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THE STATE EDUCATION DEPARTMENT  
THE UNIVERSITY OF THE STATE OF NEW YORK



In the Matter of  
THE NEW YORK CITY DEPARTMENT OF EDUCATION

v

THEODORE SMITH

Section 3020-a Education Law Proceeding (File )

DATE: March 8, 2007

TIME: 10:00 a.m.  
12:30 a.m. to 12:35 p.m.  
1:15 p.m. to 1:28 p.m.  
1:44 p.m. to 3:03 p.m.  
3:24 p.m. to 3:39 p.m.  
3:54 p.m. to 4:13 p.m.

LOCATION: New York City Department of Education  
Office of Legal Services  
49-51 Chambers Street, 6th Floor  
New York, New York

BEFORE: JACK TILLEM, ESQ.  
Hearing Officer  
20 West Marie Street  
Hicksville, New York 11801

1 Theodore Smith - 3-8-2007  
 2  
 3 FOR THE DEPARTMENT:  
 4 SUSAN JALOWSKI, ESQ., Of counsel  
 5 MICHAEL BEST, ESQ., General Counsel  
 6 New York City Department of Education  
 7 Office of Legal Services  
 8 49-51 Chambers Street, 6th Floor  
 9 New York, New York  
 10 FOR THE RESPONDENT:  
 11 DAVID KEARNEY, ESQ., Of Counsel  
 12 Law offices of Neal Brickman, P.C.  
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 14 New York, New York 10017  
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 2 EXHIBIT INDEX  
 3 Marked as Description  
 4 Respondent  
 5 Twenty-nine 538 - 09  
 6 Letter by Dr. Scheidt  
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1 Theodore Smith - 3-8-2007  
 2 THE HEARING OFFICER: We'll  
 3 note our appearances. Jack Tillem, the Hearing  
 4 Officer.  
 5 For the Complainant?  
 6 MS. JALOWSKI: Susan Jalowski  
 7 for the Department of Education.  
 8 THE HEARING OFFICER: For the  
 9 Respondent?  
 10 MR. KEARNEY: David Kearney.  
 11 THE HEARING OFFICER: And the  
 12 Respondent, Theodore Smith, is present. We're  
 13 ready to continue with the Respondent's case.  
 14 MR. KEARNEY: If -- if the  
 15 Arbitrator will allow, I'd like to just make  
 16 one request.  
 17 THE HEARING OFFICER: Sure.  
 18 On the record?  
 19 MR. KEARNEY: Yes, please.  
 20 We had put on our witness list a woman named  
 21 Marissa Russo and it was our understanding --  
 22 it was my understanding that she was going to  
 23 testify today. However, for whatever reason,  
 24 she did not return my previous calls. However,

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1 Theodore Smith - 3-8-2007  
 2 last night, she did come forward and she is  
 3 willing to testify, as I understand it, and I  
 4 would simply ask for a brief adjournment so  
 5 that we can arrange to have her come in to  
 6 testify. And one of the basis -- bases for my  
 7 request is that -- and I don't believe that  
 8 this was malicious or in bad faith at all, but  
 9 I had asked Ms. Jalowski if -- if Ms. Russo  
 10 worked for the Department and I think she  
 11 inadvertently communicated that she didn't. It  
 12 turns out she does work for the Department of  
 13 Education. She is within their control, so  
 14 there -- I would just like to base my request  
 15 on that, as well.  
 16 THE HEARING OFFICER: Let --  
 17 let -- let -- I'm not clear. Give me a  
 18 timeline. When did you find out she's not  
 19 coming in today?  
 20 MR. KEARNEY: I found out  
 21 that she was not coming in today -- she did not  
 22 return my phone call.  
 23 THE HEARING OFFICER: Well  
 24 why didn't you call Ms. Jalowski and me, so

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1 Theodore Smith - 3-8-2007  
 2 MR. KEARNEY: No; I meant in  
 3 just --.  
 4 THE HEARING OFFICER: Okay.  
 5 No problem.  
 6 MR. KEARNEY: Okay.  
 7 THE HEARING OFFICER: No  
 8 problem.  
 9 Okay. You want to call a  
 10 witness?  
 11 MS. JALOWSKI: I -- I have an  
 12 issue with -- it's my understanding that Mr.  
 13 Kearney wants to call Dr. -- the doctor.  
 14 You -- you had made a -- you granted his  
 15 application that the doctor could testify by  
 16 phone.  
 17 THE HEARING OFFICER: Yes.  
 18 MS. JALOWSKI: But I made an  
 19 application that I want the medical records and  
 20 I don't have them and I'm not going to -- I'm  
 21 going to object to the doctor testifying unless  
 22 I have medical records.  
 23 THE HEARING OFFICER: She's  
 24 got a point.

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1 Theodore Smith - 3-8-2007  
 2 that you didn't have to come in and we didn't  
 3 have to come in.  
 4 MS. JALOWSKI: You've got  
 5 witnesses.  
 6 MR. KEARNEY: I've got  
 7 witnesses.  
 8 THE HEARING OFFICER: Oh,  
 9 okay. Then, let's go ahead. All right. No  
 10 problem.  
 11 MR. KEARNEY: I just want to  
 12 bring her in at a later date.  
 13 THE HEARING OFFICER: We'll  
 14 cross that bridge when we come to it. I would  
 15 assume you're not going to finish today or  
 16 whatever. And if you have an application for  
 17 another day for another witness, I -- I'd be  
 18 glad to do it. I'm not going to prevent you  
 19 from presenting your case.  
 20 MR. KEARNEY: I just wanted  
 21 to make sure that --.  
 22 THE HEARING OFFICER: I  
 23 thought you were making an application to  
 24 adjourn today and come back another day.

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1 Theodore Smith - 3-8-2007  
 2 MR. KEARNEY: We have two  
 3 things. One, we have requested them; we have  
 4 not received them. Secondly, there was an --  
 5 there was some miscommunication between Ms.  
 6 Jalowski and I as to the timeframe. She had  
 7 made a written request for records relating to  
 8 the years '99 and 2000 and 2001. I found out  
 9 that she -- that that was inadvertent, but I  
 10 rejected that request as irrelevant and I  
 11 didn't -- I didn't understand what it to be a  
 12 request for.  
 13 MS. JALOWSKI: But I made an  
 14 application that was a written one just stating  
 15 that again. But I made the oral application  
 16 of -- a long time ago to let them -- I believe  
 17 sometime in February, I believe -- with --  
 18 saying the dates, with the proper dates. I  
 19 mean I didn't realize, obviously --.  
 20 THE HEARING OFFICER: What  
 21 dates are the doctor going to testify to? And  
 22 those are the dates that we'd like to see the  
 23 records, I guess.  
 24 MR. KEARNEY: The -- I'm just

3 (Pages 504 to 507)

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1 Theodore Smith - 3-8-2007  
 2 simply going to ask the doctor questions about  
 3 Mr. Smith's condition and their opinion that on  
 4 the class --.  
 5 MS. JALOWSKI: I said on the  
 6 record -- I said I want the records for  
 7 September 2004 through June of 2005. Mr.  
 8 Kearney is correct; my e-mail the other day,  
 9 I -- I -- I did mistakenly put the wrong date,  
 10 but that doesn't -- then he should have been  
 11 written back to why do you want those dates  
 12 because obviously they're irrelevant. But the  
 13 fact is on the record, I did ask for the proper  
 14 dates and they should have been given to me way  
 15 before --.  
 16 THE HEARING OFFICER: It's a  
 17 valid request. If the doctor was here, he'd be  
 18 referring to his records, which I presume would  
 19 show some sort of evidence to what he did with  
 20 his -- this -- with the Respondent. To have  
 21 him testify on the telephone and not allow the  
 22 Complainant to avail themselves of seeing the  
 23 records on cross examination, I'm not sure his  
 24 testimony has very much worth.

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1 Theodore Smith - 3-8-2007  
 2 go off the record while the Respondent tries to  
 3 get the doctor's records. Okay?  
 4 THE REPORTER: Sure.  
 5 THE HEARING OFFICER: Off the  
 6 record.  
 7 (Off the record)  
 8 THE HEARING OFFICER: We're  
 9 going to now start the hearing. We're going to  
 10 be calling a Respondent's witness. We have the  
 11 witness here; the gentleman is Herbert  
 12 Robinson, R-O-B-I-N-S-O-N.  
 13 Mr. Robinson, would you raise  
 14 your right hand?  
 15 Do you affirm the testimony  
 16 you're about to give will be the truth, the  
 17 whole truth, and nothing but the truth?  
 18 MR. ROBINSON: Yes, sir, I  
 19 do.  
 20 HERBERT ROBINSON; Sworn.  
 21 THE HEARING OFFICER: Keep  
 22 your voice up. They're going to ask you some  
 23 questions.  
 24 DIRECT EXAMINATION

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1 Theodore Smith - 3-8-2007  
 2 MR. KEARNEY: Is there any  
 3 way that the Arbitrator would allow us to call  
 4 the doctor on another day when --  
 5 THE HEARING OFFICER: Sure.  
 6 MR. KEARNEY: -- we get the  
 7 records because we --.  
 8 THE HEARING OFFICER: If he  
 9 has the record and he wants to come in with  
 10 them, we'll send them copies to Ms. Jalowski.  
 11 Is that all right?  
 12 MS. JALOWSKI: I don't see --  
 13 the records are in his office. I don't see why  
 14 it can't be done today and faxed to me.  
 15 MR. KEARNEY: I can make that  
 16 request again.  
 17 THE HEARING OFFICER: So  
 18 let's take a break for a moment and see if we  
 19 can get the doctor to fax the records here that  
 20 he's going to testify about.  
 21 MR. KEARNEY: Okay.  
 22 THE HEARING OFFICER: Okay?  
 23 MR. KEARNEY: Thank you.  
 24 THE HEARING OFFICER: Let's

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1 Robinson - Direct - Kearney  
 2 BY MR. KEARNEY:  
 3 Q. Mr. Robinson, are you  
 4 currently employed?  
 5 **A. Yes.**  
 6 Q. And in what capacity?  
 7 **A. Self-employed as a lawyer.**  
 8 Q. And how long have you  
 9 practiced law?  
 10 **A. Sixty-six years.**  
 11 Q. And -- sixty-six years?  
 12 **A. Yes, sir.**  
 13 Q. And what area do you practice  
 14 in?  
 15 **A. Most corporate governments**  
 16 **and litigation.**  
 17 Q. All right. And where did you  
 18 graduate law school?  
 19 **A. Harvard Law School.**  
 20 Q. And what year was that?  
 21 **A. 1940.**  
 22 Q. And have you served any time  
 23 in the military, sir?  
 24 **A. Yes, sir.**

4 (Pages 508 to 511)

1 **Robinson - Direct - Kearney**  
 2 MS. JALOWSKI: Objection.  
 3 THE HEARING OFFICER: Yeah,  
 4 that's not relevant to me. Let's move on.  
 5 BY MR. KEARNEY: (Cont'g.)  
 6 Q. Do you know the Respondent,  
 7 Mr. Smith?  
 8 **A. I do.**  
 9 Q. And how do you know him?  
 10 **A. I met him through his mother.**  
 11 Q. And how long have you known  
 12 Mr. Smith?  
 13 **A. More than twenty years.**  
 14 Q. And have you had the  
 15 opportunity to visit Mr. Smith at a school in  
 16 which he's taught?  
 17 **A. I did.**  
 18 Q. And when was that?  
 19 **A. Some years ago.**  
 20 Q. And do you know which school  
 21 it was?  
 22 **A. It was the Beacon School.**  
 23 **THE HEARING OFFICER:**  
 24 **Beekman?**

1 **Robinson - Direct - Kearney**  
 2 THE WITNESS: Beacon,  
 3 B-E-A-C-O-N.  
 4 THE HEARING OFFICER: Thank  
 5 you.  
 6 BY MR. KEARNEY: (Cont'g.)  
 7 Q. And did you -- did you, in  
 8 fact, visit one of his classes?  
 9 **A. I did.**  
 10 Q. And can you just tell us  
 11 about that?  
 12 MS. JALOWSKI: Objection.  
 13 THE HEARING OFFICER: What's  
 14 the objection?  
 15 MS. JALOWSKI: It's -- it's  
 16 irrelevant that --.  
 17 THE HEARING OFFICER: It  
 18 might have relevance. I'll allow it. Let's  
 19 continue. I'll allow it. I'll allow it.  
 20 Go ahead, sir.  
 21 THE WITNESS: Would you  
 22 repeat the question, please?  
 23 BY MR. KEARNEY: (Cont'g.)  
 24 Q. Sure. Could you just tell me

1 Robinson - Direct - Kearney  
 2 what you observed?  
 3 THE HEARING OFFICER: Give us  
 4 a date to approximately, sir.  
 5 THE WITNESS: Some years ago.  
 6 THE HEARING OFFICER: Like  
 7 we're talking ten -- twenty --?  
 8 THE WITNESS: I would say  
 9 more than five years ago.  
 10 THE HEARING OFFICER: Okay.  
 11 Go ahead.  
 12 **A. Well, when I met -- he**  
 13 **introduced me to some of the children -- some**  
 14 **of the students. They gathered around me; we**  
 15 **were chatting and so forth. And I would say**  
 16 **they -- they obviously liked him very much.**  
 17 **And I would say that they regarded him**  
 18 **favorably and --**  
 19 MS. JALOWSKI: Objection.  
 20 **A. -- respected him.**  
 21 MS. JALOWSKI: Does he know  
 22 how the -- the children --?  
 23 THE HEARING OFFICER: I'm  
 24 going to allow his testimony, Counsel.

1 Robinson - Direct - Kearney  
 2 Go ahead.  
 3 BY MR. KEARNEY: (Cont'g.)  
 4 Q. Did you speak to the  
 5 children, Mr. Robinson?  
 6 **A. Yes, I did.**  
 7 Q. And what did they tell you?  
 8 **A. Well I just chatted with**  
 9 **them. I wasn't asking them questions and they**  
 10 **weren't asking me questions. We were just**  
 11 **chatting congenially.**  
 12 Q. And of -- how many times  
 13 would you say you visited Mr. Smith at his  
 14 school?  
 15 **A. Only that one time.**  
 16 Q. And aside from observing --  
 17 strike that.  
 18 Aside from visiting him at a  
 19 school, have you had any other interaction with  
 20 Mr. Smith?  
 21 **A. Oh, a great deal.**  
 22 Q. And can you tell us about  
 23 that?  
 24 **A. Well, yes. First of all I**

1 **Robinson - Direct - Kearney**  
 2 **have a problem with my balance and he's been**  
 3 **helping me over a run of some years now. And**  
 4 **two years ago, I fractured my vertebrae --.**  
 5 MS. JALOWSKI: Objection.  
 6 It's irrelevant.  
 7 THE HEARING OFFICER: What --  
 8 yeah -- let -- let me interrupt. What would be  
 9 the relevance of this? What probative value  
 10 would this have to me on the issues that are  
 11 here?  
 12 MR. KEARNEY: It goes to his  
 13 character, it goes to his fitness, and his --  
 14 his moral fitness to teach, his spirit of  
 15 volunteerism.  
 16 MS. JALOWSKI: I still object  
 17 that it's irrelevant.  
 18 THE HEARING OFFICER: I'll  
 19 allow it.  
 20 Go ahead, sir.  
 21 **A. (Cont'g.) Well he's been**  
 22 **helping me because I have some difficulty**  
 23 **getting around and particularly, the past two**  
 24 **years when I've had a great deal of difficulty.**

1 **Robinson - Direct - Kearney**  
 2 **And that's why I'm using**  
 3 **that, has some heavy books at the bottom. I**  
 4 **need it for balance. And I'm a book collector**  
 5 **and I donate thousands and thousands of books**  
 6 **to various non-profit organizations. And I**  
 7 **also have a book warehouse out on Long Island.**  
 8 MS. JALOWSKI: Objection.  
 9 **A. (Cont'g.) And he helps me**  
 10 **move books to and from the warehouse and he**  
 11 **helps me get around, even with some of the**  
 12 **local shopping that I do occasionally. And he**  
 13 **volunteer -- he volunteered this after I got**  
 14 **badly hurt.**  
 15 BY MR. KEARNEY: (Cont'g.)  
 16 Q. Do you pay Mr. Smith for  
 17 these services?  
 18 **A. Oh no, not at all.**  
 19 Q. Did you ever ask Mr. Smith to  
 20 perform these services?  
 21 **A. He volunteered it.**  
 22 Q. All right. Aside from the  
 23 charitable work that you alluded to with the  
 24 books, are you involved in any other charities?

1 Robinson - Direct - Kearney  
 2 MS. JALOWSKI: Objection.  
 3 THE HEARING OFFICER: I'll  
 4 sustain that. What charities someone would be  
 5 involved in is not relevant to me, unless you  
 6 tell me there's a connection.  
 7 MR. KEARNEY: It's -- it's  
 8 just -- he's being offered for his testimony as  
 9 to Mr. Smith's character.  
 10 THE HEARING OFFICER: Well it  
 11 wouldn't -- what charity this gentleman  
 12 contributes to would not be relevant.  
 13 THE WITNESS: They're mostly  
 14 in the educational and library field. They're  
 15 all in that field.  
 16 THE HEARING OFFICER: I don't  
 17 need to tell you, sir, but you as an attorney  
 18 know you're a witness, so I'll sustain that.  
 19 Let's move on.  
 20 BY MR. KEARNEY: (Cont'g.)  
 21 Q. Other than helping you with  
 22 the fractured vertebrae that you testified to  
 23 earlier and your balance problems, can you say  
 24 anything else about Mr. Smith's character?

1 Robinson - Direct - Kearney  
 2 **A. Well in my experience, I**  
 3 **would say it just helps. In our society, a lot**  
 4 **of people use vulgar and obscene expressions,**  
 5 **like in the military, et cetera I've never**  
 6 **heard a single word of that nature from Ted**  
 7 **Smith. And it never occurred to me at all**  
 8 **until just this morning that that's the case**  
 9 **there. It seems to me that's it's very unusual**  
 10 **for a young American man.**  
 11 Q. Do you know what I mean when  
 12 I say the F word, sir? Do you know what's  
 13 meant by the phrase the F word?  
 14 MS. JALOWSKI: Objection.  
 15 **A. Oh, of course.**  
 16 MS. JALOWSKI: He said he  
 17 never heard --.  
 18 **A. (Cont'g.) Of course I do. I**  
 19 **never heard it from him.**  
 20 **THE HEARING OFFICER: Go**  
 21 **ahead. What's the question?**  
 22 BY MR. KEARNEY: (Cont'g.)  
 23 Q. Have you ever heard Mr. Smith  
 24 use the F word?

1 Robinson - Direct - Kearney  
 2 **A. Never.**  
 3 Q. And how long have you known  
 4 Mr. Smith?  
 5 **A. At least twenty years.**  
 6 MR. KEARNEY: Nothing  
 7 further.  
 8 CROSS EXAMINATION  
 9 BY MS. JALOWSKI:  
 10 Q. Now Mr. Robinson, you're not  
 11 an educator, correct? You're not -- you're not  
 12 a teacher, correct?  
 13 **A. No.**  
 14 MS. JALOWSKI: I have no  
 15 further questions.  
 16 THE HEARING OFFICER: Thank  
 17 you Mr. Robinson. Thanks for coming down.  
 18 THE WITNESS: Thank you sir.  
 19 My pleasure.  
 20 THE HEARING OFFICER: Off the  
 21 record.  
 22 (Off the record)  
 23 THE HEARING OFFICER: Okay.  
 24 We're ready to call another witness, let the

1 Robinson - Cross - Jalowski  
 2 record show, for a telephone conference call.  
 3 The witness is Dr. Stephen Scheidt,  
 4 S-T-E-P-H-E-N; last name S-C-H-E-I-D, as in  
 5 Donald, T, as in Tom.  
 6 Dr. Scheidt, would you raise  
 7 your right hand, please?  
 8 MR. SCHEIDT: I am doing so.  
 9 THE HEARING OFFICER: Thank  
 10 you.  
 11 Do you affirm the testimony  
 12 you're about to give will be the truth, the  
 13 whole truth, and nothing but the truth?  
 14 MR. SCHEIDT: I do.  
 15 STEPHEN SCHEIDT; Sworn.  
 16 THE HEARING OFFICER: Thank  
 17 you.  
 18 Your witness.  
 19 You're going to be examined  
 20 now by Mr. Kearney, the attorney for Mr. Smith.  
 21 THE WITNESS: Okay.  
 22 DIRECT EXAMINATION  
 23 BY MR. KEARNEY:  
 24 Q. Good afternoon, Dr. Scheidt.

1 Scheidt - Direct - Kearney  
 2 **A. Good afternoon, sir.**  
 3 Q. Are you currently employed?  
 4 **A. I am.**  
 5 Q. Where?  
 6 **A. By New York Hospital or New**  
 7 **York Presbyterian Hospital at Cornell Medical**  
 8 **Center at 525 East 68th Street, in Manhattan.**  
 9 Q. And do you practice medicine,  
 10 sir?  
 11 **A. I do.**  
 12 Q. And you do have a certain --  
 13 any particular specialty?  
 14 **A. Cardiology.**  
 15 Q. And how long have you been a  
 16 cardiologist?  
 17 **A. Since 1970.**  
 18 Q. Do you hold any other -- do  
 19 you hold any special licensure as it relates to  
 20 your practice of cardiology?  
 21 **A. Well I have a New York State**  
 22 **license to practice medicine. I'm a -- I have**  
 23 **Boards in internal medicine, as well as Boards**  
 24 **in cardiology.**

1 **Scheidt - Direct - Kearney**  
 2 Q. You're a Board certified  
 3 cardiologist?  
 4 **A. Correct.**  
 5 Q. Do you know the Respondent,  
 6 Mr. Smith?  
 7 **A. Mr. Smith, I do. My chart**  
 8 **starts on May 4th, 1992, so I presumably met**  
 9 **him on that day. And I've seen him**  
 10 **periodically ever since -- routinely ever**  
 11 **since.**  
 12 Q. And did you -- and for what  
 13 purpose?  
 14 **A. He has had paroxysmal atrial**  
 15 **tachycardia or supra ventricular tachycardia**  
 16 **and then more recently, actually paroxysmal**  
 17 **atrial fibrillation. All of these are rhythm**  
 18 **disturbances. The heart takes an unusual**  
 19 **rhythm, which is generally faster than the**  
 20 **normal rhythm. And the usual complaint that**  
 21 **the person feels when this happens is**  
 22 **palpitations and that, indeed, has been -- you**  
 23 **know, that was Mr. Smith's initial complaint.**  
 24 Q. And have you, in fact,

1 Scheidt - Direct - Kearney  
 2 examined Mr. Smith while he was in a -- in a  
 3 state of fibrillation?  
 4 **A. Yes, I believe I have. There**  
 5 **have been a number of episodes where the**  
 6 **fibrillation has come and gone. And on at**  
 7 **least one occasion, he's had fibrillation in**  
 8 **the emergency room. So I mean the answer is**  
 9 **yes, although I would have to dig hard to find**  
 10 **out when -- when the last time it was.**

11 Q. Just testifying as to -- to  
 12 your memory just today, can you just describe  
 13 generally what, in layman's terms, the symptoms  
 14 of atrial fibrillation are?

15 **A. Well it -- it depends on a**  
 16 **number of factors among which probably the most**  
 17 **important is whether the patient has other**  
 18 **heart disease. Atrial fibrillation is one of**  
 19 **the commonest -- probably is the commonest**  
 20 **rhythm disturbance in cardiology, very much age**  
 21 **related. But in the people that get it as they**  
 22 **get older, they usually have some heart**  
 23 **disease. Mr. Smith was and is somewhat unusual**  
 24 **in that he probably has what's called lone**

1 **Scheidt - Direct - Kearney**  
 2 **atrial fibrillation, lone, L-O-N-E, like the**  
 3 **Lone Ranger.**  
 4 **And what that means it means**  
 5 **to -- to be described is that he doesn't have**  
 6 **structural disease of the heart. He doesn't**  
 7 **have coronary narrowing in atherosclerosis and**  
 8 **he doesn't have valve disease and he doesn't**  
 9 **have other stuff that tends to go along with**  
 10 **the older people who get fibrillation. So in**  
 11 **people who have just this lone atrial**  
 12 **fibrillation the symptom is almost always**  
 13 **palpitation. But sometimes the heart can get**  
 14 **going so fast, I mean like a hundred and**  
 15 **ninety -- two hundred times a minute, double --**  
 16 **triple -- quadruple a normal heart rate, that**  
 17 **there are people who have dizziness; there are**  
 18 **people who have vertigo; there are people who**  
 19 **actually faint. And certainly a lot of people**  
 20 **have to sit down or lie down. Otherwise,**  
 21 **they'll fall down. But this varies from**  
 22 **patient to patient and also even within the**  
 23 **same patient depending upon on how fast the**  
 24 **heart goes.**

1 **Scheidt - Direct - Kearney**  
 2 Q. Doctor, I just want to tailor  
 3 my inquiry to Mr. Smith.  
 4 **A. Yes.**  
 5 Q. Some of the symptoms you  
 6 described, palpitations, dizziness, fainting,  
 7 does any of that apply in Mr. Smith's case?  
 8 **A. Well the palpitations and the**  
 9 **dizziness or the, you know, feeling not able to**  
 10 **do standard things do apply in Mr. Smith's**  
 11 **case. I do not believe he ever fainted,**  
 12 **actually.**

13 Q. Now are there any factors  
 14 that exacerbate the condition of atrial --  
 15 atrial fibrillation?

16 **A. Well, there are potentially**  
 17 **many factors, most of which are not important**  
 18 **in relatively young people like Mr. Smith**  
 19 **with -- with normal or relatively normal**  
 20 **hearts. So I mean, you know, that's not a**  
 21 **question that it's easy -- that one can give a**  
 22 **yes or no answer to. But there certainly --**  
 23 **and by the way, there are some patients in whom**  
 24 **there's nothing that we can put our fingers on**

1 **Scheidt - Direct - Kearney**  
 2 **that precipitates the atrial fibrillation, but**  
 3 **I would say as a general rule, many people have**  
 4 **more fibrillation when they're under stress,**  
 5 **either physical or -- or mental. There are**  
 6 **some people in whom the fibrillation is related**  
 7 **to caffeine consumption. There are some people**  
 8 **in whom it's related to alcohol consumption.**  
 9 **I would say as a general rule, you don't -- you**  
 10 **just don't know why somebody is going to have**  
 11 **it and there are -- there are -- there's a**  
 12 **periodicity to it that all cardiologists know**  
 13 **about, but is very hard to explain. There are**  
 14 **people who will get a lot of fibrillation many,**  
 15 **many episodes and long, prolonged episodes and**  
 16 **bothersome episodes, symptomatic episodes for a**  
 17 **while and then for several months, they won't**  
 18 **have it. But I would say that -- that it's**  
 19 **different for different people. But in**  
 20 **general, the only thing that -- that tends**  
 21 **to -- you tend to hear often would -- would be**  
 22 **stress. And I must tell you since most people**  
 23 **lead stress -- or many people lead stressful**  
 24 **lives, one never quite knows whether A is**



1 **Scheidt - Direct - Kearney**  
 2 **really related to B.**  
 3 Q. All right. Now having  
 4 treated Mr. Smith in the ordinary course, has  
 5 he ever communicated to you circumstances which  
 6 you feel could exacerbate his fibrillation?  
 7 **A. Well he, as you undoubtedly**  
 8 **know, is an extraordinarily active person,**  
 9 **probably more active and -- and in better**  
 10 **physical shape than -- than ninety-five to**  
 11 **ninety-nine percent of -- of a**  
 12 **cardiologist's -- of -- of my patients. So I**  
 13 **mean, you know, I -- I -- I will read -- read**  
 14 **you from the very fist line of the very first**  
 15 **note when I met him on May 4th, 1992.**  
 16 **Thirty-one year old physical education teacher**  
 17 **for evaluation of palpitations, past several**  
 18 **years has -- has noted palpitations during**  
 19 **stress. So you know, it's from the very first**  
 20 **sentence of the very first note that I wrote.**  
 21 **And from time to time he would tell me that**  
 22 **under stressful situations at school, he would**  
 23 **tend to get more fibrillation.**  
 24 Q. Dr. Scheidt, during the

1 Scheidt - Direct - Kearney  
 2 2004-2005 academic year, did you treat Mr.  
 3 Smith as a cardiologist?  
 4 **A. Yes, I did.**  
 5 Q. Did you notice anything about  
 6 his -- the incidents of fibrillation during  
 7 that period?  
 8 **A. Well, I just sort of --**  
 9 **that's a sort of tough question. Now you say**  
 10 **the 2004-2005 school year?**  
 11 THE HEARING OFFICER: Yes,  
 12 that's September '04 to June '05.  
 13 **A. (Cont'g.) Well, you know,**  
 14 **he -- we had -- he had been having a various**  
 15 **episodes of the fibrillation earlier in 2004,**  
 16 **so the first six months of 2004. And he**  
 17 **actually went to see Dr. Kenneth Stein, who is**  
 18 **an electrophysiologist. These are sort of like**  
 19 **electricians for the heart. And he went to see**  
 20 **Dr. Stein, I think, on August 3rd, '04 because**  
 21 **he was having enough palpitations so that we**  
 22 **were thinking about doing more than just giving**  
 23 **him medications.**  
 24 **He was seen in the emergency**

1 **Scheidt - Direct - Kearney**  
 2 **room November 18, '04 with palpitations that**  
 3 **were, you know, daily or nearly daily, even**  
 4 **awakening him at night. And I increased the --**  
 5 **the -- the drugs and he had been put on a new**  
 6 **antiarrhythmic drug. And then I saw him again**  
 7 **on a regular visit in the office in December.**  
 8 **And again, you know, it says -- in that visit**  
 9 **it says for the past six months much more**  
 10 **often, several times weekly, so that it's not**  
 11 **perfectly coincident with that school year, but**  
 12 **clearly in the -- in the second half of 2004,**  
 13 **he was having an awful lot of palpitations.**  
 14 **And as of December 14th, my chart says nearly**  
 15 **every day.**  
 16 **And then I saw him again. I**  
 17 **saw him in the emergency room in -- in March**  
 18 **'05 at which point, he actually needed an**  
 19 **intravenous drug to get him out of atrial**  
 20 **fibrillation. And then I increased the drugs**  
 21 **again on March 25th. And I saw him in the**  
 22 **office on April 5th, again with nearly every**  
 23 **day, some related to exertion, some not. So**  
 24 **you know, he was having -- and then you know,**

1 **Scheidt - Direct - Kearney**  
 2 **again, my note of April 5th, 2005 said that in**  
 3 **the ten days prior to this visit of April 5th**  
 4 **'05, he's had another five episodes one to six**  
 5 **hours in duration, possibly related to work**  
 6 **stress. So you know, there are plenty of**  
 7 **notations during the 2004-2005 school year that**  
 8 **he was having a lot of arrhythmia.**  
 9 BY MR. KEARNEY: (Cont'g.)  
 10 Q. Now as a cardiologist, how do  
 11 you -- how do you expect class size to play a  
 12 role in Mr. Smith's -- in his instances of  
 13 fibrillation?  
 14 MS. JALOWSKI: Objection.  
 15 THE HEARING OFFICER:  
 16 Sustained.  
 17 THE WITNESS: I didn't hear  
 18 what the --  
 19 THE HEARING OFFICER: Well  
 20 you don't have to answer that question.  
 21 THE WITNESS: -- the judge.  
 22 I don't have to answer that. Okay.  
 23 BY MR. KEARNEY: (Cont'g.)  
 24 Q. Were you aware of any

1 Scheidt - Direct - Kearney  
 2 precipitating factors during this period, the  
 3 2004-2005 academic year, that contributed to  
 4 the frequency of Mr. Smith's fibrillation?  
 5 MS. JALOWSKI: Objection.  
 6 THE HEARING OFFICER: Yeah,  
 7 I'll -- you can lay a foundation on that and  
 8 ask him what the Respondent may have told him  
 9 about causing that and I'll take that, but not  
 10 what he thinks may have. If you want to  
 11 rephrase that question, I might allow it.  
 12 BY MR. KEARNEY: (Cont'g.)  
 13 Q. Did the Respondent  
 14 communicate to -- to you any factors that -- to  
 15 explain the frequency of fibrillation during  
 16 that period?  
 17 **A. Well, Mr. Smith mentioned on**  
 18 **many occasions that he thought that the**  
 19 **increased frequency of fibrillation was related**  
 20 **to increased stress. I must tell you I don't**  
 21 **know exactly when the question of class size**  
 22 **came up. I have certainly heard about it, but**  
 23 **whether it was during the 2004-2005 school**  
 24 **year, I don't know.**

1 **Scheidt - Direct - Kearney**  
 2 **I mean, I -- I went to New**  
 3 **York City public schools. I went to P. S. 3**  
 4 **Queens and Junior High School 157 and Forest**  
 5 **Hill High School and so I remember very well**  
 6 **the -- the arguments there used to be about**  
 7 **class size and teachers and such and such. And**  
 8 **I --.**  
 9 THE HEARING OFFICER: No --  
 10 no; stop that, sir.  
 11 Ask the next question, Mr.  
 12 Kearney.  
 13 BY MR. KEARNEY: (Cont'g.)  
 14 Q. Irrespective of the time at  
 15 which you heard this class size come up, what  
 16 did Mr. Smith tell you about his class -- the  
 17 size of his classes?  
 18 **A. That they were you know,**  
 19 **larger than anything I was used to in -- in the**  
 20 **public school system.**  
 21 MS. JALOWSKI: Objection.  
 22 THE HEARING OFFICER: That's  
 23 not the question sir. What did he tell you?  
 24 Did he tell you -- what did he tell you, if

1 Scheidt - Direct - Kearney  
 2 anything, about class size? If you recall.  
 3 **A. (Cont'g.) Well I have**  
 4 **learned within the past six to twelve months**  
 5 **that the number is -- is -- is sometimes**  
 6 **sixty-five or more people. I do not know**  
 7 **whether I -- when I first heard that number,**  
 8 **but -- but you know, what -- what did I hear?**  
 9 **I heard that --.**  
 10 THE HEARING OFFICER: Not  
 11 what did you hear. What did he tell you, if  
 12 you recall. When you say you heard --.  
 13 THE WITNESS: Are you asking  
 14 me when? Because that -- that I don't  
 15 remember. Let -- let's put it this way. I --  
 16 I did not hear about -- you know, about gang  
 17 violence in his classes. All right? That's --  
 18 that wasn't --.  
 19 THE HEARING OFFICER: All  
 20 right. Let's ask another question. Thank you,  
 21 Doctor.  
 22 Continue, please.  
 23 THE WITNESS: Okay.  
 24 THE HEARING OFFICER: I'll

1 Scheidt - Direct - Kearney  
 2 sustain the objection.  
 3 BY MR. KEARNEY: (Cont'g.)  
 4 Q. Doctor, can you explain how  
 5 stressful situations contribute to  
 6 fibrillation?  
 7 **A. Quite honestly, I cannot,**  
 8 **except that you know, there's -- there's an**  
 9 **obvious potential link. And that is stress of**  
 10 **any kind, physical stress, emotional stress,**  
 11 **any kind of stress tends to increase the amount**  
 12 **of catecholamines. These are our epinephrines,**  
 13 **the fight or flight hormones. And -- and any**  
 14 **kind of stress will increase those -- those**  
 15 **hormones in the blood and those hormones or**  
 16 **drugs very similar to those hormones clearly**  
 17 **can precipitate fibrillation.**  
 18 **And I mean just as an**  
 19 **example, it's well known that -- that asthma**  
 20 **medications in order -- in order to dilate the**  
 21 **bronchi, you give a form of -- of epinephrine,**  
 22 **of adrenaline. That's what opens up the**  
 23 **breathing tubes and those -- those inhalers**  
 24 **that -- that millions of people use those**

1 **Scheidt - Direct - Kearney**  
 2 **certainly speed up the heart rate, increase the**  
 3 **blood pressure, and can cause the heart to go**  
 4 **faster and have arrhythmia so I mean that's --**  
 5 **that's the standard explanation. Whether it's**  
 6 **true or not, I can't tell you.**

7 Q. In Mr. Smith's case, did --  
 8 do you know whether his instances of  
 9 fibrillation affected his ability to report to  
 10 work?

11 MS. JALOWSKI: Objection.  
 12 THE HEARING OFFICER: I'll  
 13 take it. I'll allow it.

14 Go ahead, Doctor, you can  
 15 answer that if you can.

16 **A. Well I do know it did because**  
 17 **it -- it did affect it because there were**  
 18 **occasions when he would call and -- and say you**  
 19 **know, had -- had an episode of fibrillation**  
 20 **many hours, couldn't go to work. So yes, it**  
 21 **did affect -- I -- I know it did affect his**  
 22 **ability to go to work.**

23 BY MR. KEARNEY: (Cont'g.)

24 Q. In your records, it -- do you

1 Scheidt - Direct - Kearney  
 2 have a copy of a letter dated June 8, 2005 that  
 3 you wrote on behalf of Mr. Smith?

4 **A. I probably do; give me a**  
 5 **moment. June 8, 2005, yes.**

6 THE HEARING OFFICER: Is this  
 7 in evidence --

8 **A. (Cont'g.) Ah -- yes, so**  
 9 **there I did -- I did know about the large class**  
 10 **size during that school year.**

11 THE HEARING OFFICER: Doctor,  
 12 please try to just confine yourself to  
 13 answering the questions. Okay?

14 MR. KEARNEY: I'd like to  
 15 mark this for identification.

16 THE HEARING OFFICER: Okay.  
 17 This is going to be Respondent's Twenty-nine.

18 MR. KEARNEY: Respondent's  
 19 Twenty-nine.

20 BY MR. KEARNEY: (Cont'g.)

21 Q. Doctor, do you have --?

22 THE HEARING OFFICER: For  
 23 identification.

24 Do you have this in front of

1 Scheidt - Direct - Kearney  
 2 you, Doctor?

3 THE WITNESS: I do.

4 THE HEARING OFFICER: Good.  
 5 Okay. Go ahead.

6 BY MR. KEARNEY: (Cont'g.)

7 Q. I'm going to refer to it as  
 8 Respondent's Twenty-nine. Did you write this  
 9 letter, sir?

10 **A. I did.**

11 MR. KEARNEY: Move into  
 12 evidence.

13 MS. JALOWSKI: No objection.

14 THE HEARING OFFICER: In  
 15 evidence. Go ahead.

16 BY MR. KEARNEY: (Cont'g.)

17 Q. Just looking at the second  
 18 paragraph, did there come a time when you  
 19 concluded that Mr. Smith's class size  
 20 contributed to his frequency and the severity  
 21 of atrial fibrillation?

22 MS. JALOWSKI: Objection.

23 THE HEARING OFFICER: All

24 right. I'm going to allow this. Let's

1 Scheidt - Direct - Kearney

2 continue. Go ahead.

3 THE WITNESS: You want me to  
 4 answer?

5 THE HEARING OFFICER: Yes,  
 6 please do, sir.

7 **A. Well you know, I ask both**  
 8 **sides to please note the caginess of the**  
 9 **cardiologist. All right? I said apparently**  
 10 **the new position was associated with very large**  
 11 **classroom size with very little assistance**  
 12 **because I -- you know, there was no way that I**  
 13 **personally could confirm that. What I did know**  
 14 **was that his atrial fibrillation has occurred**  
 15 **much more often in the past few months than in**  
 16 **the past ten years. And then I say possibly --**  
 17 **very possibly associated with stress at work.**  
 18 **I mean that's about as good you get from a**  
 19 **doctor. Doctors don't really know why things**  
 20 **happen.**

21 THE HEARING OFFICER: That's  
 22 okay, Doctor; you answered the question.

23 Next.

24 BY MR. KEARNEY: (Cont'g.)

1 Scheidt - Direct - Kearney  
 2 Q. As Mr. Smith's treating  
 3 cardiologist, did -- in your opinion, is it  
 4 appropriate for Mr. Smith to report to work  
 5 while in -- fibrillating?  
 6 **A. Well that's -- you know, I'm**  
 7 **not trying to be cagey here. It really does**  
 8 **depend. I think I probably could report to**  
 9 **work while fibrillating because I'm sitting at**  
 10 **a desk and I don't have to do physical**  
 11 **exertion. I don't exactly know what Mr. Smith**  
 12 **has to -- has to do in the course of a day. My**  
 13 **presumption is that as a physical ed. teacher,**  
 14 **he has to, you know, run around. He has to do**  
 15 **physical things. In general, atrial**  
 16 **fibrillation increases the heart rate and in**  
 17 **general, atrial fibrillation increases the**  
 18 **adrenaline levels and physical exercise would**  
 19 **do it even more so. So no, a cardiologist**  
 20 **would not tell a patient to exercise if -- if**  
 21 **he were in fibrillation. The cardiologist**  
 22 **tells the patient to sit down and relax and**  
 23 **chill out and take some medications that are**  
 24 **usually anti-adrenaline. So if -- if you're**

1 **Scheidt - Direct - Kearney**  
 2 **telling me that Mr. Smith is expected to do**  
 3 **physical activity -- substantial physical**  
 4 **activity at work then no, it would not be**  
 5 **appropriate for him to go to work with**  
 6 **fibrillation.**  
 7 Q. Would it be appropriate for  
 8 Mr. Smith to sit in a chair during an instance  
 9 of fibrillation?  
 10 MS. JALOWSKI: Objection.  
 11 Leading.  
 12 THE HEARING OFFICER:  
 13 Sustained. Don't answer that, Doctor.  
 14 THE WITNESS: Okay.  
 15 BY MR. KEARNEY: (Cont'g.)  
 16 Q. How would you -- what would  
 17 advise a patient to do during a -- an instance  
 18 of fibrillation?  
 19 THE HEARING OFFICER: It's  
 20 been asked and answered. He's already answered  
 21 that sir. He would ask them to rest, chill  
 22 out, take it easy, and take some medication.  
 23 Is that fair to say, Doctor?  
 24 THE WITNESS: Quite correct.

1 Scheidt - Direct - Kearney  
 2 THE HEARING OFFICER: Thank  
 3 you.  
 4 MR. KEARNEY: Nothing  
 5 further.  
 6 THE HEARING OFFICER: Want to  
 7 take a minute?  
 8 MS. JALOWSKI: Actually, I  
 9 want to look -- I just want to look for at --  
 10 at one thing and then I'll --.  
 11 THE HEARING OFFICER: Doctor,  
 12 it will take a few minutes to be cross  
 13 examined, so don't leave town.  
 14 THE WITNESS: Oh, I'm not  
 15 going anywhere.  
 16 THE HEARING OFFICER: Okay.  
 17 Thank you.  
 18 Off the record.  
 19 (Off the record)  
 20 THE HEARING OFFICER: You're  
 21 going to be asked questions now by the attorney  
 22 for the Board of Education, Susan Jalowski.  
 23 Go ahead.  
 24 THE WITNESS: Okay. Very

1 Scheidt - Direct - Kearney  
 2 good.  
 3 CROSS EXAMINATION  
 4 BY MS. JALOWSKI:  
 5 Q. Good afternoon, Doctor.  
 6 **A. Good afternoon, ma'am.**  
 7 Q. Dr. Scheidt, what are your  
 8 office hours?  
 9 **A. Oh, generally, eight to five.**  
 10 Q. And --?  
 11 **A. I'm sorry. We don't start**  
 12 **office hours. I get here at eight. The office**  
 13 **opens at nine.**  
 14 Q. And it closes at five?  
 15 **A. Yes.**  
 16 Q. And how long is a typical  
 17 patient appointment?  
 18 **A. Thirty minutes.**  
 19 Q. And is it correct -- am I  
 20 correct that the visit on December 14th and  
 21 April 5th were pre-planned follow-up visits --  
 22 you know, appointments that were made ahead of  
 23 time?  
 24 **A. Just a moment and I'll tell**

1           **Scheidt - Cross - Jalowski**  
2 **you. You're talking December 14th, '04?**  
3           Q. Correct.  
4           **A. Yeah, that is a pre-planned**  
5 **visit. And April 5th?**  
6           Q. Right.  
7           **A. Yes, that also looks like a**  
8 **pre-planned visit.**  
9           THE HEARING OFFICER: That's  
10 April 5th, '05?  
11           THE WITNESS: Yes.  
12           THE HEARING OFFICER: Thank  
13 you.  
14 BY MS. JALOWSKI: (Cont'g.)  
15           Q. Is it fair to say that Mr.  
16 Smith easily could have made an appointment  
17 that didn't start until -- he could have come  
18 into your office for a three-thirty  
19 appointment, correct?  
20           MR. KEARNEY: Objection.  
21           THE HEARING OFFICER: What's  
22 the objection?  
23           MR. KEARNEY: There's no --.  
24           **A. Yes, I mean we could --**

1           **Scheidt - Cross - Jalowski**  
2           **THE HEARING OFFICER: No.**  
3 **Wait, Doctor. No -- no. It's overruled**  
4 **anyway. It's a fair question on cross.**  
5           **Go ahead. Answer it, please,**  
6 **if you can.**  
7           **A. (Cont'g.) Yeah I mean the --**  
8 **the notes in the chart don't -- don't tell you**  
9 **what the time the patient came, but I mean**  
10 **those are in the records if one really cared,**  
11 **but you know, yes, there -- there's -- I can't**  
12 **tell you for sure.**  
13 BY MS. JALOWSKI: (Cont'g.)  
14           Q. But essentially, Mr. Smith,  
15 Cornell Medical Center is on what,  
16 seventy-five -- seventy-eighth and --  
17           **A. Try Seventieth and York.**  
18           Q. Is it fair to say that Mr.  
19 Smith could have worked all day and then had an  
20 appointment at your office if school let out at  
21 three, correct?  
22           **A. Yes, that's possible.**  
23           Q. Now, is it fair to say that  
24 in general, you testified that it's -- it's --

1           Scheidt - Cross - Jalowski  
2 it's not clear why some patients go into  
3 fibrillation. It could be numerous factors,  
4 correct?  
5           **A. Correct.**  
6           Q. Essentially, though, Mr.  
7 Smith self-reports that he finds his way -- he  
8 does find it that when he's under stressful --  
9           **A. Correct.**  
10           Q. -- situations. In general,  
11 the medical literature doesn't really say that  
12 that is always -- that is the number one factor  
13 for fibrillation, correct?  
14           **A. Correct. And even in Mr.**  
15 **Smith's case, there were, you know, episodes**  
16 **that -- that were not related to stress. So I**  
17 **mean, it's a sort of a typical situation; you**  
18 **can never be really sure.**  
19           Q. But what did he say there  
20 were other things that brought on -- along the  
21 fibrillation?  
22           **A. I don't believe he ever**  
23 **mentioned anything other than stress. But I**  
24 **mean there were a number of occasions when he**

1           **Scheidt - Cross - Jalowski**  
2 **would be sitting doing nothing. It would in**  
3 **the evening or something like that and he would**  
4 **get an episode.**  
5           Q. Is it fair to say if during  
6 fibrillation and Mr. Smith had class, if he was  
7 able to just stand in front of the class and  
8 give instructions without having to perform any  
9 of the sports or exercises that he was  
10 instructing the class -- it would be fair to  
11 say one could be in fibrillation and do -- and  
12 be able to just stand in front of a class and  
13 instruct, correct?  
14           MR. KEARNEY: Objection.  
15 Assumes facts not in evidence.  
16           THE HEARING OFFICER: I'll  
17 allow it.  
18           Can you answer that, Doctor?  
19           **A. Well it's very hard to answer**  
20 **that. Again, depending upon how fast the heart**  
21 **goes, people have everything from no symptoms**  
22 **to, you know, some people faint. Mr. Smith**  
23 **never had such extreme symptoms. I mean if he**  
24 **just had to -- to stand in front of a class or**

1 **Scheidt - Cross - Jalowski**  
 2 **sit down at a desk in front of the class and**  
 3 **tell them what to do, I suppose that for many**  
 4 **of the episodes, he could have done that. But**  
 5 **I -- you know, I can't really say. If he was**  
 6 **going a hundred and ninety or two hundred times**  
 7 **a minute, I don't imagine he would have wanted**  
 8 **to pay a lot of attention to the class.**

9 BY MS. JALOWSKI: (Cont'g.)  
 10 Q. Is it fair to say, though,  
 11 that an episode -- but what -- when one simply  
 12 has the episode, how long does it usually last  
 13 for?

14 **A. Well that's very variable and**  
 15 **it was very variable in Mr. Smith's case. The**  
 16 **initial episode, and we're not talking about**  
 17 **the first ten years that I was talking -- that**  
 18 **I was taking care of him. The initial episodes**  
 19 **were, you know, relatively far between and**  
 20 **didn't last very long, like sometimes just**  
 21 **seconds. And sometimes, you know, in -- in**  
 22 **just -- just a random note -- in 1995, there's**  
 23 **a chart here -- there's a note here that he was**  
 24 **seen with atrial fibrillation, but his rate was**

1 **Scheidt - Cross - Jalowski**  
 2 **only a hundred and ten. So you know, that**  
 3 **probably would not have been very symptomatic.**  
 4 **On the other hand, by**  
 5 **2004-2005, he was reporting more episodes and**  
 6 **he was reporting longer episodes. And now,**  
 7 **some of them are forty-five minutes, et cetera,**  
 8 **et cetera and most of the episodes, I didn't**  
 9 **see and -- and nobody took any -- any -- any**  
 10 **cardiograms, so I can't tell you what his heart**  
 11 **rate was or how symptomatic he would have been.**

12 Q. Is it fair to say that in  
 13 your medical opinion that somebody who had  
 14 fibrillation could actually mentally work  
 15 themselves up into fibrillating? Is that a  
 16 possibility?

17 **A. It is certainly a**  
 18 **possibility.**

19 Q. Again, essentially, when one  
 20 is fibrillating, what one really needs to do is  
 21 just sit until -- basically the person should  
 22 sit down. Is that correct?

23 **A. Well what you want to do is**  
 24 **you want the person to be sitting down so the**

1 **Scheidt - Cross - Jalowski**  
 2 **person doesn't fall down. And you also, in**  
 3 **general, would like to get the adrenaline**  
 4 **levels down, so that the heart rate comes down.**  
 5 **And the ways to do that are, you know, as I**  
 6 **said before, sit down, chill out, et cetera, et**  
 7 **cetera.**

8 **And then I believe during**  
 9 **much of this time, I actually gave Mr. Smith**  
 10 **some Propranolol, which is a short acting**  
 11 **anti-adrenaline medication that one can -- can**  
 12 **pop in one's mouth and acts against adrenaline**  
 13 **in variable periods of time but, you know,**  
 14 **under -- under an hour. But one could still**  
 15 **feel pretty rotten until those medications took**  
 16 **effect and one never quite knows in every**  
 17 **situation whether they will or won't take**  
 18 **effect.**

19 MS. JALOWSKI: Okay. I have  
 20 no further questions.

21 THE HEARING OFFICER:  
 22 Anything else, sir?

23 MR. KEARNEY: Yes.

24 REDIRECT EXAMINATION

1 Scheidt - Redirect - Kearney  
 2 BY MR. KEARNEY:  
 3 Q. Just one question, Doctor.  
 4 As Mr. Smith's treating cardiologist, do have  
 5 any reason to believe that Mr. Smith mentally  
 6 worked himself into fits of atrial -- atrial  
 7 fibrillation?

8 **A. No, I don't really. Lone**  
 9 **atrial fibrillation, like -- as I say, like the**  
 10 **Lone Ranger, is a relatively common diagnosis.**  
 11 **It occurs in people who tend to be anxious and**  
 12 **in people who tend not to be anxious. It**  
 13 **occurs in big people, little people, you know,**  
 14 **active people, inactive people. It's not that**  
 15 **unusual a disease, so that the -- the -- the**  
 16 **trajectory here, the symptoms, the complaints**  
 17 **here are absolutely typical that you get a**  
 18 **young person who has good exercise tolerance,**  
 19 **who has normal tests, normal function of the**  
 20 **heart and has occasional infrequent episodes**  
 21 **that don't bother the patient and don't bother**  
 22 **the doctor very much. And then as the patient**  
 23 **gets somewhat older, it is relatively common to**  
 24 **see this trajectory that -- that the episodes**

1 **Scheidt - Redirect - Kearney**  
2 **get more frequent and get longer and get more**  
3 **bothersome.**

4 **So there isn't any reason to**  
5 **believe that -- that Mr. Smith in any way**  
6 **contributed to -- to what's happening here.**  
7 **It's -- it's one of those things. And one**  
8 **frequently -- after ten or fifteen years, one**  
9 **has to add medications, one has to change**  
10 **medications, and -- and these days there are**  
11 **even invasive procedures for people who have so**  
12 **many symptoms that they just can't get through**  
13 **life.**

14 Q. Doctor, and this is just sort  
15 of a yes or no question, is Mr. Smith a -- an  
16 appropriate candidate for an invasive treatment  
17 for his atrial fibrillation?

18 **A. Yes, but there's always a**  
19 **but. Invasive treatment of atrial fibrillation**  
20 **is not in its -- it its infancy, but it is also**  
21 **not quite, how shall we say, a hundred percent**  
22 **accepted therapy. It -- it's an invasive**  
23 **procedure. It has a risk. And that risk can**  
24 **be very substantial. I mean one can literally**

1 **Scheidt - Redirect - Kearney**  
2 **make a hole in the heart while one is going in**  
3 **and doing the things one does, so that one does**  
4 **not do this lightly and both doctors and**  
5 **patients tend to try to avoid it as long as**  
6 **they can.**

7 **In every patient, it's a**  
8 **little different. How bad are the symptoms,**  
9 **how difficult it is, how long you wait, how**  
10 **many different drugs you try, et cetera, et**  
11 **cetera but as I said, I initiated the process**  
12 **and -- and Mr. Smith did go to see Dr. Stein,**  
13 **who is an expert in this procedure.**  
14 **Interestingly, Mr. Smith and Dr. Stein together**  
15 **decided that it wasn't -- in 2004, the first**  
16 **time they met, that it wasn't yet time. And --**  
17 **and Dr. Stein put him on a medication. But**  
18 **over the next year or two, there've been loads**  
19 **of episodes even on this -- this additional**  
20 **medication. You know, the world is also**  
21 **changing and -- and the invasive procedure is**  
22 **getting safer. But I -- it's still fair to**  
23 **summarize by saying that the invasive procedure**  
24 **is something that one -- one only does after a**

1 **Scheidt - Redirect - Kearney**  
2 **considerable period of time and soul searching**  
3 **and -- and you know, considering the individual**  
4 **case.**

5 MR. KEARNEY: Thank you.  
6 Nothing further, Doctor.

7 MS. JALOWSKI: I have nothing  
8 further.

9 THE HEARING OFFICER: Thank  
10 you very much, Doctor.

11 THE WITNESS: Okay. So I can  
12 hang up now?

13 THE HEARING OFFICER: Yes,  
14 would you do that, please?

15 THE WITNESS: Thank you all  
16 very much. Bye.

17 THE HEARING OFFICER: Off the  
18 record for a moment, please.

19 (Off the record)

20 THE HEARING OFFICER: Okay.  
21 We're going to continue now with the  
22 Respondent's case. We're calling another  
23 witness. Let the record show it's on a  
24 telephone conference call. The witness being

1 Scheidt - Redirect - Kearney  
2 called is Dr. Joseph Ament, A-M, as in Mary,  
3 E-N, as in Nathan, T, as in Thomas.

4 Dr. Ament, would you raise  
5 your right hand, please?

6 DR. AMENT: Yes.

7 THE HEARING OFFICER: Do you  
8 affirm the testimony you're about to give will  
9 be the truth, the whole truth, and nothing but  
10 the truth?

11 DR. AMENT: Yes, that's true.

12 JOSEPH AMENT; Sworn.

13 THE HEARING OFFICER: Thank  
14 you.

15 You're going to be asked some  
16 questions now by Mr. Kearney, who is the  
17 attorney for the Respondent in this case,  
18 Theodore Smith.

19 Your witness, sir.

20 DIRECT EXAMINATION

21 BY MR. KEARNEY:

22 Q. Good afternoon, Dr. Ament.

23 **A. Good afternoon.**

24 Q. Do you know Theodore Smith?

1 Ament - Direct - Kearney  
 2 **A. Yes.**  
 3 Q. How do you know him?  
 4 **A. He is my patient.**  
 5 Q. And how long have you been  
 6 treating him?  
 7 **A. More -- more than five years.**  
 8 Q. Did you -- were you -- are  
 9 you his primary care provider?  
 10 **A. Correct, yes.**  
 11 Q. Were you his physician from  
 12 September of 2004 to 2005?  
 13 **A. Yes.**  
 14 Q. To June of 2005?  
 15 **A. Yes.**  
 16 Q. Are you -- do you if Mr.  
 17 Smith has been diagnosed with a heart  
 18 condition?  
 19 **A. Yes.**  
 20 Q. What is the diagnosis?  
 21 **A. It's paroxysmal atrial**  
 22 **fibrillation.**  
 23 Q. And have you, yourself,  
 24 treated him for that condition?

1 Ament - Direct - Kearney  
 2 **A. Well yes, he's seen me for**  
 3 **that and his main -- the main medication -- the**  
 4 **main physician who prescribes medication is his**  
 5 **cardiologist, Dr. Scheidt, but I -- I do see**  
 6 **him for that also.**  
 7 Q. Have you discussed Mr.  
 8 Smith's case with Dr. Scheidt?  
 9 **A. Dr. Scheidt has periodically**  
 10 **transferred some records, but I -- I've had --**  
 11 **I've only had maybe one or two phone**  
 12 **conversations with Dr. Scheidt over the years.**  
 13 Q. In terms of severity, do you  
 14 have any opinion as a -- as medical doctor as  
 15 to how severe Mr. Smith's atrial fibrillation  
 16 is?  
 17 **A. Yes some -- it's recurrent**  
 18 **and it's --.**  
 19 THE HEARING OFFICER: Wait,  
 20 Doctor. There's some --.  
 21 What is the objection?  
 22 MS. JALOWSKI: He said  
 23 cardiologist.  
 24 THE HEARING OFFICER: Yes,

1 Ament - Direct - Kearney  
 2 I'll take it.  
 3 Go ahead. Go ahead.  
 4 THE WITNESS: Hello?  
 5 THE HEARING OFFICER: Yes.  
 6 You want to answer the question.  
 7 **A. Yes. There're recurrent**  
 8 **episodes. I mean we did catch one episode in**  
 9 **the office where he came in in a regular**  
 10 **rhythm, then had a -- symptoms of atrial**  
 11 **fibrillation. And that was documented on an**  
 12 **E.K.G. and then he went back into sinus rhythm,**  
 13 **so we actually have captured that in the -- and**  
 14 **he has went to the emergency room multiple**  
 15 **times.**  
 16 BY MR. KEARNEY: (Cont'g.)  
 17 Q. But Doctor, you've actually  
 18 observed Mr. Smith fibrillating. Is that  
 19 correct?  
 20 **A. Yes. I mean I've documented**  
 21 **on one -- on one occasion in the chart, I**  
 22 **believe, while he was in the office because**  
 23 **it's paroxysmal, so it -- it often doesn't**  
 24 **occur during a fifteen-minute office visit, but**

1 **Ament - Direct - Kearney**  
 2 **we did capture it once.**  
 3 Q. Did Mr. Smith, in the course  
 4 of your treatment of him, ever communicate to  
 5 you any factors that exacerbated his atrial  
 6 fibrillation?  
 7 **A. Yes. He felt that -- that**  
 8 **there was aspects that were stress related,**  
 9 **which seems logical because -- and -- and --**  
 10 **and hormonal levels or neurohormonal levels can**  
 11 **affect atrial fibrillation. There is a mind**  
 12 **body relationship there.**  
 13 Q. And --.  
 14 **A. I have to put someone on hold**  
 15 **here. I'll just be -- let me -- I'll just tell**  
 16 **them to call back. Hold on because the office**  
 17 **has multiple lines. Hold on one second.**  
 18 **(Off-the-record discussion)**  
 19 THE WITNESS: I'm sorry. Go  
 20 ahead.  
 21 BY MR. KEARNEY: (Cont'g.)  
 22 Q. What specifically has Mr.  
 23 Smith told you about the stress he -- he's  
 24 undergoing?



1 Ament - Direct - Kearney  
 2 **A. Well, he felt that it was a**  
 3 **work -- work and or classroom related stress.**  
 4 Q. And how did the classroom  
 5 relate to the stress, Doctor?  
 6 MS. JALOWSKI: Objection.  
 7 THE HEARING OFFICER: If you  
 8 know.  
 9 **A. Well I don't know that I can**  
 10 **specifically comment on. I mean he -- he**  
 11 **thought there was some aspect of large class**  
 12 **size that was related to it, but I can't relate**  
 13 **that more specifically.**  
 14 BY MR. KEARNEY: (Cont'g.)  
 15 Q. And in your opinion as a  
 16 medical doctor, would class size have an effect  
 17 on a condition of this type?  
 18 MS. JALOWSKI: Objection.  
 19 THE HEARING OFFICER:  
 20 Sustained. Don't answer please, Doctor.  
 21 THE WITNESS: Go ahead,  
 22 please.  
 23 THE HEARING OFFICER: Just  
 24 wait. There'll be another question, I'm sure.

1 Ament - Direct - Kearney  
 2 BY MR. KEARNEY: (Cont'g.)  
 3 Q. Did Mr. -- did Mr. Smith ever  
 4 communicate to you how many students were in  
 5 his class, Doctor?  
 6 **A. No.**  
 7 Q. Do you --?  
 8 **A. Yes, I'm still here.**  
 9 THE HEARING OFFICER: We know  
 10 that. We're waiting for the question.  
 11 MR. KEARNEY: Nothing  
 12 further.  
 13 THE WITNESS: Okay.  
 14 THE HEARING OFFICER: Ms.  
 15 Jalowski?  
 16 MS. JALOWSKI: I need a  
 17 couple of minutes.  
 18 THE HEARING OFFICER: Okay.  
 19 We're going to go off the record for moment,  
 20 Doctor. We want to please ask you not to leave  
 21 town and we'll back with you in a few minutes.  
 22 Okay?  
 23 (Off-the-record discussion)  
 24 THE HEARING OFFICER: Okay.

1 Ament - Direct - Kearney  
 2 We're ready, Dr. Ament.  
 3 THE WITNESS: Okay. Fine.  
 4 I'm back here.  
 5 THE HEARING OFFICER: You're  
 6 going to be asked some questions by Ms.  
 7 Jalowski, Counsel for the Board of Education.  
 8 THE WITNESS: Thank you.  
 9 CROSS EXAMINATION  
 10 BY MS. JALOWSKI:  
 11 Q. Dr. Ament, you faxed me some  
 12 documents.  
 13 **A. Yes.**  
 14 Q. And when were these documents  
 15 made?  
 16 **A. They're made -- they're**  
 17 **dictated after the patient is seen and put into**  
 18 **the chart.**  
 19 Q. So on each of these dates,  
 20 Mr. Smith is actually in your office?  
 21 **A. Correct.**  
 22 Q. Why is there no documentation  
 23 about on February 9th that Ted Smith had  
 24 bronchitis?

1 Ament - Cross - Jalowski  
 2 **A. Say that again.**  
 3 Q. I said so on February 9th,  
 4 you did not diagnosis Ted Smith with having  
 5 bronchitis?  
 6 **A. Well I'm not in front of the**  
 7 **chart. Could -- what's the specific question?**  
 8 Q. That's my question. I'm  
 9 looking at -- it says on your note for -- for  
 10 April -- I'm sorry; for February 9th that Mr.  
 11 Smith was unable to work due to palpitations  
 12 due to paroxysmal atrial fibrillation. This is  
 13 documented for his job and please see a copy of  
 14 the letter elsewhere in the electronic medical  
 15 record.  
 16 **A. All right. You don't see a**  
 17 **note from February 9th on the record?**  
 18 Q. That is February 9th. So  
 19 there -- so I'm correct in stating that you did  
 20 not such diagnose him with having bronchitis on  
 21 that day?  
 22 **A. No; that letter was written**  
 23 **by me. It is in my handwriting. Is that**  
 24 **correct?**

1 **Ament - Cross - Jalowski**  
 2 Q. I'm asking you. Do you look  
 3 at your notes for -- are you looking at --?  
 4 **A. I'm not in front of the**  
 5 **electronic records, no. No, I am not.**  
 6 Q. Well do you have what you  
 7 faxed me? Do you have a copy --?  
 8 **A. No -- no; I'm actually being**  
 9 **call forward. I'm not in the -- I'm not in**  
 10 **front of the system, but my secretary did fax**  
 11 **that to you.**  
 12 Q. Can you get a copy of the  
 13 February 9th, '05?  
 14 **A. Not -- not easily. Could you**  
 15 **re-state the nature of the question?**  
 16 Q. I just read you what you  
 17 wrote on your record.  
 18 **A. Right, that's my -- that's**  
 19 **written by hand. Is that correct?**  
 20 Q. No, it's typed.  
 21 **A. Oh, okay. Okay. Fine.**  
 22 Q. So is it fair to say that --  
 23 so you did not diagnose --  
 24 **A. No. I -- I did whatever the**

1 **Ament - Cross - Jalowski**  
 2 **record says is what --**  
 3 Q. The record does not mention  
 4 the word bronchitis.  
 5 **A. A specific --.**  
 6 THE HEARING OFFICER: Do you  
 7 have your records in front of you?  
 8 THE WITNESS: I do not have  
 9 the record in front of me, no.  
 10 THE HEARING OFFICER: Do you  
 11 have any records which would show whether or  
 12 not this patient saw you on that date?  
 13 THE WITNESS: If it's a  
 14 progress note typed, then it represents a  
 15 visit.  
 16 THE HEARING OFFICER: But you  
 17 don't have it in front of you so you can tell  
 18 us that?  
 19 THE WITNESS: No, I -- I --  
 20 I'm not in front of the record now.  
 21 MS. JALOWSKI: How can I  
 22 cross-examine him if he doesn't have the notes?  
 23 THE HEARING OFFICER: No, you  
 24 can't.

1 Ament - Cross - Jalowski  
 2 THE WITNESS: Is there  
 3 anything else that you want to concentrate on  
 4 because I can't resolve that at this time. I'm  
 5 being call-forwarded from my office, so I'm not  
 6 in front of the record. Any -- anything else?  
 7 MS. JALOWSKI: Do you have a  
 8 fax machine where you are?  
 9 THE WITNESS: I'm sorry?  
 10 MS. JALOWSKI: There's a fax  
 11 machine where you are?  
 12 THE WITNESS: Yes I do.  
 13 MS. JALOWSKI: What's the fax  
 14 number? I'll fax you the notes.  
 15 THE WITNESS: Two one two,  
 16 nine eight seven, five eight six six.  
 17 MS. JALOWSKI: I'm sorry?  
 18 Nine eight seven?  
 19 THE WITNESS: Five eight six  
 20 six.  
 21 MS. JALOWSKI: Okay. I'm  
 22 going to fax it to you right now.  
 23 THE WITNESS: Thank you.  
 24 I'm under a little time

1 Ament - Cross - Jalowski  
 2 pressure here. I do have a meeting at about  
 3 five minutes to three. I'm just going to check  
 4 the other line for a minute. Hold on, please.  
 5 (Off-the-record discussion)  
 6 THE WITNESS: Okay. I'm  
 7 sorry. Hello?  
 8 THE HEARING OFFICER: Yes,  
 9 we're ready.  
 10 THE WITNESS: I'm looking at  
 11 my specific notes. It finally came over about  
 12 two minutes ago. What -- which note do you  
 13 want to look at?  
 14 BY MS. JALOWSKI: (Cont'g.)  
 15 Q. Please, look at your note for  
 16 May -- for February 9th of 2005.  
 17 **A. Okay. One minute here.**  
 18 **February 9th. Okay. I have 3/3, 3/10,**  
 19 **3/23 -- I'm just looking -- 6/3, 2/16 and**  
 20 **2/9 -- okay -- 2/9.**  
 21 **Okay. Was unable to work due**  
 22 **to palpitations due to paroxysmal atrial**  
 23 **fibrillation. It is possible that yes, I -- I**  
 24 **see what that's referring to.**

1 **Ament - Cross - Jalowski**  
 2 Q. You didn't --?  
 3 **A. Handwritten notes are what**  
 4 **you have. Documents not faxed to you are**  
 5 **indicated elsewhere in -- in the miscellaneous**  
 6 **section of the electronic medical records.**  
 7 **THE HEARING OFFICER:**  
 8 **Doctor -- Doctor --.**  
 9 THE WITNESS: Go ahead.  
 10 THE HEARING OFFICER: Please  
 11 just answer the questions. The lawyer's going  
 12 to ask you a question. See if you can just  
 13 confine yourself to the answer of the question.  
 14 THE WITNESS: Okay. Go  
 15 ahead.  
 16 BY MS. JALOWSKI: (Cont'g.)  
 17 Q. You're saying that there's  
 18 other documentation that you didn't send me?  
 19 **A. Yes, that is correct. The**  
 20 **handwritten letters, which I assume is in the**  
 21 **chart, but I'm not in front of it, are in a**  
 22 **separate section called miscellaneous of the**  
 23 **electronic medical record. So if that was**  
 24 **important to you, the secretaries could get**

1 **Ament - Cross - Jalowski**  
 2 **that to you.**  
 3 Q. Yes. I need that. I can't  
 4 cross-examine you until I receive it.  
 5 THE HEARING OFFICER: Okay.  
 6 Let's discontinue the cross and thank you,  
 7 Doctor.  
 8 THE WITNESS: Oh, okay. Is  
 9 that -- is that all for now?  
 10 MR. KEARNEY: We might be  
 11 able to stipulate --.  
 12 THE HEARING OFFICER: If I  
 13 can't -- if he doesn't return, we're going to  
 14 make a motion to strike his testimony. Okay.  
 15 And I'll reserve on that. That's where we  
 16 stand now.  
 17 Okay. Doctor, thank you very  
 18 much.  
 19 THE WITNESS: Do you need my  
 20 secretary to fax that or that's not necessary?  
 21 THE HEARING OFFICER: No --  
 22 no, Doctor, you -- we have to have your records  
 23 for cross examination. The records that we  
 24 want to ask you about, the lawyer wants to ask

1 Ament - Cross - Jalowski  
 2 you about, we don't have. Your answers are  
 3 they're not here; they're in an electronic  
 4 whatever, so the cross-examination cannot  
 5 proceed without those records.  
 6 THE WITNESS: I understand,  
 7 so in the event you want that, you'll let me  
 8 know.  
 9 THE HEARING OFFICER: Thank  
 10 you very much.  
 11 THE WITNESS: Thank you.  
 12 Bye-bye.  
 13 THE HEARING OFFICER: Okay.  
 14 You have a motion?  
 15 MS. JALOWSKI: Unless I get  
 16 the documents and Dr. Ament comes back to  
 17 testify, I'm going to ask that the direct be  
 18 stricken.  
 19 THE HEARING OFFICER: Yes,  
 20 I'm going to grant that motion on that  
 21 condition. Unless we get the doctor to produce  
 22 his records or to come in or do what he has to  
 23 do so the cross examination can be done by the  
 24 Department, I will grant that motion.

1 Ament - Cross - Jalowski  
 2 Okay. Let's proceed with the next witness.  
 3 I'll leave that in your hands, Counsel.  
 4 (Off-the-record discussion)  
 5 THE HEARING OFFICER: Off the  
 6 record.  
 7 (Off the record)  
 8 THE HEARING OFFICER: We have  
 9 a witness here for the Respondent. The  
 10 witness' name is Nick Ragusa; N-I-C-K is the  
 11 first name; the last name is R-A-G-U-S-A.  
 12 Mr. Ragusa, would you raise  
 13 your right hand, please?  
 14 Do you affirm the testimony  
 15 you are about to give will be the truth, the  
 16 whole truth, and nothing but the truth?  
 17 MR. RAGUSA: Yes.  
 18 NICK RAGUSA; Sworn.  
 19 THE HEARING OFFICER: Thank  
 20 you. They're going to ask you questions.  
 21 Your witness.  
 22 DIRECT EXAMINATION  
 23 BY MR. KEARNEY:  
 24 Q. Mr. Ragusa, are you currently

1 Ragusa - Direct - Kearney  
 2 employed?  
 3 **A. Yes.**  
 4 Q. By whom?  
 5 **A. The Department of Education**  
 6 **at Chelsea High School.**  
 7 Q. And in what capacity?  
 8 **A. I'm a physical education**  
 9 **teacher, athletic director, and coach.**  
 10 Q. How long have you been a  
 11 physical education teacher, Mr. Ragusa?  
 12 **A. I'm beginning my thirtieth**  
 13 **year.**  
 14 Q. And in those thirty years as  
 15 a physical education teacher, have you -- which  
 16 age groups have you taught?  
 17 **A. I've always been at the high**  
 18 **school level, grades nine through twelve.**  
 19 Q. Do you know Theodore Smith?  
 20 **A. Yes.**  
 21 Q. When did you first meet Mr.  
 22 Smith?  
 23 **A. In 2002, when he became a**  
 24 **teacher of Phys Ed at Chelsea High School.**

1 **Ragusa - Direct - Kearney**  
 2 MS. JALOWSKI: What time of  
 3 year was that?  
 4 THE WITNESS: September 2002.  
 5 BY MR. KEARNEY: (Cont'g.)  
 6 Q. Did you have any -- were you  
 7 also employed at Chelsea High School at that  
 8 time?  
 9 **A. Yes.**  
 10 Q. And where you also the  
 11 director of athletics at that time?  
 12 **A. Yes.**  
 13 Q. Did you also teach physical  
 14 education, yourself?  
 15 **A. Yes.**  
 16 Q. Did you ever work with Mr.  
 17 Smith in the same classroom?  
 18 **A. Yes. At least two or three**  
 19 **periods a day, we had double classes where we**  
 20 **had seventy-five or eighty students, where I**  
 21 **would have half and Mr. Smith would have half**  
 22 **and we worked together teaching the kids and**  
 23 **exercising the kids and monitoring the kids.**  
 24 Q. You testified a moment ago

1 Ragusa - Direct - Kearney  
 2 that you divided a class of seventy-five to  
 3 eighty students with Mr. Smith?  
 4 **A. Well they actually divided it**  
 5 **for us, where I would have a certain amount of**  
 6 **students on my roster and Mr. Smith would have**  
 7 **a certain amount of students on his roster.**  
 8 **And then we would be responsible for the**  
 9 **attendance of those students and giving a grade**  
 10 **for those particular students on our roster.**  
 11 **But we would work with all the kids together**  
 12 **because you can't help it when -- when you have**  
 13 **that many kids in one area.**  
 14 Q. In your -- in your thirty  
 15 years as a physical education teacher, have you  
 16 ever taught a group of seventy-five students  
 17 alone?  
 18 **A. No.**  
 19 Q. In your training and  
 20 experience as a physical education teacher,  
 21 what can you tell me about the appropriateness  
 22 of having a single teacher teach a group of  
 23 seventy-five students?  
 24 MS. JALOWSKI: Objection.

1 Ragusa - Direct - Kearney  
 2 THE HEARING OFFICER: Well,  
 3 I'll allow it. I'll qualify him as an expert,  
 4 thirty years in the department.  
 5 I'll allow it. Go ahead.  
 6 **A. Well the contract says fifty**  
 7 **students to each teacher. However, I think**  
 8 **it's up to a school to try to put less in**  
 9 **there. You know, fifty's the --.**  
 10 MS. JALOWSKI: Objection.  
 11 He's not answering the question.  
 12 THE HEARING OFFICER: Yes.  
 13 Listen to the question again.  
 14 THE WITNESS: Oh. Oh.  
 15 BY MR. KEARNEY: (Cont'g.)  
 16 Q. Forget about the contract.  
 17 In your experience and your training, what can  
 18 you tell me about the propriety of putting one  
 19 teacher in before a class of seventy-five in  
 20 phys. ed.?  
 21 MS. JALOWSKI: Objection. I  
 22 think that's a question that's answered, that  
 23 under the contract you can't have one teacher  
 24 unless there's -- I think he -- I thought he --

1 Ragusa - Direct - Kearney  
 2 I thought he asked the question. I was  
 3 objecting because he was going off track.  
 4 THE HEARING OFFICER: Well,  
 5 let him answer this question.  
 6 Can you answer this question?  
 7 THE WITNESS: Yes.  
 8 **A. It's a serious safety hazard**  
 9 **to have that many students with one teacher.**  
 10 **As I was saying, it's hard enough to watch**  
 11 **fifty and work with fifty by yourself, let**  
 12 **alone anything more than that. You know, when**  
 13 **you get seventy -- seventy-five by yourself,**  
 14 **it's -- it's impossible; it's very hard. I --**  
 15 **I'm doing it all these years and experience but**  
 16 **even with fifty students, it's very hard. I**  
 17 **wish they would lower the number for us.**  
 18 BY MR. KEARNEY: (Cont'g.)  
 19 Q. Now you testified earlier  
 20 that you -- that the class was divided. Was  
 21 that -- did you ever observe Mr. Smith  
 22 teaching?  
 23 **A. Well of course. I -- you**  
 24 **know, when I'm teaching a class with him, we**

1 **Ragusa - Direct - Kearney**  
 2 **work together. I always found him very caring**  
 3 **to the students, very helpful to the students.**  
 4 **He was a great resource for health questions.**  
 5 **I know he's authoring a health book.**  
 6 MS. JALOWSKI: Objection.  
 7 THE HEARING OFFICER: Yes.  
 8 MR. KEARNEY: Let me -- let  
 9 me --.  
 10 BY MR. KEARNEY: (Cont'g.)  
 11 Q. Did you observe his teaching?  
 12 **A. Yes.**  
 13 Q. And how many times have you  
 14 observed Mr. Smith teaching?  
 15 **A. It's hard to say. We taught**  
 16 **together for two years, four times all together**  
 17 **and at least two times a day, two different**  
 18 **classes a day so, you know, probably a few**  
 19 **hundred times we were together in a**  
 20 **classroom -- in the gym.**  
 21 Q. And you had occasion to  
 22 observe him during those few hundred times. Is  
 23 that correct?  
 24 **A. Yes. We worked together the**

1 **Ragusa - Direct - Kearney**  
 2 **entire period, working with individual kids,**  
 3 **group -- groups of kids, the whole group**  
 4 **together.**  
 5 Q. What can you tell me about  
 6 your observations of Mr. Smith's teaching?  
 7 **A. I thought he was an excellent**  
 8 **teacher. I personally learned a lot from**  
 9 **working with him when it came to health issues**  
 10 **and exercises. And Mr. Smith had extensive**  
 11 **training in Marshall Arts and the kids looked**  
 12 **to him for that. Not that he bragged about it,**  
 13 **but you know, of course the kids find out. And**  
 14 **he was just a caring -- a caring man. He was**  
 15 **always there to help the students in the class.**  
 16 **He was always there to help me. He also did a**  
 17 **nice job with the junior varsity basketball,**  
 18 **which he did for two seasons; I'm the athletic**  
 19 **director.**  
 20 **I wish he was still at**  
 21 **Chelsea. I was very sorry to see him go.**  
 22 Q. Now do you know anything  
 23 about Mr. Smith's health?  
 24 MS. JALOWSKI: Objection.

1 Ragusa - Direct - Kearney  
 2 THE HEARING OFFICER: I'll  
 3 allow that. Hold your objection for a moment  
 4 after that.  
 5 Do you know anything about  
 6 his health?  
 7 **A. Well, I do know some.**  
 8 THE HEARING OFFICER: Well,  
 9 do you know? Just say yes or no.  
 10 THE WITNESS: Yes, yes.  
 11 THE HEARING OFFICER: Go  
 12 ahead.  
 13 BY MR. KEARNEY: (Cont'g.)  
 14 Q. Are you aware whether Mr.  
 15 Smith has any particular heart condition?  
 16 **A. Yes. I know it's -- it's**  
 17 **some sort of irregular heart beat and it causes**  
 18 **fainting. I know it caused him to be**  
 19 **hospitalized when he was at Chelsea when he was**  
 20 **the junior varsity basketball coach. He -- I**  
 21 **received a call in the morning by the lady at**  
 22 **the -- that gives the coverages -- the lady**  
 23 **that takes the absences. And the school I**  
 24 **guess received a call that Mr. Smith was rushed**

1 **Ragusa - Direct - Kearney**  
 2 **to the hospital by cab because he fainted on**  
 3 **the street, coming to work. And he was out --**  
 4 **I don't remember how long. But he brought the**  
 5 **hospital records and the medical documentation.**  
 6 MS. JALOWSKI: Objection.  
 7 THE HEARING OFFICER: Go  
 8 ahead. Next question.  
 9 BY MR. KEARNEY: (Cont'g.)  
 10 Q. While you worked with Mr.  
 11 Smith at Chelsea High School for two years, was  
 12 Mr. Smith's attendance problematic?  
 13 **A. I really don't remember it**  
 14 **every -- you know, exactly --.**  
 15 THE HEARING OFFICER: Do you  
 16 know? If you know, say -- tell us. If you  
 17 don't know, say I don't remember.  
 18 **A. (Cont'g.) I do remember -- I**  
 19 **don't remember exact amounts of days he was**  
 20 **out, but he was out because of medical reasons,**  
 21 **his irregular heart beat --.**  
 22 THE HEARING OFFICER: He's  
 23 just asking you, but not the reasons.  
 24 THE WITNESS: Oh. Oh.

1 Ragusa - Direct - Kearney  
 2 THE HEARING OFFICER: Was his  
 3 attendance problematic?  
 4 **A. (Cont'g.) Not -- not**  
 5 **problematic with -- of course I missed him when**  
 6 **he wasn't there, but he was -- first of all, he**  
 7 **didn't have perfect attendance. He wasn't**  
 8 **there every day; put it that way. We would**  
 9 **have to cover a class.**  
 10 BY MR. KEARNEY: (Cont'g.)  
 11 Q. You testified earlier that  
 12 putting a -- a -- one teacher in charge of a  
 13 class of seventy-five was a serious safety  
 14 hazard. What can you tell me specifically  
 15 about this -- what -- what -- what types of  
 16 hazards does that present?  
 17 MS. JALOWSKI: Objection.  
 18 THE HEARING OFFICER:  
 19 Sustained. I'll allow -- I'll sustain that.  
 20 Let's move on.  
 21 BY MR. KEARNEY: (Cont'g.)  
 22 Q. What types of activities did  
 23 you -- did Mr. Smith teach while you observed  
 24 him?

1 Ragusa - Direct - Kearney  
 2 **A. All right. We did a fitness**  
 3 **for life curriculum where the kids did walking**  
 4 **and exercise. It's important to know that our**  
 5 **gym is thirty-five by fifty-seven; it's not a**  
 6 **normal gym. Linoleum floor, pillars in the**  
 7 **middle; it's not really a normal gym. We did a**  
 8 **fitness for life type of curriculum where the**  
 9 **kids did walking, calisthenics, other**  
 10 **exercises. Mr. Smith taught them their various**  
 11 **exercises that could build up certain areas of**  
 12 **the body. Stretching exercises. He always**  
 13 **went over the muscles, the health benefits of**  
 14 **exercise.**  
 15 Q. In your -- in your opinion as  
 16 a physical education teacher, is Mr. Smith fit  
 17 to teach phys. ed.?  
 18 MS. JALOWSKI: Objection.  
 19 THE HEARING OFFICER: You  
 20 can't ask him that now. You ask him -- if you  
 21 want to rephrase it so when he was working with  
 22 Mr. Smith, I'll allow that question. But if  
 23 you're asking in the present tense, I would  
 24 sustain the objection.

1 Ragusa - Direct - Kearney  
 2 BY MR. KEARNEY: (Cont'g.)  
 3 Q. Based on your observations of  
 4 Mr. Smith's teaching from 2002 to 2004 --  
 5 **A. Yes.**  
 6 Q. -- was Mr. Smith fit to teach  
 7 at that time?  
 8 **A. I thought he was an excellent**  
 9 **teacher. I enjoyed working with him. As I**  
 10 **said, I was very sorry to see him go. I wanted**  
 11 **him to stay at Chelsea.**  
 12 MR. KEARNEY: Nothing  
 13 further.  
 14 CROSS EXAMINATION  
 15 BY MS. JALOWSKI:  
 16 Q. So you never observed Ted  
 17 Smith during -- teach during the 2004-2005  
 18 school year, correct?  
 19 **A. 2004-2005, no ma'am. He left**  
 20 **in June 2004.**  
 21 Q. And when -- when you came --  
 22 you were saying when there were seventy-five  
 23 students in the class --?  
 24 **A. Yes. Actually two classes.**

1 **Ragusa - Cross - Jalowski**  
 2 Q. So it was two separate  
 3 classes?  
 4 **A. Two separate classes, yes.**  
 5 Q. So it was really -- you had  
 6 forty kids and --?  
 7 **A. Yes. Thirty-five to forty**  
 8 **kids -- you know, I might have had thirty-six,**  
 9 **maybe he had thirty-eight -- you know, it**  
 10 **depends. And the way that they did it, I don't**  
 11 **know how they put the kids in each class**  
 12 **attendance-wise. But we were both responsible**  
 13 **for thirty-five to forty students for**  
 14 **attendance and then, of course, making up their**  
 15 **grade. But I don't know -- I guess I'm allowed**  
 16 **to say this. I always stressed to the kids,**  
 17 **you always had some sort of you're not my**  
 18 **teacher, your -- he's my -- hey, we're both**  
 19 **your teachers. You know, and that's -- we**  
 20 **worked together watching all and working with**  
 21 **all these kids you can't help but intermingle.**  
 22 Q. Now when Mr. Smith was out,  
 23 who covered his class?  
 24 **A. Another phys. ed. teacher.**

1 **Ragusa - Cross - Jalowski**  
 2 Q. So did you at times have to  
 3 cover his class?  
 4 **A. If it was a single class --**  
 5 **for example, let's say there was another**  
 6 **teacher there at the time, Mr. Bernstein. If**  
 7 **Mr. Smith shared a class with Mr. Bernstein,**  
 8 **one of those large classes, and Mr. Smith was**  
 9 **out and I was free, I would cover for Mr.**  
 10 **Smith's group. If he had a single class, I**  
 11 **would cover or Mr. Bernstein would cover for**  
 12 **his phys. ed. class. It has to be a phys. ed.**  
 13 **teacher if you keep the kids in the gym.**  
 14 Q. And isn't it true under the  
 15 contract that if the class is over fifty, you  
 16 just need a certified teacher plus a phys. ed.  
 17 teacher. Is that correct?  
 18 MR. KEARNEY: Objection.  
 19 THE HEARING OFFICER: The  
 20 contract will speak for itself. You can ask  
 21 him his knowledge or his experience, but I will  
 22 sustain that objection. The contract speaks  
 23 for itself.  
 24 Ask him if he knows.

1 Ragusa - Cross - Jalowski  
 2 MS. JALOWSKI: I'll withdraw  
 3 the question.  
 4 I have no further questions  
 5 for this witness.  
 6 THE HEARING OFFICER:  
 7 Anything else?  
 8 MR. KEARNEY: Nothing  
 9 further.  
 10 THE HEARING OFFICER: Thank  
 11 you very much, Mr. Ragusa when are you going to  
 12 retire?  
 13 THE WITNESS: Hopefully, I'm  
 14 fifty-three, in two more years.  
 15 MR. KEARNEY: All right.  
 16 Thank you.  
 17 THE WITNESS: Thank you.  
 18 THE HEARING OFFICER: Off the  
 19 record.  
 20 (Off the record)  
 21 THE HEARING OFFICER: Okay.  
 22 The Respondent is now calling as a witness  
 23 Victor Kurniaputra. I'm going to spell that  
 24 for you. K-U-R-N, as in Nathan, I-A-P, as in

1 Ragusa - Cross - Jalowski  
 2 Peter, U-T, as in Thomas, R as in Robert, A as  
 3 in Albert, Kurniaputra.  
 4 THE REPORTER: Okay. One  
 5 more time because that was a lot of letters.  
 6 THE HEARING OFFICER:  
 7 K-U-R-N-I-A-P-U-T-R-A.  
 8 THE REPORTER: Okay.  
 9 THE HEARING OFFICER: Got it?  
 10 THE REPORTER: Got it.  
 11 THE HEARING OFFICER: Okay.  
 12 Victor, you want to raise your right hand,  
 13 please?  
 14 Do you affirm the testimony  
 15 you're about to give will be the truth, the  
 16 whole truth, and nothing but the truth?  
 17 MR. KURNIAPUTRA: Yes.  
 18 THE HEARING OFFICER: You  
 19 have to speak up.  
 20 MR. KURNIAPUTRA: Yes.  
 21 VICTOR KURNIAPUTRA; Sworn.  
 22 THE HEARING OFFICER: Very  
 23 good. Okay.  
 24 Your witness.

1 Kurniaputra - Direct - Kearney  
 2 They're going to ask you  
 3 questions.  
 4 DIRECT EXAMINATION  
 5 BY MR. KEARNEY:  
 6 Q. Mr. Kurniaputra, are you  
 7 currently employed?  
 8 **A. Yes.**  
 9 Q. And what is your job title?  
 10 **A. I'm the operations**  
 11 **coordinator, pretty much the order processing**  
 12 **for internet orders.**  
 13 Q. Was there a time when you  
 14 were employed by the Department of Education?  
 15 **A. Yes.**  
 16 Q. And when was that?  
 17 **A. It was 2005, I believe it's**  
 18 **from February to September.**  
 19 Q. And what was your job with  
 20 the Department of Education?  
 21 **A. Math teacher.**  
 22 Q. And were you assigned to any  
 23 particular school?  
 24 **A. New York City Museum School.**

1 **Kurniaputra - Direct - Kearney**  
 2 Q. Do you know the Respondent,  
 3 Theodore Smith?  
 4 **A. Yes.**  
 5 Q. And when did -- how is it  
 6 that you know Mr. Smith?  
 7 **A. The principal asked me to**  
 8 **help him as an assistant in gym class, pretty**  
 9 **much a co-teacher.**  
 10 Q. And when did you teach with  
 11 Mr. Smith? What day of the week, that is.  
 12 **A. I believe once a week and**  
 13 **Tuesday.**  
 14 Q. And what age group did you  
 15 teach with Mr. Smith?  
 16 **A. Ninth grade.**  
 17 Q. How many students were in  
 18 that class?  
 19 **A. It was a very big class. It**  
 20 **was a mix of two classes; I believe it's almost**  
 21 **sixty.**  
 22 Q. And what -- tell me about  
 23 your experience teaching the class with Mr.  
 24 Smith. How did you find it?

1 Kurniaputra - Direct - Kearney  
 2 **A. Well first of all, it's**  
 3 **very -- for me personally, it is very difficult**  
 4 **because I'm a math teacher. I do not have the**  
 5 **experience to teach gym, but Lindy pushed me**  
 6 **for it. And the class itself, though, is --**  
 7 **the class itself, it's planned and he gave me**  
 8 **all the information necessary to, so even --**  
 9 **even I don't have any experience doing gym**  
 10 **teaching, I know exactly what he's going to do**  
 11 **for the day.**  
 12 Q. All right. And you -- you  
 13 mentioned a name earlier, Lindy. Who is Lindy?  
 14 **A. Lindy is the principal at the**  
 15 **time.**  
 16 Q. Of the Museum School?  
 17 **A. Museum School.**  
 18 Q. Did you ever have a  
 19 conversation with Ms. Lindley Uehling about the  
 20 Respondent, Ted Smith?  
 21 **A. Yes, we did. And the --**  
 22 **pretty much the conversation --.**  
 23 **THE HEARING OFFICER: He**  
 24 **asked you did you have a conversation. The**

1 **Kurniaputra - Direct - Kearney**  
 2 **answer is yes?**  
 3 THE WITNESS: Yes.  
 4 BY MR. KEARNEY: (Cont'g.)  
 5 Q. How often -- how many times  
 6 did you come in conversation with Ms. Uehling  
 7 about Mr. Smith?  
 8 **A. Pretty much once a week.**  
 9 Q. And were -- were they all of  
 10 a similar subject matter?  
 11 **A. Similar -- very similar.**  
 12 Q. What was the nature of the  
 13 conversations you had with Ms. Uehling?  
 14 **A. She would ask me about**  
 15 **details in Mr. Smith class and she is**  
 16 **particularly interested in subjects that finds**  
 17 **incriminating evidence for Mr. Smith.**  
 18 MS. JALOWSKI: Objection.  
 19 BY MR. KEARNEY: (Cont'g.)  
 20 Q. Were those her words,  
 21 incriminating evidence?  
 22 **A. She would ask if Ted Smith**  
 23 **did something that, you know, I don't like,**  
 24 **that feels wrong.**



1 **Kurniaputra - Direct - Kearney**  
 2 Q. To you personally?  
 3 **A. To me personally. And in**  
 4 **general -- you know, in teaching in general.**  
 5 Q. And did you report back to  
 6 Ms. Uehling at all about Mr. Smith's teaching?  
 7 **A. No.**  
 8 Q. And why not?  
 9 **A. I told her that I'm -- I am**  
 10 **in the Museum School for teaching, not to be a**  
 11 **spy.**  
 12 Q. And how did she react to  
 13 that?  
 14 **A. She wasn't very happy about**  
 15 **it.**  
 16 Q. And did she express her not  
 17 being not very happy about it, to you?  
 18 **A. She did and by start picking**  
 19 **on my -- you know, minor negative things**  
 20 **instead of focusing on my positive impact on**  
 21 **the students and also start making false**  
 22 **reports about myself and also making me look**  
 23 **bad in front of other teachers and other stuff.**  
 24 **You know, I don't remember what she did -- you**

1 **Kurniaputra - Direct - Kearney**  
 2 **know, extra stuff that she did to me. She did**  
 3 **a lot of stuff. I just don't remember.**  
 4 Q. What can you tell me about  
 5 the environment at the Museum School when you  
 6 taught there from February to June of 2005.  
 7 **A. Hectic. The environment was**  
 8 **very hectic and it seems that whoever is**  
 9 **responsible for the discipline of the school**  
 10 **couldn't handle it.**  
 11 MS. JALOWSKI: Objection.  
 12 THE HEARING OFFICER:  
 13 Sustained.  
 14 BY MR. KEARNEY: (Cont'g.)  
 15 Q. When you say hectic, can you  
 16 describe for the record what you mean?  
 17 **A. Hectic in terms of**  
 18 **students -- well, students running all around**  
 19 **the place. Students don't listens to the**  
 20 **teachers. Even on my free time, I had to go**  
 21 **around and help other teachers handle students**  
 22 **in their classroom. I volunteered that -- you**  
 23 **know, I volunteer myself to help the teachers**  
 24 **because, you know, there's no disciplines. And**

1 **Kurniaputra - Direct - Kearney**  
 2 **even in some other cases when the principle,**  
 3 **Lindy, would come to room and try to calm them,**  
 4 **they -- you know, the student wouldn't hear --**  
 5 **you know, wouldn't listen to her. I also even**  
 6 **specifically heard students say as far as**  
 7 **you're concerned, Lindy is not --**  
 8 MS. JALOWSKI: Objection.  
 9 THE WITNESS: -- Lindy is  
 10 not --.  
 11 THE HEARING OFFICER: I'll  
 12 allow it. Go ahead.  
 13 BY MR. KEARNEY: (Cont'g.)  
 14 Q. Now relative -- you testified  
 15 a moment ago that you -- you helped just sort  
 16 of control other classes. How were Mr. Smith's  
 17 classes that you -- you assisted him with? How  
 18 did they compare to the -- the classes that you  
 19 helped to control?  
 20 **A. Well the classes that I**  
 21 **helped control, it is just one class, so it's**  
 22 **about twenty-six -- twenty-eight students. But**  
 23 **Mr. Smith's -- Mr. Smith's class is like almost**  
 24 **sixty, like I said earlier, so it is twice the**

1 **Kurniaputra - Direct - Kearney**  
 2 **size and it's big. It's difficult -- it's very**  
 3 **difficult.**  
 4 Q. I just want -- the times that  
 5 you taught with Mr. Smith, the ninth grade on  
 6 Tuesdays, did he ever give you a lesson plan?  
 7 MS. JALOWSKI: Objection.  
 8 Leading.  
 9 THE HEARING OFFICER: Yeah,  
 10 you might rephrase that. I'll allow it to move  
 11 on.  
 12 Did he ever give you a lesson  
 13 plan? I'll allow it.  
 14 **A. Yes.**  
 15 BY MR. KEARNEY: (Cont'g.)  
 16 Q. And how many times?  
 17 **A. All the time.**  
 18 Q. Do you recall -- did you ever  
 19 observe Mr. Smith sitting in a chair while you  
 20 taught with him?  
 21 **A. No.**  
 22 Q. Did you ever observe Mr.  
 23 Smith talking on the phone while you taught  
 24 with him?

1 Kurniaputra - Direct - Kearney  
 2 **A. No.**  
 3 Q. Did -- while you taught with  
 4 Mr. Smith, did Mr. Smith -- describe what he  
 5 would in a -- in a regular class.  
 6 **A. Regular class, he would start**  
 7 **the class by putting students on specific**  
 8 **assigned place and then he would make the roll**  
 9 **call because it's already put inside; it's very**  
 10 **easy; it's quick. And afterwards, he would do**  
 11 **some exercise, warm up. And after the warm-up,**  
 12 **he would ask the students run -- run like**  
 13 **several laps around the -- around the field --**  
 14 **around the, you know, auditorium, pretty much.**  
 15 **And then he would continue with his lesson**  
 16 **plan, whatever it is for today. Let's for**  
 17 **example that it's basketball and he would start**  
 18 **with the basketballs and how do you dribble one**  
 19 **by one. If it's soccer, then we would do**  
 20 **soccer.**  
 21 Q. All right. Did you ever  
 22 observe Mr. Smith using profane language around  
 23 other students?  
 24 **A. No.**

1 **Kurniaputra - Direct - Kearney**  
 2 Q. What are the Regents exams?  
 3 MS. JALOWSKI: Objection.  
 4 THE HEARING OFFICER:  
 5 Sustained -- sustained. We'll take arbitral  
 6 notice that we know what Regents means.  
 7 Certainly, he hasn't called for an expert to  
 8 tell us what Regents exams are. Sustained.  
 9 MS. JALOWSKI: Well I'm  
 10 saying it's irrelevant. There's no Regents in  
 11 gym.  
 12 THE HEARING OFFICER: I don't  
 13 know if there are or aren't, but I'll leave it  
 14 open in case there's some question.  
 15 MR. KEARNEY: I'm actually  
 16 trying to set a time period here that relates  
 17 directly to the specifications.  
 18 BY MR. KEARNEY: (Cont'g.)  
 19 Q. Do you know what the Regents  
 20 exams are?  
 21 **A. Yes. They're standardized**  
 22 **state tests for New York City. No -- excuse**  
 23 **me -- New York State.**  
 24 Q. Did the schedule at the

1 Kurniaputra - Direct - Kearney  
 2 Museum School in the 2004-2005 school year  
 3 change because of the Regents exam?  
 4 **A. There is a specific set of**  
 5 **last day because afterward, the school would be**  
 6 **closed for Regents.**  
 7 Q. Did you teach with Mr. Smith  
 8 on the last day?  
 9 **A. I believe so.**  
 10 Q. Did you have -- sitting here  
 11 today, do you have any recollection of that --  
 12 that day. Does it stand out in your mind?  
 13 **A. That day, yes. I have a**  
 14 **very, actually a very good memory about that**  
 15 **day.**  
 16 MS. JALOWSKI: What day are  
 17 we talking about?  
 18 THE WITNESS: The specific  
 19 last day.  
 20 MS. JALOWSKI: Last day of  
 21 school?  
 22 THE WITNESS: No; the last  
 23 day I was teaching with Mr. Smith.  
 24 THE HEARING OFFICER: Is that

1 Kurniaputra - Direct - Kearney  
 2 what you're referring to?  
 3 MR. KEARNEY: Yes.  
 4 THE HEARING OFFICER: What  
 5 did that have to do with the Regents?  
 6 MR. KEARNEY: Because --.  
 7 THE HEARING OFFICER: He  
 8 taught there in December '05. I'm -- I'm --  
 9 I'm confused.  
 10 Continue. I thought you were  
 11 asking the last day of school. The witness is  
 12 answering the last day he taught with Mr.  
 13 Smith.  
 14 MR. KEARNEY: Yes.  
 15 THE HEARING OFFICER: Okay.  
 16 Go ahead.  
 17 MR. KEARNEY: That's what I'm  
 18 getting at.  
 19 THE HEARING OFFICER: Okay.  
 20 Go ahead.  
 21 BY MR. KEARNEY: (Cont'g.)  
 22 Q. Do know what day that was?  
 23 THE HEARING OFFICER: You  
 24 mean the date?

1 Kurniapura - Direct - Kearney  
 2 MR. KEARNEY: The date.  
 3 **A. Correct date, not really. It**  
 4 **would be around --.**  
 5 THE HEARING OFFICER: Don't  
 6 guess. He's asking you if you know the exact  
 7 date. If you know, say it.  
 8 **A. (Cont'g.) It's the end of**  
 9 **the spring. It's the --.**  
 10 THE HEARING OFFICER: Do you  
 11 know what it means to say exact date?  
 12 THE WITNESS: No.  
 13 THE HEARING OFFICER: You  
 14 don't know what that means?  
 15 THE WITNESS: No. I  
 16 understand what you mean, but I do not --.  
 17 THE HEARING OFFICER: That's  
 18 what he's asking. Do you know the exact date?  
 19 If you don't, say I don't know.  
 20 THE WITNESS: I don't know.  
 21 BY MR. KEARNEY: (Cont'g.)  
 22 Q. Did there come a time when  
 23 you became aware that Mr. Smith was no longer  
 24 teaching at the Museum School?

1 Kurniapura - Direct - Kearney  
 2 **A. Yes.**  
 3 Q. And how did you learn about  
 4 that?  
 5 **A. I was -- when I -- I asked**  
 6 **Mr. Smith after several weeks of not showing up**  
 7 **and I asked him what's going on, why did you**  
 8 **leave without any notice, I asked him. And he**  
 9 **explained to me that Lindy expelled him from**  
 10 **the school. And I was -- you know, I was**  
 11 **surprised because Lindy never said anything**  
 12 **about him being expelled. He just -- Lindy**  
 13 **just said that Mr. Smith decided not to show up**  
 14 **and not to do his job.**  
 15 Q. Those were her words?  
 16 **A. Similar to that.**  
 17 MR. KEARNEY: Nothing  
 18 further.  
 19 CROSS EXAMINATION  
 20 BY MS. JALOWSKI:  
 21 Q. Mr. Kurniapura, when did you  
 22 first -- prior to your being the assistant in  
 23 that -- in the ninth grade class, there was  
 24 another teacher who was the assistant, correct?

1 Kurniapura - Cross - Jalowski  
 2 **A. Not that I know of.**  
 3 Q. So when did you first become  
 4 the -- Ted's -- when -- when did you first  
 5 become Mr. Smith's assistant? What month was  
 6 that?  
 7 **A. Starting -- I believe it's in**  
 8 **February.**  
 9 THE HEARING OFFICER: I am  
 10 confused. You worked from September '05 -- I  
 11 must have gotten this wrong -- December '05 --?  
 12 THE WITNESS: No; June.  
 13 MS. JALOWSKI: He worked the  
 14 2004-2005 school year.  
 15 THE WITNESS: I worked --.  
 16 THE HEARING OFFICER: Let me  
 17 hear it from him.  
 18 What was the year or years  
 19 you worked at the Museum School?  
 20 THE WITNESS: I worked on  
 21 2005.  
 22 THE HEARING OFFICER: Do you  
 23 remember the months you worked?  
 24 THE WITNESS: Yeah.

1 Kurniapura - Cross - Jalowski  
 2 THE HEARING OFFICER: What  
 3 are they, sir?  
 4 THE WITNESS: February to  
 5 September.  
 6 MR. KEARNEY: And he's  
 7 already --.  
 8 THE HEARING OFFICER: Didn't  
 9 you testify before that worked there from  
 10 September '05 to December '05?  
 11 THE WITNESS: No; February to  
 12 September.  
 13 THE HEARING OFFICER:  
 14 February to September?  
 15 THE WITNESS: Right.  
 16 THE HEARING OFFICER: All  
 17 right. Just bear with me a minute.  
 18 THE WITNESS: I'm sorry.  
 19 THE HEARING OFFICER: You  
 20 worked there from February '05 --  
 21 THE WITNESS: Right, in the  
 22 middle.  
 23 THE HEARING OFFICER: You  
 24 came in the middle?

1 Kurniaputra - Cross - Jalowski  
 2 THE WITNESS: Yes.  
 3 THE HEARING OFFICER: And you  
 4 worked there until December '05?  
 5 THE WITNESS: September.  
 6 That's when I resigned.  
 7 THE HEARING OFFICER: Wait --  
 8 wait. Did -- did they have -- forgive me; I  
 9 have to get this. Did you work there in the  
 10 middle of the summer?  
 11 THE WITNESS: No, but I'm  
 12 still under the -- I had an assignment.  
 13 BY MS. JALOWSKI: (Cont'g.)  
 14 Q. So you came to the Museum  
 15 School in the spring semester of 2005, correct?  
 16 **A. Correct.**  
 17 Q. So you did not teach -- you  
 18 did not teach in September of 2004? You came  
 19 mid-school year?  
 20 **A. Mid-school year.**  
 21 Q. And then isn't it correct  
 22 that Lindy Uehling recommended -- and then you  
 23 came in as a probationary teacher, correct?  
 24 **A. Right.**

1 **Kurniaputra - Cross - Jalowski**  
 2 Q. And isn't it correct that the  
 3 end of the -- in June of 2005, Lindy Uehling  
 4 recommended that you be -- that your probation  
 5 be discontinued, correct?  
 6 **A. Right.**  
 7 **THE HEARING OFFICER: And**  
 8 **that was when? June?**  
 9 MS. JALOWSKI: June of 2005.  
 10 BY MS. JALOWSKI: (Cont'g.)  
 11 Q. And she rated you  
 12 unsatisfactory, correct?  
 13 **A. Correct.**  
 14 Q. And then -- so then you told  
 15 us you resigned in September of 2005.  
 16 **A. Right.**  
 17 Q. So it's fair to say that they  
 18 told you would -- either you would -- would --  
 19 you should resign or else you were going to be  
 20 discontinued, correct? You were given that  
 21 option to resign?  
 22 **A. I was -- I was actually more**  
 23 **resign because I was more disappointed with,**  
 24 **you know, Lindy's action.**

1 **Kurniaputra - Cross - Jalowski**  
 2 Q. But Lindy wasn't -- wasn't  
 3 the principal in 2005, correct -- in September  
 4 of 2005.  
 5 **A. No. He -- she told me that I**  
 6 **wouldn't be teaching there anymore because --**  
 7 **well, it was -- it was confusing really.**  
 8 Q. So it's your opinion that  
 9 it -- is it your feeling that she just rated  
 10 you unsatisfactory because you wouldn't spy  
 11 on -- on Ted Smith?  
 12 **A. Yes.**  
 13 Q. It had nothing to do with  
 14 your ability as a math teacher?  
 15 **A. No.**  
 16 Q. So being that Mr. Smith's  
 17 class had approximately sixty students, it's  
 18 fair to say that it would be pretty chaotic in  
 19 there, correct?  
 20 **A. Yes.**  
 21 Q. And it was hard for Mr. Smith  
 22 to control the students, correct?  
 23 **A. It's very difficult because**  
 24 **it's -- you know, if the principal couldn't**

1 **Kurniaputra - Cross - Jalowski**  
 2 **even control it --.**  
 3 Q. My question is when you were  
 4 there once a week, is it fair to say that Mr.  
 5 Smith -- it's fair -- it's correct that Mr.  
 6 Smith had trouble controlling such a large  
 7 class, correct?  
 8 **A. Correct.**  
 9 MS. JALOWSKI: I have no  
 10 further questions for this witness.  
 11 THE HEARING OFFICER:  
 12 Anything else?  
 13 MR. KEARNEY: Nothing  
 14 further. Thank you.  
 15 THE HEARING OFFICER:  
 16 Bye-bye.  
 17 MR. KEARNEY: Are we off the  
 18 record?  
 19 THE HEARING OFFICER: No,  
 20 we're not. Are we finished, you figure, for  
 21 the witnesses for the day? You want to go off  
 22 the record? Do you have anything else?  
 23 MR. KEARNEY: No.  
 24 THE HEARING OFFICER: Okay.

1 Theodore Smith - 3-8-2007  
 2 Before we go off the record, let me just  
 3 confirm that the -- we're completing today.  
 4 We're going to recess and reconvene on March  
 5 13th at two-thirty p.m.  
 6 (Off the record)  
 7 pkic  
 8  
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 24

1 Theodore Smith - 3-8-2007  
 2 STATE OF NEW YORK  
 3 I, Amy Douglas, do hereby certify that the  
 4 foregoing was reported by me, in the cause, at  
 5 the time and place, and in the presence of  
 6 counsel, as stated in the caption hereto, at  
 7 Page 499 hereof; that the foregoing  
 8 typewritten transcription, consisting of pages  
 9 number 499 through 608, inclusive, was prepared  
 10 under my supervision and is a true record of  
 11 all proceedings had at the hearing.  
 12 IN WITNESS WHEREOF, I have  
 13 hereunto subscribed my name, this the 22nd day  
 14 of March, 2007.  
 15  
 16 \_\_\_\_\_  
 17 Amy Douglas, Reporter  
 18  
 19  
 20  
 21  
 22  
 23  
 24

1 Theodore Smith - 3-8-2007  
 2 E R R A T A S H E E T  
 3 Case: Theodore Smith, File #  
 4 Date: March 8, 2007  
 5 CORRECTIONS:  
 6 Page \_ \_ line \_  
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