

PETITIONER'S EXHIBIT 1: PECUNIES TRANSCRIPT

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

In the Matter of the Application
of Benjamin Chevat, Director of
9/11 Health Watch,

Petitioner,

For a Judgment Pursuant to
Article 78 of the Civil Practice
Law and Rules

Index No.

155678/2024

v.

New York City Department of
Environmental Protection,
Respondent.

DEPOSITION OF

RUSSELL PECUNIES

DATE: Wednesday, July 1, 2026

TIME: 10:23 a.m.

LOCATION: New York City Law Department
100 Church Street, 4th Floor
New York, NY 10007

REPORTED BY: Oweinama Biu

JOB NO.: 8303729

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1 A P P E A R A N C E S (Cont'd)
2 ON BEHALF OF RESPONDENT NEW YORK CITY DEPARTMENT OF
3 ENVIRONMENTAL PROTECTION:

4 SAARAH SINGH DHINSA, ESQUIRE

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E X H I B I T S

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2 THE REPORTER: Good morning. My name
3 is Oweinama Biu. I am the reporter
4 assigned by Veritext to take the record of
5 this proceeding. We are now on the record
6 at 10:23 a.m.

7 This is the deposition of Russell
8 Pecunies taken in the matter of Benjamin
9 Chevat vs. New York City Department of
10 Environmental Protection on Wednesday,
11 July 1, 2026, at New York City Law
12 Department, 100 Church Street, New York,
13 New York 10007.

14 I am a notary authorized to take
15 acknowledgments and administer oaths in
16 New York.

17 Additionally, absent an objection on
18 the record before the witness is sworn,
19 all parties and the witness understand and
20 agree that any certified transcript
21 produced from the recording of this
22 proceeding:

23 is intended for all uses
24 permitted under applicable
25 procedural and evidentiary rules

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2 and laws in the same manner as a
3 deposition recorded by
4 stenographic means; and
5 shall constitute written
6 stipulation of such.

7 At this time, I'd like everyone in
8 attendance to identify themselves for the
9 record. We're going to begin with the
10 petitioner's side.

11 MR. CARBOY: Good morning. Andrew
12 Carboy, C-A-R-B-O-Y, for the petitioner.
13 With me are two co-counsel.

14 MR. TURKEN: Hi, and good morning.
15 My name is Jason Turken, also for the
16 petitioner.

17 MR. MCCAULEY: Matthew McCauley,
18 M-C-C-A-U-L-E-Y, for the petitioner.

19 THE REPORTER: Thank you.

20 MR. PECUNIES: Russell Pecunies with
21 the New York City Department of
22 Environmental Protection.

23 MS. DHINSA: Saarah Dhinsa for the
24 Department of Environmental Protection,
25 S-A-A-R-A-H D-H-I-N-S-A. I also just

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2 wanted to make a stipulation on the
3 record. Should I do that now or after
4 intros?

5 THE REPORTER: We should do it after
6 intros.

7 MS. DHINSA: Okay.

8 MR. ALFIERI: Good morning. Lucinda
9 Alfieri with the New York City Law
10 Department for the respondents.

11 MR. ALI: Musa Ali for the New York
12 City Department of Environmental
13 Protection.

14 THE REPORTER: Thank you. Hearing no
15 objections, I will now swear in the
16 witness and then we'll do the
17 stipulations. One second. Okay. Mr.
18 Pecunies, please raise your right hand.

19 WHEREUPON,

20 RUSSELL PECUNIES,
21 called as a witness and having been first
22 duly sworn to tell the truth, the whole
23 truth, and nothing but the truth, was
24 examined and testified as follows:

25 THE REPORTER: Thank you. You may

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2 now proceed.

3 MS. DHINSA: I just wanted to
4 stipulate on the record that pursuant to
5 CPLR 3107, since neither side has given
6 the 20 days' notice of video recording for
7 the deposition, neither side will be
8 recording or preserving the deposition
9 through audio or video means.

10 MR. CARBOY: We're not filming it.

11 MS. DHINSA: Okay. Thank you.

12 MR. CARBOY: We're good.

13 THE REPORTER: You're good.

14 EXAMINATION

15 BY MR. CARBOY:

16 Q Good morning, Mr. Pecunies. My
17 name is Andrew Carboy. Now, we've never
18 met. Have we?

19 A No.

20 Q I represent the petitioner in
21 this matter. I'm going to be asking you
22 some questions today. Just a few ground
23 rules. Most importantly, if at any point
24 in time I ask you a question that you
25 don't understand, please let me know.

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2 I'll ask the question a different way.

3 If you answer the question,
4 everyone will assume, including the Court,
5 that you understood the question. Is that
6 clear?

7 A Yes.

8 Q Our court reporter, Mr. Biu, is
9 taking down every word that you and I and
10 counsel are speaking. However, he cannot
11 take down a shake of the head, an "mm-hm"
12 or "uh-huh," as we might do in an ordinary
13 conversation. So you've got to answer in
14 words. Okay?

15 A Understood.

16 Q And if at any point in time you
17 need to take a break, you are free to do
18 so. I would just ask that you not do so
19 when there's an unanswered question, an
20 open question. Is that understood?

21 A Understood.

22 Q You gave the name of your
23 employer as the Department of
24 Environmental Protection. Is that right?

25 A Correct.

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2 Q For today, for brevity, are you
3 all right if we refer to the Department of
4 Environmental Protection is DEP?

5 A Correct.

6 Q How long have you worked for
7 DEP?

8 A Since November 1984.

9 Q Have you worked for any other
10 employer --

11 A No.

12 Q -- aside from DEP --

13 A No.

14 Q -- since November 1984? You're
15 an attorney.

16 A Yes.

17 Q When were you admitted to
18 practice?

19 A Spring 1985.

20 Q To the best of your memory, and
21 I'm not looking to belabor this, believe
22 me, it's my least favorite part of
23 depositions, can you give for me all of
24 the positions you've held at DEP since
25 becoming an attorney in the spring of

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2 1985?

3 A So in terms of office titles, I
4 started as an assistant counsel, and then
5 when I was made a manager, I was given the
6 title of senior counsel, and currently I
7 am senior enforcement Counsel.

8 Q If I'm hearing you correctly,
9 essentially you've held three positions
10 during your tenure at DEP as an attorney.
11 Is that correct?

12 A In terms of office titles, yes,
13 three.

14 Q Relevant to what I'm going to
15 ask later, it may sound like a strange
16 question, at what physical locations have
17 you maintained offices at DEP throughout
18 your career?

19 A Okay. So when I started, we
20 were at the municipal building, 1 Center
21 Street, and then we moved from 1 Center
22 Street to the current location on Junction
23 Boulevard in Queens, and I forget what
24 year exactly that was, but those have been
25 the two locations.

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2 Q May we refer to Junction
3 Boulevard as the Corona location of DEP?

4 A People, it's LeFrak City,
5 Corona. Yeah.

6 Q Okay. So LeFrak or Corona is --

7 A Correct.

8 Q You'll know what I'm talking
9 about if I use those terms.

10 A Yep.

11 Q Great. Appreciate that. I want
12 to draw your attention back to September
13 of 2001. For the period of time beginning
14 September 11th through December 31, 2001,
15 what were you doing, as I am imagining you
16 were a senior counsel at that point at
17 DEP?

18 A I believe, yes, I was a manager
19 at that point. Yes.

20 Q Okay. What were your duties and
21 responsibilities in that time period?

22 A My duties were to represent the
23 department at administrative enforcement
24 hearings relating to summonses issued by
25 the department for a variety of different

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2 violations of a variety of different codes
3 and regulations that DEP has.

4 Q Okay. Is that forum for those
5 hearings known as the ECB or Environmental
6 Control Board?

7 A Correct.

8 Q Okay. And when you say
9 summonses, can you give me some examples?
10 I know what comes to mind with ECB.
11 Someone isn't having their garbage, let's
12 say they're a restaurant, not pulled away
13 properly, and they're -- they're cited.

14 A We appear on violations relating
15 to the noise code, to the air pollution
16 control code, to the asbestos regulations,
17 to the hazardous materials law, to the
18 water code, to the right to know law.

19 Q When you say "the right to no
20 law," what law are you referring to?

21 A The Community Right-to-Know Law.

22 Q And can you explain to me what
23 the Community Right-to-Know Law is?

24 A The Community Right-to-Know Law
25 says that if you are the owner of a

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2 building that has hazardous material
3 stored inside the building, you have to
4 file an annual report with DEP called an
5 FIF, a Facility Inventory Form.

6 Q Were you aware, in the same time
7 period, September 11, 2001, to December
8 31, 2001, of a role that your agency, DEP,
9 took with respect to the response
10 following the collapse of The World Trade
11 Center in Lower Manhattan?

12 A Was I aware?

13 Q Yes.

14 A Yeah, I would say I was aware.

15 Q And what was that role, to your
16 understanding?

17 A I believe air monitoring was
18 conducted. That was --

19 THE REPORTER: I'm sorry. That was
20 what kind of monitoring?

21 THE WITNESS: Air monitoring.

22 MR. CARBOY: Air, yeah.

23 THE WITNESS: I -- I believe that
24 would be the main thing I would remember
25 us doing, was that we -- that -- that air

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2 monitoring was conducted by -- by DEP,
3 yeah.

4 MR. ALFIERI: Sorry, just by counsel,
5 are you asking about his role in
6 particular or DEP?

7 MR. CARBOY: No, I'm not
8 asking -- that's the next question.

9 MS. DHINSA: Yeah. Oh, okay.

10 MR. CARBOY: My question stands.

11 MR. ALFIERI: I'm not sure. Okay.

12 MR. CARBOY: All right.

13 MR. ALFIERI: No, I'm just -- I'm
14 not --

15 MR. CARBOY: Is that okay with you?
16 Thank you.

17 MR. ALFIERI: No, no. Wait, wait.
18 No.

19 MR. CARBOY: Yeah. So can you repeat
20 the last question?

21 MR. ALFIERI: I just want to finish
22 what I want to say. I just don't think he
23 was responsive to what you were asking, so
24 I just wanted to know if you were asking
25 him his role individually or as DEP.

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2 MR. CARBOY: I didn't pose -- excuse
3 me. It's my deposition. I didn't pose
4 that question. All right?

5 MR. ALFIERI: All right. Then I'm
6 objecting to form then, because I don't
7 understand the question.

8 MR. CARBOY: Right. He --

9 MR. ALFIERI: Can you read back the
10 question, please?

11 MR. CARBOY: He, an attorney, clearly
12 does. He answered it. And you're
13 interrupting him.

14 MR. ALFIERI: Can you read back the
15 question, please, and the answer? Thank
16 you. Yeah.

17 (The reporter repeated the
18 record as requested.)

19 BY MR. CARBOY:

20 Q You mentioned air monitoring.
21 You know, from your perch in enforcement,
22 Mr. Pecunies, what else did you learn
23 about the role of DEP concerning this
24 response to the collapse of the trade
25 center in those four months?

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2 A I don't recall anything else.

3 Q How, if at all, did your duties
4 and responsibilities change in that
5 four-month period because of the DEP's
6 response to The World Trade Center
7 collapse?

8 A As far as I remember, not at
9 all.

10 Q Is it accurate to state then,
11 sir, that you played no role in the DEP's
12 response to the collapse of The World
13 Trade Center? Your job duties and
14 responsibilities remained the same as they
15 did on September 10, 2001?

16 A Yes.

17 Q Did there come a point in time,
18 Mr. Pecunies, from January 1, 2002, going
19 to January 1, 2005, when your duties and
20 responsibilities changed and you did play
21 some role, even a small one, with respect
22 to DEP's response to the collapse of The
23 World Trade Center?

24 MR. ALFIERI: Object to form.

25 MS. DHINSA: Object to form.

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2 THE WITNESS: I'm sorry?

3 MS. DHINSA: It's objection to form,
4 but you can answer.

5 THE WITNESS: I can answer?

6 MS. DHINSA: You can answer.

7 THE WITNESS: Then, I -- I don't -- I
8 don't remember precisely. There may have
9 been, but I don't remember precisely.

10 BY MR. CARBOY:

11 Q Okay. What makes you say, and I
12 know we're going back more than 20 years,
13 what makes you say "there may have been,"
14 understanding, you know, you don't have
15 certainty, this is just some vague
16 recollection or memory. What makes you
17 say "there may have been"?

18 MS. DHINSA: I'll -- I'm just going
19 to object. I think that calls for
20 speculation.

21 BY MR. CARBOY:

22 Q What? He just gave the answer.
23 What makes you say "there may have been"?

24 MR. ALFIERI: Object to form.

25 MS. DHINSA: Object to form.

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2 MR. ALFIERI: And let him answer.

3 MS. DHINSA: But you can answer.

4 THE WITNESS: I -- I don't remember,
5 again, you said it's over 20 years. There
6 may have been summonses issued to building
7 owners relating to their cleanup downtown
8 by the Asbestos Unit, and since we appear
9 on all asbestos-related summonses
10 there -- there may have been.

11 BY MR. CARBOY:

12 Q Okay. So again, to the extent
13 you did, and I know there's some
14 uncertainty, and that's appreciated, you
15 would have played that role with respect
16 to your perch in enforcement --

17 A Correct.

18 Q -- and appearances at ECB. Is
19 that right?

20 A Correct.

21 Q Okay.

22 A Yeah.

23 Q Okay. In other words, you
24 weren't downtown doing air testing. You
25 weren't downtown doing health risk

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2 assessments and so forth. Right?

3 A No.

4 Q Did there come a point in time,
5 Mr. Pecunies, when your work in
6 enforcement, in terms of ECB, changed and
7 you assumed additional responsibilities at
8 DEP?

9 A Not sure what specifically you
10 would be referring to.

11 Q All right. Let's do it this
12 way. At this point in time, are you
13 serving as an appeals officer for Freedom
14 of Information Law requests to the DEP?

15 A Yes.

16 Q When did you first serve in that
17 capacity? I'll take the year.

18 A The earliest letter that I wrote
19 was in 2008, so that would be 18 years.

20 Q And what title or function are
21 you serving when you're handling and
22 determining appeals of FOIA requests at
23 DEP? Is that known as a records appeal
24 officer? Some other title?

25 A I usually put FOIA Appeals

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2 Officer or Records Access Appeals Officer
3 on the letters. It's not a formal title.

4 Q Are you still handling FOIA
5 appeals at DEP today?

6 A Yes.

7 Q And are you handling them in the
8 capacity of, I'll use your term, FOIA
9 Appeals Officer?

10 A Yes.

11 Q When a FOIA Appeals Officer at
12 DEP is reviewing a denied request that has
13 been appealed by the requester, what is
14 the name or function of the DEP person or
15 employee who did the underlying search?

16 A What is the function of the -- I
17 don't understand the question.

18 Q Sorry. Yeah. Let me rephrase.
19 Is there someone known as a record
20 searcher at DEP who responds to FOIA
21 requests preliminarily?

22 A We have numerous bureaus and
23 each of the bureaus has a FOIA liaison or
24 liaisons.

25 Q Are these so-called FOIA

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2 liaisons the folks who do the actual
3 record searching when a FOIA request comes
4 to DEP?

5 A Yes.

6 Q Have you ever served in the
7 capacity of a FOIA liaison?

8 A No.

9 Q Have you ever conducted, in
10 whole or in part, a search for responsive
11 records after a FOIA request comes in?
12 Not as an appeals officer, but essentially
13 as a record searcher?

14 A No.

15 Q Are there policies and
16 procedures in place at DEP for the
17 handling of FOIA appeals by the FOIA
18 Appeals Officer?

19 A No.

20 Q What training did you receive,
21 if any, to become a FOIA Appeals Officer
22 at DEP?

23 A I was named FOIA Appeals Officer
24 by our former Deputy General Counsel when
25 she was promoted to General Counsel, and

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2 she basically told me how to do it. There
3 was no formal training.

4 Q And this is something that
5 happened back in 2008?

6 A Correct.

7 Q What was the name of that Deputy
8 General Counsel?

9 A Robin Levine.

10 Q Is she still with DEP today?

11 A No.

12 Q When you were named the FOIA
13 Appeals Officer, was that a promotion in
14 either title or compensation?

15 A No.

16 Q Is that to say that when you
17 were named FOIA Appeals Officer, your life
18 changed because you were given additional
19 duties and responsibilities?

20 A I don't understand the question.

21 Q Sure. You were given more work,
22 you had to handle these appeals, but you
23 weren't given a promotion or additional
24 compensation. Is that correct?

25 A That's correct.

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2 Q Back in the year 2024, as a
3 percentage of the time you spent on an
4 annual basis, what percentage was devoted
5 to determining FOIA appeals at DEP?

6 A Less than 5 percent.

7 Q When Robin Levine named you FOIA
8 Appeals Officer, did she give you any
9 written materials that would enable you or
10 facilitate you performing your job?

11 A She gave me her files.

12 Q Were those files of open
13 appeals?

14 A No. They were of -- of appeals
15 she had had handled.

16 Q Okay. Did she give you any
17 policies and procedures or guidance and
18 instructions as to how to conduct FOIA
19 appeals?

20 A No.

21 Q So other than working in
22 enforcement, as you've explained, and
23 other than working as a FOIA Appeals
24 Officer, is there any other function that
25 you're serving today at DEP?

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2 A Yes.

3 Q Okay. What are those other
4 functions?

5 A I am in charge of rule-makings,
6 so I am in charge of putting proposed
7 rules through the rule-making process
8 under the City Administrative Procedure
9 Act, and I am the supervisor of our intern
10 program.

11 Q The rules that are made in the
12 rule-making process, is that -- those are
13 rules that are changes to the city code or
14 something else?

15 A The -- the rules that are
16 promulgated that are published in the city
17 record and become official regulations of
18 DEP.

19 Q Is there a job -- well,
20 withdrawn. The FOIA liaisons you
21 referenced earlier today, is that a
22 full-time position or is working as a FOIA
23 liaison an additional set of duties and
24 responsibilities for an employee who does
25 other things at DEP?

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2 A I would say that depends on the
3 bureau and how many FOIA requests get
4 referred to them. In some bureaus, I
5 believe the FOIA liaisons pretty much
6 don't do anything else, and in other
7 bureaus it would definitely be a
8 part-time.

9 Q Can you give me a sense of how
10 many bureaus you're talking about when you
11 say "bureaus at DEP"?

12 A I believe in terms of operating
13 bureaus, not counting things like legal
14 and public affairs, I think there are
15 eight or nine operating bureaus.

16 Q Okay. Turning back to the DEP's
17 response to The World Trade Center
18 collapse, in those four months in 2001,
19 September, October, November and December,
20 can you name for me the bureaus that
21 participated in that effort?

22 A I would say possibly two. One
23 would be, and again, I'm not sure that the
24 bureau names were the same 25 years ago --

25 Q Understood.

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2 A -- but by their current names,
3 it would be the Bureau of Environmental
4 Compliance and the Bureau of Police and
5 Security.

6 Q Broadly, what does the Bureau of
7 Police and Security do?

8 A The Bureau of Police and
9 Security includes our upstate police
10 force, but also includes the HAZMAT unit.

11 Q DEP maintains an upstate police
12 force because of the water supply?

13 A Correct.

14 Q Okay. And with respect to
15 HAZMAT within the Bureau of Police and
16 Security, does HAZMAT respond to acute
17 incidents, let's say a tanker truck flips
18 over, or does HAZMAT respond to broader,
19 longstanding issues, such as we had after
20 the collapse of The World Trade Center?

21 A I would -- I -- I would say
22 they -- they respond to both, which is why
23 I -- I would say they may have been
24 involved. I don't know whether they were
25 or not, but those would be the two bureaus

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2 that I would say may have been involved.

3 Q Tell me about the Bureau of
4 Environmental Compliance, and I know it
5 may not have had the name back in those
6 four months in 2001. What would its role
7 and responsibilities have been?

8 A So currently the
9 responsibilities of the Bureau of
10 Environmental Compliance include air
11 pollution related issues, noise related
12 issues, and asbestos related issues.

13 Q Within the DEP, is it
14 appropriate or commonplace to refer to
15 these FOIA liaisons as "record searchers"?

16 A I'm sorry. I didn't catch the
17 end.

18 Q Sure. Is it common or typical
19 to refer to these FOIA liaisons as "record
20 searchers"?

21 A As what?

22 Q Record searchers.

23 A I've never heard of them
24 referred to that way, no.

25 Q Okay. Okay. Would it be

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2 appropriate for a FOIA liaison who
3 completed a Freedom of Information
4 response to then sit and determine the
5 FOIA appeal that was taken by the
6 requester?

7 A Could you repeat the question?

8 Q Sure. Just hypothetically, a
9 FOIA liaison at DEP completes a record
10 search.

11 A Okay.

12 Q Maybe they found no records,
13 maybe they found some, but not all. The
14 requester takes an appeal. Would it be
15 appropriate for that FOIA liaison to
16 determine the appeal the way that you do
17 as a FOIA Appeals Officer?

18 MS. DHINSA: I'm going to object on
19 form, but you can answer.

20 THE WITNESS: Would it be appropriate
21 for them to determine it? No.

22 BY MR. CARBOY:

23 Q Okay. Why wouldn't it be
24 appropriate for the underlying searcher
25 here, the liaison, to determine the appeal

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2 of the FOIA response?

3 A Because I determine the appeal.
4 I mean, when you say "determine the
5 appeal" -- maybe I'm not understanding it.

6 Q Sure. When you handle an
7 appeal, there are several steps you take
8 before you issue your decision. Is that
9 right?

10 A There are a couple of steps.

11 Q Okay. And when you reach your
12 decision and you send a letter indicating
13 that the appeal is, let's take, denied,
14 what do you refer to that letter as? A
15 decision, a determination?

16 A Determination.

17 Q Determination. Okay. So let's
18 go back a moment. A FOIA liaison worker
19 completes their search. The requester
20 takes an appeal. Would it be appropriate
21 or proper for that liaison to issue the
22 determination in the appeal?

23 A No.

24 Q And can you tell me why that
25 would be not appropriate?

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2 A Because I believe the law
3 requires a designated person to determine
4 the appeal, and I'm the designated person.

5 Q You're an attorney. You've been
6 one for many years. Why does the law
7 require a designated person to adjudicate
8 the appeal?

9 MS. DHINSA: I'm --

10 MR. ALFIERI: Wait for him to finish.
11 Okay?

12 MS. DHINSA: I'm going to object.
13 That calls for expert testimony. Because
14 he's a fact witness. I think that's more
15 opinion.

16 MR. CARBOY: That's not a basis to
17 block a question anymore. That ship
18 sailed a long time ago. You're going to
19 block him to answer that question?

20 He's a FOIA Appeals Officer. He's an
21 attorney. He just said it was not
22 appropriate. He just said it would be
23 unlawful. I'm exploring why he gave those
24 answers.

25 MS. DHINSA: He's an attorney.

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2 MR. CARBOY: He gave those answers.

3 MS. DHINSA: He's an attorney, but he
4 came here as --

5 MR. CARBOY: Do you want to go back
6 to Judge Clynes on this? I'll be back
7 tomorrow.

8 MR. ALFIERI: No, we want to call now
9 for a judge's ruling.

10 MR. CARBOY: Yeah, let's
11 call -- let's call him right now.

12 MR. ALFIERI: Yes, we do want to call
13 for a ruling. If you are going to ask him
14 to interpret the law. He told you it was
15 a law. You're asking him to interpret the
16 law. If you want to rephrase the
17 question --

18 MR. CARBOY: I'm not asking him to
19 interpret the law. He said it would not
20 be proper. He answered the question. I
21 am following up with a why question.

22 MR. ALFIERI: Can you read back the
23 last question that we objected to, please?
24 Thank you.

25 (The reporter repeated the

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2 record as requested.)

3 MR. ALFIERI: Objection. Why the
4 legislator would have designated a person
5 or the city counsel. You're asking him a
6 question about the intent of a law, and
7 that's the basis of our objection.

8 It's beyond the scope of this
9 deposition. It's beyond the scope of what
10 he is here to testify to. And we can get
11 a ruling for sure, or if you want to
12 reword it, it's your deposition.

13 BY MR. CARBOY:

14 Q Mr. Pecunies, when you decide
15 FOIA appeals, are you required to know and
16 understand the law as it concerns the
17 Freedom of Information Law?

18 A Yes.

19 MR. CARBOY: You're still objecting?

20 MR. ALFIERI: You're asking him why
21 the law required. That was the question
22 I'm objecting to. Why the law required
23 it.

24 BY MR. CARBOY:

25 Q What is your understanding as to

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2 why an independent and separate individual
3 sits in determination of these FOIA
4 appeals as opposed to the FOIA liaison?

5 A I have no idea why the
6 legislature required that.

7 Q From your standpoint as a FOIA
8 Appeals Officer for the last 18 years,
9 who's sitting independently in
10 determination of these appeals, as opposed
11 to having the record searcher or liaison
12 handle them, promote integrity and
13 transparency?

14 A Could you repeat the end of the
15 question?

16 MR. CARBOY: Sure. Could you read
17 the question back?

18 (The reporter repeated the
19 record as requested.)

20 THE WITNESS: I have no idea. I
21 don't -- I can't answer that question.

22 BY MR. CARBOY:

23 Q Well, let me ask you this way:
24 Is the result you reach, sitting
25 independently as a FOIA Appeals Officer, a

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2 better result than having the record
3 searcher or liaison reach a determination
4 on the appeal?

5 MR. ALFIERI: Just note my objection
6 to form. You can answer, but I'm not even
7 sure -- you can answer.

8 THE WITNESS: I have no idea.

9 BY MR. CARBOY:

10 Q Has there ever been an occasion
11 where one of the FOIA liaisons in one of
12 the bureaus of DEP is unable to complete a
13 FOIA response, and you're brought in and
14 asked to sign the FOIA response on behalf
15 of the FOIA liaison or record searcher, in
16 your capacity as the appeals officer?

17 A No.

18 Q Would that be appropriate?

19 A I have no idea.

20 MS. DHINSA: I'm going to object. I
21 think that's opinion. I also am not sure
22 what this line of questioning -- the
23 relevance for this is.

24 MR. CARBOY: Because that's what the
25 mayor's office does. You know why I'm

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2 asking it.

3 MS. DHINSA: Okay. But we're here
4 for Chevat vs. the DEP, so I'm not sure
5 why --

6 MR. CARBOY: Yeah. You're the
7 council on both of them. We're seeing the
8 same pattern in practice, and you just
9 moved to dismiss our mayor's case. Okay?
10 After telling me you wouldn't.

11 MS. DHINSA: Respectfully --

12 MR. ALFIERI: Move to strike that.
13 We -- that has nothing to do --

14 THE REPORTER: Everybody. We got to
15 keep it under control. I'm sorry. But
16 just for the sake of the transcript.

17 MR. ALFIERI: Yeah. I want to state
18 something on the record. I don't know
19 what you -- what did we have last? Did we
20 get anything I said?

21 THE REPORTER: I mean, I have what
22 you said.

23 MR. ALFIERI: Yeah. Okay. Let just
24 stick to the case we're here on and not
25 add any comments about Counsel. Let's

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2 continue. Thank you.

3 MR. CARBOY: But by the way, who's
4 representing this witness? Is it Ms.
5 Dhinsa or is it you, who's now parachuted
6 in today?

7 MS. DHINSA: Okay. Can we take --

8 MR. ALFIERI: Wait, wait. Let's
9 take -- let's take --

10 MR. CARBOY: No, no. I'm dealing
11 with one lawyer, not two, not three.
12 Okay? Excuse me.

13 MR. ALFIERI: Is your co-counsel
14 going to be asking any questions today?

15 MR. CARBOY: That's different.
16 They're not jumping in right now.

17 MR. ALFIERI: I'm not jumping in.
18 I'm not jumping in.

19 MR. CARBOY: You're absolutely
20 jumping in. She's handled this case for
21 three years now.

22 MR. ALFIERI: No she didn't --

23 THE REPORTER: Everyone. We do -- we
24 do -- should we take -- should we go off
25 the record for a minute?

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2 MS. DHINSA: Yes.

3 MR. ALFIERI: No, I don't want to go
4 off the record.

5 THE REPORTER: Okay. But we got to
6 go one at a time because I can't --

7 MR. CARBOY: Yeah.

8 MR. ALFIERI: Let's try not to insult
9 each other. If you are requesting one
10 attorney to speak, Ms. Dhinsa will speak.
11 Okay? Let's proceed.

12 MR. MCCAULEY: Just for the record to
13 reflect, we represent Mr. Chevat
14 individually, but we also individually
15 represent other clients, as well. So
16 while there are multiple counsel here, Mr.
17 Turkin and I actually represent Mr.
18 Alvarez's family and another family in
19 addition to Mr. Chevat.

20 And Mr. Carboy also represents
21 individual counsel. So it is not the same
22 as far as having a number of counsel. If
23 we decide to ask questions, it's not a
24 three against three type of discussion
25 here. It's multiple claims.

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2 MR. TURKEN: What we agreed not to
3 do, and what we'll never do, is each think
4 of the next question and go back and
5 forth, because that's just too unwieldy.
6 You know, if we ask any questions, it'll
7 be our own questions after Mr. Carboy is
8 done, and as Mr. McCauley said, when you
9 have actually different clients in a
10 matter, that is different. You guys are,
11 sort of, going back and forth between
12 counsel, or have been a little bit, you
13 know, as to the Department of
14 Environmental Protection.

15 And so it gets to be almost more of a
16 conversation going on. And so we'd
17 appreciate it if one attorney would, you
18 know, do the work until there's some
19 particular structural reason in the matter
20 for another attorney to do it.

21 MR. ALFIERI: I don't have an
22 objection to Ms. Dhinsa just making the
23 speaking objections. However, questions
24 for other individuals that are not a party
25 to this particular FOIA petition, I would

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2 state an objection on the record not to
3 say, "Well, we're going to object to
4 further questions." But the fact that
5 you're alluding to other actions that are
6 not the subject of this would not be
7 appropriate for you to ask questions on
8 behalf of those clients. Okay. We may
9 proceed.

10 MS. DHINSA: Maybe let's take a
11 five-minute break.

12 MR. ALFIERI: Do you want to take a
13 five-minute break? Let's take, yeah, a
14 five-minute break. Got a little -- take a
15 five-minute break. Okay.

16 MR. CARBOY: All right, we're off the
17 record.

18 MR. ALI: All right. We're off the
19 record at 10:57 a.m.

20 (Off the record.)

21 MR. ALI: All right. We're back on
22 the record at 11:07 a.m.

23 BY MR. CARBOY:

24 Q Mr. Pecunies, is it accurate to
25 state that since 2008 for the entire DEP,

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2 you are the sole FOIA Appeals Officer?

3 A Yes.

4 Q Is there any other DEP employee
5 at this time, or at any other point in
6 time during your tenure, who determined
7 FOIA appeals?

8 A Repeat? I'm sorry.

9 Q Sure. During your tenure, over
10 the last 18 years, as DEP's one and only
11 FOIA Appeals Officer, has any other DEP
12 employee ever determined a FOIA appeal?

13 A A FOIA appeal?

14 Q Yes.

15 A Not to my knowledge.

16 Q So 100 percent, for the last 18
17 years, appeals are determined by you,
18 Russell Pecunies. Correct?

19 A As far as I know, yes.

20 Q What other duties and
21 responsibilities, if any, do you have with
22 respect to the Freedom of Information Law
23 and requests to the DEP, apart from
24 serving as the one and only FOIA Appeals
25 Officer?

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2 MS. DHINSA: Objection. Can you just
3 rephrase? I'm not sure I understood the
4 question.

5 BY MR. CARBOY:

6 Q Do you understand the question?

7 MS. DHINSA: Objection.

8 THE WITNESS: None.

9 BY MR. CARBOY:

10 Q So you understand the question,
11 and the answer is "None"?

12 A Yes, yes. None.

13 Q Are there ever points in time
14 when one of these so-called FOIA liaisons
15 in the bureaus, or record searchers, comes
16 to you while they're processing a FOIA
17 response and poses questions to you?

18 A No.

19 Q At any point in time, from
20 September 11, 2001, through January 1,
21 2010, did you serve as a press liaison or
22 spokesperson for DEP?

23 A At a press liaison or
24 spokesperson?

25 Q Yes.

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2 A No.

3 Q In that same time period, Mr.
4 Pecunies, was it ever the occasion that
5 you found yourself speaking to the media
6 and members of the press, journalists,
7 concerning DEP?

8 A No.

9 Q Have you ever spoken to a
10 journalist or other media member about the
11 DEP's response to the collapse of The
12 World Trade Center?

13 A No.

14 Q Have you ever been requested to
15 provide documents to the media, to a
16 journalist, or other investigator outside
17 of government, concerning the DEP's
18 response to the collapse of The World
19 Trade Center?

20 A Could you -- could you repeat?

21 MR. CARBOY: Sure. Could you read
22 the question back, Mr. Biu?

23 THE REPORTER: Sure. Give me one
24 second. You got it.

25 (The reporter repeated the

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2 record as requested.)

3 THE WITNESS: No.

4 BY MR. CARBOY:

5 Q Do you know who Wayne Barrett
6 is?

7 A Yes.

8 Q Who is Wayne Barrett?

9 A Well, I -- I don't know. A -- a
10 writer for The Village Voice, I believe.

11 Q How do you know of Mr. Wayne
12 Barrett?

13 A I think he's -- he used to be
14 pretty well-known. Just --

15 Q Back when The Village Voice was
16 a print newspaper, did you ever read The
17 Village Voice?

18 MS. DHINSA: Objection.

19 MR. ALFIERI: Goes beyond the scope.

20 MS. DHINSA: Objection. I think this
21 is beyond the scope of this case.

22 MR. CARBOY: Actually it isn't.
23 We're going somewhere with this.

24 MS. DHINSA: You can answer over
25 objection.

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2 MR. CARBOY: Thank you.

3 THE WITNESS: Did I ever read The
4 Village Voice? Yes.

5 BY MR. CARBOY:

6 Q Okay. Did you read any of the
7 writings of Mr. Wayne Barrett concerning
8 Mayor Rudy Giuliani and the city's
9 response to the collapse of The World
10 Trade Center?

11 MS. DHINSA: I'm just going to note
12 the same objection. You can answer.

13 THE WITNESS: I -- I don't recall.

14 BY MR. CARBOY:

15 Q Did you ever speak to Wayne
16 Barrett?

17 MR. ALFIERI: Same objection.

18 MS. DHINSA: Same objection. You can
19 answer.

20 THE WITNESS: I don't recall speaking
21 to him.

22 BY MR. CARBOY:

23 Q Did you ever speak to someone
24 who identified themselves to you, Mr.
25 Pecunies, as one of his staff members,

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2 working to research the city's response to
3 the September 11th attacks and the
4 collapse of The World Trade Center?

5 MS. DHINSA: And again, same
6 objection. You can answer.

7 THE WITNESS: I don't recall speaking
8 to anyone like that.

9 BY MR. CARBOY:

10 Q Did you provide any documents
11 concerning the city's response to the
12 collapse of The World Trade Center to Mr.
13 Wayne Barrett or his staff?

14 MS. DHINSA: Again, same objection.
15 You can answer.

16 THE WITNESS: I don't recall.

17 BY MR. CARBOY:

18 Q Have you, at any point in your
19 career, for any reason, I'm opening it
20 up -- full compliment of your years at
21 DEP, of faithful service, provided
22 documents to a member of the media, a
23 journalist, upon request, concerning DEP's
24 activities?

25 MS. DHINSA: Object. Well, can you

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2 clarify? Any activities of the DEP?

3 MR. CARBOY: Yeah. Yes.

4 MS. DHINSA: I think that's out of
5 scope, as well, but you can answer

6 THE WITNESS: No, I don't recall.

7 BY MR. CARBOY:

8 Q As a city employee, would you be
9 required to obtain prior authorization
10 from a supervisor or a manager before
11 speaking to a member of the media about
12 DEP's activities?

13 MS. DHINSA: Same objection, out of
14 scope, but you can answer.

15 THE WITNESS: Yes.

16 BY MR. CARBOY:

17 Q Concerning the events of
18 September 11th and city's response, at any
19 point in time did you obtain the
20 authorization of a supervisor or manager
21 to speak to a member of the media or a
22 journalist concerning DEP's response to
23 the collapse of The World Trade Center?

24 MS. DHINSA: I note the same
25 objection. You can answer.

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2 THE WITNESS: Not that I recall.

3 BY MR. CARBOY:

4 Q Did you provide any documents to
5 Wayne Barrett or his staff concerning
6 DEP's response to the collapse of The
7 World Trade Center?

8 MS. DHINSA: Objection. Same
9 objection. Out of scope. I also think
10 this was already asked and answered.

11 MR. CARBOY: I apologize if it was.
12 Okay. But if you can just answer, I will
13 move on.

14 THE WITNESS: Not that I recall.

15 BY MR. CARBOY:

16 Q Okay. Are you familiar with the
17 book entitled "The Grand Illusion"
18 authored by Wayne Barrett and Dan Collins?

19 A What's the name of the book?

20 Q "The Grand Illusion."

21 MS. DHINSA: Objection. Out of
22 Scope, as well.

23 MR. ALFIERI: Beyond the Scope.

24 MS. DHINSA: Beyond the Scope.

25 THE WITNESS: No.

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2 MR. ALFIERI: Over objection.

3 BY MR. CARBOY:

4 Q Are you aware that you were
5 credited as providing substantial time and
6 documents to Wayne Barrett and Dan Collins
7 in this book?

8 MS. DHINSA: I'm sorry. Can you
9 repeat that question?

10 MR. CARBOY: Can you read the
11 question back?

12 MS. DHINSA: Sorry. Yeah.
13 (The reporter repeated the
14 record as requested.)

15 MS. DHINSA: Okay. Go ahead.

16 THE WITNESS: No.

17 BY MR. CARBOY:

18 Q Having discussed this, and I'm
19 going to show you the book and I'm going
20 to show the nice credit they gave you, Mr.
21 Pecunies, having discussed this now, does
22 this jar or refresh your memory as to the
23 cooperation you extended to Wayne Barrett,
24 if any?

25 A No.

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2 MS. DHINSA: Objection to form.

3 THE WITNESS: No.

4 BY MR. CARBOY:

5 Q As you sit here today, and we're
6 discussing the most significant event in
7 New York City history, do you have any
8 idea why Wayne Barrett would give you a
9 credit in this book?

10 MS. DHINSA: Objection. I think
11 that's opinion. You can answer. You can
12 answer.

13 THE WITNESS: No.

14 BY MR. CARBOY:

15 Q Are you surprised to learn what
16 I have just told you?

17 MS. DHINSA: I just note the same
18 objection.

19 THE WITNESS: Yes.

20 BY MR. CARBOY:

21 Q Why are you surprised?

22 MS. DHINSA: You can answer.

23 THE WITNESS: Because I don't
24 remember doing that.

25 BY MR. CARBOY:

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2 Q Does it sound like something you
3 might have done?

4 MS. DHINSA: Objection.

5 BY MR. CARBOY:

6 Q You just don't remember the
7 details or you just didn't do this at all?
8 This is a complete puzzle to you?

9 MR. ALFIERI: Asked and answered.

10 MS. DHINSA: Objection. He already
11 answered that question. Don't answer.

12 MR. CARBOY: You're directing him not
13 to answer?

14 MR. ALFIERI: No, we're not directing
15 him not to answer. You asked --

16 MR. CARBOY: She just said, "Don't
17 answer."

18 MR. ALFIERI: Let him answer.

19 MR. CARBOY: Wait, wait. Was that in
20 English?

21 MR. ALFIERI: Let him answer.

22 MS. DHINSA: You can answer. Go
23 ahead.

24 THE WITNESS: Could you repeat the
25 question?

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2 MR. CARBOY: Can you read the
3 question back, please?

4 THE REPORTER: One moment.

5 (The reporter repeated the
6 record as requested.)

7 BY MR. CARBOY:

8 Q Okay. Before we get to the book
9 and the credit, Mr. Pecunies, have you
10 ever, on the telephone, spoken to Wayne
11 Barrett, Dan Collins, or any member of
12 their staff in connection with the
13 preparation of this book? We're going to
14 mark it as Exhibit 1, "The Grand Illusion:
15 The Untold Story of Rudy Giuliani and
16 9/11"?

17 A I don't remember.

18 Q Are you telling me it didn't
19 happen or are you telling me you don't
20 remember?

21 A I don't remember it happening.

22 MR. CARBOY: Okay. I don't have
23 paperclips, but this is Exhibit 1 for
24 today. You can mark it as Pecunies 1, Mr.
25 Biu.

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2 (Pecunies Exhibit 1 was marked
3 for identification.)

4 THE REPORTER: Okay. Give me one
5 second, everyone.

6 BY MR. CARBOY:

7 Q Okay. I'm showing the witness
8 and his counsel photocopies of pages taken
9 from "The Grand Illusion," a book authored
10 by Wayne Barrett and Dan Collins. We have
11 the entirety of the book here today;
12 however, my questions to Mr. Pecunies are
13 going to be limited to the pages I am
14 showing him. If his counsel wants to
15 peruse the book and read it, they're
16 welcome to do so, but for efficiency,
17 we're just going to go with the excerpts.
18 All right?

19 MR. ALFIERI: Let me take a look
20 after he reads it.

21 BY MR. CARBOY:

22 Q Take your time and let me know
23 when you're done reviewing those pages.

24 MS. DHINSA: And if we could just
25 have a moment to --

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2 MR. CARBOY: Yeah. If you want to go
3 off the record while he reviews, we can do
4 that.

5 MR. ALFIERI: That's okay.

6 MR. CARBOY: Okay.

7 MS. DHINSA: We can stay on the
8 record. Yeah.

9 MR. CARBOY: Okay. All right.

10 THE WITNESS: Is there any particular
11 part of this that I'm looking at, or am I
12 reading the whole thing, or just what's in
13 boxes, or --

14 BY MR. CARBOY:

15 Q Yeah, I'm going to ask you some
16 questions. I just want you to have
17 familiarized yourself with it, albeit
18 briefly, before I do so. And if I ask you
19 a question and you need to keep looking at
20 it, let me know. That's okay. All right?
21 All right. So I'm showing you a copy of
22 what we've marked as Exhibit 1. I want
23 you to turn to --

24 MR. ALFIERI: Hang on a second. Just
25 by counsel, we just wanted to --

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2 MR. CARBOY: Oh, you want to look at
3 it. Yeah. Yeah, no problem.

4 THE REPORTER: I'm sorry. Be advised
5 I can hear it. So if you need to speak
6 privately, don't whisper. Write notes.
7 Because I can hear everything.

8 MR. ALFIERI: Okay.

9 MS. DHINSA: Yeah.

10 MR. CARBOY: Are we ready to proceed?
11 Okay. Back on.

12 BY MR. CARBOY:

13 Q Mr. Pecunies, I asked you
14 earlier if you had ever heard of the book
15 "The Grand Illusion." I believe your
16 answer was "no." Having looked at these
17 pages, is your memory refreshed as to
18 whether or not you've read the book, "The
19 Grand Illusion"?

20 A No, I never read it.

21 Q Now, I want you to turn, it's
22 the third from the last page.

23 A Is there a page number on the
24 top?

25 Q There isn't, but it's entitled

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2 "Acknowledgments."

3 A "Acknowledgments."

4 Q Okay?

5 A Got it.

6 Q All right. Please turn the page
7 to page 360, the last paragraph. I'm
8 going to read a sentence to you. "While
9 many sources cooperated with us, some
10 require special thanks for supplying
11 documents, for giving substantial amounts
12 of their time," colon, and there's a list
13 of the people who provided documents and
14 gave substantial amounts of their time.
15 Please turn to page 361.

16 A Two sixty --

17 Q 361.

18 A 361. Okay.

19 Q All right. It's a continuation
20 from the previous page. On line 7, one of
21 the people thanked for supplying documents
22 and/or giving substantial amounts of their
23 time is "Russ Pecunies." Do you see your
24 name there?

25 A I do.

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2 Q Okay. Is that a different Russ
3 Pecunies, or is that a reference to you?

4 MR. ALFIERI: Object to form.

5 MS. DHINSA: Objection. I'm
6 not -- do you know how -- I'm not sure how
7 he would know. He didn't write the book.

8 BY MR. CARBOY:

9 Q Do you refer to yourself as
10 "Russ"?

11 A Usually?

12 Q Do you know of anyone else named
13 Russ Pecunies who works at DEP?

14 MR. ALFIERI: Objection. He can
15 answer.

16 MS. DHINSA: Objection. You can
17 answer.

18 THE WITNESS: Who worked at DEP? No.

19 BY MR. CARBOY:

20 Q How about within city
21 government, any branch, any agency?

22 A Not that I'm aware of.

23 Q Okay. Having looked at this,
24 does this appear to be a credit given to
25 you for supplying documents or giving

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2 substantial amounts of your time to Wayne
3 Barrett and Dan Collins?

4 MS. DHINSA: Objection. I think the
5 document speaks for itself.

6 MR. CARBOY: Well, he's free to
7 disagree.

8 THE WITNESS: I'm sorry?

9 MR. CARBOY: You were free to
10 disagree. Do you agree with me that you
11 were being given a credit in this book for
12 supplying documents and giving substantial
13 amounts of your time?

14 MS. DHINSA: Objection.

15 MR. ALFIERI: Objection to form.

16 MS. DHINSA: Objection to form.

17 MR. ALFIERI: He can answer.

18 MS. DHINSA: Yeah. You can answer.

19 THE WITNESS: If that's what it says.

20 BY MR. CARBOY:

21 Q Now I want you to flip back to
22 page 259.

23 A Okay.

24 Q I'm going to read from the first
25 full sentence at the top. "Even as every

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2 public pronouncement from the mayor and
3 his men was filled with reassurance, an
4 internal memo to Deputy Mayor Robert
5 Harding reported that the Law Department
6 was estimating that there were 35,000
7 potential 9/11 plaintiffs against the
8 city. Two of the prime potential claims
9 cited in the memo, just weeks into the
10 cleanup, were that rescue workers had been
11 provided with faulty equipment or no
12 equipment, i.e. respirators, and that
13 Ground Zero was 'an unsafe workplace under
14 various federal safety and labor laws.'"
15 Are you familiar with a document issued to
16 Deputy Mayor Robert Harding along those
17 lines, Mr. Pecunies?

18 A No.

19 Q Have you ever heard of the
20 so-called "Harding Memo"?

21 A No.

22 Q Having looked at this some more,
23 is there any other information you can
24 give me, perhaps your memory is refreshed,
25 as to why you received a credit in this

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2 book, Exhibit 1?

3 MS. DHINSA: Objection.

4 MR. ALFIERI: Just let him answer.

5 MS. DHINSA: You can answer.

6 THE WITNESS: No.

7 BY MR. CARBOY:

8 Q We're here today because
9 Petitioner, our client, took an appeal of
10 a denial of the DEP to his FOIA request.
11 Is that your understanding?

12 A Yes.

13 Q And did you issue a
14 determination of that appeal, Mr.
15 Pecunies?

16 A Did I -- did I what?

17 Q Issue a determination of that
18 appeal?

19 A As to that appeal, yes.

20 Q Okay. Can you tell me, as you
21 sit here today, did you create any file or
22 record of the work and activities you
23 conducted to determine that appeal?

24 A Yes.

25 Q What did your file consist of?

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2 A A copy of the appeal.

3 Q Did you take any notes, either
4 by hand, on a computer, on a tablet,
5 something else, before issuing your
6 written determination of the appeal?

7 A No.

8 Q Typically, as the FOIA Appeals
9 Officer, the one and only for DEP, how do
10 you learn that an appeal has been filed
11 that requires your determination?

12 A In 99 percent of the cases, it
13 comes by email. There may still
14 occasionally be somebody who sends one by
15 "snail mail," but it's generally always,
16 these days, an email to an inbox that I
17 have access to.

18 Q And I'm not speaking about this
19 case, because we're going to get into that
20 in a bit. I'm talking generally.
21 Generally what are the steps you take when
22 an appeal comes in, let's say to your
23 email, for a FOIA denial from the DEP?
24 What do you do, step by step, to reach
25 your appeals determination?

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2 A I forward the appeals email to
3 the our FOIA Unit.

4 Q Is the FOIA Unit separate and
5 apart from the FOIA liaisons that are
6 assigned to individual bureaus?

7 A Yes.

8 Q Back in 2023 and 2024, how many
9 DEP staffers worked at the FOIA Unit?

10 A I'm not sure.

11 Q Was the FOIA unit located at
12 LeFrak City back in 2023 and 2024?

13 A Yes.

14 Q Where was the FOIA Unit located
15 in the building? I'll take a floor.

16 A By floor?

17 Q By floor, yep.

18 A Nineteen.

19 Q Okay. Was your office located
20 on the 19th floor back in 2023 and 2024?

21 A Yes.

22 Q Okay. How far away or how close
23 to the FOIA Unit was your office?

24 A In terms of --

25 Q Yeah, if you wanted to walk.

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2 A Feet? If I wanted to walk?

3 Less than a minute.

4 Q Less than a minute. So down the
5 hall?

6 A Yeah.

7 Q Now, I'm just curious. My
8 understanding, and please correct me if
9 I'm wrong, these FOIA liaisons assigned to
10 the different bureaus actually do the
11 record searching when a FOIA request comes
12 in. Correct?

13 A Yes.

14 Q What did the people in the FOIA
15 Unit do if there are these liaisons in the
16 bureaus handling the requests? And I'm
17 not being a smart aleck. I'm just
18 curious.

19 A When an -- when a -- when a
20 request comes in, somebody has to
21 determine which bureau or bureaus it gets
22 sent to. So they enter it into the FOIA
23 system, they assign a FOIA number, and
24 they then send it to the appropriate
25 bureau.

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2 Q So in other words, the FOIA Unit
3 staff don't actually participate in the
4 records searching for records responsive
5 to the FOIA request?

6 A Not to my knowledge.

7 Q So they're, sort of, record
8 keepers for where things stand in the FOIA
9 process more than anything else?

10 A I'm not sure. I'm not sure
11 whether they are the -- yeah, I'm
12 not -- I'm not really sure about how that
13 aspect of it works.

14 Q Do the employees in the FOIA
15 Unit report to you as the Records Access
16 Appeal Officer?

17 A No.

18 Q Same question for the FOIA
19 liaisons, the record searchers. Did they
20 report to you?

21 A No.

22 Q To whom do the employees of the
23 FOIA Unit report?

24 A I am not sure. I'm not sure how
25 it works on the org chart.

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2 Q At this time, who is your direct
3 report?

4 A Who is who?

5 Q Your direct report. Who do you
6 report to?

7 A My direct report is Marcella
8 Eckels.

9 Q What is her title?

10 A Deputy General Counsel.

11 Q Do you have the FOIA appeal and
12 determination you reached in this case in
13 mind, Mr. Pecunies?

14 A Do I have it --

15 Q Do you have it in mind? Are
16 you --

17 MS. DHINSA: Objection to form, but
18 you can answer.

19 THE WITNESS: I mean, I -- I know it
20 was a one-page letter.

21 BY MR. CARBOY:

22 Q Okay. All right. And before
23 coming here today, did you review that
24 one-page determination you issued?

25 A Not specifically before I came

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2 here today, but I have looked at it, yes.

3 Q Okay. And you've looked at it
4 in the year -- we're in 2026. You've
5 looked at it this year?

6 A Yeah.

7 Q Okay. Can you tell me how much
8 time you spent, once you learned you were
9 being asked to make a FOIA appeal
10 determination on our request, from the
11 moment you learned of it until the time
12 you signed that letter, the one-page
13 determination?

14 A How much time I --

15 Q Spent determining our appeal.

16 A How much time I spent
17 determining the appeal? Including writing
18 the letter, less than an hour.

19 Q Okay. And when you sat down and
20 put pen to paper, or started typing the
21 letter on your keyboard, so to speak, did
22 you have in mind what it was you were
23 going to say and conclude? Or are you one
24 of those writers who, kind of, sits there
25 and brainstorms, and thinks about what

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2 you're going to draft? Or conversely, did
3 you have a goal, like, "Okay. I'm going
4 to deny this appeal. I'm just going to
5 write it"?

6 MS. DHINSA: Objection. You can
7 answer.

8 THE WITNESS: No, I know what I was
9 going to write.

10 BY MR. CARBOY:

11 Q Okay. All right. So you said
12 less than an hour for the whole process.
13 Let's take out the writing time. How much
14 time did you spend devising, in your own
15 mind, what your conclusion would be with
16 respect to this appeal?

17 A I -- if -- less than half an
18 hour.

19 Q And was that less than half an
20 hour expended on one day, on multiple
21 days, weeks, months, something else?

22 A No, it would have been pretty
23 much on one day.

24 Q What documents, if any, did you
25 review before reaching your conclusion

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2 that the appeal at issue in this lawsuit
3 would be denied?

4 A Well, I had -- I had reviewed
5 the appeal, obviously. There were no
6 other documents, I don't believe.

7 Q Okay. So essentially the
8 requesters filed an appeal. They provided
9 some information. It is that information
10 provided by the requesters, appellants,
11 that you reviewed to reach your conclusion
12 within 30 minutes. Is that right?

13 MS. DHINSA: Objection. You can
14 answer.

15 THE WITNESS: Yes.

16 BY MR. CARBOY:

17 Q Did you interview any of the
18 FOIA liaisons who were involved in the
19 underlying search for responsive documents
20 as part of the work you did in this less
21 than 30-minute segment of time?

22 A No.

23 Q Is it ever your practice, when
24 determining an appeal, to interview the
25 record searchers or FOIA liaisons before

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2 reaching your conclusions?

3 A Interview? No.

4 Q Did you ascertain -- withdrawn.

5 Okay. So here you didn't. Generally,
6 have you ever done that, reached out to
7 the searchers or FOIA liaisons to find out
8 what it was they did and conducting the
9 underlying search before you determined
10 the appeal?

11 A Yes.

12 Q Okay. And what sort of
13 circumstances dictate that you seek out
14 those searchers, those FOIA liaisons, and
15 interview them before drafting your appeal
16 determination?

17 A Well, again, I don't interview
18 them.

19 Q Who does?

20 A Well, when you say "interview,"
21 that -- that makes me think of me sitting
22 across from them asking them questions. I
23 don't -- I don't do that.

24 Q Well, what do you do? Do you
25 send them an email?

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2 A Yes.

3 Q Asking them written questions?

4 A It's -- it's done by email

5 or -- or possibly on the phone.

6 Q Okay. So let's break it down,

7 and let's talk about Chevat against DEP.

8 You determined the appeal in our case.

9 Did you conduct any face-to-face

10 interviews with the record searchers or

11 FOIA liaisons before reaching your

12 conclusion?

13 A On this

14 MS. DHINSA: Objection. You can

15 answer.

16 THE WITNESS: On this appeal?

17 MR. CARBOY: Yes, sir.

18 THE WITNESS: No.

19 BY MR. CARBOY:

20 Q Okay. Did you call any of these

21 FOIA liaisons or record searchers by

22 phone, and speak to them by phone, finding

23 out what they did or did not do before

24 reaching the determination in this appeal?

25 A No.

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2 Q Did you email any of the record
3 searchers or FOIA liaisons involved in the
4 underlying response to our request before
5 issuing your determination in this appeal?

6 A No.

7 Q So we're going to step back.
8 We're going to look more broadly in your
9 role for 18 years as the Appeals Officer.
10 What type of circumstances dictate that
11 you, as the Appeals Officer, conduct a
12 face-to-face interview of a record
13 searcher before reaching your conclusions
14 on an appeal?

15 MS. DHINSA: Objection. You can
16 answer.

17 THE WITNESS: I -- I can't imagine
18 a -- a circumstance where I would need to
19 see them face-to-face.

20 BY MR. CARBOY:

21 Q Okay. So you've never conducted
22 an interview of a record searcher
23 face-to-face in determining a FOIA appeal
24 in the 18 years you have served as the
25 FOIA appeals officer of DEP. Is that

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2 right?

3 MS. DHINSA: Objection. You can
4 answer.

5 THE WITNESS: Not that I recall.

6 BY MR. CARBOY:

7 Q Okay. Let's take phone
8 interviews. You pick up the phone, you
9 call them. What type of circumstances
10 dictate that you do that before reaching
11 your conclusion on the appeal?

12 MS. DHINSA: Objection. You can
13 answer.

14 THE WITNESS: What kind of
15 circumstances? Why would I need to speak
16 to somebody on the phone as opposed to
17 email? I -- I can't really think of a
18 circumstance. It would be -- it would be
19 very infrequent. It would almost always
20 be done by email.

21 BY MR. CARBOY:

22 Q Okay. And in this case, we've
23 established, you didn't do any phone
24 interviews, any email questions, or
25 face-to-face interviews. Correct?

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2 A Yeah.

3 Q Can you tell me what would
4 trigger your sending an email to a
5 searcher or a liaison when you were
6 determining a FOIA appeal?

7 A I'm sorry. I missed the
8 beginning of the question.

9 Q Sure. What circumstances would
10 dictate that you email questions to the
11 liaison or record searcher while you're
12 going about determining an appeal?

13 A Well, a circumstance would be if
14 we had denied the appeal because we had
15 said there were no responsive records. I
16 would email them and generally would say,
17 "They're saying there must be responsive
18 records, so can you do another search?"

19 Q Okay. In this case, we received
20 the response from the DEP that there were
21 no responsive records and a diligent
22 search was undertaken. We filed an
23 appeal. And we're going to look at the
24 appeal in a bit. When you got the appeal
25 from us, did you redirect or direct that a

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2 search began anew for responsive records?

3 MS. DHINSA: Um.

4 MR. ALFIERI: Just let him answer,
5 let him answer.

6 MS. DHINSA: I just want to clarify,
7 because I think there may be --

8 MR. ALFIERI: No, no. Let him answer
9 that question.

10 MS. DHINSA: Okay. Go ahead.

11 THE WITNESS: No.

12 BY MR. CARBOY:

13 Q Did you consider asking these
14 searchers or liaisons to conduct such a
15 search anew?

16 A No.

17 Q Did it strike you as strange,
18 peculiar, or odd that the DEP maintained
19 no responsive records concerning its
20 activities in the aftermath of the
21 collapse of The World Trade Center that
22 were responsive to Petitioner's Freedom of
23 Information Law request?

24 A Did it strike me as --

25 Q Odd or unusual?

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2 MS. DHINSA: Object, but you can
3 answer.

4 THE WITNESS: Not really.

5 BY MR. CARBOY:

6 Q What makes you say "not really"?

7 A Anytime anybody is asking for
8 records from 25 years ago, it's -- it
9 wouldn't strike me as strange.

10 Q Are there procedures DEP needs
11 to undertake and comply with before
12 destroying or transferring records in its
13 custody?

14 A I believe so, yes.

15 Q Okay. Where are those
16 memorialized? I'm imagining they're in
17 writing. Is that right?

18 A If where?

19 Q They're in writing. Right?
20 This isn't just, like, some verbal policy.

21 A I -- I don't know.

22 Q Are you familiar with DEP's
23 record retention, destruction, and
24 transfer policies?

25 A I wouldn't say I'm familiar with

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2 them. I know that such a thing exists,
3 but I wouldn't say I'm familiar with them.

4 Q Is it your understanding that
5 approval from both the law department,
6 other city agencies, and senior level
7 personnel at DEP is required before DEP
8 records are destroyed or transferred?

9 MS. DHINSA: Objection. You can
10 answer.

11 THE WITNESS: I don't know.

12 BY MR. CARBOY:

13 Q Previous to the appeal that we
14 took that's at issue in this case, Mr.
15 Pecunies, have you ever decided a FOIA
16 appeal concerning a request for records
17 concerning DEP's response to September
18 11th and the collapse of The World Trade
19 Center?

20 A Has there ever been another
21 appeal regarding 9/11 records?

22 Q That you determined? Yes, sir.

23 A I don't think so.

24 Q In the less than 30 minutes that
25 you spent reaching the conclusion in our

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2 appeal, did you ascertain what locations
3 were physically searched by the searchers
4 or FOIA liaisons before they came to their
5 conclusion that they were unable to find
6 records?

7 A No.

8 Q Are you familiar, as of 2024,
9 where DEP stored or preserved its records?

10 A Just all records in general?

11 Q Historical records, records that
12 are not being used actively by personnel.
13 Are there archives?

14 A I know --

15 Q Record storage rooms, libraries,
16 whatever you want to call it?

17 A I -- I believe there's an
18 archives.

19 Q Where's the archives located?

20 A I am not sure.

21 Q Have you ever been to the DEP
22 archives?

23 A Not any place where they keep
24 old records, no.

25 Q To the best of your

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2 understanding, as the FOIA Appeals

3 Officer, is it fact that the DEP maintains

4 an archive of its older records?

5 MS. DHINSA: Objection. You can

6 answer.

7 THE WITNESS: I -- I believe there is

8 an archives, yes.

9 BY MR. CARBOY:

10 Q Is that archive contained in

11 LeFrak city headquarters, or is it an

12 offsite location?

13 A No, it would not be at LeFrak.

14 Q Can you give me any greater

15 specificity in terms of geography as to

16 the location of the DEP archives?

17 A No.

18 Q Are you familiar with a Court of

19 Appeals decision known as Rattley against

20 the City of New York, specifically the New

21 York City Police Department?

22 A Who against the city?

23 Q Rattley, R-A-T-T-L-E-Y.

24 A No.

25 Q When you reached your conclusion

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2 after less than 30 minutes that this
3 appeal would be denied, in our case, were
4 you satisfied, Mr. Pecunies, that a
5 diligence search had been undertaken --

6 MS. DHINSA: Objection.

7 MR. CARBOY: -- just to look for
8 responsive records?

9 MS. DHINSA: Objection to form. You
10 can answer.

11 THE WITNESS: Yes.

12 BY MR. CARBOY:

13 Q What was the basis of your
14 conclusion that a diligent search had been
15 undertaken for the records that Petitioner
16 requested?

17 A Advice of Counsel.

18 Q Okay. I want to be careful
19 here, because attorney-client privilege is
20 a real privilege, and I don't want to step
21 on it at all. Did you interview any of
22 the people who did the search to find out
23 whether, in your estimation or conclusion,
24 that their search was diligent, thorough,
25 and adequate?

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2 MR. ALFIERI: Asked and answered.

3 MS. DHINSA: Objection. Asked and
4 answered. You can answer.

5 THE WITNESS: No.

6 BY MR. CARBOY:

7 Q So basically what you're telling
8 me is a lawyer told you something, you
9 adopted what the lawyer told you --

10 MR. ALFIERI: No.

11 MR. CARBOY: -- and that's what ended
12 up in your appeal?

13 MR. ALFIERI: Objection --

14 MS. DHINSA: Objection,
15 attorney-client privilege.

16 THE REPORTER: I'm sorry. I'm
17 getting both of your objections at the
18 same time, so just can we avoid speaking
19 of each other?

20 MS. DHINSA: Sure. Objection -- over
21 the objection.

22 MR. ALFIERI: Don't answer.

23 MS. DHINSA: Attorney-client -- don't
24 answer.

25 MR. ALFIERI: Attorney-client

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2 privilege.

3 MS. DHINSA: Attorney-client

4 privilege.

5 BY MR. CARBOY:

6 Q Other than what you've just told
7 me, Mr. Pecunies, what else, if anything,
8 informed your conclusion that a diligent
9 search was undertaken, again, for this
10 appeal, this FOIA request that is at issue
11 in this article 78 proceeding?

12 A Nothing -- nothing else.

13 Q Okay. Mr. Pecunies, can you
14 give me the name of the attorney you spoke
15 with respect to this appeal?

16 A Spoke with? I didn't speak with
17 anybody.

18 MS. DHINSA: He may have --

19 MR. ALFIERI: You can't --

20 MS. DHINSA: Sorry. Sorry.

21 BY MR. CARBOY:

22 Q Mr. Pecunies, is it accurate to
23 state, and I don't want to hear about
24 anything you learned from this attorney,
25 that the substance of your determination

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2 was based upon what the attorney told you,
3 as opposed to information you obtained
4 directly yourself?

5 A Yes.

6 Q What is the name of the attorney
7 that you were referring to?

8 A The attorney --

9 Q What is the name of the
10 attorney --

11 A Yes.

12 Q -- that you just referenced?

13 A Musa Ali.

14 Q How often is it the case that
15 you, an attorney for decades and the only
16 FOIA Appeals Officer at DEP --

17 MR. ALFIERI: Objection.

18 MR. CARBOY: -- has your substantive
19 conclusions of a FOIA appeal directed to
20 you by another attorney?

21 MS. DHINSA: Objection.

22 Attorney-client privilege.

23 BY MR. CARBOY:

24 Q Is this typical for you when you
25 determine your appeals?

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2 MR. ALFIERI: Objection.

3 MS. DHINSA: Objection. You can
4 answer.

5 THE WITNESS: I can answer?

6 MS. DHINSA: Can you repeat their
7 last question, please?

8 THE REPORTER: Stand by.

9 (The reporter repeated the
10 record as requested.)

11 THE WITNESS: Where we left off.

12 MS. DHINSA: Yeah, I just want to
13 make sure you understand the question, as
14 well.

15 THE WITNESS: So the question is, is
16 it typical?

17 MR. CARBOY: Yes.

18 MR. ALFIERI: -- answer --

19 THE WITNESS: That's -- no, it's not
20 typical.

21 BY MR. CARBOY:

22 Q Is this the only FOIA appeal in
23 your tenure as FOIA Appeals Officer where
24 you've had your conclusion or the
25 conclusion essentially dictated to you by

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2 another person?

3 MR. ALFIERI: Objection.

4 MS. DHINSA: Objection.

5 MR. ALFIERI: That's not his
6 testimony.

7 MS. DHINSA: That's a
8 mischaracterization of --

9 MR. CARBOY: It's a form objection.
10 You can answer.

11 MS. DHINSA: You can answer.

12 THE WITNESS: Has -- has there been
13 another case where this has happened?

14 MR. CARBOY: Yes, sir.

15 THE WITNESS: Not to my recollection.

16 BY MR. CARBOY:

17 Q So this is the one and only case
18 in 18 years, during your tenure as the
19 FOIA Appeals Officer for DEP?

20 A As far as I can remember, yes.

21 Q Is there anyone at DEP who knows
22 more about FOIA appeals than you?

23 MS. DHINSA: Objection. You can
24 answer.

25 THE WITNESS: I don't know.

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2 BY MR. CARBOY:

3 Q Can you think of anyone?

4 A No.

5 Q Can you give me their name if
6 you can think of them?

7 A No.

8 Q Do you consider yourself an
9 expert in adjudication of FOIA appeals
10 determinations at DEP?

11 MR. ALFIERI: Objection.

12 MS. DHINSA: Objection.

13 MR. ALFIERI: Form --

14 MS. DHINSA: You can answer.

15 THE WITNESS: I -- I don't know if I
16 would consider myself an expert, no.

17 BY MR. CARBOY:

18 Q But there's no one else who's
19 been doing it for almost 20 years. Is
20 that correct?

21 MS. DHINSA: Objection. You can
22 answer.

23 THE WITNESS: I -- I don't know if I
24 would categorize myself as an expert.

25 BY MR. CARBOY:

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2 Q Would you characterize Mr. Ali
3 as an expert in --

4 MR. ALFIERI: Objection.

5 MR. CARBOY: -- determining FOIA
6 appeals?

7 MR. ALFIERI: Same objection.

8 MS. DHINSA: Objection.

9 THE WITNESS: I don't know.

10 MR. CARBOY: Okay. We're going to
11 mark this as Exhibit 2. Yeah. We're
12 going to mark this as Pecunies 2.

13 BY MR. CARBOY:

14 Q Okay. Mr. Pecunies, I'm showing
15 you Exhibit 2. It's a letter authored by
16 you -- or signed by you, I should say,
17 dated February 29, 2024. Have you seen
18 this document before?

19 (Pecunies Exhibit 2 was marked
20 for identification.)

21 A Yes.

22 Q And what document is this?

23 A This is the letter by which I
24 made a determination as to the FOIA appeal
25 that I believe we're talking about.

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2 Q let me change the question for
3 just a quick second. Two, sort of,
4 follow-ups. Have you ever brought a
5 whistleblower complaint against the City
6 of New York or DEP?

7 MS. DHINSA: Objection.

8 THE WITNESS: No.

9 BY MR. CARBOY:

10 Q Have you considered doing so?

11 MS. DHINSA: Objection.

12 THE WITNESS: No.

13 BY MR. CARBOY:

14 Q To your knowledge and
15 understanding, has Mr. Musa Ali, an
16 attorney at DEP, ever served as a FOIA
17 liaison?

18 A No.

19 Q To your knowledge, has Mr. Musa,
20 attorney at DEP, ever served as a FOIA
21 appeals officer?

22 A No.

23 Q Turning to the bottom of this
24 letter, there's several people who are
25 copied. Do you see that?

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2 A Yep.

3 Q We have D. Dellafiora.

4 A Yep.

5 Q We have M. Ali. And then we
6 have an acronym, COOG.

7 A Mm-hm.

8 Q Working from the bottom up, what
9 is COOG?

10 A The Committee on Open
11 Government.

12 Q The organization based in
13 Albany?

14 A Correct.

15 Q Okay. And why is the Committee
16 on Open Government copied on your FOIA
17 determination?

18 A I believe FOIA requires them to
19 be copied.

20 Q Did you have any written or
21 verbal communication with the Committee on
22 Open Government concerning this FOIA
23 determination?

24 A No.

25 Q Who is D. Dellafiora?

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2 A Diana Dellafiora.

3 Q Okay. And what was her role or
4 connection, if any, to this FOIA appeal or
5 the underlying search?

6 A She is the head of DEP's FOIA
7 Unit.

8 Q So she works less than a minute
9 walk away from your desk?

10 A Correct.

11 Q And why is she copied?

12 A Because she's the head of the
13 FOIA Unit.

14 Q Did you interview Ms.
15 Dellafiora, speak to her on phone, or
16 email her about this appeal before you
17 signed your name on this letter?

18 A Well, I -- I had earlier said
19 that when the appeal came in, I sent it to
20 the FOIA Unit, so it would have gone to
21 Diana.

22 Q So the appeal comes in and you
23 send it to the FOIA Unit. It would have
24 gone to Diana. What happens then? Is it
25 calendared for a response or a

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2 determination?

3 A What happened generally or what
4 happened --

5 Q Yeah, what happens generally.
6 Yeah.

7 A What happens generally --

8 Q Yes.

9 A -- is -- is that when I forward
10 it to the FOIA Unit, I ask them to let me
11 know who worked on this response.

12 Q Okay. And in this case, did Ms.
13 Dellafiora let you know who worked on the
14 response?

15 A No.

16 Q Did you ask Ms. Dellafiora
17 specifically in an email, "Diana, who
18 worked on this response?"

19 A When I forward a FOIA appeal to
20 the FOIA Unit, I always do so, and
21 ask -- when I do so, I always ask them who
22 worked on it.

23 Q And did you do that here? Did
24 you ask Ms. Dellafiora by email, when
25 forwarding the appeal, the identity of the

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2 liaison or searcher -- searchers, plural,
3 who worked on the response?

4 A I'm -- I believe I did ask her
5 who worked on it, yes.

6 Q And did she provide you with an
7 answer?

8 A No.

9 Q As you sit here today, had you
10 ever learned, subsequent to your writing
11 this -- or signing this letter of February
12 29, 2024, the identity of the searcher or
13 searchers involved in the underlying
14 response?

15 A No.

16 Q Is it typical when you ask Ms.
17 Dellafiora for the names of the searchers
18 or liaison that she does not provide them
19 to you?

20 A Is it typical? No.

21 Q But in this case, she did not
22 provide those names.

23 MS. DHINSA: Objection to form.

24 MR. CARBOY: Is that correct?

25 THE WITNESS: That's correct.

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2 BY MR. CARBOY:

3 Q Do you know why she didn't
4 provide the names to you?

5 MS. DHINSA: Objection. You can
6 answer.

7 THE WITNESS: No.

8 BY MR. CARBOY:

9 Q Did you have a follow-up
10 conversation or email with her about this
11 unanswered question you had sent to her?

12 MR. ALFIERI: Asked and answered.

13 THE WITNESS: I -- I'm not sure I
14 understand the question.

15 BY MR. CARBOY:

16 Q Sure. At any point in time
17 before you signed this letter of February
18 29, 2024, did you follow up in writing,
19 verbally, or something else, with Ms.
20 Dellafiora, to try and get an answer to
21 your question, "Who were the searchers"?

22 A No.

23 Q Why not?

24 A When I forwarded the appeal to
25 the FOIA Unit, Diana responded that I

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2 should not do anything with regard to this
3 appeal until I heard back from her.

4 Q Were these in emails?

5 A I'm sorry?

6 Q Were these emails or were these
7 phone calls?

8 A No, this
9 was -- these -- these -- this was -- this
10 would have been an email.

11 MR. CARBOY: Okay. Statement on the
12 record. More than 20 days ago, pursuant
13 to Judge Clynes' order, we requested the
14 contents of this man's file concerning the
15 FOIA appeal. Broadly read or narrowly
16 read, that would encompass appeals and
17 communications concerning his
18 determination, and as such, would have
19 included emails to and from Ms.
20 Dellafiora.

21 We don't have them. We were told no
22 file existed. And we were told we could
23 ask Mr. Pecunies s about this file because
24 it doesn't exist. Now, I am learning, yet
25 again, that a file does exist. This is

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2 really serious and this is going to end
3 now. All right?

4 Why, after three years of unpaid
5 labor and volunteer efforts, are we being
6 obstructed by this? We're going to find
7 out. We're going back to Clynes.

8 This is not the end of this. This is
9 outrageous. What do you think? We're a
10 bunch of morons? This is ridiculous.
11 This is a court order.

12 MR. ALFIERI: You're screaming. I
13 just want to state on the record --

14 MR. CARBOY: Yeah, I am creaming. I
15 am angry.

16 MR. ALFIERI: Counsel, when you're
17 done I'll finish. Counselor is screaming,
18 pointing at attorneys, and banging on the
19 table. This is well beyond professional
20 behavior. You did not --

21 MR. CARBOY: This isn't professional
22 behavior. You're violating a court order
23 and you lied to us. You said there were
24 no records.

25 MR. ALFIERI: Okay. Okay. We're

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2 going to --

3 MR. CARBOY: I am sorry. What are we
4 supposed to do?

5 MR. ALFIERI: We're going to -- we're
6 going to request a JHO or the Judge sit on
7 these proceedings. This is
8 attorney-client privilege is the
9 objection. You didn't even give us an
10 time to -- to respond on the record.

11 MR. CARBOY: You told me there were
12 no records.

13 MR. ALFIERI: We -- oh, my gosh.
14 Nobody said that.

15 MR. CARBOY: You absolutely did. You
16 said, "You can ask him, and he's going to
17 confirm there's nothing to give."

18 MR. ALFIERI: That is
19 not -- attorney-client privilege.

20 MR. CARBOY: How is attorney-client
21 privilege -- Dellafiora?

22 MR. ALFIERI: That is attorney-client
23 privilege. There were other attorneys on
24 that email, which you did not ask, he did
25 not answer, and you're accusing people of

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2 things that -- that are unfair.

3 MR. CARBOY: Then tell me they're all
4 privileged and they do exist.

5 MR. ALFIERI: We are --

6 MR. CARBOY: Don't tell me they don't
7 exist, which is what your position is.

8 MR. ALFIERI: Oh, my gosh. All
9 right. You know what?

10 MR. ALI: I think we need to adjourn
11 this because --

12 MR. ALFIERI: Yeah, we need to.

13 MR. ALI: -- because this is -- I've
14 never been -- I've never been room when an
15 attorney is yelling.

16 MR. ALFIERI: Yeah, this is -- this
17 is getting very hostile, accusatory --

18 MR. ALI: It's too hostile.

19 MR. ALFIERI: -- and very unfair.

20 MR. CARBOY: Oh, I'm so sorry.

21 MR. ALFIERI: We're going back to the
22 Judge. We're going to ask for a Court
23 Ordered JHO to sit in for the remainder of
24 the questions. This is unfair and
25 unprofessional. We would like the Court

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2 to be present for the remainder of the
3 questions you have.

4 We are going to break for the day.
5 We are going to contact the Court. We
6 would like the Court to be present for
7 these questions.

8 MR. CARBOY: You know what's really
9 funny? I asked for a live hearing in
10 front of the Court. You guys opposed.
11 You opposed this exact relief you now
12 want.

13 MR. ALFIERI: No -- for the
14 deposition.

15 MR. CARBOY: Then you tried to
16 dismiss our case as a frivolous fishing
17 expedition.

18 MR. ALFIERI: Okay.

19 MR. CARBOY: You're asking for the
20 same thing I wanted three years ago.

21 MR. TURKEN: Let him --

22 MR. ALFIERI: By -- by counsel, no,
23 no. I'm sorry. You're not an attorney --

24 MR. CARBOY: Yeah, no, no.

25 THE REPORTER: Hey, hey. I'm trying

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2 to get everything down. We're still on
3 the record.

4 MR. ALFIERI: Yeah, I just --

5 THE REPORTER: Everyone has to speak
6 one at a time.

7 MS. DHINSA: Okay. Thank you. I
8 just want to finish my thought. We are
9 not ending this proceeding. We are simply
10 continuing with the request to the court
11 to have a JHO or the Judge himself to be
12 present for, not a hearing, for this
13 deposition, for this examination before
14 trial, that was court ordered by Judge
15 Clynes.

16 This has gone not only far, well
17 above and beyond the Judge's court order,
18 but the manner in which this is being
19 conducted requires the Court to be present
20 for the remainder.

21 MR. CARBOY: This is what we wanted
22 two years ago. What -- you're going
23 around and around.

24 MR. ALFIERI: No, no. So we are
25 ending for the moment until we can have

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2 the Court to be present, and we will make
3 that application based on the behavior
4 today.

5 MR. CARBOY: You're screaming at me
6 now.

7 MR. ALFIERI: I am not.

8 MR. CARBOY: You're screaming at me.
9 You're pointing at me.

10 MR. ALFIERI: No, I am not screaming.
11 I am talking.

12 MR. CARBOY: She's pointing and
13 screaming at me.

14 MR. ALFIERI: I am not.

15 MR. CARBOY: Now, she's laughing.

16 MR. ALFIERI: I am not. I am
17 laughing because it's untrue. We are
18 ending right now.

19 MR. TURKEN: So from my law firm's
20 perspective -- so first of all, Ms.
21 Alfieri, I am an attorney here, and yes,
22 I'm sitting in the second seat right now
23 on this side, but so are you. So, you
24 know, with all due respect, I do have
25 something to say. And --

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2 MR. ALFIERI: Are you an attorney for
3 Mr. Chevat?

4 MR. TURKEN: Yes, I am. Yeah.

5 MR. ALFIERI: Oh, okay.

6 MR. TURKEN: And that is very simply,
7 you know, I was simply going to make the
8 observation, and I am going to, that in a
9 proper document demand response, that you
10 are supposed to make when you get a
11 document demands, if the defense to that
12 is that, "There may be things, but you're
13 not going to get them because they're
14 attorney-client privileged," one responds
15 to that with a privilege log when you want
16 to do that. But that didn't occur here.

17 So that's -- so these issues now, for
18 instance, about the existence of emails
19 that would be responsive if they could be
20 divulged, for instance, that's unknown to
21 us. This is -- it's a very unusual method
22 that there's no document response but the
23 witness begins to tell you about, you
24 know, directions he may have received from
25 attorneys that we can't see because it's

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2 privileged.

3 That is not the way this usually
4 happens at all, and it's really not the
5 way that document demands are responded
6 to. And so, you know, I certainly object
7 to that. And that's simply what I wanted
8 to say.

9 MR. ALFIERI: No, I just want to say
10 I understand.

11 MR. MCCAULEY: Also, if I may.

12 MR. ALFIERI: Yeah.

13 MR. MCCAULEY: So the date we had the
14 hearing here, this is where the more
15 troubling issue is, and Judge Clynes
16 actually offered us to call him during
17 this proceeding if we needed to, at the
18 hearing. Counsel was directed to go and
19 find two witnesses in their availability.
20 And she identified Mr. Pecunies as the
21 first witness, and that that witness would
22 be able to talk to us about the Discovery
23 of the documents, and that that witness
24 would be able to provide us additional
25 information about the appeals.

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2 You've now cloaked the basic
3 certification of the location of the
4 documents and the search for them in
5 attorney-client privilege based on another
6 counsel that's at DEP. So in essence, the
7 appropriate witness was not Mr. Pecunies.
8 It's Mr. Musa.

9 MR. ALFIERI: We don't have to -- in
10 this deposition --

11 MR. MCCAULEY: So you didn't think it
12 was appropriate to tell the Judge that Mr.
13 Pecunies wouldn't be able to answer
14 questions because of attorney-client
15 privilege? Because you just invoked, you
16 invoked the attorney-client privilege here
17 by saying that he can't actually discuss
18 the certification because the direction
19 came from Mr. Musa, who is Counsel. So on
20 the date of the hearing, when the order
21 was cut to produce the two witnesses about
22 the information, what we've done here
23 today is you've now taken what is an
24 ordinary certification, and Mr. Pecunies
25 testified that in his 18 years he's never

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2 actually been told by somebody else to do
3 this, and cloaked an ordinary
4 certification in attorney-client
5 communications.

6 It's actually work product. It's not
7 really attorney-client communication,
8 because they work together. So is that
9 the position? Because at the time of the
10 hearing, when we were ordered to do this
11 deposition, we should have been told that
12 there were -- and the Court should have
13 been told that there were significant
14 limitations to what Mr. Pecunies could
15 testify to, because you've blocked any
16 questions about the certification.

17 MR. ALFIERI: We will respond to the
18 outstanding Discovery request before we
19 continue.

20 MR. MCCAULEY: But this is -- sorry.

21 MR. ALFIERI: Yeah -- before we
22 continue with the conclusion of this
23 proceeding. At the same time, we will
24 make an application to the court to have a
25 court monitor, a JHO or the equivalent, to

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1 sit in on the conclusion. But to be
2 clear, responding to both your comments by
3 Counselor, we will respond. I understand
4 the comments you're making, and we will
5 respond in writing to the outstanding
6 Discovery before we proceed with the
7 remainder of the proceeding.
8

9 MR. TURKEN: I think the record
10 should just also reflect, because it may
11 not be clear, somebody looking at this
12 record sometime in the future, that Mr.
13 Ali, who we've known, we've met before on
14 this case, who is here today in his role
15 as a DEP attorney, is the same person, as
16 I understand it, that Mr. Pecunies has
17 identified as giving him the advice in the
18 email. So there's some privilege being
19 claimed by a witness, or on behalf of the
20 witness, with respect to his
21 communications with somebody else who's an
22 employee at his department, and they're
23 both attorneys at his department, and that
24 attorney who gave him -- who sent him that
25 email, is actually, you know, sitting here

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2 in a structural role as Counsel today.

3 You know, when I start -- not to be
4 histrionic, but when I start to tease that
5 apart, it's starting to become a law
6 school exam. But it -- it's unusual.
7 That's all I want to say.

8 MR. CARBOY: And to be clear, before
9 we began today, I asked Ms. Dhinsa, point
10 blank, "Where is the file that we
11 requested?" And she said to me, "We
12 responded to your notice to admit with the
13 response that you should ask the witness
14 those questions." And I said -- to which
15 I responded, "Yes, that was the notice to
16 admit. There were two separate notices of
17 Discovery and inspection filed on NYSCEF,
18 to which we have no response."

19 At that point, Ms. Dhinsa's
20 co-counsel came in and told me, "There are
21 no files. Just clear that up with Mr.
22 Pecunies." And in fact, I'm trying to be
23 even handed, Mr. Pecunies testified the
24 only thing he reviewed before reaching his
25 determination, Exhibit 2, was the

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2 Petitioner's FOIA request and appeal.

3 However -- however, our Discovery notices
4 clearly included email communications made
5 during the pendency of this appeal and
6 before the determination.

7 So it is surprising and, once again,
8 in a case riddled and filled with
9 disappointments, disappointing to
10 encounter this. Something doesn't exist,
11 then it does.

12 MR. ALFIERI: I --

13 MR. CARBOY: It ends. And I welcome
14 the intervention of the Court.

15 MR. ALFIERI: Yeah, I welcome it, as
16 well, because it's very disappointing that
17 you mischaracterized what I said to you.
18 I said we had no documents responsive to
19 your request --

20 MR. CARBOY: Emails.

21 MR. ALFIERI: -- not that there were
22 no responses to your request. And I noted
23 that it would be fleshed out with the
24 questions today. Okay? I don't want to
25 belabor this point on the record.

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2 MR. MCCAULEY: Where's the privilege
3 log?

4 MR. ALFIERI: We will respond in
5 writing. We are making a request to the
6 Court to have judicial supervision for the
7 remainder of the proceeding. And thank
8 you very much. Let's go.

9 MR. CARBOY: Last comment. We asked
10 for a hearing when we brought the Article
11 78. The City moved to dismiss. I don't
12 understand this.

13 MR. ALFIERI: Thank you very much.

14 MR. CARBOY: Yeah, thanks a lot.

15 MR. MCCAULEY: Let the record reflect
16 the City has broken the deposition
17 unilaterally on their own.

18 MR. ALFIERI: Just let's go.

19 MR. MCCAULEY: Please let the record
20 reflect that at 12:12 the City has broken
21 the deposition unilaterally on their own.
22 Counsel is willing to stay here and ask
23 questions. If Counsel for the City wants
24 to leave, they're leaving on their own.

25 MR. ALFIERI: We are -- we are ending

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2 it based on the -- the behavior of Mr.
3 Convoy berating, yelling, banging, and
4 making accusations.

5 MR. CARBOY: I didn't
6 bang -- accusations.

7 MR. ALFIERI: We are done.

8 MR. CARBOY: -- there were no
9 records.

10 MR. ALFIERI: That's it. Let's go.
11 Come on.

12 MR. CARBOY: She told me there were
13 no records. There are records. It's
14 pathological. It keeps happening.

15 MR. TURKEN: We're off.

16 THE REPORTER: Before we go off the
17 record, sir, I've got to -- is this the
18 end for today or --

19 MR. MCCAULEY: Counsel, do you want
20 to sit here before we go off -- Counsel --

21 MR. ALFIERI: I'm just --

22 THE REPORTER: We're going to go off
23 the record at 12:13 p.m.

24 (Off the record.)

25 THE REPORTER: I'm sorry. Back on

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2 the record at 12:13 p.m.

3 MR. TURKEN: So we're sitting in the
4 room right now without the witness or any
5 of the Counsel for the DEP. So it's just
6 the Petitioner's Counsel and the court
7 reporter. The DEP's attorneys and witness
8 have left. They've busted the deposition
9 on the basis that they put forth.

10 So now we're sitting here in this
11 room, and Mr. Biu, the court reporter, is
12 asking us some questions. As attorneys,
13 we're all used to these questions about
14 the record, and clarifying things so that
15 we can get this record right and close it.
16 So we're sitting here without the other
17 side, not by our choice.

18 And so we'd be happy to answer your
19 questions if it'll help you prepare the
20 record.

21 THE REPORTER: I'm going to ask you
22 probably for a couple of spellings, to
23 confirm.

24 MR. TURKEN: Sure.

25 THE REPORTER: Beyond that, what I do

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2 need to get on the record is if this is,
3 let's say this -- I need to confirm the
4 transcript order with you. I assume
5 you're still ordering the transcript?

6 MR. MCCAULEY: Yes.

7 THE REPORTER: Is normal turnaround
8 time, which is ten business days, good?

9 MR. MCCAULEY: That's fine.

10 MR. TURKEN: No, we need it
11 expedited.

12 THE REPORTER: Expedited?

13 MR. TURKEN: More than 10 days you
14 think we're going to get before the Court?

15 MR. MCCAULEY: Tell me, what --

16 MR. TURKEN: We'll pay for
17 the -- we'll for the expedite, only
18 because if we need a transcript before we
19 get to the Court.

20 THE REPORTER: Sure.

21 MR. MCCAULEY: If you guys, if you've
22 got the report, that's awesome.

23 MR. TURKEN: We've got the report.

24 If you send the bill to us -- so we do
25 Veritext, as well, so send it Turken Heath

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2 & McCauley. Send the bill to us.

3 THE REPORTER: Okay. Do you have a
4 date in mind?

5 MR. TURKEN: I'm going to, with the
6 Fourth of July weekend, you have to tell
7 me. So I'm going to be mindful of you, to
8 be very --

9 THE REPORTER: I'd probably say most
10 realistic will probably be Tuesday?

11 MR. TURKEN: That's fine. Tuesday's
12 fine.

13 MR. MCCAULEY: That's quick.

14 THE REPORTER: I'll put a request
15 into the office. And with that, we're off
16 the record at 12:15 p.m.

17 (Signature reserved.)

18 (Whereupon, at 12:15 p.m., the
19 proceeding was concluded.)
20

21 -----
22 RUSSELL PECUNIES

Subscribed and sworn to before me

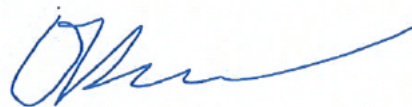
23 this _____ day of _____, 2026.
24

25 -----
Notary Public

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1 CERTIFICATE OF DEPOSITION OFFICER

2 I, OWEINAMA BIU, the officer before whom the
3 foregoing proceedings were taken, do hereby certify that
4 any witness(es) in the foregoing proceedings, prior to
5 testifying, were duly sworn; that the proceedings were
6 recorded by me and thereafter reduced to typewriting by a
7 qualified transcriptionist; that said digital audio
8 recording of said proceedings are a true and accurate
9 record to the best of my knowledge, skills, and ability;
10 that I am neither counsel for, related to, nor employed by
11 any of the parties to the action in which this was taken;
12 and, further, that I am not a relative or employee of any
13 counsel or attorney employed by the parties hereto, nor
14 financially or otherwise interested in the outcome of this
15 action.

16
17
18 
19

OWEINAMA BIU

20 Notary Public in and for the
21 State of New York

22 [X] Review of the transcript was requested.
23
24
25

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CERTIFICATE OF TRANSCRIBER

I, JOHN WHISENHUNT, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



JOHN WHISENHUNT