matter of the communications included calculation of potential excess benefits, determinations of whether something is an excess benefit, vendor compliance, and conflicts of interest.

The documents were compiled by running searches for communications with referenced counsel concerning the above-referenced topics.

Regards,  
Svetlana

Svetlana M. Eisenberg | Partner  
Brewer, Attorneys & Counselors  
750 Lexington Avenue, 14th Floor  
New York, New York 10022  
Office Direct: 212.224.8817  
Office Main: 212.489.1400  
Cell: 929.319.1731  
Fax: 212.751.2849  
[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com) [www.brewerattorneys.com](http://www.brewerattorneys.com)

#### BREWER

This communication (including any attachments) is intended for the sole use of the intended recipient, and may contain material that is confidential, privileged, attorney work product, and/or subject to privacy laws. If you are not the intended recipient, you are hereby kindly notified that any use, disclosure, or copying of this communication or any part thereof is strictly prohibited. If you have received this communication in error, please delete this communication, including any copies or printouts, and notify us immediately by return email or at the telephone number above. Brewer, Attorneys and Counselors asserts in respect of this communication all applicable confidentiality, privilege, and/or privacy rights to the fullest extent permitted by law. Thank you.



---

**From:** Connell, Monica <[Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov)>  
**Sent:** Wednesday, November 16, 2022 8:53 AM  
**To:** Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>  
**Subject:** Re: In camera review

Svetlana,

I understand the time pressures. Thanks for responding. My request and my understanding was that we are supposed to be told how the NRA is sampling. Please let me know if you are going to do that.

Thanks,

Monica

Get [Outlook for iOS](#)

---

**From:** Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>  
**Sent:** Wednesday, November 16, 2022 7:11:33 AM  
**To:** Connell, Monica <[Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov)>  
**Subject:** In camera review

**[EXTERNAL]**

Monica,

Apologies for not responding yesterday. As you know, we are preparing for the upcoming depositions and making productions.

The documents provided to Judge Sherwood for in camera review are a representative sample of privileged documents to which the NYAG is not entitled. Separately and together, they demonstrate that the NYAG's waiver argument has no merit.

They cover a variety of years, lawyers, law firms, and issues.

Please let me know if you have any further questions or if it would be helpful to have a call.

Regards,

Svetlana

Svetlana M. Eisenberg | Partner  
Brewer, Attorneys & Counselors  
750 Lexington Avenue, 14th Floor  
New York, New York 10022  
Office Direct: 212.224.8817  
Office Main: 212.489.1400  
Cell: 929.319.1731  
Fax: 212.751.2849

[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com) [www.brewerattorneys.com](http://www.brewerattorneys.com)

**IMPORTANT NOTICE:** This e-mail, including any attachments, may be confidential, privileged or otherwise legally protected. It is intended only for the addressee. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please notify the sender immediately by reply e-mail and delete the e-mail from your system.

**CAUTION:** This email is from outside the organization. DO NOT CLICK a link or open an attachment unless you know the content is safe and are expecting it from the sender. If in doubt, contact the sender separately to verify the content.

=====

# **EXHIBIT E**

Special Master Email re Sampling

**From:** [Peter Sherwood](#)  
**To:** [Connell, Monica](#)  
**Cc:** [Svetlana Eisenberg](#); [Dawn M. Wilson](#); [kent@correlllawgroup.com](#); [WFleming@gagespencer.com](#); [Thompson, Stephen](#); [SFarber@winston.com](#); [Sarah Rogers](#); [PBannon@winston.com](#); [Sargent, Nina](#); [mwerbner@werbnerlaw.com](#); [mmacdougall@akingump.com](#); [Stern, Emily](#); [samantha.block@akingump.com](#); [hevans@akingump.com](#); [Noah Peters](#)  
**Subject:** Re: Pending motions, People v. NRA  
**Date:** Wednesday, November 23, 2022 1:35:00 PM  
**Attachments:** [image005.png](#)  
[image006.png](#)  
[image001.png](#)  
[gs/zlogo\\_finalsm2\\_53dc6904-292c-4cae-b56e-3714155393cc.png](#)

---

Dear Counsel,

Thank you for your communications prepared in response my ruling regarding approximately 40 documents, including several duplicates, presented for in camera review by the NRA. As you are aware, I am traveling and have only limited access to the means of communication. I am aware that there is little time remaining for completion of discovery. Hence this reply to communications received yesterday .

The NRA states there are two categories of documents requested by the OAG. Category one which consists of 33 email chains, concerns communications involving third parties. Category two which consists of only seven email chains, concerns communications between the NRA and it's counsel, relating to the NRA's continuing efforts to ensure compliance with applicable laws, rules and policies. The NRA represents that the subject matter of these communications included calculations of excess benefits, determination of whether something is an excess benefit, vendor compliance and conflict of interest.

The OAG argues with substantial justification that the NRA failed to describe sufficiently how it selected the documents for the review. Notably, the sample of documents in category one do not include entities of interest to the OAG such as the NRA's independent auditors and certain vendors, including McKenna and MMP. Similarly, the sample of documents that purport to be in category two do not include several topics listed by the OAG. For example, the sample makes no reference to any whistle blower complaint, investigation of alleged misconduct within the NRA or related party transactions. It also shields all documents concerning investigations or corrective action involving any of the defendants named in the complaint and gives no hint as to how the NRA made excess benefit calculations or determined their reasonableness. These examples suggest that the search terms selected were either grossly inadequate or that the NRA elected to shield selected categories of documents from in camera review.

The NRA and OAG shall meet and confer as soon as practicable to review the search terms used and database searched and to agree on ESI that will adequately search for the information requested and give a fair sampling of the results. The protocol agreed to shall provide for an adequate sampling methodology and reporting of information concerning the number of hits by word, phrase or any other terms on which the parties agree. The NRA may then present a representative sample of documents it claims are protected.

To the extent the parties stipulate that certain categories of documents are irrelevant to the matters at issue because the NRA will not be asserting an advice of counsel defense or otherwise, such documents need not be included in the sample.

The sample shall be provided for review by the close of business on December 2.

So Ordered

O. Peter Sherwood

Sent from my iPhone

**Peter Sherwood**

*Senior counsel*



*Celebrating Over 40 Years Serving Clients*

360 Lexington Avenue

New York, New York 10017

**Main:** 212.922.9250

**Direct:** 212.823.0925

**Fax:** 212.922.9335

psherwood@ganfershore.com

NOTE: The information contained in this E-Mail is confidential and may be legally privileged. If you are not the intended recipient, you must not read, use or disseminate the information. Although this E-Mail and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by the sender or Ganfer Shore Leeds & Zauderer LLP for any loss or damage arising in any way from its use. This E-Mail is not intended to create a binding agreement of any kind, nor is it intended to be a binding counter-offer to any offer that may be pending, unless otherwise expressly stated. It is intended to be an informal response to any pending proposal, part of an ongoing negotiation which awaits a written agreement signed by the party or parties to be charged before being legally binding. For this E-Mail to create any form of a binding agreement, it must include an affirmative statement to that effect.

On Nov 22, 2022, at 12:09 PM, Connell, Monica <[Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov)> wrote:

Dear Judge Sherwood:

Plaintiff write in response to the NRA's email of this morning in order to address two issues.

#### **Documents Submitted for In Camera Review**

As an initial matter, the NRA should just plainly state what it has submitted to Your Honor for in camera review and how it has selected the same. Attached is an email chain demonstrating that Plaintiff's efforts to understand the protocol the NRA used to select the emails provided to Your Honor were unsuccessful. In fact, the NRA failed to respond to the last email in the chain which simply asked "Was what was provided all documents or a sampling, and if a sampling, how was that done?"

Plaintiff sought relief in regard to two general categories of allegedly privileged

information in its October 20, 2022 omnibus letter application. The first category included documents between the NRA and its agents and third parties, including independent auditors and vendors such as McKenna and MMP, as outlined in Plaintiff's October 20, 2022 letter. The second category encompassed information withheld as privileged relating to matters the NRA directly put at issue in this litigation, including the NRA's compliance reform process. This second category includes communications with the Brewer firm and various outside counsel and consultants relating to, for example, investigation of NRA whistleblower complaints, the calculation of excess benefits, investigation of alleged misconduct within the NRA, related party transactions, conflict of interest, failure to comply with NRA policies relating to procurement, and vendor contracting. As outlined in Plaintiff's October 20<sup>th</sup> letter, such matters have been placed in issue by the NRA and the NRA may not shield the same from discovery.

It appears that the NRA is taking the position that it has submitted all documents from the first category. If that is the case, can the NRA please confirm that?

Regarding materials from the second category, the NRA states, in summary, that it compiled communications (and, assumedly, reports and related documents) with "a number of lawyers" including NRA counsel and two identified outside counsel, and ran searches "for communications with referenced counsel concerning the above-referenced topics" which include "calculation of potential excess benefits, determinations of whether something is an excess benefit, vendor compliance, and conflicts of interest." Plaintiff will note that this list of issues does not include a number of topics relating to the compliance reform efforts raised by Plaintiff and about which the NRA has asserted privilege.

Even if the search terms used by the NRA were complete, it is still unclear how the NRA selected the documents provided to Your Honor. Were all documents received in response to the search terms provided to Your Honor? *As the parties have repeatedly done throughout this litigation, the NRA should identify the search terms used, the population of ESI searched, including total number of documents searched and the custodians, and the number of "hits" it received and confirm whether it has submitted all "hits" to Your Honor or has selected some. If it has selected some documents, it should indicate how it did so.*

In short, Plaintiff needs a clearer statement of what has been submitted for your review and, to the extent that what has submitted is a portion of a larger sample of withheld documents, to understand how the documents produced were selected. The information provided to the Plaintiff regarding the documents submitted to Your Honor is simply insufficient for Plaintiff to make any assessment of whether the documents submitted, if a sample, are representative of the larger universe of responsive materials, encompass the documents at issue, and are privileged or whether the privilege has been waived by the NRA's placing the subject at issue in this litigation or using the privilege as a sword and shield.

**The NRA's Proposed Stipulation**

Second, the NRA proposes a stipulation limiting facts and arguments it may introduce at trial. The NRA stated in its email that it "is willing to stipulate that it will not (i) use any privileged documents at trial; or (ii) refer to the advice it received from any attorney in mounting any defense." That is a good first step. However, the NRA would also have to agree that it could not introduce evidence or argument at trial regarding actions undertaken by or with counsel on behalf of the NRA, such as investigations, negotiations with vendors, etc., over which the NRA has asserted privilege and blocked discovery. NRA witnesses have testified and the NRA has confirmed that it intends to argue that it has taken certain steps as part of its compliance reform process, but it has blocked Plaintiff from inquiring about the steps during depositions, placing the matters at issue but using privilege as a shield. As outlined in Plaintiff's October 20, 2022 letter and at the November 14th argument, the NRA intends to argue, and in fact its expert witnesses argue, that the NRA engaged in a far reaching and effective reform effort. But the NRA has blocked the Plaintiff from inquiring into the same and testing that assertion, withholding relevant documents and precluding relevant testimony. The NRA should not introduce facts or arguments at trial regarding issues about which it has elected to block discovery as privileged.

As a way forward to a possible stipulation, Plaintiff suggests that the NRA identify the specific steps it asserts it took as part of its compliance reform efforts, including investigations. For those steps for which it has not seriously blocked inquiry using privilege, for example, its compliance refresher courses, there may be no dispute. For other steps, Plaintiff can set forth whether discovery relating to the same was blocked by an inappropriate assertion of privilege and perhaps the parties may be able to craft a stipulation that resolves some or all of the matters at issue here.

Thank you for your attention to these matters.

Respectfully,

Monica Connell

<image001.png>

---

The information contained in this e-mail and any attachments to this e-mail is privileged and confidential information, and is intended only for the use of the individuals or entities named as addressees. If the reader of this message is not the intended recipient or the employee, agent, or service-provider responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender by telephone at 212-416-8965. The address, email address and fax numbers provided herein are not for service of

papers absent express agreement to the same. Thank you.

---

**From:** Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>

**Sent:** Tuesday, November 22, 2022 6:23 AM

**To:** Connell, Monica <[Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov)>; Dawn M. Wilson <[dwilson@ganfershore.com](mailto:dwilson@ganfershore.com)>; Peter Sherwood <[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)>

**Cc:** [kent@correlllawgroup.com](mailto:kent@correlllawgroup.com); [WFleming@gagespencer.com](mailto:WFleming@gagespencer.com); Thompson, Stephen <[Stephen.Thompson@ag.ny.gov](mailto:Stephen.Thompson@ag.ny.gov)>; [SFarber@winston.com](mailto:SFarber@winston.com); Sarah Rogers <[sbr@brewerattorneys.com](mailto:sbr@brewerattorneys.com)>; [PBannon@winston.com](mailto:PBannon@winston.com); Sargent, Nina <[Nina.Sargent@ag.ny.gov](mailto:Nina.Sargent@ag.ny.gov)>; [mwerbner@werbnerlaw.com](mailto:mwerbner@werbnerlaw.com); [mmacdougall@akingump.com](mailto:mmacdougall@akingump.com); Stern, Emily <[Emily.Stern@ag.ny.gov](mailto:Emily.Stern@ag.ny.gov)>; [samantha.block@akingump.com](mailto:samantha.block@akingump.com); [hevans@akingump.com](mailto:hevans@akingump.com); Noah Peters <[nbp@BrewerAttorneys.com](mailto:nbp@BrewerAttorneys.com)>; Stern, Emily <[Emily.Stern@ag.ny.gov](mailto:Emily.Stern@ag.ny.gov)>; Thompson, Stephen <[Stephen.Thompson@ag.ny.gov](mailto:Stephen.Thompson@ag.ny.gov)>

**Subject:** RE: Pending motions, People v. NRA

Dear Judge Sherwood,

On behalf of the NRA, I write to address Ms. Connell's latest correspondence.

**First**, Ms. Connell asserts: "We believe that it is necessary for the NRA to articulate how it selected the sample it has submitted to the Special Master to determine whether it is in fact representative of the entire[t]y of the categories of documents it has withheld from production. If the sample provided is not representative of the larger population of withheld documents, the results of Judge Sherwood's in camera review cannot be extrapolated to the entire population. We therefore ask that the NRA disclose how it selected the documents it submitted, as directed by Judge Sherwood."

As reflected in the attached (and quoted below), the NRA advised the OAG how it selected the sample it submitted to Your Honor. The attached email message, dated November 16, 2022, to OAG states:

"We provided to Judge Sherwood privileged communications between the NRA and its counsel that relate to the NRA's ongoing efforts to ensure compliance with applicable laws, regulations, and its own policies. In addition, we provided communications with a number of lawyers, including our firm, Don Lan, Alex Reid, and John Frazer. The subject matter of the communications included calculation of potential excess benefits,



determinations of whether something is an excess benefit, vendor compliance, and conflicts of interest.

The documents were compiled by running searches for communications with referenced counsel concerning the above-referenced topics.”

In sum, the documents provided to Your Honor are representative of the larger population of withheld communications.

Moreover, as Your Honor can see (and as the NRA previously represented), those documents do not involve third parties; rather, they are between the NRA and its counsel. Importantly, the NRA has no intention whatsoever of relying, introducing, or referencing any of the privileged documents in support of or as part of any of its defenses. As such, there is no basis for any claim of waiver. In addition, as noted earlier, it is not clear why in-camera review is necessary to evaluate the NYAG’s “at issue” waiver argument. Moreover, the NRA is willing to stipulate that it will not (i) use any privileged documents at trial; or (ii) refer to the advice it received from any attorney in mounting any defense.

**Second**, Ms. Connell also states: “Again, it is not solely the documents that are at issue but the NRA’s attempts to block Plaintiff from obtaining access to information it relies upon in asserting that it has appropriately calculated excess benefits, investigated whistleblower complaints, addressed alleged malfeasance, and implemented reforms regarding conflicts of interest and vendor procurement.” With regard to that statement, the NRA notes that because there has been no “at issue” waiver, there is no basis for compelling the NRA to disclose copies of written or verbal privileged communications.

Naturally, the NRA disagrees with certain mischaracterizations in the OAG’s email message. Please let us know if you have any other questions.

Regards,  
Svetlana

Svetlana M. Eisenberg | Partner  
Brewer, Attorneys & Counselors  
750 Lexington Avenue, 14th Floor  
New York, New York 10022  
Office Direct: 212.224.8817  
Office Main: 212.489.1400

Cell: 929.319.1731

Fax: 212.751.2849

[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com) [www.brewerattorneys.com](http://www.brewerattorneys.com)

BREWER

This communication (including any attachments) is intended for the sole use of the intended recipient, and may contain material that is confidential, privileged, attorney work product, and/or subject to privacy laws. If you are not the intended recipient, you are hereby kindly notified that any use, disclosure, or copying of this communication or any part thereof is strictly prohibited. If you have received this communication in error, please delete this communication, including any copies or printouts, and notify us immediately by return email or at the telephone number above. Brewer, Attorneys and Counselors asserts in respect of this communication all applicable confidentiality, privilege, and/or privacy rights to the fullest extent permitted by law. Thank you.

---

**From:** Connell, Monica <[Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov)>

**Sent:** Monday, November 21, 2022 1:49 PM

**To:** Dawn M. Wilson <[dwilson@ganfershore.com](mailto:dwilson@ganfershore.com)>; Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>; Peter Sherwood <[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)>

**Cc:** [kent@correlllawgroup.com](mailto:kent@correlllawgroup.com); [WFleming@gagespencer.com](mailto:WFleming@gagespencer.com); [tmclish@akingump.com](mailto:tmclish@akingump.com); Thompson, Stephen <[Stephen.Thompson@ag.ny.gov](mailto:Stephen.Thompson@ag.ny.gov)>; [SFarber@winston.com](mailto:SFarber@winston.com); Sarah Rogers <[sbr@brewerattorneys.com](mailto:sbr@brewerattorneys.com)>; [PBannon@winston.com](mailto:PBannon@winston.com); Sargent, Nina <[Nina.Sargent@ag.ny.gov](mailto:Nina.Sargent@ag.ny.gov)>; [mwerbner@werbnerlaw.com](mailto:mwerbner@werbnerlaw.com); [mmacdougall@akingump.com](mailto:mmacdougall@akingump.com); Stern, Emily <[Emily.Stern@ag.ny.gov](mailto:Emily.Stern@ag.ny.gov)>; [samantha.block@akingump.com](mailto:samantha.block@akingump.com); [hevans@akingump.com](mailto:hevans@akingump.com); Noah Peters <[nbp@BrewerAttorneys.com](mailto:nbp@BrewerAttorneys.com)>; Stern, Emily <[Emily.Stern@ag.ny.gov](mailto:Emily.Stern@ag.ny.gov)>; Thompson, Stephen <[Stephen.Thompson@ag.ny.gov](mailto:Stephen.Thompson@ag.ny.gov)>

**Subject:** RE: Pending motions, People v. NRA

Dear Ms. Wilson,

Thank you for your email today. We have received only a "rough" of the transcript of the conference. I have attached a copy of that to this email. I inquired of the Court Reporter and asked for the final version. I understand we can expect to receive it today.

Plaintiff needs to raise an important issue. At the November 14, 2022 conference, the NRA indicated that it was going to provide a sample of the allegedly privileged materials for in camera review. This included assertedly

privileged materials that generally fall into two categories: (1) communications with and information shared between the NRA and third parties; and (2) communications between the NRA and its counsel related to the NRA's compliance reform efforts, over which Plaintiff has alleged the NRA has waived privilege by putting such matters at issue and/or for which information the NRA has improperly used privilege as a sword and shield. These two categories were confirmed in Ms. Eisenberg's November 15, 2022 email to the Special Master. Again, it is not solely the documents that are at issue but the NRA's attempts to block Plaintiff from obtaining access to information it relies upon in asserting that it has appropriately calculated excess benefits, investigated whistleblower complaints, addressed alleged malfeasance, and implemented reforms regarding conflicts of interest and vendor procurement.

At our request, the Special Master directed, and the NRA agreed, to provide the protocol of how it selected the sample materials provided to the Special Master. The NRA has refused to do so, saying only the NRA provided "a representative sample of privileged documents to which the NYAG is not entitled. Separately and together, they demonstrate that the NYAG's waiver argument has no merit. They cover a variety of years, lawyers, law firms, and issues." We believe that it is necessary for the NRA to articulate how it selected the sample it has submitted to the Special Master to determine whether it is in fact representative of the entirety of the categories of documents it has withheld from production. If the sample provided is not representative of the larger population of withheld documents, the results of Judge Sherwood's in camera review cannot be extrapolated to the entire population. We therefore ask that the NRA disclose how it selected the documents it submitted, as directed by Judge Sherwood.

Thank you,

Monica Connell

<image005.png>

-----  
The information contained in this e-mail and any attachments to this e-mail is privileged and confidential information, and is intended only for the use of the individuals or entities named as addressees. If the reader of this message is not the intended recipient or the employee, agent, or service-provider responsible to deliver it to the intended recipient, you are hereby notified that any

dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender by telephone at 212-416-8965. The address, email address and fax numbers provided herein are not for service of papers absent express agreement to the same. Thank you.

---

**From:** Dawn M. Wilson <[dwilson@ganfershore.com](mailto:dwilson@ganfershore.com)>

**Sent:** Monday, November 21, 2022 12:22 PM

**To:** Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>; Peter Sherwood <[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)>

**Cc:** Connell, Monica <[Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov)>; [kent@correlllawgroup.com](mailto:kent@correlllawgroup.com); [WFleming@gagespencer.com](mailto:WFleming@gagespencer.com); [tmclish@akingump.com](mailto:tmclish@akingump.com); Thompson, Stephen <[Stephen.Thompson@ag.ny.gov](mailto:Stephen.Thompson@ag.ny.gov)>; [SFarber@winston.com](mailto:SFarber@winston.com); Sarah Rogers <[sbr@brewerattorneys.com](mailto:sbr@brewerattorneys.com)>; [PBannon@winston.com](mailto:PBannon@winston.com); Sargent, Nina <[Nina.Sargent@ag.ny.gov](mailto:Nina.Sargent@ag.ny.gov)>; [mwerbner@werbnerlaw.com](mailto:mwerbner@werbnerlaw.com); [mmacdougall@akingump.com](mailto:mmacdougall@akingump.com); Stern, Emily <[Emily.Stern@ag.ny.gov](mailto:Emily.Stern@ag.ny.gov)>; [samantha.block@akingump.com](mailto:samantha.block@akingump.com); [hevans@akingump.com](mailto:hevans@akingump.com); Noah Peters <[nbp@BrewerAttorneys.com](mailto:nbp@BrewerAttorneys.com)>

**Subject:** RE: Pending motions, People v. NRA

**[EXTERNAL]**

Counsel,

Judge Sherwood has completed the review of the documents submitted by the NRA for in camera review. Specifically documents 1 -33 and 87 - 94, have been reviewed and determined to be protected by the attorney-client privilege. This is a bottom line determination. A reasoned decision will be issued in coming days.

In addition, in accordance with the discussion at the hearing last week, Judge Sherwood at this time is denying the NRA's motion for legal fees related to the Aaronson document review and production, without prejudice to the NRA renewing that motion with the proper support necessary to satisfy its burden.

Will someone please forward me the transcript when it is received?

Thank you,

**Dawn M. Wilson**

*Counsel*

[<image006.png>](#)

*Celebrating Over 40 Years Serving Clients*

360 Lexington Avenue

New York, New York 10017

**Main:** 212.922.9250

**Direct:** 212.922.9181

**Fax:** 212.922.9335

[dwilson@ganfershore.com](mailto:dwilson@ganfershore.com)

NOTE: The information contained in this E-Mail is confidential and may be legally privileged. If you are not the intended recipient, you must not read, use or disseminate the information. Although this E-Mail and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by the sender or Ganfer Shore Leeds & Zauderer LLP for any loss or damage arising in any way from its use. This E-Mail is not intended to create a binding agreement of any kind, nor is it intended to be a binding counter-offer to any offer that may be pending, unless otherwise expressly stated. It is intended to be an informal response to any pending proposal, part of an ongoing negotiation which awaits a written agreement signed by the party or parties to be charged before being legally binding. For this E-Mail to create any form of a binding agreement, it must include an affirmative statement to that effect.

---

**From:** Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>

**Sent:** Sunday, November 13, 2022 4:07 PM

**To:** Peter Sherwood <[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)>

**Cc:** [Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov); [kent@correlllawgroup.com](mailto:kent@correlllawgroup.com);

[WFleming@gagespencer.com](mailto:WFleming@gagespencer.com); [tmclish@akingump.com](mailto:tmclish@akingump.com);

[Stephen.Thompson@ag.ny.gov](mailto:Stephen.Thompson@ag.ny.gov); [SFarber@winston.com](mailto:SFarber@winston.com); Sarah Rogers

<[sbr@BrewerAttorneys.com](mailto:sbr@BrewerAttorneys.com)>; [PBannon@winston.com](mailto:PBannon@winston.com); [Nina.Sargent@ag.ny.gov](mailto:Nina.Sargent@ag.ny.gov);

[mwerbner@werbnerlaw.com](mailto:mwerbner@werbnerlaw.com); [mmacdougall@akingump.com](mailto:mmacdougall@akingump.com);

[Emily.Stern@ag.ny.gov](mailto:Emily.Stern@ag.ny.gov); Dawn M. Wilson <[dwilson@ganfershore.com](mailto:dwilson@ganfershore.com)>;

[samantha.block@akingump.com](mailto:samantha.block@akingump.com); [hevans@akingump.com](mailto:hevans@akingump.com); Noah Peters

<[nbp@BrewerAttorneys.com](mailto:nbp@BrewerAttorneys.com)>

**Subject:** RE: Pending motions, People v. NRA

Your Honor,

On behalf of the NRA, below is timing update with regard to the documents for in camera review.

**First**, the NRA will provide privileged documents involving third parties for in camera review on Monday (tomorrow). The NRA believes that Your Honor will find it helpful to have a document-by-document log (index) that reflects the bases of the claimed privileges in the context of these documents (e.g., the third party's necessary role in the communications). The NRA requests until midnight on Wednesday to provide that index.

**Second**, in preparing the third party documents for in camera review, the NRA also determined (based on the review of individual documents) that some documents (i) are not privileged, or (ii) are privileged but, given Judge Cohen's recent ruling, can be produced to the NYAG if the NYAG agrees to the stipulation memorialized in the attached email exchange between the NRA and the NYAG. The NRA will produce, subject to the stipulation to the extent applicable, these documents to the NYAG on Tuesday.

**Third**, the NRA will share with Your Honor on Monday for in-camera review samples of privileged documents related to the NRA's efforts to ensure its compliance with its governance controls. As you will see, those documents do not involve third parties and are between the NRA and its counsel. Further, the NRA has no intention whatsoever of relying on, introducing, or referencing any of these privileged documents in support of or as part of any of its defenses. The NRA believes the samples provided on Monday will assist Your Honor in determining that the NYAG's waiver argument lacks merit. Of course, because the NRA is not asserting an advice of counsel defense and will not rely upon or refer to any of these documents for any defense, there is no basis for any waiver claim.

We look forward to seeing you at the hearing on the pending motions tomorrow at 10 a.m. E.S.T. (Pursuant to the Special Master Stipulation, the NRA arranged for a court reporter to join the video call. An invitation and a link were sent on 11/11 at 7:18 pm.) In the meantime, should you have any questions, please do not hesitate to let us know.

Thank you for your attention to this matter.

Regards,  
Svetlana Eisenberg

Svetlana M. Eisenberg | Partner  
Brewer, Attorneys & Counselors  
750 Lexington Avenue, 14th Floor  
New York, New York 10022  
Office Direct: 212.224.8817  
Office Main: 212.489.1400  
Cell: 929.319.1731  
Fax: 212.751.2849  
[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com) [www.brewerattorneys.com](http://www.brewerattorneys.com)

**BREWER**

This communication (including any attachments) is intended for the sole use of the intended recipient, and may contain material that is confidential, privileged, attorney work product, and/or subject to privacy laws. If you are not the intended recipient, you are hereby kindly notified that any use, disclosure, or copying of this communication or any part thereof is strictly prohibited. If you have received this communication in error, please delete this communication, including any copies or printouts, and notify us immediately by return email or at the telephone number above. Brewer, Attorneys and Counselors asserts in respect of this communication all applicable confidentiality, privilege, and/or privacy rights to the fullest extent permitted by law. Thank you.

---

**From:** Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>  
**Sent:** Saturday, November 12, 2022 11:48 PM  
**To:** Peter Sherwood <[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)>  
**Cc:** [Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov); [kent@correlllawgroup.com](mailto:kent@correlllawgroup.com); [WFleming@gagespencer.com](mailto:WFleming@gagespencer.com); [tmclish@akingump.com](mailto:tmclish@akingump.com); [Stephen.Thompson@ag.ny.gov](mailto:Stephen.Thompson@ag.ny.gov); [SFarber@winston.com](mailto:SFarber@winston.com); Sarah Rogers <[sbr@brewerattorneys.com](mailto:sbr@brewerattorneys.com)>; [PBannon@winston.com](mailto:PBannon@winston.com); [Nina.Sargent@ag.ny.gov](mailto:Nina.Sargent@ag.ny.gov); [mwerbner@werbnerlaw.com](mailto:mwerbner@werbnerlaw.com); [mmacdougall@akingump.com](mailto:mmacdougall@akingump.com); [Emily.Stern@ag.ny.gov](mailto:Emily.Stern@ag.ny.gov); Dawn M. Wilson <[dwilson@ganfershore.com](mailto:dwilson@ganfershore.com)>; [samantha.block@akingump.com](mailto:samantha.block@akingump.com); [hevans@akingump.com](mailto:hevans@akingump.com)  
**Subject:** Re: Pending motions, People v. NRA

Your Honor,  
We will be able to provide a firm ETA tomorrow afternoon. I will be in touch then.  
Regards,  
Svetlana

Svetlana M. Eisenberg | Partner

Brewer, Attorneys & Counselors  
750 Lexington Avenue, 14th Floor  
New York, New York 10022  
Office Direct: 212.224.8817  
Office Main: 212.489.1400  
Cell: 929.319.1731  
Fax: 212.751.2849  
[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com) [www.brewerattorneys.com](http://www.brewerattorneys.com)

---

**From:** Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>  
**Sent:** Friday, November 11, 2022 11:50:04 PM  
**To:** Peter Sherwood <[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)>  
**Cc:** [Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov) <[Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov)>;  
[kent@correlllawgroup.com](mailto:kent@correlllawgroup.com) <[kent@correlllawgroup.com](mailto:kent@correlllawgroup.com)>;  
[WFleming@gagespencer.com](mailto:WFleming@gagespencer.com) <[WFleming@gagespencer.com](mailto:WFleming@gagespencer.com)>;  
[tmclish@akingump.com](mailto:tmclish@akingump.com) <[tmclish@akingump.com](mailto:tmclish@akingump.com)>;  
[Stephen.Thompson@ag.ny.gov](mailto:Stephen.Thompson@ag.ny.gov) <[Stephen.Thompson@ag.ny.gov](mailto:Stephen.Thompson@ag.ny.gov)>;  
[SFarber@winston.com](mailto:SFarber@winston.com) <[SFarber@winston.com](mailto:SFarber@winston.com)>; Sarah Rogers  
<[sbr@brewerattorneys.com](mailto:sbr@brewerattorneys.com)>; [PBannon@winston.com](mailto:PBannon@winston.com)  
<[PBannon@winston.com](mailto:PBannon@winston.com)>; [Nina.Sargent@ag.ny.gov](mailto:Nina.Sargent@ag.ny.gov) <[Nina.Sargent@ag.ny.gov](mailto:Nina.Sargent@ag.ny.gov)>;  
[mwerbner@werbnerlaw.com](mailto:mwerbner@werbnerlaw.com) <[mwerbner@werbnerlaw.com](mailto:mwerbner@werbnerlaw.com)>;  
[mmacdougall@akingump.com](mailto:mmacdougall@akingump.com) <[mmacdougall@akingump.com](mailto:mmacdougall@akingump.com)>;  
[Emily.Stern@ag.ny.gov](mailto:Emily.Stern@ag.ny.gov) <[Emily.Stern@ag.ny.gov](mailto:Emily.Stern@ag.ny.gov)>; Dawn M. Wilson  
<[dwilson@ganfershore.com](mailto:dwilson@ganfershore.com)>; [samantha.block@akingump.com](mailto:samantha.block@akingump.com)  
<[samantha.block@akingump.com](mailto:samantha.block@akingump.com)>; [hevans@akingump.com](mailto:hevans@akingump.com)  
<[hevans@akingump.com](mailto:hevans@akingump.com)>  
**Subject:** Re: Pending motions, People v. NRA

Your Honor, Unfortunately, we ran into a few issues and will not be able to provide the documents this evening.  
We will be able to provide an ETA tomorrow and will send an update then.  
Please accept our apologies for the delay.  
Thank you.  
Regards,  
Svetlana

---

**From:** Peter Sherwood <[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)>  
**Sent:** Friday, November 11, 2022 3:55:17 PM  
**To:** Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>  
**Cc:** [Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov) <[Monica.Connell@ag.ny.gov](mailto:Monica.Connell@ag.ny.gov)>;  
[kent@correlllawgroup.com](mailto:kent@correlllawgroup.com) <[kent@correlllawgroup.com](mailto:kent@correlllawgroup.com)>;



WFleming@gagespencer.com <WFleming@gagespencer.com>;  
tmclish@akingump.com <tmclish@akingump.com>; Svetlana Eisenberg  
<sme@brewerattorneys.com>; Stephen.Thompson@ag.ny.gov  
<Stephen.Thompson@ag.ny.gov>; SFarber@winston.com  
<SFarber@winston.com>; Sarah Rogers <sbr@brewerattorneys.com>;  
PBannon@winston.com <PBannon@winston.com>; Nina.Sargent@ag.ny.gov  
<Nina.Sargent@ag.ny.gov>; mwerbner@werbnerlaw.com  
<mwerbner@werbnerlaw.com>; mmacdougall@akingump.com  
<mmacdougall@akingump.com>; Emily.Stern@ag.ny.gov  
<Emily.Stern@ag.ny.gov>; Dawn M. Wilson <dwilson@ganfershore.com>;  
samantha.block@akingump.com <samantha.block@akingump.com>;  
hevans@akingump.com <hevans@akingump.com>

**Subject:** Re: Pending motions, People v. NRA

Ms. Eisenberg,

I appreciate the extraordinary efforts you are making to comply with my request in a timely manner.

Best

OPS

Sent from my iPhone

**Peter Sherwood**

*Senior counsel*

[<image006.png>](#)

*Celebrating Over 40 Years Serving Clients*

360 Lexington Avenue  
New York, New York 10017

**Main:** 212.922.9250

**Direct:** 212.823.0925

**Fax:** 212.922.9335

[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)

NOTE: The information contained in this E-Mail is confidential and may be legally privileged. If you are not the intended recipient, you must not read, use or disseminate the information. Although this E-Mail and any attachments are believed to be free of virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by the sender or Ganfer Shore Leeds & Zauderer LLP for any loss or damage arising in any way from its use. This E-Mail is not intended to create a binding agreement of any kind, nor is it intended to be a binding counter-offer to any offer that may be

pending, unless otherwise expressly stated. It is intended to be an informal response to any pending proposal, part of an ongoing negotiation which awaits a written agreement signed by the party or parties to be charged before being legally binding. For this E-Mail to create any form of a binding agreement, it must include an affirmative statement to that effect.

On Nov 11, 2022, at 3:29 PM, Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)> wrote:

Dear Judge Sherwood,

Thank you for your message below. It was forwarded to the parties as requested.

The NRA is working on complying with Your Honor's request. We are intending to respond today before 12 midnight.

Thank you.

Regards,

Svetlana

Svetlana M. Eisenberg | Partner  
Brewer, Attorneys & Counselors  
750 Lexington Avenue, 14th Floor  
New York, New York 10022  
Office Direct: 212.224.8817  
Office Main: 212.489.1400  
Cell: 929.319.1731  
Fax: 212.751.2849

[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com) [www.brewerattorneys.com](http://www.brewerattorneys.com)

---

**From:** Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>

**Sent:** Wednesday, November 9, 2022 10:39 AM

**To:** Monica Connell (OFFICIAL) <[monica.connell@ag.ny.gov](mailto:monica.connell@ag.ny.gov)>; Kent Correll <[kent@correlllawgroup.com](mailto:kent@correlllawgroup.com)>; William Fleming <[WFleming@gagespencer.com](mailto:WFleming@gagespencer.com)>; McLish, Thomas <[tmclish@akingump.com](mailto:tmclish@akingump.com)>; Farber, Seth <[SFarber@winston.com](mailto:SFarber@winston.com)>; [mwerbner@werbnerlaw.com](mailto:mwerbner@werbnerlaw.com)

**Subject:** Fwd: Pending motions, People v. NRA

Pls see email below from Judge Sherwood.

Svetlana M. Eisenberg | Partner  
Brewer, Attorneys & Counselors  
750 Lexington Avenue, 14th Floor

New York, New York 10022

Office Direct: 212.224.8817

Office Main: 212.489.1400

Cell: 929.319.1731

Fax: 212.751.2849

[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com) [www.brewerattorneys.com](http://www.brewerattorneys.com)

---

**From:** Peter Sherwood <[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)>

**Sent:** Tuesday, November 8, 2022 5:39 PM

**To:** Svetlana Eisenberg <[sme@brewerattorneys.com](mailto:sme@brewerattorneys.com)>

**Subject:** Pending motions, People v. NRA

Dear Miss Eisenberg,

I have completed an initial review of the Attorney General's motion, dated October 20, the NRA's opposition, dated November 4 and the relevant case law. The cases make clear that "determining document immunity claims and reviewing them are largely fact-specific processes" (see *spectrum systems international corp. v. Chemical Bank*, 78 NY 2d 371,381 (1991)). As such fact-finders are often encouraged to conduct in camera reviews (see *id.*). I have determined that needs to be done here.

Please re-review the documents the NRA wishes to withhold and provide for in camera review the documents the NRA maintains are immune from disclosure. If possible, please make them available for my review by this Friday, November 11.

Also, please forward this email to all counsel ASAP.

Thank you,

O. P. Sherwood

Sent from my iPhone

**Peter Sherwood**

*Senior counsel*

[<image001.png>](#)

*Celebrating Over 40 Years Serving Clients*

360 Lexington Avenue

New York, New York 10017

**Main:** 212.922.9250

**Direct:** 212.823.0925

**Fax:** 212.922.9335

[psherwood@ganfershore.com](mailto:psherwood@ganfershore.com)

NOTE: The information contained in this E-Mail is confidential and may be legally privileged. If you are not the intended recipient, you must not read, use or disseminate the information. Although this E-Mail and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by the sender or Ganfer Shore Leeds & Zauderer LLP for any loss or damage arising in any way from its use. This E-Mail is not intended to create a binding agreement of any kind, nor is it intended to be a binding counter-offer to any offer that may be pending, unless otherwise expressly stated. It is intended to be an informal response to any pending proposal, part of an ongoing negotiation which awaits a written agreement signed by the party or parties to be charged before being legally binding. For this E-Mail to create any form of a binding agreement, it must include an affirmative statement to that effect.

**CAUTION: This email is from outside the organization. DO NOT CLICK a link or open an attachment unless you know the content is safe and are expecting it from the sender. If in doubt, contact the sender separately to verify the content.**  
=====

**CAUTION: This email is from outside the organization. DO NOT CLICK a link or open an attachment unless you know the content is safe and are expecting it from the sender. If in doubt, contact the sender separately to verify the content.**  
=====

**IMPORTANT NOTICE:** This e-mail, including any attachments, may be confidential, privileged or otherwise legally protected. It is intended only for the addressee. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please notify the sender immediately by reply e-mail and delete the e-mail from your system.

**CAUTION: This email is from outside the organization. DO NOT CLICK a link or open an attachment unless you know the content is safe and are expecting it from the sender. If in doubt, contact the sender separately to verify the content.**  
=====

<RE\_ In camera review .pdf>

**FILED: NEW YORK COUNTY CLERK 12/12/2022 09:10 PM**

INDEX NO. 451625/2020

NYSCEF DOC. NO. 928

RECEIVED NYSCEF: 12/12/2022

# **EXHIBIT F**

**SM Decision dated November 29, 2022**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----	x	Index No. 451625/2020
PEOPLE OF THE STATE OF NEW	:	
YORK, BY LETITIA JAMES,	:	Hon. Joel M. Cohen
ATTORNEY GENERAL OF THE STATE	:	
OF NEW YORK	:	
	:	<b>DECISION</b>
Plaintiff,	:	
	:	
v.	:	
	:	
THE NATIONAL RIFLE ASSOCIATION	:	
et al.,	:	
	:	
Defendants.	:	
-----	x	

This decision supplements three prior decisions of this Special Master arising from separate letter motions filed by the OAG and the NRA, dated October 20, 2022 and a request by email for relief by the OAG dated November 22, 2022. Several of the issues raised in the October 20, 2022 letters were resolved, at least partially, by agreement of the parties. These include the NRA's offers to provide 1) raw data underlying the determination of excess benefits repaid by Mr. La Pierre; 2) three additional hours of depositions of the NRA's independent auditors, Aronson LLP; 3) production of non-privileged documents relating to recent contract negotiations between the NRA and certain outside vendors; and 4) certain Board Reports and other items listed on page 13 of the OAG October 20, 2022 letter.

The NRA also filed a letter motion for reimbursement of attorney fees it paid to non-party Aronson LLP for services relating to its response to an OAG subpoena. The motion was denied without prejudice to renew upon presentation of proper proof.

### **I. OAG Motion to Compel**

The OAG seeks to compel several categories of documents the NRA is withholding on the basis of various recognized privileges. In response, the NRA concedes it will comply with certain of the requests but resists producing others, including production of documents concerning the NRA's "course correction" and "360 degree review" initiatives, on grounds of attorney client privilege and attorney work product privilege. The OAG insists the NRA must provide disclosure because, having placed reliance on reviews, analyses, or advice of legal consultants and counsel at issue in the litigation, the NRA has waived any claim of privilege (*see* Connell Letter dated November 20, 2022 at 2 ["OAG Letter"]). The NRA responds that the privileges are not waived because it is not asserting an "advice of counsel" defense (*see* Eisenberg Letter dated November 4, 2022 at 1) ("NRA Reply"). It acknowledges that it is invoking a "good faith" defense, but that such defense does not break the privilege (*see id.* citing *McGowan v. JP Morgan Chemical Bank, NA*, 2020 U.S. Dist. LEXIS 73051, 2020 WL 1974109 [SDNY April 24, 2020]).

Under CPLR 4503, a party seeking to invoke the attorney client privilege must show that the materials in question reflect communications between the attorney or his or her agents and the client or its agents, that the communications were made and kept in confidence, and that they were made principally to assist in obtaining or providing legal advice or services for the client (*see People v. Mitchell*, 58 NY2d 368, 373 [1983]; *see also Spectrum Sys. Int'l Corp. v. Chem Bank*, 78 NY2d 371, 378-380 [1991]). The privilege protects communications, not underlying facts, and must be legal in character, *see Id.* at 377. Because the privilege conflicts with New York's policy favoring liberal disclosure, it "must be narrowly construed" *Ambac Assurance Assur. Corp. v. Countrywide Home Loans, Inc.*, 27 NY3d 616, 624 (2016). The



privilege may be waived. Waiver occurs when a privileged communication is revealed to a third party, or where “a party affirmatively places the subject matter of its own privileged communication at issue in litigation, so that invasion of the privilege is required to determine the validity of the claim or defense of the party asserting the privilege, and application of the privilege would deprive the adversary of vital information,” *Deutsche Bank Trust Co. of Americas v. Tri-Links Inv. Trust*, 43 AD3d 56, 63 (1<sup>st</sup> Dept 2007). The privilege is also waived by placing the subject matter of counsel’s advice in issue and by selective disclosure of such advice (*see Orco Bank, N.V. v. Protein Del Pacifico, S.A.*, 179 AD2d 390 [1<sup>st</sup> Dept 1991]; *see also Banach v. The Dedalus Foundation, Inc.*, 132 AD 3d 543 [1<sup>st</sup> Dept 2015] privilege waived by using portions of board minutes at deposition and by placing contents at issue). Selective disclosure of privileged information waives the privilege because “a party may not rely on the protection of the privilege regarding damaging communications while disclosing other self-serving communications.” *Village Bd. of Vill. of Pleasantville v. Rattner*, 130 AD2d 654, 655 (2d Dept 1987).

As the United States Magistrate Judge applying New York law summarized in *McGowan*, 2020 WL 1974109 at \*7;

“The proponent of the privilege has the burden of establishing that the information was a communication between client and counsel, that it was intended to be and was kept confidential, and [that] it was made in order to assist in obtaining or providing legal advice or services to the client.” *Charter One Bank, F.S.B. v. Midtown Rochester, L.L.C.*, 191 Misc. 2d 154, 166, 738 N.Y.S.2d 179 (Sup. Ct. 2002) (citation omitted); *accord People v. Mitchell*, 58 N.Y.2d 368, 373, 448 N.E.2d 121, 461 N.Y.S.2d 267 (1983) (citing cases. Such showings must be made through “competent evidence” such as “affidavits, deposition testimony or other admissible evidence.” *Parneros v. Barnes & Noble, Inc.*, 332 F.R.D. 482, 491 (S.D.N.Y. 2019); *accord Bowne of N.Y. City, Inc. v. AmBase Corp.*, 150 F.R.D. 465, 472 (S.D.N.Y. 1993). The burden cannot be met by

“mere conclusory or ipse dixit assertions” in unsworn motion papers authored by attorneys. *See Von Bulow by Auersperg v. Von Bulow*, 811 F.2d 136, 146 (2d Cir. 1987) (quoting *In re Bonanno*, 344 F.2d 830, 833 (2d Cir. 1965)). It is also the burden of the party asserting a privilege to establish that it has not been waived. *See John Blair Commc'ns, Inc. v. Reliance Capital Grp.*, 182 A.D.2d 578, 579, 582 N.Y.S.2d 720 (1<sup>st</sup> Dept. 1992).

Having understood that the NRA is attempting to invoke a “good faith” defense based in part on materials it seeks to protect under the attorney client privilege, the NRA was accorded ample opportunity to establish that the materials being sought are privileged communications and that the privilege has not been waived. However, the NRA has made no effort before me to show *by competent evidence* that the communications at issue qualify as privileged communications. Despite an absence of such evidence but recognizing that determining immunity claims and reviewing them “are largely fact-specific processes,” *Spectrum*, 78 NY2d at 381, the NRA was invited to present a representative sample of the communications at issue for *in camera* review. The NRA selected a small unrepresentative sample (94 out of 629 documents being withheld (*see* NRA Reply) for review but elected to withdraw its assertion of privilege as to 53 of them. Of the remaining 44, approximately 17 appear to be duplicates. The remaining, approximately 24 separate documents, were found to meet the requirements of CPLR 4503(a).

Most of the documents submitted are from the categories of documents listed on pages 11-12 of the OAG Letter (*see* Eisenberg email to Sherwood dated November 15, 2022). As represented by the NRA, these are communications involving NRA third-party vendors (*see id.*). There are eight email chains that the NRA states “related to the NRA’s efforts to ensure its compliance with its governance controls” (*id.*). Notably, the documents submitted do not reference matters on which the OAG has focused much of its time and attention, *e.g.*, whistle

blower complaints, investigation of alleged misconduct within the NRA, related party transactions and investigations and corrective action involving officers or directors of the NRA.

Because the NRA has largely failed to meet its burden of demonstrating the communications at issue are protected by either the attorney client privilege or the attorney work product doctrine and less than a third of the documents selected for review were found to be protected, I find that the documents requested are presumptively discoverable and shall be produced unless the NRA makes the necessary showing.<sup>1</sup> Any communication or document the NRA wishes to protect as privileged shall be submitted along with evidence sufficient to meet the burden, described at pages 3-4, above.

I decline to order the remedy requested by the OAG, specifically disclosure of identified categories of documents without allowing the NRA a further opportunity to establish immunity of specifically identified communications and documents. The request for an order directing production of a corporate representative capable of testifying regarding the NRA's reliance on outside advisors is denied without prejudice to renew following completion of all document production.

Whether the NRA has waived the attorney client privilege by placing the advice of counsel "at issue" in the litigation remains to be determined. The NRA states that it "has never

---

<sup>1</sup> The NRA also listed the attorney work product privilege as a ground for assertion of privilege but it does not argue specifically that the privilege applies as to the documents the OAG seeks. In any event, the NRA has not established entitlement to the protection *see McGowan*, 2020 US Dist LEXIS 73051 \*8-9. "The party asserting work product protection must demonstrate that the material at issue (1) [is] a document or a tangible thing, (2) that was prepared in anticipation of litigation, and (3) was prepared by or for a party, or by his representative." [Internal quotation marks and citations omitted].

asserted an ‘advice of counsel’ defense in this matter and has no intention of doing so” (NRA Reply at 1) but states that it “maintains a good faith defense” (*id.* at 2). The NRA does not explain the distinction it is attempting to assert, or how the good faith defense applies without waiver in each instance.

The OAG argues that “the NRA’s corporate representative testified that the Brewer firm and attorney Don Lam investigated and determined the amounts of certain excess benefits owed by Wayne La Pierre as part of the course correction, but the corporate representative could not answer what investigations are still ongoing as such an answer would reveal privileged information and counsel stated the NRA’s position that ‘the entire review is privileged.’” OAG Letter at 4. The NRA does not dispute the OAG’s statement of these facts. It explains that “the NRA indeed undertook a course correction beginning in 2018 [but that] it has been clear that the NRA itself, particularly its treasurer, Craig Spray and then Sonya Rowling, spearheaded this effort – not its counsel. (NRA Reply at 6.)

Quoting from *Deutsche Bank*, 43 AD3d at 64, the NRA points out, “‘that a privileged communication contains information relevant to issues the parties are litigating does not, without more, place the contents of the privileged communication itself ‘at issue’ in the lawsuit; if that were the case, a privilege would have little effect. Rather, ‘at issue’ waiver occurs when the party has asserted a claim or defense that he intends to prove by use of the privileged materials.” (internal quotation marks omitted).] Citing *Vill. Bd. of Vill. of Pleasantville v. Rattner*, 130 A.D.2d at 655, the NRA adds (“[w]here a party asserts as an affirmative defense the reliance upon the advice of counsel, it ‘waives the attorney-client privilege with respect to all communications to or from counsel concerning the transactions for which counsel’s advice was sought’”).

In the *Deutsche Bank* case cited by the NRA, where plaintiff was seeking damages for breach of an indemnity contract, the Appellate Division, First Department stated that “[a]t issue waiver of privilege occurs where a party affirmatively places the subject matter of its own privileged communication at issue in litigation, so that invasion of the privilege is required to determine the validity of a claim or defense of the party asserting the privilege, and application of the privilege would deprive the adversary of vital information” *id.* at 64. The court explained the privileged information received by plaintiff in the underlying litigation was not premised on its contractual claims for indemnity in the instant litigation. Nor had plaintiff made any self-serving selective disclosure of any protected material.

This is not a situation where the communication sought to be protected merely informs a decision made by a party to the litigation. Instead the NRA seeks to cloak essentially all of its “course correction” and “360° review” initiatives as privileged merely because the NRA included attorneys in those efforts, save for those selected portions it chooses to disclose to the OAG as proof of the “reasonableness” of, for example, the amount of excess benefits it requested Mr. La Pierre to repay, the adequacy of its review of whistleblower complaints, the sufficiency of its investigations of alleged NRA employee misconduct or, more generally, its “good faith.”

Where the NRA establishes by competent evidence that a particular communication or document it wishes to use it in connection with a “good faith defense” or otherwise is privileged, it shall identify the item and submit it for *in camera* review along with a brief explanation of why such use does not break the privilege.

The NRA shall advise by 9:00 a.m. on December 5, 2022 whether it intends to present proof in support of its privilege or good faith claim. If it determines it wishes to do so, it shall

also indicate how much of an extension beyond December 13 being requested by the OAG it wishes to seek from Justice Cohen.

## **II. NRA Motion to Compel**

The NRA seeks an order compelling the OAG to provide additional information referenced in its privilege log or, in the alternative, to produce documents claimed to be privileged for *in camera* review.

The documents that were withheld from production are listed categorically on the OAG's privilege log and included documents relating to:

1. The OAG's communications with witnesses and their counsel;
2. the OAG's communications with other law enforcement agencies;
3. OAG's communications with consultants;
4. draft and final OAG interview memoranda; and
5. the OAG's communications with informants.

The OAG states that the NRA does not dispute that documents in categories 4 (interview memoranda) and its confidential communications with consultants, complainants and confidential informants were properly withheld as privileged. It adds that the remaining withheld documents relate solely to how the OAG conducted its investigation and have no relevance to any remaining issues in the litigation. The OAG also notes that Justice Cohen dismissed the NRA's counterclaims because the NRA's allegations "do not support any viable legal claims that the Attorney General's investigation was unconstitutionally retaliatory or selective" or deprived the NRA of any constitutional rights (*see* OAG Reply at 2).

A. Public Interest, Law Enforcement and Public Interest Privilege

The NRA challenges the OAG's assertion of the public interest, law enforcement and common interest privilege. As to the first, there is no showing of the existence of extremely sensitive material which, if disclosed, might result in harm. As to the second privilege, the OAG has not identified any law enforcement interest that would be harmed by disclosure. Moreover, any such interest could be satisfied by redaction of the portions in need of protection. These two asserted privileges relate to all five categories of documents contained in the OAG's privilege log.

Regarding the third asserted privilege, it is limited to communications among law enforcement agencies in the context of pending or reasonably anticipated litigation. No such litigation has been shown here (*see Ambac*, 27 NY3d at 627). In any event, the OAG has abandoned this defense (*see* OAG Reply at n.3.)

The OAG argues that the Special Master has already held and the Court has affirmed that the OAG properly asserted the public interest and law enforcement privileges. In that ruling, I rejected efforts by the NRA to take depositions of OAG employees. It did not address demands for document production.

The OAG has not shown that any document in Category 1 (communications with witnesses and their counsel) implicates any interest requiring protection against harm. Documents in Category 1 shall be produced.

Similarly, the OAG has failed to show that confidentiality is necessary as to documents in Category 2 (communication with other law enforcement agencies) or to protect a pending investigation.

As noted above, the NRA does not dispute that documents in Category 3 (OAG communications with consultants), Category 4 (drafts in final OAG interview memoranda) and Category 5 (OAG's communications with informants) are all properly withheld as privileged.

B. Defense of Unconstitutional Retaliation

The NRA argues that despite dismissal of the counterclaims these the constitutional arguments it has raised remain viable because the NRA's affirmative defenses have not been dismissed. The assertion is rejected because the same analysis that resulted in dismissal of the counterclaims would require rejection of the affirmative defenses.

C. Adequacy of ESI

The NRA also seeks an expansion of the "timeframe for documents withheld in each category but it does not contend that the OAG failed to apply a timeframe the NRA demanded previously or that the search parameters used failed to meet any specific parameter previously demanded. This request is rejected.

D. Everytown

The NRA also seeks production of communications with Everytown, a gun control advocacy organization. Efforts to subpoena Everytown became moot after the court dismissed the NRA's counterclaims. The fact that the court has not yet dismissed the affirmative defenses that are based on the previously rejected legal theories, does not render those defenses any more viable than the counterclaims. This request is denied.

**III. Extension of Note of Issue and Other Deadlines**

Consideration of the OAG's request for a recommendation to Justice Cohen for a short extension of the Note of Issue date to December 13, 2022 shall be deferred until December 5,



2022 in order to give the NRA an opportunity to respond regarding the matters referenced on page 7, surpa.

Dated: New York, New York  
November 29, 2022

A handwritten signature in cursive script, appearing to read "O. P. Sherwood".

Hon. O. Peter Sherwood (Ret.)  
Special Master

# **EXHIBIT G**

**12.05.2022 Conference Transcript**

Page 1

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Index No. 451625/2020

-----x  
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,  
INC., WAYNE LAPIERRE, WILSON PHILLIPS,  
JOHN FRAZER, JOSHUA POWELL,

Defendants.

-----x  
Zoom videoconference

December 5, 2022  
2:59 p.m.

CONFERENCE BEFORE SPECIAL MASTER  
HON. O. PETER SHERWOOD (Retired)

Reported By:  
Todd DeSimone, RPR

Page 2

1

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

3

NEW YORK STATE

OFFICE OF THE ATTORNEY GENERAL

4

28 Liberty Street

New York, New York 10005

5

Attorneys for Plaintiff

BY: MONICA CONNELL, ESQ.

6

monica.connell@ag.ny.gov

STEVEN SHIFFMAN, ESQ.

7

steven.shiffman@ag.ny.gov

EMILY STERN, ESQ.

8

emily.stern@ag.ny.gov

9

10

BREWER, ATTORNEYS &amp; COUNSELORS

11

750 Lexington Avenue

New York, New York 10022

12

Attorneys for Defendant The National  
Rifle Association of America

13

BY: SVETLANA M. EISENBERG, ESQ.

sme@brewerattorneys.com

14

DAVID UMANSKY, ESQ.

diu@brewerattorneys.com

15

- and -

16

BREWER, ATTORNEYS &amp; COUNSELORS

17

1717 Main Street

Suite 5900

18

Dallas, Texas 75201

BY: NOAH PETERS, ESQ.

19

nbp@brewerattorneys.com

20

21

CORRELL LAW GROUP

10 West Boscawen Street

22

Winchester, Virginia 22601

Attorneys for Defendant

23

Wayne LaPierre

BY: PHILIP KENT CORRELL, ESQ.

24

kent@correlllawgroup.com

25

Page 3

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

WINSTON &amp; STRAWN LLP

200 Park Avenue

New York, New York 10166

Attorneys for Defendant

Wilson Phillips

BY: SETH FARBER, ESQ.

sfarber@winston.com, ESQ.

WERBNER LAW

5600 West Lovers Lane

Suite 116-314

Dallas, Texas 75209

Attorneys for Defendant

Wilson Phillips

BY: MARK WERBNER, ESQ.

mwerbner@werbnerlaw.com

AKIN GUMP STRAUSS HAUSER &amp; FELD LLP

2001 K Street, N.W.

Washington, DC 20006-1037

Attorneys for Defendant

Joshua Powell

BY: SAMANTHA BLOCK, ESQ.

sblock@akingump.com

JANIE MAHAN, ESQ.

jmahan@akingump.com

- and -

AKIN GUMP STRAUSS HAUSER &amp; FELD LLP

One Bryant Park

Bank of America Tower

New York, New York 10036-6745

BY: URI A. ITKIN, ESQ.

uitkin@akingump.com

Page 4

1

2 A P P E A R A N C E S: (Continued)

3 GAGE, SPENCER & FLEMING LLP

410 Park Avenue

4 New York, New York 10022

Attorneys for Defendant

5 John Frazer

BY: WILLIAM B. FLEMING, ESQ.

6 wfleming@gagespencer.com

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Page 5

1 CONFERENCE

2 JUDGE SHERWOOD: We have some  
3 important matters to discuss, that's for  
4 sure. Who would like to go first, you,  
5 Ms. Connell? The decision matters of  
6 greatest concern, I first addressed the  
7 AG's concerns and ruled on that, so why  
8 don't I hear from you first.

9 MS. CONNELL: Thank you, your  
10 Honor.

11 You held, and the law is clear,  
12 that the NRA bears the burden of  
13 establishing privilege attaching to  
14 information and that it has not waived the  
15 privilege. Your Honor gave the NRA the  
16 opportunity of showing privilege and  
17 nonwaiver. You gave them the opportunity  
18 to submit a sample.

19 JUDGE SHERWOOD: Multiple  
20 opportunities.

21 MS. CONNELL: Multiple  
22 opportunities. We now know that they did  
23 not submit a random or representative  
24 sample, that what they did was select some  
25 documents that they thought would be good

Page 6

1 CONFERENCE

2 for you to review and submitted them.

3 Actually, the number that they gave you of  
4 629 documents withheld relating to the  
5 course correction is not accurate is my  
6 understanding as well.

7 JUDGE SHERWOOD: Do you know  
8 what the number is?

9 MS. CONNELL: I have no idea,  
10 your Honor.

11 JUDGE SHERWOOD: Ms. Eisenberg  
12 will tell me later.

13 MS. CONNELL: Your Honor found  
14 that the NRA did not meet its burden, but  
15 instead of ordering production of all  
16 responsive documents you gave them a second  
17 opportunity now to meet its burden.

18 The NRA, at least to us,  
19 indicated it will not submit documents for  
20 in-camera review. I don't know if that's  
21 its position right now. We have been  
22 endeavoring to meet and confer with the NRA  
23 and have met and conferred via  
24 communication, via a conference, and also  
25 via e-mail communications. We still don't



Page 7

## 1 CONFERENCE

2 know what the NRA considers the universe of  
3 documents, the search terms it used to  
4 identify withheld privileged documents at  
5 issue so we could build off that to make  
6 sure we all agree what that universe is.

7 Using the information the NRA  
8 has given us so far, it would seem that at  
9 least we are talking about approximately  
10 15,000 documents. We think that's a pretty  
11 gross undercount.

12 JUDGE SHERWOOD: Whoa.

13 MS. CONNELL: Exactly. Your  
14 Honor, I could walk you through how we  
15 arrived at that.

16 JUDGE SHERWOOD: You're scaring  
17 me.

18 MS. CONNELL: Us too. So, your  
19 Honor, we still don't know even now more  
20 than a month after we first officially  
21 raised this, a long time after we raised  
22 this officially with the NRA, what the  
23 realm of the universe is. The NRA has  
24 stated to us, as it has stated previously,  
25 that it would agree not to introduce actual

Page 8

## 1 CONFERENCE

2 privileged documents in evidence at trial  
3 or to allow their witnesses to specifically  
4 refer to advice of counsel and that kind of  
5 thing. Your Honor, this doesn't take care  
6 of the prejudice plaintiff has suffered or  
7 of the matter which we brought to your  
8 Honor, which is not a specific privileged  
9 document or a specific piece of advice from  
10 counsel, it is the fact --

11 JUDGE SHERWOOD: Can I cut you  
12 off at this point?

13 MS. CONNELL: Sure.

14 JUDGE SHERWOOD: I'm trying to  
15 understand what it is that we need to  
16 decide this afternoon. I know that there  
17 are issues that are of concern to you,  
18 responsive to requests made by the NRA. I  
19 have decided what I have decided with  
20 respect to the NRA. But there may be, and  
21 I'm assuming, I have assumed all along,  
22 that there would be an appeal to Judge  
23 Cohen.

24 But what is it that the  
25 Attorney General's office would like me to

Page 9

## 1 CONFERENCE

2 do this afternoon? I need to get to your  
3 issue and I have a question with respect to  
4 that that is very important to me. With  
5 respect to the disclosures you are seeking  
6 from the NRA, what is it that we need to  
7 address this afternoon?

8 MS. CONNELL: Your Honor, I  
9 think we need further briefing on this, but  
10 I think we are at sort of an impasse. We  
11 need one of two things, and I will tell you  
12 which one we prefer and which one we would  
13 have to settle with in the alternative.

14 The first one would be an  
15 order, something like that was affirmed in  
16 Gottwald versus Sebert, which was cited in  
17 our October 20th letter, which found that  
18 where a defendant makes a decision or a  
19 party makes a decision to shield something  
20 by privilege, it cannot at the end of  
21 discovery suddenly choose or select  
22 information to share and try and  
23 deprive what it wants to share, that  
24 that causes disproportionate prejudice to  
25 the other side. We think the NRA has made

Page 10

## 1 CONFERENCE

2 an election in discovery at this point and  
3 it should be held to those choices that it  
4 made, and we would ask for an order  
5 indicating the same.

6 To the extent your Honor feels  
7 that is beyond the referral to your Honor,  
8 we would ask for a report and  
9 recommendation on that point, and we are  
10 prepared to brief it very quickly if you  
11 want further briefing. We think we have  
12 already sufficiently briefed it and we are  
13 ready to brief it in greater detail, and  
14 that's option one.

15 Option two is we really dig in  
16 and get to the bottom of what have they  
17 withheld and understand what has been  
18 withheld as privileged, whether it in fact  
19 is privileged, because, as you know, a lot  
20 of documents it has been producing are  
21 dedesignating, and also then see what  
22 prejudice has accrued as a result of that  
23 and whether we need other relief related to  
24 that. So far we haven't gotten a handle on  
25 that except to know that it's at least

Page 11

## 1 CONFERENCE

2 thousands of documents, and that we don't  
3 know how the NRA is proceeding in reviewing  
4 it, and that we are not comfortable yet.

5 We do have another meet and  
6 confer that we plan on undertaking  
7 tomorrow. We haven't picked a time  
8 tomorrow, but we have agreed to have one  
9 tomorrow, to try and get a little more  
10 clarity on this, but our efforts so far  
11 have not been good. But we really see that  
12 as almost opening discovery back up on some  
13 of these issues in a way that is very  
14 prejudicial.

15 I would just remind your Honor  
16 that we had 12 experts. We did expert  
17 reports, expert rebuttal reports and expert  
18 depositions already at this point. I think  
19 it is one of the two and I think even with  
20 the second option, plaintiff suffers pretty  
21 significant prejudice.

22 JUDGE SHERWOOD: Okay.

23 Ms. Eisenberg? Now I'm simply referring to  
24 the AG's request, not yours. I will get to  
25 yours.

Page 12

## 1 CONFERENCE

2 MS. EISENBERG: Of course, your  
3 Honor. Not to sound like a broken record,  
4 but the NRA has no intent on relying on the  
5 advice of any lawyer it received. We are  
6 not interested in making selective  
7 disclosures of privileged information.  
8 We're not interested in saying the NRA  
9 should not be liable because its lawyers  
10 said X and the NRA did what its lawyers  
11 said. And even as to the good-faith  
12 defense, that is a defense that involves  
13 reliance on professionals like accountants  
14 and others that does not involve  
15 attorney-client privilege. To the extent  
16 we do have good-faith defense, it carves  
17 out reliance on lawyers' advice.

18 So from our perspective, two  
19 points are critical. First, the NRA  
20 prepared a categorical privilege log in  
21 March of 2022, and that was pursuant to the  
22 Commercial Division rules. It was  
23 appropriately accompanied by a  
24 certification which I executed that  
25 described the intensive and laborious

Page 13

## 1 CONFERENCE

2 process that we undertook to prepare the  
3 privilege log. It contained multiple  
4 appendices to provide the NYAG about what  
5 information we withheld without divulging  
6 privileged information.

7 So from our perspective, we are  
8 still trying to work it out amicably with  
9 the NYAG. We are 100 percent open to  
10 providing an additional sample to your  
11 Honor for review. The documents you  
12 already reviewed you confirmed are  
13 privileged. We hope to agree on a path  
14 forward with the NYAG during the course of  
15 this week.

16 Now, the problem is, as you may  
17 recall, last time we spoke, I specifically  
18 said that the 600 number that was  
19 identified in our letter unfortunately is  
20 not representative of the universe. So my  
21 colleagues and I have been going --

22 JUDGE SHERWOOD: What is the  
23 universe?

24 MS. EISENBERG: We don't know  
25 the number yet. My tentative prediction

Page 14

1 CONFERENCE

2 now is between 1,500 and 3,000 documents.

3 JUDGE SHERWOOD: That's a lot.

4 MS. EISENBERG: Right. Not as  
5 many as 15,000, which I think is what  
6 Ms. Connell said, but yes, exactly, that's  
7 a lot, and it is unfair to expect you to go  
8 through all of them.

9 So what we proposed to  
10 Ms. Connell over the weekend was that once  
11 we have identified the universe, whether it  
12 is 1,500 or 3,000, we are going to generate  
13 a spreadsheet that permits her to assess  
14 the components of that universe by date and  
15 other objective factors that we don't feel  
16 risk revealing privilege.

17 JUDGE SHERWOOD: Let me ask you  
18 a question, Ms. Eisenberg. Over the months  
19 that I have been involved in this, I have  
20 heard from the AG many times, you know,  
21 that there are certain areas of conduct  
22 that they would like to probe into that you  
23 have responded are involved in terms of the  
24 corrective action matters that were  
25 privileged under the attorney-client



Page 15

## 1 CONFERENCE

2 privilege.

3 The AG also had an interest in  
4 better understanding and getting details  
5 related to the so-called course correction  
6 and the 360 review. I don't have a  
7 recollection of having seen any documents,  
8 communications within the NRA involving  
9 either of those two, the course correction  
10 or the 360 review. I have heard the label,  
11 but I don't think I saw any documents that  
12 were generated in connection with that. Do  
13 I have that right or wrong?

14 MS. EISENBERG: I have provided  
15 to you documents, your Honor, that I  
16 believe are reflective of and evidence the  
17 NRA's continued effort to improve its  
18 compliance, and the term "course  
19 correction" is sort of a label that has  
20 been thrown around and used to describe  
21 what witnesses will say on the stand like,  
22 look, we have a policy and we make sure we  
23 comply with it, and we have these trainings  
24 and we went out to our vendors and asked  
25 them for all this information, and so I'm

Page 16

## 1 CONFERENCE

2 not sure that there are documents that  
3 actually say this is our course correction,  
4 here is what we are going to do, but there  
5 are multiple documents that evidence the  
6 NRA's doing the right thing, complying with  
7 policies, and enhancing their policies, and  
8 some of them happen to be privileged, and  
9 that's what we're talking about here.

10 So I hope that answers your  
11 question, your Honor.

12 JUDGE SHERWOOD: You say that  
13 you have in fact shared with the AG and  
14 with me, I personalized it by saying I  
15 don't recall having seen them, but in this  
16 group of 1,500 to 2,000 documents that you  
17 maintain are privileged, are there  
18 documents that specifically reference these  
19 two issues and/or address the issues that  
20 you are facing and what you are doing with  
21 them and that kind of stuff, or are these  
22 all documents, all 1,500 of them, well, not  
23 necessarily all 1,500, but large portions  
24 of them, documents involving things that  
25 you have uncovered but in each instance you

Page 17

1 CONFERENCE

2 have had lawyers involved, is that what's  
3 going on?

4 MS. EISENBERG: So I will  
5 answer the individual questions that I  
6 heard, your Honor.

7 First, are there documents in  
8 the 1,500 to 3,000 that refer to course  
9 correction or compliance review? I don't  
10 know if those specific terms are used. I'm  
11 happy to run a search to specifically be  
12 able to answer that question. But what I  
13 can absolutely represent is that there are  
14 documents, and those are the documents that  
15 reflect the NRA's effort to improve its  
16 compliance with laws, regulations,  
17 policies, etc.

18 So, for example, we have  
19 internal deliberations about certain  
20 contracts. We have internal deliberations  
21 involving lawyers, involving the  
22 appropriateness of a particular payment.  
23 We have the same with regard to the need to  
24 disclose something on the Form 990, so on  
25 and so forth. Those are the documents that

Page 18

## 1 CONFERENCE

2 do relate to the NRA's continued effort to  
3 improve its compliance, and the NYAG has  
4 access to those that are not privileged,  
5 and what we are talking about here are  
6 those that are, and it is only natural for  
7 the NRA to have sought legal advice in  
8 connection with these issues.

9 So I think that answers your  
10 question, your Honor.

11 JUDGE SHERWOOD: Just to probe  
12 that a little bit more, some of the things  
13 that the AG has focused much of its  
14 attention on are whistleblower complaints,  
15 complaints regarding excess benefits, and I  
16 know I've seen excess benefits documents  
17 produced by your outside auditor. I  
18 believe I have seen those.

19 MS. EISENBERG: Yes.

20 JUDGE SHERWOOD: But I don't  
21 recall seeing any documents coming from the  
22 NRA with respect to that. There are  
23 interests by the Attorney General in  
24 investigations, internal investigations,  
25 into various I guess employee and officer,

Page 19

## 1 CONFERENCE

2 I will call it misconduct, those kinds of  
3 things, and I'm getting the impression, and  
4 correct me if I'm wrong, in each of those  
5 areas you've had lawyers essentially  
6 involved in all of it, and that gives you  
7 the basis for saying that all of the  
8 documents involving those issues, again,  
9 I'm referring to the issues that the  
10 Attorney General has been seeking  
11 information on, all of those documents are  
12 -- all of the documents related to those  
13 activities are privileged. Is that about  
14 right?

15 MS. EISENBERG: I don't think  
16 so, your Honor. I think that there are  
17 definitely documents related to each of  
18 these categories that are not privileged,  
19 and have been produced to the NYAG. So  
20 just because this happens to be a topic on  
21 which, naturally, the NRA sought and  
22 obtained legal advice and there are certain  
23 documents that are withheld doesn't mean  
24 that we claim that any and all documents  
25 related to these topics that you listed are

Page 20

1 CONFERENCE

2 privileged and should be withheld.

3 JUDGE SHERWOOD: Okay.

4 MS. CONNELL: Your Honor --

5 JUDGE SHERWOOD: We don't have  
6 a sense of the extent of any of that. I  
7 want to give Ms. Connell an opportunity to  
8 weigh in on what you and I have just been  
9 talking about.

10 MS. EISENBERG: Certainly.

11 MS. CONNELL: Thank you, your  
12 Honor. Your Honor, I just want to say a  
13 couple of things. The term of "course  
14 correction" is not something that was  
15 manufactured for this litigation by the  
16 plaintiff. The NRA itself has touted  
17 the --

18 JUDGE SHERWOOD: I know that,  
19 but that's not my question. My question  
20 really is okay, these are things that your  
21 office has focused much of its time and  
22 attention on, and I mentioned I think two  
23 or three of them. There are probably eight  
24 or nine.

25 As I said to Ms. Eisenberg,

Page 21

## 1 CONFERENCE

2 quite frankly, I don't recall seeing  
3 documents that refer to that, so I'm left  
4 with, let me call it, the suspicion that  
5 the documents involving those issues, or at  
6 least some of them, are being withheld  
7 through implication of the attorney-client  
8 privilege. That's the impression I get  
9 from looking at the landscape, but I don't  
10 know. But I'm giving you an opportunity to  
11 maybe put a finer point on it.

12 MS. CONNELL: Your Honor, your  
13 impression is exactly accurate. The  
14 presence of counsel at Audit Committee  
15 meetings blocked our discovery into what  
16 was discussed at times in Audit Committee  
17 meetings. The presence of counsel and the  
18 involvement of counsel blocked witnesses  
19 from telling us how the NRA resolved  
20 certain things that it alleges it addressed  
21 as part of its course correction. Their  
22 witnesses refused to provide detailed  
23 information on key subjects because  
24 attorneys were involved. They were unable  
25 to sort out what was potentially privileged

Page 22

## 1 CONFERENCE

2 from what wasn't and so would not answer.

3 We tried to cure it in any way.

4 What did the NRA do, don't tell us what

5 counsel said, but what did the NRA do? How

6 did the NRA handle whistleblower

7 complaints? Oh, we gave that to the Brewer

8 firm to handle. Okay, what was the result?

9 I can't separate what happened from what is

10 privileged, so I can't tell you. Is there

11 an investigation going on? Absolutely,

12 there is an investigation of this conduct.

13 Who is conducting that investigation? I

14 can't tell you because I can't separate out

15 what is privileged from what's not and we

16 think that's privileged.

17 So, you know, saying that they

18 have given us some documents on some of

19 these issues, I think that is accurate on

20 some of them, but the vast bulk of it has

21 been hidden behind this curtain of

22 privilege, and it is not just whether the

23 documents were produced, they haven't been,

24 it is whether the witnesses were blocked

25 from testifying, they were. And we really



## 1 CONFERENCE

2 sought hard with the corporate rep dep to  
3 get some final answers and just were  
4 blocked at every turn.

5 So, your Honor, you are correct  
6 that the involvement of counsel here wasn't  
7 just merely sort of litigation counsel  
8 guiding someone through a lawsuit. The NRA  
9 touts in their expert reports, not just  
10 one, more than one, their use of outside  
11 counsel, outside consultants, tax  
12 consultants, that kind of thing. They  
13 relied upon litigation counsel, other  
14 counsel to perform functions that they  
15 claim were part of their course correction  
16 and they blocked us from disclosing that.

17 The case law we have provided,  
18 your Honor, makes clear, they simply can't  
19 do that. That is either an at-issue waiver  
20 or they cannot be permitted to introduce  
21 that evidence pertaining to what they have  
22 blocked us on.

23 Your Honor, I would just note  
24 that we don't agree with that definition of  
25 the universe being 1,500 to 3,000 pages.

Page 24

1 CONFERENCE

2 JUDGE SHERWOOD: No, she said  
3 1,500 to I guess 2,000 or 3,000 documents,  
4 not pages.

5 MS. CONNELL: I'm sorry, your  
6 Honor.

7 JUDGE SHERWOOD: You think the  
8 number of documents is larger than that?

9 MS. CONNELL: Yes.

10 JUDGE SHERWOOD: Somebody else  
11 wanted to weigh in, who is that?

12 MR. PETERS: Noah Peters for  
13 the NRA.

14 JUDGE SHERWOOD: Yes,  
15 Mr. Peters. You are on the staff of the  
16 NRA?

17 MR. PETERS: No, I'm an  
18 attorney.

19 JUDGE SHERWOOD: I know that.  
20 The NRA hires lawyers. With whom are you  
21 associated, which firm?

22 MR. PETERS: Brewer.

23 JUDGE SHERWOOD: Okay, got it.  
24 I just don't recall meeting you before.

25 MR. PETERS: A pleasure to meet

Page 25

## 1 CONFERENCE

2 you, sir, your Honor. This is my first  
3 time speaking.

4 So we don't want to -- we  
5 obviously don't agree that there has been a  
6 selective disclosure to date, but we have  
7 offered an additional corporate rep dep or  
8 we have put that out there, if Ms. Connell  
9 would like that. We don't want to make a  
10 selective disclosure is the bottom line.  
11 We don't necessarily even -- we don't have  
12 an appetite to do anything resembling a  
13 selective disclosure. So we have offered  
14 an additional corporate rep dep.

15 We have asked Ms. Connell  
16 specifically, you know, if there are areas  
17 where you feel that you have been blocked,  
18 please let us know what those are and we  
19 can give you additional deps on that.

20 I don't agree with her  
21 characterization that we are at an impasse.  
22 We have really just started talking about  
23 this together in the past few days. We  
24 have given her a detailed description of  
25 how we are going through the documents,

Page 26

## 1 CONFERENCE

2 basically just saying we are getting the  
3 universe together of all of the documents  
4 that potentially relate to the topics in  
5 your letter.

6 You know, the exemplar list you  
7 were referring to before, we are getting  
8 that together. It is a big process. It  
9 involves reviewing a lot of documents. If  
10 you have any input, we would like to talk.  
11 If you would like to know -- have any input  
12 on search terms or anything like that, we  
13 want to walk you through the methodology.

14 The bottom line here is that we  
15 don't want to make a selective disclosure  
16 at all, but we have really just started  
17 discussing this with the New York Attorney  
18 General in the past, really since your  
19 ruling on November 29th, we are doing a lot  
20 of work here, but we want to make any  
21 issues that Ms. Connell is identifying,  
22 give her what she needs on discovery.  
23 We're not looking to create more issues for  
24 you to decide. We would like to be able --  
25 I mean, we would want to work it out with

Page 27

1 CONFERENCE

2 her so she gets what she needs.

3 JUDGE SHERWOOD: Mr. Peters, I  
4 don't want to dwell on what I'm about to  
5 say, but I will observe for you that I made  
6 an effort to give you the opportunity to  
7 make the showing. The law is really pretty  
8 darn clear that the burden is on you, that  
9 the privilege is the exception, not the  
10 rule.

11 As I said, when I see so large  
12 a volume of documents I am beginning to get  
13 the impression, and obviously I can be  
14 shown otherwise, that your view of it, when  
15 I say "your view," I mean the NRA's view is  
16 that if a lawyer is in the room, therefore  
17 it is privileged, and that is just not the  
18 law.

19 MR. PETERS: Your Honor, we  
20 understand that. Believe us, we are not  
21 simply shielding things because a lawyer  
22 happened to be in the room. We are not  
23 trying to shield -- I think witnesses on  
24 the stand were certainly nervous. I know  
25 during the first couple of days of

Page 28

1 CONFERENCE

2 Mr. Frazer's corporate rep deposition, you  
3 know, when I read it over, I see a witness  
4 who is very nervous. I think a lot of  
5 people --

6 JUDGE SHERWOOD: I thought he  
7 was darn good, by the way.

8 MR. PETERS: Okay.

9 JUDGE SHERWOOD: Look, I was  
10 there for one day and I read his testimony,  
11 and he is a smart guy.

12 MR. PETERS: Yes. You know,  
13 I'm saying when we look at Ms. Connell's  
14 motion, she has a lot of excerpts from  
15 depositions, and the witnesses are perhaps  
16 talking about investigations or  
17 attorney-client privilege, but in some  
18 cases, you know, I think that they might  
19 have been nervous, they might have just  
20 kind of defaulted to that, because they  
21 don't understand so much what's going on in  
22 terms of the different roles of counsel.

23 But our intent has not -- first  
24 of all, we have no intention of mentioning  
25 a bunch of different outside consultants to

Page 29

## 1 CONFERENCE

2 try to dazzle the jury or to try to make it  
3 seem like that's enough or anything like  
4 that. We're not trying to dangle advice of  
5 counsel out there as being something that  
6 we are going to rely on. So when  
7 Ms. Connell feels that she was blocked in  
8 certain inquiries and stuff like that, our  
9 approach is we're not shielding this, we're  
10 not trying to create a situation, we are  
11 really not trying to create a situation  
12 where a large category of documents, other  
13 than seeking real legal advice in terms of  
14 the litigation from litigation counsel, we  
15 want to make sure that anything that is in  
16 the realm of the course correction is  
17 something that she feels that she has had  
18 enough information to inquire into.

19 So what we are trying to do is  
20 say where have you been blocked, would you  
21 like -- what are the topics and what do you  
22 need basically on this stuff? We are  
23 getting together the potential universe of  
24 course correction documents to submit a  
25 sample for in-camera review, with a robust

## 1 CONFERENCE

2 sampling methodology. If we submit  
3 something, that means we are confident, we  
4 are very confident that it is privileged,  
5 and, you know, I think that we believe that  
6 you will agree.

7 But we want to kind of make  
8 this right for Ms. Connell. We don't want  
9 to hide behind privileges in terms of  
10 saying you can't inquire into certain  
11 things. So with that being said, we don't  
12 feel that -- I can tell you we have only  
13 been discussing this stuff for a few days  
14 with Ms. Connell. We would like to be able  
15 to get to a point where she feels that she  
16 has everything that she needs on these  
17 topics.

18 JUDGE SHERWOOD: You realize  
19 that you only have about a half a minute  
20 left? I'm obviously exaggerating, but it  
21 is a matter of days before you have to file  
22 a note of issue.

23 Given what you just said, I  
24 just don't see how you are going to be able  
25 to accomplish that within the time you



Page 31

## 1 CONFERENCE

2 have, and I'm not positive that Judge Cohen  
3 is going to give you additional time,  
4 because there is a bit of history here. So  
5 that's a question that's not for me to  
6 decide, that's for him to decide. So there  
7 is that.

8 Let me raise another point,  
9 which I guess I didn't sufficiently  
10 emphasize at the time. I was left at one  
11 point with the impression that the NRA  
12 believes that the attorney-client privilege  
13 really applies in the realm of documents,  
14 and so you are focusing on document  
15 exchanges, and at one point I heard, it  
16 wasn't a suggestion, it was a statement,  
17 that, well, the NRA is not going to be  
18 relying on documents, but witnesses will be  
19 testifying.

20 Well, you know and I know, at  
21 least I hope you know, that the privilege  
22 refers to communications. It's not simply  
23 a matter of if a document that meets all  
24 the requirements to be privileged, that  
25 refers to testimony as well, because it

Page 32

## 1 CONFERENCE

2 talks about communications, and so to the  
3 extent that the NRA is thinking that it  
4 can, I'm going to put it this way, have its  
5 cake and eat it too, I think you will be  
6 disappointed at trial. I really do.  
7 Because, as I said, it is communications  
8 that are privileged, not the form that the  
9 communication takes.

10 MS. EISENBERG: Your Honor,  
11 would you like us to respond?

12 JUDGE SHERWOOD: If you wish.  
13 I'm just sort of giving you some insight.

14 MS. EISENBERG: I 100 percent  
15 agree, we weren't trying to eat our cake  
16 and have it too or draw that distinction at  
17 all. A point that we have tried to make  
18 over and over again, again, I don't mean to  
19 sound like a broken record, is that we are  
20 not putting forward documents, written  
21 communications that are privileged, and we  
22 are not eliciting from witnesses on the  
23 stand testimony about privileged  
24 communications.

25 JUDGE SHERWOOD: Okay, good

## 1 CONFERENCE

2 enough. So what is it that you would like  
3 me to do today with respect to the issue  
4 we're talking about now?

5 MS. EISENBERG: I think, your  
6 Honor, like Mr. Peters said, we feel that  
7 we are actually on a fairly productive  
8 path. We have done a whole lot of work and  
9 we are nearing a sort of point where we  
10 think we can really satisfy the New York  
11 Attorney General's office that the sample  
12 we give you is adequate, and if we can  
13 enable you to take a look at a larger  
14 sample that satisfies the NYAG, we feel  
15 like this issue might be put to bed.

16 It sounds like, despite the  
17 certification and the categorical log, your  
18 Honor would like to see additional proffers  
19 of why these documents are privileged ab  
20 initio. We are more than happy to put that  
21 forward as well to satisfy that burden.

22 So I think I echo what  
23 Mr. Peters said in that through the  
24 sampling process and perhaps additional  
25 corporate rep testimony, to the extent the

Page 34

1 CONFERENCE

2 NYAG is able to really kind of work with us  
3 to specify where specifically they felt,  
4 quote, "blocked," we feel like we may be  
5 able to amicably resolve these issues.

6 JUDGE SHERWOOD: How much time  
7 are you talking about?

8 MS. EISENBERG: Your Honor, I  
9 think that we will work as expeditiously as  
10 possible, but you are correct that we  
11 probably would be well advised to check in  
12 with Judge Cohen to see if he is amenable  
13 to adjourning the note of issue date by a  
14 week or two.

15 MS. CONNELL: Your Honor -- I'm  
16 sorry.

17 JUDGE SHERWOOD: Yes, ma'am?

18 MS. CONNELL: Your Honor, I  
19 would just like to say something for a  
20 second to put this in context. Mr. Frazer  
21 is the NRA's general counsel. He testified  
22 in the investigation of this action, in  
23 deposition at the bankruptcy trial, at the  
24 bankruptcy trial, he testified in  
25 deposition here. Mr. Frazer, among the

## 1 CONFERENCE

2 other leadership of the NRA, as the NRA  
3 touts, includes Mr. Cotton, who is an  
4 attorney and CPA and certainly pretty  
5 sophisticated.

6 This has been a process  
7 throughout this long history of this  
8 investigation and litigation, a calculated  
9 strategy of these witnesses asserting  
10 privilege. It's not the mere byproduct of  
11 nervousness.

12 When we pressed back against  
13 it, counsel fought us on it. Counsel  
14 instructed witnesses not to answer.  
15 Counsel gave instructions which didn't  
16 leave witnesses free to answer. We are  
17 left now --

18 JUDGE SHERWOOD: I know that.  
19 Remember, the one I actually showed up to  
20 for one day, I made a speech about how many  
21 objections there were, and I do think that  
22 as a result of that and my presence, the  
23 number of objections dropped precipitously.

24 MS. CONNELL: I know. I  
25 honestly wished you could have attended

Page 36

## 1 CONFERENCE

2 every deposition. But, your Honor, my  
3 colleague just corrected me, Mr. Frazer did  
4 not testify in the investigation.

5 But, your Honor, the point that  
6 I'm getting to is even now, again, I hate  
7 to say this, but months into this, of  
8 raising this issue, more than months, many  
9 months, we have been raising it throughout  
10 discovery, I don't know the universe of  
11 documents that the NRA is talking about. I  
12 don't believe this 1,500 to 3,000 is a fair  
13 pull. You already asked them to sample. I  
14 asked how they sampled over and over again,  
15 and asked you to direct them again to tell  
16 us how they sampled, and didn't know until  
17 the other day that it was literally just a  
18 cherry-picking of documents to submit to  
19 your Honor.

20 Besides the point of once there  
21 is a determination of privilege, that's not  
22 where it ends, we have to look at whether  
23 privilege has been waived. Then once we do  
24 all that, we have to look at okay, well,  
25 plaintiff, you deposed 30-some people, or

1 CONFERENCE

2 approximately 30 witnesses, and you were  
3 blocked on all of --

4 JUDGE SHERWOOD: The bottom  
5 line for you, I hear that. You are  
6 repeating some of the things I've said.

7 MS. CONNELL: I know, I'm  
8 sorry, your Honor. But to say that this  
9 could get done in two weeks, how? How can  
10 that get done in two weeks, your Honor?

11 JUDGE SHERWOOD: I think  
12 Ms. Eisenberg has made it pretty clear that  
13 she feels she is going to have to go back  
14 to Judge Cohen. I mean, that's what she  
15 just said. But you wanted to weigh in to  
16 say something, but I'm not sure that I know  
17 what it is that's responsive to what she  
18 had to say.

19 MS. CONNELL: I was just  
20 wanting to mainly be heard, your Honor,  
21 that this does not cure what has occurred  
22 in such a short period of time. I think I  
23 just wanted to make that point. We didn't  
24 agree with that.

25 JUDGE SHERWOOD: Fair enough.

Page 38

## 1 CONFERENCE

2 So you guys are meeting and conferring to  
3 see if you can come up with search terms,  
4 to see if you can come to an accommodation.  
5 I have sort of described my limit in the  
6 written decision, in which I'm only giving  
7 them one more shot, one more opportunity.  
8 I'm not convinced that Judge Cohen is going  
9 to be as accommodating. I don't know. I  
10 honestly don't know.

11 But it is pretty clear to me,  
12 and I'm talking to both sides now, you are  
13 going to need some authorization from him  
14 if you are going to go down the road that  
15 Ms. Eisenberg is requesting. So you  
16 probably ought to go to him pretty quickly  
17 and then get back to me with respect to  
18 that. I can't, in the time we have, I just  
19 don't see how there is anything that I  
20 really can do in such a short time.

21 You know, I assume you have a  
22 court reporter here, so you can quote what  
23 I have had to say, to the extent that it is  
24 appropriate, before Judge Cohen, because I  
25 have written enough about this.



Page 39

## 1 CONFERENCE

2 Now, with respect to the NRA's  
3 request for documents that you described as  
4 privileged, I must say that when I was  
5 looking at this, I had the impression that  
6 we weren't going over what was decided back  
7 in April or May, way back then, but that  
8 there were some, I hate to call them new  
9 documents, but other documents, not the  
10 specific documents that were being  
11 addressed then, and I was left with the  
12 impression that, for example, with the law  
13 enforcement privilege, that the  
14 investigation in D.C. had come to an end,  
15 and so you didn't have a pending  
16 investigation. Now, maybe I was mistaken  
17 about that, but you can tell me.

18 MS. CONNELL: Yes, your Honor.  
19 I'm sorry to say you were mistaken, and if  
20 we didn't make that clear, that's on us, I  
21 think. In fact, the D.C. Attorney  
22 General's office investigation continued  
23 and it is now an enforcement action against  
24 the NRA.

25 JUDGE SHERWOOD: Oh, is that

Page 40

1 CONFERENCE

2 right?

3 MS. CONNELL: Yes. So it is  
4 ongoing and that comes to the point that we  
5 wanted to make an additional submission --

6 JUDGE SHERWOOD: Well, let's  
7 give Ms. Eisenberg an opportunity I guess  
8 to speak first, or would you prefer to hear  
9 from Ms. Connell first, Ms. Eisenberg? Up  
10 to you.

11 MS. EISENBERG: I'm happy to  
12 speak, your Honor.

13 From our perspective, the fact  
14 that the DCAG is continuing litigation  
15 against the Foundation and the NRA doesn't  
16 make a difference. To the extent your  
17 Honor is holding each side to the burden of  
18 ab initio showing that privileges apply, it  
19 seems only fair that if we are going to  
20 have to do that, the NYAG should have to do  
21 that as well, and that's how I read your  
22 ruling.

23 JUDGE SHERWOOD: I agree with  
24 you that certainly the burden is on them,  
25 but to illustrate, with respect to the law

Page 41

## 1 CONFERENCE

2 enforcement privilege, as I understand it,  
3 it focuses on pending investigations and  
4 cooperation between two governmental  
5 agencies as they are doing work in  
6 connection with an ongoing or an existing  
7 litigation or investigation, and I must  
8 tell you, I had the impression that D.C.  
9 was no longer active, which is what got you  
10 the different result, by the way.

11 MS. EISENBERG: Your Honor, I  
12 think from our perspective, the analysis  
13 doesn't stop there. You have to look at  
14 the issues that are at issue in those two  
15 litigations, and here we think they are not  
16 sufficiently similar to permit the NYAG to  
17 invoke it.

18 Nonetheless, in addition, there  
19 is the investigative privilege, and, again,  
20 the order that you issued on the 29th  
21 states that they haven't put forward a  
22 showing to --

23 JUDGE SHERWOOD: The burden is  
24 on them, no question about that.

25 MS. EISENBERG: Right. So I

## 1 CONFERENCE

2 think from our perspective, we obviously  
3 don't think the privileges that they claim  
4 apply to begin with, given if your Honor  
5 were inclined to allow for that, the burden  
6 is on the party claiming the privilege, and  
7 if the certification and the categorical  
8 privilege log is not going to cut it for  
9 us, then it shouldn't cut it for them  
10 either.

11 JUDGE SHERWOOD: Those are two  
12 different things, you realize that? That's  
13 not to say that they don't have a burden,  
14 the burden of proving privilege, they  
15 certainly do, but obviously you are looking  
16 at different facts. Where you are talking  
17 about the law enforcement privilege, for  
18 example, versus the attorney-client  
19 privilege, that's pretty obvious I would  
20 think, different considerations. I got a  
21 smile, okay.

22 MS. CONNELL: Your Honor, I  
23 should add one thing, and I'm sorry to  
24 intrude, but the NRA challenged, in regard  
25 to those Category 2 documents, they only

1 CONFERENCE

2 challenged on law enforcement, public  
3 interest and common interest privileges.  
4 We would like to make a further submission.  
5 I think we can convince you that those  
6 documents are privileged.

7 JUDGE SHERWOOD: Those three  
8 privileges only?

9 MS. CONNELL: No, I was going  
10 to say --

11 JUDGE SHERWOOD: You want to  
12 add a privilege?

13 MS. CONNELL: No, your Honor,  
14 our privilege log asserted other privileges  
15 for those documents which the NRA did not  
16 challenge. It asserted, for example, work  
17 product privilege and trial preparation  
18 privilege. The NRA did not challenge  
19 those, so we did not oppose those.

20 Now we are talking about a  
21 smaller universe of documents in that  
22 category that were only withheld based upon  
23 those three privileges, and we think we can  
24 show you that they do fall under those  
25 categories.

Page 44

1 CONFERENCE

2 JUDGE SHERWOOD: Category 2 is  
3 communications with other law enforcement  
4 agencies.

5 MS. CONNELL: Yes, your Honor.

6 JUDGE SHERWOOD: That's what  
7 that's about. I thought that it is only  
8 the law enforcement privilege that applied  
9 with respect to Category 2. Different  
10 privileges apply to different categories as  
11 I recall it.

12 MS. CONNELL: Actually, your  
13 Honor, the different categories kind of  
14 encompass different types of documents. So  
15 Category 2 involved communications with law  
16 enforcement agencies, and we indicated that  
17 those were shielded by a number of  
18 different privileges, not just the ones the  
19 NRA challenged.

20 So there are some documents  
21 that are privileged based upon these other  
22 privileges, so they are still in that  
23 privileged category. Then there are others  
24 for those that only relate to those three  
25 privileges or one of those three

Page 45

1 CONFERENCE

2 privileges, we believe we can show you that  
3 they meet the standard to be withheld on  
4 that ground.

5 JUDGE SHERWOOD: Just as I  
6 gave -- let me back up.

7 The AG has the same obligations  
8 that the NRA has regarding who has got the  
9 burden of showing the privilege. All of  
10 these privileges, it is the party that  
11 asserts it that has the obligations to  
12 demonstrate that the privilege applies.

13 So I'm going to give you, just  
14 as I gave the NRA, the opportunity to  
15 demonstrate with respect to all these  
16 privileges, again, by competent evidence,  
17 that the privilege should be applied.  
18 Okay?

19 MS. CONNELL: Thank you, your  
20 Honor. Yes. We think we can submit  
21 something fairly quickly, your Honor.

22 JUDGE SHERWOOD: Fair enough.

23 MR. PETERS: Your Honor, just a  
24 clarification.

25 JUDGE SHERWOOD: Yes,

Page 46

1 CONFERENCE

2 Mr. Peters?

3 MR. PETERS: When you say by  
4 competent evidence, are you thinking of a  
5 document-by-document log or are you  
6 thinking of affidavits?

7 JUDGE SHERWOOD: No, I'm not  
8 thinking about that at all. I'm thinking  
9 you have to have somebody with knowledge of  
10 the facts. They have to be able to swear  
11 that the privilege applies and what  
12 privilege, and you can do it by categories.  
13 You are then going to have to come up with  
14 a sample that is a fair sample of the  
15 documents that you are asserting privilege  
16 for. You can't cherry-pick them, which is  
17 my impression is that's what you did last  
18 time, and the better approach is to consult  
19 with the other side as to the protocols  
20 that you are using to come up with a fair,  
21 random sample on those kinds of procedural  
22 steps that need to be taken, Mr. Peters. I  
23 laid it out all for you.

24 MR. PETERS: Thank you, your  
25 Honor. We appreciate it.



Page 47

1 CONFERENCE

2 JUDGE SHERWOOD: Follow the law  
3 that is described in the decision. If you  
4 think I got the law wrong, tell me.

5 MR. PETERS: No, that sounds  
6 good. Thank you, your Honor.

7 JUDGE SHERWOOD: So where do we  
8 go from here? You are continuing to meet  
9 and confer. Probably both of you need to  
10 go to see Judge Cohen and you are probably  
11 going to need some more time. I don't know  
12 whether he is going to give it to you or  
13 not, but it is up to him. You need to get  
14 back to me by probably later this week and  
15 tell me what you are expecting of me. I'm  
16 thinking Wednesday, Thursday, Friday,  
17 somewhere around there.

18 MS. CONNELL: I think we can  
19 have our submission to you of the  
20 privileged documents by Thursday morning at  
21 the latest I think.

22 JUDGE SHERWOOD: Okay, fine.

23 MS. CONNELL: And if you would  
24 like to have a conference to check in on  
25 the status of how things are going, we

Page 48

1 CONFERENCE

2 would be open to that.

3 JUDGE SHERWOOD: I think we  
4 should set a time so that you can bring me  
5 up to speed as to what the calendar is  
6 looking like.

7 MS. CONNELL: Okay.

8 JUDGE SHERWOOD: Do you want to  
9 do that Thursday or Friday?

10 MS. CONNELL: I think given the  
11 timeline, your Honor, the sooner the  
12 better. Thursday looks good to us.

13 JUDGE SHERWOOD: Ms. Eisenberg?

14 MS. EISENBERG: That works for  
15 me, your Honor.

16 JUDGE SHERWOOD: That works for  
17 you?

18 MS. EISENBERG: Yes.

19 Mr. Peters, does Thursday work for you?

20 MR. PETERS: For another  
21 conference, yes.

22 JUDGE SHERWOOD: Morning?  
23 Afternoon? As it turns out, that day I'm  
24 good until about 4:00. Thereafter, it is  
25 the holiday season, and I have obligations.

Page 49

1 CONFERENCE

2 MS. CONNELL: How about 2:00?

3 JUDGE SHERWOOD: 2:00 is fine.

4 MS. CONNELL: If that works for  
5 everybody.

6 JUDGE SHERWOOD: Does that work  
7 for everyone?

8 MR. FARBER: Can I suggest  
9 2:30, your Honor? This is Seth Farber.

10 MR. FLEMING: I'm sorry, your  
11 Honor, I missed which day we were talking  
12 about.

13 JUDGE SHERWOOD: We were  
14 talking about checking in on Thursday and  
15 trying to pick a time, and the last person  
16 to talk specifically about a time suggested  
17 2:30, which is fine by me.

18 MR. FLEMING: That's fine with  
19 me. Thank you.

20 MR. CORRELL: This is Kent  
21 Correll. That is fine with me, your Honor.

22 JUDGE SHERWOOD: Thank you,  
23 sir.

24 MS. CONNELL: Your Honor, just  
25 so we know in preparation for the meet and

Page 50

1 CONFERENCE

2 confer tomorrow, are you going to make a  
3 recommendation to extend the note of issue?

4 JUDGE SHERWOOD: Not this time,  
5 no. I am not recommending for or against.  
6 You know, my view is that you folks have  
7 had ample opportunities here and I do have  
8 the view that this should be Judge Cohen's  
9 call, not mine. Okay?

10 MS. CONNELL: Thank you, your  
11 Honor.

12 JUDGE SHERWOOD: All right,  
13 thank you all. Take care.

14 (Time noted: 3:55 p.m.)

15

16

17

18

19

20

21

22

23

24

25

Page 51

## C E R T I F I C A T I O N

I, TODD DeSIMONE, a Registered Professional Reporter and a Notary Public, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.



TODD DeSIMONE, RPR

[&amp; - appreciate]

Page 1

<b>&amp;</b>	<b>30</b> 36:25 37:2	<b>accomplish</b>	<b>ag's</b> 5:7 11:24
<b>&amp;</b> 2:10,16 3:3,13 3:19 4:3	<b>360</b> 15:6,10	30:25	<b>ag.ny.gov</b> 2:6,7,8
<b>1</b>	<b>3879</b> 51:17	<b>accountants</b>	<b>agencies</b> 41:5
	<b>3:55</b> 50:14	12:13	44:4,16
	<b>4</b>	<b>accrued</b> 10:22	<b>agree</b> 7:6,25
<b>1,500</b> 14:2,12	<b>410</b> 4:3	<b>accurate</b> 6:5	13:13 23:24
16:16,22,23 17:8	<b>451625/2020</b> 1:4	21:13 22:19	25:5,20 30:6
23:25 24:3	<b>4:00</b> 48:24	51:9	32:15 37:24
36:12	<b>5</b>	<b>action</b> 14:24	40:23
<b>10</b> 2:21	<b>5</b> 1:16	34:22 39:23	<b>agreed</b> 11:8
<b>100</b> 13:9 32:14	<b>5600</b> 3:8	51:13	<b>akin</b> 3:13,19
<b>10005</b> 2:4	<b>5900</b> 2:17	<b>active</b> 41:9	<b>akingump.com</b>
<b>10022</b> 2:11 4:4	<b>6</b>	<b>activities</b> 19:13	3:16,17,22
<b>10036-6745</b> 3:21	<b>600</b> 13:18	<b>actual</b> 7:25	<b>alleges</b> 21:20
<b>10166</b> 3:4	<b>629</b> 6:4	<b>add</b> 42:23 43:12	<b>allow</b> 8:3 42:5
<b>116-314</b> 3:9	<b>7</b>	<b>addition</b> 41:18	<b>alternative</b> 9:13
<b>12</b> 11:16	<b>750</b> 2:11	<b>additional</b> 13:10	<b>amenable</b> 34:12
<b>15,000</b> 7:10 14:5	<b>75201</b> 2:18	25:7,14,19 31:3	<b>america</b> 1:11
<b>1717</b> 2:17	<b>75209</b> 3:9	33:18,24 40:5	2:12 3:20
<b>2</b>	<b>9</b>	<b>address</b> 9:7	<b>amicably</b> 13:8
<b>2</b> 42:25 44:2,9,15	<b>990</b> 17:24	16:19	34:5
<b>2,000</b> 16:16 24:3	<b>a</b>	<b>addressed</b> 5:6	<b>ample</b> 50:7
<b>200</b> 3:3	<b>ab</b> 33:19 40:18	21:20 39:11	<b>analysis</b> 41:12
<b>20006-1037</b> 3:14	<b>able</b> 17:12 26:24	<b>adequate</b> 33:12	<b>answer</b> 17:5,12
<b>2001</b> 3:14	30:14,24 34:2,5	<b>adjourning</b>	22:2 35:14,16
<b>2022</b> 1:16 12:21	46:10	34:13	<b>answers</b> 16:10
<b>20th</b> 9:17	<b>absolutely</b> 17:13	<b>advice</b> 8:4,9 12:5	18:9 23:3
<b>22601</b> 2:22	22:11	12:17 18:7	<b>appeal</b> 8:22
<b>28</b> 2:4	<b>access</b> 18:4	19:22 29:4,13	<b>appendices</b> 13:4
<b>29th</b> 26:19 41:20	<b>accommodating</b>	<b>advised</b> 34:11	<b>appetite</b> 25:12
<b>2:00</b> 49:2,3	38:9	<b>affidavits</b> 46:6	<b>applied</b> 44:8
<b>2:30</b> 49:9,17	<b>accommodation</b>	<b>affirmed</b> 9:15	45:17
<b>2:59</b> 1:16	38:4	<b>afternoon</b> 8:16	<b>applies</b> 31:13
<b>3</b>	<b>accompanied</b>	9:2,7 48:23	45:12 46:11
<b>3,000</b> 14:2,12	12:23	<b>ag</b> 14:20 15:3	<b>apply</b> 40:18 42:4
17:8 23:25 24:3		16:13 18:13	44:10
36:12		45:7	<b>appreciate</b> 46:25

[approach - challenge]

Page 2

<b>approach</b> 29:9 46:18 <b>appropriate</b> 38:24 <b>appropriately</b> 12:23 <b>appropriateness</b> 17:22 <b>approximately</b> 7:9 37:2 <b>april</b> 39:7 <b>areas</b> 14:21 19:5 25:16 <b>arrived</b> 7:15 <b>asked</b> 15:24 25:15 36:13,14 36:15 <b>asserted</b> 43:14 43:16 <b>asserting</b> 35:9 46:15 <b>asserts</b> 45:11 <b>assess</b> 14:13 <b>associated</b> 24:21 <b>association</b> 1:11 2:12 <b>assume</b> 38:21 <b>assumed</b> 8:21 <b>assuming</b> 8:21 <b>attaching</b> 5:13 <b>attended</b> 35:25 <b>attention</b> 18:14 20:22 <b>attorney</b> 1:6 2:3 8:25 12:15 14:25 18:23 19:10 21:7 24:18 26:17	28:17 31:12 33:11 35:4 39:21 42:18 <b>attorneys</b> 2:5,10 2:12,16,22 3:4 3:10,15 4:4 21:24 <b>audit</b> 21:14,16 <b>auditor</b> 18:17 <b>authorization</b> 38:13 <b>avenue</b> 2:11 3:3 4:3	<b>better</b> 15:4 46:18 48:12 <b>beyond</b> 10:7 <b>big</b> 26:8 <b>bit</b> 18:12 31:4 <b>block</b> 3:16 <b>blocked</b> 21:15 21:18 22:24 23:4,16,22 25:17 29:7,20 34:4 37:3 <b>boscawen</b> 2:21 <b>bottom</b> 10:16 25:10 26:14 37:4 <b>brewer</b> 2:10,16 22:7 24:22 <b>brewerattorne...</b> 2:13,14,19 <b>brief</b> 10:10,13 <b>briefed</b> 10:12 <b>briefing</b> 9:9 10:11 <b>bring</b> 48:4 <b>broken</b> 12:3 32:19 <b>brought</b> 8:7 <b>bryant</b> 3:20 <b>build</b> 7:5 <b>bulk</b> 22:20 <b>bunch</b> 28:25 <b>burden</b> 5:12 6:14,17 27:8 33:21 40:17,24 41:23 42:5,13,14 45:9 <b>byproduct</b> 35:10	<b>c</b> <b>c</b> 2:2 3:2 4:2 51:2 51:2 <b>cake</b> 32:5,15 <b>calculated</b> 35:8 <b>calendar</b> 48:5 <b>call</b> 19:2 21:4 39:8 50:9 <b>called</b> 15:5 <b>camera</b> 6:20 29:25 <b>care</b> 8:5 50:13 <b>carves</b> 12:16 <b>case</b> 23:17 <b>cases</b> 28:18 <b>categorical</b> 12:20 33:17 42:7 <b>categories</b> 19:18 43:25 44:10,13 46:12 <b>category</b> 29:12 42:25 43:22 44:2,9,15,23 <b>causes</b> 9:24 <b>certain</b> 14:21 17:19 19:22 21:20 29:8 30:10 <b>certainly</b> 20:10 27:24 35:4 40:24 42:15 <b>certification</b> 12:24 33:17 42:7 <b>certify</b> 51:8,11 <b>challenge</b> 43:16 43:18
	<b>b</b> <b>b</b> 4:5 <b>back</b> 11:12 35:12 37:13 38:17 39:6,7 45:6 47:14 <b>bank</b> 3:20 <b>bankruptcy</b> 34:23,24 <b>based</b> 43:22 44:21 <b>basically</b> 26:2 29:22 <b>basis</b> 19:7 <b>bears</b> 5:12 <b>bed</b> 33:15 <b>beginning</b> 27:12 <b>believe</b> 15:16 18:18 27:20 30:5 36:12 45:2 <b>believes</b> 31:12 <b>benefits</b> 18:15 18:16		

[challenged - couple]

Page 3

<b>challenged</b> 42:24 43:2 44:19 <b>characterization</b> 25:21 <b>check</b> 34:11 47:24 <b>checking</b> 49:14 <b>cherry</b> 36:18 46:16 <b>choices</b> 10:3 <b>choose</b> 9:21 <b>cited</b> 9:16 <b>claim</b> 19:24 23:15 42:3 <b>claiming</b> 42:6 <b>clarification</b> 45:24 <b>clarity</b> 11:10 <b>clear</b> 5:11 23:18 27:8 37:12 38:11 39:20 <b>client</b> 12:15 14:25 21:7 28:17 31:12 42:18 <b>cohen</b> 8:23 31:2 34:12 37:14 38:8,24 47:10 <b>cohen's</b> 50:8 <b>colleague</b> 36:3 <b>colleagues</b> 13:21 <b>come</b> 38:3,4 39:14 46:13,20 <b>comes</b> 40:4 <b>comfortable</b> 11:4 <b>coming</b> 18:21	<b>commercial</b> 12:22 <b>committee</b> 21:14 21:16 <b>common</b> 43:3 <b>communication</b> 6:24 32:9 <b>communications</b> 6:25 15:8 31:22 32:2,7,21,24 44:3,15 <b>competent</b> 45:16 46:4 <b>complaints</b> 18:14,15 22:7 <b>compliance</b> 15:18 17:9,16 18:3 <b>comply</b> 15:23 <b>complying</b> 16:6 <b>components</b> 14:14 <b>concern</b> 5:6 8:17 <b>concerns</b> 5:7 <b>conduct</b> 14:21 22:12 <b>conducting</b> 22:13 <b>confer</b> 6:22 11:6 47:9 50:2 <b>conference</b> 1:20 5:1 6:1,24 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1	26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1,24 48:1,21 49:1 50:1 <b>conferred</b> 6:23 <b>conferring</b> 38:2 <b>confident</b> 30:3,4 <b>confirmed</b> 13:12 <b>connection</b> 15:12 18:8 41:6 <b>connell</b> 2:5 5:5,9 5:21 6:9,13 7:13 7:18 8:13 9:8 14:6,10 20:4,7 20:11 21:12 24:5,9 25:8,15 26:21 29:7 30:8 30:14 34:15,18 35:24 37:7,19 39:18 40:3,9 42:22 43:9,13 44:5,12 45:19 47:18,23 48:7,10 49:2,4,24 50:10 <b>connell's</b> 28:13 <b>considerations</b> 42:20 <b>considers</b> 7:2 <b>consult</b> 46:18 <b>consultants</b> 23:11,12 28:25 <b>contained</b> 13:3	<b>context</b> 34:20 <b>continued</b> 4:2 15:17 18:2 39:22 <b>continuing</b> 40:14 47:8 <b>contracts</b> 17:20 <b>convince</b> 43:5 <b>convinced</b> 38:8 <b>cooperation</b> 41:4 <b>corporate</b> 23:2 25:7,14 28:2 33:25 <b>correct</b> 19:4 23:5 34:10 <b>corrected</b> 36:3 <b>correction</b> 6:5 15:5,9,19 16:3 17:9 20:14 21:21 23:15 29:16,24 <b>corrective</b> 14:24 <b>correll</b> 2:21,23 49:20,21 <b>correlllawgrou...</b> 2:24 <b>cotton</b> 35:3 <b>counsel</b> 8:4,10 21:14,17,18 22:5 23:6,7,11,13,14 28:22 29:5,14 34:21 35:13,13 35:15 <b>counselors</b> 2:10 2:16 <b>county</b> 1:3 <b>couple</b> 20:13 27:25
--	--	--	--



[course - eisenberg]

Page 4

<b>course</b> 6:5 12:2 13:14 15:5,9,18 16:3 17:8 20:13 21:21 23:15 29:16,24 <b>court</b> 1:2 38:22 <b>cpa</b> 35:4 <b>create</b> 26:23 29:10,11 <b>critical</b> 12:19 <b>cure</b> 22:3 37:21 <b>curtain</b> 22:21 <b>cut</b> 8:11 42:8,9	<b>dedesignating</b> 10:21 <b>defaulted</b> 28:20 <b>defendant</b> 2:12 2:22 3:4,10,15 4:4 9:18 <b>defendants</b> 1:13 <b>defense</b> 12:12,12 12:16 <b>definitely</b> 19:17 <b>definition</b> 23:24 <b>deliberations</b> 17:19,20 <b>demonstrate</b> 45:12,15 <b>dep</b> 23:2 25:7,14 <b>deposed</b> 36:25 <b>deposition</b> 28:2 34:23,25 36:2 <b>depositions</b> 11:18 28:15 <b>deprivilege</b> 9:23 <b>deps</b> 25:19 <b>describe</b> 15:20 <b>described</b> 12:25 38:5 39:3 47:3 <b>description</b> 25:24 <b>desimone</b> 1:23 51:6,18 <b>despite</b> 33:16 <b>detail</b> 10:13 <b>detailed</b> 21:22 25:24 <b>details</b> 15:4 <b>determination</b> 36:21	<b>difference</b> 40:16 <b>different</b> 28:22 28:25 41:10 42:12,16,20 44:9 44:10,13,14,18 <b>dig</b> 10:15 <b>direct</b> 36:15 <b>disappointed</b> 32:6 <b>disclose</b> 17:24 <b>disclosing</b> 23:16 <b>disclosure</b> 25:6 25:10,13 26:15 <b>disclosures</b> 9:5 12:7 <b>discovery</b> 9:21 10:2 11:12 21:15 26:22 36:10 <b>discuss</b> 5:3 <b>discussed</b> 21:16 <b>discussing</b> 26:17 30:13 <b>disproportionate</b> 9:24 <b>distinction</b> 32:16 <b>diu</b> 2:14 <b>division</b> 12:22 <b>divulging</b> 13:5 <b>document</b> 8:9 31:14,23 46:5,5 <b>documents</b> 5:25 6:4,16,19 7:3,4 7:10 8:2 10:20 11:2 13:11 14:2 15:7,11,15 16:2 16:5,16,18,22,24 17:7,14,14,25	18:16,21 19:8,11 19:12,17,23,24 21:3,5 22:18,23 24:3,8 25:25 26:3,9 27:12 29:12,24 31:13 31:18 32:20 33:19 36:11,18 39:3,9,9,10 42:25 43:6,15,21 44:14,20 46:15 47:20 <b>doing</b> 16:6,20 26:19 41:5 <b>draw</b> 32:16 <b>dropped</b> 35:23 <b>dwell</b> 27:4
<b>d</b>			<b>e</b>
<b>d.c.</b> 39:14,21 41:8 <b>dallas</b> 2:18 3:9 <b>dangle</b> 29:4 <b>darn</b> 27:8 28:7 <b>date</b> 14:14 25:6 34:13 <b>david</b> 2:14 <b>day</b> 28:10 35:20 36:17 48:23 49:11 <b>days</b> 25:23 27:25 30:13,21 <b>dazzle</b> 29:2 <b>dc</b> 3:14 <b>dcag</b> 40:14 <b>december</b> 1:16 <b>decide</b> 8:16 26:24 31:6,6 <b>decided</b> 8:19,19 39:6 <b>decision</b> 5:5 9:18 9:19 38:6 47:3			<b>e</b> 2:2,2 3:2,2 4:2 4:2 6:25 51:2 <b>eat</b> 32:5,15 <b>echo</b> 33:22 <b>effort</b> 15:17 17:15 18:2 27:6 <b>efforts</b> 11:10 <b>eight</b> 20:23 <b>eisenberg</b> 2:13 6:11 11:23 12:2 13:24 14:4,18 15:14 17:4 18:19 19:15 20:10,25 32:10 32:14 33:5 34:8 37:12 38:15 40:7,9,11 41:11 41:25 48:13,14 48:18

[either - go]

Page 5

<b>either</b> 15:9 23:19 42:10 <b>election</b> 10:2 <b>eliciting</b> 32:22 <b>emily</b> 2:7 <b>emily.stern</b> 2:8 <b>emphasize</b> 31:10 <b>employed</b> 51:12 <b>employee</b> 18:25 <b>enable</b> 33:13 <b>encompass</b> 44:14 <b>endeavoring</b> 6:22 <b>ends</b> 36:22 <b>enforcement</b> 39:13,23 41:2 42:17 43:2 44:3 44:8,16 <b>enhancing</b> 16:7 <b>esq</b> 2:5,6,7,13,14 2:18,23 3:5,6,11 3:16,17,21 4:5 <b>essentially</b> 19:5 <b>establishing</b> 5:13 <b>everybody</b> 49:5 <b>evidence</b> 8:2 15:16 16:5 23:21 45:16 46:4 <b>exactly</b> 7:13 14:6 21:13 <b>exaggerating</b> 30:20 <b>example</b> 17:18 39:12 42:18 43:16	<b>exception</b> 27:9 <b>excerpts</b> 28:14 <b>excess</b> 18:15,16 <b>exchanges</b> 31:15 <b>executed</b> 12:24 <b>exemplar</b> 26:6 <b>existing</b> 41:6 <b>expect</b> 14:7 <b>expecting</b> 47:15 <b>expeditiously</b> 34:9 <b>expert</b> 11:16,17 11:17 23:9 <b>experts</b> 11:16 <b>extend</b> 50:3 <b>extent</b> 10:6 12:15 20:6 32:3 33:25 38:23 40:16	<b>feel</b> 14:15 25:17 30:12 33:6,14 34:4 <b>feels</b> 10:6 29:7 29:17 30:15 37:13 <b>feld</b> 3:13,19 <b>felt</b> 34:3 <b>file</b> 30:21 <b>final</b> 23:3 <b>fine</b> 47:22 49:3 49:17,18,21 <b>finer</b> 21:11 <b>firm</b> 22:8 24:21 <b>first</b> 5:4,6,8 7:20 9:14 12:19 17:7 25:2 27:25 28:23 40:8,9 <b>fleming</b> 4:3,5 49:10,18 <b>focused</b> 18:13 20:21 <b>focuses</b> 41:3 <b>focusing</b> 31:14 <b>folks</b> 50:6 <b>follow</b> 47:2 <b>foregoing</b> 51:8 <b>form</b> 17:24 32:8 <b>forth</b> 17:25 <b>forward</b> 13:14 32:20 33:21 41:21 <b>fought</b> 35:13 <b>found</b> 6:13 9:17 <b>foundation</b> 40:15 <b>frankly</b> 21:2	<b>frazier</b> 1:12 4:5 34:20,25 36:3 <b>frazier's</b> 28:2 <b>free</b> 35:16 <b>friday</b> 47:16 48:9 <b>functions</b> 23:14 <b>further</b> 9:9 10:11 43:4 51:11
	<b>f</b>		<b>g</b>
	<b>f</b> 51:2 <b>facing</b> 16:20 <b>fact</b> 8:10 10:18 16:13 39:21 40:13 <b>factors</b> 14:15 <b>facts</b> 42:16 46:10 <b>fair</b> 36:12 37:25 40:19 45:22 46:14,20 <b>fairly</b> 33:7 45:21 <b>faith</b> 12:11,16 <b>fall</b> 43:24 <b>far</b> 7:8 10:24 11:10 <b>farber</b> 3:5 49:8,9		<b>gage</b> 4:3 <b>gagespencer.c...</b> 4:6 <b>general</b> 1:6 2:3 18:23 19:10 26:18 34:21 <b>general's</b> 8:25 33:11 39:22 <b>generate</b> 14:12 <b>generated</b> 15:12 <b>getting</b> 15:4 19:3 26:2,7 29:23 36:6 <b>give</b> 20:7 25:19 26:22 27:6 31:3 33:12 40:7 45:13 47:12 <b>given</b> 7:8 22:18 25:24 30:23 42:4 48:10 <b>gives</b> 19:6 <b>giving</b> 21:10 32:13 38:6 <b>go</b> 5:4 14:7 37:13 38:14,16 47:8,10

[going - involved]

Page 6

<b>going</b> 13:21 14:12 16:4 17:3 22:11 25:25 28:21 29:6 30:24 31:3,17 32:4 37:13 38:8 38:13,14 39:6 40:19 42:8 43:9 45:13 46:13 47:11,12,25 50:2 <b>good</b> 5:25 11:11 12:11,16 28:7 32:25 47:6 48:12,24 <b>gotten</b> 10:24 <b>gottwald</b> 9:16 <b>governmental</b> 41:4 <b>greater</b> 10:13 <b>greatest</b> 5:6 <b>gross</b> 7:11 <b>ground</b> 45:4 <b>group</b> 2:21 16:16 <b>guess</b> 18:25 24:3 31:9 40:7 <b>guiding</b> 23:8 <b>gump</b> 3:13,19 <b>guy</b> 28:11 <b>guys</b> 38:2	<b>happens</b> 19:20 <b>happy</b> 17:11 33:20 40:11 <b>hard</b> 23:2 <b>hate</b> 36:6 39:8 <b>hauer</b> 3:13,19 <b>hear</b> 5:8 37:5 40:8 <b>heard</b> 14:20 15:10 17:6 31:15 37:20 <b>held</b> 5:11 10:3 <b>hidden</b> 22:21 <b>hide</b> 30:9 <b>hires</b> 24:20 <b>history</b> 31:4 35:7 <b>holding</b> 40:17 <b>holiday</b> 48:25 <b>hon</b> 1:20 <b>honestly</b> 35:25 38:10 <b>honor</b> 5:10,15 6:10,13 7:14,19 8:5,8 9:8 10:6,7 11:15 12:3 13:11 15:15 16:11 17:6 18:10 19:16 20:4,12,12 21:12 23:5,18,23 24:6 25:2 27:19 32:10 33:6,18 34:8,15,18 36:2 36:5,19 37:8,10 37:20 39:18 40:12,17 41:11 42:4,22 43:13 44:5,13 45:20,21	45:23 46:25 47:6 48:11,15 49:9,11,21,24 50:11 <b>hope</b> 13:13 16:10 31:21  <b>i</b>  <b>idea</b> 6:9 <b>identified</b> 13:19 14:11 <b>identify</b> 7:4 <b>identifying</b> 26:21 <b>illustrate</b> 40:25 <b>impasse</b> 9:10 25:21 <b>implication</b> 21:7 <b>important</b> 5:3 9:4 <b>impression</b> 19:3 21:8,13 27:13 31:11 39:5,12 41:8 46:17 <b>improve</b> 15:17 17:15 18:3 <b>inclined</b> 42:5 <b>includes</b> 35:3 <b>index</b> 1:4 <b>indicated</b> 6:19 44:16 <b>indicating</b> 10:5 <b>individual</b> 17:5 <b>information</b> 5:14 7:7 9:22 12:7 13:5,6 15:25 19:11 21:23 29:18	<b>initio</b> 33:20 40:18 <b>input</b> 26:10,11 <b>inquire</b> 29:18 30:10 <b>inquiries</b> 29:8 <b>insight</b> 32:13 <b>instance</b> 16:25 <b>instructed</b> 35:14 <b>instructions</b> 35:15 <b>intensive</b> 12:25 <b>intent</b> 12:4 28:23 <b>intention</b> 28:24 <b>interest</b> 15:3 43:3,3 <b>interested</b> 12:6,8 <b>interests</b> 18:23 <b>internal</b> 17:19 17:20 18:24 <b>introduce</b> 7:25 23:20 <b>intrude</b> 42:24 <b>investigation</b> 22:11,12,13 34:22 35:8 36:4 39:14,16,22 41:7 <b>investigations</b> 18:24,24 28:16 41:3 <b>investigative</b> 41:19 <b>invoke</b> 41:17 <b>involve</b> 12:14 <b>involved</b> 14:19 14:23 17:2 19:6 21:24 44:15
<b>h</b>  <b>half</b> 30:19 <b>handle</b> 10:24 22:6,8 <b>happen</b> 16:8 <b>happened</b> 22:9 27:22			

## [involvement - manufactured]

Page 7

<b>involvement</b> 21:18 23:6	40:6,23 41:23 42:11 43:7,11	<b>laid</b> 46:23	<b>line</b> 25:10 26:14 37:5
<b>involves</b> 12:12 26:9	44:2,6 45:5,22 45:25 46:7 47:2	<b>landscape</b> 21:9	<b>list</b> 26:6
<b>involving</b> 15:8 16:24 17:21,21 19:8 21:5	47:7,10,22 48:3 48:8,13,16,22 49:3,6,13,22 50:4,8,12	<b>lane</b> 3:8	<b>listed</b> 19:25
<b>issue</b> 7:5 9:3 23:19 30:22 33:3,15 34:13 36:8 41:14 50:3	<b>jury</b> 29:2	<b>lapierre</b> 1:12 2:23	<b>literally</b> 36:17
<b>issued</b> 41:20	<b>k</b>	<b>large</b> 16:23 27:11 29:12	<b>litigation</b> 20:15 23:7,13 29:14,14 35:8 40:14 41:7
<b>issues</b> 8:17 11:13 16:19,19 18:8 19:8,9 21:5 22:19 26:21,23 34:5 41:14	<b>k</b> 3:14	<b>larger</b> 24:8 33:13	<b>litigations</b> 41:15
<b>itkin</b> 3:21	<b>kent</b> 2:23,24 49:20	<b>latest</b> 47:21	<b>little</b> 11:9 18:12
<b>j</b>	<b>key</b> 21:23	<b>law</b> 2:21 3:8 5:11 23:17 27:7 27:18 39:12 40:25 42:17 43:2 44:3,8,15 47:2,4	<b>llp</b> 3:3,13,19 4:3
<b>james</b> 1:6	<b>kind</b> 8:4 16:21 23:12 28:20 30:7 34:2 44:13	<b>laws</b> 17:16	<b>log</b> 12:20 13:3 33:17 42:8 43:14 46:5
<b>janie</b> 3:17	<b>kinds</b> 19:2 46:21	<b>lawsuit</b> 23:8	<b>long</b> 7:21 35:7
<b>jmahan</b> 3:17	<b>know</b> 5:22 6:7 6:20 7:2,19 8:16 10:19,25 11:3 13:24 14:20 17:10 18:16 20:18 21:10 22:17 24:19 25:16,18 26:6,11 27:24 28:3,12,18 30:5 31:20,20,21 35:18,24 36:10 36:16 37:7,16 38:9,10,21 47:11 49:25 50:6	<b>lawyer</b> 12:5 27:16,21	<b>longer</b> 41:9
<b>john</b> 1:12 4:5	<b>knowledge</b> 46:9	<b>leadership</b> 35:2	<b>look</b> 15:22 28:9 28:13 33:13 36:22,24 41:13
<b>joshua</b> 1:12 3:15	<b>l</b>	<b>leave</b> 35:16	<b>looking</b> 21:9 26:23 39:5 42:15 48:6
<b>judge</b> 5:2,19 6:7 6:11 7:12,16 8:11,14,22 11:22 13:22 14:3,17 16:12 18:11,20 20:3,5,18 24:2,7 24:10,14,19,23 27:3 28:6,9 30:18 31:2 32:12,25 34:6,12 34:17 35:18 37:4,11,14,25 38:8,24 39:25	<b>label</b> 15:10,19	<b>left</b> 21:3 30:20 31:10 35:17 39:11	<b>looks</b> 48:12
	<b>laborious</b> 12:25	<b>legal</b> 18:7 19:22 29:13	<b>lot</b> 10:19 14:3,7 26:9,19 28:4,14 33:8
		<b>letitia</b> 1:5	<b>lovers</b> 3:8
		<b>letter</b> 9:17 13:19 26:5	<b>m</b>
		<b>lexington</b> 2:11	<b>m</b> 2:13
		<b>liable</b> 12:9	<b>ma'am</b> 34:17
		<b>liberty</b> 2:4	<b>mahan</b> 3:17
		<b>limit</b> 38:5	<b>mail</b> 6:25
			<b>main</b> 2:17
			<b>maintain</b> 16:17
			<b>making</b> 12:6
			<b>manufactured</b> 20:15

[march - opportunity]

Page 8

<b>march</b> 12:21 <b>mark</b> 3:11 <b>master</b> 1:20 <b>matter</b> 8:7 30:21 31:23 <b>matters</b> 5:3,5 14:24 <b>mean</b> 19:23 26:25 27:15 32:18 37:14 <b>means</b> 30:3 <b>meet</b> 6:14,17,22 11:5 24:25 45:3 47:8 49:25 <b>meeting</b> 24:24 38:2 <b>meetings</b> 21:15 21:17 <b>meets</b> 31:23 <b>mentioned</b> 20:22 <b>mentioning</b> 28:24 <b>mere</b> 35:10 <b>merely</b> 23:7 <b>met</b> 6:23 <b>methodology</b> 26:13 30:2 <b>mine</b> 50:9 <b>minute</b> 30:19 <b>misconduct</b> 19:2 <b>missed</b> 49:11 <b>mistaken</b> 39:16 39:19 <b>monica</b> 2:5 <b>monica.connell</b> 2:6 <b>month</b> 7:20	<b>months</b> 14:18 36:7,8,9 <b>morning</b> 47:20 48:22 <b>motion</b> 28:14 <b>multiple</b> 5:19,21 13:3 16:5 <b>mwerbner</b> 3:11  <b>n</b>  <b>n</b> 2:2 3:2 4:2 51:2 <b>n.w.</b> 3:14 <b>national</b> 1:11 2:12 <b>natural</b> 18:6 <b>naturally</b> 19:21 <b>nbp</b> 2:19 <b>nearing</b> 33:9 <b>necessarily</b> 16:23 25:11 <b>need</b> 8:15 9:2,6,9 9:11 10:23 17:23 29:22 38:13 46:22 47:9,11,13 <b>needs</b> 26:22 27:2 30:16 <b>nervous</b> 27:24 28:4,19 <b>nervousness</b> 35:11 <b>new</b> 1:2,3,5,6 2:3 2:4,4,11,11 3:4,4 3:21,21 4:4,4 26:17 33:10 39:8	<b>nine</b> 20:24 <b>noah</b> 2:18 24:12 <b>nonwaiver</b> 5:17 <b>notary</b> 51:7 <b>note</b> 23:23 30:22 34:13 50:3 <b>noted</b> 50:14 <b>notes</b> 51:10 <b>november</b> 26:19 <b>nra</b> 5:12,15 6:14 6:18,22 7:2,7,22 7:23 8:18,20 9:6 9:25 11:3 12:4,8 12:10,19 15:8 18:7,22 19:21 20:16 21:19 22:4,5,6 23:8 24:13,16,20 31:11,17 32:3 35:2,2 36:11 39:24 40:15 42:24 43:15,18 44:19 45:8,14 <b>nra's</b> 15:17 16:6 17:15 18:2 27:15 34:21 39:2 <b>number</b> 6:3,8 13:18,25 24:8 35:23 44:17 <b>nyag</b> 13:4,9,14 18:3 19:19 33:14 34:2 40:20 41:16  <b>o</b>  <b>o</b> 1:20 51:2	<b>objections</b> 35:21 35:23 <b>objective</b> 14:15 <b>obligations</b> 45:7 45:11 48:25 <b>observe</b> 27:5 <b>obtained</b> 19:22 <b>obvious</b> 42:19 <b>obviously</b> 25:5 27:13 30:20 42:2,15 <b>occurred</b> 37:21 <b>october</b> 9:17 <b>offered</b> 25:7,13 <b>office</b> 2:3 8:25 20:21 33:11 39:22 <b>officer</b> 18:25 <b>officially</b> 7:20,22 <b>oh</b> 22:7 39:25 <b>okay</b> 11:22 20:3 20:20 22:8 24:23 28:8 32:25 36:24 42:21 45:18 47:22 48:7 50:9 <b>once</b> 14:10 36:20 36:23 <b>ones</b> 44:18 <b>ongoing</b> 40:4 41:6 <b>open</b> 13:9 48:2 <b>opening</b> 11:12 <b>opportunities</b> 5:20,22 50:7 <b>opportunity</b> 5:16,17 6:17 20:7 21:10 27:6
--	--	--	---

[opportunity - professional]

Page 9

38:7 40:7 45:14 <b>oppose</b> 43:19 <b>option</b> 10:14,15 11:20 <b>order</b> 9:15 10:4 41:20 <b>ordering</b> 6:15 <b>ought</b> 38:16 <b>outside</b> 18:17 23:10,11 28:25	<b>perspective</b> 12:18 13:7 40:13 41:12 42:2 <b>pertaining</b> 23:21 <b>peter</b> 1:20 <b>peters</b> 2:18 24:12,12,15,17 24:22,25 27:3,19 28:8,12 33:6,23 45:23 46:2,3,22 46:24 47:5 48:19,20 <b>philip</b> 2:23 <b>phillips</b> 1:12 3:5 3:10 <b>pick</b> 46:16 49:15 <b>picked</b> 11:7 <b>picking</b> 36:18 <b>piece</b> 8:9 <b>plaintiff</b> 1:7 2:5 8:6 11:20 20:16 36:25 <b>plan</b> 11:6 <b>please</b> 25:18 <b>pleasure</b> 24:25 <b>point</b> 8:12 10:2,9 11:18 21:11 30:15 31:8,11,15 32:17 33:9 36:5 36:20 37:23 40:4 <b>points</b> 12:19 <b>policies</b> 16:7,7 17:17 <b>policy</b> 15:22 <b>portions</b> 16:23	<b>position</b> 6:21 <b>positive</b> 31:2 <b>possible</b> 34:10 <b>potential</b> 29:23 <b>potentially</b> 21:25 26:4 <b>powell</b> 1:12 3:15 <b>precipitously</b> 35:23 <b>prediction</b> 13:25 <b>prefer</b> 9:12 40:8 <b>prejudice</b> 8:6 9:24 10:22 11:21 <b>prejudicial</b> 11:14 <b>preparation</b> 43:17 49:25 <b>prepare</b> 13:2 <b>prepared</b> 10:10 12:20 <b>presence</b> 21:14 21:17 35:22 <b>pressed</b> 35:12 <b>pretty</b> 7:10 11:20 27:7 35:4 37:12 38:11,16 42:19 <b>previously</b> 7:24 <b>privilege</b> 5:13,15 5:16 9:20 12:15 12:20 13:3 14:16 15:2 21:8 22:22 27:9 28:17 31:12,21 35:10 36:21,23 39:13 41:2,19 42:6,8,14,17,19	43:12,14,17,18 44:8 45:9,12,17 46:11,12,15 <b>privileged</b> 7:4 8:2,8 10:18,19 12:7 13:6,13 14:25 16:8,17 18:4 19:13,18 20:2 21:25 22:10,15,16 27:17 30:4 31:24 32:8,21,23 33:19 39:4 43:6 44:21,23 47:20 <b>privileges</b> 30:9 40:18 42:3 43:3 43:8,14,23 44:10 44:18,22,25 45:2 45:10,16 <b>probably</b> 20:23 34:11 38:16 47:9,10,14 <b>probe</b> 14:22 18:11 <b>problem</b> 13:16 <b>procedural</b> 46:21 <b>proceeding</b> 11:3 <b>process</b> 13:2 26:8 33:24 35:6 <b>produced</b> 18:17 19:19 22:23 <b>producing</b> 10:20 <b>product</b> 43:17 <b>production</b> 6:15 <b>productive</b> 33:7 <b>professional</b> 51:7
<b>p</b>			
<b>p</b> 2:2,2 3:2,2 4:2 4:2 <b>p.m.</b> 1:16 50:14 <b>pages</b> 23:25 24:4 <b>park</b> 3:3,20 4:3 <b>part</b> 21:21 23:15 <b>particular</b> 17:22 <b>party</b> 9:19 42:6 45:10 51:12 <b>path</b> 13:13 33:8 <b>payment</b> 17:22 <b>pending</b> 39:15 41:3 <b>people</b> 1:5 28:5 36:25 <b>percent</b> 13:9 32:14 <b>perform</b> 23:14 <b>period</b> 37:22 <b>permit</b> 41:16 <b>permits</b> 14:13 <b>permitted</b> 23:20 <b>person</b> 49:15 <b>personalized</b> 16:14			

[professionals - room]

Page 10

<b>professionals</b> 12:13 <b>proffers</b> 33:18 <b>proposed</b> 14:9 <b>protocols</b> 46:19 <b>provide</b> 13:4 21:22 <b>provided</b> 15:14 23:17 <b>providing</b> 13:10 <b>proving</b> 42:14 <b>public</b> 43:2 51:7 <b>pull</b> 36:13 <b>pursuant</b> 12:21 <b>put</b> 21:11 25:8 32:4 33:15,20 34:20 41:21 <b>putting</b> 32:20	<b>read</b> 28:3,10 40:21 <b>ready</b> 10:13 <b>real</b> 29:13 <b>realize</b> 30:18 42:12 <b>really</b> 10:15 11:11 20:20 22:25 25:22 26:16,18 27:7 29:11 31:13 32:6 33:10 34:2 38:20 <b>realm</b> 7:23 29:16 31:13 <b>rebuttal</b> 11:17 <b>recall</b> 13:17 16:15 18:21 21:2 24:24 44:11 <b>received</b> 12:5 <b>recollection</b> 15:7 <b>recommendation</b> 10:9 50:3 <b>recommending</b> 50:5 <b>record</b> 12:3 32:19 <b>refer</b> 8:4 17:8 21:3 <b>reference</b> 16:18 <b>referral</b> 10:7 <b>referring</b> 11:23 19:9 26:7 <b>refers</b> 31:22,25 <b>reflect</b> 17:15 <b>reflective</b> 15:16	<b>refused</b> 21:22 <b>regard</b> 17:23 42:24 <b>regarding</b> 18:15 45:8 <b>registered</b> 51:6 <b>regulations</b> 17:16 <b>relate</b> 18:2 26:4 44:24 <b>related</b> 10:23 15:5 19:12,17,25 51:12 <b>relating</b> 6:4 <b>reliance</b> 12:13 12:17 <b>relied</b> 23:13 <b>relief</b> 10:23 <b>rely</b> 29:6 <b>relying</b> 12:4 31:18 <b>remember</b> 35:19 <b>remind</b> 11:15 <b>rep</b> 23:2 25:7,14 28:2 33:25 <b>repeating</b> 37:6 <b>report</b> 10:8 <b>reported</b> 1:23 <b>reporter</b> 38:22 51:7 <b>reports</b> 11:17,17 23:9 <b>represent</b> 17:13 <b>representative</b> 5:23 13:20 <b>request</b> 11:24 39:3	<b>requesting</b> 38:15 <b>requests</b> 8:18 <b>requirements</b> 31:24 <b>resembling</b> 25:12 <b>resolve</b> 34:5 <b>resolved</b> 21:19 <b>respect</b> 8:20 9:3 9:5 18:22 33:3 38:17 39:2 40:25 44:9 45:15 <b>respond</b> 32:11 <b>responded</b> 14:23 <b>responsive</b> 6:16 8:18 37:17 <b>result</b> 10:22 22:8 35:22 41:10 <b>retired</b> 1:20 <b>revealing</b> 14:16 <b>review</b> 6:2,20 13:11 15:6,10 17:9 29:25 <b>reviewed</b> 13:12 <b>reviewing</b> 11:3 26:9 <b>rifle</b> 1:11 2:12 <b>right</b> 6:21 14:4 15:13 16:6 19:14 30:8 40:2 41:25 50:12 <b>risk</b> 14:16 <b>road</b> 38:14 <b>robust</b> 29:25 <b>roles</b> 28:22 <b>room</b> 27:16,22
<b>q</b>			
<b>question</b> 9:3 14:18 16:11 17:12 18:10 20:19,19 31:5 41:24 <b>questions</b> 17:5 <b>quickly</b> 10:10 38:16 45:21 <b>quite</b> 21:2 <b>quote</b> 34:4 38:22			
<b>r</b>			
<b>r</b> 2:2 3:2 4:2 51:2 <b>raise</b> 31:8 <b>raised</b> 7:21,21 <b>raising</b> 36:8,9 <b>random</b> 5:23 46:21			

[rpr - stenographic]

Page 11

<b>rpr</b> 1:23 51:18 <b>rule</b> 27:10 <b>ruled</b> 5:7 <b>rules</b> 12:22 <b>ruling</b> 26:19 40:22 <b>run</b> 17:11	47:10 <b>seeing</b> 18:21 21:2 <b>seeking</b> 9:5 19:10 29:13 <b>seen</b> 15:7 16:15 18:16,18 <b>select</b> 5:24 9:21 <b>selective</b> 12:6 25:6,10,13 26:15 <b>sense</b> 20:6 <b>separate</b> 22:9,14 <b>set</b> 48:4 <b>seth</b> 3:5 49:9 <b>settle</b> 9:13 <b>sfarber</b> 3:6 <b>share</b> 9:22,23 <b>shared</b> 16:13 <b>sherwood</b> 1:20 5:2,19 6:7,11 7:12,16 8:11,14 11:22 13:22 14:3,17 16:12 18:11,20 20:3,5 20:18 24:2,7,10 24:14,19,23 27:3 28:6,9 30:18 32:12,25 34:6,17 35:18 37:4,11,25 39:25 40:6,23 41:23 42:11 43:7,11 44:2,6 45:5,22,25 46:7 47:2,7,22 48:3,8 48:13,16,22 49:3 49:6,13,22 50:4 50:12	<b>shield</b> 9:19 27:23 <b>shielded</b> 44:17 <b>shielding</b> 27:21 29:9 <b>shiffman</b> 2:6 <b>short</b> 37:22 38:20 <b>shot</b> 38:7 <b>show</b> 43:24 45:2 <b>showed</b> 35:19 <b>showing</b> 5:16 27:7 40:18 41:22 45:9 <b>shown</b> 27:14 <b>side</b> 9:25 40:17 46:19 <b>sides</b> 38:12 <b>signature</b> 51:17 <b>significant</b> 11:21 <b>similar</b> 41:16 <b>simply</b> 11:23 23:18 27:21 31:22 <b>sir</b> 25:2 49:23 <b>situation</b> 29:10 29:11 <b>smaller</b> 43:21 <b>smart</b> 28:11 <b>sme</b> 2:13 <b>smile</b> 42:21 <b>somebody</b> 24:10 46:9 <b>sooner</b> 48:11 <b>sophisticated</b> 35:5 <b>sorry</b> 24:5 34:16 37:8 39:19 42:23 49:10	<b>sort</b> 9:10 15:19 21:25 23:7 32:13 33:9 38:5 <b>sought</b> 18:7 19:21 23:2 <b>sound</b> 12:3 32:19 <b>sounds</b> 33:16 47:5 <b>speak</b> 40:8,12 <b>speaking</b> 25:3 <b>special</b> 1:20 <b>specific</b> 8:8,9 17:10 39:10 <b>specifically</b> 8:3 13:17 16:18 17:11 25:16 34:3 49:16 <b>specify</b> 34:3 <b>speech</b> 35:20 <b>speed</b> 48:5 <b>spencer</b> 4:3 <b>spoke</b> 13:17 <b>spreadsheet</b> 14:13 <b>staff</b> 24:15 <b>stand</b> 15:21 27:24 32:23 <b>standard</b> 45:3 <b>started</b> 25:22 26:16 <b>state</b> 1:2,5,6 2:3 <b>stated</b> 7:24,24 <b>statement</b> 31:16 <b>states</b> 41:21 <b>status</b> 47:25 <b>stenographic</b> 51:10
<b>s</b>			
<b>s</b> 2:2 3:2 4:2 <b>samantha</b> 3:16 <b>sample</b> 5:18,24 13:10 29:25 33:11,14 36:13 46:14,14,21 <b>sampled</b> 36:14 36:16 <b>sampling</b> 30:2 33:24 <b>satisfies</b> 33:14 <b>satisfy</b> 33:10,21 <b>saw</b> 15:11 <b>saying</b> 12:8 16:14 19:7 22:17 26:2 28:13 30:10 <b>sblock</b> 3:16 <b>scaring</b> 7:16 <b>search</b> 7:3 17:11 26:12 38:3 <b>season</b> 48:25 <b>sebert</b> 9:16 <b>second</b> 6:16 11:20 34:20 <b>see</b> 10:21 11:11 27:11 28:3 30:24 33:18 34:12 38:3,4,19			



[steps - two]

Page 12

<b>steps</b> 46:22	<b>t</b>	47:6 49:19,22	25:3 30:25 31:3
<b>stern</b> 2:7	<b>t</b> 51:2,2	50:10,13	31:10 34:6
<b>steven</b> 2:6	<b>take</b> 8:5 33:13	<b>thing</b> 8:5 16:6	37:22 38:18,20
<b>steven.shiffman</b>	50:13	23:12 42:23	46:18 47:11
2:7	<b>taken</b> 46:22	<b>things</b> 9:11	48:4 49:15,16
<b>stop</b> 41:13	<b>takes</b> 32:9	16:24 18:12	50:4,14
<b>strategy</b> 35:9	<b>talk</b> 26:10 49:16	19:3 20:13,20	<b>timeline</b> 48:11
<b>strauss</b> 3:13,19	<b>talking</b> 7:9 16:9	21:20 27:21	<b>times</b> 14:20
<b>strawn</b> 3:3	18:5 20:9 25:22	30:11 37:6	21:16
<b>street</b> 2:4,17,21	28:16 33:4 34:7	42:12 47:25	<b>today</b> 33:3
3:14	36:11 38:12	<b>think</b> 7:10 9:9,10	<b>todd</b> 1:23 51:6
<b>stuff</b> 16:21 29:8	42:16 43:20	9:25 10:11	51:18
29:22 30:13	49:11,14	11:18,19 14:5	<b>tomorrow</b> 11:7,8
<b>subjects</b> 21:23	<b>talks</b> 32:2	15:11 18:9	11:9 50:2
<b>submission</b> 40:5	<b>tax</b> 23:11	19:15,16 20:22	<b>topic</b> 19:20
43:4 47:19	<b>tell</b> 6:12 9:11	22:16,19 24:7	<b>topics</b> 19:25 26:4
<b>submit</b> 5:18,23	22:4,10,14 30:12	27:23 28:4,18	29:21 30:17
6:19 29:24 30:2	36:15 39:17	30:5 32:5 33:5	<b>touted</b> 20:16
36:18 45:20	41:8 47:4,15	33:10,22 34:9	<b>touts</b> 23:9 35:3
<b>submitted</b> 6:2	<b>telling</b> 21:19	35:21 37:11,22	<b>tower</b> 3:20
<b>suddenly</b> 9:21	<b>tentative</b> 13:25	39:21 41:12,15	<b>trainings</b> 15:23
<b>suffered</b> 8:6	<b>term</b> 15:18	42:2,3,20 43:5	<b>transcription</b>
<b>suffers</b> 11:20	20:13	43:23 45:20	51:9
<b>sufficiently</b>	<b>terms</b> 7:3 14:23	47:4,18,21 48:3	<b>trial</b> 8:2 32:6
10:12 31:9	17:10 26:12	48:10	34:23,24 43:17
41:16	28:22 29:13	<b>thinking</b> 32:3	<b>tried</b> 22:3 32:17
<b>suggest</b> 49:8	30:9 38:3	46:4,6,8,8 47:16	<b>true</b> 51:9
<b>suggested</b> 49:16	<b>testified</b> 34:21	<b>thought</b> 5:25	<b>try</b> 9:22 11:9
<b>suggestion</b> 31:16	34:24	28:6 44:7	29:2,2
<b>suite</b> 2:17 3:9	<b>testify</b> 36:4	<b>thousands</b> 11:2	<b>trying</b> 8:14 13:8
<b>supreme</b> 1:2	<b>testifying</b> 22:25	<b>three</b> 20:23 43:7	27:23 29:4,10,11
<b>sure</b> 5:4 7:6 8:13	31:19	43:23 44:24,25	29:19 32:15
15:22 16:2	<b>testimony</b> 28:10	<b>thrown</b> 15:20	49:15
29:15 37:16	31:25 32:23	<b>thursday</b> 47:16	<b>turn</b> 23:4
<b>suspicion</b> 21:4	33:25	47:20 48:9,12,19	<b>turns</b> 48:23
<b>svetlana</b> 2:13	<b>texas</b> 2:18 3:9	49:14	<b>two</b> 9:11 10:15
<b>swear</b> 46:10	<b>thank</b> 5:9 20:11	<b>time</b> 7:21 11:7	11:19 12:18
	45:19 46:24	13:17 20:21	15:9 16:19

[two - zoom]

Page 13

20:22 34:14 37:9,10 41:4,14 42:11 <b>types</b> 44:14	<b>view</b> 27:14,15,15 50:6,8 <b>virgina</b> 2:22 <b>volume</b> 27:12	<b>wfleming</b> 4:6 <b>whistleblower</b> 18:14 22:6 <b>whoa</b> 7:12 <b>william</b> 4:5 <b>wilson</b> 1:12 3:5 3:10 <b>winchester</b> 2:22 <b>winston</b> 3:3 <b>winston.com</b> 3:6 <b>wish</b> 32:12 <b>wished</b> 35:25 <b>withheld</b> 6:4 7:4 10:17,18 13:5 19:23 20:2 21:6 43:22 45:3 <b>witness</b> 28:3 <b>witnesses</b> 8:3 15:21 21:18,22 22:24 27:23 28:15 31:18 32:22 35:9,14,16 37:2 <b>work</b> 13:8 26:20 26:25 33:8 34:2 34:9 41:5 43:16 48:19 49:6 <b>works</b> 48:14,16 49:4 <b>written</b> 32:20 38:6,25 <b>wrong</b> 15:13 19:4 47:4	<b>y</b> <b>york</b> 1:2,3,5,6 2:3,4,4,11,11 3:4 3:4,21,21 4:4,4 26:17 33:10
<b>u</b>	<b>w</b>	<b>z</b>	<b>zoom</b> 1:14
<b>uitkin</b> 3:22 <b>umansky</b> 2:14 <b>unable</b> 21:24 <b>uncovered</b> 16:25 <b>undercount</b> 7:11 <b>understand</b> 8:15 10:17 27:20 28:21 41:2 <b>understanding</b> 6:6 15:4 <b>undertaking</b> 11:6 <b>undertook</b> 13:2 <b>unfair</b> 14:7 <b>unfortunately</b> 13:19 <b>universe</b> 7:2,6 7:23 13:20,23 14:11,14 23:25 26:3 29:23 36:10 43:21 <b>uri</b> 3:21 <b>use</b> 23:10	<b>waived</b> 5:14 36:23 <b>waiver</b> 23:19 <b>walk</b> 7:14 26:13 <b>want</b> 10:11 20:7 20:12 25:4,9 26:13,15,20,25 27:4 29:15 30:7 30:8 43:11 48:8 <b>wanted</b> 24:11 37:15,23 40:5 <b>wanting</b> 37:20 <b>wants</b> 9:23 <b>washington</b> 3:14 <b>way</b> 11:13 22:3 28:7 32:4 39:7 41:10 <b>wayne</b> 1:12 2:23 <b>wednesday</b> 47:16 <b>week</b> 13:15 34:14 47:14 <b>weekend</b> 14:10 <b>weeks</b> 37:9,10 <b>weigh</b> 20:8 24:11 37:15 <b>went</b> 15:24 <b>werbner</b> 3:8,11 <b>werbnerlaw.com</b> 3:11 <b>west</b> 2:21 3:8	<b>x</b> <b>x</b> 1:5,14 12:10	
<b>v</b>			
<b>various</b> 18:25 <b>vast</b> 22:20 <b>vendors</b> 15:24 <b>versus</b> 9:16 42:18 <b>videocoference</b> 1:14			

## New York Code

## Civil Practice Law and Rules

## 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.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at [www.veritext.com](http://www.veritext.com).