

I. INTRODUCTION

Contrary to Plaintiffs assertion, Mr. Freshwater did not admit that he applied the tesla coil to Plaintiff Zach Dennis in the manner that Zach suggests. Mr. Freshwater, for the purposes of his Motion, will assume that Plaintiff Zach Dennis' version of the facts as true, pursuant to Fed. R. Civ. P. 56. Further, as set forth within Defendant Freshwater's Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment (Document No. 68), genuine issues of material fact exist as to whether a battery even occurred. Therefore, as argued within Defendant Freshwater's Motion for Partial Summary Judgment (Document No. 61), even if a battery did occur, Plaintiff Zach Dennis consented to such battery and therefore is barred from recovery.

Plaintiffs erroneously argue that Zach Dennis' conduct in volunteering to have "the tesla coil applied to his arm does not equate to legal consent." *Plaintiff's Memorandum in Opposition to Defendant's Motion for Partial Summary Judgment* (Document No. 69) at 2. However, the undisputed material facts demonstrate that: 1) Zach gave informed consent regarding the application of the tesla coil; 2) Mr. Freshwater did not exceed the scope of that consent; 3) Zach possessed the capacity to consent; and 4) Zach's consent was not negated by mistake, misrepresentation and duress.

Plaintiffs also erroneously argue and reference multiple provisions of the Ohio Revised Code regarding the requirement of parental consent for certain procedures (abortion, tattoo, piercing), which are not relevant to this matter. Such arguments by Plaintiffs are red herrings and should be disregarded by this Court.

In addition, Plaintiffs focus on the irrelevant alleged consequences of Zach's consent. This is evident by Plaintiffs inflammatory and consistent use of "burning" and "branding" to describe Zach's alleged injury within their Memorandum in Opposition. Yet, of thousands of

students who attended the Mount Vernon Middle School and had the tesla coil applied to their body by Mr. Freshwater and other science teachers, **none** ever complained of injury and **none** ever complained that they were “burned” or “branded.” *See Defendant Freshwater’s Memorandum in Opposition to Plaintiff’s Motion for Partial Summary Judgment*, §II(A)(4); *see also Exhibit A, Hearing Transcript, Volume XXVI*, at 4307. Further, Plaintiffs’ assertion that Zach suffered a burn wherein blistering resulted is not supported by the record as Zach Dennis never had his arm seen by a doctor. *See Exhibit B, Deposition of Zach Dennis* at 163; *See Exhibit C, Deposition of Jenifer Dennis* at 55, 164. Finally, the School District supported middle school science teachers applying the tesla coil on students’ arms. *See Defendant Freshwater’s Memorandum in Opposition to Plaintiff’s Motion for Partial Summary Judgment*, at §II(A)(6).

In summary, the undisputed material facts demonstrate that Plaintiff Zach Dennis volunteered to have Mr. Freshwater apply the arc of the tesla coil to Zach’s arm. Additionally, the undisputed material facts demonstrate that Zach was knowledgeable regarding the tesla coil, appreciated the probable consequences and volunteered to be part of a science experiment. Therefore, summary judgment is proper for Mr. Freshwater regarding Plaintiffs’ battery claim.

II. ARGUMENT

A. Plaintiff Zach Dennis consented to Mr. Freshwater’s application of the tesla coil

1. Disclosure and Medical Battery

In regard to the application of the tesla coil on Zach Dennis, “full disclosure” regarding the “relevant facts of the procedure or its consequences” were not required by law. In turn, contrary to Plaintiffs’ argument, informed consent was not required by law for Mr. Freshwater’s application of the tesla coil on Zach. The case law which Plaintiffs set forth, regarding the

requirement of informed consent, *Lacey v. Laird*, 139 N.E. 2d 25 Ohio 1956, *Nickell v. Gonzales*, 477 N.E. 2d 1145 (Ohio 1985) and *Belcher v. Carter*, 234 N.E. 2d 311 (Ohio App. 10th Dist. 1967), are all medical battery cases and are irrelevant in regard to the scientific experiment/demonstration that occurred in the within case.

Although Plaintiffs assert that medical battery cases and the related informed consent required therein “proves instructive” in analyzing the within case, informed consent in the medical context is entirely different as there is a specific nature of the touching by a doctor and a subsequent surgical intrusion. *Lacey* for instance, concerned rhineoplasty. Clearly, there is an inherent difference between a scientific experiment/demonstration in a school science class as compared to a teenager having nose surgery.

Since full disclosure was not required for consent to be effective, the consent only must be to the particular conduct or substantially the same conduct. *See Restatement (Second) of Torts §892A(2)(b) (1979)*. Zach testified that he consented to the particular conduct of having a tesla coil mark applied to his arm and that his application was similar to the prior student volunteers’ application. *Deposition of Zach Dennis at 145*.

As express warnings were not required to be provided to Zach regarding the application of the tesla coil, Plaintiffs’ inclusion of testimony of Mr. Freshwater regarding any alleged dangers associated with the tesla coil, and whether students had any health problems, is irrelevant. The undisputed material facts demonstrate that Zach understood it was electricity coming out of the tesla coil, understood that the electricity out of the tesla coil had a heating element, witnessed students volunteering to have the tesla coil applied to their arm such that Zach followed suit, and had the tesla coil applied to his arm in a similar manner as other students. *See Deposition of Zach Dennis 136-147*.

2. Alleged disclosure by Mr. Freshwater and unexpected consequences

Plaintiffs also argue that Mr. Freshwater's alleged disclosure, that the tesla coil application will result in a temporary tattoo and that the application may leave a red mark, does not amount to full disclosure. *Plaintiffs' Brief in Opposition*, at 5. Plaintiffs mischaracterize Mr. Freshwater's alleged description of the result of the application of the tesla coil as a temporary tattoo to a sticker. Ultimately, there do not exist any facts that demonstrate that Zach thought the tesla coil application was similar a sticker.

According to Plaintiffs, Mr. Freshwater informed the students that the tesla coil application may leave a red mark. *Id.* Also, Zach had knowledge that the tesla coil could hurt prior due to the prior tesla coil application on a fellow Student, No. 7. *See Deposition of Zach Dennis at 140.* Thus, Zach knew that the tesla coil could leave a red mark and that it could hurt prior to volunteering to have Mr. Freshwater apply the tesla coil on his arm.

Plaintiffs argue, however, that Zach's observation of student No. 7's response to the application of the tesla coil did not provide Zach with the "requisite disclosure" of the "implications or probable consequences of extended contact." *Plaintiffs' Brief in Opposition*, at 5. Yet, Plaintiffs fail to account for the conduct of Zach upon seeing the application of the tesla coil to student No. 7. Specifically, Zach changed his approach to pick up a test tube as requested by Mr. Freshwater so that Zach would not be shocked in the back similar to student No. 7. *See Deposition of Zach Dennis, at 136-141.* Zach's conduct clearly demonstrates that, based upon his observation of the tesla coil application on student No. 7 and based on the comments of student No. 7 thereafter, Zach appreciated the probable consequences of the tesla coil experiment. *Id.*

What is more detrimental to Plaintiffs' argument in regard to consent, is that Zach Dennis' alleged injury was unlike over 1,000 students who had previously had the tesla coil applied to them at Mt. Vernon Middle School. *See Defendant Freshwater's Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment*, §II(A)(4); *see also Hearing Transcript, Volume XXVI*, at 4307. Consequently, the probable consequence of an application of the tesla coil on a student is potentially a temporary mark, but that there would be no injury or pain. *Id.* Thus, Zach's alleged "painful" cross-shaped burn on his arm was an unexpected consequence. As Plaintiffs note in footnote 3 of their Brief in Opposition, "the Restatement provides that consequences do not matter only in instances where unexpected consequences result from a consented-to-tort." Contrary to Plaintiffs' argument, such an unexpected consequence is exactly what occurred in the within case. As an example, Restatement (Second) of Torts § 892(A) (1979), Illustration No. 5 states: "in a friendly test of strength, A permits B to punch him in the chest as hard as he can. B does so. Unknown to either A or B, A has a defective heart, and as a result of the blow, drops dead. A's consent is effective to borrow recovery for his death."

The application of the tesla coil to Zach Dennis was identical to Illustration No. 5. Zach permitted Mr. Freshwater to use an electrical device which Zach knew was similar to lightning (*Deposition of Zach Dennis*, at 134), heated materials (gases) (*Id.*), could leave a red mark (*Plaintiffs' Brief in Opposition*, at 5) and could be painful (*Deposition of Zach Dennis*, at 136, 140). Unknown to either Mr. Freshwater or Zach, Zach evidently had some type of skin condition as compared to thousands of other students who had the tesla coil applied to them over the past 20 years at Mt. Vernon Middle School. As a result of the application of the tesla coil, Zach allegedly received a painful burn. Nevertheless, Zach's consent effectively bars recovery

for any battery claim against Mr. Freshwater. It also should be noted that Zach, admitted that while at hockey practice on the evening after the tesla coil application, his pads and sweat aggravated his arm's condition. *Id.* at 157.

In the within case, Zach specifically consented to the conduct of Mr. Freshwater in applying the tesla coil to Zach's arm. Since the consequence of the application was unexpected, it bars recovery for Zach Dennis. Further, it makes no sense, as asserted by Plaintiffs that Zach began to see the effects of "the electrical burn" at the end of the class period. *See Plaintiffs' Opposition Brief, page 7.* However, it was at this time in the class period when Mr. Freshwater performed an "ET"¹ demonstration, and Zach volunteered for that demonstration even though he allegedly had "red blotches and little welts on his arm." *Id.*; *see also Deposition of Zach Dennis,* at 152-153.

Zach's assertion that he would not have participated in the tesla coil experiment had he known it could injure him is not relevant to whether or not he provided consent to Mr. Freshwater. In effect, Zach walking up to the front of the classroom and holding out his arm to Mr. Freshwater provides express consent to have the tesla coil applied to Zach's arm. Any argument against these undisputed material facts is meritless.

3. Scope of Consent

Plaintiffs erroneously argue that Mr. Freshwater exceeded the scope of Zach Dennis' consent because "his actions caused burning, blistering and prolonged discomfort." *Plaintiffs' Brief in Opposition at 9.* Plaintiffs again make the mistake of focusing on consequences of Zach's consent instead of addressing whether Mr. Freshwater actually exceeded the scope of Zach's consent. In effect, Zach's testimony demonstrates that the application on his arm was

¹ *See Defendant Freshwater's Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment,* §II(A)(1).

similar to other students and, therefore, Mr. Freshwater, as a matter of law, could not have exceeded the scope of Zach Dennis' consent.

B. Plaintiff Zach Dennis had the capacity to consent to a tesla coil application

Plaintiffs also argue that Zach did not have the requisite capacity to consent to the tesla coil application. Specifically, Plaintiffs argue that Zach was not capable of appreciating the conduct to which he consented. *Plaintiffs' Brief in Opposition at 10*. Contrary to Plaintiffs' assertion, the undisputed material facts demonstrate that Zach Dennis, although a minor, appreciated the nature, extent, and probable consequences of the application of the tesla coil such that he had sufficient capacity to consent to such conduct.

1. Zach is not a child nor is he one of deficient mental capacity

Section 892(A) requires that "to be effective, the consent must be given by one who has the capacity to give it." Plaintiffs do not set forth any facts that demonstrate that Zach did not have the requisite capacity to consent to an application of the tesla coil. As such, Mr. Freshwater submits that not only did Zach have the requisite capacity to consent to an application of the tesla coil, Zach also should not be considered a child or one of deficient mental capacity for the purposes of § 892(A). Specifically, Zach received A's and B's in Mr. Freshwater's class and scored accelerated on the Ohio Achievement Tests as it relates to science in eighth grade. *See Deposition of Zach Dennis at 27; see also Exhibit D, Hearing Transcript, Volume XIX at 3143 – 3144*. Clearly, Zach cannot be said to have a deficient mental capacity as it relates to science. Further, Plaintiffs allowed their son to play the video games Halo and Call of Duty, that are mature video games only for individuals over the age of seventeen which demonstrates that Zach truly did not have the mental capacity of a child. *See Hearing Transcript Volume XIX at 3097*. Although Zach is a minor, he is not necessarily a child under § 892(A). In the within case, he is

a maturing teenager involved in relationships with the opposite sex, full contact sports, violent video games, and has a successful academic record in science. *See Deposition of Zach Dennis at 15; see also Hearing Transcript Volume XIX at 3097, 3099, 3144.* Based on the foregoing, it is undisputed that Zach had the capacity to consent to the tesla coil application.

2. Zach appreciated the nature and extent of probable consequences of the tesla coil application

Even assuming this Court finds that Zach is considered a child or one with a deficient mental capacity for the purposes of § 892(A), the undisputed material facts still demonstrate that Zach appreciated the nature, extent and probable consequences of the tesla coil application so as to bar recovery. In that regard, Zach first observed student No. 7 get inadvertently shocked in the back by Mr. Freshwater and reacted by “jumping” and “running around”, “rubbing his back,” and stating it “hurt”. *Deposition of Zach Dennis at 136 and 140.* Additionally, Zach observed that student No. 7 did not take the tesla coil application “too well” *Id. at 136.* Student No. 7’s reaction was so influential to Zach that Zach did not want to be shocked in the back and when Zach was prompted to pick up a test tube in the same manner as student No. 7, Zach changed his approach to pick up the test tube so that Mr. Freshwater would be unable to apply the tesla coil to Zach. *Id. at 136 and 141.*

Further, Zach observed student volunteers that had the tesla coil applied to their arm. *Id. at 145.* Zach: 1) saw the tesla coil going on the student’s arms; 2) saw the electric volt touch the student’s skin; 3) saw each of the reactions of the students who volunteered; and 4) saw the students flinch who had volunteered once the tesla coil was applied to their arm. *Id. at 145;* see also *Hearing Transcript, Volume XIX at 3051-3052.* Taking all of the foregoing into account, in addition to Zach’s assertion that Mr. Freshwater said the tesla coil would be like a temporary

tattoo and may leave a red mark, Zach made the conscious decision to proceed to volunteer to have the tesla coil applied to his arm. Additionally, it should be noted that Zach was willing to endure an amount of pain during the tesla coil application. *Hearing Transcript, Volume XIX*, at 3053. Zach's observations of prior tesla coil applications and his voluntary conduct thereafter demonstrate that he appreciated the nature, extent and probable consequences of having the tesla coil applied to his arm.

The undisputed material facts demonstrate that the probable consequences of an application of the tesla coil based on its use for 20 years and over 1000 applications, were that there were no injuries, no pain and only a possible mark of some sort which is only temporary. *See Defendant Freshwater's Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment*, §II(A)(4); *see also Hearing Transcript, Volume XXVI*, 4307. Based on the testimony of Zach, he allegedly had an injury, pain and a burn. But all that is required for requisite capacity is for Zach to appreciate the probable consequences of the tesla coil application. The undisputed material facts demonstrate that Zach did appreciate the probable consequences of the tesla coil application. Consequently, Zach's unexpected consequence of an alleged injury, pain and burn is not determinative of whether he had the capacity to consent.

3. Plaintiff's authority argument fails

Plaintiffs erroneously argue that Mr. Freshwater's position as an authority figure negated Zach's consent. *Plaintiff's Brief in Opposition*, at 11. Mr. Freshwater did not force students to participate in the tesla coil experiment and Mr. Freshwater did not promise extra credit for the tesla coil experiment. *Id.* at 3046-3047. Students were free to choose whether to participate in the tesla coil experiment and it can be assumed that the students who did not participate, made such decision based on the same information that Zach was privy to. Consequently, it is

undisputed that approximately 5 students, including Zach Dennis (the last student) willingly volunteered to participate in the tesla coil experiment without coercion, force or cajoling from Mr. Freshwater.

4. Plaintiffs special relationship argument fails

Plaintiffs suggest that Mr. Freshwater had a special relationship with Zach such that Mr. Freshwater had a duty to protect Zach. *Plaintiff's Brief in Opposition*, at 12. This argument by Plaintiffs is not only confusing, but a misapplication of the law. Plaintiffs rely on *Bevan Group v. A-Best Products Company*, 2004 WL 1191713 (Ohio Com.Pl). *Bevan* sets forth a litany of “special relationship” examples including schools and students. *Id.* at *3. “A ‘special relation’ exists when one takes charge of a person whom he knows or should know is likely to cause bodily harm to others if not controlled.” *Id.* (citing 2 Restatement of Law 2d, Torts (1965), §§314-315. However, the special relationship principal is inapplicable in the within case. There exist no facts which demonstrate that there was someone in Mr. Freshwater’s classroom who was likely to cause bodily harm to Zach. It appears that Plaintiffs have mistakenly argued that Mr. Freshwater had a duty to protect students from himself, which a misapplication of the law and an unwarranted argument based on the undisputed material facts. Should Plaintiffs still maintain that Zach needed to be protected from Mr. Freshwater, such a claim should have been directed at the School District as it is not relevant to the within case and should be disregarded by the Court.

5. Plaintiffs’ arguments fail regarding parental consent and the Ohio Revised Code

Although irrelevant to the within case, Plaintiffs cite Ohio law regarding minors getting tattoos, body piercings and abortions. Plaintiffs also erroneously relate Ohio’s criminal statutes regarding minors engaging in sexual activity and/or intercourse to the within case. In essence,

Plaintiffs improperly attempt to equate Mr. Freshwater's use of the tesla coil in this science class with the above examples as it relates to the issue of parental consent and strict liability (sexual contact with a minor).

Contrary to Plaintiffs' arguments, parental consent, as it relates to tattoos, body piercings and abortions is entirely different than what occurred in the within case. Besides the issue of compensation and other regulatory laws, the above examples are significant bodily intrusions which result in permanent additions and subtractions to a persons' body. Additionally, the amount of pain associated with the above examples is extreme without anesthesia. To compare the application of a tesla coil with the above examples is improper and should be disregarded by the Court.

Ultimately, Plaintiffs have not provided any authority that demonstrates that Zach could not have legally consented to a science experiment.

C. Mistake, misrepresentation and duress did not exist regarding Plaintiff Zach Dennis's consent to the tesla coil application

1. Mistake and misrepresentation

Plaintiffs' argument that Mr. Freshwater's misrepresentation of the tesla coil experiment negates Zach's consent fails as a matter of law. Mr. Freshwater's use of the tesla coil, in the manner applied on students, to his knowledge, could not harm students. *Hearing Transcript, Volume XXVI*, at 4307. Contrary to Plaintiffs' argument, it would have been impossible for Mr. Freshwater to misrepresent something he had no knowledge of. Taking Zach's testimony as true, Mr. Freshwater informed students the tesla coil experiment would be like a temporary tattoo and may cause red marks. This information, coupled with the observations of Zach himself, demonstrate that Zach knew what he was consenting to by volunteering to be part of the tesla

coil experiment. Further, any mistake by Zach as to the invasion of his interests or the extent of the harm to be expected does not negate Zach's consent. Specifically Restatement (Second) of Torts §892(B) Cmt. on Subsection (1) (1979) states:

If the plaintiff by words or conduct is reasonably understood by the actor to consent to the actor's conduct (see § 892), the fact that the plaintiff is operating under a unilateral mistake regarding the invasion to be expected from the conduct or the extent to which harm will follow it does not prevent the consent from being effective to protect the actor against liability for a tort based on the absence of consent, if the actor relies upon the apparent consent and does not know of the mistake. The fact that the mistake is mutual rather than unilateral to the plaintiff does not change the result so long as the actor does not know that the plaintiff is operating under the mistake. The actor's own mistake may indeed prevent his conduct from amounting to an intentional tort, as when there is no knowledge that a touching will be harmful.

Thus, even if Zach was operating under a unilateral mistake, it was not known to Mr. Freshwater such that Zach's consent remains valid to bar recovery. Further, even if both Zach and Mr. Freshwater were operating under a mistake regarding the extent of harm resulting from the tesla coil, Zach's mistake was not known to Mr. Freshwater such that Zach's consent is valid to bar recovery. Additionally, since Mr. Freshwater did not know that the tesla coil could allegedly cause an injury, this mistake by Mr. Freshwater prevents his application of the tesla coil on Zach from amounting to a battery. *Id.* Therefore, as a matter of law, Zach's consent is not invalidated due to mistake or misrepresentation.

2. Duress

Plaintiffs' argument that duress negates Zach's consent also fails. "Duress is constraint of another's will by which he is compelled to give consent when he is not in reality willing to do so. REST 2d TORTS §892(B) Cmt. on Subsection(3). The undisputed material facts demonstrate that Zach was not forced to consent to the tesla coil application, he willingly

volunteered. Consequently, as Zach's consent was not gained by duress, his consent remains valid so as to bar recovery for the alleged battery.

III. CONCLUSION

The undisputed material facts demonstrate that Zach had the requisite capacity to consent to an application of the tesla coil on his arm. Zach observed prior multiple applications of the tesla coil and chose to volunteer himself for his own application. Although the alleged injury that Zach suffered was unexpected, this consequence of his consent does not negate his consent. Further, there do not exist any facts in support of Plaintiffs' arguments regarding mistake, misrepresentation or duress. Therefore, summary judgment is proper in favor of Mr. Freshwater on Plaintiffs' battery claim.

WHEREFORE, Defendant John Freshwater respectfully requests this Court issue an order granting him summary judgment on Plaintiffs' battery claim.

Respectfully submitted,

MAZANEC, RASKIN, RYDER & KELLER CO., L.P.A.

s/ Robert H. Stoffers

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CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2010, a copy of the foregoing *Defendant John Freshwater's Reply Memorandum in Support of his Motion for Partial Summary Judgment* was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ Robert H. Stoffers

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JASON R. DESCHLER (0080584)

Counsel for Defendant John Freshwater

OCG-08C053\Reply Brief in Support of Fw's MPSJ

IN THE MATTER OF

THE TERMINATION OF EMPLOYMENT

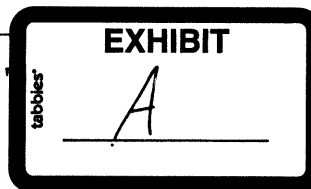
OF JOHN FRESHWATER

VOLUME XXVI

TRANSCRIPT OF PROCEEDINGS

held at Knox County Office Building,
Mount Vernon, Ohio,
on December 8, 2009,
before Mr. R. Lee Shepherd, Referee

O'DONNELL & MCGHEE, LLC
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Mr. Steve Short
Mr. Doug Mansfield
Ms. Kathy Portman
Mr. Jason Deschler
(afternoon session only)

EXHIBITS:

Board's

- 6 -- H.R. On Call report
- 37 -- Academic Content Standards
- 55 -- letter dated 05/01/06 from John Freshwater to Jeff Maley with one (1) page of Academic Content Standards attached

Employee's

- 5 -- "A Suggestion to the Mount Vernon City School Board for an Objective Origins Science Policy" -- two (2) pp.
- 10 -- contract between Board of Education and MVEA -- seventy-nine (79) pp.
- 11 -- letter dated 05/21/08 from Stephen Short to John Freshwater -- one (1) page
- 12 -- letter dated 05/27/08 from Stephen Short to John Freshwater -- one (1) page
- 97 -- Observation dated 02/25/03 -- one (1) page
- 114 -- textbook *Cells, Heredity, and Classification*
- 118 -- Policy 9130 -- Public Complaints -- four (4) pp.
- 119 -- letter dated 05/07/08 from Stephen Short to John Freshwater -- one (1) page
- 120 -- Technical Explanation of House Bill 481 -- eight (8) pp.
- 121 -- letter dated 04/23/03 from John Freshwater to Mr. Maley and Dr. Weston -- one (1) page
- 122 -- letter to the editor dated 05/07/03 from Elaine Benedict -- one (1) page

EXHIBITS:

Employee's

- 123 -- "Would You Believe? New Science for Middle Schools" -- two (2) pp.
- 124 -- newspaper article "Middle school science textbooks flunk" -- one (1) page
- 125 -- USA Today article "Our View - Innovative plans emerge to use texts less, rely on creativity" -- one (1) page
- 126 -- affidavit of John Freshwater dated 05/25/08 -- three (3) pp.
- 127 -- letter from John Freshwater to Jeff Maley dated 05/01/05 with two (2) pp. of Academic Content Standards; article "Charles Darwin - Origin Theory" -- two (2) pp.; article "Darwin's Theory of Evolution -- The Premise and Problem" -- one (1) page
- 128 -- affidavit of John Freshwater dated 05/25/08 -- eight (8) pp.

1 A. Yes, I do.

2 Q. Have you ever accidentally shocked yourself?

3 A. Yes, I have.

4 Q. John, was anybody hurt during this Tesla coil
5 demonstration?

6 A. No.

7 Q. Did anybody express to you any kind of pain that they
8 thought they were seriously injured?

9 A. 21 years, and I never had anybody express or anything
10 else.

11 Q. How many students do you think have participated in the
12 application of the Tesla coil to their own bodies?

13 A. I would say a little over 500 to 600.

14 Q. Have you had any report of any of those students from 21
15 years ever report to you that they had been harmed?

16 A. No.

17 Q. If you thought you hurt somebody, what would do you?

18 A. Stop doing it.

19 Q. Stop doing what?

20 A. This experiment.

21 Q. Have you heard from other teachers that anybody there
22 got hurt?

23 A. No. I think from what we've heard with the witnesses
24 that came in, some of them have done it a lot more than
25 I have.

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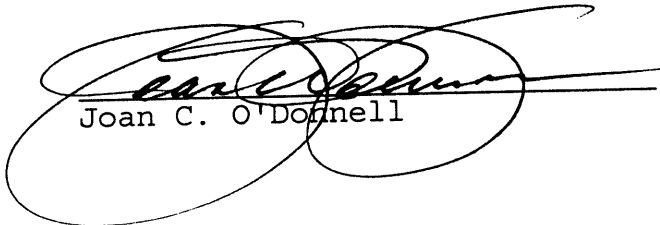
Thank you.

(This proceeding recessed at 4:02 p.m.)

CERTIFICATE OF REPORTER

I, Joan C. O'Donnell, Registered Professional Reporter, do hereby certify that the foregoing Volumes XXIV through XXVIII, consisting of pp. 3958-4679, is a true and complete transcript of the proceedings conducted on the 3rd, 4th, 8th, 10th and 11th days of December, 2009, before Mr. R. Lee Shepherd, Referee. I further certify that I was personally present throughout the said proceedings.

Subscribed this 27th day of December, 2009.



Joan C. O'Donnell

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - -

John Doe, et al.,
Plaintiffs,

vs. Case No. C2:08 CV 575

Mount Vernon City School
District Board of
Education, et al.,

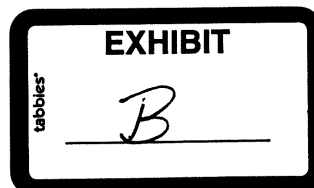
Defendants.

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Deposition of James Doe, a Plaintiff
herein, called by the Defendants under the
applicable Federal Rules of Civil Procedure,
taken before me, Jane M. Ferrante, a Notary
Public in and for the State of Ohio, pursuant to
notice, at the offices of Jones Day, 325 John H.
McConnell Boulevard, Columbus, Ohio, on Tuesday,
August 18, 2009, at 9:00 a.m.

- - -

JANE M. FERRANTE
REGISTERED MERIT REPORTER
7089 VIOLET VEIL COURT
DUBLIN, OHIO 43016
(614) 733-0158



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28 Freshwater.

29 ALSO PRESENT:

30 John Doe
31 Jane Doe

32

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Tuesday Morning Session,
August 18, 2009.

- - -

STIPULATIONS

It is stipulated by and among counsel for the
respective parties that the deposition of James
Doe, a Plaintiff herein, called by the Defendants
under the applicable Federal Rules of Civil
Procedure, may be taken at this time and reduced to
writing in stenotype by the Notary, whose notes
thereafter may be transcribed out of the presence
of the witness; and that proof of the official
character and qualification of the Notary is
waived.

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I N D E X

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By Mr. Mansfield	181

E X H I B I T S

<u>Description</u>	<u>Page</u>
A-G Photocopied Photographs	149

- - -

1 Q. Good amount?

2 A. Yeah.

3 Q. Any girls?

4 A. Just girls in my class.

5 Q. Did you have a girlfriend?

6 A. Not really.

7 Q. What does, "not really" mean?

8 A. Not technically.

9 Q. Who was the girl that you didn't really
10 have a relationship with?

11 A. Student No. 53.

12 Q. What teachers did you have that
13 2007-2008 school -- or am I right? 2006-2007? Am
14 I on the right year? I am trying to think here.
15 No. 2007-2008?

16 A. Mrs. Spitzer.

17 Q. What did she teach?

18 A. Reading.

19 Q. Okay.

20 A. Mrs. Mahan. And language arts.

21 And Mr. Cooke, social studies.

22 Mrs. Jones, math.

23 Mr. Freshwater, science.

24 Mrs. -- excuse me. Mrs. Beach, I would

1 class. You didn't really care about science, I
2 take it, that year?

3 A. Well, I did. It's just there is no big
4 event that I was looking forward to learning about.

5 Q. You said that you enjoyed the class
6 prior to the Tesla coil incident. What things in
7 the class did you enjoy?

8 A. The -- probably the atmosphere.

9 Q. Did you -- go ahead.

10 A. Kids had lots of fun, I think.

11 Q. What was the atmosphere like with
12 respect to the learning atmosphere?

13 A. I guess it was easy. And there wasn't a
14 lot of homework. We just -- it wasn't really hard
15 to do -- to pass. Just -- I guess --

16 Q. Did you get As?

17 A. I think so. I might have had a B, but
18 As, Bs.

19 Q. Was it like a lecture? Was there busy
20 work?

21 A. A little bit of both.

22 Q. Were there any labs you did?

23 A. Yeah.

24 Q. How would the labs be set up?

1 A. He had the test tubes laying on the
2 ground. And he shocked it. And it lit up. And he
3 was doing that for a while. And then he had
4 Student No. 7 pick up a tube. And Student No. 7
5 bent over, and he shocked him in the lower back.
6 Student No. 7 didn't take that too well.

7 And then he asked me to pick up one of
8 the tubes. And I figured he was going to shock me
9 with it like Student No. 7. So I kind of
10 crab-walked like forward and grabbed it and got
11 out. And he didn't shock me.

12 And then later on he asked for
13 volunteers to see what it felt like. And a few
14 kids went, and I was the last to go. And he had us
15 put our arms on the overhead, and he put his arm
16 across my wrist and then he had the Tesla coil in
17 the other hand and went up and down like two or
18 three times and across a few times.

19 Q. When you -- let's see. First of all,
20 how big were the tubes on the ground?

21 A. It's like small skinny tubes, probably
22 six inches, maybe, or something like that.

23 Q. And you said he kept doing it to the
24 gases. How did -- did he refill the gases in

1 there?

2 A. No.

3 Q. So the gas just stayed in there?

4 A. I think so.

5 Q. Was there a certain amount of charges
6 that you could get to each particular tube before
7 the gas was expired?

8 A. I don't know.

9 Q. Where was everybody standing then?

10 A. We were sitting in our seats.

11 Q. Because class was like a horseshoe? The
12 seats were?

13 A. Right.

14 Q. So he was in the middle?

15 A. Yes.

16 Q. That's where he had his test tubes?

17 A. Yeah.

18 Q. How long was the experiment with the
19 test tubes going on?

20 A. Probably half the class period.

21 Q. Did you take notes on that stuff?

22 A. I think so.

23 Q. Did you maintain a copy of those notes?

24 A. No. I threw all my stuff away.

1 Q. You did?

2 A. Yeah.

3 Q. Okay. How did -- so after he was done
4 with the test tubes, he asked Student No. 7, you
5 said?

6 A. Yes.

7 Q. Who was Student No. 7? Was that one of
8 your friends?

9 A. Not really. He was just a kid in my
10 class. He had an IEP.

11 Q. Do you know what it's for?

12 A. No.

13 Q. Behavior?

14 A. I don't know what it's for. I assume
15 academic.

16 Q. Go ahead. He got asked to pick up a
17 test tube?

18 A. Yes.

19 Q. Just one of them? I mean --

20 A. One of them. And he picked it up. He
21 was bending over to pick it up, and Mr. Freshwater
22 zapped him in the lower back.

23 Q. So the tubes were in the middle of the
24 horseshoe?

1 A. Yes.

2 Q. How many were on the ground?

3 A. I don't know.

4 Q. Ten? Twelve? I mean --

5 A. Probably more like five.

6 Q. Okay. Five. Did he -- Mr. Freshwater
7 ask Student No. 7 to pick up a specific one?

8 A. I don't think so.

9 Q. Where was Student No. 7 sitting in that
10 horseshoe?

11 A. Closest to the door in the back part of
12 the --

13 Q. It was like a double horseshoe, right?

14 A. Yeah. In the second horseshoe.

15 Q. Where were you sitting in relation to
16 Student No. 7?

17 A. I was to the left of the middle in the
18 first horseshoe.

19 Q. Okay. So he was behind you to the left?

20 A. Yeah.

21 Q. Mr. Freshwater says, "Student No. 7, go
22 get me a test tube"?

23 A. Uh-huh. Yes.

24 Q. Student No. 7 goes, picks up a test

1 tube. And when he is bending over to pick it up --

2 A. Yes.

3 Q. -- Mr. Freshwater applied the Tesla coil
4 to his back?

5 A. Yes.

6 Q. And what was Student No. 7's reaction?

7 A. He kind of jumped around and was rubbing
8 his back and --

9 Q. Did he say anything?

10 A. He was like, "Ah, that kind of hurt."

11 And was running around. Student No. 7 is kind of a
12 goofy kid, so --

13 Q. This happened right in front of you
14 then?

15 A. Yeah. It was to the left a little bit.

16 Q. Did you see the electric volt come out
17 and touch Student No. 7 in his back?

18 A. No. I wasn't paying attention really at
19 that time until I heard -- he was like, "Student
20 No. 7, come here." And I was writing something, I
21 think. And then I looked up and Student No. 7 was
22 bending over, and he pushed down the Tesla coil
23 like and went down and did a -- Student No. 7 kind
24 of reacted.

1 Q. He said, "Ouch. That hurts a little
2 bit"?

3 A. Yeah. I didn't see the -- the electric
4 volt.

5 Q. And then he asked you next to go --

6 A. Yes.

7 Q. -- pick up a test tube?

8 A. Yes.

9 Q. And you, seeing what happened to Student
10 No. 7, didn't want to be shocked in the back?

11 A. Yeah.

12 Q. So you changed your approach to pick up
13 a tube so that wouldn't happen?

14 A. Yes.

15 Q. Did anybody else get asked to pick up a
16 test tube?

17 A. Not that I can remember.

18 Q. So if there were five on the ground,
19 were there still three test tubes then laying on
20 the ground?

21 A. Yeah.

22 Q. Did anybody pick those up?

23 A. I don't know.

24 Q. So explain to me again how it occurred

1 after you handed the test tube to Mr. Freshwater
2 and then he -- then the next stage, I mean he asked
3 for volunteers?

4 A. Yeah.

5 Q. Can you explain that to me again? Did
6 that just happen like one after the other? You
7 hand him the test tube and he said, "Hey, by the
8 way"? How did that --

9 A. I think we did something else like maybe
10 a worksheet or something. I can't remember. And
11 then toward the end of the class he was like,
12 "Anybody want to see what this feels like? Come up
13 here." And a few kids went up. And I was the last
14 one to go. And he applied the Tesla coil to my
15 arm.

16 Q. Let me go back a little bit. You said
17 he did some kind of worksheet, but you don't recall
18 exactly?

19 A. Yes.

20 Q. This is after the gas in the test tubes
21 was heated and the experiment was completed?

22 A. Yes.

23 Q. Before the end of class?

24 A. Yes.

1 Q. Did he say, "Hey, anybody want to touch
2 this Tesla coil," holding it up or anything?

3 A. I don't know if he was holding it up.

4 Q. Did he apply it to himself?

5 A. Later on he half-applied it to himself,
6 I guess.

7 Q. Before he asked for volunteers?

8 A. No. This was, I think, after all the
9 volunteers.

10 Q. So who was the first person that got --
11 that volunteered?

12 A. I don't know.

13 Q. How many people were there that
14 volunteered?

15 A. I think it was around like five or
16 something.

17 Q. And you were the last one?

18 A. Yeah.

19 Q. Do you remember anybody specifically
20 going up before you?

21 A. Student No. 5 went.

22 Q. And what -- from where your viewpoint
23 was -- scratch that. Mr. Freshwater asked for
24 volunteers. Some kids raised their hands. Did you

1 raise your hand or did you --

2 A. Just kind of went up.

3 Q. You just went up?

4 A. Yeah.

5 Q. Was there a line?

6 A. No.

7 Q. Were people waiting in a line to go to
8 do it?

9 A. No. Kids went up after the person did
10 it.

11 Q. So did anybody initially raise their
12 hands and Mr. Freshwater called on somebody?

13 A. I don't know.

14 Q. So he goes, "Anybody want to touch
15 this?" Somebody just went up. No one raised their
16 hand?

17 A. I don't know.

18 Q. Okay. You don't remember?

19 A. I don't remember.

20 Q. Did you watch when the other kids got
21 the Tesla coil applied to their arm?

22 A. Yes.

23 Q. And from your viewpoint, what did you
24 see?

1 A. Just the back of their heads and I guess
2 the front of Mr. Freshwater, and the Tesla coil
3 went on their arms.

4 Q. So you could see the Tesla coil going on
5 their arm?

6 A. Yeah.

7 Q. You saw the electric volt touch the
8 skin?

9 A. Yeah.

10 Q. And was the application on other people
11 similar to the application on you?

12 A. Yes.

13 Q. Did you see if Mr. Freshwater -- I think
14 you stated that Mr. Freshwater held your arm down?

15 A. Yes.

16 Q. Did you see if other students had their
17 arms held down?

18 A. No, I didn't see.

19 Q. Okay. So you could see the Tesla coil
20 being applied to their arm?

21 A. Yes.

22 Q. But you couldn't see if Mr. Freshwater
23 was holding their arm down?

24 A. I can't remember if he did or not.

1 Q. Do you know what side of people's arms
2 were used before you --

3 A. I just know that Student No. 5's was the
4 top and mine was the top.

5 Q. "Top," meaning like --

6 A. Top of my forearm.

7 Q. Top of your forearm?

8 A. Top of my forearm.

9 Q. Not the under part?

10 A. Not the under part.

11 Q. Did anybody have it applied to their
12 underarm of their forearm?

13 A. Not that I can remember.

14 Q. Do you know who immediately went right
15 before you?

16 A. No.

17 Q. Whoever that was, that person sat down?

18 A. Yes.

19 Q. Then you just got up?

20 A. Yes.

21 Q. You didn't raise your hand?

22 A. I don't think so.

23 Q. You approached? I think we already
24 established at the termination hearing that it was

1 on top of an overhead projector?

2 A. Uh-huh.

3 Q. Did you -- what hand did you give him?
4 Or arm?

5 A. I think it was my right. I am trying to
6 think here. I think it was my right arm.

7 Q. Did he ask you for a specific arm?

8 A. No.

9 Q. So you put your right arm with your
10 forearm up?

11 A. Yes.

12 Q. And then what arm did Mr. Freshwater use
13 to hold your right arm down?

14 A. I think he used his left arm to hold my
15 right arm down.

16 Q. Okay. Was it his wrist or was it his
17 arm? I mean how far over?

18 A. I think it was his wrist like on my
19 wrist.

20 Q. So then that goes without saying that
21 his right arm was the one that -- or his right hand
22 was -- if he held it down with his -- held your arm
23 down with his left hand? Is that what you said?

24 A. Yes.

1 excuse me. And it was -- kind of burned a little
2 bit and itchy.

3 Q. Now, this is during it?

4 A. Yeah.

5 Q. It was burning and itching while it was
6 being applied to you?

7 A. Yeah.

8 Q. Okay.

9 A. And --

10 Q. Is that it?

11 A. That I can think of.

12 Q. When it was being applied did you ever
13 think twice about making the decision to volunteer?

14 A. Yes.

15 Q. After you had the Tesla coil applied to
16 you how did the next experiment transpire?

17 A. He -- he said, Let's see how many -- how
18 far you can like feel the static shock. So he had
19 us like get in a line and hold hands and then he
20 touched the first person in line, and see if we
21 could see how far it could run through. How many
22 people.

23 Q. Now, he asked for volunteers again?

24 A. Yes.

1 Q. You volunteered again?

2 A. Yeah.

3 Q. Even though you said when you were
4 having the Tesla coil applied to you that you
5 thought twice about, you know, after it was being
6 applied to you --

7 A. Yeah.

8 Q. -- you would rethink your decision.
9 Okay.

10 Did you feel the shock when you were on
11 the chain of students?

12 A. No -- or I felt a little bit. But it
13 wasn't much.

14 Q. I believe you testified earlier that you
15 were toward the end?

16 A. Yeah.

17 Q. Do you know who you were holding hands
18 with?

19 A. I think Student No. 82 might have been
20 one. I can't remember right now.

21 Q. Prior to, I guess, volunteering to have
22 the Tesla coil applied to your arm -- strike that.

23 MR. DESCHLER: Do you want to break now?
24 I mean I can keep going. That's fine. I mean you

1 A. I think she got me another wet paper
2 towel or washcloth. I don't know if she gave me
3 more medicine or not, but --

4 Q. You don't recall her giving you any more
5 medication?

6 A. No. I don't remember.

7 Q. And at no time ever did you put any kind
8 of topical antibiotic or ointment on top of your
9 arm?

10 A. Not that I know of, that I can think of.

11 Q. Besides the Tylenol that you took that
12 evening, did you take any other medication to treat
13 your arm?

14 A. I don't think so. Not that I can
15 remember.

16 Q. Did you ever go see a doctor about your
17 arm?

18 A. No.

19 Q. Did you see any type of professional
20 like a psychologist about your arm?

21 A. No.

22 Q. You stated that the red blotchiness
23 which is depicted on Exhibit A lasted for a few
24 weeks?

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - -

4	John Doe and Jane Doe,	:
	Individually and as the	:
5	Natural Parents and Next	:
	Friends of Their Minor	:
6	Child, James Doe,	:
		:
7	Plaintiffs,	:
		:
8	vs.	: Case No. 08-CV-575
		: Judge Frost
9	Mount Vernon City School	:
	District Board of	:
10	Education, et al.,	:
		:
11	Defendants.	:

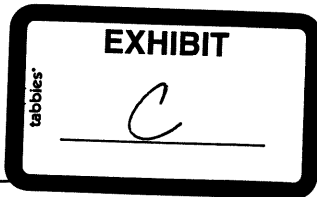
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DEPOSITION

of Jane Doe, taken before me, Maria DiPaolo Jones, a
Notary Public in and for the State of Ohio, at the
offices of Jones Day, 325 John H. McConnell
Boulevard, Suite 600, Columbus, Ohio, on Monday,
October 12, 2009, at 1:33 p.m.

- - -

Job No: 219720



1 APPEARANCES:

2 Jones Day
3 By Mr. Douglas Mansfield
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6 Columbus, Ohio 43215-2673

7 On behalf of the Plaintiffs.

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13 By Mr. R. Kelly Hamilton
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15 Grove City, Ohio 43123

16 On behalf of Defendant John Freshwater.

17 ALSO PRESENT:

18 Mr. John Doe.

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Monday Afternoon Session,
October 12, 2009.

- - -

STIPULATIONS

It is stipulated by and among counsel for the respective parties that the deposition of Jane Doe, a Plaintiff herein, called by Defendant John Freshwater under the applicable Rules of Civil Procedure, may be reduced to writing in stenotypy by the Notary, whose notes thereafter may be transcribed out of the presence of the witness; and that proof of the official character and qualification of the Notary is waived.

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WITNESS

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Cross-examination by Mr. Deschler

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DEFENDANT'S EXHIBITS

IDENTIFIED

A - Photograph

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B - Photograph

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C - Photograph

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- - -

1 infection.

2 Q. Okay. So when you saw the mark on his
3 arm, your initial -- once he told you about it, you
4 thought it may have been a metal tip --

5 A. I didn't know. I had no idea what this
6 instrument looked like or how it operated or what
7 could have left that.

8 Q. Seems like you were pretty concerned
9 about it.

10 A. Uh-huh.

11 Q. You didn't take James to a hospital that
12 night, though.

13 A. No.

14 Q. Did you put any kind of ointment on it
15 like Neosporin or hydrogen peroxide?

16 A. Definitely not hydrogen peroxide, no. I
17 don't recall putting anything on it.

18 Q. Really? You don't like hydrogen
19 peroxide?

20 A. No.

21 Q. I love it when I get cuts; it cleans it
22 out. And you can do like an oral debridement. You
23 can rinse your mouth out with it. You know that;
24 that's a surgical --

1 it?

2 A. My husband and I have.

3 Q. And what was your conclusion in that
4 regard?

5 A. That we were trying not to.

6 Q. Also, did you take James to a medical
7 doctor after he came home on December 6th, 2007,
8 with the mark on his arm?

9 A. No.

10 Q. Your former attorney had disclosed a
11 Dr. Ogle, O-g-l-e. Did you ever see a Dr. Ogle?

12 A. I showed her the picture.

13 Q. You went to the --

14 A. I showed her, yes, I showed her the
15 picture.

16 Q. Who is Dr. Ogle?

17 A. She's a local doctor in Mount Vernon.

18 Q. Is that your family practitioner?

19 A. Mine.

20 Q. Yours. Your husband or two sons don't go
21 to her?

22 A. My husband I believe sees her -- another
23 doctor in the practice, and my kids have seen some
24 doctors in that practice.

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CERTIFICATE

State of Ohio :
County of Franklin : SS:

I, Maria DiPaolo Jones, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the within named Jane Doe was by me duly sworn to testify to the whole truth in the cause aforesaid; that the testimony was taken down by me in stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony given by said witness taken at the time and place in the foregoing caption specified.

I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any attorney or counsel employed by the parties, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on this 19th day of October, 2009.

Maria DiPaolo Jones

Maria DiPaolo Jones, Registered
Diplomate Reporter, CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2011.

(MDJ-3457)

- - -

IN THE MATTER OF

THE TERMINATION OF EMPLOYMENT

OF JOHN FRESHWATER

VOLUME XIX

TRANSCRIPT OF PROCEEDINGS

held at Knox County Office Building,

Mount Vernon, Ohio,

on May 7, 2009,

before Mr. R. Lee Shepherd, Referee

O'DONNELL & MCGHEE, LLC
Registered Professional Reporters
13 Park Avenue West, Suite 502
Mansfield, OH 44902
(419)522-9700



E, LLC
0

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ALSO PRESENT

Mr. Steve Short
Ms. Sarah Moore
Mr. Jason Deschler
Mr. Kenneth Dennis
Mr. Douglas Mansfield

EXHIBITS:

Board's

- 6 -- H. R. On Call report
- 7 -- photograph
- 8 -- photograph
- 18 -- "Abundant Life New Testament"
- 21 -- Resource Speaker Request forms --
thirty-three (33) pp.

Employee's

- 61 -- Zach Dennis' drawing of classroom
- 62 -- Zach Dennis' drawing of arms
- 63 -- photograph
- 64 -- photograph
- 65 -- Zach Dennis' drawing of mark on arm
- 66 -- OAT science scores

1 THE WITNESS: Say the question again, please.

2 (Question read.)

3 A. Of the other students?

4 Q. Yes.

5 A. My seat.

6 Q. So you saw all five students that went before you. You
7 also saw when John Freshwater touched *Student No. 7* with the
8 Tesla coil. Correct?

9 A. Yes.

10 Q. And you saw each of their reactions. Correct?

11 A. Yes.

12 Q. And you still, being the last one in line, still went up
13 and let Mr. Freshwater touch you with the Tesla coil. Right?

14 A. Yes.

15 Q. Now, if the Tesla coil had hurt the first time around
16 when he touched you when it was just yourself, would you have
17 participated in the line?

18 A. Yes.

19 Q. And why would that be?

20 A. Peer pressure from my friends.

21 Q. Who was giving you pressure?

22 A. Kids were telling me to get in line with them.

23 Q. Who?

24 A. I don't know. Just all the kids in the line.

25 Q. But not everybody joined the line. Right?

1 A. No.

2 Q. Did you see any students yell after they were touched by
3 the Tesla coil?

4 A. *Student No. 7*

5 Q. Okay. Did you see any students scream?

6 A. No.

7 Q. Did you see any students flinch?

8 A. Yes.

9 Q. Who did you see flinch?

10 A. The students that individually got the Tesla coil to
11 themselves.

12 Q. Well, if you would, stand up for me and demonstrate for
13 me how they would flinch. I'd like to see your impression of
14 their flinch.

15 A. Just maybe their arm tensed and they might have jerked a
16 little bit.

17 Q. Now, when you say "jerked," I mean, did they pull their
18 arm a couple inches from the placement where it was
19 originally touched or did they pull their arm a foot from
20 where they were originally touched?

21 A. A few inches.

22 Q. Any of them say "ouch"?

23 A. Not that I remember.

24 Q. Any of them say any kind of words indicating that they
25 were in pain?

1 A. I think -- I can't remember.

2 Q. Well, if you would have seen somebody demonstrate some
3 sort of pain, what's the odds of you having gotten up the
4 first time and walking to the front of the room and
5 participating in the Tesla coil experiment?

6 MR. MANSFIELD: Objection. Asked and answered.

7 HEARING OFFICER: Overruled.

8 THE WITNESS: Say the question again, please.

9 (Question read.)

10 A. Can you say the question a different way?

11 Q. Certainly. If you would have seen some other students,
12 the five that went before you, if you had seen them
13 demonstrate some sort of pain, would you have gone up and
14 participated in the Tesla coil experiment?

15 A. Probably not if they showed an extreme amount of pain.

16 Q. Did you see any marks on the other students?

17 A. Yes.

18 Q. Who?

19 A. *Student No 5 Student No 4*. And that's all I can
20 remember.

21 Q. When did you see a mark on *Student No 5*?

22 A. The day it happened and a few weeks after it happened.

23 Q. How long is a few weeks?

24 A. Maybe a week and a half.

25 Q. Did you see any -- what kind of mark did you see on *Student No 4*?

1 A. No.

2 Q. Did your mom or dad do anything to your arm before they
3 took the picture?

4 A. No.

5 Q. It's been alleged that your grandpa, with all due
6 respect, is into photography.

7 A. Yeah.

8 Q. Was he at any point involved in taking pictures of your
9 arm?

10 A. No.

11 Q. Now, your parents were not with you after school from
12 the time school got out until you came home. Correct?

13 A. Yes.

14 Q. When you were over at *Student No. 561's* house, what did
15 you guys do?

16 A. Played video games.

17 Q. Do you remember what kind of games you played?

18 A. Call of Duty or Halo.

19 Q. Did you touch your arm, put any medicine on it, or put
20 any kind of salves on it before you had these pictures taken?

21 A. No.

22 Q. Did anybody else put any kind of medicine on it or
23 salves on it before you had these pictures taken?

24 A. No.

25 Q. Now, take a look at your right arm. How much of your

1 A. Yes.

2 Q. What is it?

3 A. That would be my arm, and the background is my hockey
4 pad, the leg pad.

5 Q. That's a hockey leg pad? Is that what that is?

6 A. Yellow and white in the bottom of the corner, depending
7 which way you hold it.

8 Q. When was this picture taken?

9 A. This was after hockey practice at the rink.

10 Q. So after hockey practice at the rink. And when you say
11 after hockey practice, are you completely done for the night?

12 A. Yes.

13 Q. So this wasn't like an intermission or anything like
14 that?

15 A. (The witness shook his head.)

16 Q. So this was actually taken up in Cleveland?

17 A. Yes.

18 Q. And whose cell phone would this have been taken on?

19 A. My dad's cell phone.

20 Q. Now, I'm taking a look there. Let me see. I see a mole
21 here, correct, on your arm?

22 A. Yes.

23 Q. Is that still on your arm?

24 A. Yes, I think so. Yes.

25 Q. You think that mole is represented here on this

1 Q. Did you ever ask John why he directed you there?

2 A. No.

3 Q. Did you find whatever information you were looking for?

4 A. No.

5 Q. Had you ever been to that Web site on a computer other
6 than the school's computer?

7 A. Yes.

8 Q. Where did you do this other research at?

9 A. I showed the Web site to my mom on her computer. And I
10 think on a computer in my dad's office, I showed the H.R. On
11 Call reporters maybe.

12 Q. Anybody else you showed it to?

13 A. No.

14 Q. How did you score on your proficiency, your science
15 proficiency test?

16 A. I think it was either average or proficient. I can't
17 really remember what it was.

18 Q. Do you feel like the teaching you received from John
19 Freshwater harmed your learning experience?

20 A. In some ways, it might have, but ...

21 Q. How so?

22 MR. MILLSTONE: Objection. Let him finish
23 answering the question.

24 HEARING OFFICER: Sustained.

25 THE WITNESS: Could you read the question again?

1 (Question read.)

2 A. It could have been harmed by it. I don't know. It
3 wasn't necessarily the curriculum. I mean, there were many
4 questions that I didn't know, didn't understand.

5 (Employee Exhibit 66 was marked for
6 identification.)

7 Q. You stated that you thought you scored proficient or
8 average. Right?

9 A. Yes.

10 Q. Take a look at Employee Exhibit No. 66. Do you see your
11 name on this?

12 A. Yes.

13 Q. And what kind of test score category did you achieve?

14 A. Accelerated.

15 Q. So, actually, you didn't score proficient or average.
16 Right?

17 A. No.

18 Q. You scored much better?

19 A. Yeah.

20 Q. Your previous testimony on page 346 asserted that John
21 talked about the hydrosphere theory in class.

22 A. Yes.

23 Q. Is that true?

24 A. Yes.

25 Q. Did John say he believed the hydrosphere theory?

1 see how his arm was doing?

2 A. He didn't mention it.

3 Q. So he never brought it up to you again?

4 A. I don't think so.

5 Q. Okay. How long did the mark stay on his arm?

6 A. I'd say about three weeks, two to three weeks.

7 Q. Two to three weeks. Did you take any pictures of the
8 arm as it started to heal?

9 A. No.

10 MR. HAMILTON: It's 4 o'clock. Do we have to
11 vacate? I'm ready to go to the next section.

12 HEARING OFFICER: Are you about to begin something
13 different?

14 MR. HAMILTON: Yeah.

15 HEARING OFFICER: Okay. Then we will adjourn.
16 We'll adjourn and reconvene at 9 o'clock tomorrow morning.

17 (Recess at 4:00 p.m.)

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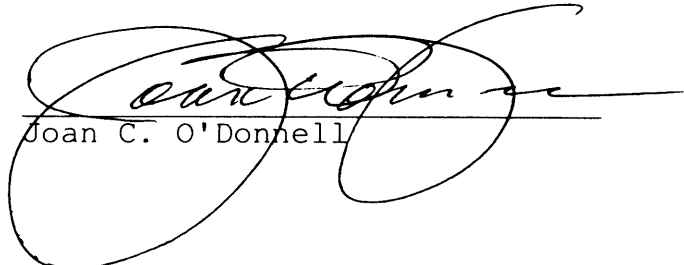
22 **CERTIFICATE OF REPORTER**

23 I, Joan C. O'Donnell, Registered Professional
24 Reporter, do hereby certify that the foregoing, consisting of
25 pp. 3014-3210, is a true and complete transcript of the

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proceedings conducted on the 7th day of May, 2009, before
Mr. R. Lee Shepherd, Referee. I further certify that I was
personally present throughout the said proceedings.

Subscribed this 28th day of May, 2009.



Joan C. O'Donnell