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time we have.

But where are we on the time spent so far? I'm asking the videographer.

THE VIDEOGRAPHER: You have 29 minutes left.

MR. NELSON: Thank you.

So let's take a short break, another ten minutes, please, and we'll -- sorry, go ahead.

THE VIDEOGRAPHER: We're now going off record. The time is 5:16.

(Recess was taken.)

THE VIDEOGRAPHER: We're now back on. The time is 5:27.

EXAMINATION BY

MS. GIBSON:

Q. Mr. Eichenholtz, I wanted to follow up on some of your direct threat comments. The first was, you stated that you don't want to second guess the commissioner's mandate. Where did the mandates say that unvaccinated employees with religious and medical exemptions cannot be accommodated without posing a direct threat to others?

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2 A. It doesn't. To the contrary, it  
3 specifically contemplates that those who have  
4 religious and medical exemptions to the -- to  
5 the vaccination requirement can be at the  
6 workplace, I believe with certain conditions,  
7 obviously.

8 Q. Thank you.

9 And you also said that Corrections  
10 was the only department, that you're aware of,  
11 agency, that did provide any kind of analysis  
12 on direct threat. Isn't it true that they  
13 provided no scientific support with that?

14 A. Again, as I said earlier, I don't  
15 remember the precise explanation that the  
16 Department of Correction provided regarding  
17 direct threat.

18 Q. But is it fair to say that other  
19 than their conclusory statements, they didn't  
20 provide any citations to science or anything  
21 evidentiary to support their assertion that  
22 there could be a direct threat based on  
23 vaccination status?

24 A. Ms. Gibson, I can't give you a  
25 characterization when I don't remember

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precisely what it says.

Q. Okay. I was looking through the discovery materials, and the FDNY didn't provide any direct threat analysis, but said there could be a potential for a direct threat. Would you consider that as persuasive evidence to uphold an undue hardship determination?

A. As I --

DI MR. HAIDER: Objection.

You know, Ms. Gibson, I know you're referencing discovery materials particular to one of the plaintiffs, which is, you know, not permitted in this deposition.

Even though it's posed as a hypothetical question, I'm going direct the witness to not answer that question.

MS. GIBSON: Well, I'm not going to accept that. The FDNY put a policy statement out for all FDNY employees about the potential for undue hardship, and I'm not going to accept in a deposition not answering a question, so we reserve the right to bring this back up with the

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2 Court.

3 Q. I would ask again: If the FDNY put  
4 out a potential, as they did, potential undue  
5 hardship without any individualized review of  
6 an individual person and why they would pose a  
7 direct threat, would you uphold that as an  
8 undue hardship determination?

9 MR. HAIDER: Objection.

10 You can answer.

11 A. Yeah, I know of no circumstances  
12 where the Citywide Panel was provided an  
13 explanation of direct threat without other  
14 information that allowed for some  
15 individualized understanding of the particular  
16 employee, such as job title, job location, and  
17 the like, elsewhere in the record.

18 Q. Did the Citywide Panel ever uphold  
19 undue hardship determinations for anyone else  
20 than DOE employees?

21 A. Yes.

22 Q. And you say that none of these  
23 agencies, other than Department of  
24 Corrections, ever provided any information  
25 about direct threats?

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A. Not that I recall, no.

Q. So how could you have an undue hardship determination based on fear of COVID spread without a direct threat analysis?

A. I'm not aware of an undue hardship determination based on fear of COVID spread, as you've characterized that. Yeah, I --

Q. Well, the basic premise --

A. I can't answer that question, yeah.

Q. You said that the mandates do not say that these employees cannot be reasonably accommodated, correct?

A. Yes, if they're entitled to accommodation under the parameters set forth in the law, yeah.

Q. Okay. Thank you.

But so how, then, would it be an undue hardship to accommodate any of these employees if they were not a direct threat to others?

A. Because the nature of the -- the mandate and the nature of their job is such that they cannot be taken offline -- I mean, I'm not quite sure with this -- how you're

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2 saying it's -- you know, the -- there are  
3 individuals and agencies that require physical  
4 presence in the workplace, and there is -- and  
5 there are people who work with vulnerable  
6 populations and things like that, and that  
7 would obviously be relevant to a direct threat  
8 analysis. It's also relevant to an undue  
9 hardship analysis in appropriate  
10 circumstances. That doesn't mean that one  
11 needs to prove the other. You know, I  
12 understand that may be your legal position.  
13 I'm not sure we see eye to eye on the law  
14 there.

15 Q. I'm trying to understand your  
16 position. So my -- I guess let me dial this  
17 back.

18 Does anything in these mandates,  
19 specific mandates covering these plaintiffs,  
20 does anything in these mandates state, if  
21 accommodated for religious or medical  
22 concerns, these employees cannot be physically  
23 present at the workplace, as a blanket rule?

24 A. If accommodated? If an  
25 accommodation is granted, they can be

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2 physically present subject to certain  
3 conditions that I don't want to misstate  
4 because I don't have the order in front of  
5 me --

6 Q. Okay. But just to clarify, the  
7 mandate does not say they cannot be  
8 accommodated by allowing them to remain at  
9 work with sincere religious objections,  
10 correct?

11 A. Correct. It says --

12 Q. Okay.

13 A. -- that --

14 Q. So unless they were a direct threat  
15 to others, there's no reason why, if they were  
16 found to have sincere religions objections,  
17 they couldn't continue at their job, correct?

18 A. No, because their requested  
19 accommodation may pose an undue hardship.

20 Q. Only if they're a direct threat,  
21 though, right?

22 A. No, that's not correct. I  
23 understand that is your legal position, I  
24 think --

25 Q. Well, why else?

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A. -- that is a legal argument, and I'm not here, respectfully, to argue the law. I'm here to provide you facts about the Citywide Appeal Panel and its processes.

Q. And the Citywide Appeal Panel granted multiple undue hardship claims, correct?

A. That's correct.

Q. So I'm asking you: If it's not based on a direct threat analysis, what possible reason could there be if somebody is not a direct threat, what possible reason could there be for undue hardship?

A. Because granting the reasonable accommodation in the context of that employer, employer, they're based on the functions and the operations, will cause a significant enough disruption that it constitutes an undue hardship under the law.

Q. How, if they're not a direct threat, would that be true?

A. Because the granting enough accommodations can impair the function of an agency, granting particular accommodations in



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2 particular functions can impair the agencies,  
3 and there may be some, as I said to you,  
4 Ms. Gibson, I'll say it again, there may be  
5 some facts that go into the undue hardship  
6 analysis that are similar to those that we  
7 might think of in the direct threat analysis.  
8 But that doesn't mean that the direct threat  
9 is a prerequisite to undue hardship. Again,  
10 that is a legal argument you are making, and  
11 I'm not here to debate the law.

12 Q. Mr. Eichenholtz, I'm asking for your  
13 explanation of how anybody -- how it would be  
14 an undue hardship. If they are not a direct  
15 threat and they can be accommodated in their  
16 current job physically present, how is that an  
17 undue hardship absent a direct threat  
18 analysis?

19 A. Because the agency articulates that  
20 granting that accommodation, either alone or in  
21 a certain amount, will impair the agency's  
22 operations, and there could be a way that  
23 having unvaccinated personnel poses a certain  
24 amount of risk. This is a slightly different  
25 issue, we're looking at a different area of

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2 the law here when we're talking about undue  
3 hardship, that might also factor in to the  
4 potential disruption to the agency's  
5 operations, if that accomodation is granted,  
6 so --

7 Q. What kind of threat would not be  
8 part of a direct threat analysis?

9 MR. HAIDER: Objection.

10 A. Again, the fact -- I keep saying  
11 this, and I understand it's your legal  
12 argument, and once again I --

13 Q. Please stick to the question I'm  
14 asking you. I'm just asking you: What type  
15 of threat would not be part of a direct threat  
16 analysis?

17 A. What type of --

18 Q. What type of risk?

19 A. Okay. Obviously risk is a very  
20 important part of direct threat analysis --

21 Q. Yes. What type is not -- if you're  
22 saying direct threat is irrelevant, I'm -- you  
23 cannot be a direct threat, but you can still  
24 pose an undue hardship because of the risk you  
25 pose. Why -- what possible type of risk would

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not be part of that direct threat analysis?

A. That's not what I said, Ms. Gibson.

Q. Okay. I'm going move on.

So have you relied on any documents at all, any science, anything, any evidence at all to establish that the risk that these employees posed because of their vaccination status is substantial?

MR. HAIDER: Objection.

You can answer.

A. Risk because of their vaccination status is substantial?

Q. Yes.

A. Again, this is sort of completely divorced from any context, and you're talking about me personally --

Q. Could you -- I would direct you to just answer the question: Is there any evidence at all that you relied on, let's start with -- actually I'm going to rephrase -- no, I'm going to stick with the original question.

A. Okay.

Q. Any evidence at all that you relied

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2 on to determine that unvaccinated employees  
3 with sincere religious beliefs pose a  
4 substantial risk to others based on their  
5 vaccination status?

6 MR. HAIDER: Objection just to the  
7 form as to what he relied on or as to the  
8 panel relied on.

9 MS. GIBSON: Well, that's a good  
10 distinction, and I do want to clarify.  
11 And I would ask, Mr. Haider, to continue  
12 to clarify the reasons for your objections  
13 if you can so that I have a chance to  
14 respond.

15 Q. So both. Did you rely on any  
16 evidence, and to your knowledge, did the panel  
17 rely on any actual evidence to establish that  
18 unvaccinated employees could pose a higher  
19 risk to others based on their vaccination  
20 status?

21 A. So as I said earlier, in the appeals  
22 that I've reviewed, I've never affirmed an  
23 appeal on the basis of direct threat. I have  
24 affirmed on the basis of undue hardship.

25 Q. I think as yes or a no would be

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2 great. Have you ever relied on any evidence  
3 for that determination?

4 A. What's "that determination"? That's  
5 where I'm confused, Ms. Gibson. I'm not  
6 trying to be difficult. I'm just trying to  
7 understand what you want to know from me.

8 Q. Okay. Have you ever assessed the  
9 duration of the risk that an individual might  
10 pose to others using evidence?

11 A. In my lifetime?

12 Q. In these panel proceedings, have you  
13 or the panel ever looked at the duration of  
14 the risk an individual might pose based on  
15 their vaccination status?

16 A. So, and I think I explained this  
17 earlier, this is done in a context that  
18 includes a public health emergency order that  
19 has a factual predicate, and so we work off of  
20 that factual predicate and --

21 Q. Did you rely on any evidence to make  
22 the determination on the duration of the risk  
23 that an individual might pose for an undue  
24 hardship analysis?

25 A. Again, I will repeat again, I have

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2 not affirmed denials of reasonable  
3 accommodations on the grounds -- specifically  
4 the grounds that they present -- oh, I'm  
5 sorry, undue hardship. On the grounds -- you  
6 know, on the direct -- on the undue hardship  
7 grounds, I have looked at the potential  
8 disruption to agency operations if the  
9 reasonable accommodations were granted, and  
10 there could be a multitude of reasons for  
11 those.

12 Q. Were any -- again, you haven't  
13 answered my question. Did you rely on any  
14 evidence for those determinations?

15 A. We've had this conversation with --

16 Q. For your undue hardship  
17 determinations, did you rely on any evidence?

18 A. My function in the panel is not to  
19 gather --

20 Q. I would ask that you say yes or no.

21 A. -- evidence.

22 I'm trying to explain to you why I  
23 can't answer it yes or no. So it is -- it is  
24 challenging because you're using terms like  
25 "you," which I can't even tell whether you're

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2 asking me personally, you're asking the panel,  
3 you're asking the whole reasonable  
4 accommodation process. You know, we're here  
5 to discuss what the Citywide Panel does, and  
6 you're asking me what I would do without  
7 really an explanation as to -- I'm trying to  
8 explain to you why this is so confusing to me.

9 Q. You trained the panel, correct?

10 MR. HAIDER: Objection.

11 A. No.

12 Q. Who trained the panel?

13 A. I mean, I -- as I said, the panel  
14 was given, you know, the guidance and things  
15 like that, and we've had group discussions and  
16 there's, you know, the City Commissioner's on  
17 the panel. So we do it collaboratively.

18 Q. Okay. But you wrote the FAQ?

19 MR. HAIDER: Objection.

20 A. No.

21 Q. You participated in writing the FAQ?

22 A. Yeah, I reviewed it. I reviewed the  
23 draft.

24 Q. With how many other people?

25 A. As I said earlier, I cannot tell you

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2 the specific people, but the agencies would  
3 have been the Department of Citywide  
4 Administrative Services, as well as the City  
5 Commission on -- I mean, I'm sorry, not "City  
6 Commission"; the Office of Labor Relations.  
7 Sorry, it's getting late.

8 Q. And people came to you for advice on  
9 how to handle -- what the standards were and  
10 the criteria that they were supposed to  
11 employ, correct?

12 MR. HAIDER: Objection.

13 A. No, that's not correct.

14 Q. So those emails to you were random?

15 A. No. That -- they were -- so that  
16 was -- Ms. Gibson, I'm really lost. So  
17 generally, I was not -- the guidance we were  
18 given comes from the EEOC policy. That was a  
19 request from a City panel to explain what was  
20 going on. I was not the source of the  
21 guidance, you know, as --

22 Q. Why --

23 A. I would talk with panel members and  
24 the panel would talk directly about the issues  
25 we were dealing with.



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2 Q. So just to clarify, neither you nor  
3 the City Panel, to your knowledge, was given  
4 any evidence, beyond conclusory statements, to  
5 support undue hardship or direct threat  
6 analysis?

7 MR. HAIDER: Objection.

8 A. I -- no, I wouldn't agree with that  
9 characterization.

10 Q. Okay. So what evidence were you  
11 given to support a direct threat or an undue  
12 hardship determination?

13 A. I can't answer that question in that  
14 generalization. I've tried to explain the  
15 framework and the context in which we've  
16 decided these cases.

17 Q. Mr. Eichenholtz, there are either  
18 documents or there are not. What I'm trying  
19 to determine is whether we need to make a  
20 request for these documents or not.

21 Did you or the Citywide Panel, to  
22 your knowledge, rely on any documents,  
23 evidence or documents, to support your undue  
24 hardship determination?

25 A. Yes.

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2 Q. What were they?

3 A. The documents provided in the appeal  
4 files for the agencies, the EEOC Guidance with  
5 respect to undue hardship, and direct threat  
6 to the extent panel members were considering  
7 direct threat.

8 Q. So any scientific studies?

9 A. The reason I hesitate to answer that  
10 question is because we are working from a  
11 public health order that was based on a  
12 scientific determination that was made by the  
13 Commissioner of Health who was lawfully able  
14 to find those determinations. It is not the  
15 function of the reasonable accommodation  
16 process or the Citywide Panel to question or  
17 to demand evidence to support why the City  
18 Health Commissioner was making a particular,  
19 you know, requirement or why the public health  
20 order was necessary.

21 Q. But these public health orders all  
22 said that reasonable accommodation -- nothing  
23 in the order should suggest that you shouldn't  
24 reasonably accommodate employees. So what  
25 from that did you take as saying you had to

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not reasonably accommodate those with sincere religious beliefs?

MR. HAIDER: Objection.

A. I've never taken the position that the City is not to accommodate sincere religious belief.

Q. And yet you're saying to me right now that you based your undue hardship determinations for those with sincere religious belief on the commissioner's order?

A. No, that's not what I'm saying. I'm saying, you -- that was -- no, that's not what I'm saying, no.

Q. So what are you saying about the relevance of the commissioner's order to an undue hardship determination?

A. I said the commissioner's order contextualizes the basis and the process for which we are proceeding, that there is a public health emergency, that vaccination of City employees is an important measure to address that public health emergency, is all within the context in which we're deciding this. So, for example, there was no need to

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2 review scientific studies to determine whether  
3 there was a public health emergency or to  
4 review scientific studies to determine whether  
5 by and large vaccination would be beneficial  
6 to address that emergency.

7 And at least that's how I'm  
8 understanding your questions now, which is,  
9 did you do those things. And that is my  
10 response, that we have a public health order  
11 that I think, you know, establishes that  
12 framework. But the specific undue hardship  
13 analysis was about impact of granting  
14 accommodations on agency operations. So the  
15 reason that fits within the legal framework of  
16 the health commissioner's order is because the  
17 health commissioner's order requires  
18 reasonable accommodations to the extent  
19 permitted by law, and law requires -- allows  
20 an agency to deny an accomodation on certain  
21 grounds with respect to undue hardship.

22 Q. Going back to the personal rather  
23 than religious distinction, a frequent reason,  
24 and I'm not speaking about any particular, you  
25 know, panels, but a frequent reason that came

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2 up in the notations on the spreadsheet was,  
3 "Appellant explains his or her understanding  
4 of her sincerely-held religious beliefs" --  
5 oh, "Under appellant's," you know,  
6 "explanation of his understanding of  
7 sincerely-held religious belief, it is  
8 ultimately appellant's choice whether to take  
9 or abstain from food or medication."

10 So my understanding is you're saying  
11 they have a sincerely-held religious belief,  
12 but because they have a choice under their  
13 religious belief system, we're going to deny  
14 them; is that correct?

15 MR. HAIDER: Objection.

16 A. I -- yeah, I could not tell you for  
17 sure without understanding the facts and  
18 circumstances of --

19 Q. Well, this was regularly put in the  
20 notations on the spreadsheet, and I'm trying  
21 to understand what that means.

22 A. Well --

23 Q. So what would it mean for somebody  
24 to have a sincerely-held religious belief that  
25 allows for choice? Why would that be a basis

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2 for denial?

3 A. The record --

4 MR. HAIDER: Objection.

5 THE WITNESS: Sorry.

6 A. The record is important to  
7 understand what that might mean in any  
8 particular context. As I've explained many  
9 times now, those determinations are based on  
10 the balancing of a variety of factors, and I  
11 could not give you an answer without  
12 understanding the particular factors that may  
13 have been at play in any particular case  
14 because these determinations truly are  
15 individualized.

16 Q. So but help me understand this,  
17 because you said in your email response that  
18 these notations on the spreadsheet are largely  
19 shorthand for you, that they're not supposed  
20 to explain anything to anyone else, correct?

21 A. They're not shorthand for me, no.  
22 They're shorthand -- they're basically for the  
23 panel members to take notes.

24 Q. Right. But they're not meant as  
25 an -- they're not necessarily transparent for

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other people to understand what that means,  
right?

MR. HAIDER: Objection.

A. Yeah, I'm not sure I understand that  
question.

Q. They're for personal notes to  
remember the basis for an exemption, correct?

A. Yes, yes, that's correct.

Q. Okay. So what would that type of  
personal note indicate? And I'm going to back  
up for a moment and say that I've noticed that  
whenever someone has an objection based-  
personal prayer, direction from personal  
prayer, they get that notation. So what, in  
your mind, are the Citywide Panel's approach  
to these cases would say that that's not  
religious in nature somehow?

MR. HAIDER: Objection.

A. I could not tell you without seeing  
the factual circumstances in each case. I can  
tell you that there have been cases involving  
personal prayers that I voted to grant, and  
there are ones that I voted to deny. It  
depends on the factual circumstances of the

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2 records. It really -- it depends on what the  
3 employee is describing and the nature of  
4 their -- what the nature of their religious  
5 belief is, the factual application, the other  
6 facts that are present.

7 Q. Well, let's go back, then, a little  
8 bit higher level. You made a distinction  
9 between two kind of levels. One is a  
10 sincerity analysis, does this person have  
11 sincere religious beliefs. And the other, are  
12 there religious beliefs actually in conflict  
13 with the vaccine. You're nodding your head  
14 yes, so I think we're on the same page.

15 A. Yes, yes. I'm sorry, I didn't know  
16 if you were done with your question.

17 Q. It's fine, just for the record. I  
18 know it's been a long day.

19 But so in the latter category of  
20 these determinations that you say yes, they  
21 have a sincere religious belief, that's  
22 actually quite related to this kind of  
23 notation, but we don't think that that's  
24 actually holding them back from vaccination.  
25 How in cases where the applicant is saying,



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2 yes, that my sincere religious belief is what  
3 is holding me back from vaccination, how is it  
4 permissible for you to step into their shoes  
5 and say it's not?

6 MR. HAIDER: Objection.

7 A. Again, you would evaluate that on  
8 the basis of objective facts, right? It's not  
9 for me or any member of the panel to step into  
10 someone's shoes and say this is who they are,  
11 this is what they believe. It's looking at  
12 all of the relevant facts of the particular  
13 belief and making a determination as to  
14 whether the employee has established that they  
15 possess a belief that is in conflict with the  
16 vaccine mandate.

17 Q. So in these cases where employees  
18 say, I get my direction from prayer and god  
19 just tells me not to take these vaccines, how  
20 would that not be -- how would you say to  
21 that, how would you respond to that, yes, they  
22 have sincere religious beliefs, but these  
23 beliefs aren't holding them back from  
24 vaccination?

25 MR. HAIDER: Objection.

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2 A. So prayerful contemplation, while it  
3 has a religious element to it, is not  
4 necessarily establishing a religious belief  
5 that conflicts with the vaccine mandate. So,  
6 for example, if an employee were to say, I  
7 think this vaccine is dangerous, so after  
8 prayerful contemplation, I've chosen not to  
9 take it --

10 Q. What if they don't say that? What  
11 if they say, god told me not to take this  
12 vaccine?

13 A. If they say, god -- then again, we'd  
14 need to understand the facts and the  
15 circumstances. You know, we spent a great  
16 deal of time earlier in the deposition talking  
17 about how we might review those sorts of  
18 things factually. I won't recap it now, but  
19 there are a lot of different factual analyses  
20 and balancing that can go into play, you know,  
21 if someone were to make that sort of assertion  
22 that might compel a conclusion one way or the  
23 other.

24 Q. Okay. Just a few more short  
25 questions. So one question is about the DOE

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2 reviews.

3 You noted that the DOE reviews, the  
4 Citywide Panel did about 500 of them; is that  
5 about right?

6 A. I think it was closer to 550-plus,  
7 but yes, it was lower than 600, I know that.

8 Q. Okay. Lower than 600.

9 And is your understanding -- I'm  
10 going to tell you what I think the facts are  
11 from before that process just so we know where  
12 we are.

13 A. Yeah.

14 Q. The initial applications, the DOE  
15 denied every one under undue hardship. The  
16 arbitrators awards, some 165 were granted, and  
17 then 550 or so denials from the arbitration  
18 awards were sent to the Citywide Panel; is  
19 that correct?

20 A. Based on my -- all I can tell you is  
21 that roughly 550 to 600 were sent to the  
22 panel. I cannot tell you with certainty what  
23 category they were in and how they got there.  
24 And I was focused on, you know, the DOE was to  
25 file qualified candidates who needed to be

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E. EICHENHOLTZ

reviewed by the panel, with the panel. And when they came in, we took a look at those --

Q. Okay. So you don't know whether or not everybody was denied initially at the DOE?

A. The ones that came to us certainly were, as I said, because we don't hear appeals of affirmances -- of grants, sorry.

Q. But you don't have any independent knowledge of whether every one was denied initially under undue hardship?

A. Yeah, I have no independent knowledge of that.

Q. Okay. So how many did you grant through the Citywide Appeals Panel for the DOE?

A. I don't have that number, offhand.

Q. Can you get that number?

A. DOE cases? Certainly, as I said before, we can obtain that information from our databases --

Q. Are you aware if any teachers were granted at the Citywide --

A. Yes, there were.

Q. Teachers; not administrators.

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2 A. My understand -- I mean, I could be  
3 wrong, but my understanding was at least one  
4 teacher, but I --

5 Q. So what would the difference be  
6 between a classroom teacher that is accepted  
7 and the rest that are told that they have  
8 sincere religious beliefs, but it would be an  
9 undue hardship to grant them accommodation?

10 MR. HAIDER: Ms. Gibson, our time is  
11 up I'll obviously allow Mr. Eichenholtz to  
12 answer this question.

13 A. Well, there could be teachers who  
14 have non-classroom functions, for example.  
15 But, you know, it depended on the particular  
16 circumstances, and there were cases, as I  
17 mentioned earlier, where the Department of  
18 Education did not present an explanation of  
19 undue hardship, and so we did not consider  
20 undue hardship in cases where it was not, you  
21 know, it was not presented as part of the  
22 record, or at least I didn't, but I don't  
23 think -- you know, so there were ones that  
24 were -- where undue hardship wasn't a factor.

25 MS. GIBSON: Mr. Haider, I just have

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one more very short line of questioning.

Can I ask it?

MR. HAIDER: I'll allow two questions.

MS. GIBSON: Okay. I just want to do the background of --

Q. You can just correct me if I'm wrong, because this is just background for the question.

A. Sure, sure.

Q. There was, and I'm sure you're aware of it, an arbitration proceeding between the DOE and Scheinman Arbitration that resulted in an arbitration award that the Second Circuit found unconstitutional or likely unconstitutional, setting forth various criteria, and there were also related arbitrations that resulted in similar awards for many other departments and union members.

My question is: Did you, before you took your current position in October 2021, did you participate in any of those arbitration proceedings resulting in those awards? I'm not talking about individual people's, you know, arbitrations. I'm talking

1 E. EICHENHOLTZ

2 about, you know, the agency wide or department  
3 wide ones, the award from Scheinman saying  
4 this is the arbitration.

5 A. No, with the sole exception of I may  
6 have been -- as the process was going on and  
7 the people who were engaged in such processes  
8 were doing it may have had my legal opinion  
9 solicited on various issues --

10 Q. And was that legal opinion ever  
11 solicited for suggested criteria for  
12 determining religious accommodations?

13 A. I cannot say due to attorney/client  
14 privilege.

15 MR. NELSON: Well, that was two  
16 questions, and Mr. Eichenholtz, you get  
17 the last word. So we thank you both, all  
18 of you, really, for participating in this,  
19 and we look forward to seeing you again.

20 MR. HAIDER: I hope not. Thank you,  
21 Mr. Nelson.

22 THE VIDEOGRAPHER: This concludes  
23 today's deposition. The time is 5:59.  
24 We're now off the record.

25 (Time noted: 5:59 p.m.)

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A C K N O W L E D G M E N T

STATE OF NEW YORK )

:SS

COUNTY OF )

I, ERIC EICHENHOLTZ, hereby certify that I have read the transcript of my testimony taken under oath in my deposition of May 24, 2022; that the transcript is a true, complete and correct record of my testimony, and that the answers on the record as given by me are true and correct.

\_\_\_\_\_  
ERIC EICHENHOLTZ

Signed and subscribed to before me, this                    day of                    , 20\_\_.

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Notary Public, State of New York



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	150	Redacted copy of model acceptance
	215	Any written materials that may have been disseminated to Citywide Appeal Panel members
	267	Any writings that reflected or constituted any of that information from the DOE regarding the remote sites

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agency that received at least remand

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C E R T I F I C A T E

STATE OF NEW YORK )

) SS.:

COUNTY OF SUFFOLK )

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of May 2022.



KRISTI CRUZ



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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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