

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BENJAMIN AUSLANDER,

Plaintiff,

V. Case No. 2:22-cv-01425-HB

TREDYFFRIN/EASTTOWN SCHOOL

DISTRICT, ET AL.

Defendant.

**CERTIFIED
TRANSCRIPT**

Zoom deposition of BENJAMIN MORRIS AUSLANDER, held in the law offices of Wisler Pearlstine, LLP, Blue Bell Executive Campus, 460 Norristown Road, Suite 110, Blue Bell, Pennsylvania, on Thursday, August 25, 2022, commencing at 10:11 a.m., before Kathleen McHugh, RPR, CRR, CCR-NJ, and Notary Public.

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15

ALSO PRESENT:

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1 VIDEOGRAPHER: We're now on the
2 record. This is the videotaped deposition of
3 Benjamin M. Auslander, which is taken by the
4 defendant in the matter of Benjamin Auslander verse
5 Tredyffrin/Easttown School District, et al., which
6 is filed in the United States District Court for
7 the Eastern District of Pennsylvania, Case No.
8 2:22-cv-01425 HB.

9 It is being held at the law offices of
10 Wisler Pearlstine, LLP, located at 460 Norristown
11 Road, in Blue Bell, Pennsylvania. It is -- today
12 is August the 25th, year 2022, and the time now is
13 10:12 a.m. Eastern Standard Time.

14 I am Lee Bitman, the videographer.
15 The court reporter is Kathleen McHugh. We are both
16 from the firm of AdvancedOne Legal.

17 At this point will counsel please
18 introduce themselves for the record.

19 MR. ELIAS: Good morning. Brian Elias
20 for defendants Tredyffrin/Easttown School District
21 and Arthur McDonnell. With me in the room from
22 Wisler Pearlstine is Christina Gallagher.

23 MR. ZIMOLONG: Good morning. This is
24 Walter Zimolong for the plaintiff Benjamin
25 Auslander.

1 MR. DONOHUE: Mike Donohue, Pacific
2 Education Group.

3 VIDEOGRAPHER: At this point will the
4 court reporter kindly swear in the witness.

5 BENJAMIN MORRIS AUSLANDER, having been
6 duly sworn, was examined and testified as follows:

7 VIDEOGRAPHER: We will now begin the
8 questioning.

9 MR. ELIAS: Thank you.

10 COURT REPORTER: Stipulations,
11 Counsel?

12 MR. ZIMOLONG: All objections except
13 to the form of the question are reserved.

14 Is that acceptable to you?

15 MR. ELIAS: Until time of trial, yes.

16 MR. ZIMOLONG: Until time of trial.

17 Thank you.

18 EXAMINATION

19 BY MR. ELIAS:

20 **Q. Mr. Auslander, is it still the case that you**
21 **can't take written notes very well?**

22 MR. ZIMOLONG: Objection. Objection
23 to form.

24 BY MR. ELIAS:

25 **Q. Go ahead. You answer the question.**

1 MR. ZIMOLONG: To the best of your
2 knowledge. Answer the question the best you can.

3 THE WITNESS: I've never made any
4 statement about my ability to take notes.

5 BY MR. ELIAS:

6 **Q. Mr. Auslander, my question to you, though,**
7 **is -- it's a yes-or-no question -- is it still the**
8 **case that you can't take notes very well?**

9 MR. DONOHUE: Objection to form.

10 MR. ZIMOLONG: Objection to form.

11 MR. ELIAS: Counsel, can you let me
12 finish my question before you do your objections?
13 Can we do that? Can we do that?

14 Hearing no response I'll assume yes.

15 BY MR. ELIAS:

16 **Q. Mr. Auslander, my question to you is yes or**
17 **no, is it still the case that you can't take**
18 **written notes very well?**

19 MR. ZIMOLONG: Objection to form.

20 MR. DONOHUE: Objection to the form.

21 BY MR. ELIAS:

22 **Q. You have to answer the question, sir.**

23 MR. ZIMOLONG: You can answer the
24 question unless you're instructed not to answer the
25 question.

1 BY MR. ELIAS:

2 Q. Not you can, you have to answer the question
3 unless you're instructed not to answer.

4 A. I don't know how to answer that question.

5 Q. Is it still the case that you cannot take
6 written notes very well?

7 MR. DONOHUE: Objection to form.

8 MR. ZIMOLONG: Objection to form.

9 Asked, answered.

10 MR. ELIAS: No, it was not.

11 THE WITNESS: I don't know how to
12 answer that question.

13 BY MR. ELIAS:

14 Q. Why don't you know how to answer that
15 question, sir?

16 A. Because it's a bad question.

17 Q. You told Mr. McDonnell you don't take
18 written notes very well, didn't you?

19 MR. DONOHUE: Objection to the form.

20 THE WITNESS: I don't remember.

21 MR. ELIAS: I'm going to play a
22 recording now.

23 (Audio recording played.)

24 MR. AUSLANDER: So let's start over
25 because you're getting into what I want to talk

1 about so --

2 (Audio recording stopped.)

3 BY MR. ELIAS:

4 **Q. That was your voice you just heard on that,**
5 **right, Mr. Auslander?**

6 A. Correct.

7 **Q. And you made that recording, right,**
8 **Mr. Auslander?**

9 A. Correct.

10 (Audio recording played.)

11 MR. McDONNELL: Why don't we do that
12 first and then we can get to your other stuff
13 because this is what you wanted to do today.

14 So let's do that first, and then when
15 you're done with that, then we'll get into the
16 other stuff.

17 MR. AUSLANDER: Well, I just want to
18 set the stage to who's here and what we're -- what
19 we're doing.

20 So it's February 7th. It's 1:30 in
21 the afternoon which is the scheduled time. My name
22 is Ben Auslander.

23 MR. McDONNELL: Are you recording
24 this?

25 MR. AUSLANDER: Taxpayer.

1 Yes, I am.

2 I'm a taxpayer. I'm a resident.

3 MR. McDONNELL: Well, I'm not giving
4 you consent to record us today.

5 MR. AUSLANDER: I'm recording this
6 because it helps me. I can't take notes very well.
7 I've been very slow at writing.

8 MR. McDONNELL: That's fine, but I'm
9 not --

10 (Audio recording stopped.)

11 COURT REPORTER: I'm sorry, I don't
12 know if you want to go off the record, but I'm not
13 able to keep up with that.

14 MR. ELIAS: Then don't worry about it.

15 COURT REPORTER: I'm just going to
16 make notes that it's there.

17 MR. ELIAS: It was played.

18 COURT REPORTER: I'm sorry if this
19 is -- this is on the video. Perhaps we could
20 translate -- transcribe later.

21 MR. ZIMOLONG: I'll just put on the
22 record that the witness was -- there was a
23 recording that was played for the witness.

24 MR. ELIAS: She can do that. You
25 don't need to do that, Wally.

1 MR. ZIMOLONG: Did you include that in
2 the record?

3 (Court reporter nods in the
4 affirmative.)

5 MR. ZIMOLONG: Thank you.

6 MR. ELIAS: Include what in the
7 record?

8 MR. ZIMOLONG: My statement.

9 MR. ELIAS: Try not to make any
10 statements. You're just here to object.

11 BY MR. ELIAS:

12 Q. Mr. Auslander, you heard your voice in that
13 recording, didn't you?

14 A. Yes, I did.

15 Q. And you heard your voice tell
16 Mr. McDonnell -- you heard Mr. McDonnell's voice on
17 there, didn't you?

18 A. Yes, I did.

19 Q. And by Mr. McDonnell I mean Arthur
20 McDonnell, the individual you sued in this
21 litigation, correct?

22 A. Yes, that's correct.

23 Q. You heard his voice as well?

24 A. That's right.

25 Q. And you heard Mr. McDonnell tell you that he

1 **didn't give you consent to record him, didn't you?**

2 A. Yes, I did.

3 **Q. You heard him say that to you, correct?**

4 A. Yes, he did.

5 **Q. And you also heard yourself tell**

6 **Mr. McDonnell that you don't take written notes**

7 **very well, didn't you?**

8 MR. DONOHUE: Objection to form.

9 MR. ZIMOLONG: Objection to form.

10 THE WITNESS: So at that moment --

11 BY MR. ELIAS:

12 **Q. Mr. Auslander, it's a yes-or-no question.**

13 MR. ZIMOLONG: The witness has to be
14 permitted --

15 MR. ELIAS: Wally, Wally, Wally, stop
16 it.

17 MR. ZIMOLONG: Brian, the witness
18 needs to be permitted to answer.

19 MR. ELIAS: He --

20 MR. ZIMOLONG: This deposition -- I'm
21 putting on the record now that I believe this
22 deposition is being taken in bad faith. It's
23 being -- it is being taken to unreasonably annoy,
24 embarrass, and oppress the deponent.

25 MR. ELIAS: I can read from the Rule

1 26 as well.

2 MR. ZIMOLONG: It's not Rule 26 that
3 I'm reading from, Brian.

4 You can continue with the question.
5 We continue with the question -- with the
6 objections.

7 MR. ELIAS: I can; is that right?
8 Thank you for your permission, Wally.

9 MR. ZIMOLONG: And we'll -- we'll see
10 how this proceeds, but if it proceeds any longer
11 I'm going to enforce my rights under Rule 37.

12 MR. ELIAS: Wally, you can do whatever
13 you want. This case is about the recordings I'm
14 playing.

15 For you to think that this is
16 oppressing and harassing, it's laughable, just like
17 everything.

18 THE WITNESS: So --

19 MR. ELIAS: Mr. Auslander, stop
20 talking.

21 Is laughable. I'm going to continue
22 on.

23 So let's play that again.

24 (Audio recording played.)

25 MR. AUSLANDER: I'm a taxpayer. I'm

1 a -- which was the scheduled time.

2 My name is Ben Auslander.

3 MR. McDONNELL: Are you recording
4 this?

5 MR. AUSLANDER: Taxpayer.

6 Yes, I am.

7 I'm a taxpayer. I'm a resident.

8 MR. McDONNELL: Well, I'm not giving
9 you consent to record us today.

10 MR. AUSLANDER: I'm recording this
11 because it helps me. I can't take notes very well.
12 I've been very slow at writing.

13 MR. McDONNELL: That's fine, but I'm
14 not --

15 (Audio recording stopped.)

16 BY MR. ELIAS:

17 **Q. On February 7th, 2022, you told**
18 **Mr. McDonnell you can't take notes very well,**
19 **didn't you?**

20 MR. DONOHUE: Objection to form.

21 MR. ZIMOLONG: Objection to form.

22 THE WITNESS: On that date I had been
23 doing work around my house and my right hand was
24 sore. I do a lot of yardwork and work around my
25 home.

1 BY MR. ELIAS:

2 Q. Mr. Auslander, if you could answer my
3 question. On February 7th, 2022, you told
4 Mr. McDonnell you can't take written notes very
5 well, didn't you?

6 MR. ZIMOLONG: Objection to form.
7 Asked and answered.

8 You've now asked the question multiple
9 times, Brian.

10 MR. DONOHUE: Objection to form.

11 MR. ELIAS: He has not answered the
12 question, Wally. He has not.

13 MR. ZIMOLONG: He's answered the
14 question, Brian.

15 MR. ELIAS: Wally, he has not.

16 MR. ZIMOLONG: He's answered the
17 question, and the record speaks for itself.

18 You played the recording. His
19 voice -- he identified his voice on the recording.

20 You've answered him now I don't know
21 how many times the question. He's given you an
22 answer.

23 BY MR. ELIAS:

24 Q. Mr. Auslander, did you hear yourself tell
25 Mr. McDonnell that you don't take written notes

1 **very well?**

2 A. On that day --

3 MR. DONOHUE: Objection to form.

4 THE WITNESS: That's correct, on that
5 day I was (inaudible) --

6 MR. ELIAS: That's all I need,
7 Mr. Auslander.

8 COURT REPORTER: I'm sorry, I didn't
9 get the whole answer.

10 On that day, that's correct --

11 THE WITNESS: On that day that was
12 correct. My hand was sore on that day. I do a lot
13 of work around my home.

14 BY MR. ELIAS:

15 **Q. That's great. What work were you doing**
16 **around your home that day?**

17 A. I don't remember what I did.

18 **Q. Well, but you knew it hurt your hand**
19 **somehow.**

20 A. (Inaudible) property --

21 MR. ZIMOLONG: Objection. Objection.

22 BY MR. ELIAS:

23 **Q. Mr. Auslander --**

24 COURT REPORTER: I'm sorry, I'm not
25 getting this.

1 MR. ZIMOLONG: The witness should be
2 permitted to answer the question before another
3 question is asked.

4 BY MR. ELIAS:

5 Q. Withdraw the question.

6 But Mr. Auslander, you recall enough
7 that it hurt your hand that day; is that correct?

8 A. No, my hand was just tired.

9 Q. You recall enough that your hand was tired
10 but you have no recollection of what you were doing
11 other than yardwork to make your hand tired; is
12 that correct?

13 A. I have lots of property and I do work
14 routinely.

15 Q. How large is your property?

16 MR. ZIMOLONG: Objection to form.
17 Relevancy.

18 MR. ELIAS: He said it. It must be
19 relevant.

20 BY MR. ELIAS:

21 Q. How long -- how large is your property?

22 A. About three acres.

23 Q. What device did you use to make the
24 recording that we just played?

25 A. This device right here.

1 Q. And you're holding up your telephone right
2 now?

3 A. Correct.

4 Q. May I see it?

5 MR. ZIMOLONG: No. Objection. You're
6 not getting -- giving -- the witness is not giving
7 you his telephone.

8 BY MR. ELIAS:

9 Q. How many recordings did you make at the
10 Tredyffrin/Easttown administration offices on
11 February 7th, 2022?

12 A. I think approximately 12.

13 Q. Why don't you know for sure?

14 A. It was seven months ago almost.

15 Q. Did you listen to them in preparation for
16 today's deposition?

17 A. I've listened to them subsequently. Not
18 recently.

19 Q. When's the last time you listened to them?

20 A. I don't remember.

21 Q. Less than seven months ago?

22 A. Less than seven months ago.

23 Q. Did you listen to them this week?

24 A. No.

25 Q. Listen to them last week?

1 A. No.

2 **Q. Who else did you give them to?**

3 A. I emailed them to certain friends and to
4 Mr. Zimolong when he asked for a copy of them.

5 **Q. Those certain friends, identify all of them,
6 please.**

7 A. I don't remember.

8 **Q. Identify all of them, please.**

9 MR. ZIMOLONG: Objection. Asked and
10 answered.

11 THE WITNESS: I don't remember --

12 BY MR. ELIAS:

13 **Q. Do you remember any of them?**

14 A. I would say Sarah Marvin, Michael McTeirnan,
15 Rosanna Hege (phonetic). I don't remember beyond
16 that.

17 **Q. Do you still have that email?**

18 A. I probably submitted that email.

19 **Q. To who?**

20 A. To -- as part of document requests.

21 **Q. Well, you said you submitted it. That
22 implies that someone received it. Someone received
23 your submission, Mr. Auslander, and it also -- when
24 you submit something, it implies that you intended
25 to submit it to someone or something.**

1 So when you say you submitted it, who
2 did you mean you submitted it to who? Who or what
3 did you submit it to?

4 MR. ZIMOLONG: Objection to form.
5 You can answer.

6 THE WITNESS: I think all relevant
7 emails I sent to Mr. Zimolong in preparation for
8 this.

9 BY MR. ELIAS:

10 Q. Did you send it to anyone else?

11 A. In preparation for this?

12 Q. What's "this"?

13 A. Can you clarify your question, please?

14 Q. Okay. You said you believe you submitted
15 all of your emails. I asked you to whom did you
16 submit them. You said Mr. Auslander -- pardon
17 me --

18 A. Mr. Zimolong.

19 Q. -- Mr. Zimolong.

20 Did you submit them to anyone else?

21 A. No.

22 Q. And you believe all the -- how many emails
23 did you send that included any of these recordings?

24 A. I don't recall.

25 Q. But you do believe you submitted all of them

1 to Mr. Zimolong?

2 A. Yes.

3 Q. And you submitted them to Mr. Zimolong for
4 the purposes of this litigation?

5 A. Yes.

6 Q. How often does your yardwork make it so that
7 you can't take notes very well?

8 MR. ZIMOLONG: Objection to form.

9 You can answer. You can answer the
10 question to the best of your knowledge.

11 THE WITNESS: Very frequently.

12 BY MR. ELIAS:

13 Q. Very frequently? Okay.

14 A. I split wood which involves a lot of shock
15 to the hands.

16 Q. Awesome.

17 You also indicated in the recording to
18 Mr. McDonnell that -- strike that.

19 In the recording to Mr. McDonnell you
20 didn't tell him that your hand was sore from
21 yardwork, did you?

22 A. I don't think I got that specific.

23 Q. Right. And you didn't say, Hey, can I come
24 back another time because my arm -- my hand is kind
25 of sore, you didn't ask that, did you?

1 A. No.

2 **Q. And Mr. McDonnell didn't tell you, This is**
3 **your half hour, this is it, this is your only**
4 **window, no --**

5 MR. ZIMOLONG: Objection to form.

6 You can answer.

7 MR. ELIAS: Pardon me, I didn't
8 finish.

9 MR. ZIMOLONG: Sorry. Sorry, Brian.

10 MR. ELIAS: I don't need a sorry. I
11 just need you to stop.

12 BY MR. ELIAS:

13 **Q. Mr. Auslander --**

14 MR. ZIMOLONG: Brian, if you're not
15 going to act in a professional manner -- we're in a
16 deposition in a litigation in the United States
17 District Court for the Eastern District of
18 Pennsylvania.

19 Everyone in this room except you,
20 including your associate, is acting professionally
21 and respectfully, and if it keeps up -- this is on
22 video -- if it keeps up, we're terminating this
23 deposition.

24 I'm not going to sit here and subject
25 the witness, myself, Mr. Donohue, or anyone else to

1 your unprofessional conduct. It's plainly apparent
2 that you're acting unprofessionally in this case.

3 So continue with your questioning or
4 this deposition is over.

5 MR. ELIAS: All done? All done? All
6 done?

7 Hearing nothing --

8 THE WITNESS: Counselor Elias, there
9 was no time --

10 BY MR. ELIAS:

11 **Q. Mr. Auslander, no question is pending.**

12 **Mr. Auslander, did Mr. McDonnell tell**
13 **you that your time to review the documents on**
14 **February 7th was limited in any way?**

15 A. Not until I started taking voice recordings,
16 exercising my First Amendment rights.

17 MR. ELIAS: This is Exhibit Auslander
18 1.

19 (Exhibit Auslander 1 was marked for
20 identification.)

21 BY MR. ELIAS:

22 **Q. Mr. Auslander, the court reporter has handed**
23 **you what's been marked as Auslander 1.**

24 A. I'm just going to take a little time to read
25 this before I --

1 Q. Mr. Auslander, let me just tell you right
2 now, you can take all the time you want to read any
3 document I put in front of you. I don't want you
4 to think there's any restriction on what you're
5 able to read that I put in front of you.

6 A. Thank you.

7 MR. ELIAS: Off the record.

8 VIDEOGRAPHER: Off the video record.

9 (Discussion off the record.)

10 VIDEOGRAPHER: Back on the video
11 record. 10:27.

12 BY MR. ELIAS:

13 Q. Mr. Auslander, I note that you have a pad
14 with notes on it in front of you. What do the
15 notes say?

16 A. It's the names of the various people who I
17 don't know that are sitting around the table, and a
18 note about the interaction between you and
19 Mr. Donohue.

20 Q. What about the first page?

21 A. The first page?

22 Q. Then what's in the folder, yeah.

23 A. This page?

24 Q. Yeah, but nothing is on it I see.

25 A. Yeah.

1 Q. What's in the folder?

2 A. Folder is some of my notes on deposition.

3 Q. Can you read them for us or give us a copy?

4 MR. ZIMOLONG: Objection. I want to
5 see what the notes are and make sure they're not
6 protected by attorney-client privilege.

7 MR. ELIAS: Well, let's put that
8 aside, then. Don't do that now. Put that --

9 MR. ZIMOLONG: Well, hold on. You
10 wanted a copy of it. I'm looking at it now.

11 MR. ELIAS: No, Mr. Zimolong, I'm not
12 going to look at it. I don't want you to take
13 anything out, so if you can just put it in the
14 folder and put it over there, that would be great.

15 MR. ZIMOLONG: No, the witness handed
16 me a document. I'm reviewing it for privilege.

17 MR. ELIAS: Okay. Well, then we're
18 going to have to -- then we'll have to watch and
19 make sure you don't remove anything.

20 MR. ZIMOLONG: No, I'm not letting you
21 look at the documents that may be -- have
22 privileged information on it.

23 MR. ELIAS: Then give them back to the
24 witness.

25 MR. ZIMOLONG: The witness is going to

1 have the documents. I'm instructing my witness not
2 to hand you documents until I've had a chance to
3 review them for privileged information.

4 MR. ELIAS: We want to mark the pad
5 and the folder and the contents of the folder as
6 Auslander 2.

7 MR. ZIMOLONG: You can put on the
8 record whatever you want, but you're not getting a
9 chance to --

10 MR. ELIAS: Will you allow us to do
11 that?

12 MR. ZIMOLONG: No.

13 MR. ELIAS: We're asking you to make
14 sure that nothing in that folder right there or on
15 that pad is altered or changed in any way until
16 this issue is resolved. Okay.

17 BY MR. ELIAS:

18 **Q. Mr. Auslander, we showed what you what's**
19 **been marked as Auslander 1.**

20 **A. Yes.**

21 **Q. Have you ever seen this document before?**

22 **A. I don't recall seeing it, no.**

23 **Q. But you're familiar -- I imagine,**
24 **Mr. Auslander, that you're familiar with what**
25 **sometimes printed emails look like.**

1 A. Correct.

2 Q. And this, would you agree, appears to be a
3 printed email chain?

4 A. I would agree.

5 Q. And on the very first page at the top, you
6 know, it has -- it says, From: Wally Zimolong to
7 myself, and you see Christina and Mr. Barry there
8 in the cc line, but I want to direct your attention
9 to the Attachments block.

10 Do you see that?

11 A. Yes, I do.

12 Q. And it appears -- wouldn't you agree that
13 that appears to indicate that there were a number
14 of attachments to this email?

15 A. Yes.

16 Q. And then each attachment is identified by
17 file name, correct?

18 A. Appears so, yes.

19 Q. Appears so, fair enough.

20 And each file -- each then file name
21 is separated by a semicolon, correct?

22 A. Yes.

23 Q. That's all -- it looks normal to me --
24 standard stuff you've seen before, correct?

25 A. Yes.

1 Q. It's my understanding that these
2 attachments, most of them, not all of them, some of
3 them appear to be pdf files, but what I want to
4 draw your attention to are the files that end in
5 the extension .m4a.

6 Do you see what I'm talking about?

7 A. Yes.

8 Q. And there's a number of those that have in
9 the file name W Valley Road -- Rd -- and a number
10 and .m4a.

11 Do you see what I'm talking about?

12 A. Yes.

13 Q. And it's -- they're not in perfect order,
14 Mr. Auslander, but it appears the very last .m4a
15 file doesn't have a number on it. It just says W
16 space Valley space Rd .m4a.

17 Do you see that?

18 A. Um-hum.

19 Q. Yes? I'm sorry. Yes?

20 A. Yes.

21 Q. If we were having a normal human
22 conversation, I would totally know what you mean by
23 uh-hum and nodding your head --

24 A. Yeah.

25 Q. -- but it's being recorded, so we have to

1 say yes or no.

2 A. Yeah. Okay. Yes.

3 Q. Did you create these .m4a files?

4 MR. ZIMOLONG: Objection to form.

5 THE WITNESS: I believe that's a
6 format that Apple uses for audio recording, so I
7 don't -- I record -- I believe, if they're the
8 ones, again, I can't examine what these are, but
9 the ones on my phone I think had similar names to
10 those.

11 BY MR. ELIAS:

12 Q. Exactly. That's what I'm getting at,
13 Mr. Auslander.

14 You recognize these recordings as --
15 pardon me, let me strike that. That wasn't well
16 put.

17 You recognize these .m4a file names as
18 the recordings that you -- as the files of the
19 recordings you took on February 7th, 2022 at the
20 Tredyffrin/Easttown offices?

21 A. They look similar.

22 Q. Fair enough.

23 Did you create the names, like did you
24 come up with capital W space, capital V, a-l-l-e-y,
25 space, capital R, d, did you come up with that name

1 or was that something Apple defaulted to as well?

2 A. Apple uses location as a default, that's
3 why.

4 Q. Okay.

5 A. I was at the executive offices for the
6 school district on West Valley Road.

7 Q. So that's your understanding as to how these
8 names were created?

9 A. My experience has been that when I make a
10 voice recording it tends to just label it where it
11 is when it happens. That's an Apple convention.

12 Q. And you're right, I agree with you, that
13 makes sense given the location of the
14 administration offices.

15 How come there's not one with a number
16 one?

17 A. I don't know. I didn't compose the email or
18 the list. I have no idea.

19 Q. Did you give all of the recordings you made
20 at the Tredyffrin/Easttown offices on February 7th,
21 2022 available to your attorney?

22 A. I believe I did, yes.

23 Q. And that again wasn't well put by me. Just
24 to clear it up. It's your understanding that you
25 produced to Mr. Zimolong every recording you made

1 that day?

2 A. Yes.

3 Q. Is it your understanding that Mr. Zimolong
4 was going to produce every one of those recordings
5 to us?

6 A. Yes.

7 Q. Are you aware of any recordings that you
8 made that have not been produced to us?

9 A. No.

10 Q. When I say "us," I mean Tredyffrin/Easttown
11 School District and Mr. McDonnell.

12 A. Yes, same answer. I'm not aware of any
13 recordings that wouldn't have been shared.

14 Q. Despite the extreme difficulty you were
15 having with your hand that day, did you ultimately
16 take any handwritten notes on February 7th, 2022?

17 MR. ZIMOLONG: Objection to form.

18 You can answer.

19 THE WITNESS: I don't believe that I
20 did, no. I just used my voice recording.

21 MR. ELIAS: We're going to then
22 play -- understanding now -- on the record,
23 understanding now the court reporter isn't able to
24 transcribe the voice recordings we're going to
25 play, we're going to play some voice recordings,

1 but then the court reporter will transcribe our
2 conversations about them.

3 MR. ZIMOLONG: Could we have
4 identified for the record by the file name what
5 voice recording is being made -- played?

6 MR. ELIAS: Absolutely. Fair enough.

7 And here let's -- on the record still,
8 right -- let me show you what I'm doing. That's a
9 very good point.

10 Wally, and if you want to look at it,
11 Mr. Donohue, I have the email up. I'm just -- I'm
12 just playing it from the email that is marked as
13 Auslander 1.

14 MR. DONOHUE: So the first audio
15 recording you played --

16 MR. ELIAS: I haven't said yet. I
17 haven't said yet.

18 MR. DONOHUE: No, no, no. You played
19 an audio recording earlier. My question is, is
20 that first audio recording that you played, the
21 first one, is that the West Valley Road 2.m4a or
22 was that something different?

23 MR. ELIAS: It was not. We're going
24 to continue. Ready?

25 THE WITNESS: Uh-hum.

1 (Audio recording played.)

2 MR. AUSLANDER: So let's start over
3 because you're getting into what I want to talk
4 about so --

5 MR. ZIMOLONG: Hold on. We haven't
6 identified this yet.

7 MR. DONOHUE: Yeah, not at all.

8 (Audio recording stopped.)

9 MR. ELIAS: Can I take my deposition?

10 MR. DONOHUE: No.

11 MR. ZIMOLONG: No, you can't.

12 MR. DONOHUE: No, I asked you to -- I
13 asked you to identify the first audio and you
14 decided to be a jackass about it.

15 MR. ELIAS: Are we on the record?

16 MR. DONOHUE: Yeah, we're on the
17 record.

18 MR. ELIAS: If you -- if you were
19 listening to the thing, I was just playing the
20 exact same recording again.

21 MR. DONOHUE: I only asked you to
22 identify --

23 MR. ZIMOLONG: The file name.

24 MR. DONOHUE: -- the file name, that's
25 all, because you said that was fair enough.

1 MR. ELIAS: And we're going -- and I
2 said we will do it.

3 MR. DONOHUE: No, you didn't. You
4 didn't say anything of the sort.

5 MR. ZIMOLONG: You didn't say
6 anything. You just started playing the recording.
7 Why don't you just tell us what file name?

8 MR. ELIAS: Because we're going to
9 play the recording and we're going to go from
10 there. I will identify the recording. Calm down.

11 MR. DONOHUE: We're perfectly calm.

12 MR. ELIAS: Then let's move on. Here
13 we go.

14 (Audio recording played.)

15 MR. AUSLANDER: So let's start over
16 because you're getting into what I want to talk
17 about so --

18 MR. McDONNELL: Why don't we do that
19 first and then we can get to your other stuff,
20 because this is what you wanted to do today. So
21 let's do that first, and then when you're done with
22 that, then we'll get into the other stuff.

23 MR. AUSLANDER: Well, I just want to
24 set the stage of who's here and what we're doing.

25 So it's February 7th. It's 1:30 in

1 the afternoon which is the scheduled time.

2 My name is Ben Auslander. Taxpayer.

3 MR. McDONNELL: Are you recording us?

4 MR. AUSLANDER: Yes, I am.

5 I'm a taxpayer. I'm a resident.

6 MR. McDONNELL: Well, I'm not giving
7 you consent to record us today.

8 MR. AUSLANDER: I'm recording this
9 because it helps me. I can't take notes very well.
10 I've been very slow at writing.

11 MR. McDONNELL: That's fine, but I'm
12 not giving you consent to record us.

13 MR. AUSLANDER: So I had forwarded you
14 questions which I thought were reasonable and
15 straight-forward questions which you declined to
16 answer.

17 An email from Mary here says that
18 Mr. McDonnell will address these questions in your
19 email on the day you are here to inspect the
20 requested records, which is today.

21 MR. McDONNELL: So I'm not going to
22 respond to anything you're saying unless you stop
23 recording.

24 MR. AUSLANDER: Okay. So it's
25 February 7th at 1:30. I'm here with Arthur

1 McDonnell who is the board secretary, the T/E
2 School Board, and his assistant, Mary Minicozzi.
3 Arthur is refusing to have me voice record
4 responses to the questions which previously they
5 had refused to answer in writing.

6 So here I am and I have no way to have
7 certitude that I'm either going to get questions
8 answered either in verbal sense or in writing, but
9 so be it.

10 (Audio recording stopped.)

11 BY MR. ELIAS:

12 **Q. Mr. Auslander, we just played recording that**
13 **is titled capital W, space, capital V, lower case**
14 **a-l-l-e-y, space, Rd, .m4a.**

15 **Did you hear that recording?**

16 A. Yes.

17 **Q. And that was the full recording of the**
18 **shorter version I played earlier today, correct?**

19 MR. ZIMOLONG: Objection to form.

20 THE WITNESS: I don't know.

21 MR. ELIAS: Try to listen this time,
22 please.

23 (Audio recording played.)

24 MR. AUSLANDER: So let's start over
25 because you're getting into what I want to talk

1 about so let's --

2 (Audio recording stopped.)

3 BY MR. ELIAS:

4 **Q. Are you having any difficulty hearing the**
5 **recording, Mr. Auslander?**

6 A. No, I'm not. I just don't have recall of
7 what you said earlier, what you played earlier,
8 so --

9 **Q. Say that again, Mr. Auslander.**

10 A. So you're stating that earlier you played --
11 I just don't know what your question was. Can you
12 clarify your question?

13 **Q. Earlier I played a recording, didn't I?**

14 A. Yes, you did.

15 **Q. And then I just played a recording again,**
16 **didn't I?**

17 A. Yes.

18 **Q. They were the same recordings, weren't they?**

19 A. I think so. I don't know.

20 MR. ZIMOLONG: Objection.

21 MR. ELIAS: Let's play it again then.

22 (Audio recording played.)

23 MR. AUSLANDER: So let's start over
24 because you're getting into what I want to talk
25 about so let's --

1 MR. McDONNELL: Why don't we do that
2 first and then we can get to your other stuff
3 because this is what you wanted to do today. So
4 let's do that first. And then when you're done
5 with that, then we'll get into the other stuff.

6 MR. AUSLANDER: Well, I just want to
7 set the stage of who's here and what we're -- what
8 we're doing.

9 So it's February 7th. It's 1:30 in
10 the afternoon, which is the scheduled time.

11 My name is Ben Auslander. Taxpayer.

12 MR. McDONNELL: Are you recording us?

13 MR. AUSLANDER: Yes, I am.

14 I'm a taxpayer. I'm a resident.

15 MR. McDONNELL: I'm not giving you
16 consent to record us today.

17 MR. AUSLANDER: I'm recording this
18 because it helps me. I can't take notes very well.
19 I've been very slow at writing.

20 VOICE: That's fine, but I'm not
21 giving you consent to record us.

22 MR. AUSLANDER: Okay. So I had
23 forwarded you questions which I thought were
24 reasonable and straight-forward questions which you
25 declined to answer.

1 An email from Mary here says that
2 Mr. McDonnell will address these questions in your
3 email on the day you are here to inspect the
4 requested records, which is today.

5 MR. McDONNELL: So I'm not going to
6 respond to anything you're saying unless you stop
7 recording.

8 MR. AUSLANDER: Okay. So it's
9 February 7th at 1:30. I'm here with Arthur
10 McDonnell, who is the board secretary, the T/E
11 School Board, and his assistant, Mary Minicozzi,
12 Arthur is refusing to have me voice record
13 responses to the questions which previously they
14 had refused to answer in writing. So here I am and
15 I have no way to have certitude that I'm either
16 going to get questions answered either in verbal
17 sense or in writing, but so be it.

18 (Audio recording stopped.)

19 BY MR. ELIAS:

20 **Q. All right, Mr. Auslander, we just again**
21 **played the W Valley Road .m4a audio recording. Was**
22 **that the first audio recording you made at the**
23 **Tredyffrin/Easttown School District offices on**
24 **February 7th, 2022?**

25 **A. I don't recall but it sounds like it.**

1 Q. Why does it sound like it?

2 A. Because at the start of the meeting I wanted
3 to have my question answered about whether I was
4 going to see all of the PEG materials or a subset.
5 That was why I made that question clear in email
6 before I arrived.

7 Q. How -- how else -- is there any other way
8 you could go about determining whether or not this
9 was the first recording you made that day?

10 A. I suppose I could go back to my phone and
11 look and see.

12 Q. Could you do that for us?

13 MR. ZIMOLONG: We're not going to the
14 phone.

15 The witness has testified he's -- he's
16 produced all recordings. It's on the record.
17 We've already stipulated to that in a set of
18 stipulated facts.

19 We're not going to look into the
20 phones and do all that stuff, so he's not doing it.

21 MR. ELIAS: The order of the
22 recordings is important to this litigation and you
23 didn't produce the metadata. So we don't -- like,
24 for -- I'm just wondering if we can see the order
25 in which they were taken, and you didn't produce

1 the metadata so we don't know --

2 MR. ZIMOLONG: You didn't request the
3 metadata.

4 MR. ELIAS: Yes, I did, Mr. Zimolong.

5 MR. ZIMOLONG: Then we can take it
6 up -- you can file a Motion to Compel if you think
7 there's additional information that you need.

8 BY MR. ELIAS:

9 **Q. Will you provide for us --**

10 MR. ZIMOLONG: Don't answer the
11 question.

12 If you have a request for documents --
13 Mr. Elias, if you have a request for documents or
14 for information --

15 MR. ELIAS: Mr. -- Mr. -- I didn't
16 even -- I said -- will you provide us with your
17 name? Are you instructing him not to answer? I
18 mean, you didn't let me finish the question, Wally.

19 MR. ZIMOLONG: This is the third
20 warning I'm giving you.

21 MR. ELIAS: Wally --

22 MR. ZIMOLONG: I'm not giving you a
23 warning again. I'm going to terminate this
24 deposition under Rule 37 --

25 MR. ELIAS: Wally. Wally.

1 MR. ZIMOLONG: -- to seek a protective
2 order.

3 MR. ELIAS: Wally, your warnings are
4 out of line, improper, and of no meaning to me.
5 You can do whatever you want.

6 This is not a prison. This is not an
7 arrest. You guys are free to get up and leave and
8 have the ramifications flow therefrom.

9 MR. ZIMOLONG: Then we're terminating
10 the deposition under Rule 37 --

11 MR. ELIAS: Okay.

12 MR. ZIMOLONG: -- and the deposition is
13 suspended so we can seek a protective order.

14 Thank you.

15 MR. ELIAS: Okay. We're going to call
16 the judge right now.

17 MR. ZIMOLONG: No, we're terminating
18 and suspending the deposition so I can make a
19 motion for a protective order.

20 MR. ELIAS: I'm calling the judge
21 right now.

22 MR. ZIMOLONG: You can call him,
23 Brian. I'm leaving.

24 MR. ELIAS: Okay.

25 MR. ZIMOLONG: Let's go, Ben.

1 VIDEOGRAPHER: Continue to record or
2 go off?

3 MR. ELIAS: No, we're going to keep --
4 stay on the record.

5 MR. ZIMOLONG: I'm not going to be
6 here so the deposition is suspended. You can call
7 Judge Bartle if you want, and you can tell him I
8 suspended -- actually, Ben, you can leave.

9 I'm just going to tell Judge Bartle
10 I'm suspending the deposition under Rule 37 so I
11 can make a motion for a protective order. I'll
12 meet you outside.

13 THE WITNESS: Okay. Thanks.

14 MR. ZIMOLONG: So go ahead and call
15 Judge Bartle.

16 MR. ELIAS: No, that's all right.

17 What's your -- what's the basis for a
18 protective order?

19 MR. ZIMOLONG: Is that on the record
20 that the deposition is suspended --

21 MR. ELIAS: No, no, no, no, no.

22 MR. ZIMOLONG: No, I want on the
23 record that the deposition is suspended pursuant to
24 Rule 37 so I can seek a protective order.

25 MR. ELIAS: It is not. It is not. It

1 is not suspended.

2 MR. ZIMOLONG: You can say whatever
3 you want. This deposition is suspended. I'm
4 enforcing my rights under the Federal Rules of
5 Civil Procedure.

6 Thank you.

7 MR. ELIAS: Grab yourself a tissue on
8 the way out.

9 MR. ZIMOLONG: Ma'am, can I have an
10 expedited copy of this transcript, and sir, can I
11 have an expedited copy of the video, please? How
12 quickly do you think you can get it for me?

13 VIDEOGRAPHER: I'll have the office
14 contact you.

15 MR. ZIMOLONG: Do you have my contact
16 information?

17 VIDEOGRAPHER: The court reporter
18 does.

19 MR. ZIMOLONG: How quickly could you
20 get me an expedited transcript, ma'am?

21 COURT REPORTER: Tomorrow.

22 MR. ZIMOLONG: Thank you.

23 MR. DONOHUE: She's still on the
24 record.

25 MR. ELIAS: Oh, we can go off the

1 record.

2 Oh, no, hold on. Stay on the record.

3 Let the record reflect that

4 Mr. Zimolong stormed out of the deposition room

5 with his client. Thank you.

6 MR. DONOHUE: Are we off the record?

7 MR. ELIAS: Yeah, off the record.

8 THE VIDEOGRAPHER: At 10:43 we're
9 going off the video record. That concludes this
10 deposition.

11 (Deposition concluded.)

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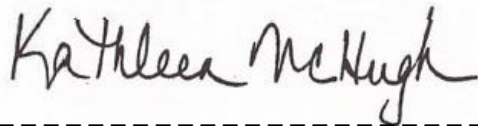
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CERTIFICATION

I, KATHLEEN MCHUGH, an RPR, CRR, CCR-NJ, and Notary Public, in and for the State of Pennsylvania, hereby certify that the foregoing is a true and accurate transcript of the deposition of said witness who was first duly sworn by me on the date and place herein before set forth.

I FURTHER CERTIFY that I am neither attorney nor counsel for, not related to nor employed by any of the parties to the action in which this deposition was taken; and further that I am not a relative or employee of any attorney or counsel employed in this action, nor am I financially interested in this case.



KATHLEEN MCHUGH
RPR, CRR, CCR (NJ)
and Notary Public

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