

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**JACK and RENEE BEAM,**

**Plaintiffs,**

**Civil Action No. 07-cv-1227**

**Honorable Rebecca R. Pallmeyer**

**vs.**

**FEDERAL ELECTION COMMISSION,**

**Defendant.**

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**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

In their Second Amended Complaint, Plaintiffs Jack and Renee Beam allege that the Justice Department and Federal Election Commission obtained and/or transferred their private financial records in violation of the Right to Financial Privacy Act. On October 15, 2008, the Court denied Defendant Commission's motion to dismiss and dismissed Defendant Justice Department from this action. Defendant Commission now seeks summary judgment under Fed. R. Civ. P. 56 claiming that there is no genuine issue of material fact such that Plaintiffs' claims should now be dismissed in their entirety. Because there are disputed factual issues contained within the record, the Court should deny Defendant Commission's motion.

**STANDARD OF REVIEW**

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). There is no issue for trial "unless there is sufficient evidence favoring the non-moving

party for a jury to return a verdict for that party. Anderson v Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

### **DISCUSSION AND ANALYSIS**

The ultimate issue before the Court is whether the DOJ and FEC shared, exchanged, or transferred Plaintiffs' financial records in violation of the Right to Financial Privacy Act. Specifically, 12 U.S.C. § 3412(a) governs the inter-agency transfer of financial records from/between the Justice Department and the Commission. Specifically, § 3412(a) provides that:

“Financial records originally obtained pursuant to this title shall not be transferred to another agency or department unless the transferring agency or department certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry . . . . 12 U.S.C. § 3412(a).

In this case, there is record evidence contradicting the Commission's contentions and revealing that the Justice Department indeed transferred Plaintiffs' private financial records to Defendant Commission without the statutory certification required under the Act.

In its motion for summary judgment, Defendant Commission repeatedly asserts that “Plaintiffs uncovered no evidence that any private financial records or private financial information of the Beams – other than the three contribution checks to the Edwards campaign – had ever been in the possession of anyone at the Commission.” (Defendant's Brief in Support of Motion for summary judgment, pg. 7). The Commission's assertion is squarely contradicted by record evidence.

During his deposition testimony, Commission Staff Attorney Phillip Olaya, testified that the Defendant Commission had/has in its possession, and he saw, Plaintiffs' financial records (Exhibit A, Depo. Olaya, pg. 18-32). Specifically, Mr. Olaya testified as follows:

Q – Mr. Olaya, were you aware or did you now that the Department of Justice had gathered the financial records for the Fieger firm employees, Geoffrey Fieger, Jack Beam, Renee Beam, during the course of their criminal investigation?

A – Yes, You know, at some point I recognized that.

Q – I first asked you if you were aware that the Department of Justice had gathered the financial records for Fieger firm employees, Mr. Geoffrey Fieger, Plaintiff Jack and Renee Beam, during its civil [sic] investigation. And you said yes, you were aware of that. And I also told you that yesterday Mr. Roger HERRON testified that he had seen these financial records, and that they were provided to him by the Department of Justice. Did you also see any financial records, similar financial records?

A – The financial records I saw were part of the exhibits at trial that were – there were on the CD that had the transcript of the trial.

Q – And can you just describe for me in general what those financial records looked like?

A – I – I can't recall. For the most part, I believe they were summaries of financial records.

Q – Summaries prepared by the Department of Justice, or summaries prepared by the financial institutes?

A – I'm assuming the Department of Justice.

Q – And did those summaries contain line item entries showing the dates that checks were either written or the dates that checks were cleared from the financial institutes for payment?

A – I believe they included those dates, yes. (Exhibit A, Depo. Olaya, pg. 18-21).

When further asked about the format of these financial records and/or summaries, Mr. Olaya testified as follows:

Q – And did you see physical hard copies of these summaries and these reports that you're referring to, or did you look at them on

electronic format, on a computer screen?

A – I saw them in both formats, hard copy and a computer screen.

Q – And if we could go back to the summaries of financial records that you had referred to. Can you give me an idea of how many – or how many summaries or pages were contained in those files?

A – At most, if was a five-page document maybe, the one that I'm thinking of in particular.

Q – And . . . there were multiple summaries, or five pages and that's it, that's the total that's contained in that CD file?

A – No, I believe there are probably other financial types of documents. I thought the one we were talking about was the one, you know, that summarized some of that information.

Q – and can you describe to me these other financial documents?

A – I think they showed the individual[‘s] informations about the individuals involved.

Q – Mr. Olaya, these other financial records that you're referring to, were these financial records that were generated by financial institutes?

A – I honestly can't remember.

Q – Did these records show individual line items for balances and debits and credits?

A – I think some of them did, yes.

Q – And do you recall any of the names on these financial records?

A – Its been awhile since I worked on the case. But if you said a name, it might ring a bell –

Q – Do you recall seeing, for instance, Geoffrey Fieger's name?

A – Right

Q – Do you recall seeing, for instance, Paul Broshcay’s name?

A – Yes.

Q – And Jack Beam?

A – Yes

Q – And Renee Beam?

A – Yes

□

Q – Did you see any sort of certification accompanying those records that would have been referred to that we looked at in the statute earlier [12 U.S.C. § 3412(a)]?

A – I don’t recall whether or not there was one.

(Exhibit A, Depo. Olaya, pg. 23-29). Standing alone, Mr. Olaya’s testimony contradicts Defendant Commission’s assertions that it never received from the Justice Department Plaintiffs’ financial records in violation of the Act.

Defendant Commission also claims that whatever financial records it received were publicly filed exhibits from the *Fieger* criminal case. But this is also disputed for the following reasons. First, as the Commission acknowledges in its brief, Plaintiff Jack and Renee Beams financial records were never used as trial exhibits in the *Fieger* criminal case. *See* Defendant Commission’s Brief in Support of Motion for Summary Judgment, pg. 9 n. 4 (“Indeed, it appears that the Department did not introduce any financial records of Jack or Renee Beam in the related criminal jury trial of Geoffrey Fieger in the United States District Court for the Southern District of Michigan[.]”). Thus, Plaintiffs’ private financial records viewed by Mr. Olaya were not “public” records and are not contained on the compact disc containing trial exhibits as asserted by Defendant Commission.

There is other record evidence contradicting Defendant Commission's assertion that it received only "publicly" filed exhibits from the *Fieger* criminal trial. Another witness and FEC employee, Tom Andersen, testified that he was asked to serve as an expert witness in the DOJ's criminal case against Mr. Geoffrey Fieger and in preparation of his testimony he meet with DOJ attorney Kendall Day **before the criminal trial** (Exhibit B, Depo. Andersen, pg. 19-32). During their meeting, Mr. Day shared with Mr. Andersen financial records including bank statements of Fieger Firm employees.

Shortly thereafter, Mr. Day sent to Mr. Andersen a compact disc which is believed to have contained the same financial records shown to Mr. Andersen during his face-to-face meeting with Mr. Day (**Exhibit B**, Depo. Andersen, Tr. 19-32). Obviously if Mr. Andersen was provided with financial records for Fieger Firm employees from the DOJ **before the Fieger criminal** trial then those documents could not have been "public" documents or "trial exhibits" since they were provided to the FEC before the commencement of the criminal trial. Upon questioning, Mr. Andersen testified that the compact disc was either lost or destroyed. *Id.* at 34.

Another witness, FEC investigator Roger Hearron, testified during his deposition that he too saw bank statements and financial records for members of the Fieger Law Firm (**Exhibit C**, Depo. Hearron, Tr. 56). Hearron further testified that such financial records were provided to him by the DOJ on either a compact disc or in electronic mail. *Id.* at 58. Mr. Hearron also testified that the financial records that were provided to Defendant Commission were "public" because "they were used as exhibits in [the Fieger] criminal trial . . ." *Id.* at 57. Hearron did not see any certification accompanying the financial records that were provided by the Justice Department. *Id.* at 38-40.

The testimony of Olaya, Andersen, and Hearron reveals that there are questions of fact as to whether Justice Department transferred to the Commission Plaintiffs' financial records without the necessary certifications required under § 3412(a). Curiously, Defendant Commission never mentions the deposition testimony of Mr. Olaya in its motion for summary judgment. Instead, the Commission asks the Court to weight the credibility of such testimony and find that Mr. Olaya's testimony should be rejected by the Court.

Specifically, Defendant Commission asserts that:

to the extent that any FEC witness may appear to have been uncertain as to the source or nature of information he may (or may not) have seen, that cannot provide the evidence as to a transfer of private financial information of the Beams . . . given the clear testimony from the most knowledgeable witnesses that no such transfer occurred.

(Defendant's Brief in Support of Motion for Summary Judgment, pg. 9 n.4). In other words, the Commission is asking the Court to reject as incredible the witness testimony of Mr. Olaya and accept as credible the testimony of other witnesses. Obviously, it is not the function of the Court to weigh the credibility of witnesses for purposes of a summary judgment proceeding under Rule 56.

Mr. Andersen's testimony also contradicts the Commission's claims that the only financial records it received were publicly filed as trial exhibits in the *Fieger* criminal case. Mr. Andersen testified that he met with DOJ attorney Kendall Day in April 2008 at which time he was shown financial records for Fieger firm employees. This meeting occurred months **before the Fieger criminal case** and therefore such documents could not have been publicly filed trial exhibits. Mr. Andersen also testified that shortly after his meeting with Day, he received a compact disc containing the records that he viewed at his face-to-face meeting with Day. Andersen testified that the compact disc containing such records has been lost or destroyed. *Id.* at 34.

The aforementioned testimony squarely contradicts the declarations submitted by the Commission indicating otherwise. The Commission offered the sworn declarations of Ms. Wassom (former FEC staff attorney) and Mr. Kendall Day (DOJ trial attorney) both of whom swore that there had been no exchange of Plaintiffs' private financial records. The Commission's contention has now been refuted by three witnesses (Mssrs. Hearron, Anderson, and Olaya) each of whom testified that they saw the private financial records of Fieger Firm employees, and specifically, the records of Jack and Renee Beam.

Interestingly, Defendant Commission is also taking a back-up position which is to blame the Justice Department for violating the Act. As the Commission points out in its brief:

The Commission respectfully disagrees with the Court's earlier conclusion (Oct. Mem. Op. At 14) that the Commission could be liable under the RFPA – even if it had received financial information about the Beams from the Department – based on any alleged failure to make and provide notice of a certification as required under 12 U.S.C. § 3412. That provision places certain obligations on the transferring agency, and plaintiffs have not alleged that the Commission improperly transferred their financial information to another agency. As the alleged receiving agency, the Commission would have had no obligation under Section 3412.

(Defendant Commission's Brief in Support of Summary Judgment, pg. 9 n.5). To a certain extent, Plaintiffs agree with the Commission that the Justice Department is liable under the Act for transferring to the Commission their financial records without the necessary certification. In this regard, Plaintiffs agree with the Commission that the Justice Department should still be a party to this proceeding.

However, Plaintiffs disagree that the liability for the transfer rests solely with the Justice Department. Based on this record, there are questions of fact as to who requested the records, who



transferred them, who received them, and whether such acts were done by agreement or otherwise. These are all factual disputes that preclude summary judgment.

For these reasons, Plaintiffs respectfully request that this Honorable Court deny Defendant Commission's motion for summary judgment and allow this matter to proceed to trial on the disputed questions of fact.

Respectfully submitted,

FIEGER, FIEGER, KENNEY, JOHNSON  
& GIROUX, P.C.

/s/ Michael R. Dezsi

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Attorney for Plaintiffs

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(248) 355-5555

[m.dezsi@fiegerlaw.com](mailto:m.dezsi@fiegerlaw.com)

Dated: August 7, 2009

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on August 7, 2009, he electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Benjamin A. Streeter, III at [bstreeter@fec.gov](mailto:bstreeter@fec.gov)

*Attorney for Defendant Federal Election Commission*

s/ Michael R. Dezsi

MICHAEL R. DEZSI

**INDEX OF EXHIBITS**

<b><u>Exhibits</u></b>	<b><u>Description</u></b>
Exhibit A	Deposition Transcript of Phillip Olaya (3/11/09)
Exhibit B	Deposition Transcript of Thomas J. Anderson(3/11/09)
Exhibit C	Deposition Transcript of Roger A. Hearn (3/10/09)

# EXHIBIT A

1 THE UNITED STATES DISTRICT COURT  
 2 NORTHERN DISTRICT OF ILLINOIS  
 3 EASTERN DIVISION

**RECEIVED**

**MAR 26 2009**

JACK AND RENEE BEAM, :

Fieger, Fieger, Kenney & Johnson, P.C.

4 :  
 5 Plaintiffs, :

6 v. :

CA No. 07-cv-1227

7 MICHAEL B. MUKASEY, UNITED STATES:

8 ATTORNEY GENERAL, in his official:  
 9 Capacity; FEDERAL ELECTION :

10 COMMISSION CHAIRMAN DAVID M. :

11 MASON, in his official capacity; :

12 UNKNOWN AGENTS OF THE FEDERAL :

13 BUREAU OF INVESTIGATION, in their:

14 individual and official :

15 capacities, :

16 Defendants. :

17 -----

Washington, D.C.

Wednesday, March 11, 2009

18 Deposition of

19 PHILLIP OLAYA, called for examination by  
 20 counsel for Plaintiffs, pursuant to notice, at the  
 21 Offices of the Federal Election Commission, 999 E  
 22 Street, NW, Washington, D.C., commencing at 9:35  
 a.m., before Barbara A. Huber, Notary Public in and  
 for the District of Columbia, when were present on  
 behalf of the respective parties:

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:                  2 On behalf of Plaintiffs:                  3 MICHAEL DEZSI, ESQUIRE                  Fieger, Fieger, Kenney, Johnson &amp; Giroux                  4 19390 West Ten Mile Road                  Southfield, Michigan 48075                  5 (248) 355-5555                  midezsi@fiegerlaw.com                  6                  On behalf of Defendants:                  7                  BENJAMIN A. STREETER, III, ESQUIRE                  8 Federal Election Commission                  999 E Street, NW                  9 Washington, D.C. 20463                  (202) 694-1650                  10 bstreeter@fec.gov                  11                  12 * * * * *                  13                  14                  15                  16                  17                  18                  19                  20                  21                  22</p>	<p style="text-align: right;">Page 4</p> <p>1 PROCEEDINGS                  2 Whereupon,                  3 PHILLIP OLAYA,                  4 was called as a witness by counsel for Plaintiffs,                  5 and having been duly sworn by the Notary Public,                  6 was examined and testified as follows:                  7 EXAMINATION BY COUNSEL FOR PLAINTIFFS                  8 BY MR. DEZSI:                  9 Q Good morning, Mr. Olaya.                  10 A "Olaya." Good morning.                  11 Q "Olaya." Good morning. I'm Michael                  12 Dezsi. I'm the attorney representing the                  13 Plaintiffs, Jack and Renee Beam, in this matter.                  14 Mr. Olaya, could you please spell -- say                  15 and spell your full name for the record?                  16 A Sure. It's Phillip Olaya,                  17 P-H-I-L-L-I-P, Olaya, O-L-A-Y-A.                  18 Q Okay. And Mr. Olaya, before we get into                  19 some substantive matters, if we could just do some                  20 housekeeping.                  21 Can you tell me when you began your                  22 employment at the Federal Election Commission?</p>
<p style="text-align: right;">Page 3</p> <p>1 CONTENTS                  2 EXAMINATION BY: PAGE                  3 Counsel for Plaintiffs 4                  4 Counsel for Defendants 40                  5                  6                  7                  8                  9                  10                  11                  12                  13                  14                  15                  16                  17                  18                  19                  20                  21                  22</p>	<p style="text-align: right;">Page 5</p> <p>1 A Late June 2008.                  2 Q Late June 2008. Okay.                  3 And can you tell me where were you                  4 employed prior to the Federal Election Commission?                  5 A Prior to that I was at the U.S.                  6 Department of Veterans Affairs, general counsel's                  7 office.                  8 Q Okay. And that would be from what years                  9 to what years, approximately?                  10 A June 2006 to June 2008.                  11 Q Okay. And how about before that?                  12 A Before that I was at the Asian American                  13 Legal Defense and Education Fund. And that was in                  14 November 2005 to June 2006.                  15 Q Okay. And how about before that?                  16 A Before that I was doing some contract                  17 work here in D.C.                  18 Q And you graduated from law school when?                  19 A May 2004.                  20 Q Okay. And can you tell me, what is your                  21 title at the Federal Election Commission?                  22 A I'm an attorney in the enforcement</p>

Page 6

1 division.  
 2 Q Would that be like a staff attorney?  
 3 A Staff attorney, that's correct.  
 4 Q And can you tell me, it's my  
 5 understanding that you were hired and you worked  
 6 with Ms. Audra Wassom; is that correct?  
 7 A That's correct.  
 8 Q And did you work with her on several  
 9 different matters, or on any one particular  
 10 matter?  
 11 A I worked with her on two matters.  
 12 Q Okay. And can you tell me, when was the  
 13 first time you heard of the names Jack or Renee  
 14 Beam?  
 15 A Must have been early when I started  
 16 here. I think this was one of the first cases  
 17 that I was assigned to, to help out with, so --  
 18 Q Okay. And when you say cases, are you  
 19 referring to the general universe of the matter on  
 20 review 5818?  
 21 A Right. Correct.  
 22 Q Okay. Which includes Jack and Renee

Page 7

1 Beam?  
 2 A That's correct.  
 3 Q Okay. And can you just describe to me  
 4 what exactly your role versus what Audra Wassom's  
 5 role was in the beginning, when you began working  
 6 on this?  
 7 A Okay. Well, when I started, I was  
 8 basically I guess assigned to take over the case  
 9 from Audra. So for the first few weeks, you know,  
 10 she had just briefed me, kept me up-to-date on  
 11 what was going on in the case, what had happened  
 12 in the -- in the matter. And keep in mind, you  
 13 know, this was my first matter that I had handled  
 14 at the FEC, so I was just learning about the  
 15 procedure here, how -- how things worked, and at  
 16 the same time learning about the particulars of  
 17 this matter.  
 18 So while she was generally in charge of  
 19 the -- the matter at the time, my responsibility,  
 20 as it was explained to me, was to start writing a  
 21 general counsel's brief. So there was no  
 22 particular timeline given or anything like that at

Page 8

1 the time. It was just basically, you know, catch  
 2 up to speed, look at the file, read some of the  
 3 reports that have already been filed with the  
 4 Commission. And then, you know, we kind of moved  
 5 on from there, so --  
 6 Q And if I could just have you take a look  
 7 at these. These were marked yesterday as  
 8 Plaintiff's Exhibit A and B. This is a letter --  
 9 A Sure.  
 10 Q -- from Michael Toner to Jack Beam, and  
 11 the second one from Michael Turner to Renee  
 12 Beam --  
 13 A Okay.  
 14 Q -- dated September 26th of 2006. You  
 15 can just take a moment and look at those.  
 16 A (Witness examined document). Okay.  
 17 Q Have you seen these before?  
 18 A Oh, during the course, I -- I must have.  
 19 I think these are standard --  
 20 Q Uh-huh.  
 21 A -- RTB letters that we send out.  
 22 Q Yes. Okay.

Page 9

1 You mentioned going through the file and  
 2 getting up to speed.  
 3 As part -- as part of that process, did  
 4 you physically go through the entire -- the actual  
 5 physical file, the papers, the documents contained  
 6 in the file?  
 7 A At -- at some point I had to do that  
 8 related to these cases. But at first, I mean, the  
 9 file was with Audra in her office. Some of it was  
 10 with Peter Blumberg, I believe. So I didn't  
 11 really have any physical files to work with. I  
 12 just had to go on the computer and read briefs,  
 13 reports, that type of thing.  
 14 MR. STREETER: You weren't asking about  
 15 the CED document? You're talking --  
 16 MR. DEZSI: I'm going to ask about the  
 17 CED document.  
 18 MR. STREETER: Oh, okay, okay. So my  
 19 follow was really broadly speaking?  
 20 MR. DEZSI: Yes.  
 21 MR. STREETER: All right.  
 22 BY MR. DEZSI:

Page 10	Page 12
<p>1 Q So could you just give me an idea of 2 what this -- what this file looks like? 3 I mean would it cover this whole table? 4 Is it just a couple files, or, I mean, how -- what 5 is it -- 6 A Umm -- 7 Q -- in terms of its volume? 8 MR. STREETER: Could you ask him to 9 define what he means by file? Because I think you 10 guys are talking about different things, or -- 11 MR. DEZSI: Sure. 12 BY MR. DEZSI: 13 Q I'm talking about any papers that may 14 have been generated, reports, any exhibits, 15 documents that the FEC relied upon in this matter, 16 when that all gets collected together -- 17 A Uh-huh. 18 Q -- along with any reports that you guys 19 my write, memos. 20 What does it look like, this file? 21 A People's personal notes -- 22 Q Yes.</p>	<p>1 Q -- also related to this file? 2 A Actually, don't think I ever used the 3 central -- the CED. Everything that I needed from 4 the case I either found in our computer system or 5 I had, you know, physical hard copies that were 6 previously in the possession of Audra or Peter 7 Blumberg. 8 Q Okay. 9 A Who I also think received -- Peter 10 received some of those files from -- from Audra, 11 so -- 12 Q Okay. At any time during your work on 13 this file have you issued any administrative 14 subpoenas to obtain any financial records? 15 A I have not, no. 16 Q Okay. Are you aware of anybody else 17 from the FEC who would have or did issue 18 administrative subpoenas? 19 A I want to say I have seen them in the 20 file, or in the electronic system. I can't say 21 who issued them, because I -- I don't really 22 remember opening them, those documents.</p>
Page 11	Page 13
<p>1 A -- that type of research? In like a 2 single file cabinet, in one of those deep drawers, 3 maybe three-quarters of that drawer. 4 Q And all of that file was essentially -- 5 was in Audra's possession, not -- it was in the 6 possession of the FEC, of course, but Audra was 7 the one that was using that file or had it in -- 8 A Audra had -- eventually when the case, 9 you know, was transferred to me in whole, both 10 Audra and Peter had parts of the file to give to 11 me, so -- 12 Q Okay. Now, the -- there's also, I 13 understand, a system at the FEC called the central 14 enforce -- the central enforcement -- 15 MR. STREETER: Docket. 16 BY MR. DEZSI: 17 Q -- docket? 18 A Uh-huh. 19 Q Could you explain to me what -- how you 20 used the central enforcement docket, and how you 21 found items docketed in that system -- 22 A Okay.</p>	<p>1 Q Okay. Mr. Olaya, I'm going to have you 2 take look at a particular code section of a 3 statute -- 4 A Okay. 5 Q -- which is 12 United States Code 6 Section 3412. And I'm referring specifically to 7 paragraph A. If you could just take a moment and 8 read that to yourself. 9 A (Witness examined document). Okay. 10 Q Okay. Have you seen that statute 11 before? 12 A I have not. 13 Q You've had no occasion to read that? 14 A I have not, no. 15 Q Okay. Have you had any occasion, during 16 your employment with the Federal Election 17 Commission, to either share, transfer, or obtain 18 any financial records from other federal agencies, 19 any other federal agencies? 20 A I have not. 21 Q Okay. In that statute, that paragraph 22 A, it refers to certifications that have to be</p>

Page 14	Page 16
<p>1 made if there are transfers of financial records.                  2 Could you just take a second to review                  3 that?                  4 A (Witness examined document). Okay.                  5 Q Okay. Have you ever seen any such                  6 certification during your employment with the FEC,                  7 on any matters?                  8 A Umm --                  9 Q Without disclosing any --                  10 A Sure.                  11 Q -- particular matter.                  12 A None -- none that I can remember off the                  13 top of my head.                  14 Q Okay. Have you ever -- have you heard                  15 of anybody at the FEC talk about or refer to                  16 that -- to those certifications that are issued                  17 when transferring or sharing financial records?                  18 A I -- I don't think so.                  19 Q Okay. Thank you. I'll take that back.                  20 A Sure.                  21 (Handing document).                  22 Q Thank you.</p>	<p>1 Q Okay. And we're referring to Ben --                  2 Mr. Ben Streeter?                  3 A Correct.                  4 Q How about Department of Justice                  5 employees or agents or --                  6 A There was. And --                  7 Q -- attorneys?                  8 A -- I can't remember his name right now.                  9 But there was one DOJ attorney there who was the                  10 one we met with who tried the criminal case.                  11 Q Would that be Kendall Day, do --                  12 A Kendall Day --                  13 Q -- you recall?                  14 A -- right.                  15 Q Kendall Day. Okay.                  16 Okay. And during that meeting, were                  17 there -- was there an exchange of any documents or                  18 files or compact disks?                  19 A At that meeting, I don't believe there                  20 were any exchanges of any files.                  21 Q Okay. Are you aware of any exchange of                  22 files or documents or compact disks between</p>
Page 15	Page 17
<p>1 A Sure.                  2 Q During your -- during the course of your                  3 work on this file that we're referring to                  4 involving Jack and Renee Beam, did you have                  5 occasion to communicate or talk to anybody from                  6 the Department of Justice?                  7 A I did not personally have any contact                  8 with anyone from DOJ.                  9 Q Okay. No face-to-face meetings with                  10 anybody that --                  11 A I was involved in a face-to-face                  12 meeting, but --                  13 Q And do you remember approximately the                  14 date of that meeting --                  15 A I think --                  16 Q -- just approximate?                  17 A -- it must have been, yeah, August or                  18 September of 2008.                  19 Q Okay. And can you tell me who was                  20 present at that meeting?                  21 A I was there, Audra, Mark Shonkwiler,                  22 Peter Blumberg, Ben.</p>	<p>1 members of your team and the FEC and the                  2 Department of Justice with Mr. Kendall Day?                  3 A We have a copy of the transcript of the                  4 criminal trial. But that was in the file when I                  5 inherited it. So I'm not sure how it got there,                  6 but --                  7 Q Okay.                  8 A It's from the DO -- or, you know, the                  9 DOJ, who tried the case.                  10 Q At any time during your work on this                  11 case have you had occasion to read FBI 302                  12 reports?                  13 A I have. I write 302 reports.                  14 Q And were any grand jury subpoenas                  15 attached or included with those 302 reports?                  16 MR. STREETER: Objection, law                  17 enforcement privilege, 2 U.S.C. 437g(a)(12).                  18 Instruct the witness not to answer.                  19 BY MR. DEZSI:                  20 Q During your work on this file, did you                  21 have any occasion to read any IRS field memoranda                  22 reports, which are similar to FBI 302 reports</p>



Page 18

1 except that they're prepared by IRS agents instead  
 2 of FBI agents?  
 3 A I think the only ones I've read were the  
 4 FBI 302's.  
 5 Q Okay. And how about grand jury  
 6 transcripts? Have you had occasion to see or  
 7 review or read any grand jury transcripts?  
 8 MR. STREETER: Objection, law  
 9 enforcement privilege. It violates 2 U.S.C.  
 10 437g(a)(12), as well. Instruct the witness not to  
 11 answer.  
 12 BY MR. DEZSI:  
 13 Q Mr. Olaya, were you aware or did you  
 14 know that the Department of Justice had gathered  
 15 the financial records for the Fieger firm  
 16 employees, Geoffrey Fieger, Jack Beam, Renee Beam,  
 17 during the course of their criminal investigation?  
 18 A Yes. You know, at some point I  
 19 recognized that.  
 20 Q Okay. Yesterday Mr. Roger Hearron  
 21 testified that he had reviewed the financial  
 22 records. And he also testified that he was

Page 19

1 provided those financial records by the Department  
 2 of Justice.  
 3 Did you also have occasion to see those  
 4 financial records?  
 5 MR. STREETER: Let me object to the form  
 6 of that question because it contains facts not in  
 7 evidence. Also, it mischaracterizes the testimony  
 8 of Mr. Hearron.  
 9 If the witness understands the question,  
 10 you can answer the question.  
 11 THE WITNESS: Okay. Can -- can you  
 12 please repeat it?  
 13 BY MR. DEZSI:  
 14 Q Sure. I'll -- first I'll tell you --  
 15 I'll make a statement, so that you don't have to  
 16 make this assumption.  
 17 Yesterday, Mr. Roger Hearron testified  
 18 that he had seen financial records for Fieger firm  
 19 employees that were provided by the Department of  
 20 Justice.  
 21 Did you have occasion to see those  
 22 financial records, also?

Page 20

1 MR. STREETER: Could we go off the  
 2 record?  
 3 (Discussion off the record)  
 4 BY MR. DEZSI:  
 5 Q Mr. Olaya, did you understand my  
 6 previous question?  
 7 A If you could repeat that one more time.  
 8 Q Sure.  
 9 I first asked you if you were aware that  
 10 the Department of Justice had gathered the  
 11 financial records for Fieger firm employees,  
 12 Mr. Geoffrey Fieger, Plaintiff Jack and Renee  
 13 Beam, during its civil investigation. And you  
 14 said yes, you were aware of that. And I also told  
 15 you that yesterday Mr. Roger Hearron testified  
 16 that he had seen these financial records, and that  
 17 they were provided to him by the Department of  
 18 Justice.  
 19 Did you also see any financial records,  
 20 similar financial records?  
 21 MR. STREETER: Object to the form of the  
 22 question because the term "financial records" is

Page 21

1 vague. The witness can answer if the witness  
 2 knows.  
 3 THE WITNESS: The financial records I  
 4 saw were part of the exhibits at trial that  
 5 were -- that were on the CD that had the  
 6 transcript of the trial.  
 7 BY MR. DEZSI:  
 8 Q And can you just describe for me in  
 9 general what those financial records looked like?  
 10 A I -- I can't recall. For the most part,  
 11 I believe they were summaries of financial  
 12 records.  
 13 Q Summaries prepared by the Department of  
 14 Justice, or summaries prepared by the financial  
 15 institutes?  
 16 A I'm assuming the Department of Justice.  
 17 Q And did those summaries contain line  
 18 item entries showing the dates that checks were  
 19 either written or the dates that checks were  
 20 cleared from the financial institutes for payment?  
 21 A I believe -- I believe they included  
 22 those dates, yes.

Page 22

1 Q Okay. And did those summaries include  
 2 dates of payments from the Fieger firm to the  
 3 individuals' accounts?  
 4 A They did, yes.  
 5 Q Okay. And you referred to a compact  
 6 disk which contained these records.  
 7 Do you know where that -- how did the  
 8 FEC obtain that disk?  
 9 How did it come into your hands?  
 10 A It came into my hands, it was part of  
 11 the files that were left with me when the case was  
 12 transferred to me, so --  
 13 Q Okay. And did that disk have a marking  
 14 or a label? Do you recall?  
 15 A It must have. It -- I think it's  
 16 handwritten, just maybe trial transcripts or DOJ  
 17 transcripts, or -- I -- I don't know specifically.  
 18 Q Okay. And do you know how -- who from  
 19 the DOJ sent that disk over to the FEC?  
 20 A I -- I don't.  
 21 Q Okay. Do you know who at the FEC  
 22 received the disk?

Page 23

1 A I don't.  
 2 Q Okay. There was not a -- sort of a  
 3 receipt signature or something like that or --  
 4 A Not that I know of.  
 5 Q Okay. Was there a cover letter  
 6 accompanying this disk?  
 7 A I don't think so.  
 8 Q Okay. And did you see physical hard  
 9 copies of these summaries and these reports that  
 10 you're referring to, or did you look at them on  
 11 electronic format, on a computer screen?  
 12 A I saw them in both formats, hard copy  
 13 and a computer screen.  
 14 Q Okay. Can you tell me, was there some  
 15 sort of index or scanned cover letter that  
 16 preceded the actual files, either on the hard copy  
 17 or in -- let's start with the hard copy -- on the  
 18 hard copy?  
 19 MR. STREETER: Objection, the question  
 20 is still compound. If you could just break it out  
 21 a little bit more.  
 22 MR. DEZSI: Sure.

Page 24

1 BY MR. DEZSI:  
 2 Q Did you see a cover letter preceding the  
 3 hard copies of these files?  
 4 A I didn't -- did not see a cover letter.  
 5 Q Okay. How about another document, like  
 6 an index?  
 7 A I believe I saw an index, but the --  
 8 yeah.  
 9 Q Can you describe that index to me?  
 10 A I think one column said exhibits, and  
 11 another column said description or maybe file  
 12 numbers something or file folder and a  
 13 description.  
 14 Q Okay. And was there a name that you  
 15 recall anyone as someone who prepared that, or --  
 16 A I -- I don't remember seeing a name.  
 17 Q And how about sometimes you see these  
 18 footer lines on documents which indicate where it  
 19 was stored in -- in its original server?  
 20 A Uh-huh.  
 21 Q And is there any footer or header line  
 22 like that?

Page 25

1 A Not that I can remember.  
 2 Q At any time did you send any documents  
 3 or files to anybody at the Department of Justice  
 4 related to this case?  
 5 MR. STREETER: Objection, that question  
 6 violates a law enforcement privilege. That  
 7 question also violates 2 U.S.C. 437g(a)(12), and  
 8 even the attorney work product doctrine. Instruct  
 9 the witness not to answer.  
 10 BY MR. DEZSI:  
 11 Q Mr. Olaya, during your time at the FEC,  
 12 have you had occasion to work with the Department  
 13 of Justice on any other matters?  
 14 A No, I have not.  
 15 Q Okay.  
 16 MR. DEZSI: Give me just a minute.  
 17 BY MR. DEZSI:  
 18 Q Can you tell me, Mr. Olaya, where that  
 19 CD would be found at this time?  
 20 A It's in my file cabinet.  
 21 MR. STREETER: Michael, there are  
 22 multiple copies floating around, too.

Page 26

1 MR. DEZSI: Okay.  
 2 BY MR. DEZSI:  
 3 Q And if we could go back to the summaries  
 4 of financial records that you had referred to.  
 5 Can you give me an idea of how many --  
 6 or how many summaries or pages were contained in  
 7 those files?  
 8 A At most, it was a five-page document  
 9 maybe, the one that I'm thinking of in particular.  
 10 I mean, it was just a summary, so --  
 11 Q Okay. And that was -- and there were  
 12 multiple summaries, or five pages and that's it,  
 13 that's the total that's contained in that CD file,  
 14 either?  
 15 A No, I believe there are probably other  
 16 financial types of documents. I thought the one  
 17 we were talking about was the one, you know, that  
 18 summarized some of that information.  
 19 Q And can you describe to me these other  
 20 financial documents?  
 21 A I think they showed the individual --  
 22 informations about the individuals involved.

Page 27

1 MR. STREETER: Let me pose a standing  
 2 objection to this line of questioning about the  
 3 content of the public Government exhibits in the  
 4 criminal trial that were transferred to us,  
 5 because Mr. Dezsi was also counsel at that trial  
 6 and has seen all these exhibits.  
 7 And I don't understand the point in  
 8 trying to interrogate Mr. Olaya on the content of  
 9 the documents that's already in the possession of  
 10 Mr. Dezsi. But just a standing objection. You  
 11 can continue.  
 12 MR. DEZSI: Okay.  
 13 BY MR. DEZSI:  
 14 Q Mr. Olaya, these other financial records  
 15 that you're referring to, were these financial  
 16 records that were generated by financial  
 17 institutes?  
 18 A I honestly can't remember.  
 19 Q Okay. Did these records show individual  
 20 line items for balances and debits and credits?  
 21 A I think some of them did, yes.  
 22 Q Okay. And do you recall any of the

Page 28

1 names on these financial records?  
 2 A It's been awhile since I worked on the  
 3 case. But if you said a name, it might ring a  
 4 bell, so --  
 5 Q Do you recall seeing, for instance,  
 6 Geoffrey Fieger's name?  
 7 A Right.  
 8 Q Do you recall seeing, for instance, Paul  
 9 Brochay's name?  
 10 A Yes.  
 11 Q And Jack Beam?  
 12 A Yes.  
 13 Q And Renee Beam?  
 14 A Yes.  
 15 Q Perhaps Jeff -- Jeff Danzig, Jeffrey  
 16 Danzig?  
 17 A I do.  
 18 Q Okay. And when you -- these other  
 19 financial records that you're referring to, not  
 20 the summaries, can you tell me approximately how  
 21 many pages you're referring to, like a hundred,  
 22 or --

Page 29

1 A Well --  
 2 Q -- 500?  
 3 A Certainly not 500, I don't think. Maybe  
 4 a few pages per person, so -- if I had to guess, a  
 5 hundred to 200 or something maybe.  
 6 Q Okay.  
 7 A This was all electronic, so --  
 8 Q Uh-huh. And Mr. Olaya, just to -- to  
 9 ask you to follow up with an earlier question.  
 10 Did you see any sort of certification  
 11 accompanying those records that would have been  
 12 referred to that we looked at in the statute  
 13 earlier?  
 14 MR. STREETER: Let me object to that  
 15 question. Because that question assumes that  
 16 there's a need to have a certification for  
 17 exhibits that are used in the public criminal  
 18 trial. And I think that that's a false  
 19 assumption.  
 20 MR. DEZSI: Okay. Are you --  
 21 MR. STREETER: If you can answer, you  
 22 can answer.

Page 30

1 THE WITNESS: I don't recall whether or  
 2 not there was one.  
 3 BY MR. DEZSI:  
 4 Q Okay. Mr. Olaya, can you also tell me  
 5 or just tell me a list of all of the individuals  
 6 from the FEC with whom you worked on this file?  
 7 I know earlier we --  
 8 A Right.  
 9 Q -- we many talked about Audra Wassom, of  
 10 course.  
 11 A There's Audra, Mark Shonkwiler, Peter  
 12 Blumberg, Ben Streeter, Roger Hearron. And that's  
 13 it on my end.  
 14 Q And can you tell me what -- tell me what  
 15 Mr. Blumberg's role was in this matter?  
 16 A When I came into it, I think he was  
 17 supposed to be the kind of supervising more senior  
 18 attorney helping me out with the -- with the  
 19 matter. As you know, Audra had been temporarily  
 20 promoted to a supervisory role and -- or a  
 21 management role. And Peter was kind of the senior  
 22 attorney on -- on my team. So he was --

Page 31

1 Q Okay. So did you have to seek his  
 2 concurrence or approval before taking certain  
 3 steps in the file?  
 4 MR. STREETER: I'll object to that one  
 5 on 2 U.S.C. 437g(a)(12).  
 6 Instruct you not to -- not to answer.  
 7 BY MR. DEZSI:  
 8 Q Mr. Blumberg, could you -- could you  
 9 tell me what his title is? He is he a supervising  
 10 attorney, or --  
 11 MR. STREETER: Currently, or back then?  
 12 BY MR. DEZSI:  
 13 Q At the time.  
 14 A At the time, he was staff attorney, as  
 15 well.  
 16 Q Okay. But do you know -- how long had  
 17 he been employed by the FEC?  
 18 I -- I'm just curious.  
 19 A He's been here awhile I believe. I -- I  
 20 don't know, I mean.  
 21 Q He's been here a few years; you came in  
 22 as the new guy, and --

Page 32

1 A Right.  
 2 Q -- so he sort of was your supervisor in  
 3 this regard?  
 4 A Well, Mark Shonkwiler was my supervisor,  
 5 but -- on -- on this case he was I think supposed  
 6 to serve that role.  
 7 Q Okay. Thank you.  
 8 Mr. Olaya, can you tell me, do you know  
 9 Lois Lerner?  
 10 A I don't.  
 11 Q You do not. Okay.  
 12 Were you aware that the FEC had provided  
 13 an expert witness to testify in the DOJ's criminal  
 14 case against Mr. Fieger?  
 15 A I was not aware.  
 16 Q You weren't. Okay.  
 17 And so -- and you've never heard of Lois  
 18 Lerner as a former Federal Election Commission  
 19 employee?  
 20 A Right. It doesn't ring a bell.  
 21 Q Okay. How about Mr. Tom Andersen? Are  
 22 you -- do you know Mr. Andersen?

Page 33

1 A I do know Mr. Andersen.  
 2 Q Okay. Did you know that for a time he  
 3 was -- he was intended to serve as an expert  
 4 witness for the Department of Justice's criminal  
 5 case against Mr. Fieger?  
 6 A I was not aware of that.  
 7 Q Okay. Did you have any meetings with  
 8 Mr. Andersen?  
 9 MR. STREETER: On this case?  
 10 BY MR. DEZSI:  
 11 Q On this case. Excuse me.  
 12 A I did not.  
 13 Q Did not. Okay.  
 14 How about do you know Ms. Madelynn Lane?  
 15 A I -- I know the name.  
 16 Q Okay. If I -- if I represent to you  
 17 that she works in the audit division of the  
 18 Federal Election Commission, you wouldn't have any  
 19 reason to -- to disagree with that?  
 20 MR. STREETER: It's the RAD division.  
 21 MR. DEZSI: The RAD division, the  
 22 reports and --

Page 34	Page 36
<p>1 MR. STREETER: Analyst division.  2 MR. DEZSI: -- and analyst division.  3 MR. STREETER: Analysis division, I  4 guess.  5 MR. DEZSI: Okay.  6 BY MR. DEZSI:  7 Q All right. You don't know Ms. Lane  8 personally, or you haven't worked with her on this  9 matter?  10 A I have not.  11 MR. DEZSI: Do you mind if we take a  12 quick break?  13 MR. STREETER: Your dime.  14 MR. DEZSI: We'll take a quick break.  15 (Recess)  16 BY MR. DEZSI:  17 Q Okay. Mr. Olaya, if we could go back to  18 that CD you were referring to earlier that had the  19 documents on it.  20 A Uh-huh.  21 Q Can you tell me how many PDF's or how  22 many different files were contained on that CD,</p>	<p>1 Q And if you could flip to Exhibit A  2 that's attached, which requests you to produce  3 documents.  4 Are you familiar with that?  5 A (Witness examined document). I am.  6 Q Okay. Prior to the deposition today,  7 did you search for documents within your  8 possession --  9 A I did.  10 Q -- related to those exhibits, that  11 exhibit?  12 A I did.  13 Q Okay. And did you find any responsive  14 documents?  15 A (Witness examined document). Give me  16 one second.  17 Q Okay.  18 A (Witness examined document). I -- I  19 did. I found a few e-mails.  20 Q Okay. Okay. And once you located those  21 documents, what did you do with them?  22 A I believe I had copied them and sent</p>
<p>1 about?  2 A More than ten, less than twenty.  3 Q Okay. And were the -- the individual  4 PDF's, were they labeled in some fashion, or --  5 A They indicated who was on the witness  6 stand, whose -- whose transcript it was.  7 Q Okay. And the financial records that  8 you were referring to, those were also contained  9 on PDF's on that same CD?  10 A On that same CD I believe, yes.  11 Q Okay. And were those in PDF's, or those  12 were also within the ten to twenty that you  13 mentioned --  14 A I think they were --  15 Q -- associated with the --  16 A -- one of the folders that -- maybe  17 labeled trial exhibits.  18 Q Okay. Okay. Also, Mr. Olaya, if I  19 could just have you take a look at -- this is the  20 sub -- the notice of deposition for your testimony  21 today.  22 A (Witness examined document).</p>	<p>1 them to Audra, or maybe made a list and pointed  2 out which e-mails contained correspondence between  3 the two, and sent it to Audra.  4 Q Okay. And do you know what would have  5 happened with your documents or your  6 correspondence or that list after it was provided  7 to Audra?  8 A I believe we probably sent it to  9 litigation to respond.  10 Q Okay. Would that be Mr. Streeter, or --  11 A I would imagine it would go to the --  12 Q All right.  13 A -- Mr. Streeter.  14 Q Okay. And can you just describe for me,  15 tell me how you went about searching for those  16 documents?  17 A Audra had provided me with her e-mail  18 correspondence regarding this case. Everything  19 she could find, she forwarded to me via e-mail.  20 And then I scrolled through the e-mails to see if  21 any of them were responsive, the e-mails she  22 forwarded.</p>
Page 35	Page 37

Page 38

1 Q Okay. And how about your own, how did  
 2 you --  
 3 A Oh.  
 4 Q -- search for your own e-mails?  
 5 A For my -- well, I had no correspondence  
 6 with -- with the Justice Department, so --  
 7 Q Okay.  
 8 A -- nothing that really involved a  
 9 search.  
 10 Q How about any of your own communications  
 11 between members of the FEC, related to this  
 12 matter?  
 13 A Related to this matter.  
 14 MR. STREETER: I don't think there's a  
 15 request for any of that stuff.  
 16 MR. DEZSI: Can we go off the record a  
 17 second?  
 18 (Discussion off the record)  
 19 BY MR. DEZSI:  
 20 Q Okay. Mr. Olaya, again, could you  
 21 describe for me how you searched for your own  
 22 documents that would have been responsive to these

Page 39

1 requests attached to your notice of deposition?  
 2 A Okay. My own documents, I know for a  
 3 fact that I did not correspond with the Justice  
 4 Department. So there was really no search  
 5 involved.  
 6 Q Okay. And, similarly, you don't recall  
 7 having any e-mails in which you were included as  
 8 cc's between, for instance, Audra or other FEC  
 9 individuals and the Department of Justice?  
 10 A I guess leading up to that meeting with  
 11 Kendall Day in August or September 2008, I would  
 12 have been cc'd on the e-mails at that point.  
 13 Q But do you recall the primary -- the  
 14 sender and the receiver of those e-mails?  
 15 Do you recall the sender and the  
 16 receiver?  
 17 A I believe the sender would have been  
 18 Audra and the receiver would have been Kendall, or  
 19 vice versa.  
 20 Q Okay.  
 21 MR. DEZSI: Okay. I have nothing  
 22 further for the witness.

Page 40

1 MR. STREETER: I just have a few  
 2 questions.  
 3 But let's go off the record for just a  
 4 second.  
 5 (Discussion off the record)  
 6 EXAMINATION BY COUNSEL FOR DEFENDANTS  
 7 BY MR. STREETER:  
 8 Q Mr. Olaya, you were asked a series of  
 9 questions about the exhibits that had been sent to  
 10 you by DOJ that you had an occasion to review.  
 11 Do you recall that testimony?  
 12 A I do.  
 13 Q And you recall that you were asked some  
 14 specific questions about the nature of various  
 15 financial information that you reviewed as part of  
 16 that process? Do you recall that, those answers  
 17 and questions?  
 18 A I do.  
 19 Q Do you recall whether or not the  
 20 financial information that you saw, however  
 21 broadly defined, contained any redactions of any  
 22 sort?

Page 41

1 A I can't recall specifically.  
 2 Q Okay. Do you recall whether or not you  
 3 saw what would appear to be actual bank statements  
 4 as sent out by the various financial institutions  
 5 themselves to the various individuals?  
 6 A Yes, I -- I do think I remember seeing  
 7 that.  
 8 Q And you said you also saw what appeared  
 9 to be summaries of that kind of information?  
 10 A Correct.  
 11 Q Okay. Approximately when was the last  
 12 time that you had the occasion to review documents  
 13 that -- no, strike that.  
 14 Approximately when is the last time that  
 15 you had an occasion to actually perform any work  
 16 on the MUR 5818?  
 17 A The last time I did any substantive work  
 18 on this was late October. By early November I had  
 19 handed in what I was responsible for, which was  
 20 the general counsel's brief --  
 21 Q All right.  
 22 A -- to my supervisor.

Page 42

1 Q You also make reference to -- to viewing  
 2 various files and documents electronically.  
 3 Would it be correct to say that that  
 4 meant you were reviewing files on what's referred  
 5 to as our PC DOCS system?  
 6 A That's accurate.  
 7 Q Could you give a brief explanation for  
 8 the record of what the PC DOCS system is or is  
 9 supposed to be?  
 10 A It's supposed to be I guess our shared  
 11 drive for -- I'm -- I'm not sure, maybe -- I know  
 12 all of enforcement uses it. I don't really know  
 13 if other division have access to it. But it's the  
 14 system where we can save files or documents we're  
 15 working on, and drafts of those files. And  
 16 anyone -- you know, you can secure the documents.  
 17 But most anyone -- you can unlock it and make it  
 18 available to other attorneys.  
 19 Q So the idea is that a document that's  
 20 being worked on would be stored electronically;  
 21 and the author could work on a document and, as  
 22 well, other people responsible or working in the

Page 43

1 same manner would also have access to the  
 2 document; is that correct?  
 3 A Everyone has access to the -- the  
 4 document, actually. I mean -- yeah.  
 5 Q And the files, the -- the documents  
 6 would be organized according to author, and could  
 7 also be organized according to the matter under  
 8 review; is that fair?  
 9 A That's fair.  
 10 Q So when you would go electronically to  
 11 review what I'll call the index of available  
 12 documents, is it possible that you would view not  
 13 only documents on say MER 5818, but also be able  
 14 to review at the same time documents from other  
 15 matters?  
 16 A That's true. That's accurate.  
 17 Q So when you say that you saw -- when you  
 18 said earlier that you saw administrative subpoenas  
 19 while reviewing files electronically, do you have  
 20 any recollection as to whether or not those  
 21 administrative subpoenas pertained to MUR 5818, or  
 22 to other cases, or do you have any recollection at

Page 44

1 all?  
 2 A Again, I'm not sure about the  
 3 recollection, if it was specifically for that, or  
 4 other matters.  
 5 Q All right. That's fine.  
 6 MR. STREETER: That's all I have.  
 7 MR. DEZSI: Okay. I don't have anything  
 8 else.  
 9 But I think I would like to reserve the  
 10 witness, only because we have some privilege  
 11 issues.  
 12 Just so you're aware, Mr. Olaya, because  
 13 there were some privileges asserted by  
 14 Mr. Streeter directing you not to respond to  
 15 certain questions, and in the event that I end up  
 16 challenging or contesting those privileges, we'll  
 17 have to have that resolved by our judge in  
 18 Chicago, after which I might have additional  
 19 questions for you.  
 20 So at this time, I'm going to pass on  
 21 any further questions, but I would like to reserve  
 22 your testimony in the event that I have to come

Page 45

1 back and continue the deposition.  
 2 MR. STREETER: And, of course, we won't  
 3 waive.  
 4  
 5  
 6  
 7 (Whereupon at 10:46 p.m., the  
 8 deposition of PHILLIP OLAYA  
 9 was adjourned.)  
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Page 46

1 ACKNOWLEDGEMENT OF DEPONENT

2

3

4 I, PHILLIP OLAYA, do hereby acknowledge I  
5 have read and examined the foregoing pages of  
6 testimony, and the same is a true, correct and  
7 complete transcription of the testimony given by  
8 me, and any changes or corrections, if any, appear  
9 in the attached errata sheet signed by me.

10

11

12

13

14

15

\_\_\_\_\_ Date PHILLIP OLAYA

16

17 Subscribed and Sworn to before me this

18 \_\_\_\_ day of \_\_\_\_\_, 2009.

19

20

21 Notary Public

22 My Commission Expires:

Page 47

1 CERTIFICATE OF NOTARY PUBLIC

2 I, BARBARA A. HUBER, CSR, the officer  
3 before whom the foregoing deposition was taken, do  
4 hereby certify that the witness whose testimony  
5 appears in the foregoing deposition was duly sworn  
6 by me; that the testimony of said witness was  
7 taken by me in stenotypy and thereafter reduced to  
8 print under my direction; that said deposition is  
9 a true record of the testimony given by said  
10 witness; that I am neither counsel for, related  
11 to, nor employed by any of the parties to the  
12 action in which this deposition was taken; and,  
13 furthermore, that I am not a relative or employee  
14 of any attorney or counsel employed by the parties  
15 hereto, nor financially or otherwise interested in  
16 the outcome of this action.

17

18

19

\_\_\_\_\_ BARBARA A. HUBER, CSR

20 Notary Public, in and for the  
District of Columbia

21

My Commission Expires:

22 March 14, 2012



# EXHIBIT B

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THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**RECEIVED**

MAR 26 2009

Fieger, Fieger, Kenney & Johnson, P.C.

JACK AND RENEE BEAM, :

Plaintiffs, :

v. : CA No. 07-cv-1227

MICHAEL B. MUKASEY, UNITED STATES:

ATTORNEY GENERAL, in his official:

Capacity; FEDERAL ELECTION :

COMMISSION CHAIRMAN DAVID M. :

MASON, in his official capacity; :

UNKNOWN AGENTS OF THE FEDERAL :

BUREAU OF INVESTIGATION, in their:

individual and official :

capacities, :

Defendants. :

Washington, D.C.

Wednesday, March 11, 2009

Deposition of

THOMAS J. ANDERSEN, called for examination  
by counsel for Plaintiffs, pursuant to notice, at  
the Offices of the Federal Election Commission, 999  
E Street, NW, Washington, D.C., commencing at 2:14  
p.m., before Barbara A. Huber, Notary Public in and  
for the District of Columbia, when were present on  
behalf of the respective parties:

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:                  2 On behalf of Plaintiffs:                  3 MICHAEL DEZSI, ESQUIRE                  Fieger, Fieger, Kenney, Johnson &amp; Giroux                  4 19390 West Ten Mile Road                  Southfield, Michigan 48075                  5 (248) 355-5555                  midezsi@fiegerlaw.com                  6                  On behalf of Defendants:                  7                  BENJAMIN A. STREETER, III, ESQUIRE                  8 Federal Election Commission                  999 E Street, NW                  9 Washington, D.C. 20463                  (202) 694-1650                  10 bstreeter@fec.gov                  11                  12 * * * * *                  13                  14                  15                  16                  17                  18                  19                  20                  21                  22</p>	<p style="text-align: right;">Page 4</p> <p>1 PROCEEDINGS                  2 Whereupon,                  3 THOMAS J. ANDERSEN,                  4 was called as a witness by counsel for Plaintiffs,                  5 and having been duly sworn by the Notary Public,                  6 was examined and testified as follows:                  7 EXAMINATION BY COUNSEL FOR PLAINTIFFS                  8 BY MR. DEZSI:                  9 Q Good afternoon, Mr. Andersen.                  10 A Good afternoon.                  11 Q My name is Michael Dezsi. Of course                  12 we're meeting for the first time today. Thank you                  13 for coming down.                  14 If you understand, I represent the                  15 Plaintiffs, Jack and Renee Beam, in this matter,                  16 in a federal lawsuit that's been filed in the U.S.                  17 District Court for the Northern District of                  18 Illinois.                  19 Before we begin, could you please state                  20 your full name for the record?                  21 A Thomas J. Andersen.                  22 Q Okay. And Mr. Andersen, is this the</p>
<p style="text-align: right;">Page 3</p> <p>1 CONTENTS                  2 EXAMINATION BY: PAGE                  3 Counsel for Plaintiffs 4                  4 Counsel for Defendants 33                  5 Counsel for Defendants 35                  6                  7                  8                  9                  10                  11                  12                  13                  14                  15                  16                  17                  18                  19                  20                  21                  22</p>	<p style="text-align: right;">Page 5</p> <p>1 first time you've been deposed?                  2 A Yes, it is.                  3 Q Okay. I think I've heard that a few                  4 times today.                  5 MR. STREETER: We live clean here in the                  6 FEC.                  7 BY MR. DEZSI:                  8 Q Just to remind you, as I'm sure you're                  9 aware -- because you've been doing this for a long                  10 time -- but please make sure to verbalize all of                  11 your responses and -- so that the -- our good                  12 court reporter, Barbara, can pick up everything.                  13 And if we speak over one another, she will                  14 admonish us that only one of us should speak at a                  15 time. So I get a little excited, so I will try to                  16 let you finish your statements and your answers                  17 before I ask another question. And if you would                  18 also do the same.                  19 Mr. Andersen, could you please tell me                  20 your title and your position here at the Federal                  21 Election Commission?                  22 A I am an attorney in the office of</p>

Page 6

1 general counsel, currently detailed as executive  
 2 assistant to the chairman.  
 3 Q Okay. And is that sort of a rotating  
 4 position, somebody who is the detail to the  
 5 chairman of the Commission, or is that something  
 6 you've been assigned to for a number of years?  
 7 A I've had this detail since July of last  
 8 year, 2008.  
 9 Q Okay. So it sounds -- would I be  
 10 correct in assuming that you work more closely  
 11 with the chairman as -- on a daily basis?  
 12 A Yes.  
 13 Q Okay. And do you have attorneys that  
 14 work under you that you supervise?  
 15 A No.  
 16 Q Okay. Because you are on detail to the  
 17 chairman?  
 18 A Yes.  
 19 Q Okay. So if you weren't on a detail to  
 20 the chairman and you were part of the office of  
 21 general counsel, you would generally supervise the  
 22 attorneys.

Page 7

1 And how would that work?  
 2 A Not when I return to the office of  
 3 general counsel. I will return as a staff  
 4 attorney. I will not supervise any other  
 5 attorneys.  
 6 Q Okay. And can you just give me your  
 7 dates of employment with the Federal Election  
 8 Commission?  
 9 A I started at the Federal Election  
 10 Commission in October 1995.  
 11 Q Okay. Through the present, of course.  
 12 Uninterrupted?  
 13 A Uninterrupted.  
 14 Q Okay. And if you could just -- so I  
 15 have a better understanding, could you tell me a  
 16 little bit about your prior legal employment  
 17 history prior to joining the FEC?  
 18 A Prior to joining the FEC, my only legal  
 19 experience was serving as a law clerk at a private  
 20 firm during -- between my second and third year of  
 21 law school.  
 22 Q Okay. So you graduated from law school

Page 8

1 in ninety --  
 2 A In 1995.  
 3 Q '95. Okay. Got it.  
 4 Where did you go to law school?  
 5 A University of California Los Angeles.  
 6 Q Okay. Mr. Andersen, can you tell me the  
 7 first time that you heard the names Jack and Renee  
 8 Beam?  
 9 A The first time I recall hearing those  
 10 names was in connection with -- I assume is the  
 11 present litigation. I -- I think that it was Ben  
 12 telling me, either by e-mail or a phone  
 13 conversation, that my deposition would be  
 14 requested in the -- in a matter involving Beam.  
 15 Other than that, I may have heard it in passing  
 16 with regard to Fieger litigation in general. But  
 17 I can't specify in connection with what  
 18 specifically.  
 19 Q Okay. And when you just mentioned being  
 20 notified that your deposition may be called for,  
 21 that was more recently?  
 22 A Yes.

Page 9

1 Q Okay. Let's just back up then.  
 2 Are -- you're familiar with the Fieger  
 3 litigation, or the Department of Justice criminal  
 4 prosecution of Mr. Fieger; is that correct?  
 5 MR. STREETER: Objection, compound.  
 6 Break them apart.  
 7 BY MR. DEZSI:  
 8 Q Okay. You're aware of the Department of  
 9 Justice's criminal prosecution of Mr. Fieger?  
 10 A Somewhat aware.  
 11 Q Okay. Take a moment. I'm going to ask  
 12 you to look at these letters, Plaintiff's Exhibit  
 13 A and B, which are essentially the same letters,  
 14 dated September 26th, 2006, from former Chairman  
 15 Michael Toner; one letter to Jack Beam, and a  
 16 second letter to Renee Beam.  
 17 If you could just review those if you  
 18 would, please, for a second.  
 19 A (Witness examined document). I haven't  
 20 read every word, but --  
 21 Q That's fine.  
 22 Mr. Andersen, are you familiar with

Page 10

1 those letters?  
 2 A I have no recollection of ever seeing  
 3 them before.  
 4 Q Okay. How about a substantially similar  
 5 letter containing the same factual basis, perhaps  
 6 a different respondent's name, without disclosing  
 7 any of the names?  
 8 A I have no recollection of seeing any  
 9 letter like this with any respondent's name.  
 10 Q Okay. Can you just hand those back to  
 11 me?  
 12 A (Handing document).  
 13 Q Thank you so much.  
 14 I'm going to have you take a look at  
 15 something else, Mr. Andersen.  
 16 This is a code section, Title 12 United  
 17 States Code Section 3412. And if you would please  
 18 review and read paragraph A to yourself.  
 19 A (Witness examined document). Okay.  
 20 Q Are you familiar with that section of  
 21 that statute, section A?  
 22 A I am not.

Page 11

1 Q Okay. Have you had occasion, during  
 2 your employment with the Federal Election  
 3 Commission, to either -- to either send or receive  
 4 financial records to other federal agencies?  
 5 A I can't recall any specific instances  
 6 offhand.  
 7 Q Okay. Do you have any specific  
 8 recollection of requesting or ever seeing a  
 9 certification that's referred to in this statute?  
 10 A In my job as a staff attorney in the  
 11 enforcement division over the course of the last  
 12 decade, I may have had occasion to draft a  
 13 subpoena to a financial institute in connection  
 14 with a respondent that we may have been  
 15 investigating. In connection with drafting the  
 16 subpoena, I may have reviewed the Right to  
 17 Financial Privacy Act and the requirements, just  
 18 to make sure that we were abiding by those  
 19 requirements.  
 20 Again, I -- I assume I've done that, but  
 21 I can't recall offend any specific instances.  
 22 Q Okay. Thank you.

Page 12

1 Mr. Andersen, do you recall ever working  
 2 with the Department of Justice on any enforcement  
 3 matters in the past, without -- without divulging  
 4 the specifics of anybody?  
 5 Do you remember working with the  
 6 Department of Justice in the past?  
 7 MR. STREETER: Objection to the use of  
 8 the term "working with." But if the witness  
 9 understands it, he can answer.  
 10 THE WITNESS: Yes, there have been  
 11 parallel -- what we would call parallel cases or  
 12 parallel investigations. We do the -- the Federal  
 13 Election Commission investigating a -- a civil  
 14 side, while the Department of Justice has focused  
 15 on the criminal side. But the matters have enough  
 16 in common that we refer to them as parallel cases.  
 17 BY MR. DEZSI:  
 18 Q Okay. And in instances you mentioned  
 19 where you may have issued administrative subpoenas  
 20 to obtain financial records, do you recall ever  
 21 sharing any of those financial records with the  
 22 Department of Justice?

Page 13

1 MR. STREETER: I'm going to object to  
 2 that question on the basis that it assumes facts  
 3 not in evidence. As the witness testified, he  
 4 doesn't recall any specific instances where he  
 5 sent out subpoenas or had to do certifications.  
 6 But to the extent that the witness knows anything,  
 7 he can answer.  
 8 THE WITNESS: The answer is no.  
 9 BY MR. DEZSI:  
 10 Q Okay. You're -- you're familiar with  
 11 441f violations, I assume?  
 12 A I am.  
 13 Q Okay. And I guess sometimes you --  
 14 they're commonly called conduit violations, or --  
 15 A Correct.  
 16 Q That's correct. Okay.  
 17 Have you had occasion to work on any  
 18 441f violations in the past -- without divulging  
 19 any specifics -- whereby you sought financial  
 20 records from financial institutes in connection  
 21 with those matters?  
 22 A I can recall working on 441f, or conduit

Page 14

1 cases as you refer to them. But I cannot recall  
 2 in any -- on any of those occasions seeking the  
 3 information that you described.  
 4 Q Okay. If we could just move forward.  
 5 There came a time during the Fieger  
 6 criminal investigation that you were identified as  
 7 a potential expert witness or a potential witness  
 8 to testify during the DOJ's criminal case; is that  
 9 correct?  
 10 A That's correct.  
 11 Q Okay. And if you would just take a look  
 12 at this document, which is marked as Plaintiff's  
 13 Exhibit C.  
 14 A (Witness examined document).  
 15 MR. STREETER: I got one.  
 16 MR. DEZSI: You got one? Okay.  
 17 MR. STREETER: Yes.  
 18 BY MR. DEZSI:  
 19 Q Let the record reflect that this is an  
 20 e-mail sent from Audra Wassom to Kendall Day,  
 21 dated February 25th, 2008.  
 22 And the e-mail begins, Kendall, we have

Page 15

1 a witness for you, Tom Andersen.  
 2 Mr. Andersen, have you seen this  
 3 e-mail --  
 4 MR. STREETER: Let him finish reviewing  
 5 it first.  
 6 BY MR. DEZSI:  
 7 Q Oh, sorry.  
 8 A (Witness examined document).  
 9 MR. STREETER: You ever going to tell me  
 10 where you got this stuff?  
 11 MR. DEZSI: Huh?  
 12 MR. STREETER: You ever going to tell me  
 13 where you got this?  
 14 THE WITNESS: (Witness examined  
 15 document). Okay.  
 16 BY MR. DEZSI:  
 17 Q Okay. Thank you.  
 18 This -- in this e-mail, it indicates  
 19 that you've had absolutely no involvement on the  
 20 civil side of this matter.  
 21 I guess that's -- if you could -- if you  
 22 could confirm for me that that's referring loosely

Page 16

1 to this Fieger litigation, this Fieger matter  
 2 under review, 5818?  
 3 A That's correct.  
 4 Q Okay. So I guess that should have  
 5 obviated a lot of my previous questions. My  
 6 apologizes.  
 7 Mr. Andersen, have you seen this e-mail  
 8 before?  
 9 A No, I have not.  
 10 Q Okay. Can you describe for me the  
 11 time -- how you became aware or involved in  
 12 serving as a possible witness for the Department  
 13 of Justice?  
 14 MR. STREETER: I want to object to that  
 15 question, to the extent that it requires the  
 16 witness to -- no, no. Objection, law enforcement  
 17 privilege. Objection, it violates 437g(a)(12).  
 18 Instruct the witness not to answer.  
 19 BY MR. DEZSI:  
 20 Q Mr. Andersen, are you familiar with  
 21 Mr. Kendall Day?  
 22 A I am.

Page 17

1 Q Okay. Can you tell me if you have  
 2 personally met Mr. Day?  
 3 A I have.  
 4 Q And on how many occasions, if you  
 5 recall, or approximate number, have you actually  
 6 met Mr. Day in person?  
 7 A Two.  
 8 Q Okay. Could you give me just time  
 9 frames, rough time frames on those meetings?  
 10 A Very rough time frame, once -- the first  
 11 time likely was in March of 2008. The second time  
 12 would have been roughly either the end of March,  
 13 or April of 2008.  
 14 Q Okay. Both before -- obviously, before  
 15 the criminal trial began in --  
 16 A That's correct.  
 17 Q Okay. And could you tell me who was  
 18 present at those meetings?  
 19 A The first meeting, aside from myself and  
 20 Mr. Day, Audra Wassom; there was a representative  
 21 from the Justice Department there.  
 22 Q Perhaps I could -- I can give you a

Page 18

1 couple names, and see if they sound familiar to  
 2 you.  
 3 How about Mr. Craig Donsanto?  
 4 A No, he was not there.  
 5 Q No.  
 6 How about Assistant United States  
 7 Attorney Lynn Helland.  
 8 A I think he was not physically present,  
 9 but he was on a speakerphone.  
 10 Q Videoconference or something?  
 11 A There was not videoconference. I think  
 12 they attempted that, but it was not in operation.  
 13 Q That happens to me a lot.  
 14 How about FBI Special Agent Jeffrey  
 15 Rees?  
 16 A No.  
 17 Q Have you ever heard of Jeffrey Rees?  
 18 A I've never heard that name before.  
 19 Q Okay. Have you worked with anybody from  
 20 the FBI in connection with this matter?  
 21 A I do not recall working with anybody  
 22 from the FBI in connection with this matter.

Page 19

1 Q Okay. And what was the location of that  
 2 meeting that you've described?  
 3 A It was at the offices of department of  
 4 public integrity. I believe that would have been  
 5 around New York Avenue and --  
 6 Q That's fine.  
 7 The DOJ in Washington?  
 8 A Yes.  
 9 Q Okay. That's fine.  
 10 And during that meeting, were you  
 11 provided any materials to review by the Department  
 12 of Justice?  
 13 A I was shown some materials at that  
 14 meeting.  
 15 Q Okay. And could you describe for me  
 16 what types of materials you were shown?  
 17 MR. STREETER: Yeah, that's a law  
 18 enforcement privilege objection, and -- and -- no,  
 19 just law enforcement privilege. Instruct the  
 20 witness not to answer.  
 21 BY MR. DEZSI:  
 22 Q Okay. Mr. Andersen, did you have

Page 20

1 occasion to review -- or strike that.  
 2 Were you aware that the Justice  
 3 Department had gathered financial records for  
 4 members of the Fieger firm as part of its criminal  
 5 investigation?  
 6 A Can you explain what you mean by  
 7 financial information?  
 8 Q Sure. Certainly.  
 9 Financial records from banks, private  
 10 banking institutions, basically something like  
 11 let's say your checking account showing your  
 12 monthly statements, your debits, your credits,  
 13 your balances, your ATM withdrawals.  
 14 A Okay. I understand that. Now can you  
 15 repeat the question?  
 16 Q Oh, sure.  
 17 Were you aware that the DOJ had gathered  
 18 financial records for the employees of the Fieger  
 19 firm as part of its criminal investigation?  
 20 A Yes.  
 21 Q Okay. Did you have occasion to see any  
 22 of those financial records?

Page 21

1 MR. STREETER: Answer that one.  
 2 THE WITNESS: I believe I did.  
 3 BY MR. DEZSI:  
 4 Q Okay. Can you describe to me what you  
 5 saw, if you could sort of --  
 6 MR. STREETER: You can answer that, to  
 7 the extent you recall.  
 8 THE WITNESS: I recall seeing copies of  
 9 checks and a copy of a -- and an individual's bank  
 10 records.  
 11 BY MR. DEZSI:  
 12 Q Okay. And would you happen to recall  
 13 the individual's name on the bank records?  
 14 A I have a fairly good recollection of --  
 15 of the individual's name.  
 16 Q Okay. Could you tell me whose name that  
 17 would be?  
 18 MR. STREETER: And that we'll object to  
 19 based on law enforcement privilege. Instruct him  
 20 not to answer.  
 21 BY MR. DEZSI:  
 22 Q Were you provided copies of these

Page 22

1 materials, physical copies that your -- compact  
 2 disks of these materials that -- that you could  
 3 take with you?  
 4 A Not at that meeting.  
 5 Q How about at any subsequent meetings or  
 6 that subsequent second meeting?  
 7 MR. STREETER: Law enforcement  
 8 privilege. Instruct him not to answer.  
 9 BY MR. DEZSI:  
 10 Q Mr. Andersen, the financial records that  
 11 you have referred to, could you just tell me  
 12 approximately how many pages we're talking about?  
 13 A In terms of photocopies of checks, I  
 14 would say two to three pages. And, again, I -- it  
 15 may have been one check per page. I can't recall  
 16 how many. But I do recall maybe a couple of  
 17 pages, plus or minus one.  
 18 Q Okay.  
 19 A I do recall seeing maybe one or two  
 20 pages of bank statements.  
 21 Q Okay. And did you see those in hard  
 22 copy or in electronic format?

Page 23

1 A Hard copy.  
 2 Q Hard copy.  
 3 And were there additional hard copies  
 4 but you only reviewed a couple pages, or was that  
 5 all that was there in front of you?  
 6 A All I reviewed was a couple of pages.  
 7 Whether they had additional pages there, I don't  
 8 recall.  
 9 Q Okay. And was there a cover letter or  
 10 any sort of index attached to these financial  
 11 records?  
 12 MR. STREETER: Objection, compound.  
 13 Break it apart. And -- and cover letter by whom?  
 14 BY MR. STREETER:  
 15 Q Was there any cover letter attached?  
 16 A I do not recall any cover letter  
 17 attached.  
 18 Q Was there any sort of index or other  
 19 sort of categorizing document?  
 20 A I do not recall.  
 21 Q Okay. Were the documents that you saw  
 22 Bates stamped?

Page 24

1 A They may have been, but I can't say for  
 2 sure.  
 3 Q Okay. And who was it that actually gave  
 4 these records to you to look at?  
 5 A Mr. Day.  
 6 Q Are you aware, do you know if anybody  
 7 from the FEC obtained a compact disk containing  
 8 these same records that you're referring to?  
 9 MR. STREETER: If you know.  
 10 THE WITNESS: Whether -- I am aware of a  
 11 compact disk, but I'm not aware whether it  
 12 contained what I just described.  
 13 BY MR. STREETER:  
 14 Q Okay. The compact -- the compact disk  
 15 that you are aware of, do you know when that was  
 16 given or provided to the FEC by the Department of  
 17 Justice?  
 18 A I recall receiving a Fed-Ex package  
 19 sometime after that meeting, from DOJ. What I  
 20 recall about its contents was a copy of the  
 21 subpoena to me, and a compact disk.  
 22 Q Okay. And I'm assuming that Fed-Ex

Page 25

1 package was sent to you by Mr. Kendall Day?  
 2 -A I assume his name was somewhere on the  
 3 Fed-Ex package. But I'm assuming that because I  
 4 had just either spoken with him or met with him.  
 5 Q Okay. And did you have occasion to open  
 6 the compact disk or to review the files on that  
 7 disk?  
 8 A I believe I opened it and skimmed  
 9 through it for a very brief period; in other  
 10 words, just a few minutes.  
 11 Q Okay. And do you recall seeing any of  
 12 the same documents on the compact disk that you  
 13 saw during the meeting with Mr. Day?  
 14 MR. STREETER: Object to that question,  
 15 because the term "documents" is vague. I mean,  
 16 he's only testified to a couple pages. And your  
 17 term the "documents" is very broad.  
 18 MR. DEZSI: Okay. I'll rephrase.  
 19 BY MR. DEZSI:  
 20 Q Do you recall seeing the documents --  
 21 the pages that you referred to that you saw during  
 22 your meetings, do you recall seeing those



Page 26

1 documents on the compact disk?  
 2 A I do not.  
 3 Q Did the compact disk have a label on it,  
 4 either printed or written, handwritten or  
 5 otherwise?  
 6 A I assume it did, but I cannot recall.  
 7 Q Okay. And if I could ask you, when you  
 8 opened the compact disk to skim it, do you  
 9 recall -- or could you describe for me how the  
 10 documents were contained, how the files were  
 11 contained?  
 12 Was it in PDF form?  
 13 A I think that was my impression at the  
 14 time, based on my understanding of what a PDF  
 15 document looks like.  
 16 Q Okay. And could you give me a rough  
 17 estimate of how many different files were  
 18 contained on the CD once you opened it? Ten, or  
 19 forty?  
 20 A There may have been a few.  
 21 Q Do you recall any sorts of labels or  
 22 names on the files themselves, like perhaps if the

Page 27

1 file was identified by a certain individual's  
 2 name, or perhaps it was identified by bank records  
 3 or whatever it may be?  
 4 Was it -- were the PDF's labeled with  
 5 names PDF's labeled with names?  
 6 A I don't recall that.  
 7 Q And what -- what happened to the compact  
 8 disk that you received in this Fed-Ex package?  
 9 What would you have done with that?  
 10 A I recall setting it aside and awaiting  
 11 further instruction from DOJ.  
 12 Q Okay. And then I -- would it be an  
 13 accurate statement to say that sometime shortly  
 14 therefore it was decided that you would not be  
 15 testifying during the DOJ's criminal case; is that  
 16 correct?  
 17 A That's correct.  
 18 Q Okay. And at that point, once the FEC  
 19 or the Department of Justice or whomever had  
 20 decided that you would not be testifying, did you  
 21 then send your materials to somebody else, that  
 22 you had received in the Fed-Ex package?

Page 28

1 A I do not recall doing that. It may have  
 2 happened. I don't recall it.  
 3 Q Okay. Do you know of an individual by  
 4 the name of Lois Lerner?  
 5 A Yes.  
 6 Q And are you aware that she ended up  
 7 testifying during the criminal case?  
 8 A Yes.  
 9 Q Okay. Did you have any conversations or  
 10 communications with Ms. Lerner in regard to her  
 11 upcoming testimony?  
 12 A No.  
 13 Q Okay. So after you -- after the  
 14 decision was made that you would not be  
 15 testifying, did you have any -- any other  
 16 communications or -- any other communications with  
 17 Mr. Day or anybody else from the Justice  
 18 Department?  
 19 A I don't recall any such contacts.  
 20 Q No additional meetings after that time  
 21 frame, March?  
 22 A After I was notified that my services

Page 29

1 would not be needed, I do not recall having any  
 2 contact with anybody from DOJ concerning this  
 3 matter.  
 4 Q Okay. If you could just give me a  
 5 moment, please.  
 6 Mr. Andersen, did you have occasion to  
 7 review any FBI 302 reports provided by the Justice  
 8 Department to the Federal Election Commission  
 9 regarding your criminal investigation?  
 10 A In this matter, I did not review any FBI  
 11 302's.  
 12 Q Okay. How about any IRS field  
 13 memoranda?  
 14 A Same answer.  
 15 Q Okay. Did you have any occasion to see  
 16 or to review any grand jury transcripts?  
 17 A I do not recall reviewing any grand jury  
 18 transcripts.  
 19 Q Okay. Also, Mr. Andersen, if I could  
 20 have you take a look. This was -- this is the  
 21 notice of deposition.  
 22 MR. STREETER: Oh, his notice?

Page 30

1 MR. DEZSI: Yeah.  
 2 BY MR. DEZSI:  
 3 Q Notice of deposition for your testimony  
 4 today. And if you could just take a moment to  
 5 review that document, along with the attachment.  
 6 A (Witness examined document). Okay.  
 7 Q Have you seen that before today?  
 8 A I believe I have.  
 9 Q Okay. And the exhibit, also?  
 10 A I believe I have.  
 11 Q Okay. The exhibit -- the subpoena,  
 12 along with the exhibit, asks you to produce  
 13 documents.  
 14 Can you tell me what type of search that  
 15 you've done to look for documents responsive to  
 16 that subpoena and that exhibit?  
 17 A I took a look at some boxes that I had  
 18 in my office as a result of moving between offices  
 19 on the -- the floor that I was -- that my office  
 20 was in, to the office that I'm in now. There were  
 21 documents that were still in boxes. I took a look  
 22 at the -- through those boxes, and could not find

Page 31

1 anything that was relevant to the request in the  
 2 exhibit.  
 3 Q Okay. Did you also search for any  
 4 e-mails that would be responsive to the subpoena?  
 5 A I -- with regard to this specific  
 6 request, I -- I would say that I recall getting a  
 7 request that was basically identical to this  
 8 request. I -- from I believe within -- within the  
 9 FEC some time ago. And I looked at that time, and  
 10 could not find anything as far as -- so based on  
 11 that, I did not undertake, in essence, a duplicate  
 12 search.  
 13 Q Okay.  
 14 A Because since between that request and  
 15 this request, I've had no contact whatsoever with  
 16 DOJ.  
 17 Q Okay. I understand.  
 18 And earlier you referred to the Fed-Ex  
 19 package that you had received from the Department  
 20 of Justice.  
 21 That has not been either produced or  
 22 listed on the Commission's privilege log. If I

Page 32

1 could just let the report reflect that those  
 2 documents have not been produced, or listed on the  
 3 Commission's privilege log.  
 4 Are you aware of any particular e-mail  
 5 communications that you had with Mr. Day in regard  
 6 to those meetings, the meetings that you referred  
 7 to?  
 8 A I'm aware of sending a few e-mails to  
 9 Mr. Day during the trial. I recall getting one or  
 10 two e-mails from him during the trial. I recall  
 11 the substance of those e-mails.  
 12 Q I -- I -- go ahead.  
 13 MR. STREETER: You can answer.  
 14 THE WITNESS: Okay.  
 15 The substance of those e-mails was  
 16 basically this: Me to Kendall: Do you need me  
 17 this week? Kendall to me: No. The next week, me  
 18 to Kendall: Do you need me this week? Kendall to  
 19 me: No. And then finally -- and I'm -- I'm just  
 20 giving you roughly what I recall, but I think it's  
 21 fairly accurate -- and finally something from  
 22 Kendall -- I don't know if it was an e-mail or a

Page 33

1 voice mail -- basically: We don't need you at  
 2 all.  
 3 BY MR. DEZSI:  
 4 Q Okay.  
 5 A It did not go beyond that. It did not  
 6 concern any substance of the matter other than  
 7 scheduling.  
 8 Q Okay. If you could just give me a  
 9 moment. I -- I might almost be done. Or maybe I  
 10 am done.  
 11 MR. STREETER: Take your time.  
 12 MR. DEZSI: I don't have any further  
 13 questions for the witness.  
 14 MR. STREETER: Okay. I have a couple.  
 15 And then we'll chat.  
 16 EXAMINATION BY COUNSEL FOR DEFENDANTS  
 17 BY MR. STREETER:  
 18 Q You described the search you undertook,  
 19 Mr. Andersen, with respect to the deposition  
 20 notice.  
 21 Did you succeed in finding the CD disks  
 22 that you had described earlier?

Page 34

1 A No.

2 Q Is it fair to say that that CD disk is

3 lost?

4 A I would assume so. Lost, destroyed. I

5 don't have it.

6 Q And there's no reason for you to keep it

7 after you were --

8 A No.

9 Q -- told not to -- that you're not going

10 to be a witness?

11 A No.

12 Q You also mentioned that you had done an

13 earlier e-mail search, and that as a result of

14 that search you did not undertake a duplicative

15 search.

16 Was that first search done in response

17 to some e-mail regarding FOIA requests that had

18 been received?

19 A That's correct.

20 MR. STREETER: And that's all I have.

21 MR. DEZSI: Okay. Mr. Andersen, thank

22 you for your testimony.

Page 35

1 I'm going to reserve your testimony,

2 only because there were a few privileges asserted.

3 And I might contest or challenge those privileges,

4 in which case we'll have to litigate that in

5 Chicago before our presiding judge. And --

6 MR. STREETER: Can I interrupt? Can I

7 ask one more question?

8 MR. DEZSI: Go ahead.

9 MR. STREETER: Just one more.

10 EXAMINATION BY COUNSEL FOR DEFENDANTS

11 BY MR. STREETER:

12 Q You described that while sitting at that

13 meeting with Kendall Day in possibly early April

14 2008 you were handed some documents to review,

15 some financial information to review.

16 Do you recall if that information was

17 redacted in any way, things blacked out in any

18 way?

19 A I don't recall.

20 Q Fair enough.

21 MR. STREETER: Now I'm done.

22 MR. DEZSI: Okay. Thank you.

Page 36

1 As I was saying, Mr. Andersen, I'm going

2 to reserve your testimony until we resolve any

3 privilege issues with the presiding judge. In the

4 event that I am successful on my privilege

5 contest, then we may continue your deposition. It

6 may not be necessary. But for the time being, I'm

7 going to reserve it, in case we come back to

8 finish any other questions.

9 MR. STREETER: And, therefore, we don't

10 waive.

11

12

13

14 (Whereupon at 2:57 p.m., the

15 deposition of THOMAS J.

16 ANDERSEN was adjourned.)

17

18

19

20

21

22

Page 37

1 ACKNOWLEDGEMENT OF DEPONENT

2

3

4 I, THOMAS J. ANDERSEN, do hereby acknowledge I

5 have read and examined the foregoing pages of

6 testimony, and the same is a true, correct and

7 complete transcription of the testimony given by

8 me, and any changes or corrections, if any, appear

9 in the attached errata sheet signed by me.

10

11

12

13

14

15

16 Date THOMAS J. ANDERSEN

17 Subscribed and Sworn to before me this

18 \_\_\_\_ day of \_\_\_\_\_, 2009.

19

20 \_\_\_\_\_

21 Notary Public

22 My Commission Expires:

1 CERTIFICATE OF NOTARY PUBLIC  
2 I, BARBARA A. HUBER, CSR, the officer  
3 before whom the foregoing deposition was taken, do  
4 hereby certify that the witness whose testimony  
5 appears in the foregoing deposition was duly sworn  
6 by me; that the testimony of said witness was  
7 taken by me in stenotypy and thereafter reduced to  
8 print under my direction; that said deposition is  
9 a true record of the testimony given by said  
10 witness; that I am neither counsel for, related  
11 to, nor employed by any of the parties to the  
12 action in which this deposition was taken; and,  
13 furthermore, that I am not a relative or employee  
14 of any attorney or counsel employed by the parties  
15 hereto, nor financially or otherwise interested in  
16 the outcome of this action.

17  
18  
19 \_\_\_\_\_  
20 BARBARA A. HUBER, CSR  
21 Notary Public, in and for the  
22 District of Columbia  
My Commission Expires:  
March 14, 2012

# EXHIBIT C

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THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JACK AND RENEE BEAM, :

Plaintiffs, :

v. : CA No. 07-cv-1227

MICHAEL B. MUKASEY, UNITED STATES:

ATTORNEY GENERAL, in his official:

Capacity; FEDERAL ELECTION :

COMMISSION CHAIRMAN DAVID M. :

MASON, in his official capacity; :

UNKNOWN AGENTS OF THE FEDERAL :

BUREAU OF INVESTIGATION, in their:

individual and official :

capacities, :

Defendants. :

Washington, D.C.

Tuesday, March 10, 2009

Deposition of

ROGER A. HEARRON, called for examination  
by counsel for Plaintiffs, pursuant to notice, at  
the Offices of the Federal Election Commission, 999  
E Street, NW, Washington, D.C., commencing at 2:52  
p.m., before Barbara A. Huber, Notary Public in and  
for the District of Columbia, when were present on  
behalf of the respective parties:

Page 2

1 APPEARANCES:  
 2 On behalf of Plaintiffs:  
 3 MICHAEL DEZSI, ESQUIRE  
 4 Fieger, Fieger, Kenney, Johnson & Giroux  
 5 19390 West Ten Mile Road  
 6 Southfield, Michigan 48075  
 7 (248) 355-5555  
 8 midezsi@fiiegerlaw.com

9 On behalf of Defendants:  
 10 BENJAMIN A. STREETER, III, ESQUIRE  
 11 HARRY J. SUMMERS, ESQUIRE  
 12 Federal Election Commission  
 13 999 E Street, NW  
 14 Washington, D.C. 20463  
 15 (202) 694-1650  
 16 bstreeter@fec.gov  
 17 hsummers@fec.gov  
 18 \* \* \* \* \*

Page 4

1 PROCEEDINGS  
 2 Whereupon,  
 3 ROGER A. HEARRON,  
 4 was called as a witness by counsel for Plaintiffs,  
 5 and having been duly sworn by the Notary Public,  
 6 was examined and testified as follows:  
 7 EXAMINATION BY COUNSEL FOR PLAINTIFFS  
 8 BY MR. DEZSI:  
 9 Q Good afternoon, Roger, Mr. Hearron.  
 10 A Good afternoon.  
 11 Q Good afternoon. My name is Michael  
 12 Dezsi. I'm the attorney who represents the  
 13 Plaintiffs Jack and Renee Beam in this matter.  
 14 And if I could just remind you when you respond to  
 15 my questions if you would please respond verbally  
 16 with yes's or no's, and not a nod of the head,  
 17 just so that the court reporter can get  
 18 everything.  
 19 A Okay.  
 20 Q And also she has -- our court reporter  
 21 has admonished us a couple times that only one of  
 22 us can talk at a time. So if you would allow me

Page 3

1 CONTENTS  
 2 EXAMINATION BY: PAGE  
 3 Counsel for Plaintiffs 4  
 4 Counsel for Defendants 48  
 5 Counsel for Plaintiffs 58  
 6 Counsel for Defendants 61

7  
 8  
 9  
 10 PLAINTIFF'S DEPOSITION EXHIBITS: PAGE  
 11 D - E-Mail, October 23, 2007; Attachment 25

Page 5

1 to finish my question, and I'll allow you to  
 2 finish your answers.  
 3 A Okay.  
 4 Q If you don't understand any of my  
 5 questions, just ask me to repeat. And I'll be  
 6 happy to either rephrase it or repeat it if it  
 7 doesn't make sense to you.  
 8 A Okay.  
 9 Q And I might repeat it if it doesn't make  
 10 sense to me.  
 11 Mr. Hearron, could you just state your  
 12 full name for the record, please?  
 13 A Yes. It's Roger A. Hearron.  
 14 Q And your spelling of your last name?  
 15 A H-E-A-R-R-O-N.  
 16 Q Okay. And you're currently employed by  
 17 the Federal Election Commission; is that correct?  
 18 A Yes.  
 19 Q Okay. And what is your title?  
 20 A I'm an investigator.  
 21 Q Okay. That's the title, investigator?  
 22 It's not FEC, or audit investigator; it's just

Page 6

1 investigator?  
 2 A Investigator.  
 3 Q Okay. And how long have you been  
 4 employed by the Commission?  
 5 A A little over five years.  
 6 Q Okay. And what did you do prior to your  
 7 employment here at the Commission?  
 8 A Prior to that I was a D.C. police  
 9 officer for 25 years.  
 10 Q Okay. And you do not have a law  
 11 license; is that correct?  
 12 A That is correct.  
 13 Q Okay.  
 14 A I do not.  
 15 Q You're probably happy that you don't?  
 16 A Yes, I am.  
 17 Q Okay. Mr. Hearron, I want to ask you  
 18 when was the first time that you heard the names  
 19 Jack or Renee Beam, if you can recall generally?  
 20 A It's -- I would guess that it's been  
 21 over a couple years ago.  
 22 Q And how did you come to hear their

Page 7

1 names, first?  
 2 A I read a letter, a response letter that  
 3 was sent from Mr. Beam to the Federal Election  
 4 Commission.  
 5 Q Uh-huh. Okay. That must have been --  
 6 that must have been a response letter to  
 7 Mr. Toner's letter dated September 26th. If I  
 8 could just have you take a look at that letter, if  
 9 you recognize that. If you would take a look at  
 10 it.  
 11 A (Witness examined document).  
 12 MR. STREETER: Objection. Because it  
 13 again assumes facts not evidence, but --  
 14 BY MR. DEZSI:  
 15 Q Have you seen that letter before?  
 16 A I have seen this.  
 17 Q Okay. And this letter --  
 18 MR. STREETER: Excuse me for  
 19 interrupting. Let me -- let me go back. You said  
 20 that the letter that he recalls having seen that  
 21 was written by Jack Beam, and then you said that  
 22 that must be in response to this. But you never

Page 8

1 posed that as a question.  
 2 MR. DEZSI: I'm going to get there.  
 3 MR. STREETER: Okay. Okay.  
 4 BY MR. DEZSI:  
 5 Q Just for the record, this is Plaintiff's  
 6 Exhibit A, which was attached to Ms. Wassom's  
 7 deposition this morning, a letter from Michael  
 8 Toner to Jack Beam, dated September 26, 2006. And  
 9 I don't know what you guys call this. I call it a  
 10 reason to believe letter.  
 11 Would that be your understanding of this  
 12 letter?  
 13 A Yes. That's correct.  
 14 Q Okay. And then in response to this  
 15 letter, Mr. Beam wrote a letter back to Mr. Toner,  
 16 which it sounds like some candy-nose.  
 17 Do you remember referring to Mr. Toner  
 18 as a candy-nose; is that correct?  
 19 A That's the one I remember, yes.  
 20 Q Okay.  
 21 MR. DEZSI: So we know. Now we know  
 22 it's the same letter.

Page 9

1 MR. STREETER: Is that your  
 2 understanding, that that -- the Beam letter was in  
 3 response to that?  
 4 THE WITNESS: Yes.  
 5 MR. STREETER: Okay. I wasn't clear.  
 6 Sorry.  
 7 BY MR. DEZSI:  
 8 Q Mr. Hearron, when a letter like this  
 9 goes out, do you have any involvement in  
 10 investigating the factual basis of the allegations  
 11 contained in these reason to believe letters?  
 12 A Sometimes, yes.  
 13 Q Okay. Do you recall, did you have  
 14 involvement in this case with putting together a  
 15 factual basis or investigating the factual basis?  
 16 A Yes, I did.  
 17 Q Okay. And can you describe to me what  
 18 your role was in that, and what exactly you did?  
 19 MR. STREETER: Objection, that violates  
 20 2 U.S.C. 437g(a)(12). The witness is instructed  
 21 not to answer.  
 22 BY MR. DEZSI:



Page 10

1 Q Okay. Can you tell me, did you have any  
 2 participation or role in investigating Jack and  
 3 Renee Beam, the factual allegations contained in  
 4 this letter as to Jack or Renee Beam?  
 5 MR. STREETER: Objection, asked and  
 6 answered. But the witness can answer again.  
 7 THE WITNESS: Yes, I did.  
 8 BY MR. DEZSI:  
 9 Q Okay. And can you tell me what your  
 10 involvement was in that manner?  
 11 MR. STREETER: Objection that violates 2  
 12 U.S.C. 437g(a)(12).  
 13 MR. DEZSI: It's only as to Jack and  
 14 Renee Beam. And we've waived that as to Jack and  
 15 Renee Beam.  
 16 MR. STREETER: No, but once again, you  
 17 have 70 other respondents that you represent.  
 18 Anything that he says that pertains to Jack and  
 19 Renee Beam may very well apply to the other --  
 20 MR. DEZSI: Yeah, but I --  
 21 MR. STREETER: -- 70. And he is  
 22 instructed not to answer.

Page 11

1 MR. DEZSI: Okay. But the question is  
 2 limited to Jack and Renee Beam. So I'm going to  
 3 ask the question once more.  
 4 BY MR. DEZSI:  
 5 Q Did you have any participation or  
 6 investigation in the factual basis that's  
 7 contained in this letter as to Jack or Renee Beam?  
 8 MR. STREETER: Objection, that violates  
 9 2 U.S.C. 437g(a)(12). Why don't you ask him if he  
 10 did anything at all only in respect to Jack and  
 11 Renee Beam first, before you ask a more general  
 12 question?  
 13 MR. DEZSI: Sounds like the same, but --  
 14 BY MR. DEZSI:  
 15 Q Okay. Did you investigate Jack and/or  
 16 Renee Beam and their prior contributions to any  
 17 federal candidates?  
 18 MR. STREETER: At what point?  
 19 BY MR. DEZSI:  
 20 Q At any point either before or after this  
 21 letter?  
 22 MR. STREETER: You can answer that.

Page 12

1 Specifically Jack and Renee Beam?  
 2 MR. DEZSI: Uh-huh.  
 3 MR. STREETER: All right.  
 4 THE WITNESS: Yes, I did.  
 5 BY MR. DEZSI:  
 6 Q Okay. Can you tell me, describe what  
 7 that investigation entailed?  
 8 MR. STREETER: Can we get a timeframe  
 9 for this?  
 10 MR. DEZSI: At any time either before or  
 11 after the investigation he's -- he's referring to  
 12 that he had participated in such an investigation.  
 13 THE WITNESS: I ran their names through  
 14 the Federal Election Commission database for  
 15 contributors, to see if they had made  
 16 contributions to the 2004 Edwards for President  
 17 campaign, and found out that they had.  
 18 BY MR. DEZSI:  
 19 Q Okay. Do you remember about when, when  
 20 that happened, when you did that?  
 21 Would that have been -- if this letter  
 22 was sent in September of 2006, would that have

Page 13

1 been in close proximity to that date, or would it  
 2 have been after, or before?  
 3 A It would have been close to the date of  
 4 the letter.  
 5 Q Okay. And by who's direction or request  
 6 did you do that? By who -- from whom at the FEC?  
 7 Who would have requested you to do that?  
 8 How would that have come to your -- on  
 9 your desk?  
 10 MR. STREETER: Okay. That question  
 11 violates both 437g(a)(12) and a law enforcement  
 12 privilege. And he's instructed not to answer.  
 13 BY MR. DEZSI:  
 14 Q Were you supervised by a staff attorney  
 15 at the FEC in your investigatory role?  
 16 MR. STREETER: With respect to this  
 17 case, or in general?  
 18 BY MR. DEZSI:  
 19 Q With respect to this case.  
 20 A Yes, I had a supervisor at the time.  
 21 Q And who would that have been?  
 22 A Larry Calvert.

Page 14	Page 16
<p>1 Q Okay. And so can you just tell me</p> <p>2 generally how does -- how does a matter come to</p> <p>3 your -- on your desk?</p> <p>4 Does Mr. Calvert, if he is your</p> <p>5 supervisor, does he send you a request and ask you</p> <p>6 to run names through the FEC's database, or</p> <p>7 just -- could you just describe that for me?</p> <p>8 MR. STREETER: No, I guess I have to</p> <p>9 object to that one, as well, law enforcement</p> <p>10 privilege grounds, as well, and 437g(a)(12).</p> <p>11 Because it goes to the assignment of work. And</p> <p>12 that worries me.</p> <p>13 BY MR. DEZSI:</p> <p>14 Q In the general course of your</p> <p>15 responsibilities, how do you get an assignment?</p> <p>16 Who is it that brings something to you?</p> <p>17 Is it an attorney? Is it just your</p> <p>18 supervisor? Is it a number of -- a number of</p> <p>19 staff attorneys at the FEC?</p> <p>20 Who specifically would -- or generally,</p> <p>21 who would -- who would bring you that assignment?</p> <p>22 A It can be done in a number of ways. I</p>	<p>1 MR. STREETER: At this time, or at the</p> <p>2 time that --</p> <p>3 BY MR. DEZSI:</p> <p>4 Q At the time that he was your supervisor.</p> <p>5 A He was the assistant general counsel in</p> <p>6 enforcement, I believe.</p> <p>7 MR. STREETER: I think he was a deputy</p> <p>8 associate.</p> <p>9 MR. SUMMERS: He might have been deputy</p> <p>10 associate.</p> <p>11 MR. STREETER: Who can tell, with all</p> <p>12 these titles.</p> <p>13 THE WITNESS: I don't know what his</p> <p>14 title was.</p> <p>15 BY MR. DEZSI:</p> <p>16 Q Okay. But you described him as your</p> <p>17 supervisor?</p> <p>18 A He was my direct supervisor at the time,</p> <p>19 yes.</p> <p>20 Q Okay. But that doesn't necessarily mean</p> <p>21 that all of your assignments would come from him;</p> <p>22 but he was just your direct supervisor?</p>
Page 15	Page 17
<p>1 think more in answer to your question, the</p> <p>2 investigators decide who's going to work on a</p> <p>3 specific matter that comes in.</p> <p>4 Q And how does it come in to -- how do you</p> <p>5 get it?</p> <p>6 A Well, it comes in, in different ways.</p> <p>7 The staff attorney assigned to the case may come</p> <p>8 in and ask for an investigator's assistance.</p> <p>9 Mr. Calvert may ask us to work on a matter. Some</p> <p>10 of the other office of the general counsel team</p> <p>11 leaders may ask us to help out.</p> <p>12 Q Okay. And can you recall who</p> <p>13 specifically asked you to look -- to run Jack and</p> <p>14 Renee Beam's names for their contributions?</p> <p>15 MR. STREETER: That question violates a</p> <p>16 law enforcement privilege and violates 2 U.S.C.</p> <p>17 437g(a)(12). The witness is instructed not to</p> <p>18 answer.</p> <p>19 BY MR. DEZSI:</p> <p>20 Q Okay. Can you tell me who Larry Calvert</p> <p>21 is?</p> <p>22 What his title and position?</p>	<p>1 A That's correct.</p> <p>2 Q Okay. I got it. Thank you.</p> <p>3 Did you also work with Audra Wassom on</p> <p>4 this matter, as an investigator?</p> <p>5 A Yes, I did.</p> <p>6 Q Okay. Was she your primary contact or</p> <p>7 person of contact while you were investigating</p> <p>8 this matter?</p> <p>9 A Yes, she was.</p> <p>10 Q Okay. I'll have you take a look again</p> <p>11 at this letter.</p> <p>12 Okay. In this letter, on page 2, it</p> <p>13 says in this bottom paragraph --</p> <p>14 MR. STREETER: For identification</p> <p>15 purposes, that's Exhibit A again?</p> <p>16 BY MR. DEZSI:</p> <p>17 Q Yes. I'm sorry. I'm referring to</p> <p>18 Exhibit A.</p> <p>19 It says, Jack Beam had never contributed</p> <p>20 to a federal political committee prior to his</p> <p>21 contributions to the Edwards campaign.</p> <p>22 Would that statement come as a result of</p>

Page 18

1 your investigation?  
 2 MR. STREETER: I object to that on  
 3 437g(a)(12) grounds, and for law enforcement  
 4 privilege, to the extent that it's asking about  
 5 this specific investigation. The witness is  
 6 instructed not to answer.  
 7 BY MR. DEZSI:  
 8 Q In the general course of your duties, do  
 9 you provide information, to a staff attorney or  
 10 whoever requests the information, would you  
 11 provide information to them about an individual's  
 12 lack of or prior contributions? Is that something  
 13 that you would generally do?  
 14 A It would be something that I would  
 15 sometimes do.  
 16 Q Okay. And when you -- when you look for  
 17 prior contributions, you have a database; and I  
 18 assume you -- you put someone's name in the  
 19 database, and then you look -- the database tells  
 20 you if that person has made a contribution; is  
 21 that correct?  
 22 A That's one way of doing it, yes.

Page 19

1 Q And how extensive is that database?  
 2 Let's say if somebody had made a  
 3 contribution in 1980 to a federal campaign, would  
 4 it appear in that database, generally?  
 5 A I don't think so.  
 6 Q Okay. Do you know if there's sort of a  
 7 period in time where contributions are housed in  
 8 this database, whereas perhaps they weren't prior  
 9 to a certain time, or --  
 10 A I believe there's the case, yes.  
 11 Q Do you know about when that -- when that  
 12 might have started happening, that they were  
 13 housed in this database?  
 14 A I do not.  
 15 Q Okay.  
 16 MR. DEZSI: Give me just a moment.  
 17 MR. STREETER: Uh-huh.  
 18 BY MR. DEZSI:  
 19 Q The letter that you're looking at, the  
 20 Exhibit A, was it your understanding that the  
 21 Federal Election Commission's reason to believe  
 22 letter was based on Jack Beam or Renee Beam having

Page 20

1 been reimbursed for their contributions as a  
 2 violation of the Federal Election Commission act?  
 3 MR. STREETER: I'm sorry. Could you  
 4 read that question back?  
 5 (Whereupon the reporter read  
 6 the record as requested.)  
 7 MR. STREETER: You can answer that.  
 8 THE WITNESS: It was something we were  
 9 looking at, at the time, yes.  
 10 BY MR. DEZSI:  
 11 Q Okay. During your work on this case,  
 12 did you have occasion to communicate or talk to  
 13 anybody from the Department of Justice?  
 14 A Yes, I did.  
 15 Q Okay. And can you tell me who at the  
 16 Department of Justice you talked to or  
 17 communicated with, whether by e-mail, letter,  
 18 phone conversation, face-to-face meetings?  
 19 A AUSA Kendall Day. I'm sorry. He's not  
 20 an AUSA. He's a -- he works out of the Department  
 21 of Justice public integrity section.  
 22 Q Okay. How about Assistant United States

Page 21

1 Attorney Lynn Helland?  
 2 A Yes, I sat in on a teleconference where  
 3 he was involved. He was in Detroit at the time.  
 4 Q Okay. And how about Assistant United  
 5 States Attorney Chris Varner?  
 6 A No.  
 7 Q No.  
 8 And FBI Special Agent Jeff Rees?  
 9 A Rees was also involved in the  
 10 teleconference that -- that I was a witness to,  
 11 from Detroit.  
 12 Q Okay. Did you speak with Mr. Rees or  
 13 Mr. Helland, other than on that telephone -- that  
 14 teleconference, on other occasions?  
 15 A No.  
 16 Q No.  
 17 How about e-mail? Do you recall having  
 18 any e-mail communications with either Mr. Rees  
 19 from the FBI or Lynn Helland?  
 20 A No.  
 21 Q No. Okay. Let's go back to Kendall  
 22 Day, the trial attorney from the Department of

Page 22

1 Justice.  
 2 Did you meet with him face-to-face on  
 3 any occasions?  
 4 A Yes.  
 5 Q Okay. And can you tell me about how  
 6 many times?  
 7 A I recollect three times.  
 8 Q Okay. And where were those meetings?  
 9 A Two of the meetings were here at the  
 10 Federal Election Commission. One of the meetings  
 11 was at Mr. Day's office at the Department of  
 12 Justice.  
 13 Q Okay. And who else was present in those  
 14 meetings?  
 15 A Well, do you want them individually?  
 16 Q Sure.  
 17 A Okay. The meeting we had at DOJ was  
 18 made up of, besides myself, Audra Wassom, Tom  
 19 Andersen, Larry Calvert. That's all. And I need  
 20 to go back and say that we actually had two  
 21 meetings at DOJ.  
 22 Q Okay. And when you said in the -- as to

Page 23

1 the first meeting, you said yourself,  
 2 Ms. Wassom --  
 3 A Okay. I'm -- yeah. The first meeting,  
 4 it was myself, Ms. Wassom, and Larry Calvert.  
 5 Q Okay. And also then Kendall Day?  
 6 A Yes.  
 7 Q Okay.  
 8 A And that's the time we had the  
 9 teleconference with them in Detroit.  
 10 Q Okay. Okay. And then you said there  
 11 was a second DOJ meeting?  
 12 A Yes.  
 13 Q And that would have been -- who would  
 14 have been present during that meeting?  
 15 A Present there was Tom Andersen, Audra  
 16 Wassom, and myself, from the FEC.  
 17 Q Okay. At any time during any of these  
 18 meetings or any other -- any other meetings that  
 19 you may have had with the Department of Justice,  
 20 did you obtain any records or compact disks from  
 21 the Department of Justice or Kendall Day?  
 22 A Yes.

Page 24

1 Q Okay. And can you tell me what you --  
 2 when that -- when that would have happened?  
 3 A Well, I remember receiving two different  
 4 things from him. I believe one was a CD that we  
 5 received sometime after the reason to believe  
 6 letters were sent out.  
 7 Q Uh-huh. Okay.  
 8 A And then we also received material after  
 9 the criminal trial.  
 10 Q Okay. And after the criminal trial, who  
 11 initiated that exchange of information?  
 12 MR. STREETER: Objection, that violates  
 13 a law enforcement privilege, and 437g(a)(12). The  
 14 witness is instructed not to answer.  
 15 BY MR. DEZSI:  
 16 Q Okay. Were you the one that received  
 17 the documents after the trial?  
 18 A I received them, yes. I believe they  
 19 were sent in the form of an e-mail.  
 20 Q Okay. And do you remember the contents  
 21 of that e-mail or that -- the documents that you  
 22 received?

Page 25

1 MR. STREETER: Objection, that violates  
 2 a law enforcement privilege, and 437g(a)(12). The  
 3 witness is instructed not to answer.  
 4 BY MR. DEZSI:  
 5 Q Okay. I'm going to just give you a  
 6 document.  
 7 MR. DEZSI: I'm going to mark this as  
 8 Plaintiff's Exhibit D.  
 9 (Plaintiff's Deposition  
 10 Exhibit D was marked for  
 11 identification.)  
 12 BY MR. DEZSI:  
 13 Q And take a look at this.  
 14 Mr. Hearron, do you recognize this  
 15 e-mail?  
 16 A I do.  
 17 Q Okay. Can you describe to me how this  
 18 e-mail came about?  
 19 MR. STREETER: Objection, that violates  
 20 a law enforcement, provision for -- just a law  
 21 enforcement privilege. The witness is instructed  
 22 not to answer. The e-mail speaks for itself.

Page 26

1 MR. DEZSI: Okay. Would you let the  
 2 record reflect that Plaintiff's Exhibit D has not  
 3 been produced to Plaintiffs, nor has it been  
 4 identified as withheld on the Federal Election  
 5 Commission's privileged log.  
 6 MR. STREETER: Let me also say for the  
 7 record that it's not at all clear that the second  
 8 page of this document actually relates to the  
 9 first page, since the attachment on the face of  
 10 the first page isn't identified, although it very  
 11 well could be part of the same e-mail. It's just  
 12 that there's no evidence in the record now to  
 13 reflect that fact.  
 14 BY MR. DEZSI:  
 15 Q Mr. Hearron, this e-mail that we're  
 16 looking at, it appears -- it says, Please review  
 17 the attachment and give me your opinion.  
 18 This is an e-mail from you to Kendall  
 19 Day, dated October 23 of 2007, with a cc to Audra  
 20 Wassom.  
 21 Again, from the beginning of the e-mail  
 22 it says, Kendall Day, please review the attachment

Page 27

1 and give me your opinion. Is this the format that  
 2 you are looking for with the contributor history.  
 3 Thanks.  
 4 Mr. Hearron, it appears that -- isn't it  
 5 true that Mr. Day must have requested you to --  
 6 must have requested that you produce some sort of  
 7 charts for the Department of Justice for use in  
 8 their criminal case; is that true?  
 9 MR. STREETER: Objection, that calls for  
 10 speculation. It violates a law enforcement  
 11 privilege. It violates 437g(a)(12). The witness  
 12 is instructed not to answer.  
 13 BY MR. DEZSI:  
 14 Q Mr. Hearron, did you prepare the  
 15 attachment that is attached to the e-mail, which  
 16 has a name Jeffrey Danzig on the top?  
 17 A (Witness examined document). Yes, I  
 18 did.  
 19 Q Okay. Did you prepare other similar  
 20 charts?  
 21 A Similar in what way?  
 22 Q Similar to this with other -- for other

Page 28

1 individuals?  
 2 A Yes, I did.  
 3 Q And were these prepared for the  
 4 Department of Justice's use in their criminal  
 5 trial?  
 6 MR. STREETER: Objection, that violates  
 7 a law enforcement privilege. It violates  
 8 437g(a)(12). The witness is instructed not to  
 9 answer.  
 10 BY MR. DEZSI:  
 11 Q Mr. Hearron, were you aware that the  
 12 Department of Justice had obtained the bank  
 13 records for Jack and Renee Beam for use in their  
 14 criminal case?  
 15 MR. STREETER: Objection, that assumes  
 16 facts not in evidence. The witness can answer if  
 17 he knows, knows an answer.  
 18 THE WITNESS: No, I was not.  
 19 BY MR. DEZSI:  
 20 Q Were you aware that the Department of  
 21 Justice had gathered financial records for many of  
 22 the Fieger firm employees for use in its criminal

Page 29

1 case?  
 2 MR. STREETER: Objection to that one  
 3 because it's vague. But the witness can answer.  
 4 THE WITNESS: Yes, I was.  
 5 BY MR. DEZSI:  
 6 Q Okay. Did Mr. Day disclose to you that  
 7 he had in fact obtained those financial records  
 8 for individuals related to the Fieger firm?  
 9 MR. STREETER: I'm going to object to  
 10 that one on law enforcement privilege grounds, and  
 11 2 U.S.C. 437g(a)(12). Instruct the witness not to  
 12 answer.  
 13 BY MR. DEZSI:  
 14 Q Okay. Mr. Hearron, you mentioned that  
 15 you had received a CD from the Department of  
 16 Justice, which you believe you got after the  
 17 reason to -- the FEC's reason to believe letter.  
 18 When you received that CD, would you  
 19 have logged that in your normal course of your  
 20 duties?  
 21 Or how would you indicate the receipt of  
 22 that document or that file or that compact disk?

Page 30	Page 32
<p>1 MR. STREETER: If he did.                  2 THE WITNESS: I don't remember.                  3 BY MR. DEZSI:                  4 Q Is it in the normal course of your                  5 duties -- if you receive something like a compact                  6 disk, is it your practice to log that; or do you                  7 have a process by which that gets logged when it                  8 comes into the FEC?                  9 A If I would have received the original                  10 CD, yes, that would have been logged.                  11 Q And how would it be logged?                  12 A Well, we have a -- a unit that keeps all                  13 of our files and records. And it would have gone                  14 to them.                  15 Q And what unit is that?                  16 Does it have a department title or --                  17 A It's called CELA.                  18 MR. STREETER: Central enforcement                  19 document.                  20 THE WITNESS: Yes.                  21 MR. DEZSI: Central --                  22 MR. STREETER: Enforcement docket.</p>	<p>1 attach a case number, are you referring to like an                  2 MUR?                  3 A Yes.                  4 Q An MUR number.                  5 So in this case it -- assuming that you                  6 got that CD from -- from Kendall Day, you would                  7 log that under MUR 5818?                  8 A That's correct.                  9 Q Okay. And then who keeps the CD, the                  10 CE -- the central enforcement docket, they                  11 actually physically hold that CD?                  12 A Yes.                  13 Q Until somebody, yourself or a staff                  14 attorney, calls for it?                  15 A Well, I would usually make copies --                  16 Q Oh, okay.                  17 A -- of the original.                  18 Q I see.                  19 So the copies could be used by yourself                  20 or a staff attorney --                  21 A Yes.                  22 Q -- Ms. Wassom for instance?</p>
Page 31	Page 33
<p>1 MR. DEZSI: -- enforcement docket.                  2 BY MR. DEZSI:                  3 Q Okay. So just -- could you walk me                  4 through how this would happen if -- if you get a                  5 CD, you go to a meeting with the Department of                  6 Justice. And let's -- let's just assume this for                  7 a moment that Kendall Day gives you this CD. You                  8 bring it back here.                  9 And then can you tell me from that point                  10 how CELA gets it in order for it to be docketed?                  11 MR. STREETER: Can we call it CED, not                  12 CELA?                  13 MR. DEZSI: Oh, sure.                  14 BY MR. DEZSI:                  15 Q CED.                  16 A I would attach it to the something to                  17 the CD, with the case number. And then there's a                  18 depository for records, whatever the case may be,                  19 where it's dropped off. And then somebody from                  20 CED will take it and -- and make sure it gets into                  21 the proper file.                  22 Q Okay. And when you say you log it, you</p>	<p>1 A Yes.                  2 Q And the original stays with the CED?                  3 A That's correct.                  4 Q I see.                  5 And once the CED receives those                  6 documents or those compact disks, is that logged                  7 into an electronic database?                  8 A I don't know.                  9 Q Okay. So do you know if you were to                  10 pull up some sort of internal docket or some --                  11 and internal spreadsheet or something for this                  12 case, would it have entries of all of the                  13 different documents that are in the possession of                  14 CED?                  15 A The CED file is each document or CD,                  16 whatever the case may be, is -- is manually                  17 inventoried within that particular case file.                  18 Q Okay. And is there then a spreadsheet                  19 or an electronic file that can be opened; and I                  20 can read that you -- that the CED entered a                  21 document on September 1st, or December 15th?                  22 A I don't know. We have electronic files,</p>

<p style="text-align: right;">Page 34</p> <p>1 but I'm not sure that everything is electronically 2 entered. 3 MR. STREETER: Off the record for a 4 second. 5 (Discussion off the record) 6 BY MR. DEZSI: 7 Q Mr. Hearron, the CD that you received 8 from the Justice Department after the reason to 9 believe letter, do you remember the contents of 10 that CD? 11 MR. STREETER: Objection to that one on 12 law enforcement privileged grounds. He's 13 instructed not to answer. 14 BY MR. DEZSI: 15 Q You mentioned that was one of the CD's 16 that you received from the Department of Justice 17 was after this reason to believe letter was sent 18 back in September of 2006. And you mentioned that 19 you received other documents after the trial; is 20 that correct? 21 A That's correct. 22 Q And can you tell me how it came about</p>	<p style="text-align: right;">Page 36</p> <p>1 enforcement privilege. The witness is instructed 2 not to answer. 3 And just to clarify, you're asking other 4 than contributions that he attached on the list? 5 MR. DEZSI: Other than this -- this 6 chart that's attached to this e-mail. 7 MR. STREETER: Okay. And then I want to 8 add a 437g(a)(12) objection, too. Instruct the 9 witness not to answer. 10 BY MR. DEZSI: 11 Q Mr. Hearron, if we could go back for a 12 moment. 13 In the course of your investigatory 14 responsibilities here at the FEC, have you had 15 occasion in the past to work with the Department 16 of Justice? 17 MR. STREETER: In other matters? 18 BY MR. DEZSI: 19 Q In other matters? 20 MR. STREETER: Okay. Sorry. 21 THE WITNESS: Yes, I have. 22 BY MR. DEZSI:</p>
<p style="text-align: right;">Page 35</p> <p>1 that you received documents after the trial? 2 MR. STREETER: Objection to -- that 3 question calls for information that will violate 4 the law enforcement privilege, and also violate 2 5 U.S.C. 437g(a)(12). The witness is instructed not 6 to answer. 7 BY MR. DEZSI: 8 Q The documents that you received after 9 trial, the compact disk that you received after 10 trial, do you know the contents of that CD? 11 MR. STREETER: Same objection. Same 12 instruction. Also, that question assumes facts 13 not in evidence. 14 BY MR. DEZSI: 15 Q Mr. Hearron, if we could go back to that 16 e-mail that we have marked there in front of you 17 as D. 18 Did Mr. Day or anyone else from the 19 Department of Justice, did they ask you to create 20 any other types of documents or charts for use in 21 their criminal case? 22 MR. STREETER: Objection. Violates law</p>	<p style="text-align: right;">Page 37</p> <p>1 Q Okay. And can you just give me an 2 estimate as to how many times in the past you've 3 worked with the DOJ? 4 A On two other occasions. I'm sorry. 5 Three other occasions. 6 Q Okay. And can you tell me who at the 7 Department of Justice you talked to on those 8 occasions, or who was your contact person? 9 A No, I'm sorry, I don't remember. 10 Q Okay. It wasn't Kendall Day? 11 A No, it was not. 12 Q Okay. In the past -- in those past 13 matters where you have worked with the Department 14 of Justice, has that involved providing an 15 investigation into campaign contributions? 16 MR. STREETER: If you understand. 17 THE WITNESS: I'm sorry. Repeat the 18 question. 19 BY MR. DEZSI: 20 Q Okay. Sure. 21 In the past when you've -- when you've 22 worked with the Department of Justice on those</p>

Page 38

1 three occasions in the past, was that in your role  
 2 as an investigator with the FEC?  
 3 A That's correct.  
 4 Q Okay. And were you -- did you  
 5 provide -- did you provide campaign contribution  
 6 histories, or something similar, on those  
 7 instances?  
 8 A No, I don't believe so.  
 9 Q Okay. Have you had occasion to look at  
 10 or to exchange any type of financial information  
 11 with the Department of Justice, the bank records  
 12 or anything like bank records or financial  
 13 records?  
 14 MR. STREETER: Talking about these three  
 15 other instances?  
 16 MR. DEZSI: Yes.  
 17 MR. STREETER: All right.  
 18 THE WITNESS: No.  
 19 BY MR. DEZSI:  
 20 Q Okay. I'm just going to have you take a  
 21 look, if you would, at this section of the  
 22 statute, which is 12 United States Code Section

Page 39

1 3412, and then the paragraph A, which are refers  
 2 to transfer of financial records. If you could  
 3 just take a moment and read that to yourself,  
 4 Mr. Hearron.  
 5 A (Witness examined document). Okay.  
 6 Q Okay. Are you familiar with that  
 7 statute, or have you seen it before?  
 8 A Yes, I have.  
 9 Q Okay. And have you had occasion, during  
 10 your employment with the FEC, to either transfer,  
 11 to share financial records with any other  
 12 financial agency -- or federal agencies?  
 13 A I'm sorry. Repeat the question.  
 14 Q Have you -- during your employment with  
 15 the FEC, have you had occasion to share any  
 16 financial records with other federal agencies?  
 17 Have you either exchanged, disclosed,  
 18 transferred any financial records with other  
 19 federal agencies?  
 20 A Yes.  
 21 Q Yes.  
 22 And have you had occasion to execute or

Page 40

1 to sign any of these certifications that are  
 2 referred to in this section A of the Section 3412  
 3 of this law?  
 4 A I have not, no.  
 5 Q Have you ever seen one of these  
 6 certifications?  
 7 A I don't recall.  
 8 Q Okay. I'll take it back.  
 9 A (Handing document).  
 10 Q Thank you.  
 11 In the past when you've had occasion to  
 12 exchange financial records, was that with the  
 13 Department of Justice?  
 14 A Yes, it was.  
 15 Q Okay. And you don't recall at that time  
 16 having seen one of these certifications?  
 17 A I do not recall that.  
 18 Q Okay. Thank you.  
 19 If we could then flip back to  
 20 Plaintiff's Exhibit A, if you would.  
 21 A (Witness examined document).  
 22 Q And if you would, please, Mr. Hearron,

Page 41

1 flip back to page 2 of 2 of the factual and legal  
 2 analysis.  
 3 A (Witness examined document).  
 4 Q Okay. And the first full paragraph on  
 5 that page, starting with, According to news  
 6 accounts, Joseph Bird, a former attorney at the  
 7 firm, has alleged that firm reimbursed him for  
 8 contributions he and his spouse made to the  
 9 Edwards' committee. And there's a citation to a  
 10 newspaper article.  
 11 Sarah Karush, lawyer, says Fieger  
 12 partner told him to contribute, Detroit News,  
 13 December 3, 2005.  
 14 Would that have been your responsibility  
 15 to seek or to search for newspaper articles like  
 16 this, or including this one?  
 17 MR. STREETER: That question violates 2  
 18 U.S.C. 437g(a)(12). The witness is instructed not  
 19 to answer.  
 20 MR. DEZSI: This letter is to Jack Beam.  
 21 MR. STREETER: Again, it goes to the 70  
 22 other respondents that you represent.



Page 42

1 BY MR. DEZSI:  
 2 Q Okay. In the general course of your  
 3 investigative responsibilities, would it be within  
 4 your job to sometimes look for and to find  
 5 newspaper articles to support the Federal Election  
 6 Commission's reason to believe findings?  
 7 A Sometimes.  
 8 Q Sometimes.  
 9 And could you tell me about how many  
 10 times you've done that in the past?  
 11 Just a ballpark.  
 12 A Well, several occasions.  
 13 Q Okay. So in those instances, let's --  
 14 let's assume that a staff attorney or somebody  
 15 comes to you with a matter and you open an  
 16 investigation.  
 17 So then you might just start Google  
 18 searching? Is that how that would come to be?  
 19 Or how would you look for that,  
 20 newspaper articles, that is?  
 21 A Google search, or we subscribe to  
 22 some -- some programs where that information is --

Page 43

1 we can get that information through these  
 2 different programs.  
 3 Q Okay. So something like Lexus or -- for  
 4 cases, but it's something that's used for  
 5 newspapers, or is that -- that sounds like that's  
 6 what you're referring to?  
 7 A Yes.  
 8 Q Okay. And do you recall actually  
 9 looking and finding these particular articles?  
 10 MR. STREETER: Objection. That violates  
 11 2 U.S.C. 437g(a)(12). The witness is instructed  
 12 not to answer.  
 13 BY MR. DEZSI:  
 14 Q Mr. Hearron, during the course of your  
 15 work on this matter, do you recall looking at any  
 16 FBI 302 reports?  
 17 A Yes.  
 18 Q Okay. How about any IRS field  
 19 memorandum, memoranda?  
 20 A I believe so.  
 21 Q Okay. And how about any grand jury  
 22 transcripts?

Page 44

1 A Yes.  
 2 Q And how about exhibits that were used by  
 3 the Department of Justice in their criminal case  
 4 against Geoffrey Fieger?  
 5 A Yes.  
 6 Q And were you aware that the Department  
 7 of Justice had obtained financial records from  
 8 Mr. Fieger that they used in his criminal case?  
 9 MR. STREETER: You can answer that.  
 10 THE WITNESS: I'm sorry. Repeat the  
 11 question.  
 12 BY MR. DEZSI:  
 13 Q Were you aware that the Department of  
 14 Justice had gathered financial records that they  
 15 had used against Mr. Fieger in his criminal case?  
 16 A Yes.  
 17 Q Were you also -- were you aware that  
 18 Ms. Wassom had requested from the Department of  
 19 Justice several of their evidence or documents  
 20 that they used in their criminal case?  
 21 MR. STREETER: Objection, that assumes  
 22 facts not in evidence. It violates the law

Page 45

1 enforcement privilege. The witness is instructed  
 2 not to answer that one.  
 3 BY MR. DEZSI:  
 4 Q You were aware that Mr. Fieger was  
 5 acquitted of all -- of the charges brought against  
 6 him by the Department of Justice?  
 7 A Yes.  
 8 Q Okay. And after that acquittal, is it  
 9 true that you and Ms. Wassom, as you indicated,  
 10 met with the Department of Justice?  
 11 A Yes.  
 12 Q Okay. At which time you received a CD,  
 13 the contents of which I believe counsel has  
 14 objected to as privileged; is that correct?  
 15 A At some point we received that. I'm not  
 16 sure if it was at that meeting or not.  
 17 Q Okay. Do you recall at any time during  
 18 this matter, either before or after the acquittal,  
 19 if you provided any information to the Department  
 20 of Justice other than that graph, that chart that  
 21 was contained in your -- attached to your e-mail?  
 22 MR. STREETER: That question violates

Page 46	Page 48
<p>1 the law enforcement privilege. The witness is</p> <p>2 instructed not to answer.</p> <p>3 MR. DEZSI: Give me a second if you</p> <p>4 would.</p> <p>5 Can we take a break?</p> <p>6 MR. STREETER: Sure.</p> <p>7 (Recess)</p> <p>8 BY MR. DEZSI:</p> <p>9 Q Mr. Hearron, I just have a couple more</p> <p>10 questions for you before we go.</p> <p>11 If you could take a look -- this is a</p> <p>12 copy of the subpoena for the notice of deposition</p> <p>13 that was originally served on you for your</p> <p>14 appearance today. Attached to that is Exhibit A</p> <p>15 asking you to produce documents.</p> <p>16 Have you seen that document before?</p> <p>17 A Yes, I have.</p> <p>18 Q Okay. And were you responsible for</p> <p>19 searching for documents, for your own documents,</p> <p>20 or --</p> <p>21 A Yes, I was.</p> <p>22 Q Okay. So you located documents or</p>	<p>1 MR. STREETER: Yeah.</p> <p>2 BY MR. DEZSI:</p> <p>3 Q And you're not sure why that document</p> <p>4 wouldn't have been located within the -- when you</p> <p>5 did your search?</p> <p>6 A No, I do not.</p> <p>7 Q Okay.</p> <p>8 MR. DEZSI: I don't think I have any</p> <p>9 other questions.</p> <p>10 I would like to reserve the witness. I</p> <p>11 may have you back, depending on if we ask the</p> <p>12 judge in Chicago to rule on some of the privileges</p> <p>13 that were asserted by counsel. And depending on</p> <p>14 how she rules on those, I might have you back for</p> <p>15 a very brief period. But I will reserve your</p> <p>16 testimony.</p> <p>17 THE WITNESS: Okay.</p> <p>18 MR. STREETER: I have a few cross-exam</p> <p>19 questions.</p> <p>20 EXAMINATION BY COUNSEL FOR DEFENDANTS</p> <p>21 BY MR. STREETER:</p> <p>22 Q Mr. Hearron, you were asked a series of</p>
Page 47	Page 49
<p>1 didn't locate documents; and whatever you -- and</p> <p>2 whatever you found, would that have been turned</p> <p>3 over to counsel?</p> <p>4 A That's correct.</p> <p>5 Q Okay. Do you know why this particular</p> <p>6 document, the one that I marked Plaintiff's</p> <p>7 Exhibit D, was not located or produced as a result</p> <p>8 of that exhibit?</p> <p>9 A I do not know.</p> <p>10 Q Okay. Can you just give me an idea of</p> <p>11 how -- how would you search for documents in</p> <p>12 response to that subpoena?</p> <p>13 A I went through my paper files and my</p> <p>14 electronic files.</p> <p>15 Q And when you say you went through your</p> <p>16 electronic files, like WordPerfect files?</p> <p>17 Can you describe to me what's included</p> <p>18 in that?</p> <p>19 A WordPerfect, electronic mail.</p> <p>20 Q Okay.</p> <p>21 MR. STREETER: We use Lotus now, too.</p> <p>22 MR. DEZSI: Oh, Lotus? Okay.</p>	<p>1 questions about the RFPA statute, the 12 U.S.C.</p> <p>2 3412 provision that Mr. Dezsi showed you. And I</p> <p>3 guess I don't have it in front of me anymore. He</p> <p>4 asked you to look at the --</p> <p>5 MR. DEZSI: You want the statute?</p> <p>6 MR. STREETER: No, no. That's okay. I</p> <p>7 don't think he needs the see it.</p> <p>8 BY MR. STREETER:</p> <p>9 Q And you answered the question about the</p> <p>10 certification of transfers of financial</p> <p>11 information either to or from other agencies.</p> <p>12 Do you recall those questions?</p> <p>13 A Yes, I do.</p> <p>14 Q Have you ever been involved in</p> <p>15 exchanging any private financial information of</p> <p>16 any individuals in any case other than the current</p> <p>17 case?</p> <p>18 A No, I have not been.</p> <p>19 Q And if there was -- if any personal</p> <p>20 information of any type was transferred during the</p> <p>21 course -- let me start again.</p> <p>22 If any private -- if any, personal</p>

Page 50	Page 52
<p>1 information, person financial information of any                  2 type, was either transferred to you or by you in                  3 any case that you've been involved with during                  4 your tenure here at the FEC, was that information                  5 transferred in the current case, or some other                  6 case?                  7 A The current case.                  8 Q If the information that was transferred                  9 was private financial information -- meaning stuff                  10 that's not public -- and a certification had to be                  11 prepared, would you be the only person who would                  12 be responsible for preparing the certification, or                  13 would other people involved in the matter also                  14 have to involve -- may -- may be the ones who                  15 prepared the certification?                  16 A It would have been someone else. I                  17 wouldn't have been involved in that, the                  18 preparation of that document.                  19 Q The fact that you did not yourself                  20 prepare certificates, doesn't mean that other                  21 persons involved in the matters may have prepared                  22 the certification?</p>	<p>1 Q -- months apart?                  2 A They were months apart.                  3 Q Months apart.                  4 All right. Do you recall with what was                  5 contained in the CD?                  6 A No, I don't.                  7 Q Could that CD have contained transcripts                  8 of the criminal trial testimony that was given in                  9 the Fieger criminal case?                  10 A It could have.                  11 Q Do you recall whether it did or not?                  12 A I do not.                  13 Q Okay. And the attachments that -- to                  14 the e-mail that you described, could those                  15 attachments have been related to Department of                  16 Justice criminal trial material of some kind, if                  17 you recall?                  18 A It could have been, yes.                  19 Q Do you have any recollection of what was                  20 actually contained in that, those PDF attachments?                  21 A No, I do not.                  22 Q All right. Fair enough.</p>
Page 51	Page 53
<p>1 A They may have.                  2 Q With respect to -- you said that -- that                  3 in this case you received information from the                  4 Department of Justice in the form of e-mail                  5 attachments and in the form of CD's, or a CD.                  6 Do you recall how many CD's were                  7 involved?                  8 A No, I don't.                  9 Q Do you recall when the CD might have                  10 been received from DOJ, at what point in time?                  11 A I believe the CD came shortly after our                  12 finding of reason to believe. I may have that                  13 confused with us receiving the e-mail.                  14 Q An e-mail --                  15 A In other words, I'm not sure if the CD                  16 came first, or the e-mail came first.                  17 Q And would the --                  18 A But we received one of each.                  19 Q Okay. Would those two items have been                  20 received at about the same time, or would they                  21 have been --                  22 A No.</p>	<p>1 During your work on this case -- let                  2 me -- strike that.                  3 You also testified earlier that you may                  4 have seen grand jury transcripts in this case.                  5 Do you recall when that might have                  6 happened?                  7 A Thinking about that question now, I made                  8 a mistake with my answer. I have never seen grand                  9 jury transcripts. I have seen trial transcripts.                  10 Q All right. So the material that you                  11 previously referred to as grand jury transcripts                  12 were in actually transcripts from the criminal                  13 trial of various defendants in the Fieger case,                  14 thus related to this case?                  15 A That's correct.                  16 Q That's fair?                  17 Do you recall when you might have seen                  18 those transcripts?                  19 A No, not exactly. It was at some point                  20 after the end of the criminal trial.                  21 Q Which was in the summer of 2008, if you                  22 recall that?</p>

Page 54

1 A Yes.

2 Q Okay. Now, with respect to material

3 received from the Department of Justice, have you

4 seen any material from the Department of Justice

5 relating to the Beams or to anyone else in the

6 Fieger universe that had its origin in the grand

7 jury proceedings related to that criminal trial?

8 A No, I have not.

9 Q With respect to Jack Beam, have you ever

10 seen any document that contains a social security

11 number -- the social security number of Mr. Beam?

12 A Not to my knowledge.

13 Q Have you ever seen any document that

14 contains a social security number of Renee Beam?

15 A Not to my knowledge.

16 Q Have you seen any document that contains

17 a home address of either Jack or Renee Beam, of

18 any type?

19 A Yes, I have.

20 Q And what was that?

21 A Well, one place I can think of would be

22 the Federal Election Commission database of

Page 55

1 regular contributions.

2 Q Because the law requires that the Beams

3 report their home address, correct?

4 A That's correct.

5 Q Okay. With respect to financial

6 information, have you seen any bank statements,

7 any bank statements of any type of Jack or Renee

8 Beam that contains their home address?

9 A No, I have not.

10 Q Have you seen any savings account

11 belonging to Jack or Renee Beam that contains

12 their address or social security number?

13 A No.

14 Q Have you seen any savings account of

15 Jack or Renee Beam from any source that contains

16 their home address or their social security

17 number?

18 A No.

19 Q Have you ever seen any stock brokerage

20 accounts belonging to Jack or Renee Beam that

21 contains either their social security number or

22 their home address?

Page 56

1 A No.

2 Q Have you seen anything else that can be

3 considered private financial information that

4 belongs either to Jack or to Renee Beam?

5 A No.

6 Q Is it possible that you've seen copies

7 of bank statements or money market statements in

8 which certain information has been redacted?

9 A Yes, I have.

10 Q Can you state what that material might

11 have been?

12 A Bank statements involving individuals in

13 the Fieger criminal case.

14 Q The question was related to solely Jack

15 or Renee Beam, not to other possible defendants in

16 the --

17 A No.

18 Q Okay. And you just said you've seen

19 bank statements relating to our people in what I

20 will call the Fieger universe that has been

21 redacted; is that correct?

22 A Yes.

Page 57

1 Q Can you tell me what type of information

2 was redacted?

3 A Personal information.

4 Q Such as?

5 A Social security numbers, telephone

6 numbers, home addresses.

7 Q So it's fair to say that any document

8 you've ever seen that relates to any individuals

9 in the Fieger universe has been redacted to take

10 out this private financial information --

11 A Yes.

12 Q -- this private information?

13 With respect to the documents that you

14 have seen, which I guess would be the redacted

15 documents, do you know if those documents were

16 public or not?

17 A Yes, they were.

18 Q And why do you say that?

19 A Because they were used as exhibits in

20 criminal trial which --

21 Q Concluded last year?

22 A -- concluded, yes.

Page 58	Page 60
<p>1 MR. STREETER: I have nothing else.                  2 Thank you, sir.                  3 MR. DEZSI: I have some follow-up                  4 questions.                  5 EXAMINATION BY COUNSEL FOR PLAINTIFFS                  6 BY MR. DEZSI:                  7 Q Where did you get the financial records                  8 that you're referring to that you saw that were                  9 redacted?                  10 A From DOJ.                  11 Q And do you recall any of the names of                  12 the individuals of those documents?                  13 A No.                  14 Q And in what form were those documents?                  15 Were those paper, or electronic?                  16 MR. STREETER: You mean as transmitted,                  17 or when he actually saw them?                  18 BY MR. DEZSI:                  19 Q When you saw them, what did you see?                  20 Paper? You saw a computer file?                  21 A No. Once again, it was either on a CD                  22 or e-mail.</p>	<p>1 today?                  2 A Yes, I was.                  3 Q By whom?                  4 A Mr. Streeter.                  5 Q Okay. And did you -- without disclosing                  6 the contents of your discussions, did you have                  7 occasion to discuss your testimony during the                  8 break?                  9 A Yes.                  10 Q As to the financial records that you've                  11 testified that you've seen, those were redacted                  12 how, with the just like black mark-outs; or how                  13 were they redacted?                  14 A It appeared to be black mark-outs.                  15 Q I ask because sometimes there's computer                  16 programs that sort of assert black boxes over                  17 things, versus just -- I'm a simple guy. I just                  18 take a Sharpie.                  19 A I believe it was done manually.                  20 Q Okay. And can you tell me how those                  21 documents were categorized or how they were                  22 stored? Were they alphabetical, or how?</p>
Page 59	Page 61
<p>1 Q Okay. And do you remember about how                  2 many pages or documents we're talking about?                  3 Are we talking about ten, or a hundred,                  4 or 200?                  5 A I would say a lot, a hundred, closer to                  6 a hundred than to ten.                  7 Q Might it be closer to a thousand than                  8 ten?                  9 A Well, I don't -- no.                  10 Q Okay. Earlier you indicated -- and                  11 Mr. Hearron, I don't mean to trick you or to -- to                  12 play a trick on you. Earlier you had indicated                  13 that you had seen grand jury transcripts. And                  14 you've now testified that you did not see grand                  15 jury transcripts.                  16 Do you know the difference between grand                  17 jury transcripts and trial transcripts?                  18 A Yes, I do.                  19 Q And you would know the difference in                  20 their markings, or --                  21 A Yes.                  22 Q Were you prepped for your deposition</p>	<p>1 A I don't recall there being any order to                  2 them at all.                  3 Q Okay. You couldn't be certain in that                  4 those documents were Jack or Renee Beam's; you've                  5 testified that you don't recall whose documents                  6 they were, whose names in particular; is that                  7 correct?                  8 A Yes.                  9 Q Okay.                  10 MR. DEZSI: I have no further questions                  11 for you.                  12 EXAMINATION BY COUNSEL FOR DEFENDANTS                  13 BY MR. STREETER:                  14 Q And, in fact, Mr. Hearron, you don't                  15 recall specifically having ever seen any bank                  16 statements of any type, redacted or non-redacted,                  17 that pertain to Jack or Renee Beam, correct?                  18 A That's correct.                  19 MR. STREETER: Nothing further.                  20 MR. DEZSI: Again, I would like to                  21 reserve the witness's testimony, in case we have                  22 some further issues after the privilege issues are</p>

Roger A. Hearron

March 10, 2009

Washington, DC

Page 62

1 resolved.  
 2 MR. STREETER: And as a result, we can't  
 3 waive.  
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 7 (Whereupon at 4:05 p.m., the  
 8 deposition of ROGER A.  
 9 HEARRON was adjourned.)  
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Page 64

1 CERTIFICATE OF NOTARY PUBLIC  
 2 I, BARBARA A. HUBER, CSR, the officer  
 3 before whom the foregoing deposition was taken, do  
 4 hereby certify that the witness whose testimony  
 5 appears in the foregoing deposition was duly sworn  
 6 by me; that the testimony of said witness was  
 7 taken by me in stenotypy and thereafter reduced to  
 8 print under my direction; that said deposition is  
 9 a true record of the testimony given by said  
 10 witness; that I am neither counsel for, related  
 11 to, nor employed by any of the parties to the  
 12 action in which this deposition was taken; and,  
 13 furthermore, that I am not a relative or employee  
 14 of any attorney or counsel employed by the parties  
 15 hereto, nor financially or otherwise interested in  
 16 the outcome of this action.  
 17  
 18  
 19 \_\_\_\_\_  
 BARBARA A. HUBER, CSR  
 20 Notary Public, in and for the  
 District of Columbia  
 21  
 My Commission Expires:  
 22 March 14, 2012

Page 63

1 ACKNOWLEDGEMENT OF DEPONENT  
 2  
 3  
 4 I, ROGER A. HEARRON, do hereby acknowledge I  
 5 have read and examined the foregoing pages of  
 6 testimony, and the same is a true, correct and  
 7 complete transcription of the testimony given by  
 8 me, and any changes or corrections, if any, appear  
 9 in the attached errata sheet signed by me.  
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 15 \_\_\_\_\_  
 Date ROGER A. HEARRON  
 16  
 17 Subscribed and Sworn to before me this  
 18 \_\_\_\_ day of \_\_\_\_\_, 2009.  
 19  
 20 \_\_\_\_\_  
 21 Notary Public  
 22 My Commission Expires:

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