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CASE

HIGBIE, et al. v JAMES, et al.

HELD

Friday, September 20, 2024

WITNESS

MICHAEL DEYO



Exhibit 8

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Reported by: Stephan Sudano

ACR Job#: 2024-0920SS_Wit 2 of 2

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THROUGHOUT NEW YORK STATE AND BEYOND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

----- X

CARL HIGBIE, JOSEPH HARRIS, and
MICHAEL VOTRUBA,

Plaintiffs, Civil Action No:

-v- 1:24-cv-00174-MAD-TWD

STEVEN G. JAMES, in his Official Capacity as
Superintendent of the New York State Police,
SHERIFF KYLE BOURGAULT, in his Official
Capacity as the Sheriff of Rensselaer County,
New York, SHERIFF DONALD J. KRAPP, in his
Official Capacity as the Sheriff of Columbia
County, New York, and JOHN DOES 1-10,
Defendants.

----- X

30(b)(6) DEPOSITION

OF

MICHAEL DEYO, ESQ.

CALLED AS A NON-PARTY WITNESS HEREIN

HELD: Friday, September 20, 2024

9:55 a.m.- 10:51 a.m.

JOB # PC 2024-0920SSW2

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2 This is the 30(b)(6) DEPOSITION of MICHAEL
3 DEYO, ESQ., called as a Non-Party witness
4 herein, taken pursuant to Subpoena to Testify
5 at a Deposition in a Civil Action, held at:

6

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125 Wolf Road
Albany, New York 12207

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10 said witness being duly sworn and record
11 reported via steno writer by STEPHEN P.
12 SUDANO, Certified Court Reporter and Notary
13 Public within and for the State of New York.

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A P P E A R A N C E S

STAMBOULIEH LAW, PLLC
Attorneys for Plaintiffs
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18 (NO APPEARANCE)

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1 A P P E A R A N C E S

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3 Attorneys for Defendant

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7 (518) 828-3303

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1 I N D E X

2 TO TESTIMONY

3 WITNESS: MICHAEL DEYO, ESQ.

4 EXAMINATION BY PAGE

5 MR. STAMBOULIEH 11

6

7 TO EXHIBITS MARKED

8 PLAINTIFF'S DESCRIPTION PAGE

9 Exhibit 2 PPB-3 (previously marked) 27

10 Exhibit 7 Subpoena to Testify at a Deposition in a Civil Action with Affidavit of Service, consisting of 5 page(s); attached hereto 15

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1 F E D E R A L S T I P U L A T I O N S

2 IT IS HEREBY STIPULATED AND AGREED, by and
3 between the attorneys for the respective
4 parties hereto, that filing, sealing, and
5 certifications of the within deposition are
6 hereby waived;

7 IT IS FURTHER STIPULATED AND AGREED that
8 the original of the within deposition may be
9 sworn to and signed before any officer
10 authorized to administer an oath, with the
11 same force and effect as if signed and sworn
12 to before the Court;

13 IT IS FURTHER STIPULATED AND AGREED that an
14 unsigned copy of the deposition may be used
15 with the same force and effect as if signed by
16 the witness, 30 days after service of the
17 original & one copy of same upon counsel for
18 the witness.

19 IT IS FURTHER STIPULATED AND AGREED that
20 all parties shall bear their own costs in the
21 conduct of this deposition.

22

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1 F E D E R A L S T I P U L A T I O N S

2 IT IS FURTHER STIPULATED AND AGREED that
3 all objections except as to form, are reserved
4 to the time of trial.

5
6 IT IS FURTHER STIPULATED AND AGREED that
7 exhibits may be marked by the attorney
8 presenting the exhibit to the witness; and
9 THAT a copy of any exhibit presented to a
10 witness shall be emailed to or otherwise in
11 possession of all counsel prior to any
12 questioning of a witness regarding the exhibit
13 in question; and

14
15 THAT all parties shall bear their own costs
16 in the conduct of this deposition.

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1 MICHAEL DEYO, ESQ. - September 20, 2024
2 THIS IS THE 30(b)(6) DEPOSITION OF MICHAEL
3 DEYO, ESQ., called as a Non-Party witness
4 herein, produced pursuant to Subpoena to
5 Testify at a Deposition in a Civil Action, on
6 Friday, September 20, 2024, before STEPHEN P.
7 SUDANO, a Court Reporter and Notary Public in
8 and for the State of New York.

9 * * * * *

10 (Whereupon the witness,
11 MICHAEL DEYO, ESQ., presented
12 their work badge for
13 identification.)

14 * * * * *

15 MICHAEL DEYO, ESQ.
16 called as the witness, hereinbefore named,
17 being first duly cautioned and sworn or
18 affirmed by STEPHEN P. SUDANO, the Court
19 Reporter and Notary Public herein, to tell the
20 truth, the whole truth, and nothing but the
21 truth, was examined and testified as follows:

22 THE REPORTER: Please state
23 your name for the record.

24 THE WITNESS: Michael W.
25 Deyo.

1 MICHAEL DEYO, ESQ. - September 20, 2024

2 THE REPORTER: Is your
3 present work address 1220
4 Washington Avenue, Building 22,
5 Albany, New York 12226?

6 THE WITNESS: Yes.

7 * * * * *

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1 MICHAEL DEYO, ESQ. - September 20, 2024

2 EXAMINATION

3 BY MR. STAMBOULIEH:

4 Q. All right, Mr. Deyo. My name is
5 Stephen Stamboulieh. I represent the
6 plaintiffs in this case.

7 Have you ever given a deposition
8 before?

9 A. Yes.

10 Q. What I like to do is just kind of
11 go over some ground rules for the
12 depositions.

13 You're an attorney too, correct?

14 A. I am.

15 Q. Okay. So as you see and as you
16 know --

17 And I'm sorry, but I'm just going
18 to say it anyways.

19 We're going to be sitting around.
20 I'm going to ask you questions. You're
21 going to answer them. Your attorney's
22 here to object if I go too far. Make sure
23 to give him a couple seconds to get an
24 objection in.

25 If you would, answer my questions

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2 with a "yes" or "no" answer. If you have
3 to explain, that's perfectly fine. Don't
4 say "uh-huh" or "uh-uh," because it looks
5 very similar on the transcript, and we
6 want to have a clean transcript.

7 As you heard the court reporter
8 admonish me, I think for the fourth time
9 now, to slow down, I do have a tendency to
10 talk quickly. I apologize in advance. If
11 at any time I talk too quickly and he
12 doesn't correct me, please tell me to slow
13 down.

14 If I ask a question and it doesn't
15 make any sense -- it happens; I'm not from
16 here -- tell me that you don't understand
17 it, and I'm happy to rephrase it. I don't
18 want you to answer a question that you
19 don't understand because when we go back
20 to the transcript later, we will see that
21 you answered it, and we'll just assume
22 that you understood.

23 If, at any point, you need to take
24 a bathroom break or go answer the phone or
25 something and you need a break, I just ask

1 MICHAEL DEYO, ESQ. - September 20, 2024
2 that you answer the question that I have
3 posed to you before we take a break. And
4 then after that, you're free to do what
5 you need to do.

6 Do you have any questions?

7 A. No.

8 Q. Okay. And you said you were an
9 attorney.

10 You're counsel for the New York
11 State Police?

12 A. Yes.

13 Q. How long have you been with them?

14 A. I started with the state police in
15 July 2015.

16 Q. Always as counsel for them?

17 A. No.

18 Q. What did you do before you became
19 counsel for them?

20 A. I started as assistant counsel.
21 Then I became deputy counsel. Then I
22 became counsel.

23 Q. Okay. And is that like a general
24 counsel-type role?

25 A. Yes.

1 MICHAEL DEYO, ESQ. - September 20, 2024

2 Q. what are your --

3 This is a loaded question; I don't
4 mean it to be.

5 what are your job duties for the
6 New York State Police?

7 A. In a nutshell, to represent the
8 division; advise the superintendent and
9 executive staff on any legal matters that
10 may affect division operations.

11 Q. And you know you're here for a
12 30(b)(6) Deposition, correct?

13 A. Yes.

14 MR. STAMBOULIEH: I'm going
15 to hand you the subpoena and the
16 service.

17 * * * * *

18 (At which time, what will
19 be marked Plaintiff's Exhibit 7
20 was shown to the witness.)

21 * * * * *

22 MR. THOMPSON: (Perusing.)
23 (Handing.)

24 BY MR. STAMBOULIEH:

25 Q. Can you take a look at that for me,

1 MICHAEL DEYO, ESQ. - September 20, 2024
2 please.

3 * * * * *

4 (Brief pause while witness
5 reviews document.)

6 * * * * *

7 A. Okay.

8 BY MR. STAMBOULIEH:

9 Q. Did you receive that?

10 A. Yes.

11 Q. Perfect.

12 MR. STAMBOULIEH: I would
13 like to have this marked as the
14 next exhibit, Exhibit 7, please.

15 * * * * *

16 (Subpoena to Testify at a
17 Deposition in a Civil Action
18 with Affidavit of Service,
19 consisting of 5 page(s), was
20 marked as Plaintiff's Exhibit 7
21 for identification as of this
22 date; attached hereto.)

23 * * * * *

24 BY MR. STAMBOULIEH:

25 Q. There was also a check that was

1 MICHAEL DEYO, ESQ. - September 20, 2024

2 attached to this.

3 Did you receive a check for this,
4 as well?

5 A. I don't believe I received a check.

6 Q. Okay. I only ask that because it
7 hasn't been cashed yet. So I don't like
8 to have checks just flying around New York
9 somewhere.

10 Maybe that's something you could
11 look at when you get back?

12 A. Sure. Yes.

13 Q. Because it's your money, so you
14 should deposit it, please.

15 Okay. What did you do to prepare
16 for this deposition?

17 A. I reviewed some documents.
18 Specifically, the Complaint in this
19 matter, the discovery demands and
20 discovery responses, and I had some
21 conversations.

22 Q. Okay. Had conversations with
23 counsel, or conversations with other
24 people that are not counsel?

25 A. Both.

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1 MICHAEL DEYO, ESQ. - September 20, 2024

2 Q. Okay. For the conversations that
3 you had with those who are not counsel,
4 what did you discuss?

5 MR. THOMPSON: Outside of any
6 attorney-client privileged
7 communications.

8 A. Just the fact that I was subpoenaed
9 to testify -- or designated as the proper
10 person to testify in response to the
11 subpoena.

12 BY MR. STAMBOULIEH:

13 Q. Nothing about preparation and how
14 to answer questions?

15 A. No.

16 Q. Okay. And who, not counsel, did
17 you speak to?

18 A. Superintendent.

19 Q. Okay. And he was the only person?

20 A. Other than counsel, yes.

21 Q. I know. I'm --

22 A. Yeah.

23 Q. I'm going to leave him out of it
24 for now.

25 Beyond the Complaint and the

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1 MICHAEL DEYO, ESQ. - September 20, 2024
2 discovery demands, did you review any
3 other documents -- I'm sorry, I don't mean
4 to interrupt you -- in preparation for
5 this deposition?

6 A. No.

7 Q. I have the topics list in front of
8 you. That's what we're here to talk
9 about, and so I'd kind of like to go over
10 some of this.

11 Some -- for some of these, I have
12 gotten information from others that I
13 won't need to go back over with you. And
14 some, you might not know the answers to.

15 I'm going to hand you the Request
16 for Admissions.

17 * * * * *

18 (Brief pause while witness
19 reviews document.)

20 * * * * *

21 BY MR. STAMBOULIEH:

22 Q. Have you seen this document before?

23 A. Yes.

24 Q. In the first request, we had asked
25 to have the superintendent admit that

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2 Sergeant Brennan spoke to Plaintiff Harris
3 about applying for a nonresident New York
4 State pistol permit.

5 And the superintendent responded
6 Sergeant Brennan didn't recall.

7 (Reading from Document)

8 And then they have a line here that
9 says, "The New York State Police gun line
10 does not create any records of phone calls
11 from the public."

12 Do you see that?

13 A. Yes.

14 Q. Is it your understanding that when
15 someone calls in to the New York State
16 Police gun line, 1-855-LAW-GUNS, that
17 there's no record of any phone calls into
18 that line?

19 A. There's no records created by the
20 New York State Police pertaining to that
21 call.

22 Q. Does --

23 who do you use for your telephone
24 service?

25 A. I don't know.

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1 MICHAEL DEYO, ESQ. - September 20, 2024

2 Q. Okay. Would it be shocking to you
3 to know that they don't have a record of
4 who's placing an incoming call or anything
5 like that?

6 A. No, that wouldn't be shocking.

7 Q. Okay. Sergeant Brennan testified
8 that there is a caller ID on that line
9 that shows the number that's calling; but
10 you just don't know if it keeps a record
11 of who's calling?

12 A. Correct.

13 Q. (Reading from Document)

14 Okay. If we move to request for
15 Admission 2, it says, "Please admit that
16 Sergeant Brennan told Plaintiff Harris he
17 could not apply for a New York State
18 pistol permit."

19 And the superintendent could not
20 truthfully admit or deny this request.

21 Have you had any conversation with
22 Sergeant Brennan about whether or not he
23 told Plaintiff Harris that he could not
24 apply for a out-of-state New York pistol
25 permit?

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2 MR. THOMPSON: I'll ask
3 you --

4 I'll instruct you to answer
5 outside the --

6 MR. STAMBOULIEH: In the
7 30(b)(6) capacity. Not as your
8 attorney talking to him. Which
9 is kind of messed up, you know?

10 MR. THOMPSON: It gets messy.
11 Outside --

12 MR. STAMBOULIEH: Should we
13 go off?

14 MR. THOMPSON: Do you want to
15 go off the record?

16 MR. STAMBOULIEH: Yeah, I
17 think we should.

18 * * * * *

19 (At which time, a
20 discussion was held off the
21 record.)

22 * * * * *

23 BY MR. STAMBOULIEH:

24 Q. So I'm going to try to more
25 narrowly tailor my questions a little bit

1 MICHAEL DEYO, ESQ. - September 20, 2024
2 for you, sir.

3 Are you familiar, as The Agency,
4 with New York Penal Law 400, Subsection 3?

5 A. Yes.

6 Q. Okay. Can you tell me what that
7 subsection is related to?

8 A. Without having it here in front of
9 me, I know that a portion of it relates to
10 where applications for firearm licenses
11 should be filed.

12 Q. Okay. I'm going to hand you the
13 entire Penal Law 400, just that
14 subsection.

15 * * * * *

16 (Brief pause while witness
17 reviews document.)

18 * * * * *

19 A. Okay.

20 BY MR. STAMBOULIEH:

21 Q. Okay. Good.

22 You said where the application
23 should be filed?

24 A. Yes.

25 Q. Okay. And where does it talk about

1 MICHAEL DEYO, ESQ. - September 20, 2024
2 where the application should be filed?
3 what does it say, I should say,
4 about where the application should be
5 filed?

6 A. (Reading from Document)

7 In paragraph A of Subdivision 3, it
8 says, "Applications shall be made and
9 renewed, in the case of a license to carry
10 or possess a pistol or revolver or to take
11 -- or to purchase or take possession of a
12 semi-automatic rifle, to the licensing
13 officer in the city or county, as the case
14 may be, where the applicant resides, is
15 principally employed, or has his or her
16 principle place of business as a merchant
17 or storekeeper," and then it continues on
18 from there.

19 Q. That's perfect.

20 You're familiar with the subject
21 matter of the complaint at issue here?

22 A. Yes, I am.

23 Q. And what is your understanding of
24 what the plaintiffs are seeking?

25 A. As I understand it, the plaintiffs

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2 are nonresidents of New York State and
3 would like to apply for a firearm license.

4 Q. Perfect.

5 where in Subdivision 3A would these
6 nonresident plaintiffs apply for their
7 firearm permits?

8 MR. THOMPSON: Object to the
9 form of the question.

10 You can answer.

11 THE WITNESS: If any of the
12 plaintiffs had a residence
13 within New York or employed
14 within New York or had a
15 principal place of business
16 within New York, they would
17 apply in that county.

18 BY MR. STAMBOULIEH:

19 Q. Okay.

20 A. If they have none of those?

21 Q. Yes, sir.

22 A. This statute does not specify where
23 they would apply.

24 Q. Is it the New York State Police's
25 position that they could apply right now

1 MICHAEL DEYO, ESQ. - September 20, 2024

2 anywhere?

3 A (No verbal/audible response given
4 by witness to question posed by counsel.)

5 Q. I could --

6 Sorry.

7 A. Based upon the law, there's nothing
8 that would prevent them from applying in
9 any county.

10 Q. Okay. But they wouldn't apply to
11 the state -- the superintendent, would
12 they?

13 A. Correct. Members of the public
14 would not apply to the superintendent.

15 Q. As I understand it, the
16 superintendent only deals with retired New
17 York State Police members and not general
18 public.

19 A. That's correct.

20 Q. But nothing in Subdivision 3 says
21 that they can't apply to the
22 superintendent, does it?

23 A. It --

24 (Reading from Document)

25 It does, insomuch as 3A says that

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2 they are to apply to the licensing officer
3 in the city or the county.

4 And as that's -- as "licensing
5 officer" is defined within the penal law,
6 that means a county court judge in most of
7 the state. And in a few counties, it
8 means the police department, but not the
9 division of state police.

10 Q. would the state --

11 The superintendent of the state
12 police, is he classified as the licensing
13 officer for retired New York State Police
14 members?

15 A. He is designated as a possible
16 licensing officer for retired members of
17 the state police, yes.

18 Q. Okay. So could those retired
19 members then also apply to a different
20 licensing officer?

21 A. Yes.

22 Q. Okay. So that's why he's a
23 possible licensing --

24 A. Correct.

25 Q. Got it.

1 MICHAEL DEYO, ESQ. - September 20, 2024

2 Are you familiar with the PPB-3
3 form?

4 A. Yes.

5 MR. STAMBOULIEH: Okay. I'm
6 going to hand you what's been
7 previously marked as Exhibit 2.

8 * * * * *

9 (At which time, PPB-3,
10 previously marked and identified
11 as Plaintiff's Exhibit 2 at a
12 prior deposition, held Thursday,
13 September 19, 2024, was shown to
14 the witness.)

15 * * * * *

16 * * * * *

17 (Brief pause while witness
18 reviews document.)

19 * * * * *

20 BY MR. STAMBOULIEH:

21 Q. Is that the most up-to-date PPB-3
22 form?

23 A. Yes.

24 Q. Okay. Good.

25 Direct your attention about midway

1 MICHAEL DEYO, ESQ. - September 20, 2024
2 through the page. It asks for a New York
3 driver's license number.

4 Do you see that?

5 A. Yes.

6 Q. It doesn't say anything about a
7 non-New York driver's license number or
8 any other type of form of ID, does it?

9 A. The other form of ID referenced
10 here would be a nondriver identification,
11 other than a driver's license.

12 Q. Right.

13 But the driver's license, I guess,
14 suggests that it's New York only?

15 A. I think that's a fair
16 characterization, yes.

17 Q. Okay. My understanding is that the
18 superintendent can amend these forms.

19 Is that your understanding?

20 A. Yes.

21 Q. Okay. If the superintendent wanted
22 to remove "New York driver's license" and
23 make it any driver's license, that's
24 something that the superintendent has the
25 authority to do, correct?

1 MICHAEL DEYO, ESQ. - September 20, 2024

2 A. Yes.

3 Q. Beyond being the point of contact
4 -- or a point of contact for retired state
5 police members and amending the form, what
6 other responsibilities does the
7 superintendent have, under Penal Law 400,
8 for pistol licenses?

9 A. The other responsibilities would
10 involve receiving, from the various
11 counties, approved firearm license
12 applications; keeping records of those
13 submitted applications within a statewide
14 database; also receiving approved
15 amendments of firearm licenses from the
16 counties and keeping records of those
17 amendments; receiving recertification
18 forms from individual permit holders; and
19 maintaining records of those
20 recertifications; promulgating standards,
21 minimum standards, for the 16-hour
22 training required to obtain a concealed
23 carry license; as well as the live fire
24 test also required as part of obtaining a
25 concealed carry license.

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1 MICHAEL DEYO, ESQ. - September 20, 2024

2 That's all I can think of at the
3 moment.

4 Q. You said that he receives the
5 completed pistol license applications?

6 MR. THOMPSON: Object to the
7 form of the question.

8 You can answer.

9 THE WITNESS: Not all
10 completed license applications.

11 BY MR. STAMBOULIEH:

12 Q. Okay. Which --

13 So what do you mean by "not all
14 completed" ones?

15 A. State police only receives those
16 that are approved by the licensing
17 officer.

18 Q. Okay. So if someone goes into
19 Columbia County, files an application but
20 it's denied, you don't get the copy of
21 that?

22 A. Correct.

23 Q. Okay. Do you know if The Agency
24 has received and approved pistol license
25 application for a nonresident?

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1 MICHAEL DEYO, ESQ. - September 20, 2024

2 A. I don't have full knowledge of all
3 licenses issued throughout the state and
4 approved.

5 There's none that occur to me, off
6 the top of my head, from members of the
7 public.

8 Q. With respect to the retired members
9 of the state police, do you have state
10 police with active permits that are
11 retired and live out of state?

12 A. Yes, there are some.

13 Q. No problem with them having a New
14 York pistol license and living out of
15 state?

16 MR. THOMPSON: Object to the
17 form of the question.

18 You can answer.

19 THE WITNESS: Could you
20 clarify what you mean by, "No
21 problem"?

22 BY MR. STAMBOULIEH:

23 Q. Does it cause The Agency -- and by
24 "Agency," I mean the New York State Police
25 -- any concern --

1 MICHAEL DEYO, ESQ. - September 20, 2024

2 MR. STAMBOULIEH: Let me --
3 let me back up.

4 BY MR. STAMBOULIEH:

5 Q. I assume that the New York State
6 Police follows the law, right?

7 A. Yes.

8 Q. Okay. There's nothing in the law
9 that gives you concern that someone that
10 lives out of state that doesn't have -- a
11 storekeeper or own property or resides in
12 New York has a permit from New York that
13 lives out of state?

14 That's my question.

15 A. Assuming that all of the
16 eligibility criteria set forth in Section
17 400 are satisfied, then I have no further
18 concern.

19 Q. Like eligibility of --
20 I'm not a felon and I have done the
21 training, et cetera?

22 A. Correct.

23 Q. Okay. And for those people that
24 live out of state, when they recertify,
25 they just do it through the website,

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2 right?

3 A. I pause only because I don't know
4 offhand whether retired members recertify
5 their permits or not.

6 Q. Fair enough.

7 A. I assume that they do, in which
8 case they would just do the normal
9 recertification process.

10 Q. Are there specific points of
11 contact in the Agency for issuing permits
12 to carry concealed weapons for retired
13 Agency folks -- New York State Police
14 members?

15 A. When you say "points of contact for
16 issuing," what do you mean by that?

17 Q. Who ultimately issues the permits
18 for retired NYSP members?

19 A. The superintendent.

20 Q. Okay. Who are the points of
21 contact?

22 Like we had Sergeant Brennan
23 testifying in here earlier. Is he one of
24 the people that would work up that
25 application to send to the superintendent?

1 MICHAEL DEYO, ESQ. - September 20, 2024

2 A. He would be involved in the
3 process, yes.

4 Q. Are there other people that are
5 involved in that process?

6 A. Yes.

7 Q. Can you name them?

8 A. The members from the professional
9 standards bureau, which is the equivalent
10 of our internal affairs section, would be
11 involved in receiving the application and
12 helping to process it.

13 Individuals within Mike Brennan's
14 unit, the pistol permit bureau, would be
15 involved in helping to process that
16 application.

17 And then, ultimately, it would be
18 delivered to the superintendent for
19 determination.

20 Q. Okay. Does the Agency have a
21 standard response when people call in the
22 1-855-LAW-GUNS phone number and ask
23 questions about out-of-state permitting
24 for pistols?

25 A. Could you clarify what you mean by,

1 MICHAEL DEYO, ESQ. - September 20, 2024

2 "out-of-state permitting"?

3 Q. So one of the plaintiffs alleged in
4 the complaint that he called this
5 1-855-LAW-GUNS number and spoke to
6 Sergeant Brennan, and was told something.

7 My question to you as the Agency:
8 Does the Agency give instructions to
9 Sergeant Brennan or to Sergeant Bailey as
10 to how to respond to people that call in
11 and ask, "Hey, I'm out of state. I would
12 like to apply for a pistol permit in New
13 York; can I do that?"

14 A. Yes. There are -- there are
15 guidelines in place for answering those
16 questions.

17 Q. Okay. And what do those guidelines
18 direct them to say?

19 A. The guidelines direct them to say
20 that neither residency nor employment
21 within the state are an eligibility
22 requirement for obtaining a firearm
23 license.

24 Q. Did that change recently?

25 A. The guidance was made more clear

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1 MICHAEL DEYO, ESQ. - September 20, 2024
2 recently.

3 Q. Okay. And how recently was it
4 made?

5 A. This month.

6 Q. Okay. So if I called in and asked
7 them, they would tell me that residency
8 and work does not make me ineligible to
9 apply?

10 A. That would be my expectation, yes.

11 * * * * *

12 (At which time, there was a
13 brief pause in the proceedings.)

14 * * * * *

15 BY MR. STAMBOULIEH:

16 Q. There's also an email address that
17 Sergeant Brennan testified about,
18 pistolpt@troopers.ny.gov.

19 Are you familiar with that email
20 address?

21 A. I know that it exists, yes.

22 Q. Okay. And he said that they get
23 emails from people that ask the same
24 question.

25 would that instruction or the

1 MICHAEL DEYO, ESQ. - September 20, 2024
2 directive also be applicable to responding
3 to email inquiries about pistol licenses
4 for out-of-state residents?

5 A. Yes.

6 Q. Are you familiar with --

7 Is the Agency familiar with New
8 York City's recent change for allowing
9 out-of-state permits to be applied for?

10 A. We're aware that they announced
11 that change, yes.

12 Q. Okay. Has the Agency spoken with
13 anyone at the New York City Police
14 Department regarding their new change?
15 New York City.

16 A. I believe that contact was
17 attempted by Sergeant Brennan.

18 I'm not certain whether he's had a
19 substantive conversation with anybody
20 within the NYPD.

21 Q. Okay. So prior to this change in
22 the directive -- telling people how they
23 should answer the question that we just
24 spoke about -- what was the prior
25 directive on how to answer that question?

1 MICHAEL DEYO, ESQ. - September 20, 2024

2 MR. THOMPSON: Object to the
3 form of the question.

4 You can answer.

5 THE WITNESS: There was no
6 written directive or policy
7 specifically on that point that
8 I'm aware of.

9 BY MR. STAMBOULIEH:

10 Q. On out-of-state permit
11 applications?

12 A. Correct.

13 Q. Okay.

14 MR. STAMBOULIEH: Can we go
15 off the record just for, like,
16 two or three minutes?

17 MR. THOMPSON: Of course.

18 * * * * *

19 (At which time, a
20 discussion was held off the
21 record after which time a brief
22 recess was held.)

23 * * * * *

24 BY MR. STAMBOULIEH:

25 Q. I'm going to hand you the complaint

1 MICHAEL DEYO, ESQ. - September 20, 2024
2 in this case.

3 A. Okay.

4 Q. You have seen that document before?

5 * * * * *

6 (Brief pause while witness
7 reviews document.)

8 * * * * *

9 A. Yes, I have.

10 BY MR. STAMBOULIEH:

11 Q. Did you also review Superintendent
12 James's answer in this case?

13 A. Yes.

14 MR. STAMBOULIEH: I'm also
15 going hand you his answer
16 because I'm going to try to get
17 through it in a reasonable
18 amount of time.

19 * * * * *

20 (Brief pause while witness
21 reviews document.)

22 * * * * *

23 A. Okay.

24 BY MR. STAMBOULIEH:

25 Q. If we look at paragraph 6 of the

1 MICHAEL DEYO, ESQ. - September 20, 2024
2 complaint and paragraph 6 of
3 Superintendent James's answer.

4 * * * * *

5 (Brief pause while witness
6 reviews document.)

7 * * * * *

8 A. Okay.

9 BY MR. STAMBOULIEH:

10 Q. Defendant James denied allegations
11 in this paragraph.

12 Does the Agency agree with his
13 denial of allegations in that paragraph?

14 * * * * *

15 (Brief pause while witness
16 reviews document.)

17 * * * * *

18 MR. THOMPSON: Object to the
19 form of the question.

20 You can answer.

21 THE WITNESS: The Agency does
22 agree with the denial.

23 BY MR. STAMBOULIEH:

24 Q. Okay. Does --

25 what's the Agency's rationale for

1 MICHAEL DEYO, ESQ. - September 20, 2024
2 that denial -- or the agreement with that
3 denial?

4 MR. STAMBOULIEH: Actually,
5 let me withdraw that question
6 real quick. I'm not trying to
7 ask you any trick questions.

8 BY MR. STAMBOULIEH:

9 Q. Basically, there's no way for
10 nonresidents to bear arms in public
11 without a permit or reciprocity. You
12 disagree with that?

13 A. Can you restate?

14 Q. Sure. I'll just drop the
15 "reciprocity."

16 There's no way for nonresidents to
17 bear arms in public, to carry a firearm in
18 public without a permit, is there?

19 A. When you say, "firearm."

20 Q. A handgun or a pistol, a revolver.

21 A. That's correct.

22 Q. Okay. So, then, the Agency doesn't
23 agree 100 percent with the denial of this
24 because there's at least one point of this
25 that you agree to?

1 MICHAEL DEYO, ESQ. - September 20, 2024

2 MR. THOMPSON: Object to the
3 form of the question.

4 A. I'm not sure I follow.

5 BY MR. STAMBOULIEH:

6 Q. You said the Agency would agree
7 with Defendant James's answer that he
8 denies all of the allegations contained in
9 paragraph 6.

10 And I'm saying if I'm wrong in what
11 I'm saying, I want to know that I'm wrong.
12 So if there is a way for nonresidents to
13 carry a handgun in New York, then I want
14 to know about it.

15 Without a permit, right?

16 MR. THOMPSON: Could I
17 suggest it might be easier to
18 ask about the individual
19 propositions in the paragraph
20 rather than asking about the
21 paragraph as a whole.

22 MR. STAMBOULIEH: Sure.
23 Yeah, it would be. That's why I
24 took out the "reciprocity."

25

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1 MICHAEL DEYO, ESQ. - September 20, 2024

2 BY MR. STAMBOULIEH:

3 Q. But it seems like there's no way,
4 without a permit, in New York, that I know
5 of that someone could carry a handgun in
6 public.

7 A. So paragraph 6 does not reference
8 handgun. It references firearms and the
9 ability to bear arms.

10 Q. Okay.

11 A. which is a broader concept than
12 handguns.

13 Q. Okay. I can see that distinction.

14 And I'm not going to go all through
15 the paragraphs with you. I'm just picking
16 out some things.

17 New York does not allow permit-less
18 carry, right? To carry a handgun without
19 a permit?

20 A. Not by ordinary members of the
21 public, no.

22 Q. And from what I understand earlier,
23 it's the Agency's testimony that there's
24 nothing in Subdivision 3 of Penal Law 400
25 that would prevent an out-of-state

1 MICHAEL DEYO, ESQ. - September 20, 2024
2 resident from applying for a permit?

3 A. Correct.

4 MR. STAMBOULIEH: I should
5 have gotten you as a fact
6 witness instead.

7 MR. THOMPSON: Then there
8 would be lots of objections.

9 MR. STAMBOULIEH: I know, but
10 it's just such an easier thing.

11 BY MR. STAMBOULIEH:

12 Q. would you flip with me to paragraph
13 83. It's on page 19, please.

14 A. Sure.

15 (The witness complied with
16 counsel's request.)

17 A. Okay.

18 BY MR. STAMBOULIEH:

19 Q. Can I get you to just read that
20 paragraph to yourself, please.

21 * * * * *

22 (Brief pause while witness
23 reviews document.)

24 * * * * *

25 A. Okay.

1 MICHAEL DEYO, ESQ. - September 20, 2024

2 BY MR. STAMBOULIEH:

3 Q. You see Defendant James denies the
4 allegations contained in Paragraph 83 of
5 the complaint?

6 A. Yes.

7 Q. I think this tracks with your
8 current testimony that you believe there
9 is an avenue for Mr. Harris to apply.

10 Is that the Agency's position?

11 A. There's nothing in the law that
12 would prevent him from applying.

13 Q. Okay. Let me ask you this: why
14 would all the sheriffs believe that the
15 law does not allow out-of-state residents
16 to apply unless they meet these exceptions
17 in Subdivision 3?

18 MR. THOMPSON: Object to the
19 form of the question.

20 You can answer.

21 THE WITNESS: I could see a
22 reasonable interpretation based
23 upon the four corners of what
24 Penal Law 400, Subdivision 3
25 says to have that understanding.

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2 But the law is, of course,
3 interpreted by courts, and court
4 decisions give additional
5 meaning to statutes.

6 BY MR. STAMBOULIEH:

7 Q. Right.

8 Are you familiar with the Bach v.
9 Pataki case?

10 A. I may have read it, but I don't
11 recall specifically.

12 Q. Okay. I'll represent to you that
13 they say New York law requires residency
14 in -- from the Second Circuit. It might
15 be a case for you to look at.

16 I think you have answered the rest
17 of those questions with your prior
18 testimony, and I won't belabor the point.

19 There's no residency --

20 I'm sorry. There's no time to be a
21 New York resident before one could apply
22 for a permit to carry a handgun in New
23 York, is there?

24 A. No.

25 Q. Okay. In line with that question,

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1 MICHAEL DEYO, ESQ. - September 20, 2024
2 there's no residency requirement for
3 character references in the New York Penal
4 Law 400, is there?

5 * * * * *

6 (Brief pause while witness
7 reviews document.)

8 * * * * *

9 A. No.

10 BY MR. STAMBOULIEH:

11 Q. So to that point, if any specific
12 counties or cities had their own --

13 well, let me ask you this: Are the
14 counties or cities allowed to add to the
15 requirements under Penal Law 400 for their
16 own permitting processes?

17 A. The counties are allowed to define
18 the procedures they follow for issuing
19 licenses.

20 Q. Okay. Are they allowed to add
21 residency requirements for like -- let's
22 say character references -- if Penal Law
23 400 doesn't discuss that you have to be a
24 resident of a specific county or a
25 specific area to be a character reference?

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2 MR. THOMPSON: Object to the
3 form of the question.

4 You can answer.

5 THE WITNESS: There's nothing
6 in the penal law that would
7 grant that authority
8 specifically.

9 MR. STAMBOULIEH: Okay.
10 Those are all the questions I
11 have for you.

12 Actually, I'll tender the
13 witness.

14 MR. THOMPSON: Nothing from
15 us.

16 MR. STAMBOULIEH: would you
17 like to advise him of his read
18 and sign?

19 MR. THOMPSON: Yes.

20 So once there is a
21 transcript, we will get a copy
22 of it and share it with you.
23 You'll have the opportunity to
24 read through it, make sure that
25 it accurately reflects what you

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1

2

said today, and make any

3

appropriate changes to make sure

4

that it does, and then sign it

5

as to its accuracy.

6

THE WITNESS: Okay.

7

* * * * *

8

(Whereupon, the examination

9

of MICHAEL DEYO, ESQ. concluded

10

at 10:51 a.m.)

11

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2

This is the Deposition of

3

MICHAEL DEYO, ESQ.

4

taken in the matter, on the date, and at the

5

time and place set out on the title page

6

hereof.

7

8

It was requested that the deposition be taken

9

by the reporter and that same be reduced to

10

typewritten form.

11

12

It was agreed by and between counsel and the

13

parties that the Deponent will be reading and

14

signing the transcript of said deposition.

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1 DEPONENT'S CERTIFICATE

2 STATE OF _____:

3 COUNTY/CITY OF _____:

4
5 Before me, this day, personally
6 appeared MICHAEL DEYO, ESQ., who, being duly
7 sworn, states that the foregoing transcript of
8 his/her Deposition, taken in the matter, on
9 the date, and at the time and place set out on
10 the title page hereof, constitutes a true and
11 accurate transcript of said deposition.

12
13
14 MICHAEL DEYO, ESQ.

15
16
17
18 Signed and subscribed to before me
19 this ____ day of _____, 20____.

20
21 _____
22 NOTARY PUBLIC, STATE OF NEW YORK
23
24
25

1 DEPONENT'S DECLARATION

3 DECLARATION UNDER PENALTY OF PERJURY

4 I, MICHAEL DEYO, ESQ., declare, under
5 penalty of perjury, that I have read the
6 entire transcript of my Deposition taken in
7 the above-captioned matter, or the same has
8 been read to me, and the same is true and
9 accurate, save and except for changes and/or
10 corrections, if any, as indicated by me on the
11 ERRATA SHEET hereof, with the understanding
12 that I offer these changes as if still under
13 oath. I would like changes made to my
14 deposition transcript as indicated on the
15 following page.

16
17 Signed on the ____day of _____, 20____.

18
19 _____
20 MICHAEL DEYO, ESQ.
21
22
23
24
25

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1 ERRATA SHEET

2 INSTRUCTIONS: After reading the transcript of
3 your testimony, please note any change,
4 addition or deletion on this sheet. DO NOT
make any marks or notations on the actual
transcript.

5 WITNESS: MICHAEL DEYO, ESQ.

6 JOB NO.: PC 2024-0920SSW2

7 CASE NAME: HIGBIE, et al. v JAMES, et al.

8 HELD: FRIDAY, SEPTEMBER 20, 2024

9 Page Line CORRECTION

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23 Signature_____Date_____

24 MICHAEL DEYO, ESQ.

25

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1 ERRATA SHEET

2 Page Line CORRECTION

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23 Signature_____Date_____

24 MICHAEL DEYO, ESQ.

25

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1 REPORTER'S CERTIFICATION

2 I, Stephen P. Sudano, Court
3 Reporter, do hereby certify that I recorded
4 stenographically the proceedings herein at the
5 time and place noted in the heading hereof,
6 and that the foregoing transcript is true and
7 accurate to the best of my knowledge, skill
8 and ability.

9 IN WITNESS WHEREOF, I have hereunto
10 set my hand.

11
12 
13 Stephen P. Sudano

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**HICBIE, et al. v.
JAMES, et al.**

**Witness: MICHAEL DEYO, ESQ.
Held: Friday, September 20, 2024**

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Witness: MICHAEL DEYO, ESQ.
Held: Friday, September 20, 2024

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