

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

JOHN FRESHWATER, :
ET. AL., :
Plaintiffs, :
-vs- : CASE NO. 2:09 cv 464
MOUNT VERNON CITY : JUDGE FROST
SCHOOL DISTRICT BOARD : MAGISTRATE JUDGE KING
OF EDUCATION, :
ET. AL., :
Defendants. :

Deposition of JOHN D. FRESHWATER, a
Plaintiff herein, taken by the Defendants as upon
Cross-Examination and pursuant to the Federal Rules
of Civil Procedure as to the time and place and
stipulations hereinafter set forth, at the offices
of Means, Bichimer, Burkholder & Baker, 1650 Lake
Shore Drive, Suite 285, Columbus, Ohio, at 10:00,
a.m., on Friday, October 15, 2010, before Catherine
L. Schutte-Stant, a Registered Merit Reporter, and
Notary Public within and for the State of Ohio.

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QUICK REFERENCE INDEX

WITNESS: JOHN D. FRESHWATER

APPEARANCES: PAGES 3 and 4

DX CX RDX RCX

BY: MS. MOORE - 5 - -

EXHIBITS

IDENTIFIED PAGE

DEFT'S:	-	-
1 -		15
2 -		16
3 -		24
4 -		30
5 -		39
6 -		44
7 -		45
8 -		47
9 -		48
10 -		49
11 -		51
12 -		52
13 -		54
14 -		72

* * * * *

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9 9 DISTRICT BOARD OF EDUCATION; IAN WATSON; JODY
10 10 GOETZMAN; STEPHEN SHORT AND WILLIAM WHITE:

11 11 MS. SARAH J. MOORE, ESQ.
12 12 MS. ANDREA STONE, ESQ.
13 13 Attorneys at Law
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18 18 ON BEHALF OF THE DEFENDANT LYNDA WESTON:

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1 CONTINUED APPEARANCES:
2 ON BEHALF OF THE DEFENDANTS HR ON CALL, INC., AND
3 JULIA F. HERLEVI AND THOMAS J. HERLEVI:

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6 Gallagher Sharp
7 Sixth Floor Bulkley Building
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9 Cleveland, OH 44115

10 ALSO PRESENT: Mr. Paul Deegan; Mr. Steve Short;
11 Mr. William White; and
12 Ms. Jody Goetzman.

13 * * * * *

1 10:00:29 1 MS. MOORE: Swear the witness in.

2 2 * * * * *

3 3 WHEREUPON:

4 4 JOHN D. FRESHWATER,
5 5 of lawful age, a Plaintiff herein, being first duly
6 6 sworn as hereinafter certified, testified as
7 7 follows:

8 8 * * * * *

9 10:00:38 9 CROSS-EXAMINATION

10 10:00:38 10 BY MS. MOORE:

11 10:00:40 11 Q. Good morning, Mr. Freshwater.

12 10:00:42 12 A. Good morning, Miss Moore.

13 10:00:43 13 Q. While you've been through this before
14 10:00:48 14 in terms of testifying, so I recognize you're
15 10:00:51 15 probably familiar with the rules by now, but I'll
16 10:00:53 16 just go through a couple just to make sure. The
17 10:00:56 17 main one is we can't talk over each other.

18 10:01:00 18 A. Yes.

19 10:01:00 19 Q. So I'll try to be respectful of you in
20 10:01:03 20 terms of making sure I'm not cutting you off in
21 10:01:06 21 your answers, and likewise, if you could wait until
22 10:01:09 22 I finish with a question that would be terrific.

23 10:01:11 23 A. Yes.

24 10:01:12 24 Q. The court reporter can't take down
25 10:01:15 25 nonverbals, so if we can try to remind one another

1 10:01:18 1 to verbalize our thoughts rather than have
2 10:01:24 2 nonverbal cues, that would be great. And then I'm
3 10:01:27 3 going to assume that you understand my questions
4 10:01:29 4 unless you indicate otherwise.

5 10:01:31 5 A. Okay.

6 10:01:31 6 Q. So if for some reason what I'm saying
7 10:01:36 7 doesn't make sense, please just stop, indicate so,
8 10:01:39 8 and we'll do our best to address that situation.

9 10:01:42 9 A. Yes.

10 10:01:42 10 Q. Okay?

11 10:01:43 11 A. Yes.

12 10:01:43 12 Q. I notice that you have with you some
13 10:01:45 13 documents today; is that correct?

14 10:01:48 14 A. Yes, I do.

15 10:01:48 15 Q. Could I take a look at those?

16 10:01:50 16 A. Yes, you may.

17 10:02:36 17 Q. I've quickly gone through two of the
18 10:02:39 18 documents. The first is John Freshwater's Reply
19 10:02:44 19 Brief to the Employer's Post-Hearing Brief in the
20 10:02:48 20 matter of John Freshwater before Referee R. Lee
21 10:02:52 21 Shepherd. It appears to be a 75-page document that
22 10:03:15 22 does not have handwriting or marks within it, but
23 10:03:17 23 is tabbed on the side with some purple tabs; is
24 10:03:22 24 that fairly accurate?

25 10:03:23 25 A. Yes.

1 10:03:23 1 Q. And the second document is a document
2 10:03:27 2 entitled, "John Freshwater's Closing Statement
3 10:03:30 3 Brief in the matter of John Freshwater before
4 10:03:35 4 Referee R. Lee Shepherd." It appears to be a
5 10:03:40 5 166-Page document that does not have any written
6 10:03:44 6 marks or notes within the document; however, has
7 10:03:50 7 numerous purple tabs on the side of the document;
8 10:03:55 8 is that correct?

9 10:03:55 9 A. That would be correct.

10 10:03:56 10 Q. And at the bottom of this document, it
11 10:03:59 11 says, "Copy Number 4"; what does that mean?

12 10:04:03 12 A. Plain language, it says, Copy Number 4.

13 10:04:10 13 Q. Okay. How many copies are there of
14 10:04:13 14 that document that are labeled with numbers?

15 10:04:15 15 A. I wouldn't be able to answer that.

16 10:04:18 16 Q. And then the last document is the NIV
17 10:04:23 17 Study Bible, and it appears to be just exactly what
18 10:04:26 18 it says; would that be accurate?

19 10:04:31 19 A. That would be correct.

20 10:04:34 20 Q. When we take a break, I'm going to be
21 10:04:35 21 asking that the first two documents I mentioned be
22 10:04:40 22 copied, inclusive of the tabs and where the tabs
23 10:04:44 23 are, so that I ask during the course of the day
24 10:04:47 24 that you not change where the tabs are and leave
25 10:04:52 25 them in their respective places; is that fair?

1 10:04:54 1 A. That would be fair.

2 10:04:55 2 Q. Thank you. Are you under the influence
3 10:04:58 3 of any medications that would cause you to either
4 10:05:01 4 not understand my questions or be unable to answer
5 10:05:04 5 them?

6 10:05:04 6 A. No.

7 10:05:07 7 Q. As you sit here today, do you suffer
8 10:05:10 8 from any medical condition that would cause you to
9 10:05:13 9 either not understand my questions or be unable to
10 10:05:16 10 answer them?

11 10:05:18 11 A. No.

12 10:05:20 12 Q. Have you ever been convicted or charged
13 10:05:22 13 with a crime?

14 10:05:24 14 A. No.

15 10:05:25 15 Q. What, if anything, did you do to
16 10:05:29 16 prepare for this deposition?

17 10:05:30 17 A. Prayed.

18 10:05:36 18 Q. Did you meet with your attorney?

19 10:05:39 19 A. We met shortly, yes.

20 10:05:41 20 Q. When did you meet with your attorney to
21 10:05:44 21 prepare for this deposition?

22 10:05:45 22 A. That would have been, it would have
23 10:05:50 23 been for a short time yesterday.

24 10:05:52 24 Q. About how long?

25 10:05:52 25 A. I wasn't really keeping track of time,

1 10:06:00 1 how long it was. It wasn't very long.

2 10:06:01 2 Q. An hour, more than an hour, less than
3 10:06:04 3 an hour?

4 10:06:04 4 A. Like I say, I really wasn't keeping
5 10:06:07 5 track of time, so, probably no longer than an hour.

6 10:06:15 6 Q. Around an hour?

7 10:06:16 7 A. Yeah.

8 10:06:16 8 Q. And what documents, if any, did you
9 10:06:20 9 review to prepare for this deposition?

10 10:06:22 10 A. Oh, I looked at, looked at the
11 10:06:31 11 interrog -- interrogatory, and the, the lawsuit
12 10:06:40 12 itself.

13 10:06:40 13 Q. The Complaint?

14 10:06:41 14 A. Is that the correct term for it?

15 10:06:44 15 Q. I think so.

16 10:06:45 16 A. Okay.

17 10:06:48 17 Q. Did you look at anything else?

18 10:06:51 18 A. That's all I can remember now. I just
19 10:06:54 19 flipped through those and looked at them.

20 10:06:56 20 Q. I'm sorry.

21 10:06:57 21 A. Yesterday was kind of a -- my daughter,
22 10:07:06 22 my daughter hit a deer, so yesterday was kind of an
23 10:07:09 23 unusual day yesterday, so I was dealing with a lot
24 10:07:11 24 of life issues.

25 10:07:14 25 Q. Okay.

1 10:07:15 1 A. Okay.

2 10:07:15 2 Q. Is it fair to say that the documents

3 10:07:22 3 you reviewed for the deposition today were when you

4 10:07:25 4 met with Mr. Hamilton yesterday?

5 10:07:28 5 A. It was mostly -- yeah, I'll say yes,

6 10:07:37 6 yes.

7 10:07:37 7 Q. Did you spend any time outside of Mr.

8 10:07:40 8 Hamilton's presence reviewing documents in

9 10:07:42 9 preparation for today's deposition?

10 10:07:44 10 A. Like I said, I flipped through some

11 10:07:47 11 things and looked at some things.

12 10:07:50 12 Q. Did you flip through anything besides

13 10:07:54 13 the interrogatories and the Complaint that you

14 10:07:56 14 referred to?

15 10:07:57 15 A. I can't remember anything else. I

16 10:07:59 16 think that's what I dwelled on was those. I went

17 10:08:06 17 through the briefs, I flipped through the briefs; I

18 10:08:10 18 should probably say that, that I looked at those.

19 10:08:13 19 Q. When you say the briefs, you're

20 10:08:14 20 referring to the two documents I identified earlier

21 10:08:17 21 today?

22 10:08:17 22 A. Yes.

23 10:08:18 23 Q. Thank you. Did you review any of the

24 10:08:23 24 transcripts from the state administrative hearing

25 10:08:26 25 in preparation for today?

1 10:08:29 1 A. No.

2 10:08:32 2 Q. Did you review any transcripts of

3 10:08:34 3 depositions in preparation for this deposition

4 10:08:38 4 today?

5 10:08:39 5 A. No, I don't remember any, no.

6 10:08:43 6 Q. Did you review any exhibits from the

7 10:08:46 7 state administrative hearing in preparation for

8 10:08:48 8 your deposition today?

9 10:08:49 9 A. No.

10 10:08:50 10 Q. Please identify all financial

11 10:08:59 11 institutions where you have a checking or savings

12 10:09:02 12 account from January 1st, 2008, to present?

13 10:09:06 13 A. It would be First Merit -- checking and

14 10:09:23 14 savings is what you said, correct? First Merit.

15 10:09:26 15 Q. Is that the one in Mount Vernon?

16 10:09:31 16 A. Yes.

17 10:09:31 17 Q. Have you ever had a safety deposit box?

18 10:09:39 18 A. No.

19 10:09:39 19 Q. Do you have a safe?

20 10:09:42 20 A. No.

21 10:09:42 21 Q. Other than this lawsuit and the lawsuit

22 10:09:49 22 brought against you by the Dennis family, are there

23 10:09:52 23 any other lawsuits to which you've been a party?

24 10:09:55 24 A. No.

25 10:09:56 25 Q. Have you ever had your deposition taken

1 10:10:00 1 before besides in the lawsuit that the Dennises
2 10:10:05 2 brought against you?
3 10:10:05 3 A. No.
4 10:10:06 4 Q. Prior to hiring Mr. Weaver and Mr.
5 10:10:09 5 Hamilton on April 17th, 2008, had you ever retained
6 10:10:13 6 an attorney in the past?
7 10:10:15 7 A. No.
8 10:10:15 8 Q. And you were present at your wife's
9 10:10:21 9 deposition earlier this week, correct?
10 10:10:23 10 A. Yes.
11 10:10:24 11 Q. And you sat through the entire
12 10:10:25 12 deposition, correct?
13 10:10:26 13 A. That's correct, yes.
14 10:10:27 14 Q. During her deposition, she mentioned
15 10:10:32 15 that your family had received funds from third
16 10:10:35 16 parties from April 16th, 2008, to present. My
17 10:10:40 17 question to you is: Are there any funds that she
18 10:10:43 18 did not identify that you are aware of your family
19 10:10:47 19 receiving from third parties during the time period
20 10:10:50 20 April 16th, 2008, to present?
21 10:10:55 21 A. Can you refresh my memory what she said
22 10:10:59 22 on that?
23 10:11:02 23 Q. Do you recall what she said on that?
24 10:11:07 24 A. I recall some, but in order to answer
25 10:11:11 25 yes or no on that, I'd like to know, can you

1 10:11:14 1 refresh me on that?

2 10:11:16 2 Q. As you sit here right now, do you have
3 10:11:18 3 any recollection of what she said two days ago?

4 10:11:24 4 A. I have some recollection, but the last
5 10:11:26 5 couple days have been very interesting, okay, so,
6 10:11:31 6 again, if you could refresh my memory on that, I'd
7 10:11:34 7 appreciate that.

8 10:11:34 8 Q. Sure. Your wife mentioned that you've
9 10:11:38 9 received funds from third parties for apples and
10 10:11:40 10 Christmas trees, and stump grinding, correct?

11 10:11:43 11 A. That would be correct.

12 10:11:45 12 Q. Okay. Did you receive funds for
13 10:11:50 13 anything else besides the apples, the Christmas
14 10:11:53 14 trees, and the stump grinding?

15 10:11:59 15 A. Gifts, you know, did she mention that?
16 10:12:04 16 I think she did.

17 10:12:06 17 Q. Okay.

18 10:12:06 18 A. Gifts from people, yes.

19 10:12:07 19 Q. And I think you're right. I do believe
20 10:12:09 20 she mentioned that there were some envelopes that
21 10:12:12 21 she received from people. Do you recall that?

22 10:12:14 22 A. I would -- not a hundred percent, no.
23 10:12:19 23 That was a rather long deposition, but -- and I
24 10:12:23 24 expect this one is, also.

25 10:12:25 25 Q. Did you keep track of the gifts that

1 10:12:29 1 you received from third parties from April 16th,
2 10:12:33 2 2008, to present?

3 10:12:35 3 A. No.

4 10:12:35 4 Q. Can you tell me what your best estimate
5 10:12:37 5 is in terms of how much money you've received from
6 10:12:39 6 third parties from April 16th, 2008, to present?

7 10:12:44 7 A. I would not -- I would be unable to
8 10:12:47 8 estimate that.

9 10:12:47 9 Q. Would it be fair to say that you've
10 10:12:57 10 received less than \$10,000, or more than \$10,000
11 10:12:57 11 from April 16th, 2008, to present, from third
12 10:12:57 12 parties as gifts?

13 10:12:58 13 A. Again, I'll have to go back through, I
14 10:13:01 14 don't feel come comfortable in estimating that.

15 10:13:07 15 Q. What would you have to go back through
16 10:13:09 16 to figure that out?

17 10:13:11 17 A. I don't have anything to go through to
18 10:13:13 18 go back through that. Except my brain.

19 10:13:15 19 Q. Okay. So, as you sit here today,
20 10:13:17 20 there's no way that you can figure out how to
21 10:13:20 21 determine how much money you received from April
22 10:13:23 22 16th, 2008, to present from third parties as gifts?

23 10:13:28 23 A. That would be correct.

24 10:13:28 24 Q. And as you sit here today, you can't
25 10:13:31 25 think of any way that you could determine that,

1 10:13:32 1 correct?

2 10:13:33 2 A. That's correct.

3 10:13:34 3 Q. Have you ever heard of an entity called

4 10:13:38 4 the Community Council of Free Expression?

5 10:13:42 5 A. Yes, I have heard of that, yes.

6 10:13:44 6 Q. What is that entity?

7 10:13:48 7 A. I don't know a whole lot about it. I'm

8 10:13:52 8 not a part of it, so I don't really know a whole

9 10:13:54 9 lot about it.

10 10:14:37 10 (WHEREUPON Defendant's Exhibit 1

11 10:14:38 11 was marked for identification.)

12 10:14:39 12 BY MS. MOORE:

13 10:14:44 13 Q. You've been handed what's been marked

14 10:14:46 14 for identification purposes as Defendant's Exhibit

15 10:14:48 15 1. Are you familiar with that document?

16 10:14:51 16 A. Could I have some time to look through

17 10:14:54 17 this?

18 10:14:55 18 Q. Sure. Are you all set?

19 10:16:11 19 A. Yeah, I looked through it briefly, yes.

20 10:16:15 20 Q. Would it be fair to say that this

21 10:16:16 21 letter is your written request to the Board of

22 10:16:21 22 Education for a hearing to challenge the Board of

23 10:16:24 23 Education's resolution of its intent to consider

24 10:16:26 24 termination of your teaching contract?

25 10:16:29 25 A. Yes.

1 10:16:31 1 Q. And it's dated June 30th, 2008?

2 10:16:34 2 A. That is correct.

3 10:16:34 3 Q. Would you have sent that letter on or
4 10:16:37 4 about June 30th, 2008?

5 10:16:39 5 A. Can you repeat that? I missed a word
6 10:16:43 6 there.

7 7 (WHEREUPON, the court reporter
8 8 read back the requested portion of the record.)

9 10:16:54 9 THE WITNESS: Yes, that's what
10 10:16:55 10 it's saying so, yes.

11 10:16:56 11 BY MS. MOORE:

12 10:16:56 12 Q. And in that letter, you ask for the
13 10:16:58 13 hearing to be a public hearing before the school
14 10:17:00 14 board, correct?

15 10:17:04 15 A. Yes, in the second paragraph, first
16 10:17:06 16 line, yes.

17 10:17:19 17 (WHEREUPON Defendant's Exhibit 2
18 10:17:23 18 was marked for identification.)

19 10:17:24 19 BY MS. MOORE:

20 10:17:59 20 Q. You've been handed what's been marked
21 10:18:01 21 as Defendant's Exhibit 2, and I notice you've taken
22 10:18:03 22 a few seconds there to page through the document.
23 10:18:05 23 Are you familiar with that document?

24 10:18:06 24 A. It has been a while since I've looked
25 10:18:13 25 at it, but I guess I could use the word familiar

1 10:18:15 1 with it, yes.

2 10:18:16 2 Q. In fact, is this a document that,

3 10:18:20 3 turning to the last page, you received on or about

4 10:18:23 4 June 24th, 2008?

5 10:18:25 5 A. Yes, June 24th, 2008, yes.

6 10:18:37 6 Q. And I notice on the first page of that

7 10:18:42 7 letter, it's got a date of July 23rd, 2008. Would

8 10:18:47 8 you agree with me that that appears to be a typo,

9 10:18:50 9 and as to the date?

10 10:18:58 10 A. Could I read through this again?

11 10:19:00 11 Q. Sure.

12 10:19:54 12 A. Okay. Can you repeat that question,

13 10:19:56 13 please?

14 14 (WHEREUPON, the court reporter

15 10:20:15 15 read back the requested portion of the record.)

16 10:20:15 16 THE WITNESS: I'm not sure if it

17 10:20:18 17 is or isn't.

18 10:20:21 18 BY MS. MOORE:

19 10:20:22 19 Q. Do you have any reason to believe that

20 10:20:23 20 that's not a typo as to the date?

21 10:20:29 21 A. I think that question should be asked

22 10:20:31 22 Mrs. Donohue. I don't know why I'm being asked

23 10:20:33 23 that question.

24 10:20:34 24 Q. Well, you received this letter,

25 10:20:36 25 correct?

1 10:20:37 1

A. Yes.

2 10:20:37 2

Q. And on or about June 24th, 2008, you've

3 10:20:41 3

testified already, right?

4 10:20:42 4

A. Correct.

5 10:20:42 5

Q. So would you agree with me that it's

6 10:20:45 6

fair to say that the date on the first page of that

7 10:20:46 7

letter appears to be a typographical error and

8 10:20:50 8

should read June 23rd, 2008?

9 10:20:55 9

MR. HAMILTON: I'll caution you,

10 10:20:56 10

just do not speculate.

11 10:20:58 11

MS. MOORE: I'm going to stop you

12 10:20:59 12

right now, Mr. Hamilton; you have no basis to be

13 10:21:02 13

inserting or speaking to your client during

14 10:21:04 14

questioning in a federal deposition. If you intend

15 10:21:07 15

on doing that again, I will go right to the

16 10:21:10 16

Magistrate; do you understand?

17 10:21:10 17

MR. HAMILTON: I understand. And

18 10:21:11 18

I can instruct my client as I choose.

19 10:21:15 19

MS. MOORE: Under the Federal

20 10:21:16 20

Rules, it is very clear that you do not have a

21 10:21:18 21

right to interfere with this deposition. While you

22 10:21:21 22

may state an objection for the record, you may not

23 10:21:23 23

make speaking objections, and if you do it again

24 10:21:26 24

we're going to go to the Magistrate. Do you

25 10:21:28 25

understand?

1 10:21:28 1

MR. HAMILTON: I've already

2 10:21:29 2

stated.

3 10:21:38 3

MS. MOORE: Could you read my

4 10:21:39 4

question back, please?

5 5

(WHEREUPON, the court reporter

6 6

read back the requested portion of the record.)

7 10:22:02 7

THE WITNESS: Could you read my

8 10:22:03 8

answer to that, please?

9 10:22:23 9

BY MS. MOORE:

10 10:22:24 10

Q. Well, let me say that again. I'm

11 10:22:25 11

going -- let me try it a different way.

12 10:22:28 12

A. Okay.

13 10:22:28 13

Q. Defendant's Exhibit 1 is dated June

14 10:22:37 14

30th, 2008, correct?

15 10:22:37 15

A. That is correct.

16 10:22:37 16

Q. And would you agree with me that you

17 10:22:37 17

sent the letter that is marked as Defendant's

18 10:22:40 18

Exhibit 1 in response to what is Defendant's

19 10:22:47 19

Exhibit 2, asserting your right to the hearing?

20 10:22:51 20

A. I'm just looking at the date here, it

21 10:22:53 21

says June 30th. And I do have my name and my

22 10:22:56 22

signature here, yes.

23 10:22:59 23

MS. MOORE: Could you read the

24 10:22:59 24

question back, please?

25 25

(WHEREUPON, the court reporter

1 1 read back the requested portion of the record.)

2 10:23:24 2 THE WITNESS: It's been over two

3 10:23:25 3 years.

4 10:23:28 4 MR. ROSS: Objection;

5 10:23:30 5 nonresponsive. The question calls for a yes or no

6 10:23:32 6 answer, please.

7 10:23:32 7 THE WITNESS: Sir, I don't think

8 10:23:34 8 it's a simple yes or no question.

9 10:23:35 9 MR. ROSS: Well, your attorney can

10 10:23:38 10 ask you questions later if you need to explain.

11 10:23:40 11 THE WITNESS: I don't have an

12 10:23:41 12 opinion, ma'am.

13 10:23:41 13 BY MS. MOORE:

14 10:23:41 14 Q. I'm not asking for an opinion.

15 10:23:43 15 MS. MOORE: Could you read back

16 10:23:44 16 the question, please?

17 17 (WHEREUPON, the court reporter

18 18 read back the requested portion of the record.)

19 10:24:11 19 THE WITNESS: I believe my answer

20 10:24:11 20 stays the same. I don't --

21 10:24:13 21 MR. ROSS: Objection;

22 10:24:14 22 nonresponsive. Move to strike it from the record.

23 10:24:22 23 I would ask you to please answer the question.

24 10:24:28 24 THE WITNESS: And I believe I

25 10:24:29 25 have, sir. I'm not trying to be evasive. I

1 10:24:32 1 believe I've answered the question.

2 10:24:34 2 MR. ROSS: You haven't answered

3 10:24:36 3 the question. The question calls for a yes or no

4 10:24:38 4 answer.

5 10:24:39 5 THE WITNESS: Yes, I don't think

6 10:24:40 6 it's a very simple yes or no question, sir.

7 10:24:42 7 MS. MOORE: I would ask all

8 10:24:43 8 defense counsel to put on the record whether you

9 10:24:46 9 state an objection similar to what Mr. Ross has

10 10:24:49 10 stated?

11 10:24:50 11 MR. HOLMAN: Objection.

12 10:24:52 12 MR. GREATHOUSE: Objection.

13 10:24:54 13 MS. MOORE: I would object, as

14 10:24:56 14 well. Mr. Hamilton, do you want to instruct your

15 10:24:58 15 client to answer the question, or shall we call the

16 10:25:00 16 Magistrate?

17 10:25:01 17 MR. HAMILTON: Answer the

18 10:25:01 18 question, best you can.

19 10:25:05 19 MS. MOORE: Please, read the

20 10:25:06 20 question back.

21 21 (WHEREUPON, the court reporter

22 22 read back the requested portion of the record.)

23 10:25:45 23 THE WITNESS: So if I understand

24 10:25:45 24 you correctly, you're saying, did I send this in

25 10:25:50 25 response to this? Is that correct?

1 10:25:54 1 BY MS. MOORE:

2 10:25:54 2 Q. You have just said to me, if I

3 10:25:57 3 understand what you're saying, did I send

4 10:25:59 4 Defendant's Exhibit 1 in response to Defendant's

5 10:26:03 5 Exhibit 2; did I hear you correctly?

6 10:26:06 6 A. Yes, that's what I said.

7 10:26:07 7 Q. That's my question to you.

8 10:26:09 8 A. It appears that way.

9 10:26:31 9 Q. Yes or no, Mr. Freshwater?

10 10:26:34 10 A. But your question was, does it appear

11 10:26:37 11 that way, and I'm saying, yes, it appears it does.

12 10:26:40 12 I believe I'm answering your question now.

13 10:26:41 13 Q. So you would agree with me that you

14 10:26:44 14 sent Defendant's Exhibit 1 in response to having

15 10:26:47 15 received Defendant's Exhibit 2?

16 10:26:53 16 A. It appears that way.

17 10:26:55 17 Q. Yes or no, Mr. Freshwater?

18 10:26:57 18 MR. HAMILTON: Objection. He's

19 10:26:59 19 been asked; he's answered.

20 10:27:06 20 BY MS. MOORE:

21 10:27:07 21 Q. Do you have any reason to believe that

22 10:27:08 22 you would not have sent Defendant's Exhibit 1 in

23 10:27:10 23 response to Defendant's Exhibit 2?

24 10:27:15 24 A. Well, are you saying -- I'm confused

25 10:27:17 25 with this date up here.

1 10:27:19 1 MR. ROSS: Objection;
2 10:27:19 2 nonresponsive; move to strike.
3 10:27:21 3 MR. HOLMAN: Objection.
4 10:27:29 4 MS. MOORE: Could you read the
5 10:27:30 5 question back, please?
6 6 (WHEREUPON, the court reporter
7 10:27:49 7 read back the requested portion of the record.)
8 10:27:49 8 THE WITNESS: Do I have any reason
9 10:27:53 9 to believe, it appears like I sent Exhibit 1 in
10 10:27:58 10 response to Exhibit 2.
11 10:28:11 11 BY MS. MOORE:
12 10:28:12 12 Q. Yes or no, Mr. Freshwater?
13 10:28:31 13 A. It appears like I've sent Exhibit 1,
14 10:28:34 14 which was signed June 30th, 2008, in response to
15 10:28:40 15 Exhibit 2, which says July 23rd, 2008, so I have
16 10:28:46 16 confusion on the dates there.
17 10:28:48 17 Q. Let me try it a different way.
18 10:28:50 18 MS. MOORE: Mr. Hamilton, will you
19 10:28:52 19 stipulate on the record that Defendant's Exhibit 1
20 10:28:54 20 was sent by your client on or about June 30th,
21 10:28:57 21 2008, in response to Defendant's Exhibit 2?
22 10:29:01 22 MR. HAMILTON: Yes.
23 10:29:01 23 MS. MOORE: Thank you.
24 10:29:10 24 Mr. Hamilton, will you further
25 10:29:13 25 stipulate that the date on Defendant's Exhibit 2

1 10:29:16 1 appears to be a typographical error and should read
2 10:29:20 2 June 23rd, 2008?
3 10:29:57 3 MR. HAMILTON: I'd stipulate there
4 10:29:58 4 is a typographical error, July 23rd, 2008, as
5 10:30:02 5 listed on Defendant's Exhibit 2, and that it
6 10:30:04 6 appears that the correct date should have been June
7 10:30:08 7 23rd, 2008.
8 10:30:09 8 MS. MOORE: Thank you, Mr.
9 10:30:10 9 Hamilton.
10 10:30:45 10 (WHEREUPON Defendant's Exhibit 3
11 10:30:47 11 was marked for identification.)
12 10:31:40 12 BY MS. MOORE:
13 10:31:40 13 Q. Mr. Freshwater, you've been handed
14 10:31:43 14 Defendant's Exhibit 3, which you've taken a moment
15 10:31:45 15 or two to page through?
16 10:31:46 16 A. Yes.
17 10:31:46 17 Q. Does that document look familiar to
18 10:31:48 18 you?
19 10:31:48 19 A. The resolution does, yes. I would have
20 10:31:56 20 to look at the front page, yeah, but -- yes, this
21 10:31:58 21 does, I do recognize this, yes.
22 10:32:00 22 Q. Do you recognize the front page?
23 10:32:03 23 A. Can you give me a moment to flip
24 10:32:05 24 through it?
25 10:32:06 25 Q. I sure can.

1 10:32:58 1 A. Okay, Miss Moore.

2 10:33:00 2 Q. In the first paragraph, it appears that
3 10:33:02 3 Mr. Short is notifying you that he intended to
4 10:33:08 4 recommend suspending you without pay effective the
5 10:33:19 5 beginning of the 08-09 school year; is that
6 10:33:19 6 correct?

7 10:33:19 7 A. That would be correct.

8 10:33:19 8 Q. And then it also notifies you that you
9 10:33:21 9 had the right to a hearing in regard to that
10 10:33:24 10 recommendation of suspension without pay; do you
11 10:33:27 11 see that?

12 10:33:27 12 A. Yes, I do.

13 10:33:28 13 Q. Okay. Do you recall whether you
14 10:33:32 14 actually met with Mr. Short after receiving this
15 10:33:37 15 letter on or about July 1st, 2008?

16 10:33:42 16 A. Yes, I do remember that, because that
17 10:33:43 17 was the day that we saw the Christian poster up in
18 10:33:48 18 his room, so, yes.

19 10:33:48 19 Q. And during that hearing, do you recall
20 10:33:53 20 mentioning to Mr. Short that you wished for him to
21 10:33:57 21 reconsider his recommendation to suspend you
22 10:34:01 22 without pay?

23 10:34:05 23 A. Again, that was two years ago -- over
24 10:34:14 24 two years ago. I believe that was part of the, the
25 10:34:19 25 discussion, yes.

1 10:34:20 1 Q. Okay. In fact, do you recall sharing
2 10:34:23 2 with Mr. Short at that time that you had some
3 10:34:27 3 significant health problems in your family and were
4 10:34:31 4 concerned that if you were suspended without pay,
5 10:34:33 5 you would not have health insurance?

6 10:34:42 6 A. Yes, I do believe from -- again, I'm
7 10:34:44 7 trying to recall that, but, yes, I do believe that
8 10:34:47 8 was a part -- because that's when they stepped out
9 10:34:49 9 of the room, I think that was a part of the
10 10:34:51 10 discussion when they stepped out, so, yes.

11 10:34:53 11 Q. And would you further agree with me
12 10:34:55 12 that as a result of your request that you be
13 10:34:59 13 allowed to continue with health benefits, Mr. Short
14 10:35:02 14 actually modified his recommendation of suspension
15 10:35:07 15 without pay to allow you and your family to
16 10:35:09 16 continue with health benefits through the district?

17 10:35:15 17 A. I remember we received those benefits,
18 10:35:19 18 the -- we received healthcare, yes. I don't recall
19 10:35:23 19 the discussion, what all took place there.

20 10:35:27 20 Q. Do you have any reason to believe that
21 10:35:29 21 Mr. Short made that decision based on anything
22 10:35:33 22 other than your requesting that you be allowed to
23 10:35:36 23 continue with your health insurance?

24 10:35:45 24 A. I believe the discussion was between
25 10:35:47 25 Mr. Short and Mr. Millstone when they stepped out,

1 10:35:54 1 and again, I wasn't a part of that discussion, so I
2 10:35:57 2 don't know what took place in that discussion, so,
3 10:35:59 3 -- but --

4 10:36:01 4 Q. I don't mean to --

5 10:36:03 5 A. But when he came in, he granted, if I
6 10:36:05 6 recall correctly, I think that's when he granted
7 10:36:08 7 that, and it was -- I do believe the request was
8 10:36:12 8 from my wife, not me.

9 10:36:13 9 Q. Okay. So your wife was with you at
10 10:36:17 10 that meeting, correct?

11 10:36:18 11 A. That would be correct, yes.

12 10:36:20 12 Q. And so you would agree with me, then,
13 10:36:23 13 that Mr. Short changed his recommendation from
14 10:36:31 14 suspending you without pay and benefits to
15 10:36:34 15 suspending you without pay with benefits; would
16 10:36:37 16 that be correct?

17 10:36:40 17 A. Can I look at the written here again?
18 10:36:43 18 Does it say, with benefits here? I'm not sure if
19 10:36:45 19 it's in here.

20 10:36:48 20 Q. Let me back up.

21 10:36:49 21 A. Yeah, please do.

22 10:36:50 22 Q. When you went into that meeting, you
23 10:36:52 23 understood that the suspension would mean you would
24 10:36:55 24 not have health insurance anymore, correct?

25 10:36:58 25 A. My wife, that's how she took it, yes,

1 10:37:01 1 yes. And, because, again, she was the one that
2 10:37:04 2 spoke up on that.

3 10:37:06 3 Q. And it was important enough to you and
4 10:37:07 4 your wife that your wife spoke up and asked that
5 10:37:09 5 you be allowed to continue health benefits,
6 10:37:12 6 correct?

7 10:37:12 7 A. That is correct, yes.

8 10:37:13 8 Q. And, in fact, as a result of those
9 10:37:15 9 discussions, the suspension allowed you to continue
10 10:37:20 10 health benefits, correct?

11 10:37:21 11 A. Yes.

12 10:37:21 12 Q. Now, I notice at the bottom of this
13 10:37:24 13 page, it says, "A copy of the revised resolution is
14 10:37:27 14 enclosed for your convenience." Do you see that?

15 10:37:29 15 A. Yes, I do.

16 10:37:29 16 Q. And turning to the next page, the
17 10:37:32 17 amended resolution, I think we can agree that the
18 10:37:34 18 only change in this amended resolution from the
19 10:37:37 19 first resolution is changing the academic -- excuse
20 10:37:44 20 me, strike that.

21 10:37:46 21 I think you would agree with me
22 10:37:47 22 that the only change in the amended resolution from
23 10:37:54 23 the original resolution is changing the words,
24 10:37:58 24 "American Content Standards," to "Academic Content
25 10:38:04 25 Standards"; is that correct?

1 10:38:27 1 A. Yes, that, at that time, I thought it
2 10:38:30 2 was very unusual that the Board didn't know their
3 10:38:37 3 own school policies and know that, the school well
4 10:38:42 4 enough to -- used American Content Standards,
5 10:38:45 5 that's a basic thing, it's Academic Content
6 10:38:49 6 Standards, so, yes, I recognized it right away, and
7 10:38:52 7 I was like, I've never heard about American Content
8 10:38:55 8 Standards.

9 10:38:56 9 Q. So, you, you'd agree with me?

10 10:38:58 10 A. Yes, I do agree, yes. To my knowledge,
11 10:39:01 11 that's the only change that there was.

12 10:39:02 12 Q. Thank you.

13 10:39:03 13 A. In the resolution. Excuse me.

14 10:39:06 14 Q. Now, going back to Defendant's Exhibit
15 10:39:15 15 1, the hearing that you requested, was that hearing
16 10:39:28 16 held before Referee R. Lee Shepherd?

17 10:39:35 17 A. Yes, it was.

18 10:39:35 18 Q. And was that held for numerous days
19 10:39:38 19 from October 2nd, 2008, until June 22nd, of 2010?

20 10:39:41 20 A. I do believe that's correct, yes.

21 10:39:45 21 Q. And as we sit here today, is it fair to
22 10:39:47 22 say that you and the Board of Education are both
23 10:39:50 23 awaiting a decision from Referee R. Lee Shepherd?

24 10:39:54 24 A. That's correct, yes.

25 10:39:55 25 Q. Are you doing okay, or do you need to

1 10:39:58 1 take a break?

2 10:39:59 2 A. No, I'm good.

3 10:40:37 3 (WHEREUPON Defendant's Exhibit 4

4 10:40:39 4 was marked for identification.)

5 10:40:39 5 BY MS. MOORE:

6 10:41:02 6 Q. Mr. Freshwater, I'll represent to you
7 10:41:04 7 that what I've handed you is a copy of the Court's
8 10:41:09 8 order on August 27th, 2010, which is 10 pages long.

9 10:41:17 9 And the clarification on that order dated August
10 10:41:23 10 30th, 2010. My question is: Have you ever seen
11 10:41:28 11 this document before?

12 10:41:35 12 A. I've looked at a lot of documents, but
13 10:41:37 13 I believe at one point I did read this, yes.

14 10:41:43 14 Q. Directing you to Page 7 of that Opinion
15 10:41:49 15 and Order, since you read through this decision, I
16 10:42:00 16 am assuming that you were aware that the Court
17 10:42:03 17 ordered you to, quote, "Make individualized
18 10:42:09 18 response to each discovery request," end quote,
19 10:42:13 19 that was propounded upon you by my clients,
20 10:42:17 20 Defendant Board of Education, Steve Short, Bill
21 10:42:18 21 White, Jody Goetzman, and Ian Watson; is that a
22 10:42:22 22 correct assumption?

23 10:42:25 23 A. I didn't pick up where you read there,
24 10:42:27 24 I apologize. I was looking up above, trying to
25 10:42:30 25 find where you were at. Can you repeat that

1 10:42:33 1 question?

2 2 (WHEREUPON, the court reporter

3 10:43:08 3 read back the requested portion of the record.)

4 10:43:08 4 THE WITNESS: Yeah, I mean the

5 10:43:12 5 plain language says, here, "Propounded to them by

6 10:43:15 6 the moving defendants within seven days of the date

7 10:43:17 7 of the Opinion and Order," yes.

8 10:43:20 8 BY MS. MOORE:

9 10:43:21 9 Q. What did you understand the term,

10 10:43:23 10 "individualized response to each discovery request"

11 10:43:26 11 to mean?

12 10:43:34 12 A. Just what the plain language says

13 10:43:36 13 there.

14 10:43:37 14 Q. Well, what does that mean to you?

15 10:43:42 15 A. Individualized responses to each

16 10:43:44 16 discovery, each individual that was named in the,

17 10:43:51 17 in the suit, or the claim.

18 10:43:58 18 Q. Okay. Did you understand that that

19 10:43:59 19 meant you needed to provide an individual response

20 10:44:02 20 to each of the questions that were in the discovery

21 10:44:06 21 requests that were propounded on you by my clients?

22 10:44:15 22 A. Could you repeat that?

23 23 (WHEREUPON, the court reporter

24 24 read back the requested portion of the record.)

25 10:44:35 25 THE WITNESS: Yes, just in plain

1 10:44:36 1 language, yes.

2 10:44:36 2 BY MS. MOORE:

3 10:44:36 3 Q. Were you also aware in the last line
4 10:44:39 4 there that you had an obligation to identify in a,
5 10:44:45 5 quote, "privilege log," end quote, any documents
6 10:44:48 6 you would be withholding on the basis of privilege?

7 10:44:59 7 A. The plaintiffs are reminded that, if
8 10:45:00 8 they withhold any evidence on the basis of
9 10:45:02 9 privilege, they must identify these documents in a
10 10:45:05 10 privilege log, yes.

11 10:45:07 11 Q. Mr. Freshwater, have you known that
12 10:45:17 12 since June 13th, 2008, you've had an obligation to
13 10:45:21 13 preserve any and all documents, files, and
14 10:45:25 14 information, whether in paper, or electronic
15 10:45:29 15 format, inclusive of all medium, data, regarding
16 10:45:33 16 your employment at the Mount Vernon City School
17 10:45:36 17 District Board of Education, and the reasons
18 10:45:38 18 underlying the termination proceedings?

19 10:45:46 19 A. Is that a document I received?

20 10:45:50 20 MS. MOORE: Can you repeat the
21 10:45:51 21 question, please?

22 22 (WHEREUPON, the court reporter
23 10:46:28 23 read back the requested portion of the record.)

24 10:46:28 24 THE WITNESS: The date was June
25 10:46:31 25 13th, 2008?

1 10:46:33 1 BY MS. MOORE:
2 10:46:33 2 Q. Correct.
3 10:46:34 3 A. Yes, I would say yes to -- yes.
4 10:46:43 4 Q. And have you known that since June
5 10:46:46 5 13th, 2008?
6 10:46:53 6 A. Yes, I complied with that, yes.
7 10:46:54 7 Q. Your wife testified earlier this week
8 10:46:59 8 about the computers at your home. Can you tell us
9 10:47:02 9 what computer you currently have?
10 10:47:04 10 A. I've got a, I've got one computer.
11 10:47:21 11 It's a laptop.
12 10:47:23 12 Q. What kind?
13 10:47:24 13 A. I was going to look today to see what
14 10:47:30 14 it was, and I didn't, so I cannot answer that.
15 10:47:32 15 Q. Where did you purchase it?
16 10:47:35 16 A. That would have been, that would have
17 10:47:42 17 been, that would have been Best Buy. I was hoping
18 10:47:48 18 to get a Dell, but I didn't have the school backing
19 10:47:58 19 to get a cheaper Dell.
20 10:48:00 20 Q. Which Best Buy?
21 10:48:06 21 A. From my recall, I do believe Polaris.
22 10:48:10 22 Q. Cash or credit card?
23 10:48:12 23 MR. HOLMAN: I'm sorry, would you
24 10:48:13 24 mind asking him to speak up for me?
25 10:48:15 25 THE WITNESS: Oh, okay.

1 10:48:16 1 MR. HOLMAN: Thanks.

2 10:48:18 2 THE WITNESS: I'm sorry.

3 10:48:18 3 BY MS. MOORE:

4 10:48:19 4 Q. Cash or credit card?

5 10:48:20 5 A. That would be cash.

6 10:48:22 6 Q. And when did you buy this laptop at

7 10:48:28 7 Best Buy?

8 10:48:29 8 A. Six -- six- to- 10 months ago.

9 10:48:50 9 MR. ROSS: You're going to have to

10 10:48:51 10 speak up.

11 10:48:52 11 THE WITNESS: Six- to- 10 months

12 10:49:00 12 ago. I apologize.

13 10:49:00 13 MR. ROSS: Thank you.

14 10:49:00 14 BY MS. MOORE:

15 10:49:00 15 Q. Do you have a receipt?

16 10:49:00 16 A. No.

17 10:49:08 17 Q. Where did you get the money to purchase

18 10:49:10 18 the computer?

19 10:49:16 19 A. I mean I hate to be, but, my wallet,

20 10:49:21 20 but, it's just money I had in my wallet.

21 10:49:25 21 Q. Okay. Did you withdraw that money from

22 10:49:28 22 a bank?

23 10:49:30 23 A. No. No, I did not.

24 10:49:32 24 Q. Where did you get the money?

25 10:49:34 25 A. I don't remember.

1 10:49:44 1 Q. Did you receive the money from a third
2 10:49:46 2 party?
3 10:49:49 3 A. Not that I remember.
4 10:49:50 4 Q. Is there anything that would help you
5 10:49:55 5 refresh your recollection in terms of where you
6 10:49:57 6 received that money?
7 10:50:07 7 A. No.
8 10:50:09 8 Q. Did you start using the laptop
9 10:50:11 9 immediately?
10 10:50:15 10 A. Within a few days.
11 10:50:20 11 Q. Did you register the laptop?
12 10:50:27 12 A. No.
13 10:50:28 13 Q. When you started using it in a few
14 10:50:32 14 days, was it used only in your home or other
15 10:50:36 15 places?
16 10:50:37 16 A. Home.
17 10:50:38 17 Q. Is there anything that would help you
18 10:50:46 18 be able to refresh your memory in terms of the date
19 10:50:51 19 that you started using that computer?
20 10:51:00 20 A. No. Like I say, sometimes I'm out
21 10:51:12 21 mowing or picking apples or whatever, things pop in
22 10:51:16 22 my head when I'm not in a -- no.
23 10:51:24 23 Q. Why did you buy the new computer?
24 10:51:26 24 A. The other one couldn't get turned on;
25 10:51:30 25 it wasn't working.

1 10:51:31 1 Q. Okay. When did that occur that the
2 10:51:35 2 other one didn't turn on and wasn't working?
3 10:51:38 3 A. About the same time period when I
4 10:51:43 4 bought the new one.
5 10:51:52 5 Q. How did you come to learn that the
6 10:51:54 6 computer would not turn on and wasn't working?
7 10:52:00 7 A. When I tried to turn it on.
8 10:52:02 8 Q. Okay. And when you saw that it didn't
9 10:52:05 9 turn on, what did you do?
10 10:52:07 10 A. Tried to turn it on a few times, I
11 10:52:15 11 mean, it's not working and I went and bought a new
12 10:52:19 12 one.
13 10:52:19 13 Q. Did you take the computer to a repair
14 10:52:21 14 shop to see what was wrong with it?
15 10:52:22 15 A. No, not with an old computer, no.
16 10:52:25 16 Q. What did you do with that old computer?
17 10:52:31 17 A. It got thrown away.
18 10:52:39 18 Q. What do you mean by the term "Thrown
19 10:52:42 19 away"?
20 10:52:44 20 A. It would be different than pitch, okay.
21 10:52:48 21 It was thrown away.
22 10:52:50 22 Q. When you say you threw it away, where
23 10:52:52 23 did you put it?
24 10:52:53 24 A. Trash.
25 10:53:06 25 Q. When you say trash, what does that

1 10:53:09 1 mean?

2 10:53:10 2 A. That means that trash ended up at the
3 10:53:14 3 end of my lot, and it went to the refuse, to the
4 10:53:19 4 garbage man.

5 10:53:21 5 Q. Okay. Did you personally put the
6 10:53:23 6 computer in a trash can or a trash bag, as best you
7 10:53:28 7 recall?

8 10:53:31 8 A. I do not remember.

9 10:53:32 9 Q. Are you certain that you put it in some
10 10:53:36 10 sort of receptacle that you placed at the end of
11 10:53:39 11 your driveway for the trash people to pick up?

12 10:53:44 12 A. From what I remember, yes.

13 10:53:47 13 Q. And are you certain that, in fact, the
14 10:53:49 14 trash company came and picked up the receptacle
15 10:53:53 15 holding your home computer and took it away?

16 10:53:57 16 A. I am not out there when he's out there.
17 10:53:59 17 But I took empty containers back to the house.

18 10:54:04 18 Q. And based on that, do you have any
19 10:54:07 19 reason to believe that your home computer did not
20 10:54:10 20 go from the trash receptacle into the trash truck?

21 10:54:14 21 A. I have no -- that's what took place.

22 10:54:19 22 Q. Did you take any steps to attempt to
23 10:54:26 23 preserve the information, documents, and
24 10:54:30 24 electronically stored data that was contained on
25 10:54:34 25 that old computer before you placed it at the end

1 10:54:36 1 of your driveway to be thrown out?

2 10:54:39 2 A. Can you repeat that again?

3 3 (WHEREUPON, the court reporter

4 4 read back the requested portion of the record.)

5 10:55:02 5 THE WITNESS: I didn't make any

6 10:55:02 6 attempt, no, it wasn't working.

7 10:55:05 7 BY MS. MOORE:

8 10:55:06 8 Q. Who did you tell your computer had

9 10:55:08 9 died?

10 10:55:11 10 A. Wife and kids.

11 10:55:13 11 Q. Anyone else?

12 10:55:14 12 A. I don't remember anyone else.

13 10:55:17 13 Q. Did you ever tell your attorney?

14 10:55:19 14 A. I'm sure he became aware of it.

15 10:55:21 15 Q. At the time, or later?

16 10:55:31 16 A. I do not recall.

17 10:55:33 17 Q. Did you transfer any of the information

18 10:55:38 18 that was on your old computer onto your new

19 10:55:43 19 computer before you threw the old computer out?

20 10:55:46 20 A. No, I couldn't turn it on. Much like

21 10:55:49 21 my, my other computer, my, the one before that one.

22 10:55:55 22 Q. Did you take any steps to remove the

23 10:55:57 23 hard drive from your old computer and preserve it?

24 10:56:02 24 A. No.

25 10:56:11 25 Q. Are you okay?

1 10:56:11 1 A. Yes, yes.

2 10:56:13 2 Q. Okay.

3 10:56:42 3 (WHEREUPON, Defendant's Exhibit 5

4 10:56:44 4 was marked for identification.)

5 10:56:45 5 BY MS. MOORE:

6 10:57:02 6 Q. I've handed you a pretty thick

7 10:57:04 7 document.

8 10:57:04 8 A. Yes, you did.

9 10:57:06 9 Q. And where are we at, Defendant's

10 10:57:12 10 Exhibit 5. I will represent to you that I

11 10:57:17 11 attempted to combine all of the responses that you

12 10:57:28 12 have given to Defendant Mount Vernon City School

13 10:57:30 13 District Board of Education's first request for

14 10:57:31 14 production of documents propounded to you, without,

15 10:57:36 15 of course, attaching the CD's and all the paper

16 10:57:41 16 documents. If you turn to the last five pages of

17 10:57:45 17 that document, you'll see a letter dated September

18 10:57:53 18 25th, 2010, and I notice that you are not cc'd on

19 10:57:58 19 that letter, so my question is: Have you ever seen

20 10:58:01 20 that letter before?

21 10:58:17 21 A. Yes, I do believe I've reviewed this,

22 10:58:20 22 yes.

23 10:58:20 23 Q. And September 25th, 2010, was a Friday;

24 10:58:25 24 would you have reviewed this letter prior to

25 10:58:27 25 September 25th, 2010?

1 10:58:46 1 A. I'm not sure at this point.

2 10:58:48 2 Q. Do you have any reason to believe that

3 10:58:49 3 you would not have reviewed this letter prior to

4 10:58:51 4 September 25, 2010?

5 10:58:53 5 A. I don't have any reason why not.

6 10:58:56 6 Q. And, in fact, on the last page of that

7 10:58:59 7 letter is a copy of a check that was enclosed with

8 10:59:02 8 the letter to me; do you see that?

9 10:59:05 9 A. Yes.

10 10:59:06 10 Q. And that check is dated September 25th,

11 10:59:10 11 2010; is it fair to say that's the date that you

12 10:59:15 12 provided that check to your attorney?

13 10:59:16 13 A. That is correct.

14 10:59:17 14 Q. Now, on the first page of that letter,

15 10:59:27 15 under 1-A, it says, "Plaintiffs and their counsel

16 10:59:44 16 do not have any electronic copies of Employee

17 10:59:48 17 Exhibits 8, 22, 23, 24, 25, 45, 51, 52, 68, 72, 83,

18 11:00:00 18 100, 101, 108, 126, 128, 141, 143, 149 to 159, 175,

19 11:00:12 19 181, 192, 229, except as previously provided and

20 11:00:21 20 contained in the, quote, "Response," end quote,

21 11:00:25 21 contained upon the CD disk labeled, quote,

22 11:00:31 22 "464-Supplemental Responses by Freshwater," end

23 11:00:34 23 quote.

24 11:00:34 24 Is that a true and accurate

25 11:00:37 25 statement?

1 11:00:56 1 A. What you just read was right off the
2 11:01:00 2 paper, so, yes.
3 11:01:01 3 Q. And you would agree with the
4 11:01:02 4 representation that is contained within what I just
5 11:01:05 5 read to you, correct?
6 11:01:08 6 A. Yeah, without knowing all those
7 11:01:09 7 Exhibits.
8 11:01:12 8 Q. Do you have any reason to believe that
9 11:01:13 9 that representation is incorrect?
10 11:01:18 10 A. I have no reason.
11 11:01:19 11 Q. Now, I want you to go to the third page
12 11:01:21 12 of this entire document.
13 11:01:26 13 A. (Witness complies.)
14 11:01:27 14 Q. At the bottom of the page, Number 6?
15 11:01:39 15 MR. ROSS: What page are you on
16 11:01:40 16 again, Sarah?
17 11:01:41 17 MS. MOORE: It is the third page.
18 11:01:44 18 BY MS. MOORE:
19 11:01:45 19 Q. At the bottom of the Page, Number 6, it
20 11:01:47 20 reads, "Document or documents means any medium in
21 11:01:51 21 the custody, control or possession of, or available
22 11:01:54 22 or accessible to Plaintiff and/or Plaintiff's
23 11:01:58 23 counsel, upon which information is recorded or from
24 11:02:01 24 which information can be recorded, including, but
25 11:02:05 25 not limited to, any written, printed, typed,

1 11:02:08 1 photostatic, electronically stored information,
2 11:02:13 2 photographed, recorded, or otherwise produced,
3 11:02:17 3 reproduced, or stored communication or
4 11:02:20 4 representation." Do you see that?

5 11:02:24 5 A. Yes, I do.

6 11:02:29 6 Q. If you could turn another two pages?

7 11:02:45 7 One more page.

8 11:02:46 8 A. (Witness complies.)

9 11:02:49 9 Q. You'll see a document entitled,
10 11:02:51 10 "Plaintiff John D. Freshwater's First Response to
11 11:02:55 11 Defendant Mount Vernon City School District Board
12 11:02:58 12 of Education's First Set of Request For Production
13 11:03:00 13 of Documents." Do you see that?

14 11:03:03 14 A. Yes, I do.

15 11:03:04 15 Q. Going to Page 17 of that document, the
16 11:03:22 16 answer to Number 59 of that document reads, in
17 11:03:24 17 part, quote, "Plaintiff never had any
18 11:03:28 18 electronically stored information for the documents
19 11:03:32 19 specified below."

20 11:03:34 20 Do you see that?

21 11:03:46 21 A. Yes.

22 11:03:46 22 Q. Is that a true and accurate statement?

23 11:03:49 23 A. Yes.

24 11:03:50 24 Q. Going to the next question, which is
25 11:04:02 25 Number 60, appearing on Page 20?

1 11:04:15 1 A. Miss Moore, when it's convenient, I
2 11:04:18 2 could use a bathroom break, when it's convenient
3 11:04:22 3 for you.

4 11:04:22 4 Q. Are you on Page 20?

5 11:04:27 5 A. Yes, I am.

6 11:04:28 6 Q. Would you agree with me that your
7 11:04:31 7 response to request for production Number 60
8 11:04:35 8 incorporates your answer to response Number 59?

9 11:04:49 9 A. Could you repeat that again?

10 11:04:52 10 MS. MOORE: Could you read that
11 11:04:53 11 back, please?

12 11:04:53 12 (WHEREUPON, the court reporter
13 11:05:11 13 read back the requested portion of the record.)

14 11:05:11 14 THE WITNESS: Yes.

15 11:05:14 15 MS. MOORE: We can take that
16 11:05:16 16 break. Okay.

17 11:05:18 17 * * * * *

18 11:05:18 18 (WHEREUPON, a recess was had.)

19 19 * * * * *

20 20 BY MS. MOORE:

21 11:17:58 21 Q. Directing you to Page 21 of Defendant's
22 11:18:03 22 Exhibit 5, item 65 asks for any and all documents
23 11:18:11 23 containing an itemization of hours spent by your
24 11:18:15 24 attorney in instituting the Complaint and pursuing
25 11:18:21 25 this lawsuit on your behalf.

1 11:18:21 1 Is it your contention that you
2 11:18:21 2 have provided an itemization of hours spent by your
3 11:18:25 3 attorney in instituting the Complaint and pursuing
4 11:18:27 4 this lawsuit on your behalf?

5 11:18:31 5 A. Yes.

6 11:18:31 6 Q. As of today, it's my understanding you
7 11:18:39 7 are claiming to have provided me all documents
8 11:18:41 8 responsive to Defendant Board of Education's first
9 11:18:44 9 request for production of documents; is that
10 11:18:49 10 correct?

11 11:18:49 11 A. Yes, to the best of my knowledge, yes.

12 11:18:52 12 Q. And I also understand that, as of
13 11:18:54 13 today, you have provided any and all privilege logs
14 11:18:57 14 of documents you are withholding based on
15 11:18:59 15 privilege; is that correct?

16 11:19:02 16 A. Yes.

17 11:19:02 17 Q. Thank you.

18 11:19:29 18 (WHEREUPON Defendant's Exhibit 6
19 11:19:30 19 was marked for identification.)

20 11:19:31 20 BY MS. MOORE:

21 11:19:46 21 Q. Handing you what's been marked as
22 11:19:47 22 Defendant's Exhibit 6, I'll represent to you that
23 11:19:50 23 I've attempted to take all of the responses you've
24 11:19:53 24 provided to Defendant Jody Goetzman's first set of
25 11:19:56 25 interrogatories propounded to you into one

1 11:20:00 1 document. I'll represent to you further -- strike
2 11:20:07 2 that.

3 11:20:07 3 If you go to the document partway
4 11:20:11 4 through that packet that is labeled, "Plaintiff
5 11:20:15 5 John D. Freshwater's Third Response to
6 11:20:19 6 Interrogatories From Defendant Goetzman;" do you
7 11:20:23 7 see that document?

8 11:20:29 8 A. You said third response? Yes.

9 11:20:38 9 Q. I'll represent to you that you did not
10 11:20:42 10 provide answers in this document to Interrogatories
11 11:20:44 11 Number 1, Number 14, and Number 15. My question to
12 11:20:48 12 you is: Who participated in or supplied
13 11:20:51 13 information to respond to these interrogatories?

14 11:21:02 14 A. That would be me and my counsel.

15 11:21:04 15 Q. Okay. Directing you to that September
16 11:21:06 16 25th, 2010, letter, which was the last five pages
17 11:21:10 17 of this document; on Page 3 of that letter it says
18 11:21:20 18 under 7-B, "Plaintiff has provided the most
19 11:21:25 19 complete response he can to Interrogatory Number 2
20 11:21:29 20 through Interrogatory Number 13."

21 11:21:32 21 Is that a true and accurate
22 11:21:34 22 statement?

23 11:21:44 23 A. I can -- yes.

24 11:21:53 24 (WHEREUPON, Defendant's Exhibit 7
25 11:21:56 25 was marked for identification.)

1 11:21:57 1 BY MS. MOORE:

2 11:22:17 2 Q. I'm handing you a packet that's been
3 11:22:19 3 marked as Defendant's Exhibit 7 that I will
4 11:22:23 4 represent to you contains all of the responses
5 11:22:26 5 you've provided to Defendant Steven Short's first
6 11:22:30 6 set of interrogatories propounded to you. If you
7 11:22:35 7 turn to the document within that packet, which is
8 11:22:40 8 partway through, labeled, "Plaintiff John D.
9 11:22:47 9 Freshwater's Third Response to Interrogatories From
10 11:22:52 10 Defendant Short," I'll represent to you that you
11 11:22:58 11 did not provide answers to Interrogatories Number
12 11:23:00 12 1, Number 17, and Number 18 in that third response.

13 11:23:03 13 My question is: Who participated
14 11:23:06 14 in or supplied information to respond to these
15 11:23:10 15 interrogatories?

16 11:23:15 16 A. That would be me and my counsel.

17 11:23:20 17 Q. Directing you to Page 3 of the
18 11:23:24 18 September 25th, 2010, letter at the end of that
19 11:23:27 19 document, under 6-B -- excuse me -- 6-A and 6-B, it
20 11:23:43 20 reads, "Plaintiff has provided the most complete
21 11:23:46 21 response he can to Interrogatory Number 2 through
22 11:23:49 22 Interrogatory Number 16. Plaintiff has provided
23 11:23:53 23 the most complete response he can to Interrogatory
24 11:23:56 24 Number 19 to Interrogatory Number 20."

25 11:23:59 25 Is that true and accurate?

1 11:24:04 1 A. Yes.

2 11:24:13 2 (WHEREUPON, Defendant's Exhibit 8

3 11:24:18 3 was marked for identification.)

4 11:24:19 4 BY MS. MOORE:

5 11:24:37 5 Q. You've been handed what's been marked

6 11:24:38 6 for identification purposes as Defendant's Exhibit

7 11:24:41 7 8. I'll represent to you that this document is a

8 11:24:45 8 packet which contains all of your responses to

9 11:24:48 9 Defendant Ian Watson's first set of interrogatories

10 11:24:54 10 propounded to you.

11 11:24:55 11 If you turn to the document that

12 11:24:57 12 is partway through this packet, which is labeled,

13 11:25:01 13 "Plaintiff John D. Freshwater's Third Response to

14 11:25:04 14 Interrogatories From Defendant Watson," I'll

15 11:25:09 15 represent to you that you did not provide answers

16 11:25:12 16 to Interrogatories Number 1, Number 15, and Number

17 11:25:15 17 16.

18 11:25:16 18 My question is: Who participated

19 11:25:17 19 in or supplied information to respond to these

20 11:25:20 20 interrogatories?

21 11:25:25 21 A. That would be myself, me and my

22 11:25:27 22 counsel.

23 11:25:28 23 Q. Directing you to Page 2 of the

24 11:25:30 24 September 25th, 2010, letter, that is attached at

25 11:25:35 25 the end of that packet, under 4-A, it reads,

1 11:25:43 1 "Plaintiff has provided the most complete response
2 11:25:45 2 he can to Interrogatory Number 2 to Interrogatory
3 11:25:50 3 Number 14;" is that true and accurate?

4 11:25:53 4 A. Yes.

5 11:26:02 5 (WHEREUPON, Defendant's Exhibit 9
6 11:26:04 6 was marked for identification.)

7 11:26:05 7 BY MS. MOORE:

8 11:26:22 8 Q. You've been handed what's been marked
9 11:26:24 9 as Defendant's Exhibit 9, which I will represent to
10 11:26:27 10 you is a packet containing all of your responses to
11 11:26:31 11 Defendant William White's first set of
12 11:26:33 12 interrogatories propounded to you. If you would
13 11:26:41 13 turn partway through that packet, to the document
14 11:26:45 14 labeled, "Plaintiff John D. Freshwater's Third
15 11:26:48 15 Response to Interrogatories From Defendant White,"
16 11:26:52 16 I'll represent to you that you did not provide
17 11:26:54 17 answers to Interrogatories Number 1, Number 17, and
18 11:26:57 18 Number 18.

19 11:26:59 19 My question is: Who participated
20 11:27:00 20 in or supplied information to respond to these
21 11:27:03 21 interrogatories?

22 11:27:08 22 A. Me and my counsel.

23 11:27:10 23 Q. Directing you to Page 3 of the
24 11:27:13 24 September 25th, 2010, letter that is attached at
25 11:27:17 25 the end of that packet -- I'm sorry, Page 2. Under

1 11:27:32 1 5-A, it reads, "Plaintiff has provided the most
2 11:27:35 2 complete response he can to Interrogatory Number 2
3 11:27:38 3 to Interrogatory Number 16." Is that true and
4 11:27:42 4 accurate?

5 11:27:51 5 A. Did you say Number 3, yes. Yes.

6 11:27:55 6 MS. MOORE: Could you repeat the
7 11:27:56 7 question?

8 11:27:57 8 THE WITNESS: I thought maybe you
9 11:27:58 9 said the wrong number there.

10 11:27:59 10 MS. MOORE: Yes, let's make sure,
11 11:28:01 11 could you read back the question?

12 12 (WHEREUPON, the court reporter
13 13 read back the requested portion of the record.)

14 11:28:33 14 THE WITNESS: Yes.

15 11:28:52 15 (WHEREUPON, Defendant's Exhibit 10
16 11:29:05 16 was marked for identification.)

17 17 BY MS. MOORE:

18 11:29:16 18 Q. You've been handed a packet marked
19 11:29:18 19 Defendant's Exhibit 10, which I'll represent to you
20 11:29:21 20 contains all of your responses to Defendant Mount
21 11:29:26 21 Vernon City School District Board of Education's
22 11:29:28 22 first set of interrogatory propounded to Plaintiff,
23 11:29:31 23 John Freshwater.

24 11:29:33 24 If you turn within that packet to
25 11:29:39 25 the document labeled, "Plaintiff John D.

1 11:29:42 1 Freshwater's Third Response to Interrogatories From
2 11:29:46 2 Defendant Board of Education," I'll represent to
3 11:29:51 3 you that you did not provide any response for
4 11:29:53 4 interrogatories 1, 17, 18, 21, 22, or 24.

5 11:29:59 5 My question is: Who participated
6 11:30:01 6 in or supplied information to respond to these
7 11:30:04 7 interrogatories?

8 11:30:07 8 A. Me and my counsel.

9 11:30:08 9 Q. Directing you to Page 2 of the
10 11:30:19 10 September 25th, 2010, letter that is attached at
11 11:30:23 11 the end of that packet, under 3-A, it reads,
12 11:30:34 12 "Plaintiff has provided the most complete response
13 11:30:36 13 he can to Interrogatory Number 2 to Interrogatory
14 11:30:41 14 Number 16." Is that true and accurate?

15 11:30:44 15 A. Yes.

16 11:30:44 16 Q. And then under 3-C, it reads,
17 11:30:48 17 "Plaintiffs have provided the most complete answer
18 11:30:50 18 they have to Interrogatory Number 23." Is that
19 11:30:53 19 true and accurate?

20 11:30:54 20 A. Yes.

21 11:30:55 21 Q. Also, are your answers to Number 19 and
22 11:31:04 22 20, within the interrogatory response, the most
23 11:31:09 23 complete response you could give? Let me back up.

24 11:31:20 24 The September 25th, 2010, letter
25 11:31:23 25 doesn't say anything about Interrogatories Number

1 11:31:26 1 19 and 20 being your most complete answer. I am
2 11:31:31 2 assuming that that is just an oversight and you
3 11:31:35 3 intended to include your responses to
4 11:31:37 4 Interrogatories Number 19 and 20 as containing the
5 11:31:41 5 most complete answer you could provide. Is that a
6 11:31:43 6 correct assumption?

7 11:31:53 7 A. I really don't like assuming anything.

8 11:31:57 8 Q. That's fair. Let's go back to the
9 11:31:59 9 document that is labeled, Plaintiff John D.
10 11:32:06 10 Freshwater's Third Response to Interrogatories From
11 11:32:08 11 Defendant Board of Education. I'd like you to go
12 11:32:13 12 to Interrogatory Number 19, which is on Page 6. Is
13 11:32:27 13 your answer to Interrogatory Number 19 the most
14 11:32:30 14 accurate and complete answer that you could give?

15 11:32:37 15 A. Yes.

16 11:32:37 16 Q. With respect to Interrogatory Number
17 11:32:41 17 20, you provide an answer. My question is: Is
18 11:32:45 18 your answer to Interrogatory Number 20 the most
19 11:32:48 19 complete answer, true and accurate?

20 11:32:52 20 A. Yes.

21 11:33:13 21 (WHEREUPON, Defendant's Exhibit 11
22 11:33:16 22 was marked for identification.)

23 11:33:18 23 BY MS. MOORE:

24 11:33:56 24 Q. You've been handed what's been marked
25 11:33:58 25 as Defendant's Exhibit 11. Have you ever seen that

1 11:34:02 1 document before?

2 11:35:05 2 A. I believe I have.

3 11:35:23 3 (WHEREUPON, Defendant's Exhibit 12
4 11:35:30 4 was marked for identification.)

5 11:35:31 5 BY MS. MOORE:

6 11:35:50 6 Q. You've been handed what's been marked
7 11:35:51 7 as Defendant's Exhibit 12; have you ever seen that
8 11:35:54 8 document before?

9 11:36:18 9 A. Yes, I believe I have.

10 11:36:20 10 Q. Would you have seen this document
11 11:36:22 11 before it was sent on September 3rd, 2010, or after
12 11:36:26 12 it was sent by Mr. Hamilton?

13 11:36:31 13 A. I do not remember.

14 11:36:33 14 Q. On the first page of that document, do
15 11:36:37 15 you see there's an indentation that starts with
16 11:36:43 16 677?

17 11:36:43 17 A. Yes.

18 11:36:44 18 Q. Above that, it's prefaced by, "In
19 11:36:48 19 response to Defendant BOE's Request For Production
20 11:36:50 20 of Documents to John Freshwater Number 58, pursuant
21 11:36:54 21 to Federal Rule of Civil Procedure 26(b)(5), the
22 11:36:58 22 following described documents are claimed as
23 11:37:01 23 privileged or subject to protection as trial
24 11:37:04 24 preparation material," and then it's indented and
25 11:37:08 25 says, "677 E-mails between Plaintiffs and legal

1 11:37:11 1 counsel dating from the present date to April 20th,
2 11:37:15 2 2008." Do you see that?

3 11:37:22 3 A. Yes, I do.

4 11:37:22 4 Q. Are those the only documents, to your
5 11:37:35 5 knowledge, that you have claimed a privilege to?

6 11:37:37 6 A. Yes.

7 11:37:37 7 Q. Okay. Are there any other documents,
8 11:37:40 8 as you sit here today, that you believe are
9 11:37:42 9 privileged and should not be produced to us?

10 11:37:50 10 A. Privilege -- I'm not, can you repeat
11 11:37:53 11 that one?

12 12 (WHEREUPON, the court reporter
13 13 read back the requested portion of the record.)

14 11:38:08 14 THE WITNESS: No.

15 11:38:12 15 MR. ROSS: Was that a "No," I'm
16 11:38:13 16 sorry?

17 11:38:14 17 THE WITNESS: No. I'm sorry.

18 11:38:16 18 BY MS. MOORE:

19 11:38:16 19 Q. Just so we're not confused, that was
20 11:38:18 20 "No," correct?

21 11:38:18 21 A. Yes.

22 11:38:47 22 Q. I'm going to direct you back to
23 11:38:49 23 Defendant's Exhibit 5, but keep Defendant's Exhibit
24 11:38:52 24 12 in front of you, please.

25 11:38:54 25 A. Okay.

1 11:39:03 1 Q. On Defendant's Exhibit 5, if you please
2 11:39:05 2 go to the second to the last page of that packet,
3 11:39:09 3 which is Page 4 of the September 3rd, 2010, letter.

4 11:39:26 4 Let me restate that.

5 11:39:30 5 Directing your attention to the
6 11:39:32 6 second to last page of Defendant's Exhibit 5, which
7 11:39:36 7 appears to be the last page of the September 25th,
8 11:39:41 8 2010, letter that is misdated at the top September
9 11:39:45 9 3rd, 2010. Are you on that page?

10 11:39:57 10 A. Yes.

11 11:39:59 11 Q. Under L., it says, "See the list of
12 11:40:04 12 privileged E-mails on the attached disk."

13 11:40:07 13 Do you see that?

14 11:40:09 14 A. Yes.

15 11:40:14 15 (WHEREUPON, Defendant's Exhibit 13
16 11:40:19 16 was marked for identification.)

17 11:40:44 17 BY MS. MOORE:

18 11:40:52 18 Q. You've been handed what's been marked
19 11:40:55 19 Defendant's Exhibit 13. I will represent to you
20 11:40:58 20 that this is the printed off copy of the PDF
21 11:41:06 21 document that was on the disk that is referred to
22 11:41:13 22 on the second to last page of the September 25th,
23 11:41:18 23 2010, letter, that is attached to Defendant's
24 11:41:30 24 Exhibit 5. Are you familiar with Defendant's
25 11:41:38 25 Exhibit 13?

1 11:41:42 1 A. I apologize. I did not track you very
2 11:41:45 2 well on that one.

3 11:41:45 3 Q. That's okay. And I probably didn't
4 11:41:47 4 articulate it very well, so let me try it again,
5 11:41:50 5 okay? We just talked about in Defendant's Exhibit
6 11:41:54 6 5, the second to last page of that packet, Page 4
7 11:41:59 7 of the September 25th, 2010, letter, that is
8 11:42:04 8 misdated September 3rd, 2010 at the top of the
9 11:42:07 9 page. Under L., it says, "See the list of
10 11:42:10 10 privileged E-mails on the attached disk."

11 11:42:13 11 I'm going to represent to you that
12 11:42:14 12 Defendant's Exhibit 13 is, in fact, the printed off
13 11:42:19 13 version of the PDF file that was on the attached
14 11:42:22 14 disk that is referenced under L. of Defendant's
15 11:42:25 15 Exhibit 5 on the second to last page.

16 11:42:29 16 Are you following me?

17 11:42:30 17 A. Yes.

18 11:42:30 18 Q. My question to you is: Have you ever
19 11:42:33 19 seen Defendant's Exhibit 13 before?

20 11:42:39 20 A. Yes.

21 11:42:39 21 Q. And what is this document?

22 11:42:43 22 A. This would be L of the September 3rd,
23 11:42:50 23 which is misdated, where, it says, "See the list of
24 11:42:57 24 privileged E-mails on the attached disk."

25 11:43:04 25 Q. Going back to Defendant's Exhibit 12?

1 11:43:09 1 A. Okay.

2 11:43:10 2 Q. Fair to say that Defendant's Exhibit 13
3 11:43:14 3 includes E-mails between plaintiffs and legal
4 11:43:16 4 counsel dating from the present date to April 20th,
5 11:43:20 5 2008?

6 11:43:22 6 A. To the best of my knowledge, yes.

7 11:43:28 7 Q. Okay. There are nine pages to
8 11:43:33 8 Defendant's Exhibit 13. It appears to me that the
9 11:43:41 9 first three pages of this document appear three
10 11:43:45 10 times within this document. Could you look at the
11 11:43:48 11 document and tell me if that is accurate?

12 11:44:00 12 A. Can you repeat that one?

13 13 (WHEREUPON, the court reporter
14 11:44:34 14 read back the requested portion of the record.)

15 11:44:34 15 BY MS. MOORE:

16 11:44:34 16 Q. Let me try to make it easier. Page 1
17 11:44:37 17 of the document, is that the same as Page 4 of the
18 11:44:58 18 document?

19 11:45:04 19 A. Is one?

20 11:45:05 20 Q. Is Page 1 the same as Page 4 of the
21 11:45:10 21 document?

22 11:46:08 22 A. Yes, it appears like it is.

23 11:46:10 23 Q. And does that same page reappear as
24 11:46:12 24 Page 7 of the document?

25 11:46:30 25 A. Could I take the staple off?

1 11:46:32 1 Q. Well, let's do this, why don't you
2 11:46:34 2 number each of the pages in the top right-hand
3 11:46:37 3 corner, and then it will be easier for us to refer
4 11:46:39 4 to them?

5 11:46:40 5 A. (Witness complies.)

6 11:47:17 6 Q. Now, if our numbers are the same, then
7 11:47:21 7 what I have here indicates that Pages 1, 4 and 7
8 11:47:24 8 are exactly the same. And my question will be, is
9 11:47:34 9 that correct?

10 11:48:21 10 A. Yes, they appear to be the same.

11 11:48:24 11 Q. And, in fact, would you also agree with
12 11:48:28 12 me that Pages 2, 5 and 8 appear to be the same
13 11:48:32 13 page?

14 11:49:24 14 A. Yes, it does look like 2, 5 and 8.

15 11:49:30 15 Q. Are the same?

16 11:49:30 16 A. Are the same page, yes.

17 11:49:31 17 Q. Let's just focus on Pages 1, 2, and 3
18 11:49:36 18 of Defendant's Exhibit 13?

19 11:49:58 19 A. Okay.

20 11:50:02 20 Q. On Page 1, I'll represent I count 38
21 11:50:05 21 E-mails; on Page 2, I'll represent to you I count
22 11:50:15 22 78 E-Mails with one apparently cut off on the
23 11:50:15 23 bottom right-hand column; on Page 3, I'll represent
24 11:50:19 24 to you it appears to contain 79 E-mails. The total
25 11:50:28 25 I come to is 196. So my question is: Where are

1 11:50:34 1 the other 481 E-mails that you have not listed in
2 11:50:38 2 your privilege log?

3 11:51:02 3 A. I did the best I could do.

4 11:51:10 4 Q. Do you still have those E-mails?

5 11:51:25 5 A. I didn't delete anything, so --

6 11:51:30 6 Q. Okay, as I understand it, you have one
7 11:51:33 7 E-mail account, jnfreshwater@yahoo.com; is that
8 11:51:38 8 correct?

9 11:51:38 9 A. Yes, that's correct.

10 11:51:39 10 Q. And from December 6th, 2007, to present
11 11:51:42 11 day, have you deleted any E-mails that you sent
12 11:51:44 12 from that account, or received into that account
13 11:51:47 13 other than SPAM E-mails?

14 11:51:51 14 A. Repeat that, those dates again, will
15 11:51:54 15 you please?

16 11:51:54 16 (WHEREUPON, the court reporter
17 17 read back the requested portion of the record.)

18 11:52:11 18 THE WITNESS: No.

19 11:52:11 19 BY MS. MOORE:

20 11:52:14 20 Q. We heard earlier this week that your
21 11:52:17 21 wife, Nancy, has access to that account, as well,
22 11:52:20 22 correct?

23 11:52:20 23 A. Yes, she does.

24 11:52:23 24 Q. Are you personally aware of anyone else
25 11:52:25 25 having the password to that E-mail account?

1 11:52:30 1 A. No.

2 11:52:31 2 Q. Is it fair to say that right now we
3 11:52:36 3 could access that G-mail account and see all of the
4 11:52:40 4 E-mails that were sent to that account or sent by
5 11:52:44 5 that account from December 16th, 2007, to present,
6 11:52:49 6 with the exception of the SPAM E-mails that were
7 11:52:53 7 deleted by you or your wife?

8 11:53:00 8 A. Are you asking whether we could do it
9 11:53:02 9 right now?

10 11:53:03 10 MS. MOORE: Could you read back
11 11:53:04 11 the question?

12 12 (WHEREUPON, the court reporter
13 13 read back the requested portion of the record.)

14 11:53:29 14 THE WITNESS: Yes. Yes.

15 11:53:31 15 MR. HAMILTON: Sarah, if I may,
16 11:53:33 16 you said, G-mail; it's actually Yahoo.

17 11:53:36 17 THE WITNESS: Yeah, that's --

18 11:53:37 18 BY MS. MOORE:

19 11:53:37 19 Q. That's fair.

20 11:53:37 20 A. Because I was going to say --

21 11:53:40 21 MS. MOORE: Thank you for that
22 11:53:40 22 correction.

23 11:53:41 23 MR. HAMILTON: If you would, I'll
24 11:53:42 24 stipulate, this is clearly Defendant's Exhibit.

25 11:53:45 25 MS. MOORE: I'm not asking for a

1 11:53:47 1 stipulation right now, Mr. Hamilton. Let me
2 11:53:50 2 restate the question.
3 3 BY MS. MOORE:
4 11:53:52 4 Q. Is it accurate to say that as you sit
5 11:53:59 5 here right now, you have access to the
6 11:54:03 6 jnfreshwater@yahoo.com account, and would be able
7 11:54:08 7 to access all E-mails sent by that account or sent
8 11:54:12 8 to that account from December 16th, 2007, to
9 11:54:17 9 present, with the exception of the SPAMs that were
10 11:54:20 10 deleted by you, by you or your wife?
11 11:54:25 11 A. Yes.
12 11:54:27 12 Q. Pages 1, 2 and 3 of Defendant's Exhibit
13 11:54:31 13 13, whose E-mail account is that from?
14 11:54:35 14 A. Oh, I'm still back on your last
15 11:54:41 15 question, I apologize. You came out quick. I know
16 11:54:43 16 you're talking about -- can you repeat that,
17 11:54:46 17 please?
18 18 (WHEREUPON, the court reporter
19 11:54:59 19 read back the requested portion of the record.)
20 11:54:59 20 THE WITNESS: That would be my
21 11:55:02 21 E-mail account, my wife and I.
22 11:55:05 22 BY MS. MOORE:
23 11:55:05 23 Q. The jnfreshwater@yahoo.com account?
24 11:55:09 24 A. Yes. Yes.
25 11:55:10 25 Q. On Page 1, what year is that from? If

1 11:55:25 1 you know?

2 11:55:31 2 A. I can make -- I can assume that since
3 11:55:36 3 Sandy McIntosh's name is in there, I could assume
4 11:55:40 4 that's probably 2010.

5 11:55:44 5 Q. And would these be E-mails that were
6 11:55:47 6 sent to you or sent by you?

7 11:56:01 7 A. I would have a difficult time answering
8 11:56:03 8 that one.

9 11:56:04 9 Q. And the privilege log does not provide
10 11:56:08 10 any information as to whether there are attachments
11 11:56:11 11 to any of these E-Mails, does it?

12 11:56:14 12 A. No. On Exhibit 13, it does not show
13 11:56:17 13 that.

14 11:56:18 14 Q. With respect to the second page of that
15 11:56:20 15 document, do you know what year these E-mails are
16 11:56:26 16 from?

17 11:56:29 17 A. Again, I could -- whoops, wait a minute
18 11:56:57 18 -- okay, I can assume that it's again, Mrs.
19 11:57:01 19 McIntosh and her secretary, so I could assume it's
20 11:57:07 20 2010.

21 11:57:10 21 Q. Are these sent by your E-mail account,
22 11:57:13 22 or to your E-mail account?

23 11:57:15 23 A. From looking at this document, I cannot
24 11:57:20 24 tell.

25 11:57:21 25 Q. And you'd agree with me that the E-mail

1 11:57:25 1 privileged log on Page 2 of Defendant's Exhibit 13
2 11:57:28 2 does not indicate whether there are any attachments
3 11:57:30 3 to these E-mails, correct?
4 11:57:32 4 A. Correct.
5 11:57:33 5 Q. On Page 3 of Defendant's Exhibit 13,
6 11:57:37 6 what year are these E-mails from?
7 11:58:08 7 A. They appear to be a little older, just
8 11:58:18 8 because Jason Deschler is on here, but I also see
9 11:58:22 9 the secretary is on there, also, and Steve Findley.
10 11:58:27 10 So I will assume it's 2010, also.
11 11:58:36 11 Q. Okay. And do you know as you sit here
12 11:58:39 12 whether these E-mails were sent by your account or
13 11:58:41 13 to your account?
14 11:58:43 14 A. I can't tell.
15 11:58:45 15 Q. And you would agree with me the E-mails
16 11:58:48 16 listed on Page 3 of Defendant's Exhibit 13 do not
17 11:58:50 17 indicate whether, whether there are attachments to
18 11:58:54 18 these E-mails?
19 11:59:00 19 A. That's correct.
20 11:59:00 20 Q. Now, going back to Page 1 of
21 11:59:00 21 Defendant's Exhibit 13, who is Jerry Bergman?
22 11:59:14 22 A. He is a, I do believe he's a professor,
23 11:59:39 23 a, a professor that, that is -- I don't know a
24 11:59:56 24 whole lot about him.
25 11:59:58 25 Q. Okay. Do you know where he's a

1 12:00:00 1 professor?

2 12:00:01 2 A. If I recall correctly, it was several

3 12:00:10 3 different places, I think. Several different

4 12:00:16 4 colleges.

5 12:00:17 5 Q. Why have you claimed that this E-mail

6 12:00:19 6 with Jerry Bergman is privileged?

7 12:00:22 7 A. He, he has contacted me because of the

8 12:00:34 8 case.

9 12:00:35 9 Q. Is he a lawyer?

10 12:00:37 10 A. To my knowledge, no.

11 12:00:40 11 Q. Okay. Who is Kimberly Jaros?

12 12:00:45 12 A. That would be the secretary to Sandy

13 12:00:52 13 and in -- excuse me, and Findley, Stephen Findley,

14 12:01:03 14 it would be the secretary of the appointed

15 12:01:06 15 attorneys for the insurance company.

16 12:01:09 16 MR. ROSS: Appointed attorneys for

17 12:01:11 17 what, I'm sorry?

18 12:01:13 18 THE WITNESS: For the insurance

19 12:01:14 19 company.

20 12:01:14 20 MR. ROSS: Thank you.

21 12:01:14 21 BY MS. MOORE:

22 12:01:15 22 Q. Who is Thom, T-H-O-M?

23 12:01:19 23 A. A friend.

24 12:01:23 24 Q. What's his last name?

25 12:01:24 25 A. That would be Thom Collier.

1 12:01:26 1 Q. Is he an attorney?

2 12:01:28 2 A. No, he's not.

3 12:01:29 3 Q. Why have you claimed that E-mail with

4 12:01:32 4 Thom is privileged?

5 12:01:36 5 A. I don't remember right now.

6 12:01:52 6 Q. Turning to the second page of

7 12:01:53 7 Defendant's Exhibit 13, in the left-hand column, a

8 12:01:58 8 little bit of the way down, the name is,

9 12:02:04 9 B-E-U-L-A-H, Grindle, G-R-I-N-D-L-E; who is that?

10 12:02:10 10 A. Her name is Beulah Grindle. Friend

11 12:02:21 11 from my church.

12 12:02:22 12 Q. Is she an attorney?

13 12:02:24 13 A. Not to my knowledge.

14 12:02:26 14 Q. Why have you claimed in E-Mail as

15 12:02:28 15 privileged?

16 12:02:29 16 A. I, I do not remember.

17 12:02:39 17 Q. Going to Page 3, of Defendant's Exhibit

18 12:02:45 18 13, left-hand column, top Jane G-E-H-R-T, Gehrt,

19 12:03:01 19 who is that?

20 12:03:02 20 A. I do believe she was -- it's been a

21 12:03:18 21 while. I think she was the secretary to Jason

22 12:03:24 22 Deschler.

23 12:03:26 23 Q. And Stephen Findley you mentioned was

24 12:03:28 24 one of the attorneys that was appointed by Ohio

25 12:03:31 25 Casualty?

1 12:03:31 1 A. Yes.

2 12:03:31 2 Q. To represent --

3 12:03:32 3 A. Yes, that's correct.

4 12:03:33 4 Q. In the right-hand column, Tess Snyder;

5 12:03:39 5 who is that?

6 12:03:45 6 A. I'm sorry, where are you picking that

7 12:03:47 7 one up at? I do not, I do not remember.

8 12:04:12 8 Q. Okay. Do you, as you sit here today,

9 12:04:16 9 do you know whether Tess Snyder is a lawyer?

10 12:04:18 10 A. Not to my knowledge.

11 12:04:19 11 Q. And why would you have claimed that

12 12:04:20 12 this E-mail with Tess Snyder was privileged?

13 12:04:24 13 A. Again, I do not remember.

14 12:04:26 14 Q. In looking at these three pages, it's

15 12:04:39 15 clear to me that you are claiming privilege with

16 12:04:43 16 E-mails that you've had with Mr. Hamilton, with Mr.

17 12:04:48 17 Deschler, with Sandra McIntosh, with Kimberly

18 12:04:58 18 Jaros, and Stephen Findley. Are there any other

19 12:05:04 19 individuals with whom you communicated by E-mail

20 12:05:07 20 that you are asserting are protected from discovery

21 12:05:14 21 based on attorney/client privilege?

22 12:05:23 22 A. No.

23 12:05:23 23 Q. You still doing okay? Or should we

24 12:05:52 24 break for lunch?

25 12:05:53 25 A. I drank too much. If you don't mind,

1 12:05:56 1 it would be very quick.

2 12:05:58 2 MS. MOORE: Mr. Hamilton, what

3 12:05:59 3 time do you have?

4 12:06:00 4 MR. HAMILTON: 12:01.

5 12:06:03 5 MS. MOORE: I'm wondering if we

6 12:06:04 6 have lunch here, maybe we break for lunch at this

7 12:06:07 7 point?

8 12:06:08 8 THE WITNESS: I would like to, I'd

9 12:06:11 9 like to continue if we can.

10 12:06:12 10 MS. MOORE: I would, too, but I'm

11 12:06:13 11 not sure if the food's here, so why don't we check

12 12:06:16 12 and see whether the food has arrived as yet, and in

13 12:06:19 13 the meantime, we can take that quick break, okay?

14 12:06:22 14 THE WITNESS: Yes, could we do

15 12:06:23 15 that?

16 12:06:23 16 MS. MOORE: Off the record.

17 12:06:24 17 * * * * *

18 12:06:24 18 (WHEREUPON, a recess was had.)

19 19 * * * * *

20 20 (WHEREUPON, an off-the-record

21 21 discussion was had.)

22 22 * * * * *

23 23 (WHEREUPON, a luncheon recess was

24 24 had.)

25 12:57:31 25 * * * * *

1 12:57:31 1 BY MS. MOORE:

2 12:58:54 2 Q. Back on the record. Mr. Freshwater,
3 12:59:02 3 are you all set?

4 12:59:03 4 A. Yes.

5 12:59:04 5 Q. Okay. When is the last time you
6 12:59:08 6 reviewed the transcripts for the state
7 12:59:10 7 administrative hearing?

8 12:59:12 8 A. I may have looked at them a little bit,
9 12:59:26 9 like I think I said, a little bit yesterday or day
10 12:59:28 10 before, but it wasn't much. If I did. I don't
11 12:59:32 11 even remember. I don't remember if I flipped
12 12:59:35 12 through them or not. I don't have a whole, a whole
13 12:59:40 13 lot of hard copied.

14 12:59:43 14 Q. Which ones do you have hard copy?

15 12:59:48 15 A. Oh, I'm not even sure which ones. I
16 13:00:06 16 know they're not -- I don't think I have any of
17 13:00:06 17 mine hard copied off. Other witnesses. The reason
18 13:00:10 18 I don't have mine, I know, I think I know what I
19 13:00:12 19 said, so -- so I'm not positive which ones I have.
20 13:00:18 20 Some of the witnesses.

21 13:00:19 21 Q. Okay. There were 30 plus days of
22 13:00:22 22 hearings, correct?

23 13:00:23 23 A. Yes, 38, I think, 39.

24 13:00:26 24 Q. You're probably a better guess than me.

25 13:00:29 25 Do you recall about how many of those days of

1 13:00:31 1 transcripts you have in your possession?

2 13:00:34 2 A. Oh, I don't want to guess at that. I'm

3 13:00:47 3 not sure.

4 13:00:49 4 Q. Is it half of the days, is it less than

5 13:00:53 5 half of the days?

6 13:00:53 6 A. I don't even want to make an estimate

7 13:00:56 7 on that.

8 13:00:56 8 Q. About how thick are the transcripts

9 13:00:59 9 that you have total?

10 13:01:00 10 A. It's not very thick. It really isn't

11 13:01:03 11 very many. I don't have a whole lot.

12 13:01:04 12 Q. Give me a --

13 13:01:06 13 A. I'd rather not go that route.

14 13:01:08 14 Q. We'll, I'll do it for you then. About

15 13:01:10 15 that much of transcripts, or less, or more

16 13:01:15 16 (indicating)?

17 13:01:16 17 A. I really do not want to estimate right

18 13:01:18 18 now.

19 13:01:19 19 Q. About that much in transcripts, less or

20 13:01:22 20 more (indicating)?

21 13:01:24 21 A. Like I said, I'd rather -- I do not

22 13:01:35 22 want to estimate right now. To me, an estimate is

23 13:01:38 23 a guess, and I don't want to guess.

24 13:01:40 24 Q. I'm asking you, based on -- strike

25 13:01:43 25 that.

1 13:01:43 1 When is the last time you saw the
2 13:01:45 2 transcripts that you have in your possession?
3 13:01:54 3 A. I thought I answered that.
4 13:01:55 4 Q. Was it yesterday?
5 13:01:56 5 A. A lot of stuff happened yesterday.
6 13:02:00 6 Within, within the last two days, I flipped through
7 13:02:03 7 the ones that I have.
8 13:02:04 8 Q. The ones that you flipped through, were
9 13:02:09 9 they more or less than about that amount of pages
10 13:02:16 10 (indicating)?
11 13:02:17 11 A. Like I say --
12 13:02:25 12 Q. More or less, Mr. Freshwater?
13 13:02:27 13 A. Again, you're trying to get me to
14 13:02:28 14 estimate how much.
15 13:02:29 15 Q. Yes, I am.
16 13:02:29 16 A. And I don't know. I'm trying to answer
17 13:02:32 17 your question. I do not know how much I have.
18 13:02:35 18 Okay. I pulled out --
19 13:02:36 19 Q. Are you refusing to tell me if it's
20 13:02:38 20 more or less than this much in pages (indicating)?
21 13:02:42 21 A. Am I refusing? I think I answered your
22 13:02:53 22 question the best I can, Miss Moore. I really
23 13:02:55 23 don't know how much I looked at yesterday.
24 13:02:58 24 Q. So --
25 13:02:59 25 A. Or the day before.

1 13:02:59 1 Q. As you sit here today, are we all to
2 13:03:02 2 understand that you have no idea how many pages of
3 13:03:05 3 transcript you went through in the past two days to
4 13:03:08 4 prepare for deposition today?

5 13:03:10 5 A. If you walked through my shoes the last
6 13:03:15 6 two days --

7 13:03:15 7 MS. MOORE: Could you read the
8 13:03:16 8 question back for the witness, please?

9 13:03:17 9 THE WITNESS: Okay.

10 10 (WHEREUPON, the court reporter
11 13:03:46 11 read back the requested portion of the record.)

12 13:03:46 12 THE WITNESS: I do not know how
13 13:03:47 13 many pages of transcripts I went through.

14 13:03:50 14 BY MS. MOORE:

15 13:03:50 15 Q. So your answer is yes?

16 13:03:52 16 A. I don't know what the "yes" is "yes"
17 13:03:54 17 to.

18 13:03:54 18 MS. MOORE: Read the question
19 13:03:55 19 back, please.

20 13:04:13 20 (WHEREUPON, the court reporter
21 21 read back the requested portion of the record.)

22 13:04:15 22 THE WITNESS: That would be a yes.

23 13:04:16 23 BY MS. MOORE:

24 13:04:16 24 Q. Prior to the past two days, when is the
25 13:04:18 25 last time you reviewed the transcripts that are in

1 13:04:20 1 your possession that you can't recall how many
2 13:04:22 2 pages you have?

3 13:04:24 3 A. I do not know.

4 13:04:25 4 Q. Was it within the last 30 days?

5 13:04:31 5 A. Again, I, at this time, I'm unable to
6 13:04:37 6 answer that question.

7 13:04:38 7 Q. Do you have a specific recollection of
8 13:04:40 8 sitting down with the transcripts and reviewing
9 13:04:42 9 them prior to the last two days?

10 13:04:45 10 A. Do I have a specific date, no, I do
11 13:04:47 11 not.

12 13:04:47 12 Q. As you sit here today, is it fair to
13 13:04:50 13 say that you probably did not review those
14 13:04:53 14 transcripts within the last 30 days?

15 13:04:58 15 A. From my memory, that would be correct,
16 13:05:00 16 yes.

17 13:05:01 17 Q. Is it fair to say that you haven't
18 13:05:02 18 reviewed those transcripts in the last 60 days?

19 13:05:06 19 A. I do not -- 60 days? I really do not
20 13:05:24 20 remember. I don't -- again, I don't want to
21 13:05:28 21 estimate on that. I do not know.

22 13:05:30 22 Q. You're refusing to estimate, correct?

23 13:05:34 23 A. Yeah, that would be correct, yes.

24 13:05:36 24 Q. Okay. The Exhibits for the state
25 13:05:40 25 administrative hearing?

1 13:05:42 1 A. Okay.

2 13:05:42 2 Q. Would it be fair to say you haven't

3 13:05:45 3 reviewed those all within the past 30 days?

4 13:05:56 4 A. No, because, the interrogatories -- I

5 13:06:17 5 probably looked at some Exhibits in that -- you say

6 13:06:21 6 30 days?

7 13:06:22 7 Q. 30 days?

8 13:06:23 8 A. 30, 60 days, in there, I looked at some

9 13:06:39 9 Exhibits.

10 13:06:40 10 Q. All of them, or some?

11 13:06:41 11 A. I looked at, you know, I would expect I

12 13:06:58 12 looked through all of them, yeah.

13 13:07:00 13 Q. You have a specific recollection of

14 13:07:03 14 looking through all of the Exhibits from the state

15 13:07:05 15 administrative hearing within the past 30 to 60

16 13:07:08 16 days; is that what you're saying?

17 13:07:10 17 A. Do I have a specific recollection?

18 13:07:12 18 Q. Yes.

19 13:07:13 19 A. 30 to 60 days? Whew, specific

20 13:07:30 20 recollection? That would be, that would be a yes.

21 13:07:46 21 Q. Okay.

22 13:07:50 22 (WHEREUPON, Defendant's Exhibit 14

23 13:07:54 23 was marked for identification.)

24 13:07:55 24 BY MS. MOORE:

25 13:08:16 25 Q. Handing you what's been marked as

1 13:08:18 1 Defendant's Exhibit 14, can you identify that
2 13:08:21 2 document?
3 13:08:22 3 A. Could I have a minute, please?
4 13:08:25 4 Q. Sure.
5 13:10:04 5 A. Yes.
6 13:10:06 6 Q. Those transcripts and the Exhibits that
7 13:10:09 7 you reviewed in the past 30 to 60 days, were those
8 13:10:14 8 the ones at your home?
9 13:10:18 9 A. Is this when I reviewed is the
10 13:10:21 10 question?
11 13:10:22 11 MS. MOORE: Can you read my
12 13:10:23 12 question?
13 13 13 (WHEREUPON, the court reporter
14 13:10:46 14 read back the requested portion of the record.)
15 13:10:46 15 THE WITNESS: I'm confused, this
16 13:10:52 16 is not exhibit, this is not a transcript, this is a
17 13:10:55 17 14?
18 13:10:56 18 BY MS. MOORE:
19 13:10:56 19 Q. I haven't asked you about 14.
20 13:10:57 20 A. Oh, okay.
21 13:10:58 21 MS. MOORE: Can you repeat the
22 13:10:59 22 question, please?
23 23 (WHEREUPON, the court reporter
24 24 read back the requested portion of the record.)
25 13:11:16 25 THE WITNESS: No, no.

1 13:11:19 1 BY MS. MOORE:
2 13:11:19 2 Q. Where were they?
3 13:11:21 3 A. The Exhibits?
4 13:11:25 4 Q. And the transcripts that you reviewed
5 13:11:27 5 in the past 30 to 60 days; where were they?
6 13:11:43 6 A. They're not at my home. Maybe I'm
7 13:12:04 7 getting confused on the word "Exhibit."
8 13:12:11 8 Q. Could you read back --
9 13:12:12 9 A. I'm getting confused on word the
10 13:12:15 10 "Exhibit." I looked at my home, I looked at this
11 13:12:20 11 document, this is, this is the, this is the --
12 13:12:22 12 Q. That wasn't my question.
13 13:12:23 13 A. I know it's not.
14 13:12:24 14 Q. Let's back up?
15 13:12:25 15 A. I'm trying to catch --
16 13:12:26 16 Q. Let's back up.
17 13:12:27 17 A. Yes, please do.
18 13:12:27 18 Q. You testified that you reviewed the
19 13:12:29 19 Exhibits, all of them, from the state
20 13:12:31 20 administrative hearing, and portions of the
21 13:12:34 21 transcripts from the state administrative hearing
22 13:12:35 22 in the past 30 to 60 days. Were those the ones
23 13:12:40 23 from your home?
24 13:12:43 24 A. No, I have -- everything has been
25 13:12:45 25 turned over in discovery.

1 13:12:47 1 Q. That's not my question, Mr. Freshwater.

2 13:12:49 2 MS. MOORE: Can you read my

3 13:12:50 3 question?

4 13:12:51 4 THE WITNESS: Maybe I'm confused

5 13:12:52 5 on the word "Exhibit" then, maybe I'm -- I guess

6 13:12:55 6 maybe I'm thinking it's exhibit as a document.

7 13:13:03 7 BY MS. MOORE:

8 13:13:03 8 Q. Let's back up, okay?

9 13:13:04 9 A. I maybe very confused.

10 13:13:06 10 Q. Do you remember the state

11 13:13:08 11 administrative hearing?

12 13:13:10 12 A. Yes, yes.

13 13:13:11 13 Q. Do you remember, do you remember all

14 13:13:12 14 the Exhibits from the state administrative hearing?

15 13:13:18 15 A. Okay, yes. So that's what you're

16 13:13:21 16 talking about the exhibits in the state hearing

17 13:13:23 17 that were Employee Exhibits and the Board Exhibits?

18 13:13:27 18 Q. You got it. You testified a few

19 13:13:31 19 minutes ago you reviewed all of those within the

20 13:13:33 20 past 30 to 60 days. Where did you review them?

21 13:13:37 21 A. I need to back up, because I was taking

22 13:13:41 22 Exhibits as a document. All the Exhibits,

23 13:13:45 23 everything's been turned over in discovery.

24 13:13:51 24 Q. We're going to back up. Did you review

25 13:13:54 25 all of the exhibits from the state administrative

1 13:13:56 1 hearing in the past 30 to 60 days?

2 13:14:00 2 A. And I would have to say no to that.

3 13:14:03 3 Q. Okay. Did you review the transcripts,
4 13:14:06 4 all of them, from the state administrative hearing
5 13:14:08 5 in the past 30 to 60 days?

6 13:14:13 6 A. Let me, because I'm still back on one
7 13:14:16 7 question before, because I'm sitting there going
8 13:14:18 8 through, I'm still confused on that word "Exhibit."

9 13:14:22 9 MR. ROSS: Objection;
10 13:14:22 10 nonresponsive. Answer the question, please.

11 13:14:25 11 MS. MOORE: Please, read the
12 13:14:26 12 question.

13 13:14:26 13 THE WITNESS: You have to repeat,
14 13:14:29 14 excuse me.

15 15 (WHEREUPON, the court reporter
16 16 read back the requested portion of the record.)

17 13:14:49 17 THE WITNESS: Say that one more
18 13:14:50 18 time, please.

19 19 (WHEREUPON, the court reporter
20 13:15:03 20 read back the requested portion of the record.)

21 13:15:03 21 THE WITNESS: No, I didn't review
22 13:15:04 22 all of them.

23 13:15:07 23 BY MS. MOORE:

24 13:15:07 24 Q. Directing your attention to Defendant's
25 13:15:09 25 Exhibit 14, are you familiar with that document?

1 13:15:12 1 A. This one, yes.

2 13:15:13 2 Q. And what is it?

3 13:15:14 3 A. This would be, I think you used the

4 13:15:19 4 word claim, I think I used the word lawsuit. And I

5 13:15:23 5 think we're referring to the same thing. And that

6 13:15:25 6 would be what this document is.

7 13:15:27 7 Q. Can we agree to call this the

8 13:15:31 8 Complaint?

9 13:15:31 9 A. Okay. I'll try, yes. Okay.

10 13:15:34 10 Q. We'll try it?

11 13:15:35 11 A. Okay.

12 13:15:37 12 Q. Okay. I'd like to -- well, before I do

13 13:15:43 13 that, did you review this Complaint before the

14 13:15:45 14 lawsuit was filed?

15 13:15:49 15 A. Before this, yes, yes.

16 13:15:52 16 Q. So you're familiar with it, correct?

17 13:15:54 17 A. I'm familiar with it, yes, yes. But

18 13:16:01 18 not -- I'm familiar with it.

19 13:16:10 19 Q. Directing your attention to Page 22 of

20 13:16:18 20 that document, Defendant's Exhibit 14, I'd like you

21 13:16:24 21 to take a moment to review Count One, which are

22 13:16:28 22 Paragraphs 116 through 122 of the Complaint.

23 13:16:44 23 A. Page 22, Count One?

24 13:16:46 24 Q. Yes.

25 13:18:01 25 A. Okay.

1 13:18:02 1 Q. My question to you is: What specific
2 13:18:07 2 act or omission do you claim Defendant Board of
3 13:18:11 3 Education committed that serves as the basis for
4 13:18:15 4 Count One of your Complaint?

5 13:18:24 5 A. Count One would be deprivation of right
6 13:18:29 6 to free speech. And I have before me the, the
7 13:18:38 7 briefs that was written, the closing briefs for the
8 13:18:49 8 state hearing, I think everything is documented
9 13:18:49 9 within those; the John Freshwater Closing Statement
10 13:18:50 10 Brief, and Reply Brief to the Employer's
11 13:18:54 11 Post-Hearing Brief, I do believe it's well
12 13:18:57 12 established in here.

13 13:18:59 13 MS. MOORE: Could you read the
14 13:19:00 14 question back for the witness, please?

15 15 (WHEREUPON, the court reporter
16 16 read back the requested portion of the record.)

17 13:19:24 17 THE WITNESS: Again, they're
18 13:19:24 18 documented in here. I'll give the specifics to --
19 13:19:30 19 specifics are in here. I was asked to, I was asked
20 13:19:38 20 to remove my Bible from my desk from Mr. White back
21 13:19:43 21 here. He also asked another employee -- I believe
22 13:19:47 22 he singled me out. I was told by Mr. Short, again,
23 13:19:57 23 to remove my Bible from off my desk and out of the
24 13:20:01 24 room. The harassment from both those two in, in
25 13:20:11 25 the hearing, where they both looked at my

1 13:20:16 1 religious -- Mr. White said he knew I was
2 13:20:23 2 religious, but he's never talked to me once about
3 13:20:25 3 my religion, so how would he know that. Again, he
4 13:20:29 4 was making assumptions, and it's harassment.
5 13:20:33 5 Mr. Short made a comment on the
6 13:20:36 6 state hearing that, which I was taken by surprise,
7 13:20:45 7 he stated that he wouldn't put it past me putting a
8 13:20:51 8 cross on a kid's arm. My first thought was, if you
9 13:20:55 9 were thinking that, aren't you a mandated public
10 13:21:00 10 employee, are you not supposed to do something
11 13:21:03 11 about that, such as call CHILDREN'S SERVICES.
12 13:21:09 12 Which was never done by either one of Mr. White or
13 13:21:12 13 Mr. Short, being mandated employees, you know,
14 13:21:17 14 being mandated, they call.
15 13:21:22 15 Dr. Weston, from 2003 on, she
16 13:21:33 16 marked me as a religious fanatic, and she shared
17 13:21:37 17 that to teachers in -- you know, teachers came up
18 13:21:43 18 to me, she shared that in a meeting, the science
19 13:21:46 19 curriculum meeting, she shared that. Teachers came
20 13:21:50 20 back to me that were in that meeting and said she
21 13:21:52 21 was talking about your religious beliefs in the
22 13:21:54 22 meeting of about 15 people. I thought was very
23 13:21:58 23 inappropriate. And Dr. Weston talked about my
24 13:22:07 24 religion, also, from the witness chair. She was
25 13:22:12 25 sharing about my religion there. And I looked at

1 13:22:18 1 that all as harassment.

2 13:22:23 2 I've got a First Amendment right

3 13:22:26 3 to let my Bible sit silently at the corner of my

4 13:22:33 4 desk.

5 13:22:35 5 BY MS. MOORE:

6 13:22:35 6 Q. Any other specific acts or omissions

7 13:22:37 7 that serve as the factual basis for Count One?

8 13:22:41 8 A. Again, I'll refer back, I think it's

9 13:22:42 9 very well clarified in the two, in the briefs that

10 13:22:47 10 were submitted in the state hearing.

11 13:22:50 11 Q. As you sit here today, can you recall

12 13:22:53 12 any other specific acts or omissions that serve as

13 13:22:57 13 the basis for Count One, other than those that

14 13:22:59 14 you've identified to me?

15 13:23:01 15 A. Again, I would have to refer back to

16 13:23:03 16 the briefs. To what I remember at this time, those

17 13:23:08 17 are the ones that I can recall back at this time.

18 13:23:11 18 Q. Is it fair to say that if you actually

19 13:23:14 19 took the time to review through the two briefs that

20 13:23:16 20 you've referenced, that you would actually be able

21 13:23:19 21 to identify the specific acts and omissions that

22 13:23:22 22 serve as the factual basis for Count One of your

23 13:23:24 23 Complaint?

24 13:23:25 24 A. Okay.

25 13:23:27 25 Q. Could you read my question back? I'm

1 13:23:28 1 not asking you to go to the document. Listen to my
2 13:23:31 2 question.

3 13:23:32 3 A. But I don't understand why I cannot go
4 13:23:34 4 to the document?

5 13:23:34 5 Q. Listen to the question.

6 13:23:36 6 A. Okay.

7 7 (WHEREUPON, the court reporter
8 13:24:01 8 read back the requested portion of the record.)

9 13:24:01 9 THE WITNESS: Miss Moore, do I --
10 13:24:07 10 can I look in the briefs?

11 13:24:09 11 MR. ROSS: Objection;
12 13:24:11 12 nonresponsive.

13 13:24:11 13 BY MS. MOORE:

14 13:24:12 14 Q. Answer the question, Mr. Freshwater.

15 13:24:20 15 MS. MOORE: Please, read the
16 13:24:20 16 question back again.

17 13:24:21 17 THE WITNESS: Yes, you're going to
18 13:24:22 18 have to -- I apologize, but you're going to have to
19 13:24:24 19 read it back.

20 20 (WHEREUPON, the court reporter
21 21 read back the requested portion of the record.)

22 13:24:56 22 THE WITNESS: If I could review
23 13:24:56 23 through them, yes.

24 13:24:59 24 BY MS. MOORE:

25 13:24:59 25 Q. Is it fair to say that as of today you

1 13:25:01 1 have not taken the time to review through the two
2 13:25:05 2 briefs that you've referenced to identify the
3 13:25:07 3 specific acts and omissions that serve as the
4 13:25:09 4 factual basis for your Complaint as pertain to my
5 13:25:14 5 client?

6 13:25:15 6 A. Oh, that was a long one.

7 13:25:16 7 Q. Let's have her read it back.

8 8 (WHEREUPON, the court reporter
9 9 read back the requested portion of the record.)

10 13:25:42 10 THE WITNESS: I believe I stated
11 13:25:44 11 early on that I did flip through the briefs, but it
12 13:25:49 12 was a very short time period. And it has been some
13 13:25:54 13 time since those briefs have been submitted, two,
14 13:25:59 14 three months. So, my -- I would need to go through
15 13:26:04 15 and look at the briefs in order to answer that
16 13:26:07 16 Count One in any more detail.

17 13:26:10 17 BY MS. MOORE:

18 13:26:10 18 Q. When is the last time you reviewed
19 13:26:11 19 those briefs?

20 13:26:12 20 A. I do believe I said, I stated that I
21 13:26:16 21 flipped through them within the last two days, I do
22 13:26:24 22 believe I stated that, I think.

23 13:26:25 23 Q. Prior to that, when was the last time
24 13:26:27 24 you reviewed these briefs?

25 13:26:30 25 A. Oh, weeks, months. I -- weeks, a

1 13:26:45 1 month.

2 13:26:46 2 Q. Is it fair to say you would have

3 13:26:48 3 reviewed those briefs prior to September 25th,

4 13:26:53 4 2010?

5 13:26:57 5 A. I'm not going to -- Mr. Freshwater and
6 13:27:10 6 his wife are trying to move on.

7 13:27:14 7 MR. ROSS: Objection;

8 13:27:16 8 nonresponsive.

9 13:27:17 9 THE WITNESS: No, I am responding
10 13:27:18 10 to it. We're trying to move on. There's some
11 13:27:21 11 things that I have been -- it's a blur, the last,
12 13:27:26 12 actually past couple years have been a blur.

13 13:27:29 13 MS. MOORE: Can you read my
14 13:27:30 14 question back to the witness, please?

15 13:27:32 15 MR. ROSS: Objection; move to
16 13:27:33 16 strike; nonresponsive.

17 17 (WHEREUPON, the court reporter
18 18 read back the requested portion of the record.)

19 13:27:58 19 THE WITNESS: I do not remember.

20 13:28:01 20 BY MS. MOORE:

21 13:28:48 21 Q. Would you have received a copy of the
22 13:28:49 22 briefs that you're referencing on or about the time
23 13:28:51 23 that your attorney, Mr. Hamilton, filed them with
24 13:28:54 24 referee, R. Lee Shepherd?

25 13:29:08 25 A. Could you repeat that, please?

1 1 (WHEREUPON, the court reporter
2 13:29:32 2 read back the requested portion of the record.)
3 13:29:32 3 THE WITNESS: Can you re -- I'm
4 13:29:36 4 not quite sure of that question. Can you restate,
5 13:29:39 5 rephrase that one?
6 13:29:40 6 BY MS. MOORE:
7 13:29:40 7 Q. What's troubling you about that
8 13:29:42 8 question?
9 13:29:44 9 A. Maybe I'm just not --
10 13:29:46 10 Q. Why don't we read it again, and you can
11 13:29:48 11 tell me what's troubling you about that?
12 13:29:51 12 A. Okay.
13 13:29:51 13 Q. If it still does?
14 13:29:52 14 A. Okay.
15 15 (WHEREUPON, the court reporter
16 16 read back the requested portion of the record.)
17 13:30:26 17 THE WITNESS: Myself and Mr.
18 13:30:27 18 Hamilton worked on the briefs. We did the briefs.
19 13:30:34 19 Okay, so I'm not quite sure -- I did the brief.
20 13:30:40 20 That's why I'm kind of confused on it. I was
21 13:30:42 21 involved in doing the brief.
22 13:30:45 22 BY MS. MOORE:
23 13:30:46 23 Q. Oh, let me ask you a different
24 13:30:48 24 question, then?
25 13:30:48 25 A. Yes, please do. Because I'm --

1 13:30:52 1 Q. When you say you were involved in
2 13:30:53 2 writing the briefs, what do you mean?
3 13:30:55 3 A. Okay, maybe I misstated. Writing the
4 13:31:04 4 brief? In discussion with him, with the brief,
5 13:31:11 5 looking over things in the brief. Maybe I'm
6 13:31:13 6 confused on this word "writing" now.
7 13:31:16 7 Q. You used it.
8 13:31:16 8 A. I'm sorry. I'll take that word back.
9 13:31:21 9 Looking over the brief.
10 13:31:23 10 Q. Did you look over the briefs that
11 13:31:25 11 you're referencing prior to Mr. Hamilton submitting
12 13:31:28 12 them to Referee R. Lee Shepherd?
13 13:31:31 13 A. Did I look over them? Did I look over
14 13:31:43 14 the brief before submitting them? Make sure I got
15 13:31:47 15 this question correctly.
16 13:31:48 16 MS. MOORE: Could you read the
17 13:31:48 17 question back for the witness, please?
18 18 (WHEREUPON, the court reporter
19 13:32:05 19 read back the requested portion of the record.)
20 13:32:05 20 THE WITNESS: If I understand the
21 13:32:13 21 question correctly, did I look over the briefs
22 13:32:19 22 before he submitted them, yes.
23 13:32:30 23 BY MS. MOORE:
24 13:32:30 24 Q. And, in fact, I'm assuming you would
25 13:32:32 25 have had a copy of both briefs after he submitted

1 13:32:36 1 those briefs to Mr. Shepherd; is that a correct
2 13:32:40 2 assumption?

3 13:32:44 3 A. I'm not -- I don't remember whether I
4 13:32:46 4 received a copy of them.

5 13:32:48 5 Q. Have you received a copy of the briefs
6 13:32:51 6 that Mr. Hamilton supplied to R. Lee Shepherd?

7 13:32:57 7 A. I've looked over them. I've looked
8 13:33:09 8 over at his office.

9 13:33:11 9 MS. MOORE: Can you read the
10 13:33:11 10 question back for the witness, please?

11 11 (WHEREUPON, the court reporter
12 12 read back the requested portion of the record.)

13 13:33:37 13 THE WITNESS: Mr. Hamilton gave me
14 13:33:38 14 this copy here (indicating.)

15 13:33:40 15 BY MS. MOORE:

16 13:33:40 16 Q. Terrific. When did he give you those
17 13:33:43 17 copies?

18 13:33:43 18 A. Yesterday or the day before -- within
19 13:33:53 19 the last two days.

20 13:33:54 20 Q. So you haven't had access to the copies
21 13:33:56 21 of your briefs since they were filed until the past
22 13:33:59 22 two days; is that your testimony?

23 13:34:02 23 A. He's let me look at them, the copies of
24 13:34:07 24 the briefs.

25 13:34:08 25 MR. ROSS: Objection;

1 13:34:09 1 nonresponsive. Please, answer the question.

2 13:34:12 2 MS. MOORE: Can you read the

3 13:34:13 3 question back for the witness, please?

4 4 (WHEREUPON, the court reporter

5 13:34:30 5 read back the requested portion of the record.)

6 13:34:30 6 THE WITNESS: I've had access to

7 13:34:31 7 them, yes.

8 13:34:32 8 BY MS. MOORE:

9 13:34:34 9 Q. Have you had access to them at all

10 13:34:36 10 times from the time that Mr. Hamilton filed them

11 13:34:39 11 with Referee R. Lee Shepherd until today?

12 13:34:43 12 A. When Mr. Hamilton asked me to look at

13 13:34:47 13 them, but I'm just --

14 13:34:49 14 Q. Is the answer yes or no, Mr.

15 13:34:51 15 Freshwater?

16 13:34:58 16 A. You're going to have to repeat the

17 13:34:59 17 question again.

18 18 (WHEREUPON, the court reporter

19 19 read back the requested portion of the record.)

20 13:35:25 20 MR. ROSS: Mr. Hamilton.

21 13:35:26 21 BY MS. MOORE:

22 13:35:26 22 Q. Yes or no, Mr. Freshwater?

23 13:35:28 23 A. Have I had access to them? Yes.

24 13:35:36 24 Q. A few minutes ago you identified a

25 13:35:51 25 number of specific acts or omissions that you claim

1 13:35:55 1 serve as the factual basis for Count One of your
2 13:35:59 2 Complaint. The first one that you identified was
3 13:36:02 3 that you were asked to remove the Bible from the
4 13:36:04 4 desk by Mr. White. Why is it that you believe that
5 13:36:09 5 that violates your right to free speech?

6 13:36:19 6 A. I don't think you have it completely
7 13:36:21 7 right there. Removed from my desk and out of my
8 13:36:24 8 room. Okay.

9 13:36:25 9 MS. MOORE: Can you read my
10 13:36:26 10 question back for the witness, please?

11 13:36:29 11 THE WITNESS: But you didn't --
12 13:36:30 12 okay.

13 13 13 (WHEREUPON, the court reporter
14 14 14 read back the requested portion of the record.)

15 13:36:57 15 THE WITNESS: Okay. I was asked
16 13:36:59 16 to remove the Bible out of my room and believe it
17 13:37:06 17 goes against what I learned from a class that I
18 13:37:10 18 took at the Nazarene College, paid for by the
19 13:37:23 19 school for me to take, and I think, I do believe
20 13:37:23 20 that year was 2004, and that class, I was given a
21 13:37:25 21 book called Finding Common Ground. Within that
22 13:37:33 22 book, I showed in the state hearing that I have
23 13:37:49 23 the, under the First Amendment right to have a
24 13:37:53 24 Bible sitting silently at the corner of my desk in
25 13:37:59 25 a public school building.

1 13:38:03 1 BY MS. MOORE:

2 13:38:03 2 Q. Did Mr. White ask you to remove the
3 13:38:11 3 Bible from your desk? Yes or no, Mr. Freshwater?

4 13:38:26 4 A. That's not a yes, no; I have to expand
5 13:38:30 5 on that.

6 13:38:31 6 MS. MOORE: Read the question back
7 13:38:31 7 to the witness.

8 8 (WHEREUPON, the court reporter
9 9 read back the requested portion of the record.)

10 13:38:48 10 THE WITNESS: Yes, from the
11 13:38:49 11 classroom.

12 13:38:51 12 BY MS. MOORE:

13 13:38:51 13 Q. Would you agree with me that the desk
14 13:38:53 14 is in the classroom?

15 13:38:58 15 A. Yes.

16 13:38:58 16 Q. And would you agree with me that Mr.
17 13:39:01 17 White asked you to remove the Bible from your desk?

18 13:39:05 18 A. Yes, he told me to remove it from my
19 13:39:07 19 classroom.

20 13:39:08 20 MR. ROSS: Objection;
21 13:39:09 21 nonresponsive; move to strike.

22 13:39:11 22 MS. MOORE: Please, read the
23 13:39:12 23 question back to the witness.

24 24 (WHEREUPON, the court reporter
25 25 read back the requested portion of the record.)

1 13:39:35 1 THE WITNESS: Again, my response
2 13:39:36 2 would be Mr. White told me to remove my Bible from
3 13:39:39 3 my classroom.

4 13:39:40 4 MR. ROSS: Objection; move to
5 13:39:41 5 strike; nonresponsive. Mr. Hamilton.

6 13:39:43 6 MR. HAMILTON: He's answered the
7 13:39:44 7 question as best as he can.

8 13:39:47 8 MR. ROSS: It's nonresponsive.
9 13:39:48 9 Would you like to talk to your client, because we
10 13:39:52 10 can easily do this in front of a federal
11 13:39:55 11 Magistrate?

12 13:39:56 12 MR. HAMILTON: Yes, I'll talk to
13 13:39:57 13 him real quick.

14 13:39:58 14 MR. ROSS: Okay, thank you.
15 13:39:59 15 You're welcome to -- you have stuff in the
16 13:40:01 16 conference room?

17 13:40:03 17 MS. MOORE: Yes.

18 13:40:04 18 MR. ROSS: Fine, we'll take a
19 13:40:05 19 break and you can stay here.

20 13:40:40 20 * * * * *

21 13:40:40 21 (WHEREUPON, a recess was had from
22 22 1:40, p.m. to 4:17, p.m.)

23 16:17:31 23 * * * * *

24 16:17:31 24 BY MS. MOORE:

25 16:17:39 25 Q. We had recessed at 1:40, and we're

1 16:17:45 1 currently back on the record at 4:17. And there
2 16:17:53 2 was a question pending, Mr. Freshwater, at the time
3 16:17:56 3 that we adjourned at 1:40, that you sought
4 16:18:03 4 consultation with your counsel on, and there was no
5 16:18:06 5 objections to you doing so by counsel at the table.
6 16:18:09 6 So I'm going to ask the court reporter to read back
7 16:18:12 7 that question so that you can answer that.

8 16:18:15 8 A. Sure.

9 9 (WHEREUPON, the court reporter
10 10 read back the following question: "And would you
11 11 agree with me that Mr. White asked you to remove
12 12 the Bible from your desk?"

13 16:20:18 13 THE WITNESS: Yes.

14 16:20:19 14 BY MS. MOORE:

15 16:20:22 15 Q. Did you remove the Bible from your desk
16 16:20:24 16 after Mr. White asked you to remove it?

17 16:20:26 17 A. No.

18 16:20:29 18 Q. A few minutes ago, I'm sorry, a few
19 16:20:36 19 minutes ago -- a few hours ago, you had made
20 16:20:40 20 mention of a course that you took in 2004?

21 16:20:45 21 A. Mm-hmm.

22 16:20:47 22 Q. Do you recall that?

23 16:20:47 23 A. Yes.

24 16:20:47 24 Q. Is it your contention that that course
25 16:20:49 25 that you took in 2004 is somehow relevant to your

1 16:20:53 1 claims in this case?

2 16:20:57 2 A. Yes.

3 16:20:59 3 Q. Your counsel has requested that we
4 16:21:12 4 adjourn for today. And I want to make sure that we
5 16:21:17 5 have on the record how much time we actually used
6 16:21:20 6 for purposes of questioning today. So could we get
7 16:21:24 7 a count of the time we used so far, Cathy?

8 8 (WHEREUPON, an off-the-record
9 9 discussion was had.)

10 16:25:40 10 MS. MOORE: All counsel have
11 16:25:42 11 reviewed with the court reporter the time spent
12 16:25:48 12 questioning, and agree that we have spent two hours
13 16:25:52 13 and 40 minutes questioning today, which we believe,
14 16:25:57 14 if our math is correct, leaves us 4 hours and 20
15 16:26:00 15 minutes of questioning, pursuant to the Civil
16 16:26:03 16 Rules. All counsel anticipate that the time
17 16:26:09 17 necessary to allow all of the parties to fairly
18 16:26:13 18 examine Mr. Freshwater will exceed the seven-hour
19 16:26:16 19 limit. All counsel have agreed to stipulate to
20 16:26:20 20 lengthen the amount of time pursuant to Civil Rule
21 16:26:25 21 30(D)(1), in order to allow all counsel the
22 16:26:30 22 opportunity to fairly examine Mr. Freshwater. And
23 16:26:37 23 I'd ask all counsel given that we've stipulated to
24 16:26:41 24 it to put it on the record.

25 16:26:44 25 MR. HAMILTON: I stipulate.

1 16:26:46 1 MR. ROSS: Rick Ross, and on
2 16:26:49 2 behalf of Defendant Weston, we stipulate.
3 16:26:50 3 MR. HOLMAN: Anthony Holman, and
4 16:26:52 4 on behalf of Defendant Weston, we stipulate, too.
5 16:26:54 5 MR. GREATHOUSE: Larry Greathouse
6 16:26:55 6 on behalf of HR On Call, Tom and Julie Herlevi, we
7 16:26:59 7 stipulate, also.
8 16:27:02 8 MS. MOORE: The parties have
9 16:27:04 9 further agreed to use the dates of October 22nd,
10 16:27:08 10 2010, and November 8th, 2010, to continue Mr.
11 16:27:15 11 Freshwater's examination, and are all hopeful we
12 16:27:21 12 will be able to complete the examination within
13 16:27:22 13 those two days, but we'll set future dates, if
14 16:27:24 14 necessary, to allow for the fair examination of Mr.
15 16:27:28 15 Freshwater.
16 16:27:29 16 All counsel in agreement with
17 16:27:30 17 that?
18 16:27:31 18 MR. GREATHOUSE: Yes.
19 16:27:32 19 MR. HOLMAN: Yes.
20 16:27:33 20 MR. ROSS: Yes.
21 16:27:33 21 MR. HAMILTON: Yes.
22 16:27:38 22 MS. MOORE: And I think that's it
23 16:27:39 23 for today. Okay.
24 16:27:43 24 (WHEREUPON, the deposition was
25 16:27:46 25 adjourned at 4:27, p.m.)

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JOHN D. FRESHWATER

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C E R T I F I C A T E

STATE OF OHIO
SS.
COUNTY OF MONTGOMERY

I, CATHERINE L. SCHUTTE-STANT, the undersigned, a Registered Merit Reporter, and Notary Public within and for the State of Ohio, do hereby certify that before the giving of aforesaid deposition said JOHN D. FRESHWATER, was by me first duly sworn to state the truth, the whole truth, and nothing but the truth; that the foregoing is the deposition given at said time and place by said JOHN D. FRESHWATER; that said deposition was taken in stenotypy by the court reporter and transcribed into typewriting under her supervision; the court reporter was neither a relative of nor attorney for any of the parties to this case nor relative of nor employee for any of the counsel; neither the court reporter nor the affiliated court reporting firm has a financial interest under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I hereunto set my hand and official seal of office this 18th day of October, 2010.

Catherine L. Schutte-Stant / RMR
CATHERINE L. SCHUTTE-STANT, RMR
Notary Public, State of Ohio
My Commission Expires 7-23-2013