

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

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2	TAMMY J. KITZMILLER, et al.,	:	
3	Plaintiffs	:	
4	vs.	:	Case Number
5		:	4:04-CV-02688
6	DOVER AREA SCHOOL DISTRICT;	:	
7	DOVER AREA SCHOOL DISTRICT	:	
8	BOARD OF DIRECTORS,	:	
9	Defendants	:	

AFTERNOON SESSION

TRANSCRIPT OF PROCEEDINGS
OF BENCH TRIAL

Before: HONORABLE JOHN E. JONES, III

Date : September 28, 2005

Place : Courtroom Number 2, 9th Floor
Federal Building
228 Walnut Street
Harrisburg, Pennsylvania

COUNSEL PRESENT:

ERIC J. ROTHSCHILD, ESQ.
WITOLD J. WALCZAK, ESQ.
STEPHEN G. HARVEY, ESQ.
RICHARD B. KATSKEE, ESQ.

For - Plaintiffs

PATRICK T. GILLEN, ESQ.
RICHARD THOMPSON, ESQ.
ROBERT J. MUISE, EQ

For - Defendants

Lori A. Shuey, RPR, CRR
Official Court Reporter

I N D E X

WITNESSES

<u>For - Plaintiffs:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Julie Smith	34	39		
Christy Rehm	58	79		
Beth Eveland	92	106		

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1 (The following discussion occurred in
2 chambers:)

3 THE COURT: Let's go on the record. We are
4 in chambers, and this is the matter of Kitzmiller, of
5 course, versus Dover Area School District. We have
6 assembled as planned with respect to the issue of
7 certain subpoenas that have been issued to reporters
8 Joseph Maldonado and Heidi Bernhard-Bubb.

9 Present in chambers are counsel for both the
10 plaintiffs and the defendants, and in addition to
11 that, let me ask that you enter your appearances
12 specially, presumably as counsel for the individuals
13 we referred to in our orders collectively as
14 "reporters."

15 MR. BENN: I'm here, Niles Benn, on behalf
16 of both of the reporters, Heidi Bernard-Bubb and
17 Joseph Maldonado. And with me is Terance Barna, an
18 attorney in my office, as well.

19 THE COURT: All right. Now, previously, on
20 September 12th, the Court entered an order which went
21 to the motion for reconsideration. That
22 related specifically to -- filed by the reporters.
23 That went specifically to our August 2nd order which,
24 in effect, said that the reporters would have to
25 testify at certain depositions.

1 Subsequently, the reporters were, if memory
2 serves, approximately eight days ago, subpoenaed to
3 testify by the plaintiffs in the case-in-chief. Yet
4 another motion to quash or for alternative relief was
5 filed by the reporters through Mr. Benn's office. By
6 our order of last Thursday -- the date escapes me, I
7 think it was Thursday -- the Court denied relief in
8 that matter.

9 The Court was advised that yesterday, on
10 September the 27th, the reporters, both of them,
11 showed up at the appointed times for their depositions
12 as appropriately scheduled by the defendants, and I'm
13 advised -- and I'll correct this if I'm wrong -- that
14 both reporters cited the reporter's privilege that
15 they consider to exist under the First Amendment so
16 that they would not answer any questions at those
17 depositions.

18 We're brought here today by that, as well as
19 the fact that I presume you're here because the
20 reporters have been properly subpoenaed to appear in
21 the plaintiffs' case-in-chief. Now, have I
22 mischaracterized anything from your standpoint?

23 MR. BENN: No, everything that you said is
24 correct, Your Honor.

25 THE COURT: Now, the most salient question

1 then is, with respect to the reporters' appearance
2 today, is it your understanding that the reporters are
3 intending to invoke the same privilege cited by them
4 yesterday, if called, when called, to testify by the
5 plaintiffs?

6 MR. BENN: Yes.

7 THE COURT: All right.

8 MR. BENN: But that's the reason why I had
9 asked if we could have this conference.

10 THE COURT: The floor is yours.

11 MR. BENN: Thanks. I'm not here to discuss
12 law. I think we have discussed the law ad nauseam
13 with respect to briefs, argument. I certainly
14 understand the opinion and orders that have been
15 rendered by the Court, and I appreciate them.

16 And I don't want there to be a
17 misunderstanding in terms as to this case being
18 wrongly focused. And what I mean by that, with regard
19 to all of you in this room is that we've got
20 approximately 40 people from the media that are
21 observing this trial in the courtroom, plus outside of
22 the courtroom.

23 In speaking for myself, it would be my
24 humble opinion that if these parties were called to
25 the stand to testify and refuse to testify, as I just

1 indicated to you, Your Honor, that I think the focus
2 of this trial all of the sudden isn't addressed as to
3 intelligent design, but rather the media is going to
4 be very much concerned in terms as to these stringers,
5 not full-time employees, not employees at all,
6 standing up for what they think is right. And I
7 really truly believe in my heart of hearts the focus
8 gets misdirected. I really truly do mean that,
9 because I don't think that should be the focus of this
10 case.

11 As a result of that, Mr. Barna and I have
12 spent days in an effort to try to see if there was a
13 means by which we could somehow ameliorate the problem
14 so that, in a certain sense, everybody gets what they
15 want. I clearly will not get what I want, because at
16 the end of the day, if I agree that my reporters are
17 going to testify predicated upon something that I want
18 to propose here, that's more than I would want,
19 because I stand by the fact and they stand by the fact
20 that there's a reporter's privilege here.

21 They refuse to testify at a deposition, and
22 my suggestion to them was that if we were capable of
23 resolving something as a result of this conference,
24 that they would then attend a deposition, because I
25 believe the defendants would have a right to

1 cross-examine them or otherwise examine them prior to
2 them taking the stand. And based upon that, they
3 would then testify in court.

4 But we have several issues. One is that
5 when we filed our motion to quash last week, quite
6 honestly, we thought we did it in a timely fashion
7 because we filed it only after we were served with the
8 subpoena. Your Honor summarily dismissed that motion
9 to quash, so, in effect, if my reporters were to be
10 called upon to testify today by the plaintiffs,
11 they're undressed. They've got no protective order at
12 all. They're just regular people. Because the order
13 I believe that you had previously entered related to
14 the deposition and not related to their appearance in
15 court. So that raises an issue for us because clearly
16 we would otherwise object to them taking the stand
17 under the order as it currently exists or the motion
18 that you're -- your position that the motion to quash
19 could not stand.

20 I interpret the order and the amended order
21 to mean that Your Honor, in a sense, has addressed
22 them as fact witnesses. I don't think you actually
23 come out and use the word "fact witnesses," but as one
24 reads the order, that's the implication. And you
25 initially had indicated that you did not feel that the

1 reporter's privilege stood in this kind of a case.

2 These two newspapers respectively go to
3 approximately 89 municipal meetings in terms of 89
4 different municipalities and school districts. And
5 ironically -- in a sense, I have to commend both
6 Mr. Maldonado and Ms. Bernard-Bubb because, again,
7 they're paid per story. They get anywhere between \$40
8 and \$50 a story. They might make \$300, \$400 a week if
9 they write X number of stories, and that's it. And
10 the stories that they write predominantly are
11 municipal stories.

12 She's a full-time mom. She's breastfeeding.
13 She has a seven-month old child, and so she works at
14 night when her husband is at home. He's a
15 schoolteacher. Mr. Maldonado owns a little deli in
16 the market in York, and he home-schools his son, his
17 youngest son who has learning disabilities. And he's
18 been doing that for the last three years. So this is
19 just supplemental income to them because they're not
20 very wealthy people. But yet without a lot of
21 education in terms of journalism, they believe that
22 what they're standing for is the right thing.

23 I don't have control over them as I would an
24 employee of the Daily Record or the Dispatch because
25 they are stringers and independent. So having said

1 that, their fear is that because of all those
2 municipalities that they cover and the school
3 districts that they cover, that at least in the Middle
4 District Court, should a matter come up similar to
5 this case, then they are exposed as a fact witness.

6 I've related to them, quite frankly, this is
7 the first case we've ever had in federal court in the
8 15 years that I've been doing newspaper law, and most
9 of our cases are in county courts, and so, you know,
10 there's a different issue there. But having said
11 that, the concern that I have is that there is a
12 precedent being set in the counties that these people
13 otherwise work.

14 So how do I make it better? Well, we
15 provided an affidavit, and that affidavit indicated
16 that we, if called upon to testify, would validate the
17 authenticity of the articles that were written. We
18 did that, in effect, to offer to both sides so that we
19 wouldn't otherwise have to testify. Accepted by the
20 plaintiffs, not accepted by the defendants.
21 Defendants wanted to have the right of
22 cross-examination.

23 And at the time when you wrote the original
24 order and you used the words "perceived, saw, and
25 heard," we were concerned, as you well know, with the

1 word "perceived" in terms as to what's the thought
2 process. And there was dialogue on the phone amongst
3 all of us, and you made it very clear that you did not
4 want any testimony that would otherwise relate to
5 biases and prejudices. And, in fact, when you
6 reviewed the notes of the reporters, you had also
7 indicated that your review of Heidi Bubb's notes and
8 the e-mails clearly evidence that there was no bias in
9 the writings, those writings.

10 The concern that we currently have is that
11 the order reads, in effect, that they have to testify
12 as fact witnesses, predicated upon my interpretation,
13 as to what is otherwise unpublished material so that,
14 for example -- just using this for example.

15 THE COURT: That's not my intention.

16 MR. BENN: No, no, but I --

17 THE COURT: Well, that's not my intention.
18 And I wanted to let you go as far as you could, and I
19 think I have to interject and I want to interject and
20 I want to be clear, because I think it's important
21 that I do that. Let me address a couple points that
22 you made.

23 First of all, I understand and deeply
24 respect the position that you're in in this case. And
25 by saying that the motion was untimely, it was not

1 legally untimely, it was untimely in my view only in
2 the sense that it came, as I said, on the eve of
3 trial, when we knew that there was going to be an
4 issue with respect to their testimony at trial. It
5 was an attempt to bring this to a head. It was
6 successful in that respect. It was not successful in
7 solving the problem, but it was successful to bringing
8 it to a head. So to that extent, I succeeded, good,
9 bad, or indifferent.

10 With respect to the point that you made as
11 it relates to their testimony at trial, that is a very
12 valid point. However, I will tell you that the sense
13 of my opinion as it related to their deposition
14 testimony and as reconsidered and as honed in the
15 reconsideration, was that it was meant to apply -- the
16 general thrust of that, the protections, if you will,
17 in that opinion were meant to apply in the same sense
18 to their testimony at trial, if they chose to testify,
19 and they would be protected in every way by the Court,
20 and they would not be questioned in the broader sense.
21 So it would not revert back to an unprotected realm,
22 if you will, at the time of trial.

23 To be as clear as I can be, at issue in this
24 case -- and I can't particularly be concerned about
25 precedential value. I understand your concern in that

1 regard. I have to try this case the best way that I
2 know how. The concern in this case, and it is a vital
3 concern by all parties, is that we have, as you well
4 know, to restate the obvious, we have newspaper
5 articles within which there are quotes from
6 individuals. Those quotes go, at least in one sense,
7 to the purpose behind the policy that was enacted by
8 the Dover School Board.

9 The simple issue here, because it is the
10 Court's understanding that these individuals have
11 denied that they made these remarks, is from the
12 plaintiffs' standpoint how can they get something that
13 is, in my view, on the purpose test, which clearly
14 goes to the truth of the matter asserted, how do they
15 get these newspaper articles into evidence? Well,
16 they can't, in my view, without the reporters
17 testifying.

18 The defendants might say that even with the
19 reporters testifying, they can't get them in. I think
20 that's their argument. But at the very least, in my
21 view, and I think the plaintiffs might agree with
22 this, the reporters would have to testify.

23 I didn't say this strictly in the opinion,
24 perhaps, but my opinion was not meant to allow the
25 testimony of the reporters to go in any way, in

1 particular, outside the four corners of the affidavits
2 rendered by the reporters. I can't say that to the
3 word, and that's why the opinions were crafted the way
4 that they were. The Court has to have some discretion
5 on the questioning.

6 But I was as clear as I could possibly be
7 that what is at issue here would be, for example, the
8 particular events that the reporters wrote about and
9 questions such as -- simple questions, did they attend
10 the meeting, did they hear them say the comments, did
11 they write the story immediately after, did they take
12 notes at the time of the meeting.

13 I thought my opinion was clear in that
14 regard, and as you appropriately characterize, no
15 questions as to bias or motivation or reasons to
16 misrepresent quotes would be allowed in. There I
17 believe we would decidedly fly in the face of
18 established case law.

19 I did not view and do not view the law as
20 providing that there is some exhaustion requirement,
21 although I understand some cases have said that. In
22 this particular fact situation -- and I do think, I
23 will say, on the issue of precedent, you can
24 distinguish cases of -- and I'm not so sure I would be
25 as fearful as some might be as to precedential value.

1 I think this case is somewhat distinguishable, and I
2 don't know that a judge in another situation would
3 knee-jerk allow this type of testimony. We are in a
4 very unique situation here, and that's what we have.

5 Finally, the last thing that I want to do --
6 I'm answering soliloquy with soliloquy here. I'm not
7 sure if this is a dialogue. Finally, I am acutely
8 cognizant of the fact that this trial has abundant
9 media coverage, and it is surely not my intent to
10 force a constitutional confrontation with two
11 reporters and to create a side show that we don't need
12 to. That's why we're meeting in chambers.

13 But I'll tell you that if it's their
14 persistent position that they don't want to testify,
15 then we'll go on the record -- now, I'm not going to
16 put them on the witness stand. I don't think it's
17 necessary to do that. I would bring you and the
18 reporters, I will tell you, to the bar. I will swear
19 them in, I will have them sworn in. I will ask you
20 the question whether they're going to testify. I will
21 allow them to speak for themselves on that point, and
22 then we'll decide what we're going to do at that
23 point.

24 I don't know what else to do, but I'm not
25 going to go through the charade of having them take

1 the stand and assert, you know, as articulately as
2 they can the privilege that they believe that they can
3 avail themselves of.

4 MR. BENN: That's fine.

5 THE COURT: I interrupted you, but I think
6 it was necessary to do that.

7 MR. BENN: Well, let me share with you why I
8 have the issue that I have. About a week and a half
9 ago I had a telephone dialogue with Eric because I had
10 proposed to Eric the possibility that in light of your
11 most current order and because you took out the issues
12 of biases and things of that nature and because we're
13 going to be called to trial by Eric, that maybe he
14 should be speaking to Pat to see whether they would be
15 willing to accept the affidavit in lieu of the
16 testimony.

17 THE COURT: I think we're beyond that.

18 MR. BENN: Well, and then what happened was,
19 we had a conference call, Eric, Pat, several others in
20 Pat's office and myself and Terry. They indicated
21 that they would not. And then in the course of that
22 conversation, the defendants counsel had stated, for
23 example, we would like the opportunity to ask if they
24 heard Mr. So and So say something, why didn't they
25 write that. That's what I'm concerned about with

1 respect to --

2 THE COURT: I'm not going to allow that
3 question.

4 MR. BENN: But you weren't at the
5 deposition, meaning you don't know that that question
6 wouldn't be allowed and quite frankly yesterday you
7 were in trial.

8 THE COURT: I said, though, very clearly in
9 the last order, I thought, in the September 12th
10 order, that I would be available. And I thought, when
11 I heard that the reporters, quite frankly, appeared
12 for depositions, that when I was on a break, I was
13 going to hear an accumulated list of questions that
14 were objected to and that I would have to rule on
15 those questions.

16 Now, I don't have time to preside over a
17 deposition at this late date. And I know that you
18 respect that. You're experienced counsel and you know
19 that. I do know from my private practice experience
20 that I was extremely loathed to get a judge on the
21 telephone in mid-deposition. That could be one of the
22 most unhappy experiences that a lawyer would have.

23 MR. BENN: You got it.

24 THE COURT: Depending on the time of day and
25 the personality of the judge.

1 MR. BENN: Especially after your last
2 opinion on my case, I don't want to call you at all.

3 THE COURT: As you see, I'm far more genial
4 than I express in writing. What I invited by that
5 opinion, though, was that I would be available -- and
6 I believe in an issue that is as important to the
7 reporters and to you, as their counsel, as this, it is
8 appropriate for you to stop a deposition on a question
9 like that, instruct your witness not to answer, and
10 allow the Court to rule on it. I was inviting you to
11 do that. Now, I understand what your reasons are for
12 not doing that, and I think you can do that.

13 Now, if you're telling me that you have
14 problems with certain anticipated questions but not
15 others and if you're telling me that the reporters
16 would not exercise the privilege if they were kept
17 roughly within the confines of their affidavits --

18 MR. BENN: I go beyond that. I'm willing to
19 have them testify as to what they wrote in the article
20 and basically forget the affidavit.

21 THE COURT: That's fine.

22 MR. BENN: That means everything that's set
23 forth in that article.

24 THE COURT: Well, then I think we've
25 clarified that point. Then I think you should

1 reschedule the depositions and try to do that.

2 MR. BENN: Well, if I can interject -- I
3 mean, this is kind of like my last hurrah.

4 THE COURT: We could only hope not.

5 MR. BENN: It depends what happens next
6 week. Because we don't have an order with respect to
7 trial testimony -- and we don't, except for the fact
8 that, again, they're naked.

9 THE COURT: I'll produce that order, if
10 necessary.

11 MR. BENN: Well, let me share with you where
12 I'm coming from, because I think what I've done
13 here -- and obviously I can't do your job. But what
14 I'm proposing here, if you could just evaluate it.

15 THE COURT: Depending how long this trial
16 goes, you might be my guest in terms of doing my job.

17 MR. BENN: All I'm doing is adding something
18 to what it is that you basically have already written.
19 And if I could just read this. You have no idea how
20 long it took us to write this. Because I think it
21 does exactly what you just said.

22 It says, Wherein an affidavit is provided in
23 lieu of testimony to support a newspaper article or
24 newspaper articles, the reporter shall be obligated to
25 testify as to the facts set forth in the articles,

1 i.e., what was seen and heard as related in the
2 newspaper articles.

3 By doing so, the reporters would be
4 verbalizing the contents of said affidavit -- I think,
5 actually, they were your words when we had the
6 telephone conference -- by testifying as to what
7 appears in the newspaper article or articles, unless
8 such affidavit is otherwise accepted by all parties as
9 validating and authenticating the contents of the
10 newspaper article or articles in issue. Meaning if
11 they accept it, it becomes moot.

12 However, no testimony shall relate to
13 unpublished material or information or to the
14 reporters' motivations, bias, mental impressions, or
15 other information extrinsic to what the reporter saw
16 and heard, and the reporter shall not be obligated to
17 reveal any confidential sources.

18 What I've tried to do here is to say,
19 they'll testify as to everything that appeared in
20 those articles. And how I then distinguish this case
21 from maybe my next case is, where an affidavit is
22 provided and the Court or the parties don't accept the
23 affidavit.

24 What I've done is, it says that there's no
25 extraneous unpublished material questioning. That's

1 the clarity that I need. And then, quite frankly, my
2 mindset is, if the issue of the defendants is that we
3 were biased in our reporting because we either
4 misquoted somebody or whatever, well, this isn't a
5 jury trial. You're trying this case. You're either
6 going to believe the reporters or you're going to
7 believe Mr. Buckingham or Mr. Bonsell or whomever when
8 they say, I didn't say that.

9 But my concern is that I have to have some
10 degree of certainty by your order that they can't ask
11 any questions as to unpublished materials.

12 THE COURT: Are you suggesting that this
13 language should apply to both the depositions and the
14 trial testimony?

15 MR. BENN: Meaning if you could adapt
16 language similar to this for the trial testimony and I
17 agree, I have no problem in them being at a deposition
18 prior to trial with the same kind of language relative
19 to that. I will appear at a deposition prior to
20 trial.

21 I would like to do that, because of my own
22 health conditions, maybe on Friday in terms as to a
23 deposition, if that works within anybody's schedule,
24 and then maybe the latter part of next week. Because
25 what I did was, I put my surgery off until next Friday

1 to get this done.

2 THE COURT: Well, the problem Friday, I
3 assume you fellows are getting out of here on Friday,
4 but I'm not sure of that.

5 MR. BENN: Or we could do it Monday. I
6 mean, whatever works.

7 THE COURT: Well, we do have Friday morning
8 off.

9 MR. GILLEN: Right.

10 THE COURT: Although you may have something
11 scheduled in terms of pretrial planning. I'm not
12 sure. Do you know?

13 MR. MUISE: I have a plane flight.

14 MR. WHITE: I was not going to be here.

15 THE COURT: Do we need the whole team?

16 MR. WHITE: I was the one going to take the
17 deposition.

18 MR. BENN: Yeah, Ed was there yesterday.

19 THE COURT: Alternatively?

20 MR. BENN: Well, we'll do what we have to
21 do.

22 THE COURT: Scheduling usually isn't my pay
23 grade, but, you know, you can figure that out. Go
24 ahead.

25 MR. GILLEN: Judge, if I may, there are some

1 things here that we can agree with, but there are
2 others that we can't. And this is why, in our
3 opinion, Judge. You know, if our clients are
4 believed, the reporters did talk to them but took
5 misrepresentative statements so that they left things
6 out to put them in a false light and in so doing have
7 created articles that, if they were admitted for the
8 truth of the matter asserted, would be
9 misrepresentative.

10 THE COURT: Well, that's what I'm not going
11 to get into. And I understand and I respect that
12 argument. But I think I've got to line-draw here
13 someplace. And I understood that argument before.
14 And what I don't want to do here is turn this into an
15 oral argument on things that I've already decided.
16 And I know you respect that.

17 I think there is a privilege here, and I
18 think the privilege sometimes gets drawn in what
19 appears to be an ad hoc manner. But my job is to find
20 where to put the line down in this case. To traipse
21 into the area of why they selectively used a quote as
22 opposed to not using other things that were said I
23 think is to get on a very slippery slope. It really
24 almost precipitates a bias line of questioning, and
25 I'm not going to allow it. I am trying to narrowly

1 draw this.

2 I understand that that's not what the
3 defendants want in this case, but I don't think it's
4 called for. And, as a matter of fact, I think if I
5 did that and I ordered that and if -- I assume that
6 the reporters would not testify and I would predict,
7 if it went to the Third Circuit on that basis, I would
8 be reversed. I don't think that that's a fair area of
9 inquiry to get into.

10 This looks artificial when you're dealing
11 with a fact witness, but these are fact witnesses who
12 are also reporters, and I am straining to try to find
13 a fair way to do this. I believe that to the
14 extent -- and I've said this now several times -- that
15 the reporters' testimony is necessary in order to
16 invoke the residual hearsay exception under Rule 807,
17 that the defendants have to have an opportunity to
18 examine the reporters on the same topics and subjects
19 that I would allow the plaintiffs to question them on
20 during their case-in-chief, nothing more and nothing
21 less.

22 So I'm inclined to accept this language, you
23 know, not word for word, only to the extent where it
24 states, rather generically, "wherein an affidavit is
25 provided," I would take that sentence and simply say

1 that affidavits have been provided, rather than
2 "wherein." It's somewhat artificial or a little
3 strained as it relates to this case.

4 The rest of it I don't have any problem
5 because I think it does not do violence to my
6 opinions. And this gets into a semantical exercise to
7 some degree but one that is important, I understand,
8 to the reporters. We have got to cut the Gordian knot
9 here. Either --

10 MR. BENN: We can live with this, and they
11 would testify if we had language similar to this.

12 THE COURT: Well, my intention would be to
13 enter an order that is a wrap-around order, if you
14 will, that is, in effect, a re-reconsideration of the
15 order on the depositions but also speaks to the trial
16 testimony in chief. And it will be abbreviated
17 because of the time constraints on me, but we'll issue
18 it forthwith, and it will indicate that you're going
19 to -- they're going to sit for depositions under those
20 circumstances.

21 MR. BENN: Can I ask whether that would be
22 reported?

23 THE COURT: In what sense? When you say
24 "reported," what do you mean by that?

25 MR. BENN: "Reported" meaning in the books.

1 THE COURT: Oh, published. When you say
2 "reported" and you're talking about reporters, then
3 I'm thinking, I have enough work in this case. No, we
4 wouldn't publish it, but there are reporters who can
5 access the CM/ECF system.

6 MR. BENN: No, the reason why I'm asking
7 whether it would be published, I don't know whether
8 your original opinion --

9 THE COURT: You're worried about the
10 precedential value. No, it's not my intention to
11 publish it. I have no need. However, good or bad
12 news travels fast, and in the legal realm it will be
13 cited by somebody someplace.

14 MR. BENN: You have no idea.

15 THE COURT: Oh, you'd be surprised.

16 MR. GILLEN: Your Honor, just in an effort
17 to avoid needless procedure or inquiry, if I could
18 just get a sense for what you have in mind and intend
19 by the order. If they show up for deposition and
20 begin to testify about an article about June 14th,
21 2004 --

22 MR. ROTHSCHILD: Hypothetically?

23 MR. GILLEN: Hypothetically. Would we be at
24 liberty to say, did you hear anything else, did you
25 see anything else?

1 THE COURT: No, because -- and I know this
2 is difficult, but it goes like this. And this is the
3 best I can put it, other than what I tried to do in my
4 opinion. We have articles. We have a situation where
5 the declarants, the quoted individuals, have
6 apparently denied -- either denied, I guess -- I'm not
7 sure about this. This is my understanding, either
8 denied that they said what was reported in the
9 articles or said that they were statements taken out
10 of context. And they can speak for themselves. And
11 that's one of the reasons that I'm line-drawing here.
12 They can say that, and I'll take that under
13 consideration.

14 But from the reporters' perspective, were
15 they at the meeting. The obvious answer is yes, but
16 they haven't answered that under oath. Did they hear
17 the statement that is included in the article?
18 Perhaps where were they standing in the room, did they
19 utilize a tape recorder for the purpose of taking down
20 the statement or did they use a tape recorder and did
21 they take notes contemporaneously with the statement.
22 How long after the meeting did they write their
23 article, did they use the tape recorder, did they use
24 notes as it related to that statement. Those are the
25 types of inquiries that relate specifically to the

1 contents of the article.

2 To allay Mr. Benn's concerns, I think it is
3 not fair game to talk about all the other things that
4 they heard and why they wrote the article the way they
5 did and why they excluded quotes. I sincerely believe
6 that that gets into journalistic integrity, and that's
7 problematic, and it's not my intent to allow that, nor
8 would I allow any questioning on anything personal to
9 the reporters. I think I spelled that out in detail
10 in the prior orders.

11 We are going to simply have them testify for
12 the purpose of authenticating the contents of that
13 article, nothing more, nothing less, because I really
14 believe that to do more than that is to create, I
15 think, a precedent which would have reporters
16 called -- Mr. Benn, I think, fears that even this
17 would do that. I don't share that fear. But to go
18 any further than that would mean that a reporter's
19 veracity could be questioned each and every time
20 something like this comes up. I strain mightily not
21 to have to do that. That's what I'm talking about.
22 Now, I don't know if that clarifies it.

23 MR. GILLEN: It does, Your Honor, I think in
24 large measure. And I would ask this, with your leave,
25 would it suffice to preserve my objection that I

1 object here in chambers on the record?

2 THE COURT: That's fine. And I note that,
3 and that's why I wanted to do this on the record. And
4 I understand that you object to that, and I understand
5 the defendants have interposed not only this objection
6 but they have also argued against that. And to the
7 extent that this really clarifies and reasserts what I
8 have in my prior orders, I think you've preserved your
9 position as it relates to that, and I understand that
10 position.

11 MR. GILLEN: Thank you.

12 THE COURT: Anything from the plaintiffs?

13 MR. WALCZAK: We have no objection to the
14 proposed modification, Your Honor.

15 THE COURT: All right. So with that brief
16 change to what is a little bit awkward in the first
17 sentence, the "wherein" -- and I don't mean that
18 facetiously, but just as it relates to this case,
19 because this almost looks like it's a contracted or --

20 MR. BENN: I understand. I just wanted to
21 make sure the word "affidavit" was in there.

22 THE COURT: We will recite that. We will
23 get a clarifying order out.

24 Now, for the purpose of -- because this is a
25 very public trial. What's your intention, what are

1 your thoughts regarding how we should address this?
2 Because it's known that this is a festering
3 controversy.

4 MR. BENN: That's an interesting question.
5 I mean, if we're not called today, which we're not
6 going to be, I don't know that it really is an issue.
7 We just had dialogue in chambers, the judge is going
8 to be entering an order, and after we receive the
9 order, we'll be able to make a decision in terms of
10 where we proceed.

11 THE COURT: Well, I don't know about that.
12 I think you can assume, unless you doubt my word, I'm
13 going to issue an order -- and I'm very serious -- I'm
14 going to issue an order and that order will be
15 forthwith. I would prefer that --

16 MR. BENN: We can say that we've restricted
17 the order in such a fashion that we believe the
18 reporters will testify.

19 THE COURT: If I might be so bold, that we
20 are satisfied with the resolution.

21 MR. BENN: Thank you.

22 THE COURT: We expect an order that is
23 consistent with our understanding of an agreement that
24 we reached -- I will let it to you to address that.
25 And my intention would not be to address this again in

1 open court this afternoon. We would just move on.
2 You have other witnesses, I assume, to present, and we
3 can move through this. I'm simply saying I don't want
4 wiggle room that we're waiting to see, because I've
5 had that experience now before.

6 MR. BENN: If you indicate to me as you
7 have, that this is satisfactory to you, I will
8 indicate that we are satisfied with the prospective
9 order that we understand the Court is going to enter
10 and that our clients will be testifying at deposition
11 and at trial.

12 THE COURT: Because I'll adopt this, but I
13 don't want to do this again.

14 MR. BENN: I understand.

15 THE COURT: And you don't want to do it
16 again, I know, I recognize.

17 MR. WHITE: Your Honor, just one other
18 clarification question. With regard to asking what
19 they saw and heard with regard to all of the
20 statements and the articles, I would assume that's
21 statements made after the gavel banged and the meeting
22 was over. Some of those quotes are afterwards.

23 THE COURT: Yes.

24 MR. WHITE: But can questions be asked as
25 far as the context of those statements?

1 THE COURT: Ask the question that you want
2 to ask.

3 MR. WHITE: When so and so said this thing,
4 you know, it was in response to what, what question or
5 what else was being talked about when this statement
6 was made.

7 THE COURT: No. That's too amorphous a
8 question. The issue here, I'll restate, is the
9 veracity of the articles themselves, did the reporter
10 hear the statement as reported. If it was taken out
11 of context, we're not going to delve into that in this
12 examination. The individual who believes -- who was
13 quoted and believes the statement was taken out of
14 context or flatly that he didn't or she didn't say it
15 and it's inaccurate will have the opportunity to say
16 that during the defendants case-in-chief or at any
17 other time during the trial.

18 We're not going to side door, you know, a
19 bias argument by going into context. Context is a
20 dangerous thing as it relates to what we're doing
21 here. So, no, it's -- we presume that the statement
22 was likely given to the reporter upon a question being
23 asked by the reporter, although it could have been
24 volunteered. That's of no moment.

25 The issue is, did the reporter hear the

1 statement, was it reported adequately, not was it
2 reported out of context, but did those words, as
3 quoted, come out of that individual's mouth. Now, I
4 can't be any clearer than that. All right?

5 MR. WALCZAK: Your Honor, one thing I might
6 ask, since it is perhaps likely that issues are going
7 to arise during the deposition, I'm wondering if we
8 could now attempt to schedule the deposition at a time
9 when everybody, including Your Honor, might be
10 available to intercede.

11 THE COURT: Well, what's your next day that
12 would be available if not Friday?

13 MR. BENN: Monday.

14 THE COURT: Well, Monday I'll be in chambers
15 in Williamsport all day.

16 MR. WHITE: I cannot do it Monday because I
17 couldn't get here on Sunday. My wife is going out of
18 town, and I have to watch all the kids. I could do it
19 Tuesday, I could do it Wednesday.

20 MR. BENN: Tuesday and Wednesday is a Jewish
21 holiday for me. I can't do it.

22 MR. WALCZAK: How about tomorrow?

23 MR. WHITE: I'm leaving tomorrow.

24 THE COURT: Well, look, if it's any weekday
25 other than next Friday when I will not be available --

1 I'll be traveling next Friday -- I'll be available.
2 And, you know, we'll work through that issue. And if
3 you're otherwise taking the deposition and we're at
4 trial, I'll tell you that we'll construct some
5 mechanism -- and we kind of talked about this a little
6 bit yesterday -- where you hold the thought if counsel
7 instructs the reporters not to answer because it's a
8 problematic question, and we can circle back and we'll
9 deal with that later.

10 I understand those things could come up in
11 the course of the deposition, and I'll rule on those
12 as I can if I'm not instantly available. So whether
13 I'm sitting at trial or not -- and likely it will be a
14 day when I'm sitting in trial -- we'll deal with it.

15 MR. WALCZAK: How about later today?

16 THE COURT: You work that out. Let's get
17 back on the record here, because we've got people
18 waiting and I want to get going. You'll have to work
19 that out. But I will tell you in concluding that if
20 it is at night, if you do it at night, I will give you
21 my home number, and you can contact me so we get this
22 finished. If we have to do that, we'll do it so we
23 get it finished. I will not attend the deposition,
24 though. I stopped doing that when I got this job.
25 Anything else?

1 MR. BENN: No. Thank you, Your Honor.

2 MR. WALCZAK: Thank you, Your Honor.

3 (The discussion in chambers was concluded.)

4 THE COURT: We return in session, and I want
5 to apologize to the assembled spectators and, of
6 course, to the media. We handled a matter in chambers
7 that you'll become aware of in an effort to resolve a
8 problem, and I think we did. These things arise
9 during trials from time to time. That is the first
10 time that we've had that type of matter in this trial.
11 We may have others as the trial unfolds. But it was a
12 necessary exercise. And we try to keep them at a
13 minimum and we will keep them at a minimum during the
14 trial.

15 But with that, we will go back to the
16 plaintiffs. You may call your next witness.

17 MR. HARVEY: Your Honor, the plaintiffs
18 would call Julie Smith.

19 JULIE SMITH, called as a witness, having
20 been duly sworn or affirmed, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. HARVEY:

23 Q. Please tell us your name.

24 A. Julie Ann Smith.

25 Q. Where do you live, Ms. Smith?

1 A. 3007 Honey Run Drive, York, Pa.

2 Q. And is that within the area covered by the
3 Dover Area School District?

4 A. Yes, it is.

5 Q. And how long have you lived there?

6 A. Fourteen years.

7 Q. Do you have any children?

8 A. Yes, I have two children.

9 Q. How old are they?

10 A. My daughter Katherine is 16, and my son
11 Michael is 19.

12 Q. Your daughter Katherine, what school does
13 she attend?

14 A. Dover High School.

15 Q. What grade is she in?

16 A. She's in eleventh grade.

17 Q. Please tell us what you do for a living.

18 A. I'm a medical technologist.

19 Q. And please summarize for us your educational
20 background.

21 A. I graduated high school in 1979, and I
22 graduated at York College with a degree in medical
23 technology in 1984.

24 Q. Now, did there come a time when you learned
25 that the Dover Area School District Board of Directors

1 was considering approval of a biology textbook?

2 A. Yes.

3 Q. And tell us, when did you learn that?

4 A. I learned that in June of '04.

5 Q. And what was the basis for your knowledge?

6 A. I read it in the paper.

7 Q. Do you remember what you read?

8 A. Yeah, I read it in the York Daily Record,
9 and, yes, I do remember.

10 Q. Please tell us what you remember learning at
11 that time.

12 A. That the school district was very concerned
13 about approving a biology text that did not include
14 creationism.

15 Q. And do you remember anything else that you
16 learned at that time?

17 A. Not right off the top of my head.

18 Q. Okay. Did there come a time when you
19 learned that the school district board of directors
20 had approved a biology text?

21 A. Yes, they did in August.

22 Q. And what was the basis for you learning that
23 at that time?

24 A. I read about it in the paper.

25 Q. And did there come a time when you learned

1 that the school district board of directors was
2 considering a supplemental textbook?

3 A. Yes.

4 Q. And what was the basis for your knowledge of
5 that?

6 A. I learned that from the paper, also.

7 Q. And what did you learn?

8 A. That they were going to have *Of Pandas and*
9 *People* in the classroom as a supplemental text to the
10 biology book.

11 Q. And did you learn about where that book was
12 going to come from?

13 A. It was donated.

14 Q. Now, did there come a time when you learned
15 that the board had made a change to the biology
16 curriculum?

17 A. Yes.

18 Q. And approximately when was that?

19 A. In October, I believe it was, in '04. It
20 was in the newspaper that they were going to be
21 teaching their intelligent design from *Of Pandas and*
22 *People*.

23 Q. And did you attend that board meeting?

24 A. No.

25 Q. And did you learn anything else from reading

1 the newspapers at that time?

2 A. Well, that they were going to read the
3 statement in the classroom, yes.

4 Q. Okay. Now, I'd like to ask you to take a
5 look in the notebook at what's been marked as P127.

6 A. Yes.

7 Q. Can you tell us what it is?

8 A. It's the newsletter that came to the house
9 in the mail that told -- that had the statement
10 included that they were going to be teaching in the
11 biology class.

12 Q. Now, do you know approximately when you
13 received this?

14 A. Well, it says it was February, so I'm
15 assuming it was February.

16 Q. Did there come a time when -- let me
17 withdraw that. Do you believe that the board's
18 actions in this case, the change to the biology
19 curriculum and its other actions, have caused you
20 harm?

21 A. Yes, I do.

22 Q. And can you tell us what harm you believe
23 that it has caused you?

24 A. Late in '04 my daughter came home from
25 school, and I was discussing kind of what was going on

1 in the district with her. And she looked at me and
2 she said, Well, Mom, evolution is a lie, what kind of
3 Christian are you, anyway, which I found to be very
4 upsetting.

5 Q. Did you ask her why she said that?

6 A. Yeah, I asked her why she said that, and she
7 said in school what they had been talking about or
8 amongst her friends and what's going on. She seemed
9 to be under the impression that as a Christian, she
10 could not believe that evolution was a science that,
11 you know, was true.

12 Q. And how did that harm you?

13 A. Well, it goes against my beliefs. I have no
14 problems with my faith and evolution. They're not
15 mutually exclusive.

16 MR. HARVEY: No further questions of this
17 witness.

18 THE COURT: All right. Cross-examine,
19 Mr. Thompson.

20 MR. THOMPSON: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. THOMPSON:

23 Q. Mrs. Smith, my name is Richard Thompson. I
24 represent the defendants in this case. And do you
25 recall in April where your deposition was taken by

1 another member of the Thomas More Law Center, Patrick
2 Gillen? Do you remember being involved in that
3 deposition?

4 A. Yes, I do.

5 Q. Were you present in court for all the
6 testimony that has been given in this trial?

7 A. No.

8 Q. When did you get to court?

9 A. Tuesday morning.

10 Q. Now, whose testimony have you heard so far?

11 A. I heard some of Ken Miller's. I heard
12 Barrie Callahan, Bryan Rehm. I heard the gentleman
13 this morning.

14 Q. Okay. You were asked to become a plaintiff
15 in this case by the ACLU, were you not?

16 A. No.

17 Q. Didn't someone from the ACLU call you?

18 A. Yes, they called me. But I was actually
19 asked by my friend at work, who said to me, would you
20 be interested in having the ACLU contact you, and I
21 said yes.

22 Q. And so the ACLU contacted you, and you
23 agreed to become a plaintiff in this case?

24 A. Yes.

25 Q. Now, will you agree with me that the policy

1 which is the subject matter of this lawsuit, the
2 curriculum change in the biology for ninth grade, took
3 place on October 18th, 2004?

4 A. Yes.

5 Q. That's when the board passed the resolution
6 that changed the biology curriculum?

7 A. I believe so, yes.

8 Q. And that policy was implemented for the
9 first time in January of 2005. Is that correct?

10 A. That's correct.

11 Q. In January, 2005, where was your son?

12 A. My son was in college.

13 Q. So he had already graduated from Dover High
14 School?

15 A. Yes, that's correct.

16 Q. And in January, 2005, where was your
17 daughter?

18 A. She was in school.

19 Q. What grade?

20 A. She was in grade ten.

21 Q. So you will agree with me that this biology
22 curriculum really only affected, as far as the
23 statement was read, ninth-grade biology students?

24 A. No, that's not true.

25 Q. So the statement was read to other classes?

1 A. No, but it would affect all the students at
2 the school.

3 Q. Well, listen to my question. This policy
4 provided that the statement was read to ninth-grade
5 biology students. Do you agree with that?

6 A. I agree it was read to ninth-grade biology
7 students.

8 Q. Okay. And your daughter had already
9 graduated from the ninth grade?

10 A. That's correct.

11 Q. So at the time that this policy was
12 implemented, both of your children were out of the
13 ninth grade?

14 A. That's correct.

15 Q. Neither one of them would be subject to the
16 statement being read to them. Is that correct?

17 A. That's correct.

18 Q. Okay. Now, you indicated to your lawyer
19 that you got involved because of newspaper articles
20 that you read?

21 A. That's correct.

22 Q. Okay. Now, is it an accurate statement that
23 in the year 2004, prior to you becoming a plaintiff in
24 this case, you had never attended a single board
25 meeting --

1 A. That's not correct.

2 Q. -- in 2004?

3 A. In 2004, that's correct.

4 Q. Okay. Just please answer my question and
5 then your attorney can ask you to explain if he wants
6 to. So in 2004, prior to this -- prior to you
7 becoming a plaintiff, you never attended a board
8 meeting in that year?

9 A. In that year.

10 Q. Okay.

11 A. Before that, yes.

12 Q. In 2003, you never attended a board meeting.
13 Is that correct?

14 A. No, I had attended board meetings
15 previously.

16 Q. I didn't ask you that question. I asked
17 you, in 2003, did you attend a board meeting?

18 A. I'm going to say I don't remember which
19 board meetings I attended.

20 Q. In 2002 --

21 MR. HARVEY: Objection. Arguing with the
22 witness and beyond the scope --

23 MR. THOMPSON: I'm asking questions.

24 MR. HARVEY: Excuse me, and beyond the scope
25 of direct.

1 THE COURT: Wait, wait. One at a time. Let
2 him finish, Mr. Thompson. Finish the objection.

3 MR. HARVEY: Objection, arguing with the
4 witness and beyond the scope of direct.

5 THE COURT: I don't find it beyond the scope
6 of direct. It's appropriate cross-examination. It's
7 overruled on that basis. We're getting argumentative
8 only because I think the witness and counsel are
9 talking over each other. Each of you let the other
10 finish before you start talking.

11 MR. THOMPSON: I apologize, Your Honor.

12 THE COURT: There's a great temptation in
13 cross-examination to talk over. That happens. So
14 let's get a question on the floor. Why don't you
15 restate your question, Mr. Thompson.

16 MR. THOMPSON: Okay.

17 BY MR. THOMPSON:

18 Q. Is it true that you did not attend a board
19 meeting in the year 2003?

20 A. I'm not going to say that's not true. I
21 don't remember which board meetings I attended. I did
22 attend some before '04.

23 Q. Is it true that you didn't attend a board
24 meeting in 2002?

25 A. I told you I don't remember which year I --

1 I attended board meetings during the construction
2 project, so when that was, that's when I was there.

3 Q. And that was the year 2000, was it not?

4 A. I don't remember.

5 Q. Mrs. Smith, I'm going to hand you --

6 MR. THOMPSON: Your Honor, may I approach
7 the witness?

8 THE COURT: You may.

9 BY MR. THOMPSON:

10 Q. Mrs. Smith, I'm going to hand you what
11 purports to be your deposition that was taken by
12 Patrick Gillen. I would like you to direct your
13 attention to Page 13, and I would like you to read out
14 loud the question that you are asked starting with
15 Line 18 and all the way down through that page and
16 then going on to the next page, Page 14, and reading
17 from Line 1 through Line 4. And please read it out
18 loud.

19 A. You want me to read out loud starting on 18?

20 Q. Line 18 that starts with Q, which represents
21 the question that was asked by Mr. Gillen, and A
22 represents your answer. Would you please read it out
23 loud.

24 A. "Let me just make sure I get you there and
25 go on. You attended board meetings. Give me a sense

1 of which ones you attended. They were not the board
2 meetings" --

3 Q. Now give me your answer. So that the record
4 will reflect, that was the question and now your
5 answer, starting with Line 21.

6 A. You want me to read it?

7 Q. Yes.

8 A. "They were not the board meetings, and we
9 were not discussing intelligent design. When I went
10 to some board meetings, it was several years ago. We
11 were discussing the building project, and it has
12 nothing to do with the intelligent design."

13 Q. And then go on to the next page, and the
14 question that Mr. Gillen asked you starting on Line 1?

15 A. "That is all I am trying to get a sense for.
16 I am not familiar with the dates for the building
17 project. Was that '03 or '02?"

18 Q. "Was that 2003 or 2002," is that right, the
19 question?

20 A. That's correct.

21 Q. Okay. And what was your answer?

22 A. "I would say more like 2000."

23 Q. So was that an accurate reflection of your
24 memory at the time that the deposition was taken?

25 A. Yes.

1 Q. Okay. Does that seem right that the board
2 meetings that you attended prior to being a plaintiff
3 in a lawsuit was in the year 2000?

4 A. If that's what I said, that's what I
5 recalled at the time, yes.

6 Q. So based upon the response that you gave to
7 your attorney, is it a fair statement that you began
8 as a plaintiff in this case in December, 2004, without
9 ever having personally witnessed the actions of the
10 Dover School Board as they debated and enacted the
11 policy on which this lawsuit is based?

12 MR. HARVEY: Objection. It's compound.

13 BY MR. THOMPSON:

14 Q. Can you answer that question?

15 THE COURT: Now, wait. She's not going to
16 answer it until I rule on the objection. Elaborate on
17 your objection.

18 MR. HARVEY: I think there are several
19 predicates to that question. He asked whether you
20 were present at any of the board meetings while they
21 debated and then enacted this resolution, and I'm not
22 aware of any testimony that they debated the
23 resolution.

24 THE COURT: Well, I think it's a fair
25 characterization that there was discussion about the

1 policy. I'll overrule the objection. You can answer
2 the question. Do you recall the question?

3 THE WITNESS: No.

4 THE COURT: Let's have the question read
5 back, please.

6 (Previous question read back.)

7 THE WITNESS: That's correct.

8 BY MR. THOMPSON:

9 Q. In fact, all of the information upon which
10 you -- strike that. In fact, the information that you
11 were getting about what the school board was doing in
12 2004 came from newspapers. Is that correct?

13 A. That's correct.

14 Q. And I believe in your deposition you
15 indicated that you looked at the morning newspapers
16 almost on a daily basis?

17 A. That's correct.

18 Q. And when you were looking at the morning
19 newspapers, that you got very upset about what you
20 read regarding the Dover School Board and the policies
21 that they were debating. Is that correct?

22 A. That's correct.

23 Q. What were the two -- what were the
24 newspapers that you were looking at during this time?

25 A. I read the Daily Record every morning.

1 Q. What about the York Dispatch?

2 A. Not regularly, no.

3 Q. Okay. So that it would be a fair statement
4 that even though what you were reading in the
5 newspapers got you upset, that you never personally
6 attended one of the board meetings in that year?

7 A. That's correct. There were personal issues
8 in my life at that time where I was not able to do
9 that.

10 Q. And it is true that you never spoke to any
11 of the members of the Dover School Board about the
12 issues that concerned you. Is that correct?

13 A. That's correct.

14 Q. You never called them. Is that correct?

15 A. That's correct.

16 Q. You never e-mailed them. Is that correct?

17 A. That's correct.

18 Q. Did you write letters to the editor about
19 what the school board was doing?

20 A. No.

21 Q. So that the first time that the school board
22 would know that you were upset with their actions is
23 when they learned of you being a plaintiff in this
24 lawsuit. Is that correct?

25 A. That's correct.

1 Q. Okay. Now, did you ever speak to any of the
2 teachers at Dover High School before you became a
3 plaintiff in this case?

4 A. No.

5 Q. Did you ever speak to any of the reporters
6 who had written the stories about what the Dover
7 School Board was doing during this time?

8 A. No.

9 Q. Did you ever receive any minutes or notes
10 about what the Dover School Board was doing during
11 this time?

12 A. No.

13 Q. You never sent anyone e-mails or any other
14 communication regarding this issue. Is that a fair
15 statement?

16 A. That's a fair statement.

17 Q. In fact, one of the issues in this case is
18 this book *Of Pandas and People*. Is that correct?

19 A. That's correct.

20 Q. You never looked at the book *Of Pandas and*
21 *People* before you became a plaintiff in this lawsuit,
22 did you?

23 A. I didn't feel that I could look at it. It
24 was in -- I guess it was in the library at the school,
25 but I was not aware if we could go in the school

1 library and take out books or not.

2 Q. Well, did you make any effort to go and look
3 at it?

4 A. I really wasn't interested.

5 Q. Now, your attorney referred to a newsletter
6 that you received in February. Do you have a copy of
7 that newsletter in front of you?

8 A. Yes.

9 Q. And I believe you indicated that you thought
10 the newsletter was sent in February, 2002?

11 A. No.

12 Q. Excuse me, 2005. Excuse me.

13 A. Correct.

14 Q. Okay. Could we have that newsletter? I
15 would like you to read from that newsletter on the top
16 left-hand side in that box. Read it out loud, please.

17 A. "This newsletter has been produced to help
18 explain the changes in the biology curriculum.
19 Unfortunately, a great deal of misinformation has been
20 spread regarding this policy. We hope this
21 publication will help those interested better
22 understand the substance of the policy while
23 eliminating any misconceptions some may have about the
24 curriculum change. We sincerely appreciate your
25 understanding on this matter."

1 Q. Thank you. It was through this policy that
2 you first learned about the statement that was going
3 to be read. Is that correct?

4 A. No, I believe -- no, I heard about it
5 before.

6 Q. But did you actually see the statement
7 before?

8 A. I don't think so.

9 Q. So this was the first time that you saw the
10 statement that was going to be read to the students in
11 the ninth-grade biology class. Is that correct?

12 A. I believe so.

13 Q. Okay.

14 A. As far as I can tell.

15 Q. And so this newsletter was actually
16 providing information to the residents of Dover as to
17 what the actual newsletter was -- excuse me, what the
18 actual statement was going to say. Is that correct?

19 A. Yes.

20 Q. Okay. So you had no problem with the fact
21 that the newsletter was being produced, even though
22 you had a problem with the policy. Is that correct?

23 A. No.

24 Q. Now, there's a bit of street wisdom, and I
25 don't know whether you agree with this or not, and

1 that street wisdom is, don't believe everything you
2 read in the newspapers. Have you ever heard that?

3 A. Yeah, I've heard that before.

4 Q. Okay. And so if you don't believe
5 everything in the newspapers, don't you think before
6 you became a plaintiff in a lawsuit that you should
7 have taken some personal action to verify whether
8 things that were produced in a newspaper were really
9 accurate?

10 A. I did talk to people in the district, other
11 people in the district.

12 Q. Who did you talk to?

13 A. People that I work with, other people in the
14 district.

15 Q. But you never even saw the policy until that
16 newsletter came out. Is that correct?

17 A. I got my information from the newspaper,
18 yes.

19 Q. And the newspaper. Now, have you ever had
20 involvement with newspapers before? Have you been
21 interviewed? Have you been interviewed by news
22 reporters before?

23 A. No.

24 Q. But would it be a fair statement to say in
25 the normal experience that newspaper reporters might

1 spend five, ten, or fifteen minutes interviewing a
2 person and then only put one line of that interview in
3 an article?

4 MR. HARVEY: Objection. No foundation that
5 she has any experience as referred to in the question.

6 THE COURT: Do you want to respond to that
7 Mr. Thompson?

8 MR. THOMPSON: Well, I think it's common
9 experience and it's knowledge, it's common sense.

10 THE COURT: Now I think we're going afield.
11 I'll sustain the objection. We're now clearly outside
12 the scope of direct, the objection is sustained.

13 BY MR. THOMPSON:

14 Q. Well, you said that you were upset by the
15 policy because it conflicts with your religion?

16 A. I said I was upset about it because I didn't
17 find a problem with it with my religion. It does
18 not -- I'm getting confused. I have a problem with it
19 because my daughter came home from school and she says
20 to me, What kind of Christian are you, anyway? So
21 that's why I have a problem with it.

22 Q. If you recall your deposition -- and I
23 certainly will give you an opportunity to look at it
24 if you don't recall it -- the incident that you're
25 referring to, also you received information that your

1 daughter was a member of a Bible club. Right?

2 A. Yes.

3 Q. And up to that point, you were not even
4 aware she was a member of a Bible club. Isn't that
5 correct?

6 A. That's correct.

7 Q. And that it was -- she had a lot of friends
8 who went to Protestant fundamental churches. Is that
9 correct?

10 A. Yes, she does.

11 Q. And she received that information from her
12 friends, her Protestant friends in school or in the
13 Bible club. Isn't that correct?

14 A. I would assume that's where she got her
15 information, from the Bible club at school. Plus they
16 talked about it.

17 Q. And the fact that someone believes in
18 intelligent design does not make that inconsistent
19 with the Catholic faith, does it?

20 A. I spoke to my deacon about this situation,
21 and all I know is what he told me.

22 Q. Is he a theologian?

23 A. He's a deacon at St. Rose Catholic Church.

24 Q. Do you know if he has any particular
25 expertise in Catholic theology?

1 MR. HARVEY: Objection again. Beyond the
2 scope of direct, Your Honor.

3 MR. THOMPSON: She brought the issue up of
4 religion, Your Honor, and I'm exploring that.

5 THE COURT: Well, I think it is beyond the
6 scope, again, the colorable scope of direct, and I'll
7 sustain the objection. This is not a deposition.
8 This is testimony in the case-in-chief, and we're
9 afield.

10 BY MR. THOMPSON:

11 Q. Now, the book *Of Pandas and People*, you
12 don't mind that book being in the library, do you?

13 A. No, I don't have a problem with it being in
14 the library.

15 Q. You heard yesterday, if you attended the
16 deposition of -- excuse me, the testimony of
17 Mr. Rehm's, that the science teachers, in a
18 compromised move, had agreed to put *Of Pandas and*
19 *People* in the science class. Did you hear that?

20 MR. HARVEY: Objection, Your Honor.
21 Mischaracterizes the testimony.

22 THE COURT: In what sense?

23 MR. HARVEY: I believe Mr. Rehm testified
24 that the teachers did not agree to put the materials
25 in the science class.

1 MR. THOMPSON: Your Honor, my understanding
2 in --

3 MR. HARVEY: And --

4 THE COURT: Now, wait, Mr. Harvey. Let
5 Mr. Thompson speak. One at a time.

6 MR. THOMPSON: Your Honor, my memory, if it
7 serves me correct, Mr. Rehm testified that they had
8 reached a compromise with some of the board members
9 that they were going to allow the book *Of Pandas and*
10 *People* in the science classroom.

11 THE COURT: My recollection is that he may
12 not have used the word "compromise," he may have used
13 the word "concession." I'm not sure that there's a
14 distinction as it applies here. I'll overrule the
15 objection. Did you hear Mr. Rehm's testimony
16 yesterday?

17 THE WITNESS: Yes.

18 THE COURT: Well, then go ahead.

19 BY MR. THOMPSON:

20 Q. Whether it's "concession" or "compromise,"
21 did you hear that the teachers had agreed to put *Of*
22 *Pandas and People* in the science classroom?

23 A. I don't remember exactly what he said
24 yesterday.

25 MR. THOMPSON: No further questions, Your

1 Honor.

2 THE COURT: All right. Thank you,
3 Mr. Thompson. Any redirect?

4 MR. HARVEY: No, Your Honor.

5 THE COURT: Then, ma'am, you may step down.
6 That will complete your testimony. And I don't think
7 we have any exhibits to enter, do we?

8 MR. HARVEY: That's correct, Your Honor.
9 P127 is already in evidence.

10 THE COURT: You may call your next witness.

11 MR. HARVEY: Your Honor, the plaintiffs call
12 to the stand Plaintiff Christy Rehm.

13 CHRISTY REHM, called as a witness, having
14 been duly sworn or affirmed, testified as follows:

15 MR. HARVEY: Your Honor, again, may I make
16 sure that she has the binder of exhibits?

17 THE COURT: You certainly may.

18 DIRECT EXAMINATION

19 BY MR. HARVEY:

20 Q. Please tell us your name.

21 A. Christy Rehm.

22 Q. Are you married, Mrs. Rehm?

23 A. Yes.

24 Q. Tell us the name of your husband.

25 A. Bryan Rehm.

1 Q. Please clarify for us one important
2 question, and that is, exactly how old are your
3 children?

4 A. My children?

5 Q. Yes.

6 A. I have a 14-year-old daughter, Alix, an
7 eight-year-old daughter Paige, a seven-year-old son
8 Ian, and a 15-month-old son Lucas.

9 Q. And where does your family live? I mean
10 your immediate family, you and your husband and your
11 children.

12 A. 3690 Rock Creek Drive, Dover, Pennsylvania.

13 Q. And how long have you lived there?

14 A. Approximately five years.

15 Q. And had you lived in Dover previously to
16 that in your life?

17 A. Yes. I grew up in Dover, I attended Dover
18 High School, graduated from Dover High School. My
19 family, my extended family, lives in the Dover area,
20 including my grandparents, my parents, and other
21 relatives. My parents currently still live in the
22 Dover area.

23 Q. And please tell us where your children are
24 right now in school, the grades, please.

25 A. Grade level, okay, yes. The oldest is in

1 ninth grade, the next one is in the third grade. I
2 have a first-grader, and then obviously the baby is
3 not in school yet.

4 Q. And the oldest three children, do they
5 attend the public schools in Dover?

6 A. Yes. Two of them, my oldest is at the high
7 school, the Dover High School, and then I have -- the
8 next one is at the Weiglestown Elementary School. And
9 my son is hearing-impaired, so he is charged with the
10 education of Dover School District, meaning that they
11 have to provide his education, but he actually attends
12 classes at a hearing-impaired classroom.

13 Q. And your daughter that's in the ninth grade,
14 is that at the Dover High School?

15 A. Yes.

16 Q. And is she taking biology now?

17 A. Yes, she is.

18 Q. Please summarize for us your educational
19 background.

20 A. As I said, I graduated from Dover High
21 School. I attended Lock Haven University and
22 Millersville University. I received a BA from
23 Millersville University in English, and I also have a
24 degree in journalism, as well. I later got a teaching
25 certification and attended Penn State University where

1 I received my master's degree.

2 Q. Do you work outside the home?

3 A. Yes, I do.

4 Q. What do you do?

5 A. I'm a teacher, an English teacher.

6 Q. Where do you teach?

7 A. In a public school system outside of York
8 County.

9 Q. And what grade do you teach?

10 A. High-school level, so tenth through twelfth
11 grade generally.

12 Q. Did there come a time when you learned that
13 the Dover Area School District Board of Directors was
14 considering a change to -- was considering approval of
15 a biology textbook?

16 A. Yes.

17 Q. Do you remember when that was?

18 A. It was sometime in 2004. It was prior to
19 the June meetings because my husband was a teacher at
20 the school, so I often heard things that he would come
21 home and tell me. So I knew that there was some
22 discussion over the biology book, so sometime before
23 that. I can't tell you exactly when.

24 Q. Did you attend a meeting of the Dover Area
25 School District Board of Directors on June the 7th of

1 2004?

2 A. Yes, I did.

3 Q. And why did you attend that meeting?

4 A. Well, because, like I said, my husband had
5 been a teacher at the school, and he had sort of been
6 directed by the high school principal to attend the
7 meeting in support of the different things that were
8 happening. There were other textbooks that were being
9 adopted and controversies over them, and, you know, it
10 was sort of a rallying thing, I suppose.

11 And I went along because I live in the
12 district, I pay taxes in the district, my children
13 attend school in the district. I'm an educator, and I
14 was curious about what was happening.

15 Q. And can you recall anything that happened at
16 that meeting on June the 7th?

17 A. I recall a lot of things that were happening
18 at that meeting.

19 Q. Please tell us what you can remember about
20 that meeting.

21 A. Okay. Some of the -- I attended a lot of
22 meetings, so facts blur together. What I do recall,
23 I -- as my husband said yesterday, I was pregnant at
24 the time, so I have some reason to remember certain
25 things. But I recall Barrie Callahan speaking about

1 the textbook. It was the first time that I had really
2 ever been around Barrie Callahan, so she strikes me --
3 that memory strikes me because my mother had known her
4 previously.

5 And she was speaking about the textbook,
6 just questioning them. I don't remember her exact
7 words. But I do know that she was upset with them
8 about this textbook, the textbook process, the
9 students not having a textbook. Obviously it was very
10 distressing for her that the students in the biology
11 class did not have a textbook.

12 Q. Do you remember if any board member spoke
13 back to her in response to her questions?

14 A. Yes. Bill Buckingham said to her -- and I
15 know Bill Buckingham because at the time he lived down
16 the street from my grandparents and for many years
17 lived there. And he responded to her basically saying
18 that there's, you know, a problem with the textbook,
19 it needs to be balanced, comments about laced with
20 Darwinism, it needed to be balanced with creationism.
21 Comments of that nature is what he had said to her.

22 Q. Do you remember --

23 A. I'm sorry.

24 Q. I'm sorry.

25 A. And I distinctly recall Barrie Callahan sort

1 of throwing her hands up in the air and saying, Oh, so
2 this is about evolution. That was very distinct in my
3 mind, just her mannerisms as she said that.

4 Q. Do you recall a young man by the name of Max
5 Pell speaking at that meeting?

6 A. Unfortunately I was in the restroom at the
7 time that Max Pell was speaking because -- my husband
8 told you I was eight months pregnant. I was actually
9 nine months pregnant and due any day, so I spent quite
10 a deal of time in the restroom.

11 But I had excused myself to go to the
12 restroom just after Barrie did this whole thing. In
13 fact, I may have been walking out of the room at the
14 time and in close proximity to her. And so at the
15 time when Max was speaking -- I believe that there
16 were people who spoke in between she and Max Pell.

17 But at the time when he stood to speak, I
18 was in the restroom and sort of coming back from the
19 restroom, so I don't really recall exactly what his
20 comments were. I know him because he was my husband's
21 student, though.

22 Q. Do you recall any other board members saying
23 anything during the course of any discussion about the
24 biology textbook?

25 A. Well, like I said, I was reentering the room

1 from the bathroom, so I was sort of in the doorway.
2 And I obviously didn't know what Max had said to the
3 board but that he had spoken to the board. So the
4 comments that were coming back were, I assume,
5 directed at him.

6 But there were comments from Bill Buckingham
7 about brainwashing, and I remember hearing that, the
8 whole thing about brainwashing, because it dealt with
9 going to college and getting this education and
10 students who go to college become brainwashed. And I
11 was very upset by that because I attended college and
12 I don't feel as if I were brainwashed.

13 And also I recall Alan Bonsell making a
14 comment about, you know, there are only two theories,
15 there's this theory evolution and there's this theory
16 creation, and if you're teaching only those two
17 theories, then there's not a problem.

18 Q. Do you recall anything else Mr. Bonsell
19 said?

20 A. At this time, no.

21 Q. Do you remember anything else that was said
22 by any members of the public at that meeting?

23 A. At that meeting. Currently, I don't.

24 Q. I'd like you to take a look at what's been
25 marked as Exhibit P46. It's in the notebook in front

1 of you. Just take a moment to look at it.

2 A. Okay.

3 Q. Do you have that in front of you?

4 A. Yes.

5 Q. Have you ever seen it before?

6 A. This article, yes.

7 Q. Did you see it at or around the date that it
8 was published?

9 A. Yes, I did.

10 Q. What's the date on it?

11 A. The date is June 9th, 2004.

12 Q. Who is the author?

13 A. The author is Joseph Maldonado.

14 Q. And can you tell us what publication its
15 from?

16 A. Yes. It is from the York Daily Record.

17 Q. Now, did you just have an opportunity to
18 read it just a moment ago?

19 A. Just now I skimmed it, yes.

20 Q. Take another moment to look at it if you
21 need to, but I would like to know whether it refreshes
22 your recollection about anything else that happened at
23 that meeting.

24 A. Yes.

25 Q. Okay. Tell us what else -- after looking at

1 that article, do you remember anything else that
2 happened at the meeting?

3 A. Yes, I do recall Bill Buckingham making
4 comments about, you know, the apes and monkeys --
5 coming from apes and monkeys. And I also --

6 MR. MUISE: Your Honor, again, objection.
7 It appears she's going to be reading from the article
8 with her testimony.

9 THE WITNESS: I'm sorry.

10 THE COURT: It's a little hard to do this,
11 but we'll sustain the objection. Mr. Muise's
12 objection is well-founded. Let me explain how we can
13 do this, how we must do this.

14 When your counsel asks you the question, you
15 may review the article, take a look at it, see if it
16 refreshes your recollection. It's important that
17 having refreshed your recollection, if it jogs
18 something or re-creates a memory, that you testify in
19 answer to Mr. Harvey's question. Do not look back and
20 read from the article as you're testifying, please.
21 All right?

22 THE WITNESS: Yes. Sorry.

23 BY MR. HARVEY:

24 Q. Now, do you remember anything else that
25 happened at that meeting?

1 A. Yes. I remember comments about our country
2 being founded on Christianity and not needing to teach
3 the faiths of other people. And I remember talking to
4 my husband about that in the car ride home, as well,
5 because we're both teachers and I was -- when I hear
6 things like that, I immediately think of my students,
7 and I was thinking about the diverse group of students
8 that I have in my classroom, who all have different
9 religious viewpoints, and how difficult that would be
10 to tell one student that, you know, we can't express
11 your belief, but we can express that person's belief
12 in the classroom. And I just find those things to be
13 very upsetting when I hear things like that being
14 said.

15 Q. Now, do you remember if you attended another
16 meeting of the Dover Area School District Board of
17 Directors approximately a week later on June the 14th?

18 A. Yes, I did.

19 Q. And why did you attend that meeting?

20 A. Well, because there wasn't really a clear
21 resolution to what had occurred the previous meeting.
22 In addition, I was very angry when I left the June 7th
23 meeting just because of the demeanor of the school
24 board and the things that were being said.

25 And, honestly, I thought that maybe it would

1 set me into labor because of, you know, being angry,
2 and at that point in time I was past my due date, in
3 addition to caring about my children's education and
4 everything I said previously.

5 Q. Now, tell us what you can recall of the
6 June 14th, 2004 board meeting.

7 A. Again, there were many, many things that
8 happened at that school board meeting, and I can tell
9 you that I was very much interested in what was being
10 said. And so I pretty well made sure, at the
11 beginning of that meeting, which went on for quite a
12 long time, that I wouldn't miss anything, so I took
13 care of my bathroom needs beforehand.

14 And I recall the meeting starting with Bill
15 Buckingham sort of -- I'm sorry, Trudy Peterman spoke
16 about her -- actually, hold on. Give me one second to
17 think about this. Yes, Trudy Peterman spoke. She was
18 the high school principal at the time. And I know
19 that she spoke because the thing that she said seemed
20 very similar to her graduation speech that she had
21 said just previously.

22 My sister had graduated that year, and I
23 attended the commencement ceremony. And she had
24 talked about Visigoths and things like that that she
25 had spoken about in her commencement speech. And

1 essentially she was speaking up for the teachers and
2 the biology textbook.

3 And after she had spoken, Bertha Spahr also
4 spoke, as well. She's the department chairperson,
5 and, actually, I had her as a science teacher. And
6 she presented information to the board, documents,
7 that she and I believe other members of the science
8 department had researched on, I guess cases that had
9 been set down before on creationism in the public
10 school system or something of that nature, just to
11 show them that, you know, if they were still
12 considering this idea, that they might, I don't know,
13 be met with some litigation or something.

14 After she spoke, Bill Buckingham had made a
15 comment to her about her -- where did she get her law
16 degree from. Can you give me one second? I'm
17 wondering if I'm getting my meetings mixed up.

18 MR. MUISE: Objection, Your Honor. This is
19 running into a narrative.

20 THE COURT: Well, I think it's still
21 responsive to the question. Do you want to put a
22 question on the floor?

23 MR. HARVEY: She was just thinking.

24 BY MR. HARVEY:

25 Q. Did you need to think and change your

1 testimony in any way?

2 A. I just wanted to make sure that I wasn't
3 getting my meetings mixed up.

4 THE COURT: You can finish your answer. Do
5 you want to finish the answer, or is that your answer?

6 THE WITNESS: Yes, that's my answer. I'm
7 sorry, I recall something else, as well. I recall
8 Charlotte Buckingham, who is Bill Buckingham's wife,
9 speaking at that meeting, as well.

10 Essentially there were a lot of people in
11 the community who were standing and speaking at this
12 meeting because they wanted to warn the school board
13 that they were not in favor of any legal action coming
14 against the community, against the school board. They
15 were afraid for their tax dollars.

16 And Charlotte Buckingham I recall really
17 being the only person who got up to stand in defense
18 of the school board, and she was Mr. Buckingham's
19 wife, or is Mr. Buckingham's wife. And she quoted
20 Scripture, Old Testament, actually, all Old Testament
21 Scripture about why the school board is right,
22 basically. And she also talked about school prayer
23 and the need for school prayer in that speech that she
24 had prepared.

25 In addition, Reverend Warren Eshbach stood

1 up and spoke at that meeting, as well, sort of urging
2 the school board not to proceed with this. And many
3 other members of the community spoke, as well.

4 BY MR. HARVEY:

5 Q. Did your husband speak?

6 A. I recall my husband speaking. In fact, he
7 hadn't prepared to speak, but he was very upset, as
8 many people in the audience were, and he stood up to
9 speak. I don't remember his exact comments, but,
10 again, it was a warning to the school board and --
11 actually, not necessarily a warning, but just sort of
12 reiterating what science teachers do in their science
13 classes and how there is really no conflict here with
14 the textbook.

15 MR. MUISE: Objection, Your Honor. It's a
16 narrative. The question was, did your husband speak.

17 THE WITNESS: Yes, he spoke.

18 MR. HARVEY: My next question was going to
19 be simply if you could tell us what -- but I think
20 she's already told us what she can recall her husband
21 said.

22 THE COURT: Well, that answered the next
23 question. That moots the objection, and you can move
24 to the next question.

25 BY MR. HARVEY:

1 Q. Do you remember Bill Buckingham speaking at
2 this meeting?

3 A. Oh, yes. There were not many meetings where
4 Bill Buckingham did not speak. And, actually, at that
5 meeting -- I believe the beginning of the meeting was
6 an apology, actually, which he had prepared in advance
7 apologizing to the members of the community if he had
8 said anything that offended them.

9 And it seemed to me sort of an inappropriate
10 apology because -- or maybe "inappropriate" is not the
11 correct word, but not a sincere apology because almost
12 immediately after he had given his apology, he started
13 doing the same things that he had always done, which
14 was to demean the public, to say negative comments.

15 Q. Do you remember specifically anything he
16 said?

17 A. Yes. He made comments like, 2000 years ago
18 someone died on the Cross, can't we take a stand for
19 Him. He made comments about the liberals in black
20 robes coming and taking away our freedoms in the
21 school. He made many, many comments at that meeting.

22 Q. Now, did you attend any other meetings of
23 the Dover Area School District Board of Directors that
24 summer?

25 A. No, we didn't attend that summer.

1 Q. And did you attend any meetings that fall?

2 A. Yes.

3 Q. Did you attend the meeting on or about
4 October the 18th of 2004?

5 A. Yes, we did.

6 Q. And can you just tell us briefly what you
7 can recall about that meeting?

8 A. Well, there was -- at this point in time it
9 was the change in the curriculum that was being
10 proposed and voted on that evening. And, again, this
11 was a heated meeting. There were many members of the
12 community who stood to speak, science department
13 members.

14 Jen Miller spoke, although I didn't really
15 know who she was at the time. I recall her speaking
16 on behalf of her biology course. I recall Bertha
17 Spahr again speaking. My husband again spoke at this
18 meeting. And, again, other members of the community
19 spoke at that meeting.

20 Q. Did you and your husband stay for the whole
21 meeting?

22 A. No, we didn't.

23 Q. Now, during the time that you were at the
24 meeting, did you hear any discussion among the board
25 members about the reasons for the proposed change to

1 the biology curriculum?

2 A. During the board meeting?

3 Q. Yes.

4 A. No.

5 Q. Did you attend a meeting the following week,
6 on or about November the 2nd, 2004?

7 A. Yes.

8 Q. And can you remember anything from that
9 meeting?

10 A. Yes. I recall Noel Weinrich who had spoken
11 at other meetings, as well, was upset about the vote
12 that they had taken and was sort of urging them to
13 rethink the vote.

14 Q. Do you remember anyone requesting access
15 to --

16 A. Oh, yes.

17 Q. -- a tape of the October 18th meeting?

18 A. Yes. Because my husband and I had left
19 early -- we had our infant with us and he needed to
20 get home -- we had heard that there were comments that
21 were said after we left about teachers should be fired
22 if they don't listen to the school board's directive.

23 And we wanted to hear that for ourselves, so
24 my husband had previously requested the tapes and then
25 at that meeting he stood again to request the tapes.

1 In addition, Barrie Callahan had stood to request the
2 tapes at that meeting, as well.

3 Q. And do you remember if any members of the
4 school board spoke in response to either your husband
5 or Barrie Callahan with respect to the subject of the
6 tapes?

7 A. Yes. Barrie -- I'm sorry, Alan Bonsell said
8 very clearly that -- Dr. Nilsen had said something, as
9 well, about the tapes, that it's not policy or
10 something like that, that this is not past practice,
11 this is not policy, this is not standard policy to
12 release tapes to the public.

13 And additionally, Alan Bonsell made the
14 comment that they couldn't release the tapes because
15 after speaking with their solicitor, there would
16 possibly be legal issues, ramifications if they
17 released the tapes.

18 Q. Now, I'd like to just ask you just a couple
19 more questions. Mrs. Rehm, do you believe that the
20 board's actions with respect to the change to the
21 biology curriculum have caused any harm to you?

22 A. Yes, absolutely.

23 Q. And can you please tell us how you have been
24 harmed?

25 A. Well, in numerous ways. First, as a

1 teacher, professionally, I feel that teachers in
2 general are harmed, myself, as well, because there's a
3 dichotomy here in what they're saying about this
4 statement that they have passed on intelligent design
5 as they're not teaching it. On the other hand,
6 they've said that it enhances state standards and
7 critical thinking.

8 In my mind, everything that you do in a
9 classroom is teaching. And I don't necessarily think
10 that's just in my mind. I believe that's true of all
11 educators. The way I dress when I go to work tells my
12 students something. The statements I make or the
13 statements that I do not make in my classroom tell my
14 students something.

15 So I think we're charged with, you know,
16 having an ethical decision to make when we walk into
17 the classroom, the things that we say and the things
18 that we do, and so I think that's very important. But
19 you can't say when you walk into a classroom, you're
20 not teaching. And if that's what's happening in the
21 Dover school system and my children are in that school
22 system, that they're routinely establishing practices
23 that is not teaching in the classroom, then that's
24 shameful.

25 In addition, I have a child who is in the

1 ninth-grade biology class, and this has spilled over
2 into other classes. It's not just the biology class
3 that has been affected by this. My child has heard
4 comments from other students, school board member
5 students in her classroom about evolution being
6 against their religion, and do you think we came from
7 monkeys, how can you think we came from monkeys.

8 It used to be a weekly occurrence. It's now
9 a daily occurrence, and my daughter comes home from
10 school upset about these comments that are being made
11 to her and, you know, is looking for guidance on how
12 to respond to these questions.

13 Also, intelligent design is not a scientific
14 concept. It's a religious concept. And because I
15 don't subscribe to that particular brand of religion,
16 I feel that I and my daughter, my family, are being
17 ridiculed, and my daughter feels the pressure. I
18 reserve the right to teach my child about religion.
19 And I have faith in myself and in my husband and in my
20 pastor to do that, not the school system.

21 MR. HARVEY: Thank you. No further
22 questions.

23 THE COURT: All right. Before we start the
24 cross-examination, I think this will be an appropriate
25 time for our afternoon break. We'll take that break

1 for approximately 20 minutes, no longer than that, and
2 we will return with Mr. Muise's cross-examination of
3 the witness. We'll be in recess.

4 (Recess taken.)

5 THE COURT: Mr. Muise, you may
6 cross-examine.

7 MR. MUISE: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. MUISE:

10 Q. Good afternoon, Ms. Rehm. Your oldest child
11 is 14 years old. Is that correct?

12 A. Yes.

13 Q. And your child's name is Alix?

14 A. Yes.

15 Q. And Alix is presently in the ninth-grade
16 biology class at Dover High School?

17 A. Yes, she is.

18 Q. And my understanding from your husband's
19 testimony yesterday is that she hasn't yet reached the
20 section in biology that deals with evolution. Is that
21 correct?

22 A. Yes. After looking at her syllabus, it
23 appears that evolution comes later in the course. I
24 wouldn't say at the end, but closer to the end of the
25 course.

1 Q. And so she hasn't heard this one-minute
2 statement be read in the class yet?

3 A. She has not, no.

4 Q. Now, you testified about two -- or several
5 meetings, but two meetings in particular I want to ask
6 you some questions about. And those are the meetings
7 that occurred on June 7th of 2004 and then the meeting
8 on June 14th of 2004. Okay?

9 A. Yes.

10 Q. I believe you described these meetings as
11 involving some heated exchanges between some board
12 members and the public. Is that correct?

13 A. Yes.

14 Q. And it's my sense from your testimony that
15 the majority of the statements that you appear to find
16 objectionable were statements made by Mr. Buckingham?

17 A. No. There were statements made by many of
18 the school board members that I found objectionable.
19 It's just that Mr. Buckingham always seemed to say
20 very inappropriate things.

21 But in addition, Alan Bonsell said very
22 inappropriate things, and Noel Weinrich said very
23 inappropriate things. It's just that I didn't give
24 much credit to Noel Weinrich's comments because he
25 would say things like, Darwin's at least what, 60

1 years old, a theory becomes a theory if you say it
2 over and over again. Those are the kind of things he
3 would say. But they were all very outspoken.

4 Q. Now, the controversy on the June 7th and
5 June 14th meeting was surrounding the selection of a
6 biology textbook. Correct?

7 A. June 7th and June 14th?

8 Q. Yes.

9 A. Yes.

10 Q. And the biology textbook that was in
11 question at the time, I believe it was the 2002
12 version of the Miller-Levine biology book. Is that
13 your understanding?

14 A. It very well could be. I'm not sure what
15 the edition in debate was.

16 Q. But the statements that you testified to and
17 the controversy that you were describing was
18 surrounding the purchase or selection of that
19 particular biology book for the school district.
20 Correct?

21 A. Yes, it was definitely the Miller-Levine
22 textbook. I don't know what the edition was or the
23 copyright date or any of that information, but I do
24 know that it was that biology textbook that was being
25 debated very rigorously.

1 Q. And, in fact, the school district purchased
2 the 2004 Miller-Levine biology book to be used as the
3 primary text for the ninth-grade biology class.

4 Correct?

5 A. Yes.

6 Q. And that would be the textbook that your
7 daughter Alix will be using?

8 A. Yes, with the dragonfly on it.

9 Q. She already has the book?

10 A. She has the book, yes.

11 Q. Have you looked through it?

12 A. Have I looked through the book? Yes, I have
13 looked through the book.

14 Q. Do you have any objections with the book?

15 A. No, I don't.

16 Q. She wasn't given a copy of *Pandas and*
17 *People*, was she?

18 A. No, she was not.

19 Q. So the only required textbook for that class
20 was that biology book that was creating all the
21 controversy on June 7th and June 14th. Is that
22 correct?

23 A. To my knowledge, the only required book is
24 that book, in addition to supplemental materials that
25 the instructor has.

1 Q. Now, you made a comment in your direct
2 testimony that intelligent design conflicts with your
3 brand of religion.

4 A. Yes.

5 Q. Is intelligent design another brand of
6 religion?

7 A. No. What I'm saying is that I believe
8 intelligent design, as well as the ideas of
9 creationism, in particular, the Young Earth
10 creationists, which, I'm sorry, I don't agree with. I
11 don't agree with the age of, you know, the earth and
12 their opinion. There are things that I do not
13 believe. And I do not believe the same things as the
14 board members who adopted that statement.

15 Q. And so your understanding is intelligent
16 design is the same as Young Earth creationism?

17 A. Well, to my understanding, intelligent
18 design just presupposes that everything in life is too
19 complex, that it has to be designed. But I also know
20 that creationism was used repeatedly with the term --
21 or, I'm sorry, not with the term "intelligent design."
22 Intelligent design came up after the fact.

23 But I do know that, in its original context,
24 it was creationism that was being used. And when I
25 think of creationists, again, I think of Young Earth

1 creationists, and I do not subscribe to that way of
2 thinking.

3 Q. And so, again, you're associating Young
4 Earth creationism with intelligent design?

5 A. There is a connection in my mind, yes.

6 Q. If you could be shown that intelligent
7 design does not require the action of a supernatural
8 creator and, in fact, is based on observable and
9 empirical facts, would you change your opinion?

10 A. I believe that if intelligent design could
11 be proved to be scientific, then I would believe it
12 would belong in a science classroom.

13 Would I believe it? I don't know that
14 scientifically I'm qualified to say, you know, that I
15 believe many scientific concepts because I'm -- I'm
16 not a scientist. But I suppose that if intelligent
17 design could follow scientific methods, then -- and it
18 were proven to be scientific by scientists, it was
19 accepted by scientific communities, then I would have
20 no reason not to accept that.

21 Q. I want to explore your understanding of what
22 has actually taken place in this ninth-grade biology
23 class that your daughter Alix is presently taking. Is
24 it your understanding that Darwin's theory of
25 evolution will be taught in this class pursuant to the

1 Pennsylvania academic standards?

2 A. I would hope so. And as far as I know, that
3 is the case, because Dover says that it is a
4 standards-based school, and so I assume that when they
5 say that and they say that students have to pass
6 certain material before they can be advanced into new
7 material, that they would have to be abiding by the
8 state standards.

9 Q. And I take it from your answer you have no
10 objection to that?

11 A. To following state standards, no, I have no
12 objection.

13 Q. And so it's your understanding that the
14 Pennsylvania state standards require students to learn
15 about Darwin's theory of evolution and eventually take
16 a standardized test of which that theory is a part of
17 it?

18 A. Yes, the PSSA test, yes.

19 Q. And you have no objection to that?

20 A. To my students taking a PSSA test, well, you
21 know, I -- being an educator, I'm not in love with
22 PSSA tests or standardized tests. But if you're
23 asking me if I object to my daughter taking a
24 standardized test with that information on it, of
25 course not. I would hope that they would provide lots

1 of academic information on those tests.

2 Q. And is it your understanding that because
3 Dover is a standards-driven district, that they're
4 going to focus their class time on preparing students
5 to achieve proficiency on those standard-based
6 assessments?

7 A. I'm sorry, can you repeat that?

8 Q. Yes. Is it your understanding that because
9 Dover is a standard-based district, the class
10 instruction is going to focus on preparing students to
11 achieve proficiency on those standard-based tests that
12 we were just describing?

13 A. Not only is that my understanding, but that
14 is what I would expect.

15 Q. And you have no objection to that?

16 A. No, I don't.

17 Q. Is it your understanding that because Dover
18 is a standards-driven district, that students will not
19 be tested on the intelligent design theory?

20 A. As I know it and as it is written, there is
21 no test on intelligent design.

22 Q. And from your previous answer, I believe you
23 do understand that the Dover School District
24 purchased, for its ninth-grade biology class, the 2004
25 edition of the Miller and Levine biology book.

1 Correct?

2 A. Yes.

3 Q. And you have no objection to that book being
4 used in the class?

5 A. No, I do not.

6 Q. Is it your understanding that this biology
7 book provides thorough coverage of Darwin's theory of
8 evolution?

9 A. Actually, did you ask me if it's my
10 understanding or if --

11 Q. If it's your understanding. I mean, you
12 have to testify about your knowledge, ma'am.

13 A. Okay. What I've seen of actually Darwin in
14 the textbook, in my opinion, is actually quite slim.
15 It follows state standards, of course. And, actually,
16 to me, it gives more of a historical context of Darwin
17 than anything as far as what I have read. And I did
18 look at that section, and I looked basically through
19 the book. And it appears to be historical mainly in
20 context of Darwin's time frame and what he did for
21 science.

22 Q. Has Dr. Miller left the courtroom?

23 A. Maybe we should ask. So if you're asking me
24 if I feel it's enough or if it's -- I'm not sure what
25 it is you're asking me about that. I feel, actually,

1 that there are topics that probably could be explored
2 in more detail, but I understand that there are
3 limitations within any textbook that you have to hit
4 on core concepts. I believe that core concepts are
5 covered, but I think that, in my opinion, what I've
6 looked at, it's historical context.

7 Q. Is it your understanding that it presents
8 Darwin's theory of evolution in a manner that is
9 consistent with its standing in the scientific
10 community?

11 A. As much as I know about the scientific
12 community -- and, you know, you have to remember
13 that's not my discipline. But as much as I know about
14 what the high school science standards say, it would
15 be in standing with that.

16 As far as the scientific community, I really
17 can't go there, because I know that there is a lot
18 more about Darwin than is in that textbook. I mean, I
19 can absolutely say that without knowing everything
20 about Darwin or knowing everything about science.

21 Q. Do you have any reason to believe that
22 what's in the biology book is inconsistent with what
23 the scientific community --

24 A. Absolutely not, no. No, I would have no
25 reason to believe that.

1 Q. Is it your understanding that the book *Of*
2 *Pandas and People* was placed in the library for
3 students to review?

4 A. Yes.

5 Q. It's your understanding that no student was
6 required to read any portion of the *Pandas* book?

7 A. Right, just as no student is required to
8 read anything that's in the library unless they choose
9 to.

10 Q. You have no objection to *Pandas* being in the
11 library?

12 A. No, absolutely not. I don't object to
13 *Pandas* being in the library, just like I don't object
14 to, you know, any of the other books being in the
15 library, as long as -- as long as it's the appropriate
16 level and -- you know, I mean, there is a censorship
17 process that goes into putting books in the library.
18 So, I mean, as long as it has gone through that
19 process and it's approved to be there, I don't have a
20 problem with it being there.

21 Q. The statement that the school district
22 developed to be read as part of the biology class, is
23 it your understanding that the statement that was
24 drafted in January, 2005, or for use in January, 2005,
25 was modified in June of 2005? Are you aware of that?

1 A. Can you say that again?

2 Q. I'm sorry, I wasn't that precise. The
3 original statement that was drafted by the Dover
4 School District was modified in June of 2005. Are you
5 aware of that?

6 A. Well, I'm aware that that statement was
7 modified several times. In fact, there were different
8 drafts of that statement that I had seen. The exact
9 modification, are you telling me that from the time
10 that they had approved it in October, it was modified
11 before it was read in January? Because it was again
12 read in, I believe, like May, and there was a change
13 from that point in time, unless I'm incorrect and that
14 is the change that I'm thinking of.

15 Q. Were you aware that there was a change made
16 to the statement at one point to indicate that *Pandas*
17 was in the library, as well as additional resources in
18 the library addressing intelligent design?

19 A. Yes, I am aware that there was a change.

20 Q. Are you aware of that change?

21 A. Yes.

22 Q. Is it your understanding that some of these
23 additional books that were put in the library are
24 actually critical of intelligent design?

25 A. Actually, I am, because I recall them -- an

1 organization actually sending the library those books,
2 because there was controversy in those books being put
3 in there, too. And there were many members of the
4 community who had called to see whether those books
5 had actually gotten there or not, into the library,
6 because we weren't certain that those books were going
7 to be allowed in the library, permitted in the
8 library.

9 Q. They're in the library?

10 A. Well, a parent -- the books that are
11 critical to --

12 Q. Yes.

13 A. I'm assuming that they had gotten there.

14 Q. You never checked?

15 A. There were a couple instances where friends
16 of mine had tried to check on the status of the books
17 in the library but were not permitted to go in at that
18 time. So I am only assuming that those books are
19 there now because I am being told that they are. But
20 as for myself walking into a library and seeing them
21 there, I did not.

22 Q. Do you have any objection to these
23 additional books being placed in the library?

24 A. No, I do not.

25 MR. MUISE: No further questions, Your

1 Honor.

2 THE COURT: Any redirect?

3 MR. HARVEY: No, Your Honor.

4 THE COURT: Ma'am, you may step down. That
5 will complete your testimony, and you may call your
6 next witness.

7 MR. HARVEY: Your Honor, plaintiffs call to
8 the stand Plaintiff Beth Eveland.

9 BETH EVELAND, called as a witness, having
10 been duly sworn or affirmed, testified as follows:

11 THE CLERK: State your name and spell your
12 name for the record.

13 THE WITNESS: Sure. My name is Beth
14 Eveland, B-e-t-h, E-v-e-l-a-n-d.

15 DIRECT EXAMINATION

16 BY MR. HARVEY:

17 Q. Please state your name.

18 A. Beth Eveland.

19 Q. And where do you live, Ms. -- is it Ms. or
20 Mrs.?

21 A. Mrs.

22 Q. Mrs. Eveland.

23 A. 3300 Colonial Road, Dover, Pennsylvania.

24 Q. And how long have you lived there?

25 A. I've lived there approximately eight years

1 now.

2 Q. Are you married?

3 A. Yes, I am.

4 Q. Do you have children?

5 A. Yes, I do.

6 Q. How many children do you have?

7 A. Two.

8 Q. And how old are they?

9 A. I have a seven-year-old daughter and a
10 five-year-old daughter.

11 Q. And what schools do they attend?

12 A. They attend the Leib Elementary School in
13 the Dover School District.

14 Q. And do you have plans for your children to
15 continue to attend public schools in Dover?

16 A. Yes, I do.

17 Q. And what are those plans?

18 A. To continue keeping them, you know, going
19 through the Dover School District.

20 Q. And do you work outside the home?

21 A. Yes, I do.

22 Q. And please tell us what you do.

23 A. I am a legal assistant.

24 Q. Now, did there come a time when you learned
25 that the Dover Area School District Board of Directors

1 was discussing or considering approval of a biology
2 textbook?

3 A. Yes.

4 Q. And when was that?

5 A. It was approximately June, 2004.

6 Q. And do you remember how you learned that?

7 A. I had read an article in the York Daily
8 Record.

9 Q. Now, I'd like you to look at what's been
10 marked and is in the notebook before you as P46.

11 A. All right.

12 MR. GILLEN: Excuse me, Your Honor. I just
13 want to make sure that this testimony, to the extent
14 it relates to the newspaper article, is subject to our
15 standing objection.

16 THE COURT: Well, what is 46?

17 MR. HARVEY: It's a June 9th article from
18 the York Daily Record.

19 THE COURT: Well, I don't know what the
20 question is. It may relate to your standing
21 objection, but we'll note that. We'll hold that
22 thought, and you can proceed with the question,
23 because all we have is the exhibit that is a newspaper
24 article. So let's proceed with the question. There's
25 no need to restate your objection, unless you want to

1 put a finer point on the objection. But at this
2 point, proceed with your question.

3 BY MR. HARVEY:

4 Q. Did you read this article on or around June
5 the 9th of 2004?

6 A. Yes, I did.

7 Q. And following reading this article, did you
8 attend any meeting of the Dover Area School District?

9 A. Yes, I did.

10 Q. And approximately when was that?

11 A. Approximately the end of June through the
12 present.

13 Q. What I'd like to know is if you attended a
14 meeting after this June 9th -- excuse me, this board
15 meeting that's reported in this article?

16 A. Yes, I did.

17 Q. And what was the date of the next board
18 meeting that you believe you attended?

19 A. It would have been approximately June 15th,
20 June 16th.

21 Q. And can you tell us whether -- when you
22 remember that you attended this board meeting?

23 A. When I remember that I attended this board
24 meeting?

25 Q. Yes.

1 A. In preparation for trial, looking back
2 through my deposition testimony and thinking about
3 things that had happened, it occurred to me that, you
4 know, I was there at that June meeting.

5 Q. And what is it about that June board meeting
6 that made you remember that you were there?

7 A. I remember Casey Brown, one of the board
8 members at the time, discussing, during the board
9 meeting with the board, that she felt they were, I'm
10 paraphrasing, treading, you know, on -- they were
11 treading closely to violating the Pennsylvania State
12 Board of Education regulations on religion in the
13 classroom.

14 Q. And do you remember anything that was said
15 by any board members at that meeting that you attended
16 in June of 2004?

17 A. Yes, I do.

18 Q. What do you remember?

19 A. I remember Bill Buckingham making the
20 statement, 2000 years ago somebody died on the Cross,
21 can't someone take a stand for Him.

22 Q. Now, what was your reaction to what you saw
23 and heard at the board meeting on or about -- I think
24 you said June the 15th or 16th? I think, for the
25 record, it's established that it's June the 14th. But

1 tell us, what was your reaction to what you heard?

2 A. I was shocked. I was just utterly shocked.

3 Q. And did you do anything in response to that?

4 A. Yes, I did. I had wrote a letter to the
5 editor.

6 Q. And was that before or after you attended
7 that board meeting?

8 A. I wrote a letter to the editor -- I believe
9 it was actually written before I attended the board
10 meeting, but it wasn't published until after that
11 June 14th board meeting.

12 Q. And where did you send that letter to the
13 editor, which newspaper?

14 A. I submitted it to the three local
15 newspapers, York Daily Record, York Sunday News, and
16 York Dispatch.

17 Q. And did you do anything, before you sent it
18 to those papers, with the content of the letter?

19 A. Yes, I did. I had e-mailed a letter
20 basically stating the same thing in my letter to the
21 board president at the time, Alan Bonsell, a copy to
22 Dr. Nilsen, and I mailed a copy to Mr. Buckingham.

23 Q. Now, please turn to what's been marked and
24 is in the notebook before you as P56.

25 A. Okay.

1 Q. Do you have it in front of you?

2 A. Yes, I do.

3 Q. And can you tell us what it is?

4 A. It looks to me to be a copy of a letter to
5 the editor that I wrote.

6 Q. And I'm going to ask you to read this letter
7 into the record.

8 A. Okay.

9 MR. MUISE: Objection, Your Honor. This
10 letter is hearsay.

11 THE COURT: Say it again. I'm sorry.

12 MR. MUISE: Objection, hearsay.

13 THE COURT: Why is it hearsay?

14 MR. MUISE: She's going to be reading in the
15 letter, the contents of the statement. It's an
16 out-of-court statement. They're obviously offering it
17 for the truth of the matter.

18 THE COURT: Who wrote the letter?

19 MR. MUISE: She wrote the letter.

20 THE COURT: Overruled.

21 BY MR. HARVEY:

22 Q. Please.

23 A. "As a parent in the Dover Area School
24 District, I must convey my shock and utter dismay at
25 William Buckingham's comments regarding the search for

1 new biology texts for the high school. I am
2 especially upset with Mr. Buckingham's comments as
3 quoted in Wednesday's York Daily Record: 'This
4 country wasn't founded on Muslim beliefs or evolution.
5 This country was founded on Christianity, and our
6 students should be taught as such.' This statement is
7 in direct contradiction to the mission statement of
8 the Dover schools.

9 "In partnership with family and community to
10 educate students, we emphasize sound, basic skills and
11 nurture the diverse needs of our students as they
12 strive to become lifelong learners and contributing
13 members of our global society. What a slap in the
14 face to many of the parents and taxpayers of the Dover
15 area. How sad that a member of our own school board
16 would be so closed-minded and not want to carry on the
17 mission of Dover schools.

18 "His ignorance will not only hold back
19 children attending Dover area schools, but also
20 reinforce other communities' views that Dover is a
21 backwards, close-minded community. If it was simply a
22 matter of selecting a text that gives two
23 contradicting scientific theories equal time, that
24 would be an entirely different matter, but it's not.
25 Creationism is religion, plain and simple.

1 "Mr. Buckingham's comments offend me, not
2 because they are religious in nature, but because it
3 is my duty to teach my children about religion as I
4 see fit, not the Dover Area School District during a
5 biology class."

6 Q. Now, that letter was actually published in
7 the paper?

8 A. Yes, it was.

9 Q. And did you see it in the paper?

10 A. Yes, I did.

11 Q. And did you read any response to your letter
12 in the paper?

13 A. Yes, I did.

14 Q. And can you tell us who submitted -- whose
15 response did you read in the paper?

16 A. It was a published response noting Heather
17 Geesey as the author.

18 Q. And who is Heather Geesey?

19 A. She is a member of the Dover Area School
20 Board.

21 Q. And her response letter was published in
22 what newspaper?

23 A. I believe it was either the York Dispatch or
24 the York Daily Record.

25 Q. And please turn to what's been marked in the

1 notebook before you as P60.

2 A. Okay.

3 Q. Does that help you remember, looking at it,
4 what newspaper it was published in?

5 A. It was published in the York Daily Record.

6 Q. And what is that that's marked as P60?

7 A. It is a letter from Heather Geesey to the
8 editor in response to my letter.

9 Q. And did you see it at the time?

10 A. Yes, I did.

11 Q. Please read that into the record.

12 MR. MUISE: Objection, Your Honor. Our
13 standing objection, as well as she has not established
14 a foundation that actually Heather Geesey wrote this
15 article. She has no personal knowledge.

16 THE COURT: Let me first view the exhibit.
17 Do you want to respond to the objection?

18 MR. HARVEY: Yes, Your Honor. We submitted
19 an exhibit list to the other side, and we were told
20 there were no authentication issues with respect to
21 any of this, so there's no question about the
22 authenticity of this, nor do I understand -- and
23 further, it's not offered for the truth of the matter
24 asserted, so there's no hearsay objection.

25 THE COURT: Well, on the authentication,

1 let's take it in two parts. My understanding was that
2 there was not an authentication issue. That does
3 refresh my recollection on that point. Now, if
4 there's not an authentication issue, we'll move on to
5 the second --

6 MR. GILLEN: Actually, Mr. Muise may be at a
7 disadvantage here. I did agree with Steve that we --
8 he has an affidavit from someone who has indicated
9 they have collected newspaper articles. So with
10 respect to that issue, there's no objection. I have
11 agreed that she has authenticated what she did to
12 produce this article.

13 THE COURT: All right. Very well. So
14 there's no question then that this represents a letter
15 written by Ms. Geesey to the York Daily Record. Is
16 that correct from the defense standpoint?

17 MR. GILLEN: That is correct, Your Honor.
18 That's the representation that has been made in an
19 affidavit, and I accept it.

20 THE COURT: Now, counsel for the plaintiff
21 is indicating the letter as being produced on the
22 issue of -- or to show notice, obviously, on the
23 effect prong. Do you want speak to that?

24 MR. HARVEY: Your Honor, I would also note
25 that it's an admission of a party opponent.

1 THE COURT: And I think it would come in
2 under that basis, but that would be the hearsay
3 justification or the justification that would get
4 around a hearsay objection. But the purpose of the
5 letter is under the second prong. Is that correct?

6 MR. HARVEY: It is for that purpose, and
7 it's also to show that Ms. Geesey talked about the
8 statements that were made in this letter at this time.
9 That's one of the issues in the case.

10 THE COURT: So it could go to truth inasmuch
11 as it's an admission. Is that correct?

12 MR. HARVEY: Exactly.

13 THE COURT: All right.

14 MR. GILLEN: Your Honor, as you know, we've
15 got the question of whether or not these are
16 admissible for effect. Our position on that we've
17 articulated. I don't know if you want us to argue at
18 greater length or brief, but it's hearsay to the
19 extent it's offered for the truth of the matter
20 asserted as effect.

21 THE COURT: Well, I think that you reserved
22 that argument. We've had that discussion. I'm
23 inclined -- because it's a bench trial, I'll admit it
24 conditionally. Whether I'll consider it in my
25 ultimate determination will be a function of the

1 argument that I'm allowing you to reserve and make.

2 But for the purpose of this witness,
3 conditionally and subject to additional argument from
4 counsel, we'll admit the letter and you may proceed.

5 MR. GILLEN: Thank you, Your Honor.

6 BY MR. HARVEY:

7 Q. Please read the letter.

8 A. "This letter is in regard to the comments
9 made by Beth Eveland from York Township in the June 20
10 York Sunday News. I assure you that the Dover Area
11 School Board is not going against its mission
12 statement. In fact, if you read the statement, it
13 says to educate our students so that they can be
14 contributing members of society.

15 "I do not believe in teaching revisionist
16 history. Our country was founded on Christian beliefs
17 and principles. We are not looking for a book that is
18 teaching students that this is a wrong thing or a
19 right thing. It is just a fact. All we are trying to
20 accomplish with this task is to choose a biology book
21 that teaches the most prevalent theories.

22 "The definition of 'theory' is merely a
23 speculative or an ideal circumstance. To present only
24 one theory or to give one option would be directly
25 contradicting our mission statement. You can teach

1 creationism without it being Christianity. It can be
2 presented as a higher power. That is where another
3 part of Dover's mission statement comes into play.
4 That part would be in partnership with family and
5 community. You as a parent can teach your child your
6 family's ideology."

7 Q. And what was your reaction to that letter
8 when you read it in the paper, Mrs. Eveland?

9 A. That really concerned me.

10 Q. Why?

11 A. That made me question, first of all, was she
12 writing on behalf of just herself or on behalf of the
13 whole school board since it was signed Dover Area
14 School Board Director, and I sensed a religious
15 intonation.

16 Q. Now, I'd like you to tell us, did you attend
17 board meetings in 2004 after June?

18 A. Yes, I did.

19 Q. And which board meetings did you attend?

20 A. All of them.

21 Q. And do you believe that -- were you at the
22 meeting on October the 18th of 2004?

23 A. Yes, I was.

24 Q. And did you hear the board discuss any
25 reason for adopting the proposed curriculum change?

1 A. No, I didn't.

2 Q. Do you feel that you've been harmed by the
3 board's actions?

4 A. Yes, I do.

5 Q. And please tell us how you believe that you
6 have been harmed by the board's actions.

7 A. I feel it's my duty, as a parent, to
8 introduce any kind of faith-based concept to my
9 children, not the Dover Area School District. While
10 my children are small, you know, this policy is
11 district-wide, and there's nothing to prevent it from
12 being trickled down into the elementary level. It's
13 just something that I feel strongly that my husband
14 and I, that's our task to bring faith to our children.

15 MR. HARVEY: Thank you. No further
16 questions.

17 THE COURT: All right. Cross-examine,
18 Mr. Muise.

19 CROSS-EXAMINATION

20 BY MR. MUISE:

21 Q. Good afternoon, ma'am.

22 A. Good afternoon.

23 Q. You said your oldest child is seven years
24 old?

25 A. Yes, she is.

1 Q. And what grade is she in?

2 A. She's a second-grader.

3 Q. So she's seven years out from attending the
4 ninth-grade biology class at Dover High School?

5 A. That's correct.

6 Q. Now, you have an interest in science. Is
7 that correct?

8 A. Somewhat, yeah.

9 Q. I believe in your deposition you indicated
10 in your day-to-day events you try to spark your
11 children's interest in science?

12 A. Yes, I do.

13 Q. And you believe it's important to make
14 science interesting for your children?

15 A. Yes, I do.

16 Q. You don't have any specific training in
17 evolutionary theory. Correct?

18 A. No, I don't.

19 Q. I want to get a sense for what your
20 understanding is of what is going on in the
21 ninth-grade biology class that your daughter will be
22 attending several years from now.

23 Is it your understanding that Darwin's
24 theory of evolution is going to be taught pursuant to
25 the state academic standards?

1 A. It is my understanding, yes.

2 Q. And that students will be tested on subjects
3 that are based on those standards, including the
4 theory of evolution?

5 A. Yes, that is my understanding.

6 Q. And it's your understanding that the
7 students will not be tested on the theory of
8 intelligent design?

9 A. That is also my understanding, yes.

10 Q. Is it also your understanding that it is a
11 standards-based district, so classroom instruction
12 will focus on achieving those standard-based
13 assessments in which they will eventually be tested
14 on?

15 A. Yes.

16 Q. And intelligent design is not part of those
17 standard-based assessments?

18 A. As far as my understanding, yes, it is
19 currently not.

20 Q. And these board meetings that you attended
21 in June, the controversy was surrounding the purchase
22 of a biology text for the class. Correct?

23 A. Yes.

24 Q. Do you know which book it was that the
25 controversy was about?

1 A. I believe at the time it was the 2002 Miller
2 and Levine biology text.

3 Q. And isn't it true it was Mr. Buckingham's
4 objections to that biology text which precipitated
5 some of these statements that you were referring to in
6 your direct testimony?

7 A. That's correct.

8 Q. And what action did the board actually take
9 with regard to the biology book?

10 A. Well, with regard to the 2002 biology book?

11 Q. With regard to the biology book for the
12 ninth-grade class.

13 A. It's my understanding that they held off on
14 the vote in June because there was a new edition that
15 was going to come out. And they wanted to get the
16 most current book instead of wasting money on an older
17 book.

18 Q. And so they ended up purchasing the 2004
19 version?

20 A. Yes, they did. Yes, they did.

21 Q. Have you seen that book?

22 A. I have briefly looked at it.

23 Q. Now, my understanding is you went to these
24 board meetings in June because of the controversy over
25 the biology book?

1 A. Yeah, part of it.

2 Q. You said you just skimmed this biology book
3 that was at the center of the controversy?

4 A. It was available on the table where the
5 board was sitting, and I went up front and took a look
6 at it for maybe a minute or two.

7 Q. In those two minutes that you spent actually
8 looking at the book that was the center of this
9 controversy, was there anything in that two-minute
10 review that you saw that you objected to?

11 A. No. I just basically looked through the
12 table of contents quickly.

13 Q. Is it your understanding that that book that
14 was eventually purchased by the Dover Area School
15 District covers the theory of evolution consistent
16 with its status in the scientific community?

17 A. That's my understanding, yes.

18 Q. Now, these meetings that you attended, would
19 you describe them as being fairly contentious?

20 A. Fairly contentious, yes.

21 Q. Shouting matches, I believe the term you
22 used in your --

23 A. I think a circus-like atmosphere would be
24 quite appropriate.

25 Q. Now, is it your recollection that the first

1 time the *Pandas* book was mentioned was during the July
2 meeting that you attended?

3 A. I remember it being mentioned. I cannot
4 give you a specific date. The dates run together
5 after a while.

6 Q. How about mentioning the theory of
7 intelligent design, do you recall when you may have
8 heard that theory first mentioned?

9 A. To the best of my recollection, it was first
10 mentioned June, July sometime. At the time it seemed
11 that creationism and intelligent design were kind of
12 used hand-in-hand interchangeably.

13 Q. During these public comments that
14 precipitated some of those statements that you were
15 referring to, was it your impression that
16 Mr. Buckingham and Mr. Noel Weinrich were taking the
17 comments as being personally directed toward them?

18 A. Not only them, but the vast majority of
19 board members, yes, they were.

20 Q. So they saw them as being personal attacks
21 against them?

22 A. Yeah.

23 Q. Now, the first meeting you attended in July,
24 you spoke with Joe Maldonado. Correct?

25 A. Yes. And I believe the first -- as I

1 testified earlier, the first meeting I actually had
2 attended was the second meeting in June.

3 Q. I guess my question is, the first meeting
4 that you attended in July --

5 A. Yes, I had spoken to Joe Maldonado.

6 Q. And who is Joe Maldonado?

7 A. It's my understanding he is a reporter with
8 the York Dispatch.

9 Q. And during this conversation, he approached
10 you and asked if you had read or were familiar with
11 some comments that he had quoted in the paper, and
12 those were Mr. Buckingham's comments. Correct?

13 A. Yes, he had.

14 Q. And he asked you what your thoughts were
15 about those comments?

16 A. Yes, he did.

17 Q. And he also asked you if you would ask for
18 Mr. Buckingham's resignation on the spot. Correct?

19 A. That's correct.

20 Q. And you told him that you didn't think that
21 was going to happen?

22 A. I told him that I would just sit back and
23 wait and see what happened.

24 Q. And your sense for why he asked you this was
25 that you thought he was trying to elicit something

1 sensational for his paper?

2 A. There is that possibility of trying to
3 elicit something sensational, but I think he was also
4 trying to prepare for what might happen later on in
5 the meeting since they tended to denigrate in shouting
6 matches.

7 MR. MUISE: May I approach this witness,
8 Your Honor?

9 THE COURT: You may.

10 BY MR. MUISE:

11 Q. Ma'am, I'm handing you what is your
12 deposition testimony that you gave on March 28th of
13 2005. And I'd like you to read, if you look on Page
14 64, read from Line 18 through 25, and then we'll
15 continue on the next page once you finish that.

16 A. "The first board meeting I attended in July
17 he approached me before the meeting started and asked
18 if I had read the -- if I was familiar with the
19 comments that were quoted in the paper. I told him
20 just simply what I had read.

21 "He asked me what I thought about it, and I
22 said, The comments, I don't feel that is appropriate.
23 He asked me if I asked for Mr. Buckingham's
24 resignation on the spot. I told him I didn't think
25 that that was going to happen."

1 Q. And the next line, Line 3, is a question
2 which states, "When Mr. Maldonado asked you that
3 question, do you have a sense for why?" Could you
4 plead read your answer, which is Lines 5 through 8.

5 A. "Yeah. Based on what was quoted in the
6 paper, yeah, I think he was trying to elicit some
7 sensational whatever for the paper. It was my first
8 board meeting. I just wanted to sit back and see what
9 would happen."

10 Q. Were you testifying truthfully during that
11 deposition?

12 A. Yes, I was, to the best of my knowledge.

13 Q. You've had additional discussions with
14 Mr. Maldonado about the happenings with the board.
15 Correct?

16 A. Yeah.

17 Q. And you also had conversations with
18 Ms. Heidi Bubb?

19 A. Yes.

20 Q. And she's a reporter?

21 A. Yes.

22 Q. For which paper?

23 A. She's a reporter for the Dispatch. I said
24 earlier Mr. Maldonado was for the Dispatch. I believe
25 he is actually a reporter for the Daily Record.

1 Q. I believe you testified in your deposition
2 that after the complaint was filed, you actually spoke
3 with Ms. Heidi Bubb quite a bit?

4 A. Yes, at the board meetings. Well, I don't
5 recall whether or not I did say after suit was filed,
6 but I'll take your word for it if it's in my
7 deposition testimony.

8 Q. I'm sorry, ma'am, could you --

9 A. I said, I don't recall whether or not I did
10 say that I had spoken with her after suit was filed.
11 I mean, if that's what it says in my deposition
12 testimony, that's what I testified to at the time.

13 Q. Let's go to Page 68 of your deposition
14 transcript, ma'am.

15 A. Okay.

16 Q. On Line 16, the question was asked, "Can you
17 recall generally when you spoke with her?" And in
18 reference of the -- if you look above, it's referring
19 to Ms. Heidi Bubb. Can you read what your answer was
20 on Lines 17 through 21?

21 A. "She would generally approach me after the
22 meetings. Especially after the complaint was filed, I
23 spoke with her a lot. She would ask me occasionally
24 my thoughts, public comment, what I thought -- why I
25 thought the board was doing what they were doing,

1 those such things."

2 Q. Now, back in July or August, 2004, you had
3 communications with the National Center for Science
4 Education?

5 A. Yes.

6 Q. I believe you joined the Listserv?

7 A. Yes.

8 Q. And you also had a discussion with them
9 regarding an interview with the AP?

10 A. It was a brief e-mail exchange, but yes.

11 Q. Did you do that interview?

12 A. No, I did not.

13 Q. Ma'am, do you understand that the statement
14 that's going to be read to the students in the
15 ninth-grade biology class was modified in June of
16 2005?

17 A. Yes, I do.

18 Q. And do you understand that that modification
19 indicated that the book *Of Pandas and People* would be
20 in the library along with other resources regarding
21 intelligent design?

22 A. Yes.

23 Q. And is it your understanding that those
24 other resources included books that are actually
25 critical of intelligent design?

1 A. Yes.

2 Q. Do you have any objection to that?

3 A. No, I don't.

4 Q. Now, you testified about the harm that
5 you've received based on these statements and the
6 comments and the actions of the board. I'd like you
7 to go to your deposition transcript, if you could, to
8 Page 101.

9 A. Okay.

10 Q. If you'd read from Line 16, which presents
11 the question, until Line 2 of the next page.

12 A. "Question: Is there anything else that the
13 board has done here in connection with the curriculum
14 change that provides a basis for your complaint?

15 "Answer: From what I can see from attending
16 the board meetings, I don't know, because so much of
17 the curriculum debate takes place at non-public
18 meetings that I am not aware of. And when board
19 members are questioned at meetings, they really don't
20 answer any questions. So it gives this whole illusion
21 of secrecy to the process, which, you know, may be a
22 big part of the problem. It may just be a big
23 misunderstanding."

24 Q. Were you testifying truthfully when you
25 answered that question?

1 A. Yes, I was.

2 MR. MUISE: No further questions, Your
3 Honor.

4 THE COURT: Redirect?

5 MR. HARVEY: No, Your Honor.

6 THE COURT: All right. Then, ma'am, we
7 thank you. You may step down. This is probably an
8 appropriate time for us to end today. We will do so
9 by admitting the exhibits that we need to, if we need
10 to.

11 P46 is the York Daily Record article. I
12 assume we're going to withhold admitting that pending
13 further proceedings. Is that right, Mr. Harvey?

14 MR. HARVEY: Yes. We'll move it in after
15 another witness, Your Honor.

16 THE COURT: P56 is the witness's letter to
17 the editor. Are you moving for the admission of P56?

18 MR. HARVEY: Yes, Your Honor.

19 THE COURT: Now, you've stated an objection
20 to that. The objection is noted. You don't have to
21 restate it. And I will note the objection. Do you
22 have any additional objections you want to make to
23 that?

24 MR. GILLEN: Not at this time, Your Honor.
25 That's it.

1 THE COURT: All right. It's admitted
2 subject to the defendants' objection. P60 is the
3 letter from School Board Member Geesey to the editor
4 again. I think I noted that it was admitted. Over
5 the objection already of the defendants, we'll
6 reaffirm that, but you can make any other objections
7 you want to on the record, but I think that was
8 thoroughly argued at that time.

9 MR. MUISE: That's correct, Your Honor.

10 THE COURT: All right. We will reconvene a
11 little later tomorrow, at 9:30 a.m., because of some
12 matters that I must attend to, and the session will go
13 longer. With everybody's indulgence, I would expect
14 to go to approximately 5 o'clock, no later than 5
15 o'clock tomorrow to make up for the time that we lose
16 during the morning session. So we will stand in
17 recess until 9:30 a.m. on Thursday. We thank you all.

18 (Whereupon, the proceedings were adjourned
19 at 4:20 p.m.)
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CERTIFICATION

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings and that this copy is a correct transcript of the same.

Dated in Harrisburg, Pennsylvania, this 28th day of September, 2005.

/s/ Lori A. Shuey
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